

(2015) 09 SHI CK 0050
In the High Court Of Himachal Pradesh
Case No : CWP No. 2718 of 2015

Bhavak Parasher	Vs	APPELLANT
State of Himachal Pradesh and Others		RESPONDENT

Date of Decision : 09-09-2015

Acts Referred:

Arms Act, 1959 — Section 13, 13(1), 13(2), 13(2A), 13(3)
Bihar Cinemas (Regulation) Act, 1954 — Section 5
Constitution of India, 1950 — Article 154 (1), 19(1)(f)
Penal Code, 1860 (IPC) — Section 302, 325, 34, 341
Punjab Cinemas (Regulation) Act, 1952 — Section 5, 5(1), 5(2), 5(3)
Wild Life (Protection) Act, 1972 — Section 9, 9(2)

Citation : (2015) 09 SHI CK 0050

Hon'ble Judges : Rajiv Sharma, J; Sureshwar Thakur, J

Bench : Division Bench

Advocate : Ranjan Lakhanpal, for the Appellant; P.M. Negi, Dy. AG, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J—The petitioner filed an application before the Addl. District Magistrate, Una, seeking licence of revolver vide Annexure P-2 on 20.10.2014. The Superintendent of Police, Una, sent the report to the Addl. District Magistrate, Una on 11.11.2014. According to the contents of the report, there was nothing adverse against the petitioner in the police report and there was no specific threat to him. According to the report of the Pradhan, Gram Panchayat Ambota, the petitioner bore a good moral character. It was also specifically stated therein that local police had no objection if arms licence is issued to the petitioner, as per the rules and instructions. Thereafter, the Superintendent of Police, Una, sent the second report to Addl. District Magistrate, Una on 8.12.2014 stating therein that a case has been registered against the petitioner vide FIR No. 273/14 dated 19.9.2014 under Section 325/34 IPC. The matter was under investigation. There was no specific threat to him. According to the report

of the Pradhan, Gram Panchayat, Ambota, the petitioner was residing at Khel Saddan, Indira Ground, Una. Thereafter, the Addl. District Magistrate, Una, sought the guidance from Secretary (Home), to the Government of Himachal Pradesh, vide communication dated 29.12.2014. The case of the petitioner was rejected vide Annexure P-3 dated 4.2.2015. The petitioner was informed by the Addl. District Magistrate, Una, on 3.3.2015 that his case stood rejected in view of FIR registered against him under Section 325/34 IPC.

2. Section 2(d) of the Arms Act, 1959 (hereinafter referred to as the Act), defines "District Magistrate" as under:

"2(d). "district magistrate", in relation to any area for which a Commissioner of Police has been appointed, means the Commissioner of Police thereof and includes any such Deputy Commissioner of Police, exercising jurisdiction over the whole or any part of such area, as may be specified by the State Government in this behalf in relation to such area or parts;"

3. Section 2(f) of the Act, defines "licensing authority" as under:

"2 (f) "licensing authority" means an officer or authority empowered to grant or renew licences under rules made under this Act, and includes the Government;"

4. The grant of licences is governed under Section 13 and the refusal of licences is governed under Section 14 of the Act. There is a reference to the communication dated 31.3.2010 sent by the Ministry of Home Affairs to all the Secretaries (Home Department), of all the States/UTs, under the subject; "Grant of Arms Licences for acquisition/possession of arms". Sub para (ii) of the same reads as under:

"ii) Grant of Arms Licence for Non-Prohibited Bore (NPB) weapons.

The Arms Licences for acquisition of NPB weapons are considered by the State Government/DM concerned. At present, there are no norms for grant of NPB weapons and some State Governments may be issuing arms licences liberally. It has been decided that:--

a) Application for grant of NPB arms licences may be considered from persons who may face or perceive grave and imminent threat to their lives, for which the licensing authority will obtain an assessment of the threat faced by the persons from the police authorities.

b) No licence may be granted without police verification, which will include report on i) antecedents of the applicant, ii) assessment of the threat, iii) capability of the applicant to handle arms, and iv) any other information which the police authority might consider relevant for the grant or refusal of licence. Further that the steps are being taken by Ministry of Home Affairs to delete the proviso to Sec. 13(2A) of the Arms Act, 1959.

c) The Police authorities may be advised to send the Police report within 45 days positively falling which the Police officials concerned may be liable for action.

d) The licensing authority may call for any information/documents such as Voter ID card, ration card or any other document which it may consider necessary to verify the bonafides of the applicant and to ensure that the applicant resides within its jurisdiction.

e) The licensing authority shall be obliged to take into account the report of police authorities called for under section 13(2) before granting arms licenses and no arms licence may be issued without police verification."

5. The petitioner's son aged 21 years was murdered and FIR No. 260 of 2014, dated 3.9.2014 was registered under Section 302, 341/34 IPC at Police Station Sadar, Una, against one Ram Parkash Singh alias Moni. Cross-FIR was also registered against the petitioner on 19.9.2014 under Section 325/34 IPC at PS Sadar, Una.

6. It is evident from communication dated 11.11.2014 that the police had no objection if arms licence was issued to the petitioner, as per rules and instructions. FIR against the petitioner was registered on 19.9.2014 and communication was addressed by Superintendent of Police to Addl. District Magistrate, Una, on 11.11.2014. It was also specifically stated in the report dated 11.11.2014 that the petitioner had good moral character. However, in communication dated 8.12.2014, there is reference to FIR dated 19.9.2014 bearing No. 273 of 2014 registered against the petitioner under Section 325/34 IPC. The Addl. District Magistrate, Una, has sought the guidance from Secretary (Home), to the Govt. of H.P. vide communication dated 29.12.2014, wherein it is specifically stated that the case of the petitioner could not prima-facie be ignored in view of contention of the petitioner and it requires due consideration. The matter was typical and intricate as apprehension of threat to the life of the petitioner could not be ignored and also the authorities could not ignore the fact that a case was pending against the petitioner under Section 325/34 IPC. There is a reference to communication dated 31st March, 2010. The fact of the matter is that the case of the petitioner was rejected only on the ground that FIR under Section 325/34 IPC was registered against him on 19.9.2014.

7. The petitioner has applied for licence of 32 bore revolver. It is non-prohibited bore. It has also come in the reply filed by respondents No. 1 to 4 that threat assessment had been got done through local police and CID Unit, Una and no specific threat was assessed to the life of the petitioner and threat perception was to be evaluated regularly and particularly when the court hearings are fixed in the case. The challan was put up in FIR No. 260 of 2014 and the evidence of the prosecution was to be recorded w.e.f. 6.8.2015 to 14.8.2015.

8. The licence is to be issued by the District Magistrate. The licencing authority, as per Section 13, is required to call for the report of the officer in charge of the nearest Police Station on that application, and such officer shall send his report within the prescribed time. The licensing authority, after the receipt of such report, subject to other provisions of Chapter III, by order in writing either grant

the licence or refuse to grant the same.

9. The grounds on which the licence can be refused are contained in Section 14 of the Act. Section 14 of the Act, reads as under:

"14. Refusal of licences.--(1) Notwithstanding anything in section 13, the licensing authority shall refuse to grant-

(a) a licence under section 3, section 4 or section 5 where such licence is required in respect of any prohibited arms or prohibited ammunition;

(b) a licence in any other case under Chapter II,--

(i) where such licence is required by a person whom the licensing authority has reason to believe-

(1) to be prohibited by this Act or by any other law for the time being in force from acquiring, having in his possession or carrying any arms or ammunition, or

(2) to be of unsound mind, or

(3) to be for any reason unfit for a licence under this Act; or

(ii) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

(2) The licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or possess sufficient property.

(3) Where the licensing authority refuses to grant a licence to any person it shall record in writing the reasons for such refusal and furnish to that person on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement."

10. It is not the case of the respondents that the petitioner was prohibited by the Act or by any other law from acquiring, having in his possession or carrying any arms or ammunition. The petitioner is not of unsound mind. It is not the case of the respondents also that there was issue of public peace or public safety involved in this case. The only ground to refuse the licence to the petitioner is registration of FIR No. 273/2014 dated 19.9.2014 against the petitioner. The police had no-objection to grant the licence to the petitioner on 11.11.2014 but on this date, FIR already stood lodged against the petitioner, however, U-turn was taken by the Superintendent of Police on 8.12.2014 by referring to registration of case against the petitioner under Section 325/34 IPC. The Addl. District Magistrate, Una, has found the case of the petitioner genuine as per the contents of the communication dated 29.12.2014.

11. The Addl. District Magistrate, Una, has committed illegality by seeking guidance from the State Government. He has to take the decision himself. He

has abdicated his powers to the State by seeking its guidance. The decision ought to be taken by the District Magistrate, i.e. the licensing authority itself, instead of being guided by the Secretary (Home) to the Govt. of Himachal Pradesh.

12. According to the instructions issued by the Ministry of Home Affairs on 31.3.2010, the application for grant of non-prohibited bore weapon can be considered from persons who may face or perceive grave and imminent threat to their lives for which the licensing authority will obtain an assessment of the threat faced by the persons from the police authorities. The licensing authority may also call for any information/documents, such as voter ID card, ration card or any other document which it may consider necessary to verify the bonafides of the applicant and to ensure that the applicant resides within its jurisdiction. The licensing authority is required to take into consideration the report of the police authorities called for under Section 13(2) of the Act, before granting arms licenses and no arms license has to be issued without police verification. The police has supported the case of the petitioner, as per communication dated 11.11.2014 and even in communication dated 8.12.2014, it has not been said anything against the petitioner except that the case was registered against him.

13. The petitioner has lost his 21 years old son. The challan has already been put up in this case. The petitioner apprehends threat to his life from accused Ram Parkash and his associates, who are the petitioner's brothers-in-law. There is a property dispute between the petitioner and his brothers-in-law. Thus, it can safely be said that there was threat to his life and he has right to protect his life and property. The discretion vested in the licensing authority has to be exercised judiciously and not according to the humour. The power must be exercised bonafide and not in arbitrary and rigid manner. The grounds to refusal, as contained in Section 14 of the Act, are not at all attracted in the present case.

14. The Division Bench of the Allahabad High Court in the case of State of U.P. and Others Vs. Jaswant Singh Sarna, AIR 1968 All 383 : (1968) 38 AWR 404 , has held that licensing authority acts in quasi judicial manner and not in an administrative capacity. It has been held as follows:

"10. The renewal of a licence can be refused only upon the grounds mentioned in Section 14. It is apparent that there is no express requirement in section 14 requiring the licensing authority to afford a hearing to the applicant before renewal of his licence is refused. The obligation to hear, however, is a necessary concomitant of the power to refuse if the power is quasi-judicial in nature and must be imported in the exercise of the power. It is now generally recognised that while the duty to act judicially may not always be expressly stated in the statute, yet there may be considerations embodied in the statute which give rise to that duty. The principle was expounded by the Supreme Court in Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, AIR 1962 SC 1110 : (1962) 3 SCR 36 Supp where it was pointed out:

"No one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to act judicially or not. The inference whether the authority acting under a statute where it is silent has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the rights affected, the manner of the disposal provided, the effect of the decision on the person affected and other in dicta afforded by the statute."

This statement of the law has held the field ever since and has been repeatedly followed by the Courts in India."

15. The learned Single Judge of the Kerala High Court in the case of *K.S. Abdulla Vs. District Collector and Others*, AIR 1972 Ker 202, has held that the statutory requirement under Section 14(3) is that the licensing authority shall record in writing the reasons for refusal and this is obligatory. Having regard to the nature of the power entrusted, it is also necessary that the licensing authority should apply its mind and satisfy itself on the question as to whether the security of public peace or public safety demanded a refusal of licence. It has been held as follows:

"4. The statutory requirement under Section 14(3) is that the licensing authority shall record in writing the reasons for such refusal. The further requirement that the applicant should be furnished on demand with a brief statement of the reasons unless the authority is of opinion that it is not in public interest to furnish such statement, may well be left out as there is neither allegation nor proof of the demand. The re-cording of reasons is obligatory; and what is more, having regard to the nature of the power entrusted, it is also necessary that the licensing authority should apply its mind and satisfy itself on the question as to whether the security of public peace or public safety demanded a refusal of the licence. From these points of view, the counter-affidavit is unenlightening as to whether, and if so how, the licensing authority satisfied himself on these aspects, and as to whether the reasons were recorded in writing for the refusal. Counsel who appeared for the respondent made available the files with him. I shall merely place it on record, that it is seen that certain reports were called for and after the receipt of these reports and communications exchanged, there is nothing in the files produced to indicate that the licensing authority applied its mind to the contents of the reports and satisfied itself as to whether the security of the public peace or public safety required a refusal of the licence. On the other hand the files would show a report at a certain page and immediately thereafter, the draft of an order, which eventually materialised in the form of Ex. P-2. On this state of the record, I am satisfied that there has not been an application of the mind of the licensing authority to the requirement of Section 14(1)(b)(ii) of the Act. Nor was there any proper compliance with the requirement of Section 14(3).

5. On these grounds, I allow this writ petition and quash Ext. P-2 and direct the 2nd Respondent to dispose of Ex. P-1 application in accordance with law. There will be no order as to costs."

16. The license has to be granted by the licensing authority and expression "and includes the Government" was added to the definition to remove the doubt and make it clear that even the Government, i.e. the Central Government or any State Government could be the licensing authority if they are so empowered under the Rules made under the Act. In this case, there is nothing to suggest that the State Government was authorized to issue license to the category claimed by the petitioner.

17. The Division Bench of the Patna High Court in the case of Nripendra Narayan Roy Vs. The State of Bihar and Others, (1975) CriLJ 572 : (1974) 7 PLJR 296 , has held that when the District Magistrate grants a license but seeks to get informal approval of Commissioner, such direction is illegal. He has to exercise his own discretion and once satisfied of the fitness to grant the license, he ought not to have been influenced by the Commissioner's view. It has been held as follows:

"4. Section 3 of the Arms Act (No. 54 of 1959) hereinafter referred to as "the Act" lays down that no person shall acquire, have in his possession, or carry any fire arm or ammunition unless he holds in this behalf a license issued in accordance with the provisions of this Act and the rules made thereunder. Section 13(1) of the Act provides that an application for the grant of a licence under Chapter II has to be made to the licensing authority in prescribed form giving necessary particulars and accompanied by such fee, if any, as may be prescribed.

Section 13(2) empowers the licensing authority, after making such inquiry, if any, as it may consider necessary and subject to other provisions of Chapter III of the Act either to grant the licence or, refuse to grant the same by an order in writing. According to Section 13(3)(a) a licence under Section 3 is to be granted by the licensing authority to a citizen of India in respect of a smoothbore gun having a barrel of not less than twenty inches in length or in respect of a muzzle-loading gun or in respect of a .22 bore rifle or an air-rifle for certain purposes mentioned therein.

Section 13(3)(b) lays down that a licence under Section 3 in a case not covered by Sub-section (3)(a) or a licence under other sections of Chapter II may be granted by the licensing authority if it is satisfied that the person by whom the licence is required has a good reason for obtaining the same. Section 14 (1) of the Act deals with cases in which the licensing authority shall refuse to grant a licence. Section 14(2) provides that the licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not possess or own sufficient property. Section 14 (3) requires the licensing authority to record in writing the reasons for refusal to grant a licence and to furnish the person who applies for the licence on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

Section 17 of the Act provides for variation, suspension and revocation of licences by the licensing authority. The grounds on which a licence may be suspended or revoked are mentioned in Sub-section (3) of the Section. Sub-section (5) of that section is similar to Sub-section (3) of Section 14. Sub-section (6) of Section 17 lays down that the authority to whom the licensing authority is subordinate may, by order in writing, suspend or revoke a licence on any ground on which it may be suspended or revoked by the licensing authority.

The licensing authority is defined in Section 2(1)(f) to mean an officer or authority empowered to grant or renew licences under rules made under this Act, and includes the Government. R. 4 of the Arms Rules, 1962 (hereinafter referred to as "the Rules") says that licences under Chapter II of the Act may be granted or renewed for such purposes, by such authorities, in such Forms and to be valid for such period and in such areas as are specified in Schedule II and subject to such conditions as are specified in that Schedule and in the licence. Rule 3 lays down that for the purposes of the Act and the Rules, arms or ammunition shall be of the categories specified in columns 2 and 3 respectively of Schedule I and references to any category of arms or ammunition in these rules shall be construed accordingly.

In Schedule I to the Rules, revolvers constituted category III (a). Under Item 3 of Schedule II, the District Magistrate is the licensing authority for granting licences in respect of arms of category III (a) for whole of India or any specified area. It would thus appear that the District Magistrate was the licensing authority in this case. Learned counsel appearing on behalf of the State was not able to place before us any rule according to which the District Magistrate who is the licensing authority in the case could grant licence of a non-prohibited bore revolver only after obtaining approval of the Commissioner."

18. The Division Bench of the Delhi High Court in the case of Raj Prakash Varshney Vs. Addl. District Magistrate, New Delhi and Others, AIR 1978 Delhi 17 , has held that a body entrusted with a statutory discretion must address itself independently to the matter for consideration. It cannot lawfully accept instructions from, or mechanically adopt the view of another body as to manner of exercising its discretion in a particular case. It has been held as follows:

"26. Regarding the sufficiency of the material we will make our observations hereafter. For the time being we will confine ourselves only to the submission that the impugned order and the previous two orders were made under dictate and if so with what effect. We may here reiterate the law regarding "acting under dictation" and will quote from Halsbury's Laws of England (Fourth Edition) Volume 1, para 31:--

"A body entrusted with a statutory discretion must address itself independently to the matter for consideration. It cannot lawfully accept instructions from or mechanically adopt the view of, another body as to manner of exercising its discretion in a particular case, unless that other body has been expressly

empowered to issue such directions or unless the deciding body or officer is a subordinate element in an administrative hierarchy within which instructions from above may properly be given on the question at issue".

19. The Division Bench of the Patna High Court in the case of Smt. Bharti Singh Vs. State of Bihar and Others, AIR 1982 Patna 111 : (1982) 30 BLJR 365 : (1982) PLJR 206 , has held that under the guise "control of the State Government" as used in Sub-section (2) of Section 5 of the Bihar Cinemas Regulations Act, 1954, the State Government could not usurp the power of the licensing authority which had the exclusive jurisdiction. It has been held as follows:

"10. The arguments of Mr. Prasad is thus well founded and has to be accepted. The interpretation put in the judgment of the Supreme Court in Section 5(2) of the aforesaid Punjab Act will fully apply to Section 5(2) of the present Act, as there is no difference in the language used in the two Acts; rather it appears from the decision of the Supreme Court where the provisions of the Punjab Cinemas (Regulation) Act, 1952 have been briefly indicated that the provisions of the Bihar Cinemas Regulation Act, 1954 are also similar. Therefore, in my view under the guise "control of the State Government" as used in Sub-section (2) of Section 5 of the Act the State Government could not usurp the power of the licensing authority which had the exclusive jurisdiction to deal with the original application for grant and/or renewal of a cinema licence and dispose of the same in accordance with law. I may state here that other points were canvassed at the Bar, but in my opinion, it is neither necessary nor appropriate to refer and discuss other points raised at the Bar as the licensing authority has yet to apply its mind and dispose of the original application of the petitioner for renewal of the licence in her name. In the circumstances it would be open to the parties to raise such points as may be available to them before the licensing authority. I do not wish to prejudice the licensing authority by referring and answering those points at this stage."

20. The Division Bench of the M.P. High Court in the case of Amrik Chand Saluja Vs. State of M.P. and Others, (1991) CriLJ 1314 : (1990) ILR (MP) 149 , has held that refusal of renewal of licence on remote and extraneous grounds is not proper. It has been held as follows:

"3. The position that emerges from the aforesaid provisions of the Arms Act is that a person cannot hold any arms or ammunition without a licence. This licence is granted for certain duration and under certain conditions. It shall be refused under any of the circumstances mentioned in Section 14. One of such circumstances mentioned Under Section 14(1)-(b)(ii) is where the licensing authority deems it necessary for the security of the public peace or for the public safety to refuse to grant such licence. Ordinarily, a licence shall be renewable. If, however, the, licensing authority decides not to renew the licence, it has to record its reasons in writing for so doing. As the provisions of Sections 13 and 14 have been made applicable to an application for renewal of a licence in the same

manner as they apply for grant of a licence, the licensing authority is required to obtain a report of the officer-in-charge of the nearest Police Station and is also required to make such enquiry as may be considered necessary before refusing to renew the licence. One has, therefore, to see in the present case, if, while refusing renewal of licence vide Annexure R-I, the licensing authority has adhered to these provisions."

21. The learned Single Judge of the M.P. High Court in the case of C. Sam Joseph Raj Vs. District Revenue Officer and Addl. Dist. Magistrate and Another, (1998) CriLJ 3152 , has held that the authorities have to see only whether there is violation of any law, while refusing to grant licence to possess gun. It has been held as follows:

"11. Another significant aspect in this matter is that from the very beginning, it is the case of the writ petitioner herein that Section 9(2) of the Wild Life Protection Act, 1972 reads that licence can be issued for hunting "Vermin" as found in Schedule V of the Act. That being so, even though both the respondents have so far passed a number of orders in this regard, they not at all discussed about this provision of the Act or at least that the petitioner is not entitled to invoke the said provisions of the Act. At this stage it is pertinent to note that it has been brought before the authorities on behalf of the writ petitioner that hunting of bats was not prohibited under Section 9 of the Wild Life (Protection) Act, 1972 and the fruit bats, which the petitioner herein needs had been categorised as "Vermin" in Schedule V of the Act. Further it is significant to state herein that Section 13 of the Arms Act recognises a right of a citizen of India to have a licence and a gun, being a movable property, a citizen has the right under Article 19(1)(f) of the Constitution of India, to acquire and hold a licence subject to reasonable restrictions. Further as could be seen from the counter it is stated as follows:

"If the writ petitioner is very much particular in eating fruit bat and sempooth, he could get them through other means from the market or otherwise. It is not as though that they are not available in market. There is no guarantee that he will not shoot other birds and hence it is not possible to grant gun licence to catch only a particular bird by hunting."

I have already observed that it is not open to the respondents to dictate the petitioner to choose a certain kind of treatment or medicine and that it depends purely on his own will, pleasure and choice. The authorities should confine themselves only with the legal aspects. It is not denied anywhere by any of those respondents that there is no provision in the Act to grant a licence to catch only a particular bird by hunting. It is also not the case of the respondents that the fruit bat heeded by the petitioner herein is not coming under the category of the "Vermin" found in Schedule V of the Act. Further the contention of the petitioner herein that under Section 9(2) of the Wild Life Protection Act, 1972, licence can be issued for hunting "Vermin" has also not at all been disputed by any of these respondents at any point of time."

22. The learned Single Judge of the Kerala High Court in the case of Ganesh Prasad Vs. Board of Revenue (LR), (2005) CriLJ 3178 : (2005) 2 KLT 645 , has held that when the Collector rejects application only on the basis of report by Superintendent of Police not recommending licence, it amounts to non-application of mind and each application has to be treated on its own merits. It has been held as follows:

"7. Coming to the facts of this case, this is a case where undoubtedly the Tahsildar has recommended the grant of licence. The authority has proceeded, however, to refuse the licence only on the ground that the Superintendent of Police has not recommended the issue of licence. It is apparently for the reason that the Superintendent of Police has found that there are already a lot of licensed weapons in the area and the misuse of the arms should not be ruled out. The Appellate Authority has confirmed the rejection by stating that all relevant reasons and aspects have been considered. It is not understood as to what is meant by the Appellate Authority when it said that all relevant aspects have been considered, when a perusal of the order passed by the Dist. Collector would show that the only reason for rejection of the application filed by the petitioner is that the Superintendent of Police has not recommended the issue of licence. Each application for the licence has necessarily to be considered on its own individual merits. He must bear in mind the relevant facts and must refuse to be guided by irrelevant facts. He has to act bona fide. He cannot abuse his discretionary power, no doubt. It is essential that he applies his mind when any application comes up before him to the individual facts presented by the applicant before he takes a decision as to whether the application should be granted or refused. In this context, I draw support from what is stated in Wade on Administrative Law.

"The proper authority may share its power with some one else, or may allow some one else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void".

If one peruses the order of the District Collector, it can be seen that the only reason stated is that the Superintendent of Police had not recommended issue of licence. I would take the view that this is a case where the authority has virtually declined to act without the consent of the Superintendent of Police and it amounts to the exercise of discretion by the wrong authority. The said order has been upheld by Ext. P2 order. As I have already stated it is stated that the decision has been arrived at after due consideration of all relevant aspects which is itself incorrect."

23. The authorities are required to look into complete facts and not mechanically refuse the licence merely on the pretext that a case has been registered against the applicant. It is only in those cases where heinous crime is committed, the authorities may refuse to issue the licence. There should be very strong

reasoning for disqualifying/debarring the candidate from holding a licence. The authorities, in the instant case, could not overlook the murder of the petitioner's son and that too on a broad day light and registration of the cross-FIR against him in the same incident.

24. The second amendment to the American Constitution reads as under:

"A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed."

However, in India, the citizens/persons do not have a fundamental right to keep and bear arms but definitely have a legal right and not merely a privilege to protect their life and property.

25. In the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, AIR 1952 SC 16 : (1952) 1 SCR 135 , their lordships of the Hon'ble Supreme Court have held that under the rules framed under S. 22, City of Bombay Police Act, the only person vested with authority to grant or refuse a license for the erection of a building to be used for purposes of public amusement was the Commissioner of Police. The order of cancellation was not an order by the Commissioner but merely intimation by him of an order passed by another authority, namely the Government of Bombay. It has been held by their lordships as under:

"17. It is clear to us from a perusal of these rules that the only person vested with authority to grant or refuse a license for the erection of a building to be used for purposes of public amusement is the Commissioner of Police. It is also clear that under Rule 250 he has been vested with the absolute discretion at any time to cancel or suspend any license which has been granted under the rules. But the power to do so is vested in him and not in the State Government and can only be exercised by him at his discretion. No other person or authority can do it.

24. Taking the second. first, it is evident from the rules that there is no specific law which requires the Commissioner to grant a license on the fulfillment by the petitioner of certain conditions. He is vested with a discretion to grant or to refuse a license and all that the law requires is that he should exercise that discretion in good faith. But that he has done. In the exercise of that discretion he granted a license and that license still holds good because, on the view we have taken, there has been no valid order of cancellation. Accordingly, this relief cannot be granted."

26. In the present case, the Addl. District Magistrate, Una, has sought the guidance from the State Government and the State Government itself has rejected the application of the petitioner.

27. In the case of State of Punjab Vs. Suraj Parkash Kapur etc., AIR 1963 SC 507 : (1962) 2 SCR 711 , their lordships of the Hon'ble Supreme Court have held that there was no provision under the Act empowering the State Government to give any such instructions to the Consolidation Officer; nor does any provision of the Act confer on the State Government any power to make

rules or issue notifications to deprive owners of land or any part thereof or to direct the Consolidation Officer as to how he should exercise his statutory duties under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. It has been held as follows:

"7. Re (2). The second point has absolutely no legs to stand upon. The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, was enacted, in the words of the long title annexed to the Act, to, provide for compulsory consolidation of" agricultural holdings and for the prevention of fragmentation of agricultural holdings in the State of Punjab. Under s. 15 of the said Act, the scheme prepared by the Consolidation Officer shall provide for the payment of compensation to any owner who is allotted a holding of less market value than that of his original holding and for the recovery of compensation from any owner who is allotted a holding of greater market value than that of his original holding. There is no provision in the Act empowering the Consolidation Officer to deprive a person of any part of his property without allotting to him property of equal value or paying him compensation if he is allotted a holding of less market value than that of his original holding. In the present case it is not disputed that while the respondents were allotted 123 kanals and 18 marlas of "A" Grade land on a quasi permanent basis by the Custodian and later confirmed by the Central Government, the consolidation proceedings gave him only 50 kanal 8 and 7 marlas of "A" Grade land, and 34 kanals and 1 marla of "B" Grade land. The area given under the consolidation proceedings is admittedly of less value than that of the holding allotted to the respondents by the Custodian, and the Consolidation Officer has not paid any compensation for the deficiency. This unjust situation in which the respondents have been placed is sought to be supported by learned counsel for the State on the basis of the instructions given to the Consolidation Officer by the State Government. There is no provision in the Act empowering the State Government to give any such instructions to the Consolidation Officer; nor does any provision of the Act confer on the State Government any power to make rules or issue notifications to deprive owners of land of any part thereof or to direct the Consolidation Officer as to how he should exercise his statutory duties. Any such rule would be repugnant to the provisions of the Act. That apart, no such statutory rule empowering the State Government to issue such instructions has been placed before us. Both here as well as in the High Court, learned counsel appearing for the State has not been able to sustain the validity of such instructions on any legal basis. The order of the appropriate officers confirming the "scheme on the basis of the said instructions was obviously illegal and, therefore, was rightly set aside by the High Court."

28. Their lordships of the Hon"ble Supreme Court in the case of State of Punjab and Another Vs. Hari Krishan Sharma, AIR 1966 SC 1081 : (1966) 2 SCR 982 , have held that the State Government is not justified in assuming jurisdiction which has been conferred on the licensing authority by S. 5(1) and (2) of the Punjab Cinemas (Regulation) Act, 1952. It has been held as follows:

"12. The question which we have to decide in the present appeal lies within a very narrow compass. What appellant No. 1 has done is to require the licensing authority to forward to it all applications received for grant of licences, and it has assumed power and authority to deal with the said applications on the merits for itself in the, first instance, Is appellant No. 1 justified in assuming jurisdiction which has been conferred on the licensing authority by s. 5(1) and (2) of the Act? It is plain that s. 5(1) and (2) have conferred jurisdiction on the licensing authority to deal with applications for licences, and either grant them or reject them. In other words, the scheme of the statute is that when an application for licence is made, it has to be considered by the licensing authority and dealt with under s. 5(1) and (2) of the Act. Section 5(3) provides for an appeal to appellant No. 1 where the licensing authority has refused to grant a licence; and this provision clearly shows that appellant No. 1 is constituted into an appellate authority in cases where an application for licence is rejected by the licensing authority. The course adopted by appellant No. 1 in requiring all applications for licences to be forwarded to it for disposal, has really converted the appellate authority into the original authority itself, because s. 5(3) clearly allows an appeal to be preferred by a person who is aggrieved by the rejection of his application for a licence by the licensing authority."

29. Their lordships of the Hon''ble Supreme Court in the case of Chandrika Jha Vs. State of Bihar and Others, AIR 1984 SC 322 : (1983) 2 SCALE 888 : (1984) 2 SCC 41 : (1984) 1 SCR 646 , have held that the Chief Minister of the State could not usurp the powers of Registrar under the Bihar and Orissa Co-operative Societies Act, 1935. It has been held as follows:

"11. We fail to appreciate the propriety of the Chief Minister passing orders for extending the term of the first Board of Directors. Under the Cabinet system of Government, the Chief Minister occupies a position of pre-eminence and he virtually carries on the governance of the State. The Chief Minister may call for any information which is available to the Minister-in charge of any department and may issue necessary directions for carrying on the general administration of the State Government. Presumably, the Chief Minister dealt with the question as if it were an executive function of the State Government and thereby clearly exceeded his powers in usurping the statutory functions of the Registrar under bye-law 29 in extending the term of the first Board of Directors from time to time. The executive power of the State vested in the Governor under Art. 154 (1) connotes the residual or governmental functions that remain after the legislative and judicial functions are taken away. The executive power includes acts necessary for the carrying on or supervision of the general administration of the State including both a decision as to action and the carrying out of the decision. Some of the functions exercised under "executive powers" may include powers such as the supervisory jurisdiction of the State Government under s. 65A of the Act. The Executive cannot, however, go against the provisions of the Constitution or of any law."

30. Mr. Ranjan Lakhanpal, Advocate, for the petitioner has relied upon the judgment of the Delhi High Court, in the case of Sahil Kohli v. Additional Commissioner of Police, decided on 20.9.2013. The learned Single Judge has gone into the entire gamut of Section 13 and 14 of the Arms Act, 1959, and has held as under:

"4. Since the grant of an arm licence is regulated by a statute in certain situations, the statute prohibits grant of such a licence and there is no challenge to the constitutional validity of the Arms Act. No citizen has a fundamental right to obtain a fire arm licence and/or ammunition and, therefore, a fire arm licence cannot be claimed as a matter of right. The citizens are entitled to safeguard their life and liberty taking all such measures as are bound to them in law, but, possession and carrying of a fire arm is a privilege regulated by the provisions of the Arms Act, 1959. Section 13(3)(a) stipulates the cases in which it is obligatory for the Licensing Authority to grant such a licence. The grant of the licence is also mandated in a case where the Licensing Authority is satisfied that the applicant has a good reason to obtain the same. But, the provisions contained in Section 13 being subject to the provisions of Section 14 of the Act, no licence even in a case covered under Sub-section (3) of Section 13 can be granted, if a situation contemplated in Sub-section (1) of Section 14 exists. In such a case, the Licensing Authority would have no option, but to decline a licence. Section 13(3) contemplates the situations in which it is obligatory for the Licensing Authority to grant licence, whereas Section 14(1) contemplates the situation, existence of which mandates refusal of the licence even if the case of the applicant is covered under Sub-section (3) of Section 13 of the Act.

5. On a cumulative and harmonious construction of Section 13 and 14 of the Act, it becomes obvious that, except in the cases covered by Section 13(3)(a), which do not fall under Section 14(1), though the Licensing Authority has a discretion whether to grant licence or not, such a discretion is not absolute nor can it be exercised on subjective considerations. It has to be a decision guided by reasons which are cogent, objective, transparent and logical. The licence can neither be granted nor refused on the whims and fancies of the Licensing Authority and the decision taken by him must necessarily be based on good reasons which are discernible from the order passed by him. The need to become objective, fair and reasonable becomes greater in case the Licensing Authority seeks to refuse the licence since Sub-section (3) of Section 14 mandates him to record reasons for such refusal and supply a brief statement of such reasons to the applicant who has a right to challenge the decision of the Licensing Authority, before the prescribed Appellate Authority. An order refusing to grant licence is subject to judicial review if challenged on the ground that it suffers from the vice of arbitrariness, non-application of mind, mala fides or application of irrelevant considerations.

7. The next question which arises for consideration is as to whether the licence could be refused to the petitioner on the ground that there was no specific threat

to his life or property and the law and order situation in the locality in which he was residing was satisfactory. In my opinion, the fire arm licence cannot be denied to a person, in whose case a situation contemplated by Sub-section (1) of Section 14 does not exist, solely on the ground that there is no specific threat to him or his family members. A situation requiring safety in the form of a fire arm cannot always be foreseen and may develop all of a sudden. For instance, there may be an attempted burglary, dacoity, house breaking or robbery in the house of a citizen in the dead of the night or he may be subjected to robbery, snatching, etc, while on the move. It is not possible for a police official to be present everywhere and every time to protect the citizens and in fact it happens quite often that the police arrives at the scene only after the crime is already committed. Though it is an undisputed responsibility of the State to protect the lives and property of the citizens, the harsh reality is that the State does not have an impressive record in this regard. In fact, no person can predict when, where and at what time and in which form, he may face a threat to his life or property. Therefore, as a prudent citizen, he would be justified in taking adequate steps to protect himself and his property and such steps would include acquiring a licensed weapon so as to avoid any crime against his body and property. It is the applicant's own perception of threat to his life and property which needs to be considered by the Licensing Authority in the light of law and order situation, prevailing in the locality and various other factors."

31. In the instant case, the petitioner has sought fire arm licence to protect his life and property, as per the details given in the petition.

32. Accordingly, the Writ Petition is allowed. Annexure P-3 dated 4.2.2015 and communication dated 3.3.2015 are quashed and set aside. The respondent No. 5 is directed to issue licence to the petitioner within a period of three weeks after the receipt of the certified copy of this judgment. Pending application(s), if any, shall stand disposed of.