

(2020) 10 SHI CK 0045

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1381 Of 2020

Chamal Lal Sharma

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 06-10-2020

Acts Referred:

Arms Rules, 1962 — Rule 51(b)

Arms Act, 1959 — Section 3, 17, 17(3), 17(3)(c), 18, 21(1)

Indian Penal Code, 1860 — Section 34, 332, 341, 342, 353, 363, 366, 376, 392, 448, 504, 506

Mines Act, 1952 — Section 21

Citation : (2020) 10 SHI CK 0045

Hon'ble Judges : Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Devender K. Sharma, Ashok Sharma, Vikas Rathore, Vinod Thakur, Shiv Pal Manhans, Seema Sharma, Bhupinder Thakur, Yudhvir Singh Thakur

Judgement

Jyotsna Rewal Dua, J

1. Petitioner is aggrieved against cancellation of his two Arms Licences.

2. Legal Provisions

2(i) Section 3 under Chapter 2 of the Arms Act 1959 (hereinafter referred to as the Act), mandates that no person shall acquire, possess, carry any firearms or ammunition unless he holds a licence issued in this regard in accordance with provisions of the Act. The aforesaid section reads as under:-

"3. Licence for acquisition and possession of firearms and ammunition

(1) No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provision of this Act and the rules made there-under: Provided that a person may, without himself holding a licence, carry any firearms or ammunition in the presence, or under the written authority, of the holder of the licence for repair or

for renewal of the licence or for use by such holder.

(2) Notwithstanding anything contained in sub- section (1), no person, other than a person referred to in sub-section (3), shall acquire, have in his possession or carry, at any time, more than three firearms:

Provided that a person who has in his possession more firearms than three at the commencement of the Arms (Amendment) Act, 1983, may retain with him any three of such firearms and shall deposit, within ninety days from such commencement*, the remaining firearms with the officer-in-charge of the nearest police station or, subject to the conditions prescribed for the purposes of sub-section (1) of section 21, with a licensed dealer or, where such person is a member of the armed forces of the Union, in a unit armoury referred to in that sub-section.....".

2(ii) Section 17 of the Arms Act empowers the Licensing Authority to vary the conditions of grant of licence, suspend a licence for specified period or even revoke a licence in case of circumstances detailed in the provisions, which read as under:-

"17. Variation, suspension and revocation of licences - (I) The licensing authority may vary the conditions subject to which a licence has been granted except such of them as have been prescribed and may for that purpose require the licence-holder by notice in writing to deliver-up the licence to it within such time as may be specified in the notice.

(2) The licensing authority may, on the application of the holder of a licence, also vary the conditions of the licence except such of them as have been prescribed.

(3) The licensing authority may by order in writing suspend a licence for such periods as it thinks fit or revoke a licence, -

(a) if the licensing authority is satisfied that the holder of the licence is 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 is of unsound mind, or is for any reason unfit for a licence under this Act; or

(b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or

(c) if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it; or

(d) if any of the conditions of the licence has been contravened; or

(e) if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver-up the licence.

(4) The licensing authority may also revoke a licence on the application of the holder thereof.

(5) Where the licensing authority makes an order varying a licence under sub-section (1) or an order suspending or revoking a licence under sub-section (3), it shall record in writing the reasons therefor and furnish to the holder of 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.

(6) 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; and the foregoing provisions of this section shall, as far as may be, apply in relation to the suspension or revocation of a licence by such authority.

(7) A court convicting the holder of a licence of any offence under this Act or the rules made thereunder may also suspend or revoke the licence:

Provided that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void.

(8) An order of suspension or revocation under sub-section (7) may also be made by an appellate court or by the High Court when exercising its powers of revision.

(9) The Central Government may, by order in the Official Gazette, suspend or revoke or direct any licensing authority to suspend or revoke all or any licences granted under this Act throughout India or any part thereof.

(10) On the suspension or revocation of a licence under this section the holder thereof shall without delay surrender the licence to the authority by whom it has been suspended or revoked or to such other authority as may be specified in this behalf in the order of suspension or revocation."

3. Facts

3(i) Petitioner, statedly for self protection applied and on 25.7.2003, was issued an Arms Licence No.2552/DMH by the District Magistrate Hamirpur, H.P. to possess SBBL Gun No.42029.

3(ii) Petitioner again applied on 26.7.2004 and on 29.7.2004 was issued an Arms Licence No.2662/DMH to possess .32 bore revolver No. FG32206.

3(iii) In 2013, during routine scrutiny of the arms licence records, the respondents found that the petitioner while applying for .32 bore revolver licence had concealed material information in Column No.10(a) of the application form about his being already in possession of an Arms licence. Therefore, in exercise of powers under Section 17(3)(c) of the Act, the respondents vide order dated 22.7.2013 suspended petitioner's Arms Licence No.2662/DMH for a period of six months.

3(iv) Petitioner's application dated 12.7.2013 for renewal of earlier licence No.

2552/DMH was forwarded by the respondents to Station House Officer (SHO) Bhoranj for verification. The SHO Bhoranj on 12.7.2013, reported several FIRs' registered against the petitioner viz (i) FIR No.61/91 under Section 353 IPC (ii) FIR No.93/94 under Section 353, 332, 504 IPC (iii) FIR No.38/96 under Section 448, 341 IPC (iv) FIR No.62/10 under Section 21 Mining Act (v) FIR No.29/91 under Section 363, 366, 376, 341 IPC and (vi) FIR No.34/91 under Section 392 342, 506 IPC.

The Superintendent of Police Hamirpur in response to respondents' communication dated 31.07.2013, vide his letter dated 3.8.2013, also reported FIR No.102/2013 dated 10.7.2013 under Sections 341, 323, 506 and 34 of the Indian Penal Code registered against the petitioner at Police Station Bhoranj, District Hamirpur. He also reported that the petitioner was 'found indulging in aggressive social misconduct indicating threat to public peace in the area'.

3(v) On 26.7.2013, a show cause notice was issued to the petitioner by the respondents under Section 17 of the Arms Act, as to why his already suspended Arms Licence No.2662/DMH be not cancelled in view of suppression of relevant facts by him while applying the second time for the Arms Licence. Since the petitioner had concealed the fact of his being already in possession of an Arms licence while applying for the licence on 26.7.2004 under Rule 51(b) of the Arms Rule 1962 for grant of .32 bore revolver, renewal of his earlier Licence No.2552/DMH was not recommended. In view of the police reporting various FIRs registered against the petitioner & his social misconduct, respondents in exercise of powers under Section 17 of the Arms Act on 5.8.2013 issued a show cause notice to the petitioner for cancelling his Arms licence No.2552/DMH.

3(vi) Petitioner furnished his replies to the notices in respect of Licence Nos.2552/DMH and 2662/DMH, taking plea of ignorance of law requiring him to disclose his earlier Arms Licence, while applying for the fresh one. The replies were considered and were not found satisfactory by the respondents. Accordingly, Licence No.2662/DMH was cancelled by the respondents on 2.9.2013 and Licence No.2552/DMH was cancelled on 3.9.2013. Appeals were preferred by the petitioner against the aforesaid orders under Section 18 of the Arms Act. One of the appeals relating to order dated 3.9.2013, regarding Licence no.2552/DMH cancelled on 3.9.2013, has been dismissed by the learned Appellate Authority. The second appeal is stated to be pending.

3(vii) The petitioner has approached this Court, seeking quashing of orders dated 2.9.2013 and 3.9.2013, cancelling his Arms Licences No.2662/DMH and 2552/DMH respectively as well as praying for quashing of order dated 17.10.2014 passed by the Appellate Authority.

4. Observations

Having heard learned counsel for the petitioner as well as learned Advocate General, we do not find any infirmity in the action of the respondents cancelling both the Arms licences of the petitioner i.e. No. 2552/DMH & No.2662/DMH. It is

not in dispute that without disclosing about his previous Arms licence, petitioner had applied and obtained another Arms licence. Even 'the plea of ignorance of law' cannot come to the rescue of the petitioner. A specific Column No.10(a) in the application form requiring the applicant to furnish details of his previous Arms Licence was deliberately kept blank by him while applying second time for the Arms Licence. He was guilty of '*suppressio veri suggestio falsi*'. Respondents, therefore, justifiably exercised their powers under Section 17(3) of the Arms Act in cancelling both his licences. It is also worth noticing that the petitioner had applied for firearms licence for self protection under some threat allegedly perceived by him in the year 2003. No material has been placed on record by the petitioner about existence or continuation of this threat perception as on date. In the facts of instant case, even though petitioner's appeal against cancellation of his arms licence No.2662/DMH is stated to be pending adjudication before the learned Appellate Authority, however, he having approached this Court seeking quashing of cancellation orders of both of his Arms licences and after looking into & examining the case, we have no manner of doubt that his both the licences deserved to be cancelled and were justly cancelled by the authorities. It was in 2013, that the authorities stumbled on the Arms licence records and discovered not only material concealment of facts by the petitioner but also the fact that as many as seven FIRs were registered against him. Some of these were registered even prior to the issuance of the first licence. One of the FIRs was registered on 10.7.2013. As per report of Station House Officer (SHO) Bhoranj and the Superintendent of Police Hamirpur, petitioner indulged in aggressive misconduct, indicating threat to peace in the area. In the facts of the case, even acquittal of the petitioner in some of the FIRs will not imply that he is not a threat to peace in the area, on the face of police verification report.

Considering the totality of facts & circumstances; (i) whereunder petitioner had suppressed & withheld material information about his previous Arms Licence No.2552/DMH from the competent authority while obtaining second Arms Licence No.2662/DMH, (ii) whereunder petitioner himself was involved in various FIRs (iii) where as per police report, petitioner himself is a threat to peace in the area and (iv) where there is no material regarding alleged threat perception to the petitioner, we, therefore, do not find any fault in the action of the respondents in cancelling both of his Arms Licences in accordance with provisions of the Arms Act. Consequently, we do not find any merit in the instant writ petition and the same is accordingly dismissed alongwith pending application(s), if any.

Having decided the lis, we may observe that the present case is an indication of issuance of Arms Licences at the mere asking of the applicants without verifying compliance of provisions of the Act/Rules/Instructions issued in this regard. The Arms Act coordinates rights of citizen with necessity of maintaining law and order. Firearms should not come in possession of anti-social elements. There is need for greater vigilance on the grant of Arms Licences. Arms Licences cannot be granted to be used as status symbol of the applicants. We, therefore, direct that henceforth no Arms Licence shall be granted or renewed in case the

applicants do not meet the parameters prescribed in this behalf under the Act, the Rules framed thereunder or any instructions issued by the Competent Authority. We also direct all the Licensing Authorities in the State to review all the Arms Licences granted by them on the touchstone of above parameters and take appropriate action in accordance with law, wherever required. This exercise be completed within a period of four months from today.

List for compliance on 02.03.2021.