
(1972) 02 DEL CK 0013
In the Delhi High Court
Case No : Civil Writ No. 1241 of 1971

Krishan Lal Suri

APPELLANT

Vs

Ltd. Governor, Delhi and Others

RESPONDENT

Date of Decision : 21-02-1972

Acts Referred:

Citation : AIR 1972 Delhi 299

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Advocate : Avadh Behari, for the Appellant; V.P. Kohil, for the Respondent

Judgement

1. This is a Write Petition brought by Krishan Lal Suri, petitioner, to challenge the seizure of his arms license issued under the Arms Act, 1959 and also his shooting license granted under the Punjab Wild Birds Wild Animals Protection Act, 1933 as extended to Delhi. It appears that the petitioner holds a license under the Arms Act, which relates to (a) one single barrel gun, (b) a double barrel gun and (c) a rifle. He also holds a license issued under the Punjab Wild Birds and Wild Animals Protection Act (hereinafter referred to as the Punjab Act). It appears that once a person has a license under the Arms Act. He is entitled to get a shooting license under the Punjab Act on the payment of a modest fee. The petitioner's license under the Arms Act was to expire on 12th November, 1971, but he made an application for renewal before this date and paid Rs. 66/- which was the prescribed fee. This is the fee for three years.

2. From the facts disclosed in the Writ Petition, it appears that the petitioner Shot a hare (Khargosh) in the off-season and thereby infringed the provision of the Punjab Act. The said Act provides that certain animals can only be shot, captured or possessed in particular seasons and, as far as hares are concerned, the period is 15th September to 31st March. The petitioner admitted his guilt and was fined Rs.10/- by Shri Raja Ram, Magistrate. On 19th August, 1971, a notice was issued u/s 5 of the Punjab Act to the petitioner by Shri Sant Lal Nagrath, Games Inspector, respondent No. 4. This notice required the petitioner to produce his

shooting license on 1st September, 1971. I may reproduce Section 5 of the Punjab Act at this stage:-

"Any person in possession of any wild bird or wild animal specified in Schedules Ii and Iii shall, of required so to do by a person authorised in this behalf, produce his license within fifteen days."

Admittedly the petitioner did not produce his license on that day but wrote a letter saying that he could not trace out his shooting license because there had been a recent death of two relatives in his family and he was otherwise busy. This letter is Annexure "D" to the writ petition. Shri Nagrath, Games Inspector then wrote another letter to the petitioner asking him to produce the shooting license by 13th September, 1971. This letter was issued on 8th September, 1971, and according to the petitioner, was received by him after 13th September, 1971. Following this letter, the petitioner again requested for a further date to produce the license as he had received the letter late.

3. According to the petitioner on 23rd September, 1971, a police constable and an Assistant Sub-Inspector of Police came to the petitioner's residence in Tilak Nagar, Delhi and asked him to hand over his arms license as well as the shooting license. A seizure memorandum was also prepared at the time memorandum was also prepared at the time of the taking over of these two license, which is Annexure "G" to the Writ Petition. Later on, the petitioner applied to the District Magistrate for the return of the two licenses but the same were not returned. This was followed by a notice u/s 80 of the CPC which was also not complied with. In view of the non-return of the licenses to the petitioner, the petitioner brought this Writ Petition on 18th November, 1971.

4. The respondents have put in a return consisting of an affidavit and Annexures to show the facts and circumstances leading to the seizure of the arms and shooting licenses of the petitioner. I shall first take up the position of the respondent's qua the arms license. It appears that a notice Annexure R-3 was issued by Shri H.D. Birdi, respondent No.3 on 16th August, 1971, calling upon the petitioner to produce the license within 15 days. This notice is in the form of a printed postcard which is partly in Hindi and partly in English. It does not bear any signatures any one but seems to say at the top of the post-card "please refer to your application dated X and please refer to 7 below." Then there are a number of cutting and then the words "please sent your Arms license within fifteen days." It is not possible to make out what this document means and who was the person who sent this notice and what were the reasons which prompted him to send for the license. This notice was not complied with and this led the said Shri Birdi to writ a letter to the Police Station, Tilak Nagar calling upon the Station House Officer to collect the licenses. Acting on the basis of this letter, which is also on record as Annexure R-4 to the Writ Petition, the police seized the licenses from the petitioner. The question for decision is whether such a procedure is justified under the provisions of the Arms Act. I may for convenience refer to the power of demanding and ordering production of

licenses. Though the power is not specifically mentioned in the Arms Act, there is a rule to be found in the Arms Rules, 1962, on the subject which is Rule 62 and runs thus:-

"Production of licenses. -- (1) Any person who-

(a) holds a license granted or renewed or a pass, permit or certificate granted under these rules, or

(b) is acting under colour of such license pass, permit or certificate, shall forthwith produce such license, pass permit or certificate upon demand by any magistrate or any police officer of a rank not below that of an officer-in-charge of a police station.

(2) While granting or renewing a license, "no authority shall impose a condition inconsistent with sub-rule (1)."

According to this rule any person holding a license has to forthwith produce the license if demanded by a magistrate or police officer not below the rank of officer-in-charge of a police station. Thus, if the letter R-3 was sent to the petitioner by Shri Birdi, the petitioner was obliged to produce the license under Rule 62. As I have already mentioned the document asking for production of the licenses is obscure and possibly under these circumstances, the license was in fact not produced, he never got this letter at all. But, assuming that he did get it and failed to produce the licenses as required, was the police entitled to seize the licenses under any powers under the Act.

5. I have been taken through the various provision of the Rules and the Act, but Mr. Kohil on behalf of the State has not been able to show me any provision of law which entitles the police to seize the licenses on their non-production. Mr. Kohil submits that as there is a power to direct production of the license it follows that in the event of non-production the police has a right to seize the document. I am afraid that this is traveling beyond the scope of the sections of the Act and the Rules. A license is only a document issued by the authorities. If the authorities want the same to be produced, they can direct its production, but the action of compulsorily taking the same into possession without revoking or suspending the same seems to be contrary to the provisions of the Act. I may mention that Section 17 of the Act has given the Licencing Authority wide powers. This power includes the variation, suspension and revocation of licenses. There is also u/s 15 the power to refuse the renewal of a license. If the Licencing Authority wanted the petitioner's license to come to an end, it could suspend the that there has been a breach of certain conditions it could also revoke the license, but to take physical possession of the license by force or by the exercise of police powers appears to be outside the scope of the Act or Rules. A person having a document in his possession is entitled to return the same unless he can be compelled to give up its possession by some recognisable rule of law arising from statute. There are no doubt documents which can be exercised in suitable cases. There is no suggestion that the documents have been taken into

possession by the issue of a search warrant or on the institution of a first information report or under any other such power. Here, the seizure has taken place only after the alleged notice R-3 was issued, which does not even seem to have been delivered to the petitioner. Assuming that there was no production of the license, the only course open for the authorities was to take action under its statutory powers and not by sending the police to take possession of the license. I may mention that if physical possession of the license is taken, it means that the holder of the license can no longer use the arms he owns because u/s 19 of the Act any police officer may demand the production of the license from any person carrying arms or ammunition.

6. Mr. Kohil contends that the seizure of a license is not equivalent to the suspension of the license and all that was required from the petitioner was production of his license. He also submits that the seizure memo is equivalent to a license. If that is so, why was production of the license required? It is only a document and unless it is wanted for cancellation, revocation or suspension there is no point in taking the document into possession. Mr. Kohil urges that this Writ is premature because action has yet to be taken. On the other hand there is no doubt that the license has been seized, and therefore, there has been an infringement of the statute. As long as there is no statutory enactment enabling the police to take physical possession of a license, the action has to be held to be *ultra vires*.

7. I now come to the case of the shooting license. According to Section 5 of the Punjab Act, production of the license can be asked for from a person in possession of any wild bird or wild animal. The wild animal or wild bird for the purposes of this Section includes the flesh of such wild animal or bird. Now the facts in relation to the shooting license are that the petitioner had received the notice requiring him to produce the same but he wrote back saying that he could not find the same for certain reasons. Subsequently another letter directed him to produce the document on 13th September, 1971 which he received on 16th September, 1971. It so happened that the petitioner was unable to produce this license because of the late receipt of the notice. After this, this shooting license was also seized with the arms license. I am unable to find any power in the Act to even revoke such a license. The only power which has been pointed out to me, is that if a person is punished for a second time u/s 9 of the Act, his license can be confiscated. It, therefore, follows that the seizure of this license can also not be justified under any provision of law. This license could not even be suspended, revoked, etc., but in all fairness to the respondents, it must be pointed out that this shooting license is dependent on the holding of an arms license. As the rules framed under this Act for the Union Territory of Delhi suggest a shooting license can only be issued to a person who already has an arms license. Thus if the arms license is cancelled the shooting license will also stand cancelled, and if an arms license is suspended, the shooting license will also stand suspended. I am unable to find any rule or provision, either in the Punjab Act or elsewhere, which justified the seizure of the shooting license merely on account of the non-

production of the same in response to a notice u/s 5 of the Act. It is only necessary to point out that there is a peculiarity in this case before mortgage there is no doubt that the authorities concerned have the power to order production of these licenses. This can be done under Rule 62 of the Arms Rules, 1962 in the case of an arms license and u/s 5 of the Punjab Act in the case of the shooting license. There is no provision dealing with the powers to be exercised if the document is not produced. Even if the production of the license could be enforced by some special power, the same has not been pointed out to mortgage it does not follow that the license can be retained by the police if they are produced. Production means production for a special purpose. Once they have been produced and shown, they should be returned to the owner so that he can use the same. In the present case, the seizure of the documents under police powers seems to be intended to revoke the licenses or make them invalid or useless by the use of a non-legal power. In other words, the respondent's have not acted according to the statute but have still managed to make the licenses inoperative qua the petitioner. This being an unjust act and being contrary to the statute has to be struck down. Consequently, a writ has to issue in favor of the petitioner to direct the respondents to return the two licenses to the petitioner. The petitioner has also prayed that the licenses should be renewed on payment of renewal fees. It is submitted that the fees have already been paid and hence the respondents should renew the licenses. I can only direct the authorities to deal with the question of renewal of the arms license in accordance with law. The parties will bear their own costs.

8. Petition allowed.