

(1992) 09 BOM CK 0030

In the Bombay High Court

Case No : Criminal Writ Petition No. 508 of 1992

Mohanlal Chandulal Sarai

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 17-09-1992

Acts Referred:

Arms Act, 1959 — Section 13, 14, 15, 17, 18

Citation : (1993) 2 BomCR 206 : (1993) CriLJ 3298 : (1993) 1 MhLj 365

Hon'ble Judges : S.W. Puranik, J;M.S. Vaidya, J

Bench : Division Bench

Advocate : S.R. Chitnis, for the Appellant; K.H. Chopda, Assistant Public Prosecutor, for the Respondent

Judgement

Puranik, J.—The petitioner had initially been issued an arms licence by the District Magistrate, Ludhiana on 20-11-1979 under the provisions of the Arms Act, 1959 (hereinafter referred to as "the said Act") which was valid up to 19-11-1985. In the meantime, the petitioner made an application on 17-12-1979 for registration of his arms licence in Bombay. That application was considered and finally, the arms licence was registered in Bombay on 26-3-1986. The said arms licence was renewed from time to time and lastly it was renewed up to the period 19-11-1991.

2. A couple of months before the expiry of the said licence on 17-8-1991, a report about the involvement of the petitioner in a criminal case and possible breach of peace was received by the Deputy Commissioner of Police, Zone V.

3. A show cause notice was issued on 30-9-1991 why the arms licence of the petitioners should not be revoked. The reply to the show cause notice was received from the petitioner on 24-10-1991.

4. As already stated above, since the licence was to expire on 19-11-1991, the petitioner filed an application for renewal of his arms licence on 19-11-1991 for a period of two years. This was processed separately. By this date show cause

proceedings for revocation of the petitioner's licence were pending before the competent authority and the same authority passed an order of renewal of the petitioner's licence on the same day i.e. 19-11-1991 for a further period of two years i.e. up to 19-11-1993 u/s 15(3) of the said Act.

5. In the show cause proceedings after hearing the petitioner, the same competent authority on 7-12-1991, passed an order for revocation of the arms licence against the petitioner. That order was finally signed on 7-12-1991 but issued to the petitioner on 10-12-1991.

6. The petitioner upon receiving the order of revocation approached this High Court by way of Criminal Writ Petition No. 16 of 1992. However, the Division Bench of this Court brought to the notice of the petitioner that the remedy by way of an appeal u/s 18 of the said Act is available to the petitioner and he should prefer the same before the State of Maharashtra. The Division Bench also directed the petitioner to deposit his arms with the Tilak Nagar Police Station by 22-1-1992. The petition was allowed to be withdrawn.

7. The petitioner's appeal against the order of revocation of his arms licence, however, failed before the State Government on 27-3-1992 and feeling aggrieved thereby, the Petitioner has approached this Court by way of this Criminal Writ Petition No. 508 of 1992.

8. Mr. S. R. Chitnis, learned Counsel appearing for the petitioner, has contended that having granted the renewal of arms licence on 19-11-1991, there was no reason whatsoever to pass the order of revocation on 7-12-1991. He also contended that since the same competent authority which is empowered to pass orders for grant of licence, or refuse the licence, or for fixing the duration, or renewal of licence, or vary the terms of licence, suspension or revocation of licence was in the know of the show cause proceedings having been initiated, it ought to have considered both the proceedings simultaneously. At any rate, according to Mr. Chitnis, under the provisions of Section 15(3) of the said Act, once the licence is renewed, it will be deemed to have been granted u/s 13 of the said Act.

9. Mr. K. H. Chopda, learned A.P.P. appearing for the State of Maharashtra, strongly supported the impugned Order and further submitted that the renewal was granted only because the period of licence was coming to an end on 19-11-1991 and the authority, even though aware of the fact of the pendency of the show cause proceedings, granted renewal of licence. He also contended that had the authority refused to renew the licence, the licence would have come to an end and that would not have been justifiable. On the request of this Court, the learned Public Prosecutor has filed before us the Xerox copies of the application for renewal of licence and the office notings thereupon. The notings indicate that the only reason for revocation proceedings is that the petitioner-licensee was found to have been involved in a criminal case registered vide C.R. No. 328 of 1991 at Chembur Police Station and accordingly was given a show

cause notice why his arms licence should not be revoked. It was also noted that the revocation of his arms licence at that stage would not have been justifiable in view of the provisions of Section 17 of the said Act. Finally it was noted that the inquiry is pending and we may renew arms licence and decide the show cause notice and reply on merits subsequently. It is in these circumstances that on the application for renewal of arms licence received on 19-11-1991 he was granted renewal on the very same day.

10. We have heard the learned Counsel for quite some time and with their assistance gone through the Scheme of the said Act. We find that Section 3 of the said Act categorically prohibits any person to acquire, or have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of the said Act and the Rules framed thereunder. It is thus made very clear by the Statute that no citizen has a right to carry arm. He, however, can hold an arm in his possession or carry the same if the competent authority is satisfied in that behalf and has granted licence in his favour for this purpose. We need not go into all the provisions of the said Act, suffice it to say, that the competent authority has the power to grant licence, to refuse licence, to fix the duration, renewal of licence, to vary the terms of licence, suspend or revoke the licence and also to secure the arm itself in the event of suspension or revocation of the licence or on its expiry. A detailed set of Rules has also been framed under the said Act.

11. In the instant case we are basically concerned with the provisions relating to the renewal of licence. Section 15 of the said Act deals with the same. Section 15 reads as under :

"15. (1) A licence u/s 3 shall, unless revoked earlier, continue in force for a period of three years from the date on which it is granted :

Provided that such a licence may be granted for a shorter period if the person by whom the licence is required so desires or if the licensing authority for reasons to be recorded in writing considers in any case that the licence should be granted for a shorter period.

(2) A licence under any other provisions of Chapter II shall, unless revoked earlier, continue in force for such period from the date on which it is granted as the licensing authority may in each case determine.

(3) Every licence shall unless the licensing authority for reasons to be recorded in writing otherwise decides in any case, be renewable for the same period for which the licence was originally granted and shall be so renewable from time to time, and the provisions of Sections 13 and 14 shall apply to the renewal of a licence as they apply to the grant thereof."

Sub-Clause (3) of the above Section 15 sets down that the provisions of Sections 13 and 14 shall apply to the renewal of a licence as they apply to the grant thereof. In other words a renewal of licence is to be treated as if it is an

application for fresh grant of licence and all the powers of grant of licence embodied u/s 13 of the said Act and all the powers for refusal of licence embodied u/s 14 of the said Act are available to the competent authority at the time of deciding of the application for renewal that is to say, that if at the stage of deciding the application for renewal the competent authority is satisfied that he is not a desirable person for being granted a licence or if he is prohibited by any 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 an unsound mind or if the authority deems it necessary for the security of the public peace or for public safety, to refuse to grant such licence, authority has the said power. On the other hand, if the authority comes to the conclusion that if the person has a good past record and it would not harm the security of the public peace or public safety and is a fit person for grant of such licence, it may grant the licence or grant the renewal thereof.

12. Thus, whenever a licence is renewed, the licensing authority or the competent authority is deemed to have taken into consideration all the factors for grant of or refusal of such licence.

13. In the present case, the proceedings were initiated for revocation of licence u/s 17 of the said Act on the information that the licensee-petitioner was involved in a crime and had allegedly used his arm to threaten people and in that event, he is not a desirable person to hold arms licence. The said show cause notice was being enquired into during the period August to November, 1991. However, even before the completion of the said inquiry, on 19-11-1991, the last date of the licence, the renewal application of the petitioner was entertained and order of renewal was passed as stated above.

14. We find that the said action on the part of the concerned authority is totally contrary to the provisions of law, particularly because 12 days thereafter, the same authority after considering the show cause proceedings held that the licensee was not a fit person to hold the arms licence and passed an order of revocation of his licence. These two contradictory stands have been taken by the authority within a short span of time when both the proceedings were pending before the authority and he was made aware of the said fact in the office notings. The legal effect of Section 15(3) of the said Act is that the renewal application is to be considered as an application for grant of licence. A responsibility is cast on the authority to dispose of a renewal application on the same considerations and only those considerations alone which are stipulated in Sections 13 and 14 of the said Act. Thus, keeping the revocation proceedings pending it was totally erroneous to have disposed of the renewal application perfunctorily.

15. Mr. Chopda, learned A.P.P. strenuously urged that it would not have been justifiable to postpone the renewal application and to decide revocation proceedings along with it. We are unable to appreciate this submission for the simple reason that there is nothing in the provisions which indicate that the

renewal application shall be considered and disposed of before the date of renewal especially when, in the instant case, the application for renewal was made on the very last day of the licence period and particularly in view of the provisions of sub-section (3) of Section 15 of the said Act which categorically mandate that a renewal application should be considered as an application for grant of licence.

16. Even otherwise Rule 47(3) of the Arms Rules, 1962 deals with the deposit of arms and ammunition for safe custody (otherwise than u/s 21). Sub-rule (3) of Rule 47 of the Arms Rules states :

"47. (3)(a) In the event of failure to get the licence renewed, the arms or ammunition shall continue to be possessed by the dealer on the authority of his licence in Form XIV or by the officer-in-charge of the police station or unit armoury; but, if the licence is not renewed for a period of three years after its expiry, the dealer or the officer-in-charge of the police station or unit armoury shall bring this to the notice of the District Magistrate for such action as he may consider necessary;"

17. It is, therefore, clear and is so intended by the Legislature that a renewal need not be done on the date of the expiry of the licence but according to the process of grant of licence. For the consideration of application for renewal, a reasonable time may necessarily be required. It is in this light that even this sub-rule speaks of a licence not renewed for a period of three years after its expiry. In this very context reference may be made to Section 21(1) of the said Act which imposes an obligation on the licensee to deposit his weapon either to the dealer or officer-in-charge of a police station or unit armoury. These two provisions clearly indicate that the renewal is not a matter of course on the date of expiry of licence but it may take its reasonable time for consideration.

18. Mr. Chopda, learned A.P.P. tried to read and rely upon the Full Bench decision of the Allahabad High Court reported in Chhanga Prasad Sahu Vs. State of Uttar Pradesh and Others, . However, the said decision relates to the question of suspension of licence pending inquiry into revocation or suspension of a licence. Thus, it was dealing with a positive act on the part of the authority pending inquiry whereas in the instant case, the revocation proceeding was already initiated and an application for renewal was filed before the authority. The said application could have well been tagged with the revocation application for consideration and both could have been decided simultaneously. At any rate, the application for renewal could have waited the decision in the show cause proceedings. Either way, the ruling cited is not applicable to the facts of the present case and we have no hesitation, therefore, to hold that the submission on behalf of the State is merely to be stated to be rejected.

19. The net result is that having renewed the licence for a period of two years, the competent authority could not have passed an order revoking the licence on material which was available with him prior to the date of renewal. The same is,

therefore, quashed and set aside. This Order will not prohibit the authority from initiating fresh action.

20. In the result, therefore, the Court allows the petition. The impugned order of revocation dated 10-12-1991 is quashed and set aside and it is hereby directed that the weapon deposited by the petitioner under the Orders of this Court in Criminal Writ Petition No. 16 of 1992 be returned to the petitioner along with the renewed licence with necessary endorsements thereon. Rule made absolute.

21. Petition allowed.