

(2017) 11 MP CK 0011
In the Madhya Pradesh High Court
Case No : 8421 of 2012

Munshilal, S/o Jabar Singh

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 10-11-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Arms Act, 1959, Section 14, Section 17, Section 17(3)(b)

Citation : (2017) 11 MP CK 0011

Hon'ble Judges : Vandana Kasrekar

Bench : Division Bench

Advocate : Siddharth Gupta, Vandana Shrivastave

Final Decision : Allowed

Judgement

1. The petitioner has filed the present petition challenging the order dated 21.02.2012 passed by respondent no.3 in Appeal No.21/2011-2012 as well as order dated 09.11.2011 passed by respondent no.5.
2. The petitioner was granted a license for 12 bore Gun on 10.12.2001 for self-protection within Madhya Pradesh. The said license has been renewed from time to time and was valid up to 31.08.2013. The petitioner being unemployed came to Bhopal in the year 2002 for his livelihood. He was employed by M/s Raj Homes Private Limited, Bhopal on the post of Gunman for the security of their residential area at Minal Residency, J.K.

Road, Bhopal. M/s Raj Homes Private Limited is a company which was incorporated in the year 1992 and is engaged in the construction of residential houses in Bhopal City. The directors of the M/s Raj Homes Private Limited have further incorporated another company in the name and style of Raj Events and Entertainment Private Limited which is a Media Group and having a newspaper in the name and style of Raj Express Newspaper. The M/s Raj Express Newspaper published various news items against respondents no.6 and 7 exposing the illegal acts done by them before the public and, therefore, respondents no.6 and 7 became revengeful against the Directors of Raj Express Newspaper who are also the Directors of M/s Raj Homes Private Limited. Due to this, respondents no.6 and 7 has demolished the major portion of Minal Mall. The petitioner who happens to be an employee of M/s Raj Homes Private Limited has been made a scapegoat by respondents no.6 and 7 only with an intention to demoralize and settle the personal score with the Directors of M/s Raj Homes Private Limited. The petitioner was engaged in the security of the Directors of M/s Raj Homes Private Limited he, therefore, became the eyesore for respondents no.6 and 7. Thereafter, a show cause notice was issued to the petitioner on 10.06.2011. The petitioner submitted his reply to the said show cause notice on 13.06.2011. In the said reply, he has given detail with regard to purchase of cartridges and the use thereof. Respondents vide order dated 19.08.2011 cancelled the gun license of the petitioner. Against the order dated 19.08.2011, the petitioner has submitted an appeal before the Commissioner Bhopal, Division Bhopal. Thereafter on 25.08.2011 respondent no.6 made a recommendation to the Collector, Rewa to initiate the proceedings for cancellation of arm license granted to the

petitioner. Accordingly, the Collector, Rewa has issued a show cause notice to the petitioner on 19.09.2011 on the ground that the petitioner has not furnished the information in the office about the arm even after lapse of nine years and he has purchased 60 number of cartridges since grant of license and the said cartridges have not been used by him for self-protection rather they have been misused at fire in the occasion of marriage of his niece.

3. The petitioner has submitted his reply to the said show cause notice and stating that he has already given information about the registration of arm in the M.P. Nagar Police Station, Bhopal and out of total 60 cartridges purchased by him, 10 cartridges have been used by fire in air to check the performance of the said gun and 10 cartridges have been used in the year 2003 on the occasion of marriage of the niece and 10 cartridges have been used on the occasion of Republic Day. Thus, in total 30 cartridges out of 60 have been used by him. The respondent no.5 thereafter issued an order dated 09.11.2011 thereby cancelling the arm licence of the petitioner on the ground of misused of the arm. Against the order of cancellation of licence, the petitioner has preferred an appeal before the Commissioner, Rewa. The Commissioner vide order dated 21.02.2012 has dismissed the said appeal. Being aggrieved by that order, the petitioner has filed the present petition.

4. Respondents have filed their reply and in the reply they have submitted that the cancellation, suspension and revocation of the licensce is governed by the Section 17 of the Arms Act and as per the decision of the Supreme Court, number of guidelines have been laid down which has been given in the

reply. In light of the aforesaid guidelines issued by the Apex Court, respondents submits that in the given case a show cause notice was issued to the petitioner wherein it was stated that the licence was granted to the petitioner for self-defence and thereafter, the petitioner has not complied with certain mandatory requirements as contained in the rules and subsequent to the enquiry it is found that instead of using the Gun licence for self-defence the petitioner has misused the arm by firing in the marriage ceremony of his niece which is prejudicial to the public peace and the order which is also amounts to misuse of the arm licence. Thus, to ensure the security of the public place and secondly to ensure that the licence holders does not misuse the licence in any manner. Respondents authorities rightly issued the show cause to the petitioner. After considering the reply preferred by the petitioner by a reasoned and speaking order as per the requirement of law it was rightly held by the Collector that the continuance of the licence in favour of the petitioner. In light of the misuse of arms is a prejudicial in public interest and security and, therefore, decided to cancel the same. The appellate Authority also after considering the facts and circumstances of the case and the material on record has rightly upheld the order passed by the Collector. It has further been submitted that the present writ petition involves the dispute question of facts raised by the petitioner. According to the decision decided by the Court while exercising the powers or judicial review under Article 226 of the Constitution of India. In view of the concurrent findings of the fact by the Collector and subsequently by the Commissioner in appeal their remains no iota of doubt that the petitioner has misused the arms licence granted to him and has followed the

rules has framed under the act and the impugned order has been passed after giving proper opportunity of hearing to the petitioner. Thus, on the basis of the aforesaid, respondents submits that no interference is called in the said writ petition and the same deserves to be dismissed.

5. The petitioner has filed the rejoinder to the said reply, the petitioner has submitted that as per Section 17 of the Act, licence can be revoked on the conditions stipulates therein and the reasons assigned by respondents no.3 to 5 do not fulfill any of the reason as enumerated above as Section 17 of the Arms Act. The use of the fire arm contended by the petitioner were of 28.12.2001 on that day he made fire in air for checking the gun on 21.06.2003 wherein he made fire in air on the occasion of the marriage of niece on 21.06.2003 and on Republic Day i.e. on 26.01.2005. On them, there was no public threat or there was no disturbance of public piece. After fire between 2001 to 2005, the respondents have renewed the gun licence of the petitioner without any objection. It is only because of the malafide intention which the petitioner is alleged against respondents no.6 and 7, the impugned order has been passed.

6. I have heard learned counsel for the parties and perused the record. Section 17 of the Arms Act which deals with variation, suspension and revocation of licences. The Section 17(3)(b) authorizes the licensing authority to cancel or revoke the license for the security of public peace or for public safety. The provisions indicate that in case the licensing authority is subjectively satisfied that in a given case if continuation of licence endangers public peace or public safety then the licensing authority is empowered to cancel or revoke the licence. In the present case a show cause notice was issued to the petitioner on

10.06.2011. The petitioner submitted his reply to the said show cause notice on 13.06.2011 thereafter without considering the reply filed by the petitioner respondent has passed the order dated 19.08.2011. Against the order dated 19.08.2011, the petitioner has submitted an appeal before the Commissioner, Bhopal thereafter District Magistrate Bhopal has made recommendation to the District Magistrate Rewa to cancel the gun licence issued in favour of the petitioner. In light of the said recommendation, the Collector District Rewa has issued show cause notice dated 19.09.2011 to the petitioner. From perusal of the said notice it reveals that the Collector while passing the impugned order has not applied its mind to the facts of the case and issue the order in pursuance of the recommendation made by the District Magistrate Bhopal. The petitioner has filed the reply to the said show cause notice on 13.06.2011, however, the Collector has passed the order dated 09.11.2011 thereby cancelling the gun licence issued in favour of the petitioner. While passing the impugned order, the Collector has not assigned any reason and has only stated that the reply of the petitioner is not satisfactory. From perusal of Section 17 makes it manifest that before exercising the power of revocation etc. under that provision no notice is required to be given to the licence holder. Sub-section (5) merely requires that for passing an order suspending or revoking a licence, the licencing authority shall record in writing the reasons thereof and furnish to the holder of the licence on demand a brief statement of the same. Thus, the Act or the Rules made thereunder do not contemplate a notice being given to the licence holder before cancelling or varying or suspending the licence of a licence holder. Nevertheless, the act of cancelling or refusing to renew a licence

leads to grave consequences. The licence may have been presumably obtained by a person on satisfaction of the licencing authority about the circumstances of his individual case and for his protection and the withdrawal or cessation of such privilege may adversely affect the licence holder's security or protection and may even be a slur on his reputation. The cancellation of the licence is a quasi-judicial act and, therefore, it attracts the rules of natural justice. Both Sections 14 and 17(5) make the recording in writing the reasons for such order mandatory and furnishing to the holder of the licence a brief statement of the same is also mandatory, unless in an exceptional case it is not found expedient to furnish such statement. In the present case, from perusal of the order passed by the Collector Annexure P-9 dated 09.11.2011, it reveals that no reasons have been assigned by respondent no.5 in cancelling the arm licence issued in favour of the petitioner. No statement of the brief has been given to the petitioner for cancelling of his licence. Against the said order, the petitioner has preferred an appeal under Section 18 of the Act before the Commissioner and the Commissioner also affirmed the order passed by the respondents.

7. Thus, in view of the aforesaid discussion, the said writ petition is allowed and the impugned orders dated 21.02.2012 and 09.11.2011 are hereby set aside and the Collector is directed to pass afresh order in the matter after giving proper opportunity of hearing to the petitioner. The aforesaid exercise be carried out within a period of four months. Certified copy as per rules.