
(2010) 09 MP CK 0030
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3205 of 2010

Smt. Pratibha Chouhan

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Arms Act, 1959 — Section 13, 15, 44, 5(1)
Arms Rules, 1962 — Rule 20, 9

Citation : (2010) 4 MPJR 224 : (2010) 4 MPLJ 623 : (2010) 2 MPLJ 404

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Judgement

S.K. Gangele, J.

This order shall govern disposal of Writ Petitions No. 3205/10, 2514/10, 2565/10, 2687/10, 2994/10, 3028/10, 3033/10, 3074/10, 3420/10, 3892/10, 5020/10, 1306/10, 1310/10, 2843/10, 2842/10, 2841/10, 2840/10, 2839/10, 2838/10, 2837/10, 2836/10 and 3164/10 because similar issue has been involved in all these petitions.

The aforesaid petitions have been filed by the petitioners challenging the orders of the State Government by which in some of the petitions i.e. Writ Petitions No. 1306/10, 1310/10, 2843/10, 2842/10, 2841/10, 2840/10, 2839/10, 2838/10, 2837/10, 2836/10 and 3164/10 the quota of arms and ammunitions, in renewing the Arms Dealer Licences, have been reduced and in other batch of petitions i.e. Writ Petitions No. 3205/10, 2514/10, 2565/10, 2687/10, 2994/10, 3028/10, 3033/10, 3074/10, 3420/10, 3892/10 and 5020/10 in renewal of the Arms Dealer Licences to sell the arms and ammunitions have been refused. It is a fact that all the petitioners were granted Arms Dealer Licences for purchase and sale of the arms and ammunitions.

Section 5(1) of the Arms Act, 1959, prescribes for manufacture, sale, etc., of arms and ammunition. The relevant provision is as under:

Licence for manufacture, sale, etc., of arms and ammunition .- (1) No person shall -

(a) use, manufacture, sell, transfer, convert, repair, test or prove, or (b) expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any firearms or any other arms of such class or description as may be prescribed or any ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder.

Chapter III of the Arms Act, 1959, provides provisions relating to licences. Section 13 of the Arms Act prescribes provision in regard to grant of licences and Section 15 provides duration and renewal of licence. Section 15 of the Arms Act is as under:

Duration and renewal of licence .- (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 provision 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.

From the aforesaid provisions of Section 15, it is clear that a licence shall be in force for a period of three years from the date on which it is granted, even for a shorter period, may be prescribed and even the licence granted by the Licensing Authority be renewed within the same period.

Section 44 of the Arms Act 1959 entrusts power to make rules to the Central Government. The Central Government has made the Rules under the provision of Section 44, which are named as "The Arms Rules, 1962". Rule 20 thereof casts a duty on the Licensing Authority to mention in the licence the transactions permitted in respect of the different categories of arms or ammunition. The relevant rule is as under:

Manufacture, conversion, shortening, repair, test, sale, etc., of arms or ammunition .- (1) The licensing authority while granting a licence in Form IX shall show clearly in the licence Form -

(i) the categories and description of the arms or ammunition covered by the licence (ii) the transactions permitted in respect of the different categories of arms or ammunition, and omit any transactions or categories of arms or ammunition, not covered by the licence.

(2) A copy of every licence granted in Form IX by an authority other than the District Magistrate of the place of business, factory or shop of the licensee shall forthwith be sent to that District Magistrate.

Rule 26 further prescribes that every Arms Dealer has to keep a record of transactions of arms and ammunition, which is as under:

Records of transactions in arms and ammunition .- (1) Every dealer shall maintain such registers as maybe prescribed by the Central Government to show receipts, disposals, balance of stock in hand and daily sales of arms or ammunition of different categories and provide such other information as may be required.

(2) Every entry of transactions in such registers shall be made before the close of business hours on the same day and in the case of a sale or transfer the dealer shall, at the time of the transaction, require the purchaser or transferee, if not known to him, to furnish particulars sufficient for identification, and shall immediately enter the said particulars in the registers.

Rule 54 of the Arms Act prescribes renewal of licence, which is as under:

Renewal of licences .- (1) Every licence may, at its expiration and subject to the same condition (if any) as to the grant thereof, be renewed by the authority mentioned in Schedule II as nerewing authority:

Provided that the licence so renewed may be signed in the appropriate column of the licence by such officer as may be specially empowered in this behalf by the State Government under Rule 4.

(2) The authority issuing a licence shall ordinarily be responsible for watching all future renewals of the licence. Where a licence is renewed by an authority other than the authority who granted it, the former shall forthwith inform the latter of the fact of renewal and the period for which such renewal is valid. The applicant for the renewal of a licence under this rule shall always be required to state his permanent residence, and, if he notifies a change in his permanent residence to the district in which the renewal is sought, the licesing authority of such district shall hence-forward become responsible for watching all future renewals of his licence and shall inform the original issuing authority accordingly. The procedure shall be repeated on each subsequent occasion of renewal of the licence, the necessary intimation being sent by the renewing authority to the original issuing authority or to the authority who last renewed the licence on a permanent change of residence, as the case may be.

(3) An application for renewal of a licence for arms or ammunition deposited

under Sub-rule (1) of Rule 47 may be made by the depositor, or where it is not practicable to make the application direct, through the dealer or any other person authorised by him in this behalf while the arms or ammunition continue to be so deposited.

(4) The licensing authority may consider an application for renewal of a licence, if the period between the date of its expiry and the date of application is not, in his opinion, unduly long with due regard to the circumstances of the case, and all renewal fee for the intervening period are paid; otherwise the application may be treated as one for grant of a fresh licence.

Rule 52 further prescribes the form of licence. Form No. IX is relevant for the purpose of sale or transfer, conversion, repair or test of arms or ammunition, which is as under:

FORM IX

Licence to -

(1) Manufacture,

(2) Convert, shorten, repair or test (other than proof-test) sell or transfer, keep for sale or transfer, conversion, repair or test of arms or ammunition

Serial No. of licence

Name, designation and residence of licensee and of duly authorised agent or agents (if any)

Place of business, factory or shop

Description and number

Description and quantity

Name of range or other place where allowed to test

Date and year on which the licence expires.

To be manufactured, converted, shortened repaired

To be sold or keep for sale

To be manufactured, converted, etc.

To be sold or kept for sale

1

2

3

4

5
6
7
8
9

The 31st December. 20.....

The ...of ...20.... The date on which copy if sent to the District Magistrate of ...district [Vide Sub-rule (2) of rule 20] The ...of ...20.... (SEAL) (Signatutre)..... [Licensing Authority..... Designation..... Place..... FORM OF RENEWAL OF THE LICIENCE. Date and year of Date on which Signature and SEAL.? renewal renewed licence designation of expires renewing authority

In column No. 7 of the aforesaid form, there is a provision of description of quantity to be sold or kept for sale. It is clear from the aforesaid form that the licensing authority has power to restrict the quantity of arms and ammunition to be sold or kept for sale.

The learned Counsel appearing on behalf of the petitioners have contended that the authority has no power to restrict the number of arms and ammunition for sale because the licensing authority and the State Government have not given any such power by the Central Government and the policy issued by the State Government is against the power and authority. However, the aforesaid argument advanced by the learned Counsel for the petitioners could not be accepted because in Form IX, which is a statutory form of licence as per Rule 52 of the Arms Rules 1962, it is the duty of the licensing authority to mention the description of the quantity to be sold or kept for sale of the arms and ammunition. Therefore the Union Government has already given a power in this regard to the licensing authority. Hence, there is no question that no such power has been delegated to the licensing authority.

A Full Bench of Allahabad High Court in the case of Kailash Nath and Others Vs. State of U.P. and Another, , has held, as under, in regard to right of the person to carry on the business of arms and ammunition:

The law is well settled that before an action is proposed t`o be taken against an individual which affects his rights and involves civil consequences, he must be given an opportunity to show cause. This is the essence of the rule of "audi alteram partem" which is the principal doctrine of natural justice. This rule, however, must be confined to a case in which the adjudication of right of a party arises and which involves civil consequences. A right is distinct from a mere privilege. The case of licence to possess or use firearm is materially different from a case of licence to deal in or sell firearms. S. 3 deals with acquisition and

possession of firearms or ammunition on the strength of a licence whereas Section 5 provides for a licence for manufacture, sale etc. of arms and ammunition. The licence for acquisition and possession of firearms is materially different from a licence for manufacture, sale etc. While the latter confers a right to carry on a trade or business and is a source of earning livelihood, the former is merely a personal privilege for doing something which without such privilege would be unlawful. The obtaining of a licence for acquisition and possession of firearms and ammunition under the Arms Act is nothing more than a privilege and the grant of such privilege does not involve the adjudication of the rights of an individual nor does it entail civil consequences.

Our High Court in the case of Amrik Chand Saluja Vs. State of M.P. and Others, , has held, as under:

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 Ss. 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 maybe considered necessary before refusing to renew the licence.

Hon"ble the Supreme Court in the case of Chandrakant Hargovindas Shah Vs. Deputy Commissioner of Police and Another, , has held that the Arms act, 1959 was enacted to consolidate and amend the law relating to arms and ammunition and a person has no right to travel beyond the statutory restrictions imposed under the Arms Act and Arms Rules made thereunder in dealing with the arms and ammunition:

14. There cannot be any doubt or dispute whatsoever that sale and purchase of arms and ammunition by a licensee per se is not prohibited. But having regard to the provisions of the said Act and the purport and object for which different types of licences are granted for different purposes, there cannot be any doubt whatsoever that a licensee cannot be permitted to do something indirectly which he cannot do directly.

The learned Counsel for petitioners relied on two unreported judgments of this Court passed in the case of Jiyauddin and Ors. v. The state of Madhya Pradesh and another, W.P. No. 838/2000, decided on 19.07.2000 and in the case of Surendra Kumar Yadav and Anr. v. State of Madhya Pradesh and others, W.P. No. 6265/2006, decided on 28.09.2006. However, these judgments have no relevance in the facts and circumstances of the present case, because as per the Arms Rules 1962 and form IX of arms licence, there is a statutory duty of the licensing authority to mention the quantity of the arms and ammunition to be sold or kept for sale and it is in consonance with the object of the Arms Act 1959.

If, there is any grievance to the petitioners that their quantity has not been fixed properly by the authority in renewing the licence then the petitioners are free to

submit a detailed representation before the authority and the authority shall after considering the representation may pass an appropriate order.

With regard to non-grant of renewal of licence, it is well settled principle of law that when an authority has been vested a right to renew a licence it has also a right not to renew the licence. In some of the present petitions, while renewing the licence the authority has reduced the quantity of the arms and ammunition, it has been mentioned by the authority that the petitioners were not able to sell any quantity of arms and ammunition during the period when the licence was in vogue. That reasoning appears to be proper because certainly if a person is not able to sell the arms and ammunition in a prescribed period, then it would mean that either he has closed the shop or he is not competent to grant renewal of licence and that reasoning is not arbitrary or illegal. Even though the person is free to make a representation to the renewing authority mentioning the reasons that why he was not able to sell the arms and ammunition as per the licence and the authority may consider the same.

In regard to other batch of petitions where the licence have not been renewed on the ground that the petitioners are not able to sell a particular quantity of arms and ammunition during the period when the licence was in vogue, the petitioners have contended that their licences were renewed after a long gape of time and they were permitted to carry on the business for only a period of one month. In such circumstances, certainly the petitioners could not be blamed for not selling the arms and ammunition as required because they were not granted sufficient time to sell the arms and ammunition due to nonrenewal of licence within certain period.

Consequently, all the petitions are disposed of with the following directions:

(1) That Writ Petitions No. 1306/10, 1310/10, 2843/10, 2842/10, 2841/10, 2840/10, 2839/10, 2838/10, 2837/10, 2836/10 and 3164/10 in which the quota to sell the arms and ammunition has been reduced, the petitioners are free to make representation in this regard to the Authority and Authority may pass appropriate orders after considering the facts of each case. However, as held earlier, the Authority has power to fix the quantity of arms and ammunition in renewing the arms licences.

(2) In regard to other petitions, Writ Petitions No. 3205/10, 2514/10, 2565/10, 2687/10, 2994/10, 3028/10, 3033/10, 3074/10, 3420/10, 3892/10 and 5020/10, where the renewal has been refused, the holders of licences were not able to sell the arms and ammunition due to non-grant of renewal of Arms Dealer Licence within the stipulated time and the petitioners were given only a short period, the orders passed by the Authority are hereby quashed. The petitioners are directed to submit fresh representations to the competent authority to renew Arms Dealers Licences mentioning the fact that there were reasons due to which the petitioners could not sale the arms and ammunitions. On doing so, the competent authority may pass a reasoned order after

considering the representations of the petitioners.

(3) Looking to the facts of the case, there shall be no order as to costs.