
(2011) 07 P&H CK 0192

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 20371 of 2010 (O and M)

Sukhdev Singh @ Baldev Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 06-07-2011

Acts Referred:

Arms Act, 1959 — Section 17(3)

Citation : (2011) 164 PLR 221

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—The petition is for quashing of the first order dated 22.03.2010/01.04.2010 issued by the Secretary, Department of Home Affairs, Civil Secretarial, Chandigarh and the order issued on 15.02.2010 of the third respondent, who is arrayed as the District Magistrate, Patiala. The contention in the petition is that he had an arms licence upto 16.05.2008 and when he had applied for a renewal, the District Magistrate had passed an order on 15.02.2010 addressing it to the Secretary (Home), Government of Punjab, Chandigarh that the original of the prohibited bore arms licence and other documents filed along with it were required to be cancelled. The order set out the justification for the cancellation, as on the basis of the report from the ADGP (Intelligence), Punjab, it was revealed that there had been 11 criminal cases registered against the petitioner out of which there was non compliance report in 6 cases and cancellation report in 5 cases. In one case, the cancellation report had not been sanctioned by the Court. The District Magistrate observed that keeping in view the criminal record of the licence holder, it was "not recommended to renew the licence". It also referred to the fact that show cause notice issued to the petitioner and the reply had also been received by him along with the comments of the ADGP, who recommended not to renew the arms licence.

2. The Home Secretary, Chandigarh, the 2nd respondent herein, has sent a letter that bears an endorsement of the Under Secretary on 22.03.2010 and his own

endorsement on 01.04.2010 addressed to the 1st respondent approving the cancellation of the licence as recommended by the District Magistrate, Patiala.

3. The petitioner's grievance is that the criminal cases had all been foisted against him by his political rival and there was not any one case where he had been convicted of any criminal offence. According to him, mere pendency of a criminal case or lodging of FIR could not be treated as a ground for cancellation of the licence.

4. On the basis of objection taken on behalf of the Union and the State, the learned counsel Mr. Mittal appearing for the State would contend that the arms licence refers to a prohibited arms licence as set out in Schedule-I, Category 1(c) of the Arms Rules of 1962 and in terms of Schedule-II of the relevant rules, the licensing authority is the Central Government in the Ministry of Home Affairs and only the renewing authority is the District Magistrate. According to him, the writ petition itself is premature since no decision has so far been taken finally by the Union cancelling the licence in the manner laid down u/s 17(3) of the Arms Act. The other objection which is taken by the petitioner is that a licence itself was not renewed beyond 16.05.2002 and there was no basis for the contention that the licence had been renewed upto 2008 and that it would require a consideration only from 2008 onwards.

5. Referring to the second objection relating to the validity of the renewal only upto 2002, the petitioner states that even in the show cause notice issued on 08.10.2008, the District Magistrate has himself referred to the fact that the licence was valid upto 16.05.2008. This issue relating to the period upto which the licence was valid is not immediately relevant, for, it is an issue on a dispute of fact of the petitioner contending that the respondents' communications themselves referred to the validity of licence upto 16.05.2008, while the respondent contends that the reference of validity of licence upto 16.05.2008 is merely a repetition of what was contained in the petitioner's communication for renewal which cannot constitute any final affirmation that the licence was valid upto 2008.

6. The main issue for consideration is only whether the petitioner could be treated as an aggrieved person at this stage to seek for any relief before this Court. The nature of weapon and the licence which admittedly the petitioner has, makes a definite reference only of prohibited bore licence to which Schedule-I, Category 1(c) read with Schedule-II, Entry-3 apply and they admit of no doubt that while the renewal authority is the District Magistrate, the licensing authority is only the Central Government in the Ministry of Home Affairs. Section 17(3) of the Arms Act empowers only the licensing authority to suspend or revoke the licence. The impugned orders themselves do not cancel or revoke the licence but only contain recommendations to the Union Government to cancel the licence. The letter of the Under Secretary (Home), Chandigarh, states that the approval for cancellation of the licence could be granted by the Union Government. The petitioner cannot, therefore, be immediately said to be aggrieved, for, there has

resulted no cancellation of the licence as on date. It may be that the Union inevitably acts on of the materials supplied to it and the recommendations given by the State authorities. Section 17(3) sets out 5 grounds on the basis of which, the suspension or revocation could take place. Section 17(3) reads as follows:

17(3) The licensing authority may by order in writing suspend a licence for such period 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.

7. The Section requires a satisfaction of the licensing authority before the suspension or revocation of the licence. It would, therefore, behove of the licensing authority to take note of the objective materials placed before him before any decision is taken. If the petitioner's objection is that mere pendency of the criminal cases could not be a ground for cancelling the licence and that cancellation would be possible only for the parameters set through Section 17(3), he is entitled to make a representation to the Union on the basis of information supplied to him through the impugned notices or orders. Such a representation is permitted to be made within one week from the date of receipt of copy of this order and when such a representation is made pointing out to the alleged defects that are contained in the impugned notices or orders, the licensing authority shall have due consideration of the said objections and take appropriate decision in accordance with law. The issue of when the licence expired and whether a renewal would be possible at this point of time is again an issue that will be considered by the Union and if it finds that the renewal is possible, then it shall direct the renewal authority as specified in Schedule-II to pass appropriate orders but if he decides otherwise, he will pass speaking orders in the light of the observations given above. If such a representation is given in the manner referred to above, the licensing authority will take a decision within 8 weeks from the date of receipt of copy of the representation.

8. The writ petition is disposed of as above.