

A. Agg.

Before Mehinder Singh Sullar, J.

MOHINDER SINGH,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

CWP No. 22856 of 2010

17th May, 2011

Constitution of India, 1950—Art. 226 and 227—Arms Act, 1959—S. 15(3) and 16—Arms Rules, 1952—Rl. 54—Cancellation of Arms Licenses due to delay in applying for renewal—Delay in applying for renewal not a ground to deny renewal of license—Writ petition accepted.

Held, that the mere fact that some (duly explained) delay occurred on his part for applying the renewal of the arm license, *ipso facto* is not a ground to deny the renewal of his license. Therefore, the District Magistrate as well as the Appellate Authority did not record the valid reasons and have illegally negated the claim of the petitioner in this relevant behalf. Hence, the impugned order cannot legally be sustained in the eye of law, in obtaining circumstance of the case.

(Para 11)

Sant Pal Singh Sidhu, and Kamaljeet Singh Sidhu, Advocates, *for the petitioner.*

Sartaj Singh Gill, Deputy Advocate General, Punjab, *for the respondents.*

MEHINDER SINGH SULLAR, J. (ORAL)

The crux of the facts, which needs a necessary mention for a limited purpose of deciding the sole controversy involved in the instant writ petition and emanating from the record, is that petitioner-Mohinder Singh was having a valid arms licence bearing No. 700/May/99/Zira, in view of the provisions of the Arms Act, 1959 and Rules, 1962 (hereinafter to be referred as "the Act/Relevant Rules") and purchased a 12 bore double barrel gun bearing No. 20582 of 1997. His arms licence was renewed from time to time. Ultimately, it was valid upto 20th May, 2005. The petitioner claimed that since, he is an old illiterate person, remained busy in his daily pursuits and domestic problems, so, he forgot to renew his arms licence in time. As soon as, he came to know about the expiry date, in the meantime, he applied for the renewal of his licence immediately. However, it caused a delay of two years and two months in this regard.

(2) Having received the application for renewal, the District Magistrate, Moga, issued notice, and the petitioner filed the reply and explained the reasons for delay. He also sought the report of the SSP. The District Magistrate ordered the cancellation of the licence of the petitioner,— *vide* impugned order dated 7th February, 2009 (Annexure P-1). The appeal filed by him was dismissed as well by the Commissioner, Ferozepur Division-cum-Appellate Authority (for short "the Appellate Authority), by way of impugned order dated 29th July, 2010 (Annexure P-2).

(3) The petitioner did not feel satisfied and preferred the instant writ petition, challenging the impugned orders (Annexures P-1 and P-2), invoking the provisions of Articles 226/227 of the Constitution of India, *inter alia*, pleading that although the petitioner has duly explained the delay in moving the application for renewal of the licence, but the District Magistrate has illegally cancelled the same. The impugned orders were stated to be arbitrary, illegal and against the provisions of the Act/Relevant Rules. On the basis of aforesaid grounds, the petitioner sought to quash the impugned orders (Annexures P-1 and P-2) in the manner depicted hereinabove.

(4) The respondents contested the claim of the petitioner and filed their joint written statement, *inter alia*, pleading certain preliminary objections of, maintainability of the writ petition, cause of action and *locus standi* of the petitioner. The respondents claimed that the arm licence of the petitioner was expired on 20th May, 2005 and there is a considerable delay in filing the application for renewal of his licence. According to the respondents, as the SSP Moga, did not recommend the case of renewal of the licence on account of registration of a case under Section 324 IPC, therefore, the licence of the petitioner was not renewed. It will not be out of place to mention here that the respondents have stoutly denied all other allegations contained in the writ petition and prayed for its dismissal.

(5) After hearing the learned counsel for the parties, going through the record with their valuable help and after considering the entire matter deeply, to my mind, the instant writ petition deserves to be accepted in this respect.

(6) At the very outset, it may be mentioned here that in somewhat similar circumstances, a Coordinate Bench of this Court (Mohinder Pal, J.) in Criminal Revision No. 378 of 2003 titled as **Zile Singh versus State of Haryana**, decided on 4th March, 2010, has observed in this context, as under :—

“However, before parting with this judgment, I feel constrained to observe that India’s domestic policy on small arms and light weapons, which is regulated under the Arms Act (1959) and the Arms Rules (1962) is basically the extension of the policy under the Arms Act and the Arms Rules of 1878 passed during the British Regime. The sole purpose of this

Act was to prohibit Indians to acquire firearms so as to neutralize any possible threat of a fresh armed mutiny from Indian Freedom Fighters. The intelligentsia of that time had condemned the Arms Act of 1878 as Blackest. Unfortunately, till now, after more than sixty two years of independence, instead of making the Arms Act/Arm Rules citizen friendly, the policy makers in the Government kept on making policies in such a way so as to make it toughest for law abiding citizens to legally acquire and keep the arms. In fact, this myopic approach has not only rendered civilians helpless for their personal defence but also indirectly made the job of criminals—anti social elements—terrorists easy. The free flow of illegal firearms and their use against the civilians, Military/Law Enforcement Agencies/State Police remained unchecked. The possession of arms is vital for resisting tyranny. One of the myopic approach under the Arms Act of 1959 and the Arms Rules of 1962 which has made it toughest for the citizens to maintain arms is to get the arms licences renewed from the competent authority after every three years. On the one hand the policy of compulsorily getting the arms licences renewed after the prescribed period mentioned in the licence for three years, whichever is earlier, puts the holders of licences to hardship and inconvenience as they have to comply with a number of formalities before applying for renewal of licences in advance of the expiry date of licences and then to wait for the renewal of licences, on the other hand, it wastes a lot of time of the agencies handling the renewal of licences. The evidence, surveys and other data suggest that armed citizens are very responsible in using arms to defend themselves. Only the criminals violate rules and do not respect the imaginary boundaries of law. Despite India's stringent regulation of arms transfers, exports and imports, India still faces the problem of weapons which are smuggled into the country by various anti-national groups. The markings and types of weapons confiscated/recovered from various criminals indicate that these are brought into India through illicit channels from outside the country.

A great amount of crude "country made" weapons are also found to be produced clandestinely in India. In fact, acquiring country made weapons has become very easy for the criminals.

All small arms manufactured in India are uniquely marked by stamping to indicate the registration number, manufacturer/factory of origin and the year of manufacture. This applies to arms that are produced for private/personal use and those which are used by armed forces, police or paramilitary forces. Allotment of these registration numbers for the armed forces/police and paramilitary forces is done centrally and a record is maintained of these registration numbers along with the indent. This provides a double check on the records. A record of each and every weapon manufactured by the factory is kept along with the information on the concerned dealer. Arms which do not bear specified identification marks may not be sold or transferred. Further, any person found in possession of a weapon without identification marks would be presumed to have removed/obliterated the marks unless proved otherwise. Besides, all ordinance factories maintain detailed records of small arms manufactured by them. Private firms and persons authorized to manufacture firearms against licences issued under the Arms Rules of 1962 are required to maintain a Manufacturing Register which records information, including serial numbers and date, month and year of manufacture. A designated Inspecting Officer inspects these registers regularly. A record of arms sold in the civilian market is also required to be kept by each arms dealer. These records are regularly checked by the concerned State/District authorities. Still further, every Police Station maintains a register of the licence holders in its jurisdiction, with the name of the licensee, description of the weapon and its purpose. This list is updated from time to time. Any police officer or other officer specially empowered in this behalf by the Central Government can demand the production of licence from the person carrying firearm or

ammunition. The licensee is required to inform the licencing authorities of the change of the place of residence. Keeping in view these facts and without dilating any further on the issue, I am of the view that the requirement of getting the licences renewed after every three years needs to be done away with. The law should be such as may repose confidence in the armed citizens that they are presumed to be responsible in using arms to defend themselves. One such measure in this regard would be to amend the Arms Act, 1959/the Arms Rules of 1962 suitably to prescribe that arms licences are required to be renewed after every ten years. I would suggest that the concerned department of the Union Government may take necessary steps in this regard.

The Registry is directed to hand over a copy of this judgment to the learned Assistant Solicitor General of India representing the Union of India in this Court for onward transmission to the concerned quarters and necessary action."

(7) As is evident from the record that in the instant case, the arms licence of the petitioner was valid upto 20th may, 2005 and there is a delay of two years and two months in filing the application for its renewal. The explanation put-forth by the petitioner for causing the delay on account of his age, illiteracy and domestic problems, is genuine, natural and plausible. The District Magistrate and the Appellate Authority negatived his (petitioner) claim, mainly on the ground that his renewal was not recommended by the SSP due to registration of a criminal case against his under Section 324 IPC.

(8) Here, to my mind, the District Magistrate and the Appellate Authority fell in legal error in this relevant behalf. What is not disputed here is that the indicated case was registered against the petitioner,—*vide* FIR No. 92, dated 1st January, 1997, on accusation of having committed the offence punishable under Section 324 IPC, by the police of Police Station Zira, in which he was stated to have been acquitted, much prior to the issuance of the licence to the petitioner in the year, 1999. Therefore, the registration of a criminal case in the year, 1997, much prior to the issuance of the indicated arms licence, in which he was stated to have been acquitted, has no direct bearing on the application of renewal of the arms licence of the petitioner.

(9) As is clear that, Section 15(3) of the Act postulates that 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, on payment of requisite fees, as envisaged under Section 16 of the Act.

(10) Not only that, Rule 54 of the Relevant Rules further postulates that 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 renewing authority. The Licensing Authority has the power to consider the 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, as contemplated under Sub-Rule 4 of the Relevant Rules. That means, the Licensing Authority has the inherent power to condone the delay in this respect, if sufficient cause is shown.

(11) Moreover, no cogent material is forthcoming on record even to suggest remotely that the petitioner has ever illegally used his arm or has violated the terms and conditions of its licence. The mere fact that some (duly explained) delay occurred on his part for applying for the renewal of the arm license, *ipso facto* is not a ground to deny the renewal of his license. Therefore, I am of the view that the District Magistrate as well as the Appellate Authority did not record the valid reasons and have illegally negatived the claim of the petitioner in this relevant behalf. Hence, the impugned orders (Annexures P-1 and P-2) cannot legally be sustained in the eyes of law, in the obtaining circumstances of the case.

(12) In the light of aforesaid reasons, the instant writ petition is accepted. The impugned orders (Annexures P-1 and P-2) are hereby quashed. The matter is remitted back to the District Magistrate, to consider the case of renewal of the indicated arms license afresh and to renew the same, if the petitioner is otherwise entitled for its renewal (except delay), in view of the aforesaid observations and in accordance with law.