

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

O R D E R

- (1) **S.B.Civil Writ Petition No. 3959/2008**
(Jodh Singh Vs. State of Rajasthan & Ors.)
- (2) **S.B.Civil Writ Petition No. 2543/2008**
(Anil Kumar Vs. State of Rajasthan & Ors.)
- (3) **S.B.Civil Writ Petition No. 2884/2008**
(Kishan Soni Vs. State of Rajasthan & Ors.)
- (4) **S.B.Civil Writ Petition No. 3813/2008**
(Girdhari Lal Vs. State of Rajasthan & Ors.)
- (5) **S.B.Civil Writ Petition No. 3816/2008**
(Bhojraj Vs. State of Rajasthan & Ors.)
- (6) **S.B.Civil Writ Petition No. 3817/2008**
(Balvindra Singh Vs. State of Rajasthan & Ors.)
- (7) **S.B.Civil Writ Petition No. 3818/2008**
(Devi Lal Vs. State of Rajasthan & Ors.)
- (8) **S.B.Civil Writ Petition No. 3819/2008**
(Harjindra Singh Vs. State of Rajasthan & Ors.)
- (9) **S.B.Civil Writ Petition No. 3956/2008**
(Rajendra Singh Vs. State of Rajasthan & Ors.)
- (10) **S.B.Civil Writ Petition No. 3957/2008**
(Jagdish Chandra Vs. State of Rajasthan & Ors.)
- (11) **S.B.Civil Writ Petition No. 3958/2008**
(Najam Singh Vs. State of Rajasthan & Ors.)
- (12) **S.B.Civil Writ Petition No. 3965/2008**
(Mukhtyar Singh Vs. State of Rajasthan & Ors.)
- (13) **S.B.Civil Writ Petition No. 3992/2008**
(Parvindra Singh Vs. State of Rajasthan & Ors.)
- (14) **S.B.Civil Writ Petition No. 4040/2008**
(Sahab Ram Vs. State of Rajasthan & Ors.)

- (15) **S.B.Civil Writ Petition No. 4351/2008**
(Mandeep Singh Vs. State of Rajasthan & Ors.)
- (16) **S.B.Civil Writ Petition No. 4567/2008**
(Balvindra Singh Vs. State of Rajasthan & Ors.)
- (17) **S.B.Civil Writ Petition No. 4608/2008**
(Harpal Singh Vs. State of Rajasthan & Ors.)
- (18) **S.B.Civil Writ Petition No. 4634/2008**
(Sukhmander Singh Vs. State of Rajasthan & Ors.)
- (19) **S.B.Civil Writ Petition No. 4638/2008**
(Richpal Singh Vs. State of Rajasthan & Ors.)
- (20) **S.B.Civil Writ Petition No. 4651/2008**
(Gurbachhan Singh Vs. State of Rajasthan & Ors.)
- (21) **S.B.Civil Writ Petition No. 4800/2008**
(Pradeep Singh Vs. State of Rajasthan & Ors.)
- (22) **S.B.Civil Writ Petition No. 4802/2008**
(Palvinder Singh Vs. State of Rajasthan & Ors.)
- (23) **S.B.Civil Writ Petition No. 4803/2008**
(Gurjeet Singh Vs. State of Rajasthan & Ors.)
- (24) **S.B.Civil Writ Petition No. 4804/2008**
(Jasmat Singh Vs. State of Rajasthan & Ors.)
- (25) **S.B.Civil Writ Petition No. 4805/2008**
(Rajendra Singh Vs. State of Rajasthan & Ors.)
- (26) **S.B.Civil Writ Petition No. 4915/2008**
(Paras Ram Vs. State of Rajasthan & Ors.)
- (27) **S.B.Civil Writ Petition No. 5019/2008**
(Mahender Singh Vs. State of Rajasthan & Ors.)
- (28) **S.B.Civil Writ Petition No. 5020/2008**
(Rajender Vs. State of Rajasthan & Ors.)
- (29) **S.B.Civil Writ Petition No. 5057/2008**
(Kulwant Singh Vs. State of Rajasthan & Ors.)
- (30) **S.B.Civil Writ Petition No. 5106/2008**
(Rajvindra Singh Vs. State of Rajasthan & Ors.)

- (31) **S.B.Civil Writ Petition No. 5313/2008**
(Narendra Kumar Vs. State of Rajasthan & Ors.)
- (32) **S.B.Civil Writ Petition No. 5444/2008**
(Sohan Lal Vs. State of Rajasthan & Ors.)
- (33) **S.B.Civil Writ Petition No. 5553/2008**
(Bhajan Singh Vs. State of Rajasthan & Ors.)
- (34) **S.B.Civil Writ Petition No. 5554/2008**
(Kulvindra Singh Vs. State of Rajasthan & Ors.)
- (35) **S.B.Civil Writ Petition No. 5735/2008**
(Harpal Singh Vs. State of Rajasthan & Ors.)
- (36) **S.B.Civil Writ Petition No. 6082/2008**
(Iqibal Singh Vs. State of Rajasthan & Ors.)
- (37) **S.B.Civil Writ Petition No. 6148/2008**
(Jaskaran Singh Vs. State of Rajasthan & Ors.)
- (38) **S.B.Civil Writ Petition No. 6149/2008**
(Satnam Singh Vs. State of Rajasthan & Ors.)
- (39) **S.B.Civil Writ Petition No. 6299/2008**
(Sukhdev Singh Vs. State of Rajasthan & Ors.)
- (40) **S.B.Civil Writ Petition No. 6305/2008**
(Kuldeep Singh Vs. State of Rajasthan & Ors.)
- (41) **S.B.Civil Writ Petition No. 6315/2008**
(Hargovind Singh Vs. State of Rajasthan & Ors.)
- (42) **S.B.Civil Writ Petition No. 6316/2008**
(Baljindra Singh Vs. State of Rajasthan & Ors.)
- (43) **S.B.Civil Writ Petition No. 6317/2008**
(Balvindra Singh Vs. State of Rajasthan & Ors.)
- (44) **S.B.Civil Writ Petition No. 6318/2008**
(Harjeet Singh Vs. State of Rajasthan & Ors.)
- (45) **S.B.Civil Writ Petition No. 6320/2008**
(Gurdeep Singh Vs. State of Rajasthan & Ors.)
- (46) **S.B.Civil Writ Petition No. 6321/2008**
(Harmeet Singh Vs. State of Rajasthan & Ors.)

- (47) **S.B.Civil Writ Petition No. 6322/2008**
(Nishan Singh Vs. State of Rajasthan & Ors.)
- (48) **S.B.Civil Writ Petition No. 6323/2008**
(Pragat Singh Vs. State of Rajasthan & Ors.)
- (49) **S.B.Civil Writ Petition No. 6577/2008**
(Tara Singh Vs. State of Rajasthan & Ors.)
- (50) **S.B.Civil Writ Petition No. 6592/2008**
(Charan Jeet Singh Vs. State of Rajasthan & Ors.)

.....

Date of Order : 29/09/2008

P R E S E N T

HON'BLE MR. JUSTICE H.R.PANWAR

Reportable

Mr. M.K.Garg }
 Mr. Niranjan Singh }
 Mr. C.S.Kotwani }
 Mr. N.L.Joshi }
 Mr. B.K.Vyas }
 Mr. Vipin Makked }
 Mr. H.S.Sidhu }
 Mr. Rakesh Matoria} for the petitioners.
 Mr. B.S.Sandhu }
 Mr. H.K.Jain }
 Mr. H.R.Chawla }
 Mr. Kailash Khatri}
 Mr. R.C.Joshi }
 Mr. D.S.Dev }

Mr. K.L.Thakur, Addl. Advocate General}
 Mr. B.L.Tiwari, Addl. Govt. Counsel } for the respondents.

BY THE COURT

These writ petitions involve common question of law and facts and therefore, with the consent of learned counsel for the parties, are heard and decided together taking the facts of

SBCW No.3959/2008 as a leading case.

The facts and circumstances giving rise to these writ petitions are that the petitioners were initially granted Arms Licence for Muzzle Loading Gun (for short 'the ML Gun' hereinafter) which were issued in favour of the petitioners by the Tehsildar of the area and in the case of the petitioner Jodhsingh by Tehsildar, Srikananpur. Grant of ML Gun licence by the tehsildar has not been questioned by the respondent State and therefore, to the extent of grant of ML Gun licence there is no infirmity and such grant of ML Gun licence is not under challenge. However, subsequent thereto, the petitioner applied for change of the bore of the gun before the Additional District Collector, Sriganganagar who issued the Outside Licence of NP Bore vide Licence No. 14/2003. However, by order Annex.4, the respondent District Magistrate, Sriganganagar suspended the licence issued under Section 13 (3) of the Arms Act, 1959 (for short 'the Act of 1959' hereinafter) and the petitioner was directed to deposit the arms with the concerned police station. The petitioner submitted reply to the notice vide Annex.5. By order Annex.6 dated 11.2.2008 the respondent District Magistrate, Sriganganagar cancelled the licence granted in favour of the petitioner. The petitioner preferred an appeal before the respondent Divisional Commissioner, Bikaner Division, Bikaner. By order Annex.7, the appellate authority dismissed the

appeal. Hence these petitions.

A reply to the writ petition has been filed by the respondents contending therein that there has been a gross illegality in violation of the procedure in the border district Sriganganagar for conversion of the bore of the arms licence which was commonly known as Arms Scam by incompetent authority i.e. Additional District Magistrate, Sriganganagar and therefore, after giving show cause notice to the arms licence holder their licences have been cancelled. The orders cancelling the licences were subject to the appeals and the appellate authority rightly dismissed the appeals. It has further been stated that no citizen have a right to claim the arms licence. The arms licence is an privilege conferred by the Act of 1959 and it is purely discretionary for the licensing authority to grant /refuse the arms licence and even after grant of the licence, the competent authority is empowered to revoke/ suspend such licence in the event of violation of relevant provisions. In these cases there had been gross violation of the procedure as envisaged under Rule 51 of the Arms Rules of 1962 (for short 'the Rules of 1962' hereinafter) as also the Act of 1959. Neither the applications seeking change of the bore were on the prescribed proforma as required under Rule 51 of the Rules of 1962 nor there had been any police verification. More particularly being a border area, a police verification by the CID

(Intelligence) is required as per the procedure provided under Section 13 of the Act of 1959 r/w Rule 50 of the Rules of 1962 in view of the order issued by the respondent Home Department dated 17.04.1996 and it was heavily contended in the reply that the Additional District Magistrate is subordinate to the District Magistrate and was only competent to sign the licence granted by the licensing authority i.e. District Magistrate and therefore, in these cases, the licences were granted by the Additional District Magistrate, having no authority under the law for grant of Arms licence and therefore, the respondent District Magistrate was justified in cancelling the arms licence and on an appeal, the appellate authority was also justified in dismissing the appeal. However, according to learned counsel for the petitioner, while cancelling the licence, the licensing authority i.e. District Magistrate has left it open for filing a fresh application under the Act of 1959 and the Rules of 1962 if the applicants so wish and by granting such a liberty, the District Magistrate, Sriganagar, the licensing authority has made it clear in its order that now if the applicants wish to have an arm licence they may apply in accordance with the provisions of the Act of 1959 and the Rules of 1962 and if such applications are made, the same shall be considered strictly in accordance with law.

I have heard learned counsel for the parties and given my thoughtful consideration to the submissions made by

the counsel for the parties.

In all these cases, undisputedly, the change of the bore of arms was by the Additional District Magistrate, Sriganaganagar. The licensing authority has been defined in Section 2 (f) of the Act of 1959 according to which "licensing authority" means an officer or authority empowered to grant or renew licences under rules made under the Act, and includes, the Government. Rule 4 of the Rules of 1962 deals with the Licensing Authority and forms of licence which provides that the licences under Chapter II of the Act may be granted or renewed for such purposes, by such authorities, in such forms and to be valid for such period and in such areas as are specified in Schedule II, subject to such conditions as are specified in that schedule and in the licence. Schedule II provides the places or class of persons in a district, the District Magistrate has the jurisdiction to grant licence throughout the district or his area of jurisdiction or any specified part of his jurisdiction and the renewing authority is also the District Magistrate. Thus, for the purpose of acquisition/ possession/ carrying and use for protection/ sport/ target practice/ display of Arms, the licensing authority in a district is the District Magistrate. Rule 51 of the Rules deals with application for licence which reads as under :-

"51. Application for licence.- Every application for the grant of a licence under these rules-

(a) shall be submitted in Form A;

(b) may be presented by the applicant in person or sent through the medium of posts office or otherwise, to the licensing authority, as far as possible having jurisdiction in respect of the place where he ordinarily resides or has his occupation.

(c) shall contain all such information as is necessary for the consideration of the application, and in particular-

(i) where the application is for the licence for the acquisition, possession and carrying of arms and ammunition for crop protection, shall specify details of the land and cultivation requiring protection and area which the arms or ammunition are required to be carried;

(ii) Where the application is for a licence for import by land or river or for export or for transport or for export, and re-import, or for import, transport and re-export of arms, or ammunition, shall specify the place or destination, the route, the time likely to be occupied in the journey and the quantity, description and price of each kind of arms or ammunition in respect of which the licence is required and the purpose for which they are intended.

(d) Where the grant of licence requires a certificate of no objection from some other authority as provided in rule 50, shall state whether certificate has been obtained and , if so, shall be supported by evidence thereof;

(e) where an application is for the grant of licence in Form II, Form III, Form IIIA, Form IV, Form V or Form VI from a person other than a bona fide tourist as defined in section 10 (1) (b) of the Act it shall be accompanied by two passport size copies of the latest photograph of the applicant:

Provided that-

(i) an application by a member of the armed forces of the Union shall be made through his commanding officer to the licensing authority having jurisdiction in respect of the place to which he is for the time being posted; and

(ii) the licensing authority may, in accordance with any instructions issued by the State Government in respect of all or any class of fire-arms, require the personal attendance of the applicant before granting or renewing the licence applied for.

Rule 51 A provides that the applicant shall not suppress any factual information or furnish any false or wrong information in the application form.

Chapter III of the Act of 1959 deals with the provisions relating to licence. Sub-section (1) of Section 13 provides that an application for the grant of a licence under Chapter II shall be made to the licensing authority and shall be in such form, contain such particulars and be accompanied by such fee, if any, as may be prescribed. Sub-section (2) of Section 13 provides

that on receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on that application, and such officer shall send his report within the prescribed time. Sub-section (2A) provides that the licensing authority, after such inquiry, if any, as it may consider necessary, and after considering the report received under sub-section (2) shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same.

Section 17 of the Act of 1959 deals with variation, suspension and revocation of licences. Section 17 (3) (c) of the Act of 1959 provides that if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the 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, the licencing authority may revoke the licence.

Learned Additional Govt. Counsel has relied on a decision of this Court in Ranjeet Singh Vs. State of Rajasthan and Ors. 2007 (4) RLW, 3110, in Khem Singh Vs. State of Rajasthan and Ors. 2005 (1) RDD, 431 (Raj.) (DB), in Smt. Pushpa Gehlot Vs. The Collector (Small Savings) Pali and Ors. D.B.Civil Special Appeal No. 1415/1999 decided on 18.1.2005, in Mohd. Tarik alias Guddu Vs. Commissioner, Allahabad and

Ors. 2008 (3) All. L.J., 478 and a Circular of the Govt. issued by Home Department of the State dated 16.12.2006 more particularly Appendix-4A prescribing the form for verification and on prescribed form on the points mentioned therein, the District Superintendent of Police has to submit the verification report before grant of Arms Licence in border area.

In Ranjeet Singh Vs. State of Rajasthan and Ors. (supra) this Court observed that critical analysis of the law as discussed above, would indicate that in spite of the fact that the petitioner was acquitted in most of the criminal cases in which he was involved, the District Magistrate was yet entitled to take into consideration not only the number of cases but also the nature of allegations together with the report received from the Addl. S.P. And the application of the SHO, Police Station Mahesh Nagar to arrive at the required satisfaction in the meaning of Section 17 (3) (b) of the Act that it was necessary for the security of the public peace or for public safety to revoke the licence. Whether revocation of the licence under provisions of sub-section (4) of Section 17 was necessary for the purpose of the public peace or for public safety and in doing so, if he has arrived at the satisfaction that it was necessary to cancel/ revoke the licence granted to the petitioner, this Court in exercise of its power of judicial review under Article 226 of the Constitution of India cannot substitute such satisfaction recorded by the licensing

authority unless reasons recorded are so perverse, obnoxious and outrageous that no person of reasonable prudent could reach such satisfaction or the decision was actuated by malafides or based on extraneous considerations. Employment of the kind of phraseology in section 17 of the Act by the legislature leaves no manner of doubt that a wide residuary discretion has been vested in the licensing authority to revoke the licence provided it is satisfied that the holder is unfit for the licence under the Act and in doing so he is entitled to take into consideration not only such criminal cases which have resulted into conviction but also those which have ended in acquittal and even the mere pendency of criminal case, and on the above premises held that wide residuary discretion has been vested in licensing authority to revoke the licence on its satisfaction and in do so he is entitled to take into consideration all the criminal cases resulted into conviction and even acquittal and are pending.

In Mohd. Tarik alias Guddu Vs. Commissioner, Allahabad and Ors. (supra) while considering the similar question, the Court held that the arms licence of the petitioner has rightly been cancelled by the authority concerned for non-disclosure of correct information required for issuance of licence for firearms.

In Writ petitions No. 2884, 3813, 3816, 3817, 3818, 3819, 4608, 5019, 5020, 5106, 5444, 6149, 6305, 6315, 6316,

6317, 6318, 6320, 6322, 6323 and 6592 of 2008 the validity of the period of arms licences issued in favour of the petitioners have already expired and this Court in Smt. Pushpa Gehlot Vs. The Collector (Small Savings) Pali and Ors. and affirmed by the Division Bench in D.B.Civil Special Appeal No.1415/1999 decided on 18.1.2005 held that once the term of agency comes to an end, then automatically the petition has become infructuous and this Court was not required to go into the legality and validity of the order terminating the agency. Since the validity of period of arms licences issued in favour of the petitioners in the writ petitions referred above have already been expired and no application seeking renewal of such licences have been filed by the petitioners.

From the material available on record, in my view, in these cases, neither the application was in the prescribed form as required by Rule 51 of the Rules of 1962 nor there has been requisite police verification. More particularly, Sriganganagar being a border area, the police verification was required as per the circular of the State Govt., Department of Home, dated 16.12.2006 by CID (Intelligence) and arms bore have been got converted by the arms holders on the large scale by suppressing the material information and on wrong information and over and above, on the arms, bore have been converted/ changed by the

Additional District Magistrate without authority of law as has been noticed above that in a district the licensing authority is District Magistrate as appended in Schedule-II of Rule 4 of the Rules of 1962. The procedure prescribed under the Rules of 1962 has not been followed in most of the cases inasmuch as neither the application has been filed by the petitioners for change/conversion of the bore of the arms as per procedure provided under Rule 51 of the Rules of 1962 nor the Additional District Magistrate granted such conversion/ change of bore has followed the procedure as envisage under the Rules of 1962 as also the instructions issued by the State Govt. from time to time in this regard and in most of the cases the petitioners themselves were party to the illegality inasmuch as they furnished incorrect information and misrepresented by concealing the material and relevant facts in their application and therefore, the respondent District Magistrate, Sriganaganagar was justified in cancelling the licence as also on appeal the appellant authority was justified in dismissing the appeals. However, the respondent District Magistrate has made it open for the petitioners to move afresh for arms licence/ change of bore before the licensing authority i.e. District Magistrate who is licensing authority in accordance with the Act of 1959 and the Rules of 1962. Thus, in my view, the respondent authorities were justified in cancelling the licences. Even otherwise, the

petitioners have not been denied the licence forever since the Licensing Authority, District Magistrate has made it open for the petitioners to apply afresh in accordance with the law so that if the petitioners are found eligible for grant of arms licence, the licensing authority would consider and decide the same.

In view of the aforesaid discussion, I do not find any merit in the writ petitions. The writ petitions are therefore, dismissed. However, the petitioners are at liberty to apply afresh for grant of licence before the concerned District Magistrate, the licensing authority if so advised and if the petitioners apply afresh, the Licensing Authority shall decide the same strictly in accordance with law. Stay petitions also stand dismissed. There shall be no order as to costs.

(H.R.PANWAR), J.

rp