

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

O R D E R

(1) **S.B.Civil Writ Petition No. 5346/2008**
Rafique Shah Vs. State of Rajasthan & Ors.

(2) **S.B.Civil Writ Petition No. 5347/2008**
Arshad Shah Vs. State of Rajasthan & Ors.

(3) **S.B.Civil Writ Petition No. 5517/2008**
Aslam Shah Vs. State of Rajasthan & Ors.

(4) **S.B.Civil Writ Petition No. 5556/2008**
Mohammed Amin Vs. State of Rajasthan & Ors.

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Date of Order : 30th January, 2009

P R E S E N T

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. D.K.Gaur for the petitioners.
Mr. B.L.Tiwari, Addl. Govt. Counsel for the respondents.

BY THE COURT

These four 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.5346/2008 "Rafique Shah Vs. State of Rajasthan and Ors." as a leading case.

Briefly stated the facts giving rise to these writ petitions are that the petitioner alleged to have applied for Arms Licence of .12 Bore Gun and .32 Bore Revolver before the

District Magistrate, Anant Nag in the State of Jammu and Kashmir who said to have issued Arms Licence No.210/1996 in favour of the petitioner vide Annex.1. After having issued with the licence as afore-noticed, the petitioner said to have purchased .12 Bore Gun and .32 Bore Revolver. It is stated that the petitioner said to have been involved in number of criminal cases and therefore, the Superintendent of Police, Bikaner moved to the District Magistrate, Bikaner that there is apprehension of the breach of peace by the petitioner and allowing the petitioner to hold the Arms under Licence is a danger to public safety and life and therefore, on receiving the said letter from the Superintendent of Police, Bikaner, the District Magistrate, Bikaner by a communication addressed to the Secretary, Home Department, sought cancellation of the said Arms Licence and in pursuance of the letter dated 01.11.2007, District Magistrate, Bikaner by order dated 11.12.2007 (Annex.2) suspended the Arms Licence issued in favour of the petitioner and directed the petitioner to deposit .12 Bore Gun as well as .32 Bore Revolver under licence with the Police Station-Jamsar under Section 21 of the Arms Act, 1959 (for short 'the Arms Act' hereinafter). The order Annex.2 came to be challenged by the petitioner before the respondent Divisional Commissioner, Bikaner by way of an appeal being Appeal No.54/2008 (Arms Act). The appeal filed by the petitioner came to be dismissed by

order Annex.3 dated 28.05.2008. Hence these writ petitions.

A reply to the writ petition has been filed by the respondent State contending therein that by furnishing false and incorrect information, the petitioner got endorsed on licence the change of area from the office of Additional District Magistrate, Srigananagar who was not competent authority to either grant the arm licence for Revolver or to make endorsement on licence with regard to change of area for which the original licence was granted. It was further contended that the petitioner was given proper opportunity of hearing before passing the order suspending the licence Annex.2. It was also contended that the life of the Arms Licence came to be expired on 10.08.2008 and the petitioner has not applied for its renewal and therefore, the respondents were justified in directing the petitioner to deposit the Arms with Police Station Jamsar, district Bikaner. The respondents came with a case that the petitioner is involved in various criminal cases and the various offences have been registered punishable under the Indian Penal Code against the petitioner as also under the provisions of Representation of People Act and in those cases, challans have been filed before the competent Court which are pending trial. It was further contended that the petitioner obtained the endorsement of change of area, renewal and change of Bore while concealing material facts pertaining to his place of residence, need for

change of bore etc. and over and above the Additional District Magistrate, Sriganganagar was not competent for such an action and lastly it was contended that the grant/ renewal of the Arms Licence is not a fundamental right but it is a privilege conferred by the Arms Act and the Rules framed thereunder and therefore, the respondent competent authority is empowered to revoke the licence granted to the petitioner in the event of violation of relevant provisions. There is requirement of law that before grant or renewal of the Arm Licence, a police verification from CID (Intelligence) is the condition precedent and in the instant case the change of area and the change of Bore by the Additional District Magistrate, Sriganganagar was in violation of Section 13 of the Arms Act read with Rule 50 of the Arms Rules, 1962 (For short 'the Arms Rules' hereinafter), and therefore, the respondents supported the orders impugned.

I have heard learned counsel for the parties.

It is contended by learned counsel for the petitioners that though the criminal cases have been pending against the petitioners and in some of the cases the petitioners have been acquitted, however, according to learned counsel, the order of suspension/ revocation of the Arms Licence can only be made by the Central Government and not by the State authorities respondents herein. According to learned counsel for the petitioners, it cannot be said that allowing the petitioners to hold

the Arms Licence and the Arms thereunder will disturb the public peace and tranquility as one of the petitioners i.e. Rafique Shah had been elected Sarpanch of village.

Learned Additional Govt. Counsel appearing for the respondent State submitted that as per the petitioner, the said Arms Licence has been issued by an authority of Anant Nag, in the State of Jammu & Kashmir. It is another thing as to how and in what circumstances, the licence has been issued by the Licensing Authority of Anant Nag when the petitioner is resident of District Bikaner and there had not been any occasion for the petitioner having residing in the area of Jammu and Kashmir more particularly within the territorial jurisdiction of Anantnag. Be that as it may, according to learned counsel for the respondents two licences issued by the Licensing Authority of Anant Nag (J&K) cannot be said to have been issued by the Central Government and therefore, the respondent authority is competent to suspend/revoke the licence under the provisions of the Arms Act. Learned Additional Govt. Counsel has relied on 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. It was further contended that the validity of the licence period has already expired and in none of the cases, the petitioners herein moved for renewal of the licence and therefore, on this count also, no relief can be granted to the petitioners. Learned Additional Govt. Counsel further submitted that the Additional District Magistrate, Sriganganagar has no authority under law to endorse the change of area in respect of two licences issued in favour of the petitioner from Licensing Authority, Anant Nag of Jammu and Kashmir State as also the Additional District Magistrate, Sriganganagar has no authority to make an endorsement/permission to make the licence valid for 'All India'. If at all anything could have been done that can be done by the competent Licensing Authority of Sriganganagar i.e. District Magistrate and it could have only passed an order in respect of the State of Rajasthan, but in the instant case, the competent authority being the District Magistrate, Sriganganagar has not passed any order, on the contrary, it is the Additional District Magistrate, Sriganganagar who made the endorsement of

change of area more particularly making it valid for "All India". Apart from the above, according to learned Additional Govt. Counsel, there are number of cases pending against the petitioners under the Representation of People Act as also the petitioners having been involved in commission of crimes punishable under the Indian Penal Code including the offence of murder.

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

The licence Annex.1 issued in favour of petitioner Rafique Shah S/o Jamal Shah neither bears the age nor date of issue, however, the address mentioned therein is 7 G.D. Tehsil Gharsana. It also appears that the copy of the licence placed on record is a duplicate copy and nothing has been said about original copy of the licence. The Additional District Magistrate, Sriganganagar made an endorsement in respect of area within which the licence is valid on 10.08.2005 making it valid for "All India". The order Annex.2 dated 11.12.2007 issued by District Magistrate, Bikaner shows that at P.S. Jamsar Crime Reports No.31/87, 37/87, 08/88, 19/04, 37/96 and 38/96 have been registered, in most of these cases, offences punishable are under the Indian Penal Code and some of them are punishable under Section 307 IPC attempt to murder and Section 131 of the Representation of People Act. The District Magistrate by the

order impugned noticing the criminal antecedents of the petitioners and filing of the challan before the Competent Court in almost all cases noticed above as also keeping in view the recommendations made by the Superintendent of Police for cancellation of the licence that it would be unsafe to allow the petitioners to continue with the arms under the Licence and allowing the petitioners to keep the licence would endanger the public safety, peace and tranquility, in exercise of power under Section 17 (3) of the Arms Act, suspended the licence and directed the petitioners under Section 21 of the Arms Act to surrender the Arms by depositing with Police Station Jamsar. On the appeal filed by the petitioners Rafique Shah and Arshad Shah before the Divisional Commissioner, the Appellate Authority noticed that the licences said to have been granted by the Licensing Authority, Anant Nag, State of Jammu and Kashmir showing the address of the petitioner Chak 7 G.D. Tehsil Gharsana, District Sriganganagar and thereafter the endorsement has been made by the Additional District Magistrate, Sriganganagar on 10.08.2005 regarding change of area. It was brought to the notice of the authorities that all the petitioners have criminal antecedents as having been involved in number of criminal cases for which crime reports have been registered against them as noticed above. The Superintendent of Police, Bikaner moved to the District Magistrate, Bikaner that

keeping in view the criminal antecedents and petitioners having been involved in number of criminal cases, allowing the petitioners to hold the Arms under Licence would endanger the public safety and peace. The petitioners Rafique Shah and Arshand Shah have a history sheet in the concerned police station and therefore, they have been declared History Sheeter. Since the endorsement on the licence having been made by the Additional District Magistrate, Sriganganagar making the licence valid for "All India" and therefore, the District Magistrate not being competent to suspend or cancel the licence valid for "All India" approached to the State Govt. i.e. Home Secretary and on the recommendation of the Home Secretary and keeping in view the danger of the public safety and peace allowing the petitioners to keep the Arms under Licence in exercise of power under Section 17 (3) of the Arms Act, the licences came to be suspended. From the record made available before the Appellate Authority, it is clear that the petitioner Rafique Shah is a History Sheeter of the Police Station Jamsar, District Bikaner having criminal cases registered against him for the murder, attempt to murder etc. and there being sufficient material before the authority that keeping in view the criminal antecedents of the petitioners allowing them to keep the Arms under Licence would be dangerous to the public safety and peace. Apart from this, various irregularities as noticed above have been pointed out.

The licences have been obtained from the Licensing Authority, Anant Nag in the State of Jammu and Kashmir and the Arms have been purchased showing the address Chak 7 G.D. Tehsil, Gharsana and endorsement Outside Number has been made by the Additional District Magistrate, Sriganganagar making it valid for "All India" and keeping in view the danger of public safety and peace at large and likely apprehension of breach of peace by the petitioners, according to the appellate authority, the District Magistrate was justified in suspending the licences.

So far as the contention of the learned counsel for the petitioners that the licences could only be suspended by the Central Government is concerned, the contention has not been accepted for the reason that the licences have not been issued by the Central Government. More so, the licence bears the endorsement by the Additional District Magistrate making it valid for "All India". Undisputedly, the endorsement for change of area has been made by the Additional District Magistrate, Sriganganagar. The Licensing Authority has been defined in Section 2 (f) of the Arms Act 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 of 1962 deals with application for licence as to how the application is to be presented and what material information is required to be disclosed therein, 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 Arms Act 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 licensing authority may revoke the licence.

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 Sardar Chand Singh Vs. Commissioner, Burdwan Division and Another, AIR 1958 Calcutta 420, the Calcutta High Court observed as under:-

"The Divisional Commissioner has given reasons fairly and fully. The reason is that the appellant was involved in several litigations of a serious nature and that a person who is so involved in that way could not be considered to be a suitable person for possessing a revolver. There, again, the reasons are there. The question whether such reasons are right or wrong is not for this Court to examine under Art. 226 mala fide. I cannot help expressing the view that the reasons appear to me to be good. The law as I understand it is not that a person can only be refused a licence for a revolver if in such a case he has been convicted by a criminal court. Even if he is not convicted or even if he is acquitted, it may very well be a ground to refuse him a gun licence as not being a safe person to have such fire arms. Even if the Magistrate's reasons were far too brief the Commissioner's reasons are fuller and as the Commissioner is the appellate authority under the Rules, the requirement of reasons for the refusal is in these circumstances amply satisfied."

In Kapildeo Singh Vs. State of Bihar and Ors. AIR 1987 Patna 122, the Patna High Court had an occasion to consider the scope of Section 17 (3) of the Arms Act, wherein it has been observed as under:-

"..that under sub-section (3) the actual conviction or acquittal on the criminal charge does not have an inflexible or conclusive impact on the exercise of the direction by the licensing authority thereunder. Even if the holder of the licence may be acquitted by narrowly giving the benefit of doubt, the licensing authority could,

perhaps, still take the view that along with other factors such a person may not be fit for holding an arms licence. Equally, conviction on any and every criminal charge would not provide an inflexible rule that the licensing authority must revoke the same and it may well be justified in allowing the continuance of the said licence. As is noticed hereafter, conviction and acquittal are issues of relevance under sub-section (7) for the criminal Court and not conclusive for the licensing authority who is governed by the provisions of sub-section (3)."

From the material on record as noticed above, it is obvious that there had been number of irregularities in the grant, renewal and the change of area by Additional District Magistrate, Sriganganagar who is not competent and the fact that the petitioner is history sheeter of the police station and there is an adverse report by the Superintendent of Police against the petitioner and subjective satisfaction of the Licensing Authority i.e. District Collector, Bikaner that allowing the petitioners to keep the Arms under the licence would be highly unsafe for the public safety and maintaining the peace and tranquility, more particularly when the petitioners have criminal antecedents and are involved in number of criminal cases punishable under the IPC, some of which are punishable under Section 307 attempt to murder and one of the case is of murder though according to counsel, the conviction in murder case ultimately could not sustain in appeal. Be that as it may, keeping in view the decision of this Court in Ranjeet Singh Vs. State of

Rajasthan and Ors., the facts of which are somewhat similar to the present cases, in my view, the Licensing Authority as well as the Appellate Authority were justified in passing the orders impugned. In this view of the matter, I do not find any merit in the writ petitions filed by the petitioners.

Consequently, all the four writ petitions are dismissed. Stay petitions also stand dismissed. There shall be no order as to costs.

(H.R.PANWAR), J.

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