

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI
ON THE 27th OF SEPTEMBER, 2022
WRIT PETITION No. 3710 of 2021**

BETWEEN:-

**MOHD. HAROON S/O SHEIKH
MUBARAK, AGED ABOUT 50 YEARS,
OCCUPATION: CONTRATOR R/O
BHAGAT SINGH COLONY WARD NO.9
MADOLI DISTT. SINGRAULI (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI MANOJ KUSHWAHA- ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THR. SECRETARY HOME
DEPARTMENT VALLABH BHAWAN
BHOPAL (MADHYA PRADESH)**

- 2. COLLECTOR / DISTRICT MAGISTRATE
SINGRAULI, DISTRICT SINGRAULI
(MADHYA PRADESH)**

- 3. THE S.P. SINGRAULI, DISTRICT
SINGRAULI (MADHYA PRADESH)**

.....RESPONDENTS

(BY SMT. GULAB KALI PATEL- GOVERNMENT ADVOCATE)

This petition coming on for admission this day, the court passed the following:

ORDER

Heard finally with the consent of both the parties.

By filing this petition under Article 226 of the Constitution of India, the petitioner has called in question the legality, validity and propriety of the order dated 13.01.2020 passed by respondent No.2 (Collector), whereby the licence of the petitioner for holding arms has been suspended.

2. The brief facts leading to filing of this case are that the petitioner is a licence holder of gun bearing licence No.1137/III/P.S.. The aforesaid licence was granted on 17.12.2017. After expiry of the licence, the petitioner applied for renewal of the aforesaid gun licence. On 03.10.2018, the Superintendent of Police, Singrauli informed the Collector that a criminal case is registered against the petitioner in the local Police Station- Morwa for the offence punishable under Sections 147, 148, 294, 506-B, 323, 327, 427 of IPC, wherein the petitioner was acquitted vide order dated 31.10.2011. However, another case bearing crime No.438/2017 for the offence punishable under Section 3/7 of the Essential

Commodities Act has been registered, which is still pending, therefore, the objection was made regarding renewal of gun licence. The authority issued a show-cause notice dated 07.12.2019. Reply was filed on 31.12.2019 in which it is stated that only one case is pending under Section 3/7 of the Essential Commodities Act and the same is not a heinous offence and the petitioner being a contractor is required to carry the gun for business purpose as he has to visit rural areas with huge amount of cash alongwith him. The Collector without giving any opportunity of hearing suspended the gun licence vide the impugned order on the ground that the same cannot be renewed during pendency of the case. Hence, this petition.

3. Learned counsel for the petitioner submitted that the conditions enumerated under Section 17 sub-Section 3 of the Arms Act, 1959 (hereinafter shall be referred to as "the Act") are not fulfilled since the authority did not record the satisfaction or assign any reason before suspending the licence, as such the impugned order deserves to be set aside.

4. Learned counsel for the petitioner relied on the judgment of the Coordinate Bench of this Court in the case of **Abdul Saleem Vs.**

State of M.P. as reported in **2019 (3) MPLJ 332** to contend that there is nothing on record to show that the act of the petitioner is affecting public at large or community. Public safety or public tranquility was not in peril. Mere registration of one criminal offence against the licence holder is not sufficient reason for suspending the licence. The order passed by the licensing authority is without application of mind, arbitrary and without recording subjective satisfaction as required under Section 17 sub-section 3 of the Act.

5. Learned counsel for the petitioner further relied on the judgment of the Allahabad High Court in the case of **Satish Singh Vs. District Magistrate, Sultanpur and others [Writ Petition No.2491 (M/S) of 2008]**, wherein it was held that the arms licence cannot be cancelled merely because the criminal case is pending. He further relied on the judgment rendered in the case of **Habib Vs. State of U.P & others [C.M.W.P.No. 54236 of 1999]** in which it was held that the mere involvement in a criminal case or pendency of a criminal case can be a ground for revocation of arms licence.

6. *Per contra*, learned Government Advocate for the respondents/State vehemently opposed the prayer and submitted that

the order impugned is well reasoned and the reason for suspension of licence has been disclosed in the order. Since one case under Section 3/7 of the Essential Commodities Act is pending, the licence of the petitioner cannot be renewed. No interference is called for. The petition deserves to be dismissed.

7. Learned Government Advocate for the respondents/State relied on the judgment of this Court in the case of **Rajbahadur Singh Vs. State of M.P. and others** as reported in **2009 (2) MPLJ 291**, in which it was held that various cases registered under the Indian Penal Code and also the Arms Act, which are sufficient an indicator that the security to public peace and public safety are at peril.

8. Learned counsel for respondents also relied on the judgment of **Jahangir Khan Vs. State of M.P. and other** as reported in **2010 (3) MPLJ 488**, in which it is held that only when any of the 5 conditions, as enumerated under section 17(3) of the Act of the Act of 1959, are fulfilled then arms licence can be suspended or revoked.

9. In the present case, one case has been registered against the petitioner and, therefore, it satisfies the condition of section 17(3) of the Arms Act, 1959.

10. Heard the learned counsel for parties.

11. Section 17 of the Arms Act of 1959 provides that :-

“17. Variation, suspension and revocation of licences.—

- (1) The licensing authority may vary the conditions subject to which a licence has been granted except such of them as have been prescribed and may for that purpose require the licence-holder by notice in writing to deliver-up the licence to it within such time as may be specified in the notice.
- (2) The licensing authority may, on the application of the holder of a licence, also vary the conditions of the licence except such of them as have been prescribed.
- (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.
- (4) The licensing authority may also revoke a licence on

the application of the holder thereof.

(5) Where the licensing authority makes an order varying a licence under sub-section (1) or an order suspending or revoking a licence under sub-section (3), it shall record in writing the reasons therefore and furnish to the holder of the licence on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.”

12. On perusal of the impugned order, it can be seen that the licence has been suspended on the ground of the pendency of criminal case against the petitioner. The crux of the matter is that whether the petitioner has a right to possess the fire arm. The scheme of the Act discloses that grant of arms licence is a privilege extended by the State to the petitioner concerned. In the impugned order, the licensing authority has not recorded any satisfaction for suspending the licence. Merely due to registration of the case, the licence cannot be suspended. Nothing is on record to show that the public safety affecting public tranquility or going to be affected because of the petitioner.

13. In view of the aforesaid discussion, the inescapable conclusion, which can be arrived at is that the licensing authority did not exercise the power in accordance with Section 17(3) (b) of the Act. The power exercised by the authority is without application of mind, arbitrary

and without recording subjective satisfaction. Accordingly, the petition succeeds and is hereby **allowed**. The impugned order dated 13.01.2020 is hereby set aside. The licensing authority is directed to reconsider the case of the petitioner for grant of arms licence in accordance with the provisions of the Act, as expeditiously as possible, preferably within a period of three months from the date of receipt of certified copy of this order and pass a reasoned and speaking order.

No order as to cost.

(S. A. DHARMADHIKARI)
JUDGE

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