

Sheru Vs. Deputy Commissioner of Police, (Licensing), Delhi

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Court : Delhi

Decided On : Feb-23-1993

Reported in : 1993CriLJ3289; 1993(2)Crimes687; 50(1993)DLT390; 1993(25)DRJ358; ILR1993Delhi268; 1993RLR399

Judge : Jaspal Singh and; Mahinder Narain, JJ.

Appeal No. : Cri. W. No. 184 of 1992

Appellant : Sheru

Respondent : Deputy Commissioner of Police, (Licensing), Delhi

Advocate for Def. : N.K. Handa, Adv.

Advocate for Pet/Ap. : O.N. Vohra, Adv

Judgement :

ORDER

CUM SHOW CAUSE NOTICE

Whereas Shri Sheru s/o Shri Suban r/o village Chandan Holla, P.S. Mehrauli, New Delhi is holding an arms license No. SDMH-020020 for one .12 bore DBBL Gun No. 013141 issued by this office valid up to 23-2-1993.

2. And whereas, DCP/South Distt., New Delhi has intimated that on 7-7-91 one Shakruddin has reported that when he was working at Anrool Farm, Sh. Fazloo

and Saeed came and started abusing and beating him. He escaped from there and entered the house of Noor Mohd. ex-Pardhan of vill. Chandan Holla. In the meantime supporters of Fazloo and Saeed were gathered and started pelting stones and bricks on the house of Ex-pradhan. In this connection FIR No. 203/91 under sections 147/148/149/323, IPC PS Mehrauli has been registered. Shakruddin and others got injuries in the quarrel and all the accused were arrested. DCP/South Distt. has further stated that Shri Sheru, who is also an accused in the said case has a licensed gun and there is likelihood that he may create some tension by using his licensed gun in the village and as such recommend that his arms license may be cancelled.

2. And whereas, the above act of Shri Sheru renders him unfit to hold an arms license under section 17(3) of Arms Act, 1959 in the interest of public safety and peace.

4. Now, there from, I, Kanwaljit Deol, Deputy Commissioner of Police, Licensing, Delhi by virtue of powers conferred upon me under sections 17(3) of Arms Act, 1959 do hereby suspend his arms license with immediate effect. He is directed to deposit his weapon along with its cartridges, if any in the nearest Police Station under intimation of this office and his arms license in this office. He is also called upon to show cause as to why his arms license should not be cancelled for the reason mentioned above. His reply to show cause notice should reach this office within 15 days from the date of receipt of this notice, failing which, it will be presumed that he had nothing to say in his defense and matter will be decided ex parte on merits of the case.

5. He is also allowed to appear before the undersigned on 20-4-1993 at 11 a.m. to explain his case in person, if he so desires.

Sd/-

(KAMALJIT DEOL)

DEPUTY COMMISSIONER OF POLICE

(LICENSING) DELHI.

No. 8160/DCP/Lic. (Arms) dated Delhi, the 27/3/92'

4. Before proceeding to deal with the arguments advanced, Section 17(3) of the Arms Act may be noticed. It says :

17(3) The licensing authority may by order in writing suspend a license for such period as it thinks fit or revoke a license, -

(a) if the licensing authority is satisfied that the holder of the license is prohibited by this Act or by 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 license 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 license; or

(c) If the license was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the license or any other person on his behalf at the time of applying for it; or

(d) If any of the conditions of the license has been contravened; or

(e) If the holder of the license has failed to comply with a notice under sub-section (1) requiring him to deliver-up the license.

5. Mr. O. N. Vohra Advocate appearing for the petitioner drew our attention to a Full Bench judgment of the Allahabad High Court in Chhanga Prasad Sahu v. State, : AIR1986 All142 in support of his contention that the Deputy Commissioner (Licensing) could not suspend the license pending enquiry into its revocation. The judgment does support him, for it holds that (Para 22) :

'Having regard to the scheme and purpose of the provisions contained in Sections 17 and 18 of the Act and the nature of the enquiry that a licensing authority is to make before directing revocation/suspension of an arms license, it has no power to suspend the arms license pending enquiry into its cancellation/suspension.'

6. The Full Bench was persuaded to so hold principally on the ground that the power to suspend the license pending enquiry into its revocation could not be regarded as inherent/incidental power of the licensing authority as the existence of such power was not absolutely essential for the discharge of the power conferred.

7. It may be noticed that the Full Bench judgment in Chhanga Prasad Sahu : AIR1986 All142 which was delivered by a Bench of three Judges was followed by another Full Bench judgment in Kailash Nath v. State, : AIR1985 All291 . The Bench comprised of five Judges. The Court held that although normally or ordinarily before cancelling a license for fire arms the license holder must be given an opportunity of being heard but in extraordinary cases like the existence of an emergency where an obligation to give notice and opportunity to be heard would obstruct the taking of prompt action, the absence of hearing before the action, can be adequately compensated for by a hearing ex post facto. The Court further observed that (at P. 300 of AIR) :

'The licensing authority can also for the furtherance of his immediate remedial action exercise the incidental power of directing the license holder to surrender his license until the objection have been decided.'

8. The observation extracted above were interpreted by a Division Bench in Awadesh Kumar Misra v. District Magistrate, Kanpur, 1988 ALL LJ 363, as admitting the power of suspension pending enquiry under section 17(3) of the Arms Act. It was further observed (Para 8) :

'Power of suspension is a necessary concomitant of power of cancellation for effective control and regulation. It was necessary and expedient that the licensing authority should be clothed with power to suspend a license when it detects or finds it to be in the interest of law and order. Otherwise, a license-holder can commit breach of the terms and conditions of his license with impunity, without any check or control. What appeal (sic) to us to be flowing from Section 17(3) of the Arms Act the power of suspension is necessary adjunct to the power to grant a license. Sub-section (3) of Section 17 when it empowers the licensing authority may, by order in writing, suspend a license for such period as it thinks fit. It obviously means that it implies within itself the power of suspension pending

enquiry.'

9. The Judgment in Awadesh Kumar Misra's case 1988 All LJ 363 was followed by yet another Full Bench judgment in Balram Singh v. State, 1989 ALL LJ 23 wherein, while holding that the power to suspend a license is inherent in the power to cancel it, it was observed (at P. 26, Para 12) :

'We have not a minute's hesitation in holding that the effect of a combined reading of sub-section (3) and clause (b) thereof is that whenever a proceedings under sub-section (3) is initiated for suspending or revoking 'a license' and the licensing authority deems it necessary for security of public peace or for public safety to suspend or revoke 'the license', the said authority can in exercise of that power suspend the license during pendency of the proceedings, without any hindrance from other provisions of the Act.'

The Court observed that in view of the judgment in Kailash Nath's case : AIR1985 All291 , the ratio in Sahu's case : AIR1986 All142 that there was no power to suspend the license rendering enquiry 'had lost ground' and that the judgment in Awadesh Kumar's case had laid down the correct law.

10. Section 17(3) gives power to suspend or revoke the license. 'Suspend' means to make to stop for a time : to defer. & Revoke, on the other hand means to recall : call back : to withdraw. Thus whereas suspension of an arms license would only mean deferment or a temporary withholding of the license, finality attaches to the order of revocation as by it the license is withdrawn or taken back. The power of revocation is thus grater than the power of suspension. And, if it is so, the greater power always includes the less. Even otherwise, I do feel, the power to suspend is incidental to the power of revocation and follows as a matter of course being necessary compliment to the order of revocation without which, in cases of emergency etc., the show cause proceedings against revocation may be rendered ineffective. According to Stroud's judicial dictionary, a thing is said to be incidental to another when it appertains to the principal thing and I have no manner of doubt that the power to suspend an arms license does appertain to the principal thing, that is, the power to revoke.

11. The word 'or' used in Section 17(3) is not distinctive. It is used here not so much as to separate two wholly different concepts as to show that they are concepts which are too closely allied and may be used together in one order or simultaneously in the form of two separate orders. For example, the Authority may issue a notice to show cause why the license be not revoked and may simultaneously suspend the license by a separate order. And, if the Authority can resort to it, I see no reason why a combined or composite cannot be passed.

12. This much on the first question. However, a few more words before I travel on to the next. Jenkins says that an Advocate is a teacher of sorts and instructs the Judge as to what the law is and what are the underlying facts and circumstances, so that an informed choice can be made. (See : Jenkins Communication in the Courtroom. The lawyer as an educator, 48 AM B L.J. 377 (1984). In short, the Advocate must know more and help the decided more. (See : Charles W. Joiner, University of San Francisco Law Review Vol. 24 Fall 1989.) He must also remember that when the duty to the client conflicts with the duty to the system, it is the duty to the system which must prevail (Ibid). I am sure Mr. Vohra is fully alive to his role and hope that his misplaced reliance on Sahu's case and failure to bring to our notice the order judgments referred to by me above, was only an unintended slip.

13. Coming to the second question posed in the introductory part of this order. I find absolutely no justification for the order of suspension. The incident on which the action is founded is of 7-7-91. The order of suspension is of 27-3-92. The long lapse of about 8 months militates against any emergency or urgency or need for immediate remedial action. The order itself speaks of no such urgency or need.

14. Besides, what has been noticed by me above it may be mentioned that an order of the description must pass three tests. Firstly it must show that the Licensing Authority applied its mind to the material placed before it and thereafter deemed it necessary for the security of the public peace or for public safety to initiate action under section 17(3)(b) of the Act. What the impugned order does is that it makes mere reference to the police report. The police report, however, is not a part of the order and there is nothing on the record to show as to whether

that report or any part thereof was accepted and made the basis of the order. Anyhow, although the pendency of a minor or capital crime case may possibly lead to an action under clause (a) of Sub-section (3) of Section 17 on the ground that such a person is 'unfit for a license under this Act' more so where the licensed weapon is used or employed in the alleged crime, the pendency of one single criminal case of the nature as in the present case where admittedly no firearm was used and only simple hurt was allegedly caused cannot attract clause (b) of sub-section (3) of Section 17. For that reason also the 'Order Cum Show Cause Notice' cannot be sustained.

15. The rule is, therefore, made absolute and the order of the Deputy Commissioner (licensing) dated 27-3-92 is quashed and a rule in the nature of mandamus be issued directing the respondents to forbear giving effect to it.

MAHINDER NARAIN, J.

16. I have had the advantage of reading the judgment of my learned brother Jaspal Singh, and although I agree with his conclusions that the writ petition needs to succeed, I do not agree with all that is said in that erudite judgment, which necessitates my reason.

17. The way I see it, the only question involves in this case is whether the order-cum-show cause notice dated 27-3-1992 is in accordance with law, and if not, whether the same has to be quashed.

18. The law in question being Section 17(3) of the Arms Act.

19. The facts which are not disputed are that on 24-3-1984, the petitioner was granted an Arm license by the Licensing Authority, and the same was renewed from time to time, and on the basis of the last renewal, same is valid till 23-2-1993.

20. On 7-7-1992, a case was registered against the petitioner and others under sections 147/148/149/323 of the Indian Penal Code. Admittedly, a cross case bearing F.I.R. No. 202 of 1991 was also registered against the opposite party.

21. On 27-3-1992, the Deputy Commissioner Police (Licensing) issued an 'Order-cum-show cause Notice', suspending the Arm license with immediate effect, and directing the petitioner to show cause why the Arm license be not cancelled.

22. The question which needs to be decided is whether there can be suspension of Arms license with immediate effect.

23. The 'Order cum show cause notice' referred to, read as under :-

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