

Rajasthan High Court - Jodhpur

Ramesh Chandra Patel vs State Of Rajasthan on 5 August, 2022

Bench: Vijay Bishnoi

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR S.B. Civil Writ Petition No. 7417/2022 Ramesh Chandra Patel S/o Devilal Kalal, Aged About 53 Years, R/o Ward No. 5, Sallopat, Bagidora, District Banswara, Rajasthan.

----Petitioner Versus

1. State Of Rajasthan, Through The Chief Secretary, Government Of Rajasthan, Jaipur, Rajasthan.
2. The District Collector/magistrate, Banswara, Rajasthan.
3. The Divisional Commissioner, Udaipur.
4. The Superintendent Of Police, District Banswara, Rajasthan.

----Respondents For Petitioner(s) : Mr. Lakshya Singh Udawat For Respondent(s) : Mr. R.D. Bhadu, Dy.GC Mr. Harshit Bhurani HON'BLE MR. JUSTICE VIJAY BISHNOI Order 05/08/2022 This writ petition has been filed by the petitioner being aggrieved with the judgment dated 29.11.2021 passed by the Divisional Commissioner, Udaipur whereby while entertaining the appeal under Section 18 of the Arms Act, 1959 (hereinafter to be referred as 'the Act of 1959'), he has cancelled the arms licence issued in favour of the petitioner by the District Magistrate, Banswara on 22nd of December, 2016.

Brief facts of the case are that the petitioner has applied for arms licence before the District Magistrate, Banswara and the (2 of 4) [CW-7417/2022] same has been issued in his favour on 22.12.2016. The District Magistrate has thereafter preferred an appeal under Section 18 of the Act of 1959 before the Divisional Commissioner with the prayer to cancel the arms licence issued in favour of the petitioner. The Divisional Commissioner vide impugned judgment has cancelled the licence issued in favour of the petitioner mainly on the ground that on 22.12.2016, the District Magistrate, Banswara was on leave and the charge was given to the Chief Executive Officer of the Zila Parishad, Banswara, however, he was not authorized to issue arms licence and, as such, the licence issued in favour of the petitioner is by an unauthorized person, therefore, the same is illegal and liable to be cancelled.

The main contention raised by the petitioner in this writ petition is that the appeal preferred on behalf of the District Magistrate, Banswara before the Divisional Commissioner under Section 18 of the Act of 1959 was not at all maintainable. It is argued that the appeal under Section 18 of Act of 1959 can only be filed by a person, who is aggrieved by the order of the licencing authority refusing to grant a licence or varying the conditions of a licence or by an order of the licensing authority or the authority to whom the licensing authority is subordinate, suspending or revoking a licence. It is submitted that as per Section 18 of the Act of 1959, no appeal can be preferred challenging the issuance of arms licence in favour of any person.

Learned counsel has, therefore, prayed that this writ petition may be allowed and the impugned order passed by the Divisional Commissioner, Udaipur may kindly be set aside.

Mr. Bhurani, learned counsel for the respondents has opposed the writ petition, however, failed to satisfy this Court that (3 of 4) [CW-7417/2022] the appeal preferred on behalf of the District Magistrate under Section 18 of the Act of 1959 before the Divisional Commissioner was maintainable. Mr. Bhurani has submitted that the arms licence was issued in favour of the petitioner by an unauthorized person, hence, the same is liable to be cancelled.

Heard learned counsel for the parties and perused the material available on record.

A bare perusal of Section 18 of the Act of 1959 clearly reveals that any person can file appeal under the said provision being aggrieved with the action of the licencing authority of refusing to grant a licence or varying the condition of licence or against the order of suspension or revoking of licence. There is no provision where appeal can be entertained under Section 18 of the Arms Act against the order of issuance of arms licence.

In such circumstances, I am of the view that the appeal filed by the District Magistrate before the Divisional Commissioner, Udaipur under Section 18 of the Act of 1959 challenging the issuance of arms licence in favour of the petitioner was not maintainable. Hence, the order passed by the Divisional Commissioner cannot be sustained, and the same is, therefore, set aside.

The respondents are directed to return arms licence No.12/2016 dated 22.12.2016 to the petitioner forthwith. However, if there is any discrepancy in issuance of arms licence to the petitioner, the competent authority is at liberty to take appropriate action under the provisions of Act of 1959 after providing opportunity of hearing to the petitioner.

With these observations/directions, this writ petition is disposed of.

(4 of 4)

The stay petition is also disposed of.

29-Babulal/-

