

ORDER SHEET
HIGH COURT OF SINDH, KARACHI

| Date | Order with signature of Judge |
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Present

Mr. Justice Muhammad Ali Mazhar.

Mr. Justice Agha Faisal.

C.P. No.D-760 of 2018

Prince Muhammad Fahad Thaheem & othersPetitioners

Versus

Federation of Pakistan & others.....Respondents

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C.P. No.D-806 of 2018

Mir Ameer Ali Khan MagsiPetitioner

Versus

Federation of Pakistan & others.....Respondents

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C.P. No.D-815 of 2018

Agha Masihuddin Khan Durrani & othersPetitioners

Versus

Federation of Pakistan & others.....Respondents

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C.P. No.D-840 of 2018

Aneed Hussain Jatoi & othersPetitioners

Versus

Federation of Pakistan & others.....Respondents

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C.P. No.D-841 of 2018

Fahad Zaman Jatoi & othersPetitioners

Versus

Federation of Pakistan & others.....Respondents

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C.P. No.D-846 of 2018

Aslam Farooque & othersPetitioners

Versus

Federation of Pakistan & others.....Respondents
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C.P. No.D-848 of 2018

Tando Allahyar Sugar Mill & othersPetitioners
Versus

Federation of Pakistan & others.....Respondents
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C.P. No.D-852 of 2018

Muhammad Munir Khan & othersPetitioners
Versus

Federation of Pakistan & others.....Respondents
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C.P. No.D-854 of 2018

Agha Siraj Khan Durrani & othersPetitioners
Versus

Federation of Pakistan & others.....Respondents
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C.P. No.D-855 of 2018

Adnan Ali Rana & othersPetitioners
Versus

Federation of Pakistan & others.....Respondents
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C.P. No.D-876 of 2018

Rizwan Saadat & othersPetitioners
Versus

Federation of Pakistan & others.....Respondents
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C.P. No.D-969 of 2018

Abu BakarPetitioner
Versus

Federation of Pakistan & others.....Respondents
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C.P. No.D-1144 of 2018

Bandhi Sugar Mills (Pvt) LtdPetitioner

Versus

Federation of Pakistan & others.....Respondents
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C.P. No.D-1278 of 2018

Tariq Hayat Khan & othersPetitioners

Versus

Federation of Pakistan & others.....Respondents
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C.P. No.D-1455 of 2018

Zahid Abdul Qadir & othersPetitioners

Versus

Federation of Pakistan & others.....Respondents
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C.P. No.D-1457 of 2018

Shahid Hussain Bugti & othersPetitioners

Versus

Federation of Pakistan & others.....Respondents
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C.P. No.D-1586 of 2018

AttaullahPetitioner

Versus

Federation of Pakistan & others.....Respondents
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C.P. No.D-1826 of 2018

Taymoor Hussain KhanPetitioner

Versus

Federation of Pakistan & others.....Respondents
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C.P. No.D-1870 of 2018

Syed Muhammad Ali Shah Jamot & othersPetitioners

Versus

Federation of Pakistan & others.....Respondents
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C.P. No.D-2023 of 2018

Bilal Tariq & othersPetitioners

Versus

Federation of Pakistan & others.....Respondents

C.P. No.D-2151 of 2018

Raja Ghous Bux BijaraniPetitioner

Versus

Federation of Pakistan & others.....Respondents

C.P. No.D-2633 of 2018

Zia ur Rehman & othersPetitioners

Versus

Federation of Pakistan & others.....Respondents

C.P. No.D-2661 of 2018

Syed Ghulam MohiuddinPetitioner

Versus

Federation of Pakistan & others.....Respondents

C.P. No.D-2854 of 2018

Jahangir Ahmed Chandi WalaPetitioner

Versus

Federation of Pakistan & others.....Respondents

C.P. No.D-3609 of 2018

Asif MaqsoodPetitioner

Versus

Federation of Pakistan & others.....Respondents

C.P. No.D-5618 of 2018

Shiakh Muhammad TariqPetitioner

Versus

Federation of Pakistan & others.....Respondents

C.P. No.D-5619 of 2018

Shahzad NaseerPetitioner

Versus

Federation of Pakistan & others.....Respondents
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C.P. No.D-5620 of 2018

Farhad Shaikh MuhammadPetitioner

Versus

Federation of Pakistan & others.....Respondents
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C.P. No.D-5621 of 2018

Faisal JawedPetitioner

Versus

Federation of Pakistan & others.....Respondents
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C.P. No.D-5622 of 2018

Shaikh Muhammad MuneerPetitioner

Versus

Federation of Pakistan & others.....Respondents
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C.P. No.D-5623 of 2018

Fawad JavedPetitioner

Versus

Federation of Pakistan & others.....Respondents
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C.P. No.D-5624 of 2018

Irfan MuneerPetitioner

Versus

Federation of Pakistan & others.....Respondents
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C.P. No.D-5876 of 2018

Fawad Akbar JalbaniPetitioner

Versus

Federation of Pakistan & others.....Respondents

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C.P. No.D-7718 of 2018

Javed IqbalPetitioners

Versus

Federation of Pakistan & others.....Respondents

Date of hearing 29.01.2019

Mr. Mohsin Qadir Shahwani advocate for the petitioners in C.P. No.D-760, 1278, 1457, 1870, 2151, 841 & 876 of 2018. Assisted by Mr. Hamid Ali Memon advocate.

Mr. Rana Sakhavat Ali advocate for the petitioners in C.P. No.D-2661 & 2023 of 2018

Mr. Abdul Moiz Jaferi advocate for the petitioners in C.P. No.D-840 of 2018.

Mr. Zaeem Hyder advocate holding brief for Mr. Abid S. Zuberi advocate for the petitioners in C.P.No.D-852 of 2018 a/w Mr. Muhammad Munir Khan advocate.

Mr. Aamir Mansoob Qureshi advocate for the petitioners in C.P. No.D-1455 of 2018 a/w Mr. Zahid Abdul Kadir advocate.

M/s. Azmat Tufail and Mustafa Asad advocates for the petitioners in C.P. No.D-7718/2018.

Mr. Jamshed Malik advocate for the petitioners in C.P. No.D-848 and 1144 of 2018.

Mr. Zulfiqar Ali Khan Jalbani advocate for the petitioners in C.P. No.D-5876 of 2018.

M/s. Akhtar Hussain and M. Masood advocates for the petitioner in C.P. No.D-969 of 2018.

Mr. Liaquat Ali Khan advocate for the petitioners in C.P. No.D-1826/2018.

Syed Mureed Ali Shah advocate for the petitioners in C.P. No.D-806 and 855 of 2018.

M/s. Amar Naseer and Muhammad Asif Siddiqui advocates for the petitioners in C.P. No.D-5618 to 5624 of 2018.

Mr. Mamoon Chaudhry advocate for the petitioners in C.P. No.D-846/2018

None present for the petitioners in C.P. No.D-854, 1586, 3609, 2633 & 2854 of 2018

Mr. Jawad Dero, AAG.

Mr. Ghulam Akbar Lashari, State Counsel.

Amanullah Zardari, Deputy Secretary (Focal Person), Home Department.

Muhammad Ali Mazhar, J: In all aforesaid petitions, the petitioners have challenged the Notification No.15/51/2017-Arms (PB) issued by Ministry of Interior, Government of Pakistan in exercise of powers conferred under Section 12(1)(b) of the Pakistan Arms Ordinance, 1965, whereby, the Federal Government had suspended all arms licenses of

automatic weapons within prohibited bore category issued by Ministry of Interior with exception of licenses issued to Law Enforcement Agencies and Government Organization. For the ease of reference, the Notification dated 26.12.2017 is reproduced as under:-

**GOVERNMENT OF PAKISTAN
MINISTRY OF INTERIOR
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Islamabad, the 26th December 2017

NOTIFICATION

In exercise of powers conferred under Section 12 (1) (b), the Pakistan Arms Ordinance 1965 the Federal Government in the larger public interest, hereby, suspends all arms licenses of automatic weapons within Prohibited Bore category issued by Ministry of Interior with the exception of licenses issued to Law Enforcement Agencies and Government Organizations.

2. The above mentioned licensees are further directed to get their weapons converted into non-automatic weapons from authorized armourers/arms manufacturers/arms dealers and get it verified by office of concerned District Police Officer (DPO)/Deputy Commissioner/District Coordination Officer/ District Magistrate/Political Agent by 31st January, 2018. The licensees may, thereafter approach NADRA for issuance of new Non-prohibited bore licenses for the converted weapons in lieu of Prohibited bore licenses; OR

Deposit their automatic weapons with respective Deputy Commissioner/District Coordination Officer/District Magistrate/Political Agent at a compensation price of Rs.50,000/- (fifty thousand only) per automatic rifle and Rs.20,000/- (twenty thousand only) per automatic pistol /handgun.

3. Failure to comply with above options will entail cancellation of said licenses after 31-01-2018.

4. The ban on issuance of Non-Prohibited Bore Arms Licenses is lifted with immediate effect.

No. 15/51/2017-Arms (PB).

**Sd.
(Ch. Faisal Idrees)
Section Officer (Arms)**

2. Learned counsel for the petitioners collectively argued that prior to 18th Amendment of the Constitution the subject of arms, fire-arms and ammunition was provided in entry No.17 of the concurrent legislative list. After 18th amendment both legislative and the executive authority in relation to the subject has been transferred to the provincial government. It was further argued that the impugned notification of the Federal Government neither extend to the provinces nor

applicable to the petitioners in the Province of Sindh. It was further argued that after 18th amendment the subject of arms and ammunition has lost its federal character and stands transformed to a provincial subject in respect whereof appropriate legislation has already been enacted.

3. During pendency of these petitions, an interim order was passed, whereby, learned Division Bench of this court restrained the respondents from taking any adverse action against the petitioners pursuant to the aforesaid Notification. However, it has been brought to our notice that the Ministry of Interior, Government of Pakistan has issued another Notification No.15/37/2018-Arms(PB) dated 13th December, 2018 in exercise of powers conferred by clause (b) of sub-section (1) of Section 12 of the Pakistan Arms Ordinance, 1965 and in supersession of the Notification dated 26.12.2017 (Impugned Notification) whereby the Federal Government has notified that all arms licenses of automatic weapons/prohibited bore are now treated to be valid. The ban imposed on issuance of non prohibited bore arms license was also lifted with immediate effect. For the ease of reference the Notification dated 13.12.2018 is also reproduced as under:-

**GOVERNMENT OF PAKISTAN
MINISTRY OF INTERIOR**

Islamabad, the 13th December 2018

NOTIFICATION

S.R.O. (I)/2018.- In exercise of powers conferred by clause (b) of sub-section (1) of section 12 of the Pakistan Arms Ordinance, 1965 (XX OF 1965), in supersession of its Notification No. 15/51/2017-Arms (PB), dated the 26th December, 2017, the Federal Government is pleased to notify that all arms licenses of automatic weapons within Prohibited Bore suspended vide the aforementioned Notification are now treated to be valid.

2. The ban on issuance of arms licenses for Prohibited Bore category to the extent of General Officers or equivalent, officers or other ranks of the Military in accordance with Army Regulations (Instructions) 2000, is hereby lifted.

3. The ban imposed on issuance of Non Prohibited Bore Arms license is lifted with immediate effect.

[No. 15/37/2018-Arms (PB)].

**Sd.
(Muhammad Umair)
Section Officer (Arms)**

4. Learned Assistant Attorney General relying on both notifications argued that vide the earlier notification dated 26.12.2017 the ban was imposed and the licenses of prohibited bore were suspended but vide the subsequent Notification dated 13.12.2018 the ban was lifted; so in nutshell after withdrawal of the suspension through aforesaid Notification, it is a matter now between the provincial government and the licensees and Sindh Government may deal with such licenses in accordance with their own law.

5. Learned Addl. Advocate General though supported the arguments of learned Assistant Attorney General but he has further argued on the instructions of Deputy Secretary, Home Department that government has already framed the Rules to deal the matters with regard to the licenses of prohibited and/or non-prohibited bore.

6. On 03.03.2013 the Sindh Arms Act, 2013 was promulgated by the Government of Sindh in which under Section 3 clause (f) "licensing authority" means an officer or authority empowered to grant or renew licenses under the rules, whereas, the definition of government under the definition clause means the government of Sindh. Section 6 of this Act germane to prohibition of acquisition, possession, manufacture or sell of prohibited arms or ammunition which is reproduced as under:-

6. No person shall –

(a) acquire, possess or carry; or

(b) manufacture, sell, transfer, convert, repair, or test; or

(c) expose or offer for sale or transfer or possess for sale, transfer, conversion, repair, or test,

any prohibited arms or prohibited ammunition unless he has been exclusively authorized by Government, in this behalf.

Provided that all the arms licences for prohibited bore weapons issued under the provisions of Pakistan Arms Act, 1965, to the extent of Province of Sindh, shall continue to remain valid until reviewed and cancelled under this Act.

7. It is clearly provided under Section 6 that no person shall acquire, possess or carry any prohibited arms or

prohibited ammunition unless he has been exclusively authorized by the government in this behalf. The proviso attached to this section further amplifies that all arms license or prohibited bore weapons issued under the provisions of Pakistan Arms Ordinance, 1965 to the extent of Province of Sindh, shall continue to remain valid until reviewed and cancelled under this Act. Whereas, under Section 41 of the same Act it is provided that the provision of Pakistan Arms Ordinance, 1965 in its application to the Province of Sindh except the provisions relating to manufacturer including conversion, export or import of arms and ammunition which are hereby repealed.

8. Since the notification whereby the suspension of prohibited bore category of arms was communicated has been withdrawn/lifted vide the subsequent notification dated 13.12.2018, therefore for all intents and purposes, the matter has virtually been resolved, particularly in view of Section 6 of the Sindh Arms Act, 2013. Learned counsel for the petitioners in one voice argued that though the notification has been withdrawn by the Federal Government but the fact remains that if the licenses of the petitioners have expired then obviously the petitioners have to take recourse for their renewal.

9. Under Section 3 of the Sindh Arms Act, 2013 it is provided that no person shall acquire, possess, or carry any firearm and ammunition unless a licence is issued to him in accordance with the provisions of this Act and the Rules. Whereas, under Section 14 the duration and renewal of license is provided. However, in sub-Section 2 it is provided that every licence shall unless the licensing authority for cogent reasons to be recorded in writing decides otherwise, be renewable for the same period for which the licence was originally granted and shall be so renewable from time to time. A corresponding Rule 3.8 in the Sindh Arms Rules 2018 framed by the Government of Sindh under Section 39 of the

Sindh Arms Act, 2013 pertains to the validity of license and renewal which is also reproduced as under for ready reference:-

Rule. 3.8 Valid of license and renewal.

Validity period of an arms license shall be for one, three, or five calendar years at discretion of the licensing authority. Every arms license shall, unless renewed in the following manner, remain valid for one, three or five years from the date of issuance. Subject to the payment of fee as specified under Rule 5.1, a license may be renewed within three calendar months of the date of expiry without late fee/penalty. Where a license is not renewed within five years of its expiry, it shall be deemed to have been cancelled, unless the licensing authority on an application decides otherwise.

10. At this juncture, Deputy Secretary, Home Department submits that there is a NADRA desk/facility at the premises of the Home Department, where all license holders may submit their applications for renewal. The applications shall be renewed by NADRA as was always the case, and then the applications shall be processed in accordance with law after the prescribed scrutiny to be undertaken by the Home Department in such regard. All aforesaid petitions are disposed of in the above terms. Office is directed to place copy of this order in all connected petitions.

JUDGE

JUDGE