

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

C. P. No. D-2944 of 2020

Present:

Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

Petitioner : M/s. Outdoorsman, through
Mohsin Shawani, Advocate.

Respondents : Province of Sindh & others
through Muhammad Jawwad
Dero, Additional Advocate
General, Sindh, alongwith Ali
Asghar Mahar, Focal Person,
Home Department, Government
of Sindh

Date of hearing : 12.04.2023.

ORDER

YOUSUF ALI SAYEED, J. - The Petitioner is apparently engaged in business as an arms dealer, operating under a license granted in terms of the Sindh Arms Act, 2013 (the “**Act**”) and the Sindh Arms Rules, 2018 (the “**Rules**”) in the name of his proprietary concern - “Outdoorsman”. He now desires to establish a facility for the manufacture of small arms and small arms ammunition in the province, and seeks a further license under the Act and Rules for that specific purpose.

2. The case set up by the Petitioner gravitates around an application for a manufacturing license made by him to the Chief Minister (the “**CM**”) of the Government of Sindh (the “**GOS**”) through a letter dated 06.03.2018, which reads as follows:

“March 6th, 2018

To: The Honourable Chief Minister of Sindh

Subject: Request for permission to set up a plant to manufacture small arms and small arms ammunition.

Dear Sir,

I am writing this application to you because I am interested in starting a factory to manufacture small arms (Rifles, shotguns, pistols and revolvers) and small arms ammunition in Karachi. I already own a company by the name of “The Outdoorsman” which is a licensed arms dealership since the year 2016. This license to buy, sell and repair small arms (rifles, pistols, revolvers, and shotguns) and their ammunition was granted to me by the Government of Sindh after I passed the necessary scrutiny process by all the various intelligence agencies (Military Intelligence, Intelligence Bureau, Special Branch, Sindh Police, Local DC etc.).

There are already a number of companies in Pakistan that are privately owned and in the business of manufacturing both small arms and small arms ammunition in Pakistan so there is already a precedent for granting such permission to us.

I would be grateful if you would grant me this permission without any delay.

Thank you for all your time and cooperation. In case you have any questions or concerns you can contact me at the following:

Office Number 218 on 2nd Floor
“The Plaza” Plot No.G-7
Block 9 near 2 Talwar
Clifton
Karachi
Tel. (021) 111-256-257
Mobile: (0333) 214-5375
E-mail: fjatoi@yahoo.com

Regards,
Farhad Jatoi”

3. As it transpires, on 17.05.2018 the CM was pleased to make a handwritten endorsement on the face of that application, stating that “*Permission may be granted as per policy*”.

4. However, the desired license remained unissued despite repeated requests and reminders, and on the contrary, on 23.10.2019 a summary was prepared for the CM (the “**Impugned Summary**”) where it was proposed that the matter be placed before the Provincial Cabinet (the “**Cabinet**”) in the following terms:

“No.SO (Arms) HD-D/(02)/2018
GOVERNMENT OF SINDH
HOME DEPARTMENT
Karachi, dated October, 2019

SUMMARY FOR CHIEF MINISTER SINDH

SUBJECT: REQUEST FOR PERMISSION TO SET UP A PLANT TO MANUFACTURE SMALL ARMS AND SMALL ARMS AMMUNITION.

Mr. Farhad Jatoi submitted an application before the Honourable Chief Minister Sindh requesting therein that he might be granted license for manufacturing of arms & ammunition of non-prohibited bore (NPB) at Magnacrete Factory premises Plot # 358 & 359, Deh Kharkaro Gadap Town 41 to 42 KM Main Super Highway, Just Opposite Bahria Town Karachi. The Honourable Chief Minister Sindh has been pleased to record the following directions on the application of Mr. Farhad Jatoi (**Annex-I**):

**“Permission may be granted as per policy”
-sd- 17-05-2018**

2. The section-4 of the Sindh Arms Act-2013 and Rule-9 & 14 of the Sindh Arms Rules 2018 contain the provision to grant license for manufacture of arms & ammunition. Under the provision of Rule-9 & 14 the clearance reports/NOCs from AIG CTD, DIG Special Branch, SSP Karachi Malir, Deputy Commissioner Malir, Director Civil Defence, Sindh Environment Protection Agency Government of Sindh, and Law Department & Ministry of Commerce of Textile & Ministry of Industries Production have been received in support of the applicant (**Annex-II**).

3. Since, Act and Rules contain the provision for grant of license to manufacture arms & ammunition but neither a policy in the subject matter has been devised nor such license has been issued so far by the government of Sindh. However, only four manufacturing licenses were issued in the past with the approval of Federal Government, before the enactment of 18th Constitutional Amendment and out of which only one is functional at present.

4. In view of the above it is proposed that the matter may be placed before the Provincial Cabinet for orders.

5. The Honourable Chief Minister Sindh may like to approve para-04.

(ABDUL KABIR KAZI)
Secretary to Government of Sindh”

5. Per the Petitioner, the Impugned Summary and further procedure alluded to therein are unnecessary measures, as the highest authority within the contemplation of the Act and Rules is the CM, with no role of the Cabinet envisaged. Hence, the Petitioner contends that the Impugned Summary seeking to engage the Cabinet is a *mala fide* step designed to delay and frustrate implementation of a matter that has already been approved by the competent authority.

6. In that backdrop, the Petitioner has invoked the jurisdiction of this Court, arraying the Province of Sindh, the Secretary of the Home Department, GOS, and the Section Officer (Arms), GOS as Respondents in that order, while praying that the Impugned Summary be declared *mala fide* and unlawful and be set aside, and that the Respondents be directed “to issue the (already approved) license to manufacture small arms and small arms ammunition in favour of the Petitioner”.

7. Proceeding with his submissions, learned counsel for the Petitioner pointed out that an application dated 08.11.2017 had earlier been made to the Secretary Interior, Government of Pakistan, but the same was forwarded to the Home Secretary of the GOS under cover of a letter dated 21.11.2017, and the Petitioner was subsequently intimated vide a letter dated 28.11.2017 that the subject had been devolved to the provinces pursuant to the 18th Amendment to the Constitution and the matter ought to accordingly be pursued with that quarter. As the forwarded application remained unattended, the Petitioner made the further application dated 06.03.2018 directly to the CM, which was granted in the aforementioned terms, following which a detailed process of scrutiny was initiated as to the antecedents of the Petitioner and suitability of the proposed site of the manufacturing facility, viz - Factory Plot No. 358-359, Deh Kharkao, Gadap Town, Main Super Highway, Karachi; with clearance being received in all respects from the concerned departments, including the Deputy Commissioner's office, the Sindh Police and various intelligence agencies, such as Military Intelligence, the Intelligence Bureau, Special Branch, and the Counter-Terrorism Department, as well as from the Mukhtiarkar, Taluka Murad Memon, District Malir, the Deputy Commissioner Malir and the Sindh Environmental Protection Agency. However, instead of issuing a formal license, the Respondent No. 2 unnecessarily prepared the Impugned Summary with *mala fide* intent to delay and frustrate the matter. He argued that the Cabinet had no part to play under the Act and Rules, as those statutory instruments did not envisage any role of the GOS and it was the CM who was the foremost authority for the grant of licenses.

8. Learned counsel also pointed out that the Respondent No.3 had once again written to the Intelligence Bureau, Government of Pakistan on 04.11.2019 for its detailed report, specifically from a defense perspective along with recommendations and comments. It was contended that this was done just to delay and prolong the process as such a report had already been received. Furthermore, he pointed out that the Respondent No.3 had also written letters dated 04.11.2019 to the Secretaries of the Home Department of the Government of Punjab, Government of KPK and Government of Baluchistan, requesting them to share the guidelines/SOP/Policy notified by their respective Governments for grant of a license to manufacture arms and ammunitions. He argued that this too was a step designed to protract the matter as a policy was not required in terms of the Act and Rules.

9. Conversely, it was argued by the learned AAG that the CM's handwritten endorsement on the Petitioner's letter dated 06.03.2018 did not constitute a definitive and final permission *per se*, but was merely a directive to the Home Department to process the application in accordance with the policy after properly assessing the Petitioner's credentials and the viability of his proposal from all relevant standpoints. It was argued that the endorsement was contingent on there being a policy and could not be given effect unless and until the same was formulated, hence the referral to the Cabinet on that score. Furthermore, it was submitted that whilst the license for the Petitioner's arms shop had been granted on 21.12.2016, an inspection conducted on 18.05.2018 by a committee comprising of the Deputy Secretary (Security), Assistant Commissioner Saddar, SDPO Saddar and Section Officer (Arms) revealed that the same was non-functional despite a lapse of two years. It was argued that this reflected a non-serious attitude on the part of the Petitioner, hence the Home Department did not consider it appropriate to grant an arms manufacturing license as

it was a far more serious business and also had an impact on public security. It was pointed out that such a concern was communicated by the Respondent No.3 to the CM vide a letter dated 11.07.2018, which reads as follows:

“SO(Arms)HD-D(2)/2011
GOVERNMENT OF SINDH
HOME DEPARTMENT
Karachi dated 11.07.2018

To,

The Deputy Secretary (Staff)
to Chief Minister Sindh
Chief Minister Secretariat
Karachi.

SUBJECT: REQUEST FOR PERMISSION TO
SET UP A PLANT TO MANUFACTURE SMALL ARMS
AND SMALL ARMS AMMUNITION.

I am directed to refer to the subject noted above and to state that the then Honorable Chief Minister Sindh had been pleased to desire that Mr. Farhad Jatoi, proprietor of M/s. Outdoorsman Arms & Ammunition Dealer may be allowed permission for (i) repair permit and sale/purchase of prohibited bore (P.B) weapons and (ii) enhanced limit of arms and ammunition on his existing arms dealership license (Form-X & XII) and (iii) allowed license for establishing a factory at Plot No.358 & 359 Deh Kharkaro Gadap Town Karachi for manufacture of arms & ammunition of non-prohibited bore (NPB) (Annex-I).

2. It is submitted that Mr. Farhad Jatoi proprietor of M/s. Outdoorsman Arms & Ammunition Dealer was allowed arms dealership license (Form-X & XII) for sale, purchase & repair of non-prohibited bore (NPB) weapons in the year 2016 (Annex-II).

3. It is pertinent to mention here that an inspection was carried out of arms & ammunition dealership shop of the applicant and the same was found non-operational. (Inspection report may be perused at Annex-III).

4. Since, the arms dealership shop of the applicant is non-operational therefore, his above said request(s) for grant of sale purchase & repair permit of prohibited bore weapons and enhancement in existing quota of arms & ammunition of non-prohibited bore contains no merits at this stage. Moreover, keeping in view law & order situation of the province and sensitive nature of the matter and apprehension of security risk it seems Plausible that the request for grant of manufacture license may not be considered.

5. It is therefore, requested that the above said position may kindly be submitted before the Honourable Chief Minister Sindh for the perusal.

(AHMED ALI SHAIKH)
SECTION OFFICER (ARMS)”

10. It was submitted that following the letter dated 11.07.2018, no further direction was received from the CM on the subject, but the Petitioner had continually approached the Home Department to issue him the manufacturing license on the basis of the reports that had already been received from various agencies/departments. With reference to the comments submitted by the Respondent No.3, it was submitted that those reports did not confer any legal right or entitlement on the Petitioner for grant of the license, and it was pointed out that the Home Department had thus informed the Petitioner that the matter was to be decided as per rules and on its merits, including the law and order situation and public security, and that after examination of those reports, especially that of the inspection committee, the Petitioner was not found to be a suitable candidate for the grant of an arms manufacturing license. However, on fresh applications being moved by the Petitioner vide two letters, both dated 02.10.2019, the case was re-examined and reports from other agencies were also called, after which the Impugned Summary was initiated for consideration by the CM in light of the earlier direction from that quarter, however no decision had been forthcoming as yet. It was submitted that the GOS had not issued any manufacturing license to date, and it was argued that as the manufacture of arms and ammunition was a serious and sensitive business, the decision to grant such a license should be made by the highest decision-making body of the province, being the Cabinet, keeping in view the overall security and current law & order situation.

11. We have considered the arguments advanced in light of the pleadings and the material placed on the record.

12. Section 4 of the Act, falling under Chapter II thereof contemplates the licensed manufacture of arms and ammunition, in as much as it provides *inter alia* that no person shall manufacture any firearm or any other arms of specific description or any ammunition, unless he holds a license issued in accordance with the provisions of the Act and the Rules, with Section 6 prescribing in the particular context of prohibited arms or prohibited ammunition that no person shall manufacture the same unless he has been exclusively authorized by the GOS in that behalf.

13. The provisions of the Act relating to licenses are contained in Chapter III, with Sections 12 and 13 providing as follows:
 - 12.(1) An application for the grant of a licence under Chapter-II shall be made to the licensing authority in such form, containing such particulars and accompanied by such fee, as may be prescribed.

 - (2) On receipt of an application, the licensing authority, after conducting the requisite antecedent check, shall, by order in writing, either grant or refuse the licence.

 - 13.(1) Notwithstanding anything in section 12, the licensing authority shall refuse to grant –
 - (a) a licence under section 3, if it is required for any prohibited arms or prohibited ammunition;
 - (b) a licence in any other case under Chapter-II;
 - (c) where such licence is required by a person whom the licensing authority has reason to believe –
 - (i) to be prohibited by this Act from acquiring, possessing or carrying arms or ammunition; or
 - (ii) to be of unsound mind; or
 - (iii) to be for any reason, unfit for a licence under this Act; or
 - (d) where the applicant is convicted of any offence punishable under the Pakistan Penal Code;

(e) where the licensing authority deems it necessary for the security of the public peace or safety to refuse to grant such licence;

(f) where the applicant possesses more than one Computerized National Identification Card or multiple passports.

(2) The licensing authority shall not turn down any application for licence merely on the premise that applicant does not own adequate property.

(3) When the licensing authority refuses to grant a licence to any person, it shall record a reasoned decision in writing for such refusal and communicate to the applicant, the reasons of the same, unless the licensing authority holds that such communication is detrimental to the public interest.

14. Section 2(g) of the Act correlates the term “prescribed” with the Rules and Section 2(f) of the Act defines “licensing authority” in the same vein to mean an officer or authority empowered to grant or renew licenses thereunder, with Rule 3.1 designating (i) the CM, (ii) the Home Minister, (iii) the Home Secretary, and (iv) the Deputy Commissioner as the ‘Authorities’ to approve issuance of licenses as per the prescribed quota/category, and Rule 14 going on to provide that:

“14. DETERMINATION OF SUITABILITY OF APPLICANT FOR GRANT OF ARMS MANUFACTURER, DEALERS LICENSES - (1) For the purpose of determining the suitability of an applicant for the grant of license in a particular category the Home Department may direct holding of an inquiry, as it deems necessary.

(2) The Home Department shall call and assess the reports for purpose of this rule from the following offices;

(a) Additional Inspector General (Counter Terrorism Department), Deputy Inspector General of Police (Special Branch), and head of District Police with respect to an applicant’s previous criminal history, general conduct or linkages with any proscribed organization or involvement in any terrorist activity.

(b) Deputy Commissioner with respect to suitability of the applicant in general, his financial standing and suitability of proposed place of business; and

(c) Civil Defence Officer (in case of manufacturer) with respect to the suitability of place of business.

(d) In addition to above said reports Home Department may also seek reports / NOCs from other departments / agencies to examine the merits of case and suitability of the applicant.

(e) The following Committee after examining the application and relevant reports shall submit its recommendations to Home Secretary Sindh whether the request for grant of arms dealership license merits consideration or otherwise:

- i. Special Home Secretary Sindh.
- ii. Additional Secretary Home (concerned).
- iii. Deputy Secretary Home (Concerned)."

15. When one examines the issue at hand, what immediately stands out is that no summary appears to have preceded or underpinned the endorsement made by the CM on the Petitioner's letter dated 06.03.2018. Indeed, we had posed a query in that regard, but no assistance was forthcoming on that score from either side. In our view, a mere handwritten endorsement made on the face of that letter to the effect that "*Permission may be granted as per policy*" cannot be regarded as a definite approval conferring a right to a license, especially in light of the prescribed procedure, as the various checks and compliances to which our attention was drawn had not even ensued at that point in time, and all took place subsequent to that endorsement. To our mind, the fact that certain similar checks and compliances may already have been made at an earlier point in time in the context of the Petitioner's arms dealership license does not detract from the importance of such an exercise. Needless to say, neither the CM nor any other public functionary has a *carte blanche* whilst exercising any discretionary power, which must always be done fairly, justly and reasonably, and for advancing the particular object/purpose for which it was conferred, in accordance with the rules/regulations structuring that discretion.

16. Furthermore, turning to the contention that the need for the Impugned Summary did not arise in the presence of the CM's handwritten endorsement, we have examined the further letters both dated 02.10.2019, addressed by the Petitioner to the Home Secretary, as pointed out by the learned AAG, which read as follows:

"2nd October 2019

To: Home Secretary Sindh

Subject: Permission to set up Arms Manufacturing Plant

Dear Sir,

I would like to request that you move a summary to the Chief Minister of Sindh for final approval of my request to set up a factory to manufacture small arms ammunition (rifles, shotguns, pistols). I have completed all the necessary formalities as specified by your department and I only am awaiting the issuance of an explosives license from the Ministry of Industries. If you would request the Chief Minister to grant me provisional approval pending the issuance of my explosives license so that I may proceed with ordering my machinery and other formalities it would save me time and a lot of money.

Thank you for all your time and cooperation.

Regards

Farhad Jatoi"

"2nd October 2019

To: Home Secretary Sindh

Subject: Permission to set up Arms Manufacturing Plant

Dear Sir,

I would like to request that you move a summary to the Chief Minister of Sindh for final approval of my request to set up a factory to manufacture small arms (rifles, shotguns, pistols). I have completed all the necessary formalities as specified by your department.

Thank you for all your time and cooperation.

Regards

Farhad Jatoi"

16. As such, in light of those letters, it does not behoove the Petitioner to take the plea that the Impugned Summary is unwarranted as no further approval is required in the wake of the CM's handwritten endorsement.

17. Be that as it may, in light of Rule 14, we are not convinced that any further policy is required to be formulated by the Cabinet. Furthermore, we are also not convinced that the rationale expressed by the Home Department in terms of the letter dated 11.07.2018 addressed to the CM's Secretariat by the Respondent No.3 with reference to the performance of the Petitioner's arms dealership under the license previously granted has any relevance to the aspect of manufacturing or that it presents a valid cause for denial of the license sought in that regard, especially in the wake of the NOCs/clearances otherwise forthcoming from the relevant quarters.

18. In view of the foregoing, and as the highest authority for purpose of the grant of any category of license as per Rule 3.1 is apparently the CM, in as much as we are given to understand that the present subject is not one of prohibited arms or prohibited ammunition otherwise falling under Section 6 of the Act, we hereby dispose of the Petition under the given circumstances with the direction that the case/application of the Petitioner for grant of a small arms manufacturing license be decided by the CM through a speaking order, in accordance with the Act and Rules, within a period of 30 days from the date of this Order.

JUDGE

CHIEF JUSTICE

Karachi.
Dated: