

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D – 3319 of 2011

Present :

1. Mr. Justice Faisal Arab
2. Mr. Justice Nadeem Akhtar

Dates of hearing : 27.04.2012

Petitioners : Muhammad Ayub & others through
Syed M. Yahya, Advocate.

Respondents : Federation of Pakistan through
Mr. Ashfaqe Ahmed Tagar, DAG.
Mr. Zulfiqar Solangi, Law Officer, NADRA.

J U D G M E N T

NADEEM AKHTAR, J. – On 08.08.2011, the Interior Minister of Pakistan / respondent No.1 made a press statement at Karachi that all the arms licences issued by the Ministry of Interior in the form of booklets shall stand cancelled on 31.05.2011 and the license holders shall have to get their licence booklets replaced by licenses in the form of cards. By an announcement made on 09.08.2011, the aforesaid date was extended till 30.09.2011. On 11.08.2011, a public notice was issued by the Ministry of Interior, Government of Pakistan, in all the leading newspapers notifying that all arms licences issued by the respondent No.1 in the form of booklets or computerized arms licences issued prior to 01.01.2011 shall become invalid after 30.11.2011, and that NADRA (respondent No.2) will issue computerized arms licences from all District level offices throughout Pakistan. Through the said public notice, all arms license holders were advised to submit the documents mentioned therein before NADRA (respondent No.2). Thereafter on 28.08.2011, the respondent No.2 issued a public notice on the same lines as was issued by the respondent No.1 for replacement of previous arms licences / booklets. All the above mentioned press public notices, statements and announcements of the respondents have been impugned in this petition by the petitioners.

2. The case of the petitioners is that arms licences were issued to them by the Government of Pakistan, Interior Division, Islamabad (respondent No.1) in the form of booklets, which booklets were issued in the form and format prescribed under the Pakistan Arms Ordinance, 1965, (**THE ORDINANCE**) and the Arms Rules, 1924, (**THE RULES**) made there under. All the necessary and important terms and conditions for retaining an arms licence and for possessing weapons and ammunition are specifically mentioned in the said arms licence booklets. The petitioners are holding valid arms licences in the form of booklets with full description of their weapons, their bore / calibre / gauge, and the ammunition specified therein.

3. Syed M. Yahya, learned counsel for the petitioners, contended before us that the actions taken by the respondents through announcements made and public notices issued for replacing the existing arms licence from a booklet form to a computerized card are arbitrary, illegal and without jurisdiction. Learned counsel submitted that under Section 11 of the Ordinance, the Government may make rules to determine the officers by whom, the form in which and the terms and conditions on and subject to which an arms licence is granted or renewed. It was further submitted by the learned counsel that such rules are to be notified by the Government in the official gazette under the said Section 11. He then referred to Rule 33 of the Rules which provides that a licence for possession of arms and ammunition in reasonable quantities and for going armed for the purposes of sport, protection or display may be granted in Form XVI or in Form XVI-A by the District Co-ordination Officer or by any officer specially empowered by the Provincial Government in that behalf. After referring to the above mentioned Section, Rule and Forms, the learned counsel submitted that the impugned scheme / action has been initiated by respondent No.1 without amending the relevant provisions of the Rules, therefore, the prescribed form / format of an arms licence cannot be amended, altered or changed. He also contended that since the Rules have not been amended, notification thereof in the official gazette was also not issued by respondent No.1, which is a necessary requirement of Section 11 of the Ordinance. He further submitted that respondent No.1 cannot delegate its powers or functions under the Ordinance and Rules to

respondent No.2. It was also argued by the learned counsel that respondent No.2 has no power or authority either under the Ordinance and Rules or under the NADRA Ordinance, 2000, to issue arms licence. In the end, the learned counsel submitted that the impugned notices and announcement are violative of Articles 9, 14, 24, 35, 37 and 38 of the Constitution of Pakistan, 1973.

4. Learned counsel for the petitioners also contended that as per a report published in the daily 'Dawn' on 17.08.2011, the Government of Sindh, under the directives of respondent No.1, is also contemplating similar action of cancelling all previous valid arms licence booklets issued for the Province of Sindh and then substituting the same by licences in the form of cards.

5. Syed M. Yahya, learned counsel for the petitioners, showed us copies of licence booklets of the petitioners, which have been filed with this petition, and also placed before us specimens of the proposed card licences to be issued by respondent No.1 and the Government of Sindh. In addition to his above legal submissions, learned counsel for the petitioners argued that the new purported scheme is ill-conceived, impractical, illogical and arbitrary, and if implemented, the same shall cause extreme inconvenience, hardship and financial burden to licence holders *inter alia* for the following reasons :-

- (a) As per the impugned notices and action, all arms licences issued by respondent No.1 in the form of booklets or computerized arms licences issued prior to 01.01.2011 were to become invalid on 30.11.2011. This would mean that the impugned action of the respondents is going to affect all the licences issued during the last 63 years, that is, from 14th August 1947, which idea is totally absurd.
- (b) As per the Rules, the present licence booklet has the provision for annual renewals as it provides validity period of one year ending on 31st of December each year with a grace period of one month for renewal. The proposed new card licence does not have any such provision as required under the Rules.

- (c) There is an obvious ambiguity in the validity period of the impugned card licence. The specimen of card licence shows that respondent No.2 intends to issue the card licence for a minimum period of five years without giving any option to the licence holder. This arbitrary exercise of discretion by the respondents would result into heavy financial burden upon licence holders who may wish to get their licences renewed on yearly basis which is not only their right under the Rules, but is the requirement under the Rules.
- (d) A weapon can be purchased only by a licence holder either from an authorized arms dealer or from another licence holder. In case a weapon is purchased from an arms dealer, the dealer makes an endorsement to this effect on the licence of the purchaser by affixing his stamp with date and the weapon purchased is entered on the licence of the purchaser by the dealer by specifically mentioning the identification number, make and model of the weapon. In case a weapon is purchased from any other licence holder, then the weapon is deleted from the licence of the seller and is entered at the same time on the licence of the purchaser by the dealer by affixing his stamp with date and particulars of the weapon. This exercise cannot be done privately by the seller and purchaser as the above endorsements are to be effected only through an authorized arms dealer. Same is the position when a licence holder wants to change his weapon, or his weapon is lost or stolen, in which case his previous weapon is deleted from his licence and the new weapon with relevant particulars is entered on his licence by the arms dealer. The present licence booklet provides more than sufficient space and pages for all the above mentioned endorsements which can be effected even on urgent basis without wastage of time and money. Whereas, the impugned card licence has no provision or space for such entries which implies that whenever a licence holder wishes to sell, purchase or change his weapon, he will be compelled to undergo through long process of applying to the respondents for a new card licence and by paying heavy fee and charges every time.

(e) Under the Ordinance and the Rules, every license booklet provides for a fixed yearly quota of ammunition. A licence holder is entitled to purchase ammunition only within such given quota, and that too only from authorized arms dealers. It is the discretion and choice of the license holder to purchase the entire quota in one go or at different times during one year / season. Every purchase of ammunition is also entered and recorded in the license booklet by the arms dealer by specifically mentioning the make and quantity of the same and by affixing his stamp and date. The impugned card licence has no provision or space to record purchase of ammunition, and as such it will not be possible to maintain such record.

(f) The present license booklet is printed in high security in the press of the Security Printing Corporation of Pakistan, having special security features which are not available in other or ordinary presses. There is a very high risk of forgery, fabrication and manipulation in the impugned card licence.

6. In reply to the submissions made on behalf of the petitioners, learned Deputy Attorney General appearing for respondent No.1 submitted that under Section 11 of the Ordinance, the respondent No.1 assigned the task of computerization of arms licences issued by the Ministry of Interior to respondent No.2 (NADRA) through Notification dated 14.10.2011. He contended that petitioners' objection to this effect has no force in view of the said Notification. It is important to note here that no other submission was made before us on behalf of the respondent No.1 to oppose this petition, and it was also not disputed by respondent No.1 that the Ordinance, the Rules framed thereunder and Forms XVI and XVI-A contained in the Rules are still in the field and the same have not been amended, changed or altered. However in the comments filed on behalf of the respondent No.1, maintainability of this petition has been challenged on the grounds that this Court has no jurisdiction to entertain this petition which ought to have been filed before the Islamabad High Court, and that the purported action of replacement of arms licences from booklets to cards has been initiated by respondent

No.1 in view of the judgment passed by the Hon'ble Supreme Court in Suo Moto Case No.18 of 2011 taken up at Karachi.

7. Mr. Zulfiqar Solangi, Law Officer of the respondent No.2 (NADRA), defended the task of replacement of arms licences from booklets to cards assigned to respondent No.2 by the respondent No.1. At the very outset he submitted that the impugned public notice dated 28.08.2011 was issued by respondent No.2 only in respect of arms licences issued by the Federal Government / respondent No.1 and not by Provincial Governments, which fact according to him is evident from the said public notice itself as it was specifically mentioned therein that *“This scheme is not applicable to the Arms Licences issued by Provincial Governments”*. The learned Deputy Attorney General appearing for respondent No.1 also agreed with this contention of the learned counsel for respondent No.2. No other submission was made before us on behalf of respondent No.2 to oppose this petition. Like respondent No.1, the respondent No.2 also not disputed that the Ordinance, the Rules framed thereunder and Forms XVI and XVI-A contained in the Rules are still in the field and the same have not been amended, changed or altered. However in the comments filed on behalf of respondent No.2, it was claimed that respondent No.2 has now been empowered by respondent No.1 to undertake the task of replacement of arms licences from booklets to cards, and that such purported action has been initiated in view of the judgment passed by the Hon'ble Supreme Court in Suo Moto Case taken up at Karachi.

8. We have examined Section 11 of the Ordinance which clearly provides that *“Government may, from time to time, by notification in the official gazette, make rules to determine the officers by whom the form in which and the terms and conditions on and subject to which any licence shall be granted, or renewed,*”. Under this Section, the Government may also make rules in order to fix *inter alia* the period for which licences shall continue in force, and the fee payable in respect of such licences. Rule 33 of the Rules made under the Ordinance provides that *“a licence for the possession of arms and ammunition in reasonable quantities and for going armed for the purpose of sport, protection or display may be granted in Form XVI or Form XVI-A by District Coordination Officer or by any Officer*

specifically empowered by the Provincial Government in that behalf”. It is an admitted position that Section 11 of the Ordinance, Rule 33 of the Rules and Forms XVI and XVI-A contained therein have not been amended, altered or changed by the Government. Therefore, no deviation or changes can be made in any of the Forms of arms licences, including Forms XVI and XVI-A, prescribed by the Rules, especially when the Rules have admittedly not been amended by the Government and no such deviation or changes have been notified by the Government in official gazette as required under Section 11 of the Ordinance. The importance of maintaining the Forms of arms licences in the present form prescribed by the Rules is because of the reason that the same provide not only sufficient space and pages for important and vital endorsements for entering, deleting and changing of weapons and for purchase of ammunition, but also contain all the relevant terms and conditions on which a licence is issued to a licence holder. In order to appreciate whether a licence holder should or should not be aware of such terms and conditions of his licence, we deem it necessary to reproduce below the arms licences issued in Forms XVI and XVI-A :-

**“ [FORM XVI]
 [(See Rule 33)]**

ARMS LICENCE

*No.....date.....
 Name and parentage of the licensee.....*

*Photograph of
 Licensee*

*Profession.....
 Address.....
 Police Station.....
 Tehsil.....
 District.....
 Name and parentage of the retainer.....*

*Photograph of
 Retainer*

*Profession.....
 Address.....
 Police Station.....
 Tehsil.....
 District.....*

Name and parentage of the retainer.....

WEAPONS / WEAPON COVERED BY THIS LICENCE

| | | | |
|----------------|--|--------------------|--|
| <i>Shotgun</i> | | <i>Revolver</i> | |
| <i>Pistol</i> | | <i>Knife</i> | |
| <i>Stengun</i> | | <i>Sword</i> | |
| <i>Spear</i> | | <i>Sword-stick</i> | |

Note:- The issuing authority should initial in the box against the weapon covered by this licence.

Description of Arms including calibre.....
Quantity and description of ammunition that licensed retainer is entitled to possess.....
Maximum to be possessed at a time.....
Maximum quantity to be purchased during the year.....
Area within which the licence is valid.....
Date on which licence expires (unless previously ceased to be in force under the proviso to sub-rule 42).....
Date on which licence or the arms or both shall be produced for inspection before the licensing authority (under proviso to sub-rule 42).....

RENEWAL OF ARMS LICENCE

| <i>From</i> | <i>To</i> | <i>Signature of D.M./A.D.M./S.D.M./Resident Magistrate/Tehsildar/Mukhtiarkar.</i> |
|-------------|-----------|---|
| | | |
| | | |

- 1. One time fee of Rs.1000/- for extending the validity to the whole of Pakistan of non-prohibited bore arms licence and Rs.2,000/- for extending the validity to the whole of Pakistan of a prohibited bore arms licence shall be charged.*
- 2. An application for extending the licences to whole of Pakistan shall be made to the Deputy Commissioner concerned who may allow the same whereafter the applicant shall deposit the requisite fee in the State Bank of Pakistan, National Bank of Pakistan / Government Treasury in the Head of the Account No. "1300-Misc. Receipt 139-fees, Fines Forfeitures-Arms Licence Fee" within fifteen days from the date of receipt of the order of the sanction, failing which the application shall be deemed to have been rejected.*

CONDITIONS

- 1. This licence is granted subject to all the provisions of the West Pakistan Arms Ordinance, 1965 and of the Arms Rules 1924.*
- 2. It covers only the person named, and the arms and ammunitions described therein and such retainers (if any) as may be entered in column 5.*

3. *The licence is valid to the extent specified in column 8, subject to the case of a licence having effect outside the Province in which it is granted or renewed subject to any restrictions which may be imposed by any general or special order of the Provincial Government.*

4. *The licensee or any retainer acting under this licence shall not go armed with any arms covered thereby otherwise than in good faith for the purpose of sports/ protection/ display; and save where he is specially authorised in this behalf by District Coordination Officer or an officer, he shall not take any such arms to a fair, religious procession or other public assemblage.*

5. *The licensee, at the time of purchasing arms or ammunition shall cause the following particulars to be endorsed upon his licence under the vendor's signature, namely :-*

(a) the name, description and residence of the person who takes delivery of the articles purchased ;

(b) the nature and quantity of the articles purchased ; and

(c) the date of purchase ;

and, if the arms or ammunition are purchased from any person other than a licensed dealer, shall also cause the particulars specified in clauses (b) and (c) to be furnished in writing to the authority who granted this licence within such period as may be prescribed for this purpose by such authority.

No purchase of ammunition shall, however, be permitted except on a written certificate from the licensee certifying that with the amount proposed to be purchased the total quantity of ammunition in his possession will not exceed the maximum which he is entitled to possess at any one time, or his total allowance for the year.

6. *He shall not purchase ammunition of any kind in excess of the maximum which may, from time to time, be fixed by the Provincial Government. Such maximum may be prescribed both for the amount purchasable in a calendar year and for the amount that may be possessed at any one time. If, however, a licensee exhausts the total quantity ammunition purchasable in a year earlier than the close of the year, he may, for good and sufficient reasons, be given a temporary increase in the total quantity purchasable at the discretion of the licensing authority.*

7. *He shall forthwith give information at the nearest Police Station of the loss or theft of any arms or ammunition covered by the licence.*

8. He shall not possess Government arms and ammunition. Explanation – For the purpose of this Condition –

(a) “Government Arms” means a fire-arm or other weapon which is the property of the Government ; and

(b) “Government ammunition” means ammunition manufactured in any Government factory, or prepared for and supplied to Government.

9. Condition 8 may be cancelled by the authority granting the licence if empowered to do so by the Provincial Government and an endorsement added showing the Government arms and ammunition which the licensee is authorised to possess.

10. Where the licence is granted for the purpose of sport, the licensee or any retainer acting under the licence shall observe such close season as may be prescribed by the Provincial Government in respect of the game-birds and animals hereinafter set forth below.

11. The licensee shall report any change of his permanent residence either to the authority who granted him the licence, or in the event of the licence having been renewed by some other authority on a previous occasion of change of permanent residence, then to such authority. In case of any change of residence, whether permanent or temporary, he may, at his option, apply to the nearest licensing authority for the renewal of his licence, if it is necessary.

12. The authority granting or renewing the licence has the right to inquire at any time during the currency of the licence whether the weapon or weapons for which it has been granted is or are still in the possession of the licensee, and to require its or their production for the purpose of such inquiry.

Note – (1) Any breach of the conditions of this licence is punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs.500 or with both.

(2) Licensees are warned that in case they sell any arms, ammunition and military stores covered by the licences possessed by them to any person (other than a person exempted under section 27 of the West Pakistan Arms Ordinance) they are required to give notice forthwith of the sale together with particulars as to the name and address of the purchaser to the Magistrate of the District or the officer-in-charge of the nearest Police Station. Failure to give notice as required above is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.”

.....

by a person exempted under Article 1(a) of Sch. I to these rules, and it shall only be granted in respect of the arms and ammunition specified in this behalf by and being the property of such exempted person.

5. This licence may be granted or renewed for any period not exceeding one year, provided that it shall expire on the date on which the person specified in column 2 of this licence ceases to be exempted under Article 1(a) of Sch. I to these rules, where such date is prior to the date on which it would ordinarily expire.

6. The licensee shall not go armed with any arms covered by this licence otherwise than in good faith for the purpose of sport, protection, display; and save where he is specially authorised in this behalf, in any place, by the [District Co-ordination Officer] or an [Officer] he shall not take any such arms to a fair, religious procession or other public assemblage.

7. He shall forthwith give information at the nearest Police Station of the loss or theft of any arms covered by the licence.

8. He shall not possess Government arms and ammunition.

Explanation. – For the purpose of this condition –

(a) “Government Arms” means a fire-arm or other weapon, which is the property of the Government ; and

(b) “Government ammunition” means ammunition manufactured in any Government factory, or prepared for and supplied to Government.

9. Condition 8 may be cancelled by the authority granting the licence if empowered to do so by the Provincial Government, and an endorsement added showing the Government arms and ammunition which the licensee is authorized to possess.

10. Where the licence is granted for the purpose of sport, the licensee shall observe such close season as may be prescribed by the Provincial Government in respect of the game-birds and animals hereinafter set forth below.

11. The licensee shall report any change of his permanent residence to the authority who granted him the licence, or in the event of the licence having been renewed by some other authority on previous occasion of change of permanent

residence, then to such authority, in case of any change whether permanent or temporary, he may, at his option, apply to the nearest licensing authority for renewal of this licence, should it be necessary.

12. The authority granting or renewing the licence has the right to inquire at any time during the currency of the licence whether the weapon or weapons for which it has been granted is or are still in the possession of the licensee, and to require its or their protection for the purposes of such inquiry.

Note – (1) Any breach of the conditions of this licence is punishable with imprisonment for a term which may extend to six months, or with fine which may extend to Rs.500, or with both (section 21 of the Arms Act, 1878).

(2) Licensees are warned that in case they sell any arms or ammunition covered by the licences possessed by them to any person (other than a person exempted under section 27 of the Act) they are required to give notice forthwith of the sale together with particulars as to the name and address of the purchaser to the Magistrate of the District or to the Officer-in-charge of the nearest Police Station. Failure to give notice as required above is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

13.(1) The licence may be granted or renewed for a period of one year ending on 31st December.

(2) The licence may be renewed within a period of one month of its expiry (that is by 31st January) hereinafter referred to as the grace period without the payment of any penalty or late fee.

(3) After the expiry of the grace period but before the lapse of three months of the date of expiry of the licence (that is, by 31st March) it may be renewed at the Post Office on the payment of a late fee calculated at the rate of Rs.5 for every month that intervenes between the expiry of the grace period and the date of renewal of the licence.

(4) The licence may be renewed after three months before the lapse of six months of the date of expiry thereof under the orders of Licensing Authority on the payment of four times the normal renewal fee and such intimation shall be sent by the Licensing Authority to the Postmaster where the licence was registered and the licensee shall pay the renewal fee at such Post Office.

(5) If a licence is not renewed within the period specified in clause (4), the licence shall, on the expiry of the said period, stand cancelled. ”

9. A close examination of the above quoted prescribed Forms XVI and XVI-A shows that arms licences issued in a booklet form under the said Forms provide all the relevant and vital information about the licence holder, his parentage, his address, his photograph, his profession, names of police station, tehsil and district which have jurisdiction in respect of the licence holder, all similar particulars about the retainer(s), description of the weapon along with its calibre / gauge / bore, description and maximum quantity of ammunition to which the licence holder / retainer is entitled to possess at one time or during the year, area within which the licence is valid, date on which the licence expires, date on which licence or the weapon(s) or both are to be produced for inspection before the licensing authority and column of renewals of the licence. In addition to the above vital information, arms licences issued in the present booklet form also provide sufficient space and pages for important endorsements on licences by the authorized arms dealer for entering and deleting of weapons in case of sale, purchase, change or loss of weapons, and also for recording purchase of ammunition. All the above vital information is in addition to the relevant terms and conditions specifically mentioned in the licence booklet on which a licence is issued to a licence holder to which he must be fully aware of.

10. We have noticed that on the contrary the impugned card licence does not have any detailed information about retainer(s), and it has no provision or space for important endorsements by the authorized arms dealer for entering and deleting of weapons in case of their sale, purchase, change or loss, and also for recording purchase of ammunition. The terms and conditions of licence are also not mentioned any where on the impugned card licence due to which a licence holder will be totally unaware of the terms and conditions which are binding on him and on which the licence is issued to him. The aspect of disclosure of the terms and conditions of licence in the licence itself becomes more important when we see Sections 15 and 17 of the Ordinance which provide punishments and penalties in case a licence holder violates the terms and conditions subject to which a licence was granted to him, or if he violates any provision of the Rules made under the Ordinance. Therefore, a licence holder should not be

ignorant of the terms and conditions of the licence which must be mentioned in the licence as per the Rules. Moreover, Section 12 of the Ordinance provides for cancellation and suspension of licences which endorsement is possible only on the booklet as there is no such provision in the impugned card licence. It is easier and simpler to copy or forge a card licence by making its coloured photo stat copy with plastic lamination.

11. We may point out here that Rule 41(1) of the Rules specifically provides that every licence shall be granted or renewed in the appropriate Form and subject to the conditions set forth in such Form. The comparison discussed in the preceding paragraphs shows that the impugned card licence is not in the appropriate Form and is not subject to the conditions set forth in the prescribed Forms, but is contrary to the Forms prescribed by the Rules made under the Ordinance which are admittedly still in force.

12. Under Rule 41-A of the Rules, arms licences, including licences issued under Forms XVI and XVI-A, are required to be registered with the Post Office mentioned in the application filed by the licence holder, and a registration number is allotted to every licence by the Post Master. Under Rule 42(3)(b) of the Rules, arms licences, including licences issued under Forms XVI and XVI-A, are renewed at the same Post Office where they have been registered under Rule 41-A. Both the above referred Rules are still in force and the same have not been amended. The impugned card licence does not have any such provision for registration with and/or renewal by the Post Office. This aspect is also contrary to the Rules and the Forms prescribed by the Rules made under the Ordinance, which are admittedly still in force. Without amending Rule 41-A of the Rules, an arms licence can not be registered and / or renewed by any other authority or agency except by the Post Office where the licence is registered.

13. Finally we would like to refer to Section 9 of the Ordinance which provides that *“No person shall have in his possession or under his control any arms, or any ammunition or military stores, except under a licence and in the manner and to the extent permitted thereby.”* The words *“in the manner”* specifically mentioned in the

said Section 9 are significant. These words undoubtedly imply that licences for having possession or control of any arms, or any ammunition or military stores must be in the Forms prescribed by the Rules because, except for the Forms prescribed by the Rules, there is no other “manner” given or prescribed under the Ordinance or Rules for issuance of licences. Since the impugned card licence is not in the Forms prescribed under the Rules, the same is contrary to the “manner” prescribed by the Rules and is violative of Section 9 of the Ordinance.

14. We are inclined to agree with the learned counsel for the petitioners that the scheme of the impugned card licence is impractical and illogical. As an example, we would like to compare arms licence with passports and vehicle registration books. When a passport holder travels, his entire travel history can be traced out by looking at his passport which contains not only all the entries of his departures and arrivals, but also the countries he has visited and the countries for which he has applied for visas. A vehicle registration book contains the entire history of the vehicle starting from its import to registration and then to each subsequent transfer / sale, and also about regular payments of road tax. Previous passport and vehicle registration book numbers are also mentioned on passports and vehicle registration books. All the above is possible only because passports and vehicle registration books are in booklet forms. For the past many years, passports and vehicle registration system have been computerized in the present booklet forms without substituting them with cards. Due to such computerized system of passports, the barcode contained in passports is swiped at immigration counters all over the world which immediately reveals all the relevant particulars about the passport holder. Similarly, because of the computerized vehicle registration, road tax of vehicles can be paid at authorized branches / banks where the entire previous road tax payment history is available online. In order to verify the ownership, engine or chassis number of a vehicle, or in case of its theft, all the data is readily available online with the motor registration authority, Citizens Police Liaison Committee (CPLC), and Anti Car Lifting Cell (ACLC). If passports and vehicle registration books are issued in the form of cards, then no record / history, as stated above, would be

traceable. It would be absurd and extremely inconvenient and impractical if at the time of every travel the traveller is asked to get a new passport in the form of a card, or at the time of every sale / transfer of vehicle or payment of road tax, the owner is asked to get a new registration book in the form of a card. The impugned scheme of issuance of arms licences in the form of cards will have the same impact on all the licence holders who are holding valid arms licences in the form of booklets as per the prescribed Forms and Rules made under the Ordinance.

15. We do not agree with the contention made on behalf of the respondents that the impugned scheme of card licences initiated by the respondents is justified because assigning the task of card licences to respondent No.2 (NADRA) was notified by respondent No.1 vide Notification dated 14.10.2011. As observed above, Section 11 of the Ordinance provides that Government may, from time to time, by notification in the official gazette, make rules to determine the officers by whom, the form in which and the terms and conditions on and subject to which any licence shall be granted, or renewed, and the Government may also make rules in order to fix *inter alia* the period for which licences shall continue in force, and the fee payable in respect of such licences. Further, Rule 33 of the Rules made under the Ordinance provides that a licence for the possession of arms and ammunition in reasonable quantities and for going armed for the purpose of sport, protection or display may be granted in Form XVI or Form XVI-A by District Co-ordination Officer or by any officer specifically empowered by the Provincial Government in that behalf. The respondent No.1 delegated such authority purportedly in favour of respondent No.2, and not in favour of District Co-ordination Officer or any officer specifically empowered by the Provincial Government in that behalf, without amending the Rules and without notifying in the official gazette. Therefore, the impugned action of the respondent No.1 is without jurisdiction and of no legal effect.

16. According to the learned counsel for the petitioners, the contention of the respondents that the impugned scheme has been initiated in view of the judgment passed by the Hon'ble Supreme Court in the *Suo Moto* case taken up at Karachi, is incorrect and misleading as the impugned scheme was announced much before passing of the

said judgment. The learned counsel also contended that the Hon'ble Supreme Court had ordered issuance of computerized arms licences and not replacement of the subsisting and valid licence booklets issued as per the Rules. This contention of the learned counsel appears to be correct. In any event, the impugned card licences can not be issued by violating the relevant provisions of the Ordinance and the Rules which are in force and have not been amended, changed or altered, which position has not been disputed by any of the respondents.

17. As noted earlier by us, respondent No.2 has conceded that the impugned scheme and public notice dated 28.08.2011 was issued only in respect of arms licences issued by the Federal Government / respondent No.1 and not by Provincial Governments, and the learned Deputy Attorney General has also not disputed this position. In view of this admission by the respondents, no Provincial Government can issue card licences under the impugned scheme. Even otherwise, card licences cannot be issued by any Provincial Government in violation of the relevant provisions of the Ordinance and Rules discussed above because under Section 3(1)(d) of the Ordinance, "Government" means the "Federal Government" for the whole of Pakistan, and the "Provincial Government" in case of a Province.

18. In view of the above discussion, we allow this petition by holding that Government, whether the Federal Government or any Provincial Government as defined in Section 3(1)(d) of the Ordinance, cannot issue arms licences in violation of any of the provisions contained in the Ordinance or in the Rules made thereunder. The impugned scheme and actions of issuance of card licence, being contrary to the Rules made under the Ordinance and violative of Section 9 of the Ordinance, are, therefore, declared as without lawful authority and jurisdiction and of no legal effect.

Judge

Judge

CP D-3319-11/Judgments/ARK/D