



2024/KER/34623

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

MONDAY, THE 27<sup>TH</sup> DAY OF MAY 2024 / 6TH JYAISHTA, 1946

WP(C) NO. 7106 OF 2024

PETITIONER:

T.JACOB ARMORY,  
BUILDING NO. 17/10638,  
PUTHOKARAN BUILDING, PRESS CLUB ROAD,  
ERNAKULAM, REP.BY ITS PROPRIETOR,  
SHAMON P.Y, AGED 47 YEARS,  
SON OF P.V.YAYOKKI, RESIDING AT PULLAMANGALAM  
VEEDU, NELLIKUZHY P.O,  
KOTHAMANGALAM, PIN - 682011

BY ADVS.  
PEEYUS A.KOTTAM  
RAGESH CHAND R.G.  
ISSAC ALEXANDER

RESPONDENTS:

- 1 STATE OF KERALA,  
REPRESENTED BY ITS SECRETARY,  
HOME DEPARTMENT,  
GOVERNMENT SECRETARIAT ANNEX,  
TRIVANDRUM, PIN - 695001
- 2 ADDITIONAL CHIEF SECRETARY,  
HOME DEPARTMENT, SECRETARIAT,  
TRIVANDRUM, PIN - 695001
- 3 THE DISTRICT COLLECTOR & DISTRICT MAGISTRATE  
KAKKANAD CIVIL STATION,  
ERNAKULAM, COCHIN, PIN - 682030
- 4 ADDITIONAL DISTRICT MAGISTRATE/  
DEPUTY COLLECTOR,  
KAKKANAD CIVIL STATION,  
ERNAKULAM, COCHIN, PIN - 682030

BY ADV. SRI.SREEJITH V.S., GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 27.05.2024, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:



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**N. NAGARESH, J.**

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*Dated this the 27<sup>th</sup> day of May, 2024*

**J U D G M E N T**

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M/s.T. Jacob Armory is the writ petitioner. The petitioner is a Proprietary concern having licence for Arms and Ammunition dealer. The petitioner seeks to quash Exts.P14 and P15 and to direct respondents 2 and 3 to allow the petitioner to shift his Armory Shop from the present address to the new address as sought for, since the existing Armory Shop is not sufficient to keep the arms and ammunition.

2. The petitioner states that the Firm is a licensed dealer since 1957. The management of the Proprietary concern changed in the year 2019 and Shamon P.Y. became



the Proprietor of the Firm. The Home Department gave new dealer licence to M/s. T. Jacob Armory, as per Ext.P1 order dated 01.01.2021. The District Collector also issued licence to the petitioner as authorised Arms and Ammunition Dealer for the period up to 22.01.2026, as per Ext.P2.

3. While so, the Additional District Magistrate issued Ext.P3 notice dated 29.01.2023 requiring the petitioner to rectify seven shortfalls noticed by him. Ext.P3 noted that the shop where arms and ammunitions are kept does not have the requisite space. The petitioner submitted a detailed reply dated 16.02.2023 rectifying all other defects and informing the Additional District Magistrate that the petitioner is proposing to shift his business of Armory Shop to another convenient room bearing door No.35/58A6 on getting permission.

4. The petitioner submitted Ext.P5 application dated 21.02.2023 to the District Collector seeking permission to shift the armory shop to the new building. The petitioner was required as per Ext.P6 to get a long term lease arrangement



for the new building. The petitioner thereupon executed Ext.P7 lease deed where the tenure of the lease was fixed as five years. The District Collector forwarded all the documents to the Additional Chief Secretary, Home (F) Department.

5. The Additional Chief Secretary called for a report from Police. The Inspector General, as per Ext.P11, informed that the proposed building is equipped with fire protection, emergency exist, strong room and recommended to give permission to shift the Shop. The District Collector also, as per Ext.P13, informed the Additional Chief Secretary that the building proposed for shifting the Armory Shop is safe and convenient.

6. To the surprise and predicament of the petitioner, the Additional Chief Secretary, as per Ext.P14 letter dated 02.12.2023, rejected the request for shifting the Armory Shop. Ext.P14 was communicated to the petitioner as per Ext.P15 letter dated 20.01.2024 of the District Collector.

7. The petitioner would submit that Ext.P14 order is



*per se* illegal. Rule 73 of the Arms Rules, 2016 referred to in Ext.P14 would not apply in the case of transfer of Armory Shop from one place to another. The petitioner wanted to shift the Armory Shop as the respondents have found the present building/shop is insufficient.

8. The petitioner pointed out that in other places in Kerala, change of business from one place to another was given by the licensing authority which is evident from Exts.P18 and P19. Respondents 2 and 3 are therefore compellable to allow the petitioner to shift their Armory Shop to the new location.

9. Government Pleader resisted the writ petition. The Government Pleader submitted that variation, suspension and revocation of licences is governed by Section 17 of the Arms Act and the licensing authority may vary the conditions of licence. The Government Pleader further pointed out that the location of the place where the business is conducted is an integral part of the licence. When a licensee shifts place of business, it would require a



new licence. Ext.P14 is therefore perfectly legal and justified, contended the Government Pleader.

10. I have heard the learned counsel for the petitioner and the learned Government Pleader representing the respondents.

11. It is evident from the pleadings that the Armory Shop in question is being run in the current premises since the year 1957. The licence is being renewed periodically. The 5<sup>th</sup> respondent-Additional District Magistrate, as per Ext.P3, found certain deficiencies. One of the shortfalls pointed out by the 5<sup>th</sup> respondent in Ext.P3 was that the room where arms and ammunitions are stored in the current premises does not have facilities to store the huge quantity of arms and ammunition. It is, in fact, in deference to the directions of the 5<sup>th</sup> respondent that the petitioner proposed to shift the armory to a convenient room. After making all arrangements for shifting the armory, the petitioner submitted Ext.P5 application to the District Collector seeking permission for shifting the Armory Shop.



12. The Police Inspector General, in Ext.P11 letter, has informed that the proposed building to which the Armory Shop sought to be shifted is equipped with fire protection, emergency exist and strong room for keeping arms and ammunition. The Inspector General recommended to give permission to shift the shop. By Ext.P13, the District Collector also has recommended to the Government to give permission to shift. The Additional Chief Secretary, however, rejected the application as per Ext.P14 communication.

13. The Additional Chief Secretary has taken a stand that the licence is valid only so long as one carries on the trade or business at the premises shown in the licence and that the licence will lapse if the business is discontinued. As per the conditions of licence, the licensee shall not sell the arms or ammunition covered by the licence elsewhere than at the place of business specified.

14. Section 5 of the Arms Act, 1959 provides that no person shall use, manufacture, obtain, procure, sell, transfer,



convert, repair, test or prove or expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any fire arms or any other arms of such class or description as may be prescribed or any ammunition unless he holds a licence issued in accordance with the provisions of the Act and the Rules made thereunder. Section 17 provides for variation, suspension and revocation of licences. Sub-section (1) of Section 17 provides that the licensing authority may vary the conditions subject to which a licence has been granted except such of them as have been prescribed and may for that purpose require the licence holder by notice in writing to deliver up the licence to it. Sub-section (2) of Section 17 provides that the licensing authority may, on the application of the holder of a licence, also vary the conditions of the licence except such of them as have been prescribed.

15. Section 17 thus provides variation of conditions of licence *suo motu* by the licensing authority under Section 17(1) and on an application of the holder of a licence, under





Section 17(2). Any condition prescribed for the grant of licence can be subjected to such variation “except such of them as have been prescribed”.

16. The Arms Rules, 2016 have been framed in exercise of the powers conferred by Section 17 of the Arms Act also. Part III of the Arms Rules, 2016 makes provisions for licensing Arms and Ammunition Dealers. Rule 73 provides for grant of licences to Arms and Ammunition Dealers. Rule 74 enables the authorities to grant licence for restricted category of fire arms and ammunition to Arms and Ammunition Dealers. Rule 75 mandates the licensees to maintain records of transactions. Rule 76 mandates that a licensee in Form-VIII shall not accept for deposit arms or ammunition under the provisions of Section 21 of the Act and for safe custody under Rule 48 without satisfying himself that there is no malafide intention on the part of the depositor or any person on whose behalf the deposit is being made. The Arms Rules nowhere prescribe conditions of licence which cannot be altered by the licensing authority *suo motu* or on



an application submitted by the licensee.

17. The Additional Chief Secretary has declined permission to shift the armory shop to a suitable place relying on Clause 1(c) and 5 of Schedule III Form-VIII to the Rules.

18. Condition 1(c) to Schedule III Form-VIII provides that a licence is valid only so long as the licensee carries on the trade or business at the premises shown in column 1 thereof and the *ipso facto lapse* if the business is discontinued for a continuous period exceeding six months. Condition No.5 stipulates that the licensee shall not sell the arm or ammunition covered by the licence, elsewhere than at the place of business specified in column 1.

19. Thus, the place of business of an armory is only a condition of licence. Conditions of licence are susceptible to variation in view of Section 17 and only those conditions which are exempted from variation as has been prescribed by law, which cannot be changed. Neither the Arms Act, 1959 nor the Arms Rules, 2016 nor any materials produced before this Court provide that the condition as to place of



business cannot be varied by the licensing authority under Section 17 of the Arms Act. Therefore, Ext.P14 communication of the Additional Chief Secretary which states that the licence will *ipso facto lapse* once the place of licence is varied, cannot stand the scrutiny of law.

20. In the case of the petitioner, the petitioner was informed as per Ext.P3 that the present shop of the armory is not sufficient to store the quantity of arms and ammunitions now stored there. It is in order to cure the said shortcoming that the petitioner is proposing to shift the armory to a suitable shop nearby. The police as well as the District Collector has reported that the proposed building is suitable and has recommended to permit the petitioner to shift the armory to the new place. Therefore, in the absence of any inhibition or prohibition to vary the licence condition relating to place of business of the petitioner in the Arms Act or in the Arms Rules, the request for shifting cannot be declined unless there is any other factor which disentitle the petitioner to shift the place of business.



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21. Exts.P14 and P15 are therefore illegal and unsustainable. Exts.P14 and P15 are therefore set aside. Respondents 2 and 3 are directed to allow the petitioner to shift his Armory Shop from the present address to the new address as sought for, by changing the condition of place of business in the licence.

The writ petition is allowed as above.

Sd/-

**N. NAGARESH, JUDGE**

aks/24.05.2024

APPENDIX OF WP(C) 7106/2024

## PETITIONER'S EXHIBITS:

- Exhibit P1 THE TRUE COPY OF THE ORDER G.O.(MS) NO.1/2021/HOME DATED 01.01.2021 ISSUED TO THE PETITIONER GRANTING PERMISSION FOR CONDUCTING ARMORY BUSINESS NAMED T.JACOB ARMORY
- Exhibit P2 TRUE COPY OF THE LICENSE ISSUED BY THE DISTRICT COLLECTOR TO THE PETITIONER AS AUTHORIZED ARMS AND AMMUNITION DEALER FOR THE PERIOD FROM 23-1-2021 TO 22-01-2026
- Exhibit P3 THE TRUE COPY OF THE NOTICE DATED 29.01.2023 ISSUED BY THE ADDITIONAL DISTRICT MAGISTRATE/DEPUTY COLLECTOR
- Exhibit P4 THE TRUE COPY OF THE REPLY SENT BY THE PETITIONER DATED 16.02.2023 TO THE DEPUTY COLLECTOR, ERNAKULAM
- Exhibit P5 THE TRUE COPY OF THE APPLICATION DATED 21.02.2023 SUBMITTED BY THE PETITIONER BEFORE THE DISTRICT COLLECTOR, ERNAKULAM
- Exhibit P6 THE TRUE COPY OF THE LETTER NO. F1/190/2023/HOME DATED 13.06.2023 ISSUED BY THE DEPUTY SECRETARY FOR ADDITIONAL CHIEF SECRETARY TO THE DISTRICT COLLECTOR, ERNAKULAM
- Exhibit P7 THE TRUE COPY OF THE LEASE DEED WHICH IS REGISTERED AS DOCUMENT NO. 1013/2023 DATED 20.04.2023 EXECUTED BETWEEN THE PETITIONER AND LEASE OWNER SHEELA SIMON REGISTERED BEFORE SUB REGISTRY OFFICE, ERNAKULAM
- Exhibit P8 THE TRUE COPY OF THE AFFIDAVIT SUBMITTED BY THE PETITIONER IN COMPLIANCE WITH RULE 73 OF ARMS ACT
- Exhibit P9 THE TRUE COPY OF THE LETTER DATED 20.06.2023 GIVEN BY THE PETITIONER TO THE DISTRICT COLLECTOR, ERNAKULAM



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- Exhibit P10 THE TRUE COPY OF THE LETTER DATED 06.07.2023 SENT BY THE DISTRICT COLLECTOR, ERNAKULAM TO THE ADDITIONAL CHIEF SECRETARY, HOME (F) DEPARTMENT, THIRUVANANTHAPURAM
- Exhibit P11 THE TRUE COPY OF LETTER DATED 19-08-2023 ISSUED BY POLICE INSPECTOR GENERAL & COMMISSIONER, POLICE COMMISSIONERATE, KOCHI TO THE ADDITIONAL CHIEF SECRETARY, HOME DEPARTMENT
- Exhibit P12 THE TRUE COPY OF THE LETTER NO.F1/190/2023/HOME DATED 27.07.2023 SENT BY THE ADDITIONAL CHIEF SECRETARY, HOME DEPARTMENT TO THE DISTRICT POLICE CHIEF, ERNAKULAM CITY
- Exhibit P13 TRUE COPY OF THE LETTER DATED 28.05.2023 SENT BY DISTRICT COLLECTOR, ERNAKULAM TO ADDITIONAL CHIEF SECRETARY, HOME (F) DEPARTMENT, THIRUVANANTHAPURAM
- Exhibit P14 THE TRUE COPY OF THE LETTER NO.F1/190/2023/HOME ISSUED BY THE ADDITIONAL CHIEF SECRETARY, HOME DEPARTMENT, THIRUVANANTHAPURAM DATED 02.12.2023 REJECTING THE PETITIONER'S REQUEST FOR CHANGE OF BUILDING FOR CONDUCTING THE ARMS SHOP
- Exhibit P15 TRUE COPY OF THE LETTER OF INTIMATION NO.DCEKM/4145/2021/M3 DATED 20-01-2024 GIVEN BY THE DISTRICT COLLECTOR, ERNAKULAM TO THE PETITIONER ABOUT EXT-P14 ORDER ISSUED BY THE ADDITIONAL CHIEF SECRETARY, HOME DEPARTMENT, THIRUVANANTHAPURAM
- Exhibit P16 THE PHOTOGRAPHS OF THE PRESENT SHOP WHEREIN THE ARMORY SHOP IS BEING CONDUCTED BY THE PETITIONER
- Exhibit P17 THE PHOTOGRAPHS SHOWING THE NEW SHOP TO WHICH THE PETITIONER SOUGHT TO SHIFT THE ARMORY SHOP



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Exhibit P18

THE TRUE COPY OF THE PROCEEDINGS OF  
THE DISTRICT MAGISTRATE, KOTTAYAM  
NO.DCKTM/11714/2022-H2 DATED  
21.03.2023 FOR CHANGING THE ARMORY  
SHOP FROM ONE PLACE ANOTHER

Exhibit P19

TRUE COPY OF THE TRANSFER ORDER NO.H2-  
54465/2003 DATED 29.09.2004 ISSUED BY  
THE DISTRICT COLLECTOR, KOTTAYAM FOR  
SHIFTING THE ARMORY SHOP FROM ADDRESS  
TO ANOTHER, (ALONG WITH TRUE TYPED  
COPY OF EXT-P19 TRANSFER ORDER) .