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Balochistan High Court, Quetta

PLJ 2017 Quetta 1(DB)

Present: JAMAL KHAN MANDOKHAIL AND ZAHEER-UD-DIN KAKAR, JJ.

ALL QUETTA BALOCHISTAN ARMS DEALERS ASSOCIATION
and others--Petitioners

versus

SECRETARY HOME AND TRIBAL AFFAIRS, CIVIL
SECRETARIAT, QUETTA--Respondent

C.P. No. 69 of 2016, decided on 6.4.2017.

Constitution of Pakistan, 1973--

—Art. 199--W.P. Arms Ordinance, (XX of 1965), S. 11(b)--Business of
selling of arms/rounds--Notification--Challenge to--Dealership

license--Domain and policy to enhance revised--Constitutional petition--Law class not debar official to increase renewal fee nor there any maximum limit of increased amount--High Court cannot sit as a Court of appeal over policy decisions and substitutes its own decision with decision of Government unless it is proved that the decision has been made in excess of jurisdiction or same is arbitrary and devoid of any justification--Policy making is domain of executive and interference in such domain was not function of High Court while exercising Jurisdiction under Article 199 of Constitution unless it is violative of Constitution, law or was product of mala fide--Petition was dismissed. [Pp. 3 & 4] A, B & C

Mr. Muhammad Akram Shah, Advocate for Petitioners.

Mr. Zahoor Ahmed Baloch, AAG for Respondent.

Date of hearing: 21.3.2017

JUDGMENT

Zaheer-ud-Din Kakar, J.--The petitioners, who are authorized Arms Dealers, dealing in the business of selling of various kinds of Arms/Rounds, have assailed the Notification No. SO (Arms) 2-1/Arms Policy/2014/1603-11 dated the 09 December, 2014 "**the impugned notification**", through which, the respondent revised the fees/rules of Arms Dealership License, which for the convenience is reproduced herein below:

"GOVERNMENT OF BALOCHISTAN HOME AND TRIBAL AFFAIRS DEPARTMENT

(Arms Section)

Dated Quetta, the 09th December, 2014

NOTIFICATION

No. SO(Arms)2-1/Arms Policy/2014/1603-11/ In suspension of this Department's Notification No. SO(H)1-3/92/1566 dated 31st May, 1992, and in exercise of power conferred by clause (b) of Section 11 of the West Pakistan Arms Ordinance, 1965 (XX of 1965) the Government of Balochistan, Home and Tribal Affairs Department is pleased to revise the Fee/Rates of the following Arms Dealership License in Balochistan Province with immediate effect:--

S #	NATURE OF ARMS	EXISTING		REVISED	
		INITIAL FEE	RENEWAL FEE	INITIAL FEE	RENEWAL FEE
01	Arms Dealership Licence on (Form-X) for (NPB Pistol/Revolver & NPB Shotgun and its Rounds/Cartridges	Rs 3,000/-	Rs 1,500/-	Rs 25,000/-	Rs 25,000/-
02	Arms Dealership Licence on (Form-XII) For (NPB Rifle and its Rounds)	Rs 3,000/-	Rs 1,500/-	Rs 25,000/-	Rs 25,000/-

2. Learned counsel for the petitioners contended that increase of renewal fee from Rs. 1500/- to Rs. 25,000/- by the respondent is unreasonable as well as contrary to the rates/fees as determined and fixed by the sister provinces; that the respondent by mis-exercise its authority and jurisdiction has enhanced and revised the fees/rates of Arms Dealership License; that the impugned notification is a result of illegal and arbitrary exercise of jurisdiction, therefore, the same is required to be declared as unlawful and void.

3. On the other hand, the learned AAG vehemently opposed the petition and defended the impugned notification. He contended that as per clause (b) of Section 11 of the West Pakistan Arms Ordinance, 1965, the respondent has the authority to enhance/revise the renewal fees of the Arms Dealership License in Balochistan, therefore, no illegality has been committed.

4. We have heard the learned counsel for the parties and have gone through the record. Admittedly, it is in the domain and policy of the Government to enhance/revise the Arms Dealership License from time to time as per clause (b) of Section 11 of the West Pakistan Arms Ordinance, 1965, which is reproduced herein below:

"11. Power to make rules as to licences.....

- (b) fix a fee payable by stamp or otherwise in respect of any such licence;"

5. The law does not debar the official to increase the renewal fee nor is there any maximum limit of the increased amount. It is true that the increased amount should be reasonable. The increased amount of Rs. 25,000/- in our view is not that much high to consider it as unreasonable. Even otherwise, for a considerable long period, the renewable fee was not increased and the dealers were enjoying a meager fee for several years, as such the increased amount cannot be considered unreasonable. A

6. Moreover, this Court, in view of the law laid down in {1998 SCMR 2679} "*Institute of Chartered Accountants of Pakistan. Karachi and others v. Federation of Pakistan and others*", cannot interfere in the policy matters, which require consideration of various factual aspects. The High Court cannot sit as a Court of appeal over the policy decisions and substitutes its own decision with the decision of the Government unless it is proved that the decision has been made in excess of jurisdiction or the same is arbitrary and devoid of any justification. The Hon'ble Supreme Court of Pakistan in another judgment reported in [2013 SCMR 1749] titled "*Dossani Travells Pvt. Ltd. and 4 others v. Messrs Travels Shop (Pvt) Ltd. and others*" has held that policy making is the domain of the Executive, and interference in such domain was not the function of the High Court while exercising jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 unless it is violative of the Constitution, law or was product of *mala fide*. The learned counsel for the petitioners has failed to point out any mis-exercise of jurisdiction on behalf of the respondents or to show any illegality or irregularity in the impugned notification warranting interference.

7. For what has been discussed above, we find no merit in this petition, which is, accordingly, dismissed. The interim order passed in CMA No. 167/2016 dated 03.2.2016 is hereby recalled.

(M.Y.A.)

Petition dismissed.
