

Neutral Citation No. - 2023:AHC:227533

Judgment reserved on 22.11.2023

Judgment delivered on 5.12.2023

Court No. - 5

Case :- WRIT - C No. - 2439 of 2015

Petitioner :- Utpal Rai

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Chandan Sharma, Shailendra

Counsel for Respondent :- C.S.C., Shailendra

Hon'ble Piyush Agrawal, J.

1. Heard Sri Shubham Tripathi, Advocate, holding brief of Sri Chandan Sharma, learned counsel for the petitioner and Sri Vaibhav Tripathi, learned Chief Standing Counsel for the State-respondents.

2. By means of present writ petition, the petitioner has assailed the order dated 15.10.2010 passed by respondent no. 3/District Magistrate, Allahabad, by which the firearm license of the petitioner has been cancelled as well as the order dated 28.8.2014 passed by respondent no. 2/Commissioner, Allahabad Division, Allahabad, by which the same has been confirmed.

3. Brief facts as stated in petition are that the petitioner was granted license of NPB Rifle bearing License No. 438, Address George Town, Prayagraj. The petitioner was involved in criminal activity, therefore, his gun license was cancelled. Several criminal cases were levied against the petitioner. On the said ground, the gun license was cancelled, hence the present writ petition has been

filed.

4. Learned counsel for the petitioner submits that the petitioner is a student leader who was also elected as Vice President, Allahabad University, Union, in the year 1994 and his affiliation was with political parties, therefore, due to political rivalry, the license of the petitioner has been cancelled. He further submits that due to active involvement in politics, just to harass the petitioner with ulterior motive, various criminal cases were lodged against him. In more than six cases, acquittal have been granted to him. He further submits that after the acquittal have been granted to the petitioner, the very basis of the order of cancellation vanishes and merely on the basis of apprehension, firearm license cannot be cancelled. He next submits that as the petitioner is involved in active politics, therefore, cancelling the license of the petitioner shall put his life into danger. He further submits that due to mere pendency of criminal cases against the petitioner, license of the petitioner cannot be cancelled. He further submits that the firearm license possessed by the petitioner has neither been used in any of the criminal cases nor there is any allegation against the petitioner. He also submits that petitioner has not violated any provisions of the Arms Act. As per Section 17 and its sub-clause, the Authorities with an ulterior motive, has cancelled the license, which has been confirmed on appeal without considering the material on record. He further submits that this Court time and again has held that the firearm license cannot be suspended during the pendency of the trial. In support of his contention, he relied upon the judgment of this Court in **Sanjay Chaudhari V. State of U.P. and others**, passed in C.M.W.P. No. 18263 of 2019, decided on 28.5.2019, **Suresh Singh Yadav vs. State of U.P. and others** in Writ-C No. 19871 of 2021, decided on 14.11.2022 and **Ram Vilas Vs. State of U.P. and four others** in Writ-C No. 1562 of 2020, decided on 13.7.2023.

5. Per contra, learned Standing Counsel supports the impugned orders.

6. Learned Standing Counsel submits that the acquittal, which the petitioner has pleaded, has not been granted on merit, but due to witnesses became hostile. He further submits that petitioner is a criminal man of mind and used to threaten persons and realises goonda taxes. He further submits that it is not in the City of Allahabad, but cases have been registered against him in other cities as well, such as, Lucknow. He next submits that the said finding of fact recorded by the Authorities against the petitioner has not been specifically challenged in the writ petition. Once the finding of fact recorded by the Authorities have not been challenged, the order passed by Authorities is justified.

7. After hearing learned counsel for the parties, the Court has perused the record.

8. Admittedly, the various criminal cases have been registered against the petitioner and in some of them, petitioner has been granted acquittal only on the basis of witnesses being hostile. The said fact has not been disputed by the learned counsel for the petitioner. The record further reveals that it is not the solitary case or two criminal cases, which has been filed against the petitioner, but several cases are being filed against the petitioner not only in Allahabad but in other cities as well.

9. Record reveals that the petitioner was accused in various criminal cases but the acquittal was not granted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levied against the petitioner, therefore, it cannot possibly be said that the petitioner was granted honorable acquittal.

10. The findings have been recorded by the District Magistrate concerned while cancelling firearm license of the petitioner that the petitioner is a criminal minded person and if the firearm license is granted to him, there may be in danger to peace and public safety. On appeal, further findings have been recorded by Commissioner, which reads as under:

"अपीलकर्ता एक अपराधिक किस्म का व्यक्ति है तथा उसके द्वारा जान से मारने की धमकी एवं गुण्डा टैक्स जैसे कार्य किये जाते हैं, जिससे यह स्पष्ट होता है कि ऐसे अपराधिक व्यक्ति के पास शस्त्र लाइसेंस का होना उचित नहीं प्रतीत होता है।"

11. The said findings of fact have not been assailed in any of the paragraph of the writ petition and once the findings of fact recorded against the petitioner have not been assailed in the writ petition, therefore, merely on argument the petitioner cannot succeeds.

12. This Court in Writ-C No. 4947 of 2019 (Indrajeet Singh v. State of U.P. and four others), decided on 22.10.2021, held that while considering the criminal history, the nature of acquittal in cases should be given importance. It has been further observed by the Court that the subjective satisfaction of the Licensing Authority cannot be judged without there being any specific ground of any malice being levied. The relevant paragraphs of the said judgment are hereby quoted as under:

"14. The nature of acquittal i.e. honorable acquittal or acquittal on the basis of benefit of doubt are terminologies not mentioned in the Criminal Procedure Code. However, the Apex Court has discussed these terminologies in Deputy Inspector General of Police and another Vs. S.Samuthiram, 2013 (1) SCC 598, relevant paragraph 24 of which is reproduced below:

"24. The meaning of the expression 'honourable acquittal' came up for consideration before this Court in RBI Vs. Bhopal Singh Panchal, (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with

honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted." (Emphasis Added)

The Apex Court in a recent case of State of Rajasthan and Ors. Vs. Love Kush Meena, 2021 SCC Online SC, 252. has also observed in this regard: Relevant paragraph 15 of which is mentioned hereinafter:

15. It is pointed out that various nuances arising in this judgment has been considering even in the subsequent judgments. In Union Territory, Chandigarh Administration & Ors. v. Pradeep Kumar & Anr., (2018) 1 SCC 797, a two Judge Bench of this Court dealt with the expression "honourable acquittal". It was opined that acquittal in a criminal case was not conclusive for suitability of the candidate concerned and it could not always be inferred from an acquittal or discharge that the person was falsely involved or has no criminal antecedents. Thus, unless it is an honourable acquittal, the candidate cannot claim the benefit of the case. No doubt, it was mentioned by relying on the earlier judgment of this Court in Inspector General of Police v. S. Samuthiram, (2013) 1 SCC 598, that while it was difficult to define precisely what is meant by the expression "honourable acquittal", an accused who is acquitted after full consideration of the prosecution evidence and prosecution has miserably failed to prove the charges levelled against the accused...."

15. *Considering the scheme to grant, refuse, suspension and revocation of arms licence under the Act, 1959 and the subjective satisfaction of the licensing authority on the basis of material available after taking into consideration various factors mentioned in Sections 13,14 and 17 of the Act, 1959 and also medical certificate, threat perception, genuine requirement, no objection, police report, antecedent verification report, undertaking for safe storage of fire arms etc., by way of filling of requisite forms prescribed under schedule of Arms Rule, 2016 subject to restrictions provided under Rules 32 and 112 etc., the important considerations while granting or revoking the arms licence is likelihood or actual misuse of firearm and it is important for the licensing authority to take appropriate decision considering the factors mentioned above including the nature of acquittal to form a reasoned opinion whether to refuse, grant, suspend or revoke the licence. The nature/manner of acquittal is very relevant factor in disciplinary proceedings as well as in selection on various posts such as police, judiciary and army etc. As referred above, antecedent verification report is also a very important consideration to grant or to refuse arms licence, such report includes general behaviour of the applicant and his involvement in the criminal cases etc.*

16. *The words "public peace and public order" are normally considered to maintain peace and order at public at large. However, there may be instances where though the immediate danger may be to an individual, but it may have threat to the public at large. For example a fire arm licensee entered inside the house of a neighbour and threatened him or undertook blank firing by licensed weapon or otherwise, though it may be itself be violative or not violative of conditions fire arm license, but this act is not only a threat to an individual, but is definitely likely to cause disturbance of public peace and public order to public at large, therefore, in these circumstances for security of public peace or for public order, the licensing authority may suspend or revoke the arms licence under Section 17 (3) of the Act, of 1959. Similarly, a person/licensee who is involved in a case of murder or attempt to murder or any offence affecting human body or any other serious*

offence, there may be likelihood of breach of public peace or public order.

17. The words used in Section 17 (3) (b) of the Act, 1959 is "deems it necessary for the security of the public peace or for public safety" i.e. in order to secure public peace or for public safety, the licensing authority if deems necessary, may suspend or revoke the licence. It is not necessary that actual disturbance of public peace or public safety may take place to revoke or suspend the arms licence. The licensing authority on the basis of material available, if deems necessary for security of public peace or for public safety may revoke the arms licence. Therefore, at this stage subjective satisfaction of the licensing authority comes into picture and if the licensing authority finds that due to certain act whether it is affecting to an individual or public at large, may for the security of public peace or for public safety, may suspend or revoke the arms licence. This is a precautionary measure, therefore, it is not necessary that actual disturbance of public peace or public safety may occur. Therefore, even the criminal antecedent of the licensee are very important factor for consideration for granting license. In these circumstances, even pendency of a criminal case involving serious offence may be sufficient to suspend or revoke the arms licence. Similarly, even after the acquittal, the nature of acquittal may be an important factor to consider whether there may be a likelihood of disturbance of public peace and safety especially in cases where the offences are against the State, offence against public tranquillity, offences affecting human body, offences affecting life, and sexual offences etc.

18. The licensing authority is in the field, therefore, is the best judge who can assess the situation on the basis of material which are before him. Such an assessment cannot be substituted by this Court which is no way connected or does not have any inkling of situations. This Court cannot undertake any exercise to determine the facts leading to the subjective satisfaction of the licensing authority on the basis of situation then existing, except there are material to show as to how the satisfaction is perverse or based on no material. (See Jagat Pal Singh

Vs. State of U.P. 1997 (34) ACC 499).

19. There must be subjective satisfaction of the licensing authority that the licensee is not fit to continue holding of licence. If the licensing authority is satisfied of the fact that a continued existence of fire arms licence with a person charged with various offence may endanger security of public peace and public safety then revocation of licence under Section 17 cannot be said to arbitrary or without jurisdiction. (See 1999 SCC Online Pat 206, (1999) 3 PLJR 203, Tej Narayan Singh Vs. State of Bihar and others.)

13. Record reveals that the petitioner has not been acquitted after full Consideration of the prosecution evidence and prosecution has miserably failed to prove the charges levied against the petitioner. The acquittal has been granted to the petitioner merely on the ground that witnesses have become hostile, therefore, it cannot be said that nature of acquittal to the petitioner was honorable.

14. Record further reveals that the findings of fact recorded against the petitioner in the Appellate Order as well as the Licensing Authority were not specifically challenged. The subjective satisfaction of the Licensing Authority for permitting to continue holding of licenses to the petitioner is in danger to public peace and public safety.

15. In view of foregoing discussions, this Court does not find any good reason to interfere in the impugned orders. The petition fails and is, hereby, **dismissed**.

Order Date :- 5.12.2023

A.P. Pandey