

Neutral Citation No. - 2023:AHC:237752

RESERVED

Court No. - 5

Case :- WRIT - C No. - 40123 of 2023

Petitioner :- Gaurav Agarwal

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Mithilesh Kumar Tiwari

Counsel for Respondent :- C.S.C.

HON'BLE PIYUSH AGRAWAL,J.

1. Heard Shri Mithilesh Kumar Tiwari, learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State – respondents.
2. At the very outset, learned ACSC raises a preliminary objection with regard to maintainability of the writ petition on the ground that against the impugned order, the petitioner has equally, efficacious alternative remedy of filing an appeal under section 18 of the Arms Act, 1959. In support of his submissions, he has placed reliance on the judgements of the Apex Court in ***United Bank of India Vs. Satyawati Tondon & Others*** [(2010) 8 SCC 110] (paragraph no. 43), ***Radha Krishan Industries Vs. State of Himachal Pradesh & Others*** [(2021) 6 SCC 771] (paragraph no. 27.5) and ***Varimadugu Obi Reddy Vs. B. Sreenivasulu & Others*** [(2023) 2 SCC 168] (paragraph no. 36).
3. Rebutting the submissions of the learned ACSC, learned counsel for the petitioner submits that the impugned suspension order has been passed without issuing notice to the petitioner and without providing any opportunity of hearing to the petitioner and therefore, the instant writ petition is maintainable. He further submits that while passing the impugned order, the respondent no. 2 has violated the guidelines issued by the State Government vide circular dated 07.02.2018, in which it has specifically provided

that before passing a suspension or cancellation order of firearm licence, the licensee must be heard. He further submits that the writ petition is maintainable, even if an alternative remedy is available, if there is a violation of principles of natural justice and the alternative remedy would not operate as an absolute bar. In support of his submissions, he has placed reliance on the judgements of the Apex Court in ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Others*** [1998 (8) Supreme 176], ***Satwati Deswal Vs. State of Haryana & Others*** [2009 (7) Supreme 229] and ***L.K. Verma Vs. HMT Limited & Another*** [2006 (0) Supreme 575]. He further submits that before passing the impugned suspension order, the respondent no. 2 was duty-bound to issue show cause notice to the petitioner. In support of his submission, he has placed reliance on the judgement of this Court in ***Girish Mishra Vs. State of U.P. & Others*** [2013 (1) ADJ 630].

4. After hearing learned counsel for the parties and perusing the materials available on record as well as the judgement of the Apex Court in the case of ***Whirlpool Corporation*** (supra); wherein, it has held that the writ petition can be maintainable on three counts, one of which is violation of the principles of natural justice, which has subsequently been following in various judgements referred to herein-above, the writ petition is entertained being maintainable on account of the fact that the impugned order has been passed in violation of the principles of natural justice as the petitioner was neither put to any notice, nor was heard before passing the impugned order.
5. Further, the judgements cited by the learned ACSC in paragraph no. 2 will be of no help to him as in the present case, there is a clear violation of principles of natural justice.

Case :- WRIT - C No. - 40123 of 2023

6. This writ petition has been filed challenging the suspension order/notice dated 20.10.2023 passed by the District Magistrate, Bijnor suspending the firearm licence of the petitioner.
7. With the consent of learned counsel for the parties, this writ petition is being finally disposed of at this stage without calling for counter affidavit.
8. Learned counsel for the petitioner submits that the petitioner was granted firearm licence of DBBL gun 12 Boare No. 123499 on 05.05.1999, which was renewed upto 31.12.2027. On 02.03.2018, an FIR bearing Case Crime No. 79/2018 under sections 147, 148, 149, 307, 353, 332, 336, 341 IPC and section 31(A) of Criminal Law Amendment Act and sections 2/3 of Prevention of Damage to Public Property Act, was lodged against the petitioner and other persons. Thereafter, the respondent no. 4 sent Police report on 28.04.2023 against the petitioner to the District Magistrate; whereafter, the impugned suspension order dated 20.10.2023 has been passed by the District Magistrate. In support of his submission, he has placed reliance upon the judgement of this Court in *Yogeshwar Prasad Dwivedi Vs. State of U.P. & Others* [Writ C No. 18359/2023, decided on 27.07.2023]
9. He further submits that the impugned order has been passed without recording any finding that the public peace and tranquility will be disturbed in case the firearm licence of the petitioner is not suspended. He further submits that the impugned order has been passed in violation of the provisions contained in section 17(3)(b) of the Arms Act, 1959. He prays for allowing the writ petition.
10. Per contra, the learned ACSC supports the impugned order and prays for dismissal of the writ petition.

11. After hearing learned counsel for the parties, the Court has perused the records.
12. From the perusal of the impugned order dated 20.10.2023, it is evidently clear that no definite finding was recorded that the public peace and tranquility will be disturbed in case the firearm licence of the petitioner is not suspended.
13. In view of the above, the impugned order dated 20.10.2023 cannot be sustained in the eyes of law. The same is hereby quashed.
14. The petitioner is directed to appear before the District Magistrate concerned, along with a certified copy of this order, within a period of two weeks from today, which shall be considered and decided by the District Magistrate within a further period of one month thereafter in accordance with law, after issuing due notice and reply of the petitioner.
15. The writ petition succeeds and is allowed.

Order Date :-15/12/2023

Amit Mishra