

Court No. - 5

Case :- WRIT - C No. - 1004870 of 2015

Petitioner :- Jagdish

Respondent :- State Of U.P. Thru Secy.Home Deptt.Civil
Sectt.Lko.And Ors.

Counsel for Petitioner :- Prem Shanker Trivedi,O.P.
Tiwari,Vivek Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the petitioner and Shri Rahul Shukla, learned Additional Chief Standing Counsel appearing on behalf of the respondents as well as perused the record..

2. The instant writ petition has been filed praying for the following main reliefs:

"(i) issue a writ, order or direction in the nature of Certiorari thereby quashing the impugned order dated 15.03.2013 as well as 25.05.2015 passed by opposite party No.2 and 3 contained as Annexure No.1 and 2 to this writ petition and restore the in the interest of justice.

(ii) issue a writ, order or direction in the nature of mandamus thereby commanding the opposite party no.2 to restore the license of D.B.B.L. Gun Number 22208A/Gangaghat at Police Station- Gangaghat, District Unnao of the petitioner in the interest of Justice."

3. The case set forth by learned counsel for the petitioner is that the petitioner was having an arms license, which was issued in the year 2002. On 27.10.2012, the petitioner had received a notice from respondent No.2 indicating about a police report having been filed pertaining to Case Crime No.1610 of 2012 under Sections 147, 148, 149, 336, 323, 504 & 506 IPC and

requiring him to show cause as to why his arms license should not be cancelled. The petitioner had submitted his reply, which did not find favour with the competent authority, who vide order dated 15.03.2013, a copy of which is Annexure No.1 to the writ petition, cancelled the arms license of the petitioner. Being aggrieved, the petitioner filed an appeal which has also been rejected vide the order dated 25.05.2015, copy of which is Annexure No.2 to the writ petition.

4. Being aggrieved with both the orders, the instant petition has been filed.

5. The contention of learned counsel for the petitioner is that this Court in a number of judgements has held that mere pendency of a criminal case cannot be a ground for cancellation of the arms license.

6. In this regard, learned counsel for the petitioner has placed reliance on the various judgements of this Court namely in Writ-C No.28821 of 2018 In re: **Nar Singh Yadav vs State of U.P. and others** decided on 15.09.2021, **Ram Prasad Vs. Commissioner and others** in Writ-C No.56378 of 2006 decided on 07.02.2020, **Dinesh Kumar Singh Vs. Commissioner, Faizabad Division 2017 (35) LCD 1274, Umesh Chandra Gupta Vs. State of U.P. and others** in Writ-C No.60228 of 2013 decided on 25.11.2021 and **Sunil Vs. State of U.P. and others** in Writ-C No.42274 of 2019 decided on 03.02.2020.

7. Placing reliance on the aforesaid judgements, the argument of learned counsel for the petitioner is that mere pendency of a criminal case cannot be a ground for cancellation of the arms license and thus in the instant case, the competent authority patently erred in law in placing reliance on the FIR that has been lodged against the petitioner, namely, vide Case Crime

No.1610 of 2012 and has cancelled the arms license of the petitioner. This fact has not been appreciated by the appellate authority while rejecting the appeal of the petitioner vide order dated 25.05.2015 and as such both the orders impugned merit to be set aside.

8. On the other hand, Shri Rahul Shukla, learned Additional Chief Standing Counsel appearing for the State argues that this is not a case in which the competent authority has cancelled the arms license of the petitioner solely on the ground of pendency of the criminal case. He argues that no doubt it is settled proposition of law that mere pendency of a criminal case cannot be made a ground for cancellation of the arms license, but in the instant case, the competent authority has considered the provisions of Section 17(3) of the Arms Act, 1959 (hereinafter referred to as 'the Act, 1959') to record his satisfaction that continuance of the arms license with the petitioner would be detrimental and being threat to the security of public peace and public safety.

9. Placing reliance on the judgement of this Court passed in the case of **Rajit Ram Verma Vs. State of U.P. and other Manu/UP/0344/2024**, the contention is that this aspect of the matter has been considered threadbare by this Court, wherein it has been held that where the authority has recorded his subjective satisfaction on the grounds as recorded under the provisions of Section 17(3) of the Act, 1959, the same may not be interfered with by the Writ-Court while exercising jurisdiction under Article 226 of the Constitution of India.

10. Reliance has also been placed on a Division Bench judgement of this Court passed in Special Appeal No.62 of 2014 in the case of **State of U.P. and others Vs. Mahipat Singh** decided on 15.01.2014 to argue that where there is a

perception of threat to the security of a citizen it is a matter which has to be considered by the licensing authority and there cannot be any interference by this Court under Article 226 of the Constitution of India.

11. Heard learned counsel for the parties and perused the record.

12. From the perusal of the record, it emerges that the petitioner was having an arms license. An incident occurred on 18.06.2012, which led to an FIR being lodged against the petitioner as well as various other persons which was registered as Case Crime No.1610 of 2012.

13. Considering this, the competent authority initially issued a notice to the petitioner requiring him to show cause as to why his license be not cancelled. After considering the reply of the petitioner, the competent authority vide order dated 15.03.2013 has cancelled the arms license of the petitioner by categorically recording that the cancellation is necessitated as the licensing authority deems it necessary for the security of public peace and for public safety. The reasons for recording of the said findings have also been indicated threadbare in the order of the cancellation dated 15.03.2013. The appellate authority has also affirmed the cancellation order.

14. No doubt, this Court in various judgements as have been referred to by learned counsel for the petitioner in the case of **Nar Singh Yadav (supra)**, **Dinesh Kumar (supra)**, **Umesh Chandra Gupta (supra)**, **Ram Prasad (supra)** and **Sunil (supra)** has held that mere lodging of an FIR or a criminal case against a person cannot be a ground for cancellation of the arms license.

15. However, in the instant case, it is not simply on account of the lodging of an FIR or a criminal case against the petitioner

which had led to the cancellation of the arms license of the petitioner rather the competent authority has specifically recorded the basis on which he arrived at a view that cancellation of the arms license with the petitioner is required for the security of public peace and for public safety. Thus, the subjective satisfaction of the authority has been recorded in the cancellation order dated 15.03.2013.

16. This aspect of the matter has been considered by this Court along with the question that where the competent authority has recorded a satisfaction as provided u/s 17(3)(b) of the Act, 1959, as to whether the said subjective satisfaction can be interfered by this Court while exercising jurisdiction under Article 226 of the Constitution of India.

17. This Court in the case of **Rajit Ram Verma (supra)** has held as under:

*"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 licencing 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.)'(emphasis by the court)

22. Likewise this Court in the case of Raj Kumar Gautam (*supra*) has held as under:

'22. Moreover, the judgment of Ram Pratap Singh (*supra*) would have no applicability inasmuch as the authority concerned has not cancelled the license of the petitioner merely on the ground of pendency of criminal case rather perusal of the order impugned would indicate that the competent authority has applied his mind to the reply filed by the petitioner meaning thereby that there has been objective consideration of all facts by the authority concerned and after considering the same, the authority has decided that continuance of arms license with the petitioner would cause threat to public peace and security and considering this aspect, the arms license of the petitioner has been revoked. These all are the findings of fact and in the absence of anything to show that the aforesaid inference drawn

by the competent authority is per se illegal, the Court does not find any reason to interfere with the same as if sitting in appeal, since the scope of judicial review in such matters in exercise of power under Article 226/227 of Constitution of India is very limited and narrow.

23. This aspect of the matter has been considered by this Court in the case of Thakur Das Yadav Vs. State of U.P and Ors passed in Writ-C No, 55352 of 2009 decided on 16.07.2024. For the sake of convenience, the relevant observations of this Court in the case of Thakur Das Yadav (supra) are reproduced below:-

8. In D. N. Banerji Vs. P. R. Mukherjee 1953 SC 58 the Court said:

"Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under articles 226 and 227 of the Constitution to interfere."

14. In Ajaib Singh Vs. Sirhind Co-operative Marketing cum Processing Service Society Ltd., (1999) 6 SCC 82, the Court has held that there is no justification for the High Court to substitute its view for the opinion of the Authorities/ Courts below as the same is not permissible in proceedings under Articles 226/227 of the Constitution.

16. In Indian Overseas Bank Vs. Indian Overseas Bank Staff Canteen Workers' Union (2000) 4 SCC 245, the Court observed that it is impermissible for the Writ Court to reappreciate evidence liberally and drawing conclusions on its own on pure questions of fact for the reason that it is not exercising appellate jurisdiction over the awards passed by Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose ordinarily should be considered to have become final. The same cannot be disturbed for the mere reason of having based on materials or evidence not sufficient or credible in the opinion of Writ Court to warrant those findings. At any rate, as long as they are based upon some material which are relevant for the purpose no interference is called for. Even on the ground that there is yet another view which can reasonably and possibly be taken the High Court can not interfere.

22. In Abdul Razak (D) through Lrs. & others Vs. Mangesh

Rajaram Wagle and others (2010) 2 SCC 432, Court reminded that while exercising jurisdiction under Article 226 or 227, High Courts should not act as if they are exercising an appellate jurisdiction.

24. In *Commandant, 22nd Battalion, CRPF and others Vs. Surinder Kumar (2011) 10 SCC 244*, Apex Court referring to its earlier decision in *Union of India Vs. R.K. Sharma (2001) 9 SCC 592* observed that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Articles 226 or 227.

23. From perusal of the aforesaid judgements it thus emerges that it is always the satisfaction of the authority concerned based on material before him to revoke the license in case he is of the view, as per the provisions of Section 17(3)(b) of the Act, 1959, that where it is in the security of public peace or for public safety to revoke the license, then the competent authority can pass an order for revocation of the arms license.

24. As already indicated the order impugned dated 08.01.2021 specifically records the reasons as to why the competent authority has found it necessary to cancel the license of the petitioner. This Court while exercising jurisdiction under Article 226/227 of the Constitution of India does not find any reason to interfere with the orders impugned as if sitting in appeal since the scope of judicial review in such matters in exercise of power under Article 226/227 of the Constitution of India is very limited and narrow.

18. Likewise a Division Bench of this Court in the case of **Mahipat Singh (supra)** has held as under:

"23. Whether there is a perception of threat to the security of a citizen, is a matter which has to be considered by the licensing authority. The learned Single Judge has erred in substituting his opinion about a perception of threat with that of the District Magistrate. We must hasten to add that in a case where discretion is conferred on a public authority to grant or refuse a licence to hold a firearm, the scope of judicial review is limited. The Court has to consider whether any irrelevant or extraneous consideration has been taken into account by the authority and or if it ignored relevant, valid and germane matters. In a case like the present, where the relevant circumstances have been taken in consideration and no

extraneous considerations were taken into account, it would be outside the purview of judicial review of the Court to substitute its own opinion with the opinion of the licensing authority.

24. For the aforesaid reasons, we are of the view that the order which was passed by the District Magistrate was manifestly in accordance with law and did not call for any interference by the learned Single Judge in the exercise of the writ jurisdiction under Article 226 of the Constitution. We, therefore, allow the Special Appeal and set aside the judgment of the learned Single Judge dated 11 December 2013. In consequence, the writ petition filed by the respondent shall stand dismissed."

19. From the perusal of the aforesaid judgement, it emerges that this Court has categorically held that where the subjective satisfaction of the authority has been recorded indicating the reasons as to why the continuance of an arms license with a person would be a treat for public peace or for public safety and sufficient material also emerges from the perusal of the said order then the Courts while exercising jurisdiction under Article 226 of the Constitution of India may not interfere with the same.

20. The Division Bench of this Court in the case of **Mahipat Singh (supra)** has categorically held that where there is a perception of threat to the security of a citizen it is a matter which has to be considered by the licensing authority and this Court while exercising jurisdiction under Article 226 of the Constitution cannot substitute their opinion about a perception of threat with that of the District Magistrate. No doubt, the Court has to consider whether any irrelevant or extraneous consideration has been taken into account by the authority or if the authority has ignored the relevant, valid and germane matters, but in the instant case, as has already been recorded above, the competent authority has passed a detailed order dated 15.03.2013 categorically recording as to why the continuance of the arms license with the petitioner would be a

threat to the security of public peace and public safety.

21. Keeping in view the aforesaid discussion, no case for interference is made out.

22. The writ petition is **dismissed**.

Order Date :- 7.3.2024

Ashutosh