

Court No. - 6

Case :- WRIT - C No. - 1772 of 2023

Petitioner :- Raj Kishore Dixit

Respondent :- The Commissioner, Lucknow Mandal Lko. And 3 Others

Counsel for Petitioner :- Shailesh Tripathi, Piyush Kumar Giri

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Sailesh Tripathi, learned counsel for the petitioner as well as learned Standing Counsel for the respondents.

2. By means of present writ petition the petitioner has challenged the order dated 19.10.2020, passed by the District Magistrate, Lakhimpur Kheri in Case No. 01238 of 2020 – State Vs. Raj Kishore Dixit, under Section 17(3) of the Arms Act, 1959 whereby fire arm license of petitioner No. 793 of S.B.B.L. Gun No. 25234 has been cancelled. The petitioner has also challenged the order dated 21.11.2022, passed by the Commissioner, Lucknow Division, Lucknow whereby he has dismissed the appeal filed by the petitioner.

3. It has been submitted by learned counsel for the petitioner that on account of having political rivalry the petitioner has threat perception to his lie and therefore he applied for and was granted arms license in 2011 for single barrel breach loading (S.B.B.L.) Gun No. 25234. It is stated that on 01.05.2014 a first information report was lodged against the petitioner in Police Station – Kotwali Maigalganj, District – Lakhimpur Kheri being Criminal Case No. 345 of 2015, under Sections 147, 148, 149, 341, 323, 504, 506 and 427 I.P.C. Another first information report was also lodged against the petitioner on 28.12.2018, being Case Crime No. 0578 of 2018, under Sections 147, 148, 149, 323, 504, 506 I.P.C., Police Station -Kotwali Maigalganj, District – Lakhimpur Kheri. On the basis of aforesaid two FIRs a show cause notice was issued to the petitioner on 04.09.2020 asking him to show cause as to why his arms license be not cancelled considering the fact that he is involved in two criminal cases and also that there is possibility of misuse of the fire arm and also public safety and security is adversely effected. The petitioner denied the allegations and considering the reply of the petitioner his arms license was cancelled by means of order dated 19.10.2020, passed by the District Judge, Lakhimpur Kheri.

4. Perusal of cancellation order dated 19.10.2020, would indicate that the arms license of the petitioner has been cancelled on the ground of pendency of two criminal cases against him, and finding has been recorded that there are serious criminal charges against the petitioner and there was threat to public peace and safety and hence petitioner's arms license deserves to be canceled.

5. Against order of cancellation dated 19.10.2020, petitioner preferred an appeal before the Commissioner, Lucknow Division, Lucknow. The Commissioner has reiterated the findings recorded by the District Magistrate and affirmed the order of cancellation of arms license of petitioner by means of order dated 21.11.2022.

6. Learned counsel for the petitioner while assailing the impugned order of cancellation as well as rejection of his appeal has submitted that both the orders are illegal and contrary to the provisions of Section 17(3) of the Arms Act. It is submitted that mere pendency of criminal cases can not be a ground of cancellation of arms license otherwise there was no material to come to conclusion that public safety, security and peace were adversely effected in case petitioner is allowed to retain his arms license. It is submitted that in absence of any material such a finding recorded by the District Magistrate is clearly perverse and deserves to be set aside.

7. It is next submitted by learned counsel for the petitioner that during pendency of said proceedings the petitioner has already been acquitted in Case Crime No. 225A of 2014 by means of order dated 22.07.2020, passed by the Judicial Magistrate, Mohammadi, Lakhimpur Kheri.

8. Learned Standing Counsel on the other hand has submitted that there was sufficient material on record before the District Magistrate indicating that petitioner is a criminal minded person and is involved in various criminal cases, two of which are mentioned in the impugned order. It is submitted that there is no infirmity in the impugned orders.

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

9. From the undisputed facts of the present case it is noticed that the petitioner was granted arms license in 2011 and subsequently notice was issued to him under Section 17(3) of the Arms Act, 1959, asking him to show cause as to why his arms license may not be cancelled as two criminal cases are registered against him being Case Crime No. 225A of 2014 and 0578 of 2018, at Police Station – Kotwali Maigalganj, District – Lakhimpur Kheri. In the said notice it was also recorded that local Police Station has submitted its report that there is threat to public peace and security in case petitioner is allowed to

retain his arms license. Relying upon the said Police Report and considering that two criminal cases are pending against petitioner, the District Magistrate proceeded to cancel the arms license of petitioner and said cancellation has been upheld by the Commissioner where he has reiterated the findings recorded by the District Magistrate.

10. Considering the appellate order it is noticed that no ground raised by the petitioner in appeal has either been considered or recorded. Such an order is not expected from the appellate authority where he is bound to consider the grounds raised in appeal and even if the grounds are not made out, adequate reasons have to be given for rejection of the appeal. Merely reiterating the contents of cancellation order would not suffice at the stage of considering the appeal against the cancellation of arms license. Even otherwise issue as to whether arms license can be cancelled merely on the basis of pendency of criminal cases has been considered by the Hon'ble Apex Court as well as this Court in number of cases. This Court in Writ Petition No. 3382 (M/S) of 2016 - Mohd. Shakeel Vs. State of U.P. Thru Prin. Secy. Home Lko & Others (decided on 30.01.2017), has observed as under :-

"Section 17 of the Act empowers the licensing authority to vary, suspend or revoke any firearm licence. Sub section (3) of section 17 of the Act being relevant is reproduced below:- 17. Variation, suspension and revocation of licenses.- (1) & (2) (omitted as unnecessary) (3) The licensing authority may, by order in writing, suspend a licence for such period as it thinks fit or revoke a licence,:- (a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force, from acquiring, having in his possession or carrying any arms or ammunition, or is of unsound mind, or is for any reason unfit for a licence under this Act; or (b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or (c) if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it; or (d) if any of the conditions of the licence has been contravened ; or (e) if the holder of the licence has failed to comply with a notice under subsection (1) requiring him to deliver-up the licence. (4) to (10) (omitted as unnecessary)

A perusal of sub section (3) of section 17 of the Act would show that the firearm licence could be suspended or revoked by the licensing authority inter alia on the following grounds:- 4 (i) if the licensing authority is satisfied that it was necessary for the security of the public peace or for the public safety to suspend

or revoke the licence. (ii) if any of the conditions of the licence has been contravened.

Before dealing with the rival contentions advanced by the counsel for the parties, it will be appropriate to refer to the law bearing on the matter.

The principles settled way back in the year 1966 in the case of Dr. Ram Manohar Lohia (Supra) has been repeatedly quoted with respect and approval.

In 1998 (16) LCD 905, Ram Murti Madhukar Vs. District Magistrate, Sitapur, in paragraph 8 & 9 of the said report this Court has held as follows:- "8. It is also well settled in law that mere pendency of criminal case or apprehension of abuse of Arms Act, are not sufficient ground for passing of the order of suspension or revocation of licence under Section 17 of the Act. A reference in this regard may be made to the decisions of this Court in Ganesh Chandra 5 Bhatt v. D.M. Almora (AIR 1993 Allahabad-291). 9. It is also well settled in law that before passing of the order of suspension or revocation, under clause (b) of sub section (3) of Section 13 of the Act, the licensing authority must apply its mind to the question as to whether there was eminent danger to public peace and safety involved in the case. Licence cannot be suspended or revoked on the ground of 'Jan Hit'."

In 2002 (44) ACC 783, Habib Vs. State of U.P. & Ors. in paragraph 3 & 4 of the said report it has been held as follows:- "3. The question as to whether mere involvement in a criminal case or pendency of a criminal case can be a ground for revocation of the licence under Arms Act, has been dealt with by a Division Bench of this Court reported in Sheo Prasad Misra v. The District Magistrate, Basti and others, wherein the Division Bench relying upon the earlier decision reported in Masi Uddin v. Commissioner, Allahabad, found that mere involvement in criminal case cannot in any way affect the public security or public interest and the order cancelling or revoking the licence of firearm has been set aside. The present impugned orders also suffer from the same infirmity as was pointed out by the Division Bench in abovementioned cases. I am in full agreement with the view taken by the Division Bench that these orders cannot be sustained and deserve to be quashed and are hereby quashed. 4. There is yet another reason that during the pendency of the present writ petition, the petitioner has been acquitted from the aforesaid criminal cases and at present there is neither any case pending, nor any conviction has been attributed to the petitioner, as is evident from Annexure SA-1 and II to the supplementary affidavit filed by the petitioner. In this view of the matter, the petitioner is entitled to have the fire-arm licence. It is submitted by

petitioner's counsel that the petitioner has been acquitted of the charges."

In 2009 (10) ADJ 635, Ashiq Hussain Vs. Commissioner, Moradabad & Ors., in paragraph 6 of the report it has been held as under: - "6. The mere involvement in a solitary criminal case cannot be a ground for cancellation of a firearm license as held by this Court in case of Mohd. Haroon Vs. The District Magistrate, Siddharth Nagar reported in 2003 (1) ACJ 124, unless and until it is shown on the basis of material on record that there was grave danger to public law and order. In the instant case it is 6 only a solitary incident, which was not arising out of any disturbance of public law and order, that has been made the basis for ordering cancellation."

In 2011 (29) LCD 1045, Rama Kushwaha Vs. State of U.P. & Ors., a Single Judge of this Court in paragraph 10 & 11 of the said report has held as follows:- "10. In Ram Murli Madhukar Vs. District Magistrate, Sitapur [1998(16) LCD 905], this Court has held that licence can not be suspended or revoked on the ground of public interest (Janhit). 11. It is well settled in law that mere pendency of criminal case or apprehension of abuse of arms act are not sufficient grounds for passing the order of suspension or revocation of licence under Section 17 (3) of the Act. The question as to whether mere involvement in a criminal case or pendency of a criminal case can be a ground for revocation of licence under Arms Act, has been dealt with by a Division Bench of this Court Sheo Prasad Misra Vs. The District Magistrate, Basti & others, wherein the Division Bench relying upon the earlier decision of Masiuddin Vs. Commissioner, Allahabad, found that mere involvement in criminal case cannot in any way affect the public security or public interest. The law propounded in the said decisions has been subsequently followed in Habib Vs. State of U.P. Reported in 2002 ACC 783, Ram Sanahi Vs. Commissioner, Devi Patan Division, Gonda & another."

In 2011 (29) LCD 829, Hiramani Singh Vs. State of U.P. & Ors. it was held as under:- "8. This Court in the case of Ashok Rao v. State of U.P. and others, reported in 2010 (68) ACC 441 while considering the authority to be exercised under Section 17 of the Indian Arms Act has taken the view that mere pendency of criminal case cannot be ground for cancellation of firearm license unless and until finding is returned by the authority concerned that possession of firearm has the tendency of threatening public peace and public safety."

In 1994 (12) LCD 1109, Anil Kumar Singh Vs. Distt. Magistrate, Pratapgarh, in paragraph no. 6 of the said report it has been held as follows:- "6. ...Therefore, it is clear that at the time of passing the order order dated 6-2-79 by the

Commissioner, there was no ground on which the gun licence of the petitioner could have been cancelled. Both the grounds were wiped off before passing of the order of the learned Commissioner and the learned Commissioner could not have passed this order unless there was some fresh material against the petitioner by that date. In this connection it will be useful to refer to the case of Ram Bodh Singh v. State of U.P. & others, 1985 (11) Allahabad Law Reports, 114, in which it has been held that once petitioner was acquitted those cases could not furnish material for cancellation of his licence. Therefore, on the date on which the Commissioner passed his licence. Therefore, on the date on which the Commissioner passed his order, it cannot be said that the cancellation of licence was in the public interest and this fact could not be substantiated by the State."

11. In the present case there is no allegation that petitioner has misused his arms license or that the weapon was misused by him in either of the two cases in which first information report have been lodged against petitioner.

12. From the judgment quoted herein above, it emerges that firstly, mere pendency of criminal cases is not a ground on which the arms license can be cancelled and accordingly the findings recorded by the authorities below are illegal and arbitrary and are accordingly set aside. Secondly, with regard to finding that there is threat to public peace and security, there is no material either before the District Magistrate or before the Appellate Authority or even before this Court to come to conclusion that any of the provisions of Section 17(3) of the Arms Act have been fulfilled necessitating cancellation of arms license in the present case.

13. There is no material or likelihood of breach of public peace and security, hence finding in this regard is also arbitrary and illegal.

14. In the light of above discussion the cancellation order dated 19.10.2020 passed under Section 17(3) of Arms Act is arbitrary and illegal and is accordingly set aside. The appellate order dated 21.11.2022 is also arbitrary and illegal and is also set aside.

15. The writ petition stands allowed.

Order Date :- 2.1.2024

A. Verma

(Alok Mathur, J.)