

Court No. - 17

Case :- WRIT - C No. - 23485 of 2021

Petitioner :- Suresh Chandra

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko.And Ors.

Counsel for Petitioner :- Atiya Abid

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard Ms. Atiya Abid, learned counsel for petitioner and learned State Counsel for opposite parties.

2. Petition has been filed challenging order dated 11.05.2015 passed under Section 17 (3) of the Arms Act whereby petitioner's arms licence has been cancelled. Also under challenge is the order dated 23.07.2021 rejecting petitioner's appeal.

3. Learned counsel for petitioner has submitted that the impugned order passed by prescribed authority has been passed in ignorance of specific provisions of Section 17 (3) (b) of the Arms Act since it has been passed only on the basis of pendency of a single criminal case against petitioner registered as Case Crime No. 94 of 2013 under Sections 307, 504 & 506 I.P.C. It is submitted that there is no subjective satisfaction recorded by the authority regarding breach of public peace and safety which does not mean ordinary disturbance of law and order but only pertains to such disturbance to the public at large. It is further submitted that the appellate authority also has noticed the fact that in the aforesaid case crime number, allegations pertaining to Section 307 IPC have been removed with only Sections 504 & 506 IPC remaining which clearly denotes the fact that allegations pertaining to wrongful use of the licensed arm become baseless. Learned counsel has placed reliance on judgment rendered in the case of **Thakur Prasad versus State of U.P. and others** reported in **2013 (31) LCD 1460**.

4. Learned State Counsel on the basis of counter affidavit has refuted submissions advanced by learned counsel for petitioner with the submission that petitioner is habitual offender as would be evident from the fact that criminal case against him was registered as Case Crime No. 94 of 2013 and is also involved in Case Crime No. 94-A of 2013 and after detailed investigation,

charge-sheet has been filed against petitioner dated 16.10.2013 under Sections 286, 504 & 506 I.P.C. It is submitted that the arms licence of petitioner has been cancelled under Section 17 (3) (b) of the Arms Act.

5. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it appears that notice to petitioner was issued under Section 17 (3) of the Act pertaining to his involvement in Case Crime No. 94 of 2013 whereby First Information Report was lodged against him under Sections 307, 504 & 506 I.P.C. It also appears that subsequently charge-sheet has been filed removing Section 307 I.P.C. against petitioner. The aforesaid criminal proceedings are still pending consideration.

6. A perusal of the initial order dated 11.05.2015 will make it evident that same has been passed only on the basis of the First Information Report lodged against petitioner and on the ground that there is no fundamental right to arms by Indian citizens. It is quite evident from a perusal of the said order that there is absolutely no discussion with regard to conditions required pertaining to breach of public peace and safety in terms of Section 17 (3) (b) of the Arms Act inasmuch as the order does not indicate any condition the breach of which has been alleged against petitioner. It is therefore quite evident that impugned order dated 11.05.2015 has been passed only on the basis of First Information Report lodged against petitioner and charge-sheet subsequently filed.

7. The appellate order also makes mention of the fact that subsequently upon filing of charge-sheet, Section 307 I.P.C. has been removed from the Case Crime No. 94 of 2013 against petitioner.

8. It is quite evident that both the impugned orders have been passed only on the basis of pendency of a single criminal case against petitioner.

9. The aforesaid aspect pertaining to violation of Section 17 (3) (b) of the Arms Act have been dealt with by Co-ordinate Bench of this Court in the case of **Thakur Prasad** (supra) in which the aspect of public peace and public safety have been examined in the context of the aforesaid provision and has held that public peace and public safety do not mean ordinary disturbance of law and order pertaining to safety of few persons only but instead means safety of public at large and while before passing an order of cancellation of Arms Act, the licensing authorities have an obligation to apply mind as to there was any eminent danger to public peace and safety. Relevant portion of the

judgment is as follows:-

"11. Further, this Court in the case of Habib v. State of U.P., 2002 ACC 783, held as under:-

"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 in Sheo Prasad Misra Vs. District Magistrate, Basti and Ors., 1978 AWC 122, wherein the Division Bench relying upon the earlier decision in Masi Uddin v. Commissioner, Allahabad, 1972 ALJ 573, 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 fire arm has been set aside. The present impugned orders also suffer from the same infirmity as was pointed out by the Division Bench in the above-mentioned 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.

There is yet another reason that during the pendency of the present writ petition, the petitioner has been acquitted from the aforesaid criminal case and at present there is neither any case pending, nor any conviction has been attributed to the petitioner, as is evident from Annexure SA-I 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."

10. Upon applicability of aforesaid judgment in the present facts and circumstances of the case, it is quite evident that petitioner's arms licence has been cancelled exercising power under section 17 (3) (b) of the Arms Act but without recording any subjective satisfaction pertaining to wrongful use of the licensed arm which would endanger public peace and safety. Furthermore, the order has been passed only on the basis of a single criminal case registered against petitioner in which also provisions pertaining to Section 307 IPC have been withdrawn.

11. Consequentially the impugned orders have clearly been passed against the mandate of Section 17 (3) (b) of the Act and therefore the impugned orders dated 11.05.2015 passed by the prescribed authority in Case No. 862 of 2015 as well as the appellate order dated 23.07.2021 is hereby quashed by issuance of a writ in the nature of certiorari restoring petitioner's DBBL Licence No. 4672 issued in the year 2001.

12. Resultantly, the petition succeeds and is **allowed**. Parties to bear their own cost.

Order Date :- 22.5.2024

Satish