

Court No. - 6

Case :- WRIT - C No. - 1003162 of 2011

Petitioner :- Sachendra Kumar Dixit

Respondent :- The State Of U.P. Through Principal Secy.Home
Dept.Lucknow

Counsel for Petitioner :- S.K.Tripathi,Akashdeep
Shukla,Girish Kumar Pandey,Neeraj Kumar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Girish Kumar Pandey, 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 21.12.2009 passed by the District Magistrate, Sitapur in exercise of power under Section 17(3) of the Arms Act thereby cancelling the arms license issued to the petitioner. The petitioner has also challenged the order dated 11.03.2010, passed by the Commissioner, Lucknow Division, Lucknow thereby the appeal preferred by the petitioner against cancellation of his arms license has been rejected.
3. It has been submitted by learned counsel for the petitioner that petitioner was granted arms license for personal safety and protection some time in 1995. Subsequently, petitioner was involved in two criminal cases namely Case Crime No. 230A of 1987, under Sections 147, 323, 506 I.P.C. and Case Crime No. 424 of 1989, under Section 307 I.P.C. and Section 5 of Explosive Act, at Police Station – Maholi, District – Sitapur. A show cause notice was issued to the petitioner asking him to respond as to why his arms license may not be cancelled. The petitioner submitted his reply stating that the first information reports lodged against him are malafide and he is not connected with the said criminal cases. The District Magistrate, Sitapur after considering the reply of the petitioner as well as Police Report and also the report submitted by the Sub Divisional Magistrate, was of the view that the petitioner has misused his fire arm and he was threat to public safety and security and hence provisions of Section 17(3)(c) of the Arms Act are fulfilled and by means of order dated 21.12.2009, cancelled the arms license of the petitioner. Against the order of cancellation, the petitioner preferred an appeal which was also rejected on 11.03.2010, affirming the order passed by the District Magistrate.

4. It is submitted by learned counsel for the petitioner that the impugned orders have been passed only on the ground that criminal cases are pending against the petitioner. It is submitted that in both the said criminal cases the petitioner has been acquitted on merits.

5. It is submitted that in Case No. 230-A of 1987, the petitioner has been acquitted by IIIrd Additional Sessions Judge, Sitapur by means of judgment and order dated 30.03.1999 while in Case Crime No. 424 of 1989, the petitioner has been acquitted by means of judgment and order dated 25.03.1995 passed by the Special Sessions Judge, Sitapur. In support of his submissions the petitioner has submitted that the impugned order of cancellation has been passed only on the basis of pendency of criminal cases against the petitioner and such an order cannot be sustained in the light of consistent view taken by this Court in catena of judgments.

6. Learned counsel for the petitioner has submitted that merely on account of lodging of first information reports the arms license of the petitioner cannot be cancelled and secondly he has submitted that he has raised several grounds in appeal before the commissioner and none of the grounds have been considered and the Commissioner has rejected the appeal of the petitioner reiterating the findings recorded by the District Magistrate and consequently both the orders are illegal and arbitrary and deserve to be quashed.

7. Learned counsel for respondent on the other hand has opposed the writ petition. He has supported the impugned orders stating that a perusal of the impugned order cancelling the arms license of the petitioner would indicate that petitioner has misused his licensed weapon and even a perusal of the first information report would indicate that he had violated the public peace and public safety for which District Magistrate has rightly invoked jurisdiction vested under him under Section 17(3)(b) of the Arms Act and cancelled the license of the petitioner.

8. I have heard learned counsel for parties and perused the record.

9. The issue which requires consideration is, whether on the ground of pendency of the criminal cases the petitioner's fire arm licence could be cancelled and his appeal could be dismissed, notwithstanding his acquittal. It also requires consideration that if the ground in the impugned orders that if the petitioner's fire arm licence remain with the petitioner, it would not be in the public interest and public security, are justified for cancellation and based on substantial material.

10. A bare reading of Section 17 (3) of the Arms Act makes it

evident that the licencing authority may by order in writing suspend a licence for such period as he things fit or revoke a licence; (b) if the licencing authority deems it necessary for the security of public peace or for public safety to suspend or revoke the licence. These two expressions "Security of public peace" and "for public safety" are of utmost importance. The licencing authority must be satisfied of the existence of these pre conditions.

11. In **Masiuddin Vs. Commissioner, Allahabad Division, Allahabad and another reported in 1972 A.L.J. 573** this Court held in paragraph Nos. 4 and 7 as under:

"4. After a license is granted, the right to hold the license and possess a gun is a valuable individual right in a free country. The security of public peace and public safety is a valuable social interest. Section 17 shows that Parliament had decided that neither of the two valuable interests should unduly impinge on the other Section 17 seeks to establish a fair equilibrium between the two contending interests. It says: Hear the licensee first; and then cancel the license "if necessary for the security of the public peace or for public safety". True, there is no express provision for hearing. True, there is no express provision for hearing. But the nature of the right affected, the language of Sec. 17, the grounds for cancellation, the requirement of a reasoned order and the right of appeal plainly implicate a fair hearing procedure. Jai Narain Rai v. District Magistrate, Azamgarh. While cancelling a licence, the District Magistrate acts as a quasi-judicial authority.

7. A license may be cancelled, inter alia on the ground that it is "necessary for the security of the public peace or for public safety" to do so. The District Magistrate has not recorded a finding that it was necessary for the security of the public peace or for public safety to revoke the license. The mere existence of enmity between a licensee and another person would not establish the "necessary" connection with security of public peace or public safety. There should be something more than mere enmity. There should be some evidence of the provocative utterances of the licensee or of his suspicious movements or of his criminal designs and conspiracy in reinforcement of the evidence of enmity. It is not possible to give an exhaustive list of facts and circumstances from which an inference of threat to public security or public peace may be deduced. The District Magistrate will have to take a decision on the facts of each case. But in the instant case there is nothing in his order to indicate that it was necessary for the security of the public peace or for public safety to cancel the license of the petitioner. Mere enmity is not sufficient."

12. Thus, in **Masiuddin's case (supra)** it was held that a license may be cancelled, inter alia on the ground that it is necessary for the security of the public peace or for public safety, to do so. Mere existence of enmity between the licensee and another person would not establish the necessary connection with security of public peace or public safety.

13. In **Sheo Prasad Misra Vs. The District Magistrate Basti and others reported in 1978 Allahabad Weekly Cases, 122, (D.B.)** this Court after considering **Masiuddin case (supra)** held in paragraph 4 which is reproduced as under:

"4. Learned Counsel for the petitioner contended that, while there was material before the licencing authority, viz., the District Magistrate, to show that some reports had been lodged against the petitioner, there was neither any material to warrant a conclusion that it was necessary to cancel the licence for security of public peace or public safety nor was a finding to that effect recorded. Learned Counsel referred us to a decision of this Court in case of Masi Uddin v. Commissioner, Allahabad, 1972 ALJ 572, where this Court held:

"A licence may be cancelled, inter alia, on the ground that it is "necessary for the security of public peace or for public safety, to do so. The District Magistrate has not recorded a finding that it was necessary for the security of the public peace or for public safety to revoke the licend. The mere existence of enmity between a licensee and another person would not establish the "necessary" connection with security of the public peace or public safety."

14. In case before us also the District Magistrate has not recorded any finding that it was necessary to cancel the licence for the security of public peace or for public safety. All that he has done is to have referred to some applications and reports lodged against the petitioner. The mere fact that some reports had been lodged against the petitioner could not form basis for cancelling the licence. The order passed by the District Magistrate and that passed by the Commissioner cannot, therefore, be upheld on the basis of any thing contained in Sections 17(3) (b) of the Act"

15. In **Chhanga Prasad Sahu Vs. State of U.P. and others reported in 1984 AWC 145 (FB)**, after noticing the provisions of Section 17 (3) of the Arms Act the Full Bench in paragraph 5 held as follows:

"A perusal of abovementioned provisions indicates that the licensing authority has been given the power to suspend or revoke an arms licence only if any of the conditions mentioned in sub-clauses (a) to (e) of sub-section (3) of Section 17 of Act exists." sub section (5) of Section 17 makes it obligatory upon

the licensing authority to, while passing the order revoking/suspending an arms licence, record in writing the reasons therefore and to, on demand, furnish a brief statement thereof to the holder of the license unless it considers that it will not be in the public interest to do so."

In paragraph-9 it has been emphasised as under:-

"it is true that in order to revoke/suspend an arms licence, the licensing authority has necessarily to come to the conclusion that the facts justifying revocation/suspension of licence mentioned in grounds (a) to (e) of section 17 exist"

16. In **Ilam Singh v. Commissioner, Meerut Division and others, 1987 ALL. L.J. 416**, this Court held that under Section 17(3) (b) the licencing authority may suspend or revoke a licence if it becomes necessary for the security of public peace or public safety. In this case no report was lodged against the licensee indicating that he had used the gun in the incident which led to the breach of public peace or public safety. It was held that there must be some positive incident in which the petitioner participated and used his gun which led to breach of public peace or public safety and in the absence of the use of the gun by the licensee against the security of public peace or public safety the licence of the gun could not be suspended or revoked. The relevant paragraphs 4 and 5 of the judgment in **Ilam Singh (supra)** are being reproduced as under:

"4. Having heard the learned counsel for the petitioner I am of the view that the submissions raised by the learned counsel for the petitioner cannot be said to be without substance. Section 17(3) (b) of the Arms Act enacts that licensing authority may by order in writing suspend a licence or revoke the same if it becomes necessary for the security of public peace or the public safety. When once a person has been granted a licence and he acquires a gun, it becomes one of his properties. In the present case no incident of breach of security of the public peace or public sfety at the behest of the petitioner has been pointed out. Even no report was lodged against the petitioner indicating that he used his gun in the incident which led to the breach of public peace or public safety. Even though some reports might have been lodged but that could not be said to be a sufficient reason to cancel the licence."

5. There must be some positive incident in which the petitioner participated and used his gun which led to the breach of the public peace or public safety. In the absence of the use of the gun by the petitioner against the security of public peace or public safety the licence of the gun of the petitioner was not liable either to be suspended or revoked. The licensing authority as well as the Commissioner committed errors on the

face of the record in cancelling the licence of the gun held by the petitioner in utter disregard of the provisions of Section 17 (3) (b) of the Arms Act. In view of these facts the impugned orders cannot be sustained and deserves to be quashed."

17. In **Habib v. State of U.P. and others [2002 (44) ACC 783]** this Court held that mere involvement in a criminal case cannot in any way affect the public security or public interest and the order cancelling or revoking licence of fire arm was not justified. Paragraph 3 of this judgment reads as under:

"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 Vs. 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 fire arm has been set aside."

18. In *Satish Singh v. District Magistrate, Sultanpur* 2009 (4) ADJ 33 (LB), this Court elaborately explained what is detrimental to the security of the public peace or public safety and held that mere involvement in criminal case cannot in any way affect the public security or public interest. Paragraphs 6 and 7 of **Satish Singh case (supra)** are being reproduced as under:

"6. A plain reading of section 17 indicates that the arms licence can be cancelled or suspended on the ground that the licensing authority deems it necessary for security of the public peace or the public safety. In the present case, while passing the impugned order, neither the District Magistrate nor the appellate authority has recorded the finding as to how and under what circumstance, the possession of arms licence by the petitioner, is detrimental to the public peace or the public security and safety. Merely because criminal case is pending more so, does not seem to attract the provisions of section 17 of the Arms Act. To attract the provisions of section 17 of the Arms Act with regard to public peace, security and safety it shall always be incumbent on the authorities to record a finding that how, under what circumstances and what manner, the possession of arms licence shall be detrimental to public peace, safety and security. In absence of such finding merely on the ground that a criminal case is pending without any mitigating circumstances with regard to endanger of public peace, safety and security, the provisions contained under Section 17 of the Arms Act, shall not satisfy."

7. Needless to say that right to life and liberty are guaranteed under Article 21 of the Constitution of India and the arms licences are granted for personal safety and security after due inquiry by the authorities in accordance with the provisions contained in Arms Act, 1959. The provisions of section 17 of the Arms Act with regard to suspension or cancellation of arms licence cannot be invoked lightly in an arbitrary manner. The provisions contained under Section 17 of the Arms Act should be construed strictly and not liberally. The conditions provided therein, should be satisfied by the authorities before proceeding ahead to cancel or suspend an arms licence. We may take notice of the fact that any reason whatsoever, the crime rate is raising day by day. The Government is not in a position to provide security to each and every person individually. Right to possess arms is statutory right but right to life and liberty is fundamental guaranteed by Article 21 of the Constitution of India. Corollary to it, it is citizen's right to possess firearms for their personal safety to save their family from miscreants. It is often said that ordinarily in a civilised society, only civilised persons require arms licence for their safety and security and not the criminals. Of course, in case the government feels that arms licence are abused for oblique motive or criminal activities, then appropriate measures may be adopted to check such mal-practice. But arms licence should not be suspended in a routine manner mechanically, without application of mind and keeping in view the letter and spirit of Section 17 of the Arms Act."

19. In **Vishal Varshney Vs. State of U.P. and another [2009 (75) ALR 593]** this Court held that cancellation of a fire arm licence merely on the ground of apprehension or likelihood of misuse of fire arm is illegal. In **Jageshwar Vs. State of U.P. and others 2009 (67) Allahabad Criminal Cases 157** this court held that in view of the settled law the licence under the Arms Act cannot be suspended on the ground of mere involvement in a criminal case or criminal trial or on the basis of mere apprehension of misuse of fire arm by the licensee.

20. In **Thakur Prasad Vs. State of U.P. and others reported 2013(31) LCD 1460 (LB)** this Court after referring to the earlier pronouncements in the case of **Ram Murli Madhukar Vs. District Magistrate, Sitapur [1998 (16) LCD 905]** and **Habib Vs. State of U.P., 2002 ACC 783**, held in paragraphs 10 and 11 as follows:

"10. "Public peace" or "public safety" do not mean ordinary disturbance of law and order public safety means safety of the public at large and not safety of few persons only and before passing of the order of cancellation of arm license as per Section 17 (3) of the Act the Licensing Authority is under an

obligation to apply his mind to the question as to whether there was eminent danger to public peace and safety involved in the case in view of the judgment given by this court in the case of Ram Murli Madhukar v. District Magistrate, Sitapur [1998 916) LCD 905], wherein it has been held that license can not be suspended or revoked on the ground of public interest (Jan-hit) merely on the registration of an F.I.R. and pendency of a criminal case."

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 Others, 1978 AWC 122, wherein the Division Bench relying upon the earlier decision in Masi Uddin Vs. 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 deserves 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."

21. Thus, it has been held by this Court that "Public peace" or "public safety" do not mean ordinary disturbance of law and order. Public safety means safety of the public at large and not safety of few persons only. The Licensing Authority is under an obligation to apply his mind to the question as to whether there was eminent danger to public peace and public safety before passing the order under Section 17 (3) of the Act.

22. In **Chandrabali Tewari v. The Commissioner, Faizabad [2014 (32) LCD 1696]** this Court again held that mere pendency of criminal case is no ground to cancel fire arm licence. It has also been held that as in that case there were no allegations that the licenced gun was ever taken out by the licensee and was used in the act, the order cancelling

petitioner's fire arm licence was quashed. Paragraph 12 of the said judgment is being reproduced as under:

"12. In the case reported in [2012 (79) ACC 824] Allahabad High Court, Civil Misc. Writ Petition No. 30724 of 1999 His Lordship has observed as follows:

"However, the impugned order nowhere indicates that the petitioner had used his licensed firearm or for that matter any firearm at all. The allegation in the impugned order is of physical assault (without use of firearm) and use of abusive language. Such an allegation, in my opinion cannot be the foundation of an impression by the District Magistrate that the petitioner, if allowed to retain his firearm license, would be a threat to future public peace and order."

23. In **Hari Prasad Vs. State of U.P. and others (supra)** judgments cited by learned counsel for the petitioner this Court held in paragraph Nos. 4 and 5 as under:-

"4. It is apparent from the record that the aforesaid finding is perverse and against the record as the petitioner has already been acquitted in Case Crime No. 170/93. The non-cognizance report No. 242/96 dated 7.9.1996 under Sections 252 and 504 I.P.C. was also not investigated. Involvement and pendency of a case crime is no ground for cancellation of fire-arm licence. It is settled law, that after acquittal the very basis for cancellation of the arms licence stands vitiated. In this regard reference of the decision rendered in Lalji v. Commissioner, Kanpur and Anr. MANU/UP.0661/1999 has been made.

5. 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 Section 17 of the Arms Act has been considered by a Division Bench of this Court in Sheo Prasad Misra v. The District Magistrate Basti and others, 1979 (16) ACC 6 (Sum) wherein the Division Bench relied upon an earlier decision in Masi Uddin v. Commissioner, Allahabad, 1972 ALJ 573. In both the aforesaid cases it has been held mere involvement in a criminal case cannot in any way affect the public security or public interest. In view of this proposition of law the order cancelling or revoking the licence of the petitioner or the aforesaid ground of involvement and pendency of a criminal case is not tenable."

24. This Court in the case of **Ram Prasad Vs. Commissioner and Others, AIR Online 2020 All 190**, after discussion catena of judgments, in para 35 has outlined various proposition of law required to be followed by the licensing authority while cancelling a fire arm licence. Para 35 of the said judgment is quoted herein below :-

"(35) From the aforesaid judgments some of the following propositions of law may be summarized as under:

(i) Right to hold fire arm licence granted by the authorities in accordance with the provisions contained in the Arms Act, 1959 is a valuable right of an individual.

(ii) Licencing authority has the power to suspend or revoke an arm's licence only if any of the conditions mentioned in Sub-Clauses (a) to (e) of Sub Section (3) of Section 17 of the Arms Act exists.

(iii) The provisions of Section 17 of the Act cannot be invoked lightly in an arbitrary manner.

(iv) The licencing authority has to satisfy itself if it is necessary for the security of public peace or for public safety to suspend or revoke the licence.

(v) Such satisfaction of the licencing authority must be expressed in the order and must be based on relevant material.

(vi) Public peace or public safety do not mean ordinary disturbance of law and order. Public safety means safety of the public at large and not of few persons only.

(vii) Mere involvement or pendency of a criminal case does not, of its own, necessarily affect public peace or public safety. The licencing authority in each case has to record a finding as to how and under what circumstances the possession of the arm licence is detrimental to the public peace or public safety.

(viii) On mere apprehension of misuse of fire arm or that the licensee would extend threat to the persons of the weaker section, the arm licence cannot be cancelled. There must be some positive incident in which the licensee participated or used his arm, leading to breach of public peace or public security.

(ix) After acquittal of the licensee from the criminal case, the very basis of cancellation of arm licence is vanished."

25. In the present case the petitioner's licence was cancelled by the District Magistrate on the ground of pendency of criminal cases against him. The petitioner was later on acquitted of the criminal cases by orders dated 30.03.1999 and 25.03.1995. A perusal of the order of acquittal does not show the use of fire arm. After acquittal the very basis of the order of cancellation vanished. The finding of the District Magistrate as affirmed by the Commissioner, that it was not in the interest of public peace and the public security that the licence remained with the petitioner/licensee, is not based on any evidence/material, except the police reports which in their turn were in view of the pendency of the criminal cases against the petitioner. On mere

apprehension expressed in the impugned orders that the petitioner would misuse the fire arm and would extend threat to the persons of the weaker section of the society, the arm licence could not be cancelled.

26. I do not find any substance in the submission advanced by learned Standing Counsel in support of the impugned orders, in view of the above discussion.

27. The writ petition deserves to be allowed and is hereby allowed. The orders impugned dated 21.12.2009 and 11.03.2010 are quashed. However, quashing of the impugned orders would not result in revival of the petitioner's fire arm licence automatically. The petitioner may apply for arm licence afresh under the Arms Act, 1959 read with Arms Rules, 2016 before the Licencing Authority, along with a certified copy of this Judgment, if so desires, to have the arm licence. If any such application is filed before the licencing authority, the same shall be considered and decided expeditiously by the licencing authority strictly in accordance with law but the licencing authority shall not refuse the arm licence on the ground of the impugned orders which have been quashed by this judgment.

28. Writ petition is **allowed**.

Order Date :- 4.1.2024

A. Verma

(Alok Mathur, J.)