

Court No. - 6

Case :- WRIT - C No. - 1004261 of 2011

Petitioner :- Nazmul S/O Noor Hasan

Respondent :- Commissioner Lucknow Division Lucknow And Another

Counsel for Petitioner :- J.P. Narayan Vajpayee, Chhatrapal Rawat, Dilip Kumar Pandey, Praveen Kumar Sharma, Umesh Chandra Vishwakarma

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Shri Dilip Pandey, learned counsel for petitioner, learned Standing Counsel for the State and perused the material available on record.

2. By means of the present writ petition, the petitioner has challenged the order dated 10.12.2010 passed by the District Magistrate, Hardoi in exercise of powers under Section 17 (3) of the Arms Act, 1959 thereby cancelling the arm licence issued in favour of the petitioner, he further assailed the order dated 16.03.2011 passed by the Commissioner, Lucknow Division, Lucknow thereby rejecting the appeal of the petitioner against the order of the District Magistrate, Lucknow.

3. It has been submitted by learned counsel for petitioner that the petitioner was issued an arm licence for SBBL with Licence No. 6469 and Arm No. 158. Subsequently, he was served with a show cause notice on 05.06.2007 asking him to respond as to why his licence be not cancelled considering the fact that he has misused his arm licence and five cases have been registered against him, namely, (i) Case Crime No. 287 of 2007, under Sections 147, 148, 149, 307, 323, 336, 332, 353 and 427 IPC,

and Section 7 of the Criminal Law Amendment Act, (ii) Case Crime No. 39-A of 1999 under Section 324 IPC, (iii) Case Crime No. 20 of 2004, under Sections 147, 148, 149 and 307 IPC, (iv) Case Crime No. 247 of 2004, under Section 3/4 of the Dowry Prohibition Act and lastly a case was lodged under the Goonda Act. The petitioner duly responded to the said notice issued by the District Magistrate, Hardoi and submitted that the criminal cases have been lodged against the petitioner are false and politically motivated and he has not misused his weapon since the date of its issuance and accordingly prayed for discharge of the said notice.

4. The Licensing Authority/District Magistrate, Hardoi by means of order dated 10.12.2010 was of the view that the petitioner has misused his arm licence, inasmuch as, according to the FIR, in Case Crime No. 287 of 2007, under Sections 147, 148, 149, 307, 323, 336, 332, 353 and 427 IPC, and Section 7 of the Criminal Law Amendment Act, it was found that when the demolition drive was being carried out by the officers of the Nagar Palika, then the petitioner including number of other persons had gathered and attacked the public official and restrained them from discharge of the public function and also used his licensed weapon, which had hit the police vehicle and had damaged the same. It is in regard of the said offence that the Licensing Authority was of the view that the condition prescribed under Section 17 (3) (b) of the Arms Act, 1959 pertaining to the fact that wherever a case is made out with regard to the public peace and public safety, the Licensing Authority is vested with the power to suspend and revoke the licence. He further considered the fact that there are number of cases registered against the petitioner and there are further allegations in Case Crime No. 39-A of 1999 in relation to the petitioner for illegally use of weapon, he was of the view that

the conditions for exercise of powers under Section 17 (3) of the Arms Act, 1959 are made out and consequently cancelled his arm licence.

5. Against the order of cancellation of arm licence, the petitioner preferred an appeal before the Commissioner, Lucknow Division, Lucknow. The appellate authority also went through the entire record and also contents of the criminal cases registered against the petitioner and was of the view that the findings recorded by the District Magistrate, Hardoi in its order dated 10.12.2010 did not suffer from any infirmity and consequently while rejecting the said appeal, affirmed the findings recorded by the Licensing Authority.

6. The petitioner while assailing both the said orders, has submitted that the main ground for cancellation of arm licence is the alleged involvement of the petitioner in Case Crime No. 287 of 2007, under Sections 147, 148, 149, 307, 323, 336, 332, 353 and 427 IPC, and Section 7 of the Criminal Law Amendment Act where there was allegation against the petitioner for misuse of weapon and fired at the public officials, who were carried out public duties for demolition of illegal structures. In this regard, he submitted that the trial was conducted by the Special Judge, (SC/ST Act), Hardoi and by means of order dated 16.11.2013, the offences were not established against the petitioner and he was acquitted by giving them the benefit of doubt. He submits that once the petitioner has been acquitted by means of order dated 16.11.2013 then on this ground alone, the order of cancellation and order of appellate authority deserves to be set aside.

7. Learned counsel for the petitioner submits that with relation to FIR in Case Crime No. 39-A of 1999, the complainant had turned hostile and consequently, giving him benefit of the same,

the petitioner was acquitted. It is submitted that the remaining cases are still pending consideration. Learned counsel for petitioner has submitted that once the petitioner has been acquitted in Case Crime No. 287 of 2007 as well as Case Crime No. 39-A of 1999 and remaining cases are pending consideration at the trial stage, it cannot be said that the petitioner is a criminal minded person, consequently no proceedings should have been initiated under Section 17 of the Arms Act, 1959.

8. Learned Standing Counsel for the State on the other hand has opposed the writ petition. He submits that undoubtedly, it is correct that there are numbers of judgment of this Court holding that merely on the basis of pendency of criminal cases, a fire arm licence cannot be cancelled. He further submits that in the present case, the arm licence has not been cancelled merely on account of the pendency of the criminal cases but because misuse of the arm licence has provided for under Section 17 (3) (b) of the Arms Act, 1959. He submits that sufficient power has been vested in the Licensing Authority in cases where he satisfied that there is breach of security of the public peace or public safety. The arm licence has been clearly misused by the petitioner and after giving due opportunity to the licensee, he may revoke or suspend the arms licence granted.

9. He submits that in the present case, an FIR in Case Crime No. 287 of 2007 was lodged relation to an incident dated 17.05.2007 where the Municipal authorities along with officials were proceeding to demolish the illegal structure. According to the allegations contained therein, the petitioner along with several other persons were present with their licensed weapon and had fired upon the public official so as to prevent them from carrying out the public duties and demolishing the illegal structure. It was in that incident that it has alleged that the

petitioner had fired upon the public vehicle (police vehicle). Considering this to be a serious infraction in terms of the licence issued to the petitioner, notices were issued. He further submits that during the trial also number of persons, who had been injured, had been examined. He states that the evidence under Section 161 Cr.P.C. was duly recorded by the police authorities where also involvement of the said incident was verified but subsequently a different version of the story was given by the witnesses. Consequently, the trial court was of the view that there was no sufficient evidence and only benefit of doubt was given to the petitioner as there was no sufficient evidence to bring home the charges levelled against him. He has also submitted that the licence was cancelled in 2010 when only the FIR had been lodged and the licence was cancelled after following the due procedure. Acquittal in criminal case would not have the effect of nullifying the order of cancellation of arm licence passed after following the procedure prescribed by law.

10. Learned Standing Counsel submits that it was not a clean acquittal but only the benefit of doubt was given to the petitioner and consequently, it cannot be said that the petitioner was not involved in the incident, which occurred on 17.05.2007. He further submits that firing upon public officials is a serious offence and the Licensing Authority has duly satisfied himself in this regard as would be evident from the impugned orders and consequently, submits that there is no infirmity in the same.

11. He further submits that with regard to the Case Crime No.39-A of 1999, the complainant himself had turned hostile and accordingly, benefit of such an acquittal cannot be taken by the petitioner for assailing the order of cancellation of the arm licence.

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

13. According to the impugned order dated 10.12.2010, there was an allegation against the petitioner with regard to his involvement in Case Crime No. 287 of 2007, under Sections 147, 148, 149, 307, 323, 336, 332, 353 and 427 IPC, and Section 7 of the Criminal Law Amendment Act. In the said case, it was alleged that the team of officials of the Nagar Palika had proceeded to demolish certain illegal structures where a lot of public had gathered including the petitioner with their firearms. Apart from the brick backs, the public officials were fired upon where the petitioner is also alleged to have fired and consequently an FIR was lodged and also notice under Section 17 of the Arms Act, 1959 was given to the petitioner seeking his response as to why his arm licence be not cancelled.

14. The petitioner had objected to the show cause notice and denied his involvement in the said incident and also submitted that the allegations against the petitioner are politically motivated. The Licensing Authority, considering the allegations contained in Case Crime No. 287 of 2007, under Sections 147, 148, 149, 307, 323, 336, 332, 353 and 427 IPC, and Section 7 of the Criminal Law Amendment Act as well as other four cases registered against the petitioner, was of the considered view that permitting the petitioner to retain the arm licence would endanger the public peace and safety and consequently was also of the view that there is violation of condition prescribed under Section 17 (3) (b) of the Arms Act, 1959 are fulfilled and consequently proceeded to cancel the said licence. The appellate authority has also confirmed the findings. Considering the arguments of learned counsel for petitioner, this Court is of the considered case it is not a case where the arm licence of the petitioner has been cancelled only on the grounds of pendency

of criminal cases.

15. In the present case, there are clear allegations of misuse of firearm licence by the petitioner petitioner, inasmuch as, he is said to have fired upon the public officials. Firing upon the public officials is a serious offence and if a satisfaction has been recorded by the Licensing Authority, then it would be a condition sufficient itself to cancel the arm licence. The judgments referred to by the petitioner questioning the case of ***Rajeev Kumar alias Monu Shukla Vs. State of U.P. and others passed in Writ C No. 31473 of 2019***, this Court was to ascertain as to whether the arm licence can be cancelled in public interest or due to pendency of the criminal case against the petitioner only apprehension of misuse of arm which may endanger public peace or safety. In those cases, this Court was of the view that none of the ground were made out and consequently, had proceeded to set aside the order of cancellation of the arm licence. The facts in the present case are are substantially at variance with the facts on which the aforesaid judgment was rendered.

16. In the present case there are clear allegations against the petitioner for having use his firearm against the public officials, who were carrying out public duty. This Court is of the considered view that this allegation is substantiated and a satisfaction is recorded that certainly provisions of Section 17 (3) (b) of the Arms Act, 1959 would be made out and Licensing Authority would be justified and competent to pass such an order.

17. The other aspect of this case is that the incident is said to have occurred on 17.05.2007 and impugned order of cancellation has been passed on 10.12.2010. The acquittal order has been passed after the cancellation of the arm licence on

16.11.2013. It is not the case of the petitioner that unless and until the trial is concluded, the power under Section 17 (3) of the Arms Act 1959 cannot be exercised. The proceedings of trial are totally on a different footing than are under Sections 17 of the Arms Act, 1959, where licence can be cancelled on the satisfaction of the Licensing Authority. While exercise powers under Section 17 (3) of the Act of 1959 a subjecting satisfaction has to be recorded by the Licensing Authority with regard to the existence of conditions required for cancellation of licence as provided in sections of Section 17 of the Act of 1959. While during trial the Court has to satisfy that prosecution has proved their case beyond reasonable doubt to record a conviction.

18. Learned counsel for petitioner has submitted that at the relevant point of time, the petitioner had deposited his gun before the arms dealer. It is noticed that neither this point was raised before the Licensing Authority nor at the stage of appellate authority and has been raised for the first time before this Court in the present writ petition. These facts were never subjected to examination by the competent authority. This Court while exercising jurisdiction under Article 226 of the Constitution of India, this Court has limited jurisdiction of examining validity of the orders passed by the authorities. A new question of fact cannot be entertained for the first time in writ jurisdiction under Article 226 of the Constitution of India unless and until the fact is uncontroverted or is of such nature that it itself reflects in truthfulness or sterling quality without any further examinations and the petitioner has been able to demonstrate cogent reasons to the satisfaction of the Court for not adducing before the authorities below. It is only in the limited sphere that in very special circumstances fresh facts can be considered in writ petition assailing the order of statutory appellate authorities. In the present case, no reason has been

stated for not adducing the evidence before the District Magistrate or the appellate authority for deposit of the arm with the dealer, and even the document cannot be relied upon as the same is not a receipt issued by the dealer. He even did not take this plea before the trial court and hence this piece of evidence is not reliable, and is not of such nature or can be considered for the first time in a writ under Article 226/227 of the Constitution of India.

19. I do not subscribe to the arguments of petitioner that unless and until there is a conviction with regard to the criminal case lodged against the licensee, the arm licence cannot be cancelled. There is no connection between exercise of power under Section 17 (3) of the Act 1959 and secure a conviction in the trial in relation to the criminal case lodged against the licensee. This Court is of the considered view that the acquittal in the present case, which was much subsequent to the cancellation of the arm licence would not have bearing about the validity of the order of cancellation dated 10.12.2010.

20. I have gone through the order of the Licensing Authority and have satisfied that he has duly considered the existing conditions for exercising the powers and duly recorded the satisfaction in this regard.

21. In light of the above, no ground for interference is made out. Accordingly, the writ petition is dismissed.

(Alok Mathur, J.)

Order Date :- 24.1.2024

Virendra