

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.5175 of 1999**

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1. Gauri Shankar Pandey son of Late Nand Kishore Pandey, R/o village Baghelwan, P.S. Rajpur District Buxar.
  2. Sadan Roy, son of Ram Naresh Roy, R/o village Harpur P.S./ Rajpur District Buxar.

.... .... Petitioner/s

Versus

The State of Bihar & Ors

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. SACHCHIDANAND CHOUDHARY

For the Respondent/s : Mr. (SC2)  
Mr. (Ga3)  
Mr. (Ga2)

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**

**ORAL JUDGMENT**

**Date: 09-03-2015**

Heard counsel for the petitioners and the State.

In this case, petitioners are challenging the order 13<sup>th</sup> May 1997 passed by the Commissioner.

It appears from the record of the case that petitioner no.1 was granted licence of rifle vide licence No. 144 of 1984 of 0.315 bore. Petitioner no.2 was granted licence of rifle vide licence no. 31 of 1983 of 0.315 bore and both of them purchased rifle of 0.315 bore bearing No. 831292 2OF and AB 830014/80F.

Petitioners along with Chandrahas Roy was intercepted by Police and asked them to show their licence thereupon they said that the Police arbitrarily arrested and sent them in judicial custody. Police has lodged an FIR where it has been mentioned that the petitioners were coming along with one Ram Kumar Upadhyaya who was released on bail from Buxar Jail and the petitioners were giving them security coverage.



When they failed to produce the licence, Police registered G.R.No. 1496 of 1986 u/s 25(A) of the Arms Act. The case was tried by SDJM, Buxar. In the mean time, the District Magistrate initiated a proceeding for cancellation of licence against both the petitioners, accordingly show cause was issued, after considering the reply, he cancelled the licence of the petitioners on the ground of providing a safe passage to Ram Kumar Upadhyaya made them disentitled for holding the rifle. The order of the Collector was challenged before the Commissioner who also affirmed the order.

The said order of the Commissioner was challenged before this Court in CWJC No. 7987 of 1994 (Annexure-6) and this Court vide order dated 28<sup>th</sup> September 1995 did find error in the order and set aside the same. While setting aside the order, this Court has said that from the impugned order, it does not appear that the licenses were cancelled on the ground that there was any misuse of firearm or any criminal case was pending. If only ground for cancellation of licence was pendency of criminal case, petitioners were entitled to get it revoked after the acquittal order was passed in their favour.

After the remand, the case was registered as Case No. 17 of 1995. The Collector has again taken a view that the petitioners are not entitled to licence as apart from GR No.1496/86, petitioners were also accused in Rajpur P.S.Case No. 98 of 1984 registered under sections 147, 148, 149, 341, 302 IPC in which charge-sheet has been submitted whereas Sadan Rai, Petitioner no.2 was also an accused in Rajpur P.S.Case No.92 of 1984 and charge-sheet has been submitted against them. So much so, both petitioners are accused in Dumraon P.S. 163 of 1986 and in addition to that Gauri Shankar Pandey, petitioner no.1 is also an accused in Rajpur P.S.Case No. 98 of 1984, as well as Rajpur P.S.Case No.92 of 1984.

The order passed by the Collector was challenged before the Commissioner in Case No. 82 of 1992 and the Commissioner has affirmed the order passed by the Collector.

If other criminal cases are pending against them before passing the order of cancellation of their licence, they should have been afforded opportunity informing them about the pendency of criminal case and without informing them the order could not have been passed. It does not appear from the record, before passing the order, the District Magistrate on any occasion sought reply with regard to pendency of aforesaid criminal case pending against them.

This Court is of the view that the Collector and the Commissioner have committed procedural irregularity in passing the order against the petitioners. Accordingly, the order of the Collector (nnexure-7) and the Commissioner (Annexure-8) are hereby quashed and the matter is remanded back to the Collector with a direction, if he still intends to cancel the licence, he must serve show cause giving description of pendency of criminal case and after following the due process of law, may pass appropriate orders.

With this observation, this petition is allowed.

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**(Shivaji Pandey, J)**