

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8036 of 1997

Basudeo Prasad son of Sri Deo Narayan Prasad, resident of village- Laduhari,
P.S.Ekangarsarai, District- Nalanda.

.... Petitioner/s

Versus

- 1.The State of Bihar
2. The Commissioner, Patna Division, Patna.
- 3.The District Magistrate, Nalanda.
4. The Sub-divisional Officer, Hilsa, Nalanda.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Nand Kishore Prasad 2
Mr. Vishwanath Prasad
Mr. Bindeshwar Prasad
For the State : Mr. Syed Arshad Alam, S.C.-3
Mr. Mahtab Alam,A.C. to S.C.3

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 12-02-2015

Heard learned counsel for the petitioner and the State.

In this case the petitioner is challenging the order of District Magistrate, Nalanda, dated 30th September, 1995, cancelling Arms License No.3 of 1991 bearing Arms No. 93/2436 in Arms Case No. 156 of 1995-96 and the order of the Commissioner, Patna Division, dated 03.09.1996 passed in Arms Appeal No. 269 of 1995 affirming the order of District Magistrate, Nalanda.

In 1995 General Assembly Election of Hilsa constituency, the petitioner has deposited the arms, which was ordered to be returned on observation made by the Hon'ble High Court in the case of Md. Khurshid Alam –v- Chief Election Commissioner reported in 1995(1)PLJR 683.

Again a notice was issued to the petitioner during bye election of Hilsa constituency from 28.01.1995 to 03.02. 1995 to deposit the arms. On non compliance, a proceeding for cancellation of license was initiated vide Arms

Case No. 156 of 1995-96. The petitioner filed a show cause. He has taken a plea that he was out of his village in connection with the marriage of his daughter and as such he could not receive notice in time and became unable to comply with the order of the Court.

The Collector, by the impugned order, did not accept the plea of the petitioner. On appeal also he could not succeed.

It appears that when General Assembly Election was held, he had deposited his arms. In the light of judgment passed by this Court, the petitioner has withdrawn his arms from police station. Explanation has been given about his engagement in connection with his daughter's marriage on the eve of bye election as the same was counter manded on account of death of a candidate. The Collector has not discussed the plea taken by the petitioner in his order so much so in General Assembly Election the petitioner has deposited his gun on account of direction of District Magistrate and there is no allegation that he has ever misused his gun or a third party has used the gun.

Section 17(3) (2) provides that the licensing authority may by order in writing suspend the license for the said period as it thinks fit or revoke a license. If the holder of license has failed to comply with a notice under sub-section (1) requiring him to deliver up the license.

The order of District Magistrate to cancel his license of gun ipso facto without considering his defence, cannot be said to be justified.

In view of the aforesaid the manner in which the Collector has rejected the application and cancelled his license without application of his mind; reasons are not germane to the facts and circumstances of the case and he has wrongly exercised his discretion. The Commissioner has committed same mistake while passing the order.

Accordingly, the order of the Collector, Nalanda, dated 30th September, 1995 passed in Arms Case No. 156 of 1995-96 and the order of the Commissioner, Patna Division, dated 03.09.1996 passed in Arms Appeal No. 269 of 1995 are hereby quashed and the matter is remanded back to the Collector, Nalanda, for passing the fresh order.

The writ petition is allowed.

(Shivaji Pandey, J)

singh/-

U			
---	--	--	--