

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20840 of 2014

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Ajay Kumar Singh son of Late Shyamli Singh Resident of village Sethna
Salaunja, P.S. Halsi, District Lakhisarai.

.... Petitioner

Versus

1. The State of Bihar
2. The District Magistrate Lakhisarai District Lakhisarai.
3. The District Arms Magistrate Lakhisarai District Lakhisarai.
4. The In-charge Officer District Arms Magistrate, Lakhisarai.
5. The Superintendent of Police Lakhisarai District Lakhisarai.
6. The officer-in charge halsi Police Station District Lakhisarai.

.... Respondents

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Appearance :

For the Petitioner : Mr. Arun Kumar,
Mr. Ram Vinay Pd. Singh @ Sanjay, Advocates
For the State : Mr. Purnendu Singh, GP27,
Mr. Rakesh Kumar Sharma, A.C. to G.P. 27

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 24-09-2015

I have heard learned counsel for the petitioner and the State and perused the records of this case and original records produced by the District Arms Magistrate, Lakhisarai who is present in person.

Petitioner has challenged Annexure 2 dated 23.2.2010 which is a notice issued by the I/c District Arms Magistrate, Lakhisarai to the petitioner informing him that in view of his



involvement in Gandhi Maidan (Patna) P.S. Case No. 215/2010 registered under Sections 420/467/468/471/472 I.P.C. in which he has been made accused, his arms licence has been suspended on 22.10.2010. He has been directed to surrender his licence no. 01/1989 as well as fire arms within two days with the Police Line (Bazar Samiti), Lakhisarai.

The petitioner claims that he had already deposited the arms before the Officer Incharge of Halsi Police Station on the verbal direction earlier given by the Officer Incharge and, thereafter, he has replied to the show cause notice also. It is further contended that he was not named in the first information report but during the course of investigation he has been made accused with allegation that he was also involved in the conspiracy for forging a demand draft. It is contended that this has nothing to do with any fire arms or allegation of causing or attempting any physical injury to any one and as such his license should not have been suspended.

It is further submitted that the petitioner has already been granted anticipatory bail by a Single Bench of this Court and every thing has been informed to the licensing authority. However, no decision has been taken as yet though the Collector has requested the Superintendent of Police to give its opinion regarding recall of the order of suspension and, upon that, the Officer Incharge has opined

that there is no case pending against the petitioner other than the aforesaid case and there is no complaint against the petitioner also regarding any misuse of firearm.

However, at the time of hearing, learned counsel for the petitioner has raised the issue that the order of suspension has not been passed in accordance with the procedure laid down in the Arms Act, 1959 (hereinafter referred to as 'the Act').

Since the order of suspension of his licence of the petitioner, as per his claim, has never been served or communicated upon him and only notice contained in Annexure 2 has been issued, this Court had directed learned counsel for the State to produce the original records of this case which has been produced today which contains the order dated 22.10.2010 passed by the District Magistrate, Lakhisarai taking a decision for suspension of licence of the petitioner in view of his involvement in the aforesaid case and further issuing notice upon him as to why his licence should not be cancelled. However, it does not appear from the order that either any show cause notice was issued in contemplation of suspension of licence or any finding has been recorded by the licensing authority assigning positive reason for taking action of suspension of licence as he has only stated that upon the recommendation of the Superintendent of Police in view of the involvement of the petitioner in the aforesaid case, his licence

has been suspended.

It appears from the order dated 22.10.2010 as well as the notice contained in Annexure 2 that the order of suspension of licence has been passed in a proceeding contemplated for cancellation of his licence. However, learned counsel for the State has not been able to point out any provision either from the Arms Act, 1959 or the Arms Rule 1962 and that order of suspension can be passed in contemplation of a proceeding of cancellation of the licence. However, at the same time it could also not be brought to the notice of this Court by the petitioner that the licensing authority cannot at first stage suspend the licence and, thereafter, again take a decision for cancellation of the licence. Be that as it may, even assuming that he may do so but while doing that, he will have to follow the procedure laid down in Section 17 of the Act. Upon reading of Section 17 of the Act, it appears that the suspension of arms licence is also a punitive/protective measure to be taken by the licensing authority as the same can be done either if the holder of the licence is prohibited by this Act or by any other law to possess/acquire or carry arms and ammunition or in the larger interest of security of public peace or public safety suspension or revocation of licence is required, or licence was obtained upon suppression of material information or if any of the conditions of the licence has been contravened and lastly if



the holder of the licence has failed to comply with a notice under sub-Section (1) requiring him to deliver up the licence. However, while doing so, i.e., while passing the order either for suspension or revocation of the licence he would be obliged to record in writing the reasons thereof and furnish to the holder of the licence on demand of brief statement of the same unless the licensing authority is of the opinion that the same would not be in public interest.

It does not appear that provision of Section 17(5) has been followed while passing the impugned order of the suspension of the licence which merely discloses that the same is being done in view of the recommendation of the Superintendent of Police due to the involvement of the petitioner in Gandhi Maidan P.S. Case No 215/2010.

In my considered view, even before passing of suspension order in the present case, he was required to serve show cause notice upon the petitioner and should have considered the grounds raised by him also. It does not appear that even in the absence of the aforesaid he has applied his mind as he has merely acted upon the report of the Superintendent of Police. In fact there is no provision under Section 17 of the Act for suspension or cancellation of licence due to involvement in the criminal case. However, the matter came up for consideration before a Full Bench



of this Court which had already considered and held that even during the pendency of the criminal case, upon his subjective satisfaction, the licensing authority can vary, suspend or revoke the licence. However, that has been held after strong note of caution that it is not the pendency of every criminal case which would inflexibly warrant the suspension or revocation of a licence validly granted. A criminal case may range from a paltry traffic offence to the most horrendous capital crime. Whilst the pendency of the former may hardly provide an adequate basis under Section 17(3), in the case of the latter, after notice and hearing of the explanation, such action may well become necessary. The Full Bench has further observed that a safeguard has been provided by sub Section (5) of Section 17 so the effect that the licensing authority must record in writing reasons for taking such action and also furnish to the holder of the licence on the demand a brief statement thereof unless in exceptional cases he is of the opinion that it will not be in the public interest. It has been further observed that the requirement of recording reasons in writing is inflexibly mandatory and also, in view of the provisions contained in sub Section (1) of Section 17, he is required to give notice in writing to deliver the licence within such period as may be specified in the event of variation, suspension and revocation of the licence. Notice issued to the petitioner vide Annexure 2 is a notice

in contemplation of cancellation of licence but such notice in contemplation of suspension of licence has admittedly not been issued upon him which is appeared from the original records produced for perusal of this court.

Accordingly, in my view such order of suspension cannot be sustained in law. As a result order of suspension as well as the notice contained in Annexure 2 is quashed and set aside. However, that does not mean that the firearm would be immediately released to the petitioner as licensing authority would be required to take a decision in accordance with law and also in view of the decision of the Full Bench of this Court rendered in **AIR 1987 Pat 122 [Kapildeo Singh vs State Of Bihar And Ors.]** after analyzing the issue as to whether in view of involvement in the case, it would be necessary either for suspending, modifying, varying or revoking of licence. Thereafter, he would be required to take necessary action in accordance with law.

As a result, this writ application stands allowed to the extent as indicated above.

The firearm of the petitioner would not be released till any decision is taken in his favour by the licensing authority. However, it is expected that such decision would be taken within four months from today as the order has been passed in presence of

the District Arms Magistrate, Lakhisarai.



(Dr. Ravi Ranjan, J)

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