

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23 of 2005

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Bindeshwar Rai son of late Bibhikshan Rai, resident of village Bagar, Police Station
Sikaranta, District Bhojpur,

.... Petitioner

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna,
2. The Commissioner, Patna Division, Patna,
3. The District Magistrate, Bhojpur,

.... Respondents

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Appearance :

For the Petitioner : Mr. Ram Suresh Roy, Sr. Advocate,
M/s Binod Kumar Singh and
Gaurav Kumar, Advocate

For the State : Mr. Mukund Mohan Jha, AC to GP 31

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 23-11-2015

I have heard the parties and perused the record.

The order dated 06.01.1998 passed by the District
Magistrate, Bhojpur in Criminal Miscellaneous Case No. 54 of 1997
as well as the order dated 06.07.2004 passed by the appellate
authority, i.e., the Commissioner, Patna Division (respondent no. 2),
as contained in Annexures 3 and 7, respectively, are sought to be
challenged in this writ petition.

By the order dated 06.01.1998(Annexure 3) petitioner's
arms licence no. 150/68 was cancelled by the licensing authority on
the ground that the petitioner is an accused Sikarhatta Police Station
Case No. 3/97 registered under sections 353/307/34 of the Indian
Penal Code and section 27 of the Arms Act. As per the allegation,



there was firing upon the police party from the roof of the house of the petitioner. It also stands stated in the impugned order that the petitioner is a member of the extremist outfit, viz., Ranvir Sena, therefore, the licensing authority opined that it would not be safe in the public interest to continue the arms licence of the petitioner and, accordingly, the same was cancelled. The petitioner challenged the aforesaid order by filing Appeal No. 57 of 1998 which was dismissed vide order dated 08.01.2001 contained in Annexure 4. Then the petitioner approached this Court by filing C.W.J.C. No. 4804 of 2001, which was partly allowed vide order dated 28.01.2004 as contained in Annexure 6. The order of the appellate authority was quashed and the matter was remitted back for reconsideration in accordance with law as the order impugned was found to be a non-speaking one having been passed without discussing the grounds raised by the petitioner. Thereafter, the impugned order as contained in Annexure 7 dated 06.07.2004 came to be passed by the appellate authority again dismissing the appeal holding that whether the licence would be suspended or revoked or would continue is dependent upon the subjective satisfaction of the licensing authority which has held that it would not be appropriate to continue the arms licence in favour of the petitioner.

Mr. Ram Suresh Roy, learned senior counsel for the



petitioner, submits that the licence of the petitioner was granted in the year 1968 and till the lodgment of Sikarhatta Police Station Case No. 3/97 there was no complaint at all against the petitioner. It is further contended that, in the aforesaid matter, a court of competent jurisdiction has already rendered a judgment of acquittal in favour of the accused persons including the petitioner. A copy of the judgment has been appended as Annexure 5 to the writ petition. Mr. Roy further submits that the appellate authority has brushed aside the issue by saying that the acquittal in the aforesaid case would not be sufficient for restoring the licence as the same depends upon the subjective satisfaction of the licensing authority.

A counter affidavit has been filed on behalf of the respondents supporting the decision of the authorities.

I find force in the submission made on behalf of the petitioner. From perusal of the impugned order as contained in Annexure 3, it appears that the basis of cancellation of licence was the petitioner's involvement in the criminal case which has led to lodgment of Sikarhatta Police Station Case No. 3/97. It also stands stated in the order that the petitioner is a member of the extremist outfit, namely, Ranvir Sena, however, there is no iota of evidence either considered in the impugned order or in the counter affidavit filed on behalf of the State disclosing as to how one can come to



such conclusion. Admittedly, there was no case registered prior to the aforesaid Sikarhatta Police Station Case No. 3/97 against the petitioner when the licence of the gun was granted in the year 1968. So far the aforesaid case is concerned, after the acquittal of the petitioner in the case, that cannot be made a basis for non-grant of licence to the petitioner.

This Court in **C.W.J.C. No. 6661 of 2013 (Lalan Singh v. The State of Bihar and others)** disposed of on 15.09.2015 has already held that the judgment passed by the courts of competent jurisdiction cannot be brushed aside in that manner by the statutory authorities because the same, not having been altered or set aside by the superior court, attains finality. However, the question is that at the time of passing of the order by the licensing authority in the year 1998 the judgment of acquittal was not there. Therefore, in my view, since the petitioner was involved in a criminal case of serious nature, that order cannot be faulted with. But now the situation has changed as the petitioner has been acquitted of the charges, therefore, this Court is inclined to dispose of the writ petition without setting aside the impugned order granting liberty to the petitioner for approaching the licensing authority for grant of fresh licence which should be considered and decided by the licensing authority in accordance with law but it should be kept in mind that the order of cancellation of

licence of the petitioner and its affirmation in appeal would not form a basis for rejection of grant of licence to the petitioner as the petitioner has been acquitted of the charges by a court of competent court of criminal jurisdiction.

At this juncture, Mr. Roy, learned senior counsel, submits that the petitioner might have reached the age of about 75 years and, thus, he may intend that his gun, which has been seized and is in statutory custody, should be released in favour of his son.

In such a situation, this Court would grant liberty to such heir or legal representative of the petitioner, who is eligible for the same under Family Heirloom Policy, to apply for arm licence. In case such application is filed, the matter should be considered by the licensing authority without being prejudiced by the earlier order of cancellation of licence of the petitioner in the facts and circumstances of the case and in view of the observation made above by this Court and also considering the Family Heirloom Policy.

Accordingly, this writ application stands disposed of.

(Dr. Ravi Ranjan, J)

SC/-

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