

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5981 of 2014

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Durga Singh son of Late Kalika Singh, resident of Village Nagpur, P.S.
Rajpur District Buxar

.... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Patna Division, Patna
3. The District Magistrate, Buxar, at Buxar

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Shri Prakash Shrivastava, Advocate
Mr. Shashank Shekhar Sinha, Advocate
For the Respondent/s : Mr. Devendra Kr Sinha, AAG-2
Mr. Abhinav Raj, A.C. to A.A.G.-2

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

5 11-02-2015 Heard Mr. Shri Prakash Shrivastava for the petitioner
and Mr. Abhinav Raj, Assisting Counsel to A.A.G.-2 for the State.

The petitioner is aggrieved by the order dated 16.1.2014 passed by the Commissioner, Patna Division, Patna in Arms Appeal No. 110 of 2009 whereby the Commissioner as an appellate authority under the Arms Act, 1959 (hereinafter referred to as 'the Act') and the rules framed thereunder while dismissing the appeal has affirmed the order dated 31.3.2009 passed by the licensing authority i.e. the District Magistrate, Buxar whereby the license of the fire arm granted to the petitioner, has been cancelled.

Facts of the case briefly stated is that following an



institution of an FIR against the petitioner and some others giving rise to Rajpur P.S. Case No. 117 of 2007 registered for offences punishable under Sections 323, 341, 307, 447, 448/34 of the Indian Penal Code and Section 27 of the Arms Act, that on a recommendation made by the Superintendent of Police, Buxar to the District Magistrate, Buxar recommending for cancellation of arms license of the petitioner, a copy of which is placed at Annexure-B to the counter affidavit that a show cause notice cum suspension order was issued to the petitioner vide Memo No. 175 dated 11.3.2008 placed at Annexure-4 to the writ petition. The licensing authority while suspending the license of the petitioner on receipt of recommendation of the Superintendent of Police, by the same order issued show cause notice against the cancellation of the fire arm licence bearing No. 274 of 2003. The petitioner responded to the show cause notice and the District Magistrate vide order passed on 31.3.2009 in Case No. 30 of 2008 has proceeded to cancel the license of the petitioner purportedly under Section 17 of the Act and which order of the District Magistrate stands affirmed by the appellate authority i.e. the Commissioner, Patna Division, Patna when the appeal preferred by the petitioner bearing Arms Appeal No. 110 of 2009 was dismissed vide order passed on 04.10.2013 / 16.01.2014 and hence this writ petition.

Mr. Shrivastava, learned counsel appearing on behalf of the petitioner has questioned the orders impugned in the writ petition on the following grounds:

- (a) The provisions of Section 17(3) of the Act provides for the circumstances in which arms license can be suspended or cancelled and whereas the other stipulations are not applicable to the petitioner, insofar as Clause-b thereof is concerned, there is no material on record to support that the arms license was a threat to security and public peace;
- (b) There is complete absence of any material as to the usage of fire arms by the petitioner and;
- (c) The show cause notice is a composite order of suspension as well as show cause against cancellation of license when the two powers are distinct and have to be exercised independently of each other.
- (d) The parties are on litigating terms and the F.I.R. is an outcome thereof.

The arguments of Mr. Shrivastava has been contested by Mr. Raj appearing for the State who submits that the cancellation order has been passed upon the subjective satisfaction of the



statutory authorities and once such satisfaction has been arrived at on the basis of recommendation of none other than the Superintendent of Police, it does not require to be interfered at this stage more so when the criminal case is yet pending final adjudication.

Very fairly Mr. Abhinav Raj has drawn the attention of this Court towards a Division Bench order passed in L.P.A. No. 288 of 2013 dated 07.03.2013 (Chandan Kumar Yadav @ Chandan Yadav @ Chandan Kumar vs. The State of Bihar & Ors.) to submit that in a similar matter the Division Bench taking note of the circumstances where the license of the appellant had been cancelled by the statutory authority even though the firing by his licensed gun was with the object of securing his property and in self defence, has set aside the order of the statutory authority. He however clarifies that the case of the present petitioner would not be covered by the Division Bench judgment inasmuch as in the present case the allegation against the petitioner is of attacking the informant at his residence alongwith his licensed gun. He thus submits that it is the circumstances and the conduct of the Licencee which is the relevant factor in such cases.

Mr. Raj, learned counsel appearing on behalf of the State has referred to the FIR to submit that there is a clear

allegation against the petitioner of threatening the informant with his fire arms and it is taking into consideration such aspect of the matter that the action has been taken which suffers from no infirmity.

It is the contention of Mr. Raj that the usage of the fire arms is not necessary and if there are circumstances to support a misuse thereof, it would constitute sufficient reason for an order of cancellation.

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

The argument advanced by Mr. Shrivastava are similar to the arguments which were advanced before the Full Bench of this Court in the case of **Kapildeo Singh vs. State of Bihar** reported in **1987 PLJR 385**. The Full Bench was in consideration of the discretionary power vested in the licensing authority under Section 17 of the Act in matter of revocation and suspension of license and it was the argument advanced on behalf of the petitioner that a mere registration of a criminal case would not *ipso facto* be sufficient for either suspension or revocation of license and that the usage of the fire arms and the purpose thereof would be a relevant factor. The Full Bench while agreeing that institution of every form of criminal case would not be a basis for



exercise of such power, has upheld the discretionary jurisdiction of the licensing authority to cancel or suspend a license upon an institution of a criminal case if he is satisfied that the continuation of the fire arms in the possession of the license holder would be covered under either of the parameters underlying Section 17 of the Act. The Full Bench has held that there cannot be a precise definition or exhaustive enumeration of the situation for exercise of such discretion and that each case would have to be discussed and addressed on its own merits.

It is thus to be seen whether the arguments of Mr. Shrivastava that the FIR is an outcome of long pending dispute between the parties and that the District Magistrate even while appreciating that there was no firing by the petitioner, yet has proceeded to cancel the license, would be good enough to allow the writ petition.

The copy of the FIR has been placed at Annexure-3 to the writ petition and a plain reading thereof manifests that the informant while at his house, was attacked by no less than seven persons all armed including this petitioner. The matter was investigated and supervised by the Superintendent of Police and his recommendation dated 2.2.2008 is placed at Annexure-B to the counter affidavit of the State in which he has opined upon



investigation and supervision that the allegations were correct. It is in the backdrop of the allegations and the opinion of the Superintendent of Police that the District Magistrate even while admitting that there was no firing done by the petitioner, yet has proceeded to cancel his license.

The Full Bench at paragraph-11 of the judgment in Kapildeo Singh (supra) has clarified that not every criminal case would result in suspension or revocation but has also observed that the usage or employment of the licensed weapon in an alleged crime would be a relevant and added factor for consideration in the exercise of discretion by the licensing authority. Had it been a case where the petitioner had used the licensed gun to defend himself or his property then perhaps this Court would have appreciated the argument of Mr. Shrivastava but the fact is converse here and it is the petitioner who has gone on an attacking mode to the residence of the informant fully armed with the gun. Whether the allegations are correct and whether the petitioner did use the fire arm is a matter which is pending consideration before the criminal court and this Court would not express any opinion thereon but having said so, this Court is not persuaded enough to interfere with the orders of the statutory authority at this stage.

Insofar as the issue regarding the show cause notice

being a composite notice of suspension and show cause is concerned, this Court is of the opinion that the same has become academic by virtue of the final order of cancellation having been passed and the petitioner having failed to raise the same at the relevant stage, he cannot be permitted to raise the issue at the present stage. Besides, the power of the licensing authority to order for suspension and revocation stands affirmed by the Full Bench judgment in the case of Kapildeo Singh (supra) and requires no further reiteration.

For the reasons aforementioned, the writ petition is dismissed.

(Jyoti Saran, J)

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