

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8078 of 2013

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Md. Salam Iraqui, S/O Md. Sattar, Resident of Raipur Idgah, Police Station- Fatuha
And District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the District Magistrate, Patna.
2. Commissioner, Patna Division, Patna.
3. District Magistrate, Patna.

.... Respondents

Appearance :

For the Petitioner/s : Mr. Vishwanath Pandey, Advocate
Mr. Gajendra Kumar Singh, Advocate
Ms. Manisha Pandey
For the Respondent/s : Mrs. Nivedita Nirvikar, G.A.10
Mr. Manoj Kumar, AC to GA-10

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT

Date: 29-09-2015

I have heard learned counsel for the petitioner and the
State.

The petitioner seeks quashing of the order dated
29.01.2013/1.03.2013 passed by the District Magistrate-cum-
Licensing Authority, Patna by which the Collector has refused to
restore his arms licence granted earlier for NP Bore Rifle.

The arms licence of the petitioner was cancelled vide
order dated 10.10.2007 passed by the District Magistrate, Patna, a
copy of which has been appended as Annexure-10. The aforesaid
order was put to challenge in Arms Appeal No.569/2007 by the
petitioner which was allowed on 11.06.2011 vide Annexure-11 and

after setting aside the order of the District Magistrate, Patna, the matter was remitted back to him to consider the restoration of arms licence of the petitioner. However, by the impugned order, again the licensing authority has refused to restore the arms licence.

In my considered opinion, the case was not for restoration of the arms licence and even the Commissioner was not correct in saying that the issue of restoration of licence would be decided by the District Magistrate. Once the order of the licensing authority cancelling the licence was quashed or set aside by a superior statutory authority in appeal, the order itself goes and becomes a nullity and, as such, the licensing authority was required to consider the case as if there was no order of cancellation of licence in existence. The issue that was required to be reconsidered should have been whether there should be cancellation of licence or not in the facts and circumstances of the case.

Be that as it may, it appears from the impugned order that the licensing authority has refused to restore the licence of the petitioner in view of his involvement in three criminal cases, i.e., Kotwali P.S. Case No.80/2004, Kotwali P.S. Case No.527/2004 and Kotwali P.S. Case No.97/2005. Surprisingly, even after remand, no fresh report of the Senior Superintendent of Police, Patna was sought by the District Magistrate-cum-licensing authority, Patna, rather the order has been passed relying upon his earlier report dated 28.04.2007



which formed the reason for cancellation of arms licence. Had further report been sought from the Senior Superintendent of Police or even the officer-in-charge concerned then the subsequent developments would have come to the notice of the licensing authority that in one of the cases being Kotwali P.S. Case No.80/2004, which was registered under Sections 341, 323, 379 and 504 of the Indian Penal Code, the petitioner has already been acquitted in view of the fact that the matter has been compounded and so far the charge under Section 379 is concerned that was compounded in view of the permission granted by the Court and so far Kotwali P.S. Case No.527/2004 is concerned, cognizance has been taken merely under Sections 323, 504 and 34 of the Indian Penal Code only and not under any provisions of the Arms Act. It has been contended that the petitioner is not involved in any horrendous crime. So far the third case, i.e., Kotwali P.S. Case No.97/2005 is concerned, it is being contended on behalf of the petitioner that the same has nothing to do with use of firearm as the same was registered under Sections 406, 420, 454, 353 and 34 of the Indian Penal Code and one of the witnesses produced therein has already become hostile. It has also been urged on behalf of the petitioner that while granting bail to the petitioner in the aforesaid case vide Annexure-5 dated 23.09.2005, a Single Judge Bench of this Court has noticed that Title Suit No.45 of 2003 was pending before the Munsif-III, Patna in which Patna Regional Development Authority

was also a party. It is contended that a direction was given for maintaining *status quo* which was extended till 9.12.2004 but even prior to the aforesaid date, the lock was put on 13.10.2004 by the authority in utter disregard and disobedience of the order of the *status quo*.

Be that as it may, in view of the fact that the order impugned was passed without seeking a fresh report or without considering the subsequent events, the same cannot be held to be tenable. In fact, the Full Bench of this Court has held in **Kapildeo Singh vs. State of Bihar and Ors.** [AIR 1987 Pat 122] that, in view of pendency of a criminal case, if the licensing authority would be of the view that granting licence to such person would be detrimental for peace and tranquility of the people of that locality then he may take decision for suspension/revocation of the licence, however, at the same time, it has also been observed that it is not the pendency of any and 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 for taking action under Section 17 (3) of the Arms Act, 1959 but in case of the latter, after notice and hearing of the explanation, such action may well become necessary.

In my considered view, these aspects should have been

considered by the licensing authority along with the subsequent events which have taken place during the pendency of the appeal or thereafter.

Accordingly, I set aside the order dated 29.01.2013/1.03.2013 passed by the District Magistrate-cum-licensing authority, Patna. The matter is remitted back to the licensing authority for fresh consideration of the matter and for passing a reasoned order in accordance with law also considering all the events subsequent to the passing of final order of cancellation of licence and the decision of the Full Bench **rendered in the case of Kapildeo Singh vs. State of Bihar and Ors.** (Supra) within a period of two months from the date of receipt/production of a copy of this order.

This writ application is allowed to the extent indicated above.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

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