

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.705 of 2001

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1. Nathuni Prasad Singh son of Jagdeo Singh.
 2. Lakshman Singh son of Radha Singh.
 3. Jawala Singh son of Late Sheopujan Singh.

All are residents of village Karup, P.S.-Karghar, District-Rohtas.

.... Petitioner/s

Versus

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

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh, Adv.
Mr. Satyapal Singh, Adv.

For the Respondent/s : Mr. A.N.Singh, GP-XI
Mr. Jay Prakash Sharma, AC to GP-XI

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 30-03-2015

Heard counsel for the petitioner and the respondents.

In the present case, petitioner is challenging the order of Commissioner, Patna Division, Patna dated 28th August 2000 passed in Case No. 159 of 1999 against these petitioners whereby and whereunder affirmed the order of the Collector, dated 12th October 1999 whereby he refused to release the arms in favour of petitioners.

It appears from the record, in the village of the petitioners, residents of same caste are divided in two rival groups, they have dagger drawn relationship and cannot see to each other eye to eye and they used to exchange fire from time to time. Whenever any group is in advantageous position they attack adversary, used to inflict causality to opposite group. Both groups have instituted number of Police cases against each other, vide Sasaram (T)P.S.Case No. 586/91, 194/96, 195/96, Karghar P.S.Case Nos. 77/95, 35/97,

42/97 and 43/97. It also appears that one Satyedra Prasad Singh, Young person and Ajay Kumar Rai were killed in exchange of fire past and on account of accidental death aforesaid two persons the atmosphere of village surcharged, it led to exchange of firing among two groups which led to institution of Karghar P.S.Case No. 35 of 1995 and the accused persons of both the groups were sent to jail and later on they were enlarged on bail.

Looking to the grave surcharged situation, Officer In-charge, Karghar vide Memo No. 1549 of 1997 dated 27th July 1997 filed an application before the District Magistrate, Rohtas, Sasaram recommended for cancellation of arms licence of 14 persons, including petitioner no.1 (at sl.4), petitioner no.2 (at sl.no.13) and petitioner no.3 (at sl.no.14).

On receipt of the report from the Officer In-charge, Karghar Arms Case No. 22 of 1997 was instituted and notices were sent to all persons for cancellation of their arms licence so much so treating it emergent situation their licenses were suspended forthwith and they were directed to deposit their arms in the Police Station. In failure to deposit the arms the Officer In-charge was directed to seize the same and keep in the Malkhana.

Show cause was filed by the petitioners where a plea was taken that they have not violated any terms of the licence and they are not member of any group or party and as such, there is no danger to any person from their arms or from them and they have also taken a plea that they have kept the arms for their personal safety and for their family members and have also claimed that they have legal right to keep the arms for protection of life and property.

The District Magistrate considered the plea of petitioners and vide order dated 12th October 1999, cancelled the licence of these petitioners and again directed the Police to seize their arms forthwith. It has been recorded

that even after suspension of the licence arms were not deposited by them. At the same time recommended the Superintendent of Police for initiation of a departmental proceeding against the Officer In-charge of Karghar Police Station.

That order was challenged before the Divisional Commissioner, Patna, respondent no.2 who vide order dated 28th August 2000 in Case no. 159 of 1999 affirmed the order against the petitioners but passed the order in favour of Bharat Singh assigning the ground that he is a government employee, he does not live in that village.

While passing the impugned order it has been recorded that two groups are at loggers head, they use to make dangerous attempt to kill each other and these petitioners are permanent resident of that village, giving additional ground that these petitioners even after direction of the District Magistrate on several times did not deposit their respective arms but deposited their respective arms, after the order of Divisional Commissioner.

Counsel for the petitioners submits that the District Magistrate while issuing notice for suspension of licence acted de hors to the provisions of Section 17(1) of the Arms Act, as while passing the order of suspension of arms licence, has not mentioned the definite period.

Other point has been taken that they are not accused in any other criminal case nor their arms have ever been used by any party. The question of threat on account of arms creating law and order problem does not arise so much so before passing the order of suspension of arms licence, hearing was not given to these petitioners and in support of his contention, counsel for the petitioner relied on the judgment reported in 1996 Cr.L.J. 817 :: 1986 All 142 (Para-10 and 18), further submitted threat to public peace or

public safety is quite different to normal law and order problem.

It has been mentioned that while issuing notice of show cause and passing the order of suspension no period has been mentioned. In such view of the matter, the order for cancellation of licence, affirmed by the Commissioner is per se illegal.

Counsel for the State, in contra, has objected the argument of the petitioners and submitted that the situation of the village is so volatile and surcharged, two groups now and then clash to each have created reign of terror and they used to attack against each other whenever they get advantage situation. The peace at large in village is disturbed situation turmoil and riot striking in the village and people at large feel tormented, also submitted that large number of Police cases have been lodged against each other and there is always attack and counter-attack on that account two innocent persons were killed.

The District Magistrate has directed all the 14 persons to deposit their arms but the petitioners even after repeated directions audaciously refused to comply the order, when an appeal was filed, on the order of the Commissioner, they deposited their respective arms, itself make them disentitled the return of their arms. The ground that has been raised by the petitioners about not mentioning the period is without substance as Section 17 does not prescribe mentioning of particular period as the words have been used 'such period', not the specific period is apparent from the formulation of Section 17 of the Act, is as follow:

“Section 17. Variation, suspension and revocation of licences. –(1) The licensing authority may vary the conditions subject to which a licence has been granted except

such of them as have been prescribed and may for that purpose require the licence holder by notice in writing to deliver up the licence to it within such time as may be specified in the notice.

(2) The licensing authority may on the application of the holder of a licence, also vary the conditions of the licence except such of them as have been prescribed.

(3) The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence –

(a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force, from acquiring, having in his possession or carrying any arms or ammunition, or is of unsound mind, or is for any reason unfit for a licence under this Act; or

(b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or

© if the licence was obtained by suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person in his behalf at the time of applying for it; or

(d) if any of the conditions of the licence has been contravened; or

(e) if the holder of the licence has failed to



comply with a notice under sub-section(1) requiring him to deliver-up the licence.”

The power has been exercised by the authority under the provisions of Section 17(3)(b), which shows that the licensing authority can order in writing suspending the licence for such period as he deems fit or revoke the licence but the word has been used ‘for such period’ which does not indicate a particular period.

The claim of the petitioners that their case is out side the scope of 17(3) (b) is not sustainable, looking to volatile situation as two groups clash regularly that led to casualties.

Here “public peace”, as per the judgment reported in AIR 1993 All 291 (Ganesh Chandra Bhatt v. District Magistrate, Almora) means “public at large”. The people of the village constituted the pubic at large and Para-80 of the said judgment means “public peace or public safety do not mean ordinary disturbance of law and order, but public safety means public at large”.

In the present case, two groups keep deadly arms and attack on each other and whenever they get a time and in that course two innocent persons lost their lives. The District Magistrate recorded volatile and riotous situation in village directed them to deposit their arms but they did not have courtesy to deposit the same, rather they violated the order and during that period they were keeping arms illegally.

As the District Magistrate has suspended their licence, even if there was some error, it cannot be basis to keep arms illegally. Keeping arms illegally itself renders them disqualified to keep arms for their own purpose or for the purpose of the society. This Court is of view that District Magistrate looking to surcharged situation in village rightly and properly exercised the

power.

This Court is of the view that the Divisional Commissioner, Patna has not committed any error in passing the order impugned. This petition is, accordingly dismissed.

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(Shivaji Pandey, J)