

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6166 of 2015

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M. G. M. Co - Operative Society Ltd., Sadipur, District - Munger, through its
Secretary Mr. Laxman Lal Sharma Son of Late Jawahar Lal Sharma resident of
Puraniganj, P.S. Kasim Bazar, District - Munger

.... Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, Govt. of India, North Block, New Delhi - 110001
2. The Secretary, Ministry of Home Affairs, Govt. of India, North Block, New Delhi - 110001
3. The State of Bihar
4. The Principal Secretary, Department of Home, Govt. of Bihar
5. The Divisional Commissioner, Munger Division, Munger
6. The District Magistrate, District - Munger
7. The Sub-Divisional Magistrate, Sadar, District - Munger

.... Respondent

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Appearance :

For the Petitioner	: Mr. Asoka Jang Bahadur, Advocate Md. Mahtab Alam, Advocate Md. Aslam Ansarai, Advocate
For the State	: Mr. P.N. Shahi, AAG-10 : Mr. Nasim Yahya- G.P.13
For the Union of India	: Mr. S.D. Sanjay, Addl. Solicitor General : Mr. Ram Anurag Singh, C.G.C.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 15-12-2015

I have heard the parties and perused the records of this case.

This writ application has been filed inter alia for grant of following reliefs:

- (A) For issuance of an appropriate writ, order or direction for setting aside / quashing the Memo No. 644 dated 21.7.2014, whereby show cause / explanation with regard to possessing altogether extra 173 barrel as per the Stock Register, filed by the petitioner

is rejected and request was made to the Commissioner to make recommendation for cancellation of the licence of Arms Manufacturing.

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- (B) For issuance of an appropriate writ, order or direction for setting aside / quashing the Memo No. 509 dated 20.06.2014, whereby the petitioner was asked to file show cause as to why not license be cancelled for possessing extra 173 barrel in the stock. As well as set aside the Enquiry Report contained in Memo No-1235 dated 28.5.2014 in which petitioner is shown to be indulged in commission of irregularities as having extra barrel, works of other factories in its factory.
 - (C) For issuance of an appropriate writ, order or direction directing the Respondents to unseal / open the premises of the petitioner and allow the members of the petitioner to enter and start work therein.
 - (D) For any other relief and reliefs for which petitioners are entitled the opinion of this Hon'ble High Court. "

The petitioner is a registered Gun Manufacturing Co-operative Society which was operating under valid licence. It appears that District Magistrate, Munger vide order contained in Memo No 667 dated 18.10.2012, as contained in Annexure 1, had authorized certain officers to make inspection and submitted report with respect to the several manufacturing units situated at Munger. The Sub Divisional Officer, was authorized to inspect six units including one of the petitioner. It is claimed by the petitioner that such inspection was started on 18.12.2012 and had continued till 14.7.2014. However, vide Annexure 2 dated 4.1.2013 a report appears to have been submitted before the District Magistrate, Munger stating that the



society was having 171 barrels excess in stock which was a serious irregularity and illegal act. Certain recommendations were made by the Sub Divisional Officer. Thereafter, show cause notice was issued to the Chairman of the Society by the District Magistrate to explain as to why the manufacturing licence of the society should not be cancelled. A reply to the show cause notice was filed vide Annexures 4 and 5. Again an order was passed vide Annexure 7 dated 10.12.2013 directing the members of the Society to remain present during inspection. Again the Sub Divisional Officer vide Annexure 9 dated 28.5.2014 had written that 171 barrels were found in excess. Again a show cause notice was issued by the District Magistrate vide Annexure 10 dated 20.6.2014 as to why manufacturing licence of the unit should not be cancelled. The Society responded by filing its reply through its Secretary, a copy of which has been appended as Annexure 11. It appears from perusal of the reply that the Society has accepted the fault and requested to condone it. However, District Magistrate, Munger, vide his letter dated 21.7.2014, has recommended the Commissioner, Munger Division, Munger to cancel the licence of the petitioner. The aforesaid action is sought to be quashed.

It is contended on behalf of the petitioner that, on the date of inspection, the manufacturing unit was working under a valid



licence which was to expire sometime in the month of December, 2012. The premises was inspected but was illegally sealed by the Sub Divisional Officer. It is contended that, after the manufacturing unit got sealed by the Sub Divisional Magistrate, about 211 persons have become unemployed though having special knowledge of manufacturing of gun. Learned counsel has submitted that there is no provision of sealing of the premises and, alternatively, it is contended that, even if some provision is there, the proper procedure has not been followed. It is further contended that the petitioner had duly applied on 13.12.2012 to the Home Secretary for renewal of licence for further 3 years. However, the same has remained pending. Neither the licence has been cancelled till date nor the same is being renewed.

Since a question arose in this writ application regarding the power of the Sub Divisional Magistrate to seal the premises, learned counsel appearing for the respondents were directed to respond to it.

Counter affidavits have been filed on behalf of the respondent nos. 5 and 6 as well as respondent no. 4, i.e., the Principal Secretary, Department of Home, Government of Bihar, Patna. Two provisions of law have been pointed out by the respondents in this regard. Rule 27 of the Arms Rule, 1962 empowers every Magistrate



and police-officer not below the rank of Inspector, or if the Central Government so directs, of Sub-Inspector also, would have authority to enter and inspect the premises in which arms or ammunition are manufactured or in which arms or ammunition are kept by a manufacturer and examine the stock and accounts of receipts and disposal of arms and ammunition or any other register or documents. Section 22 provides that whenever any Magistrate has reason to believe that any person residing within the local limits of his jurisdiction has in his possession any arms or ammunition for any unlawful purpose or such person cannot be left in the possession of any arms or ammunition without danger to the public peace or safety, he, after having recorded the reasons for his belief, cause a search to be made of the house or premises occupied by such person, where, according to the Magistrate, such arms and ammunitions are to be found and, on finding such arms or ammunition there, he may seize and detain the same in safe custody for such period as he thinks necessary.

Mr. Pushkar Narain Shahi, learned AAG 10, has submitted with the help of Section 22 of the Arms Act, 1959 and Rule 27 of the Arms Rules, 1962 that in view of the provisions contained thereunder, the Sub Divisional Magistrate was fully justified to enter the premises and make inspection and seize the

articles.

However, in my opinion, the aforesaid submission has to be rejected. The Sub Divisional Magistrate, under the direction of the District Magistrate has made the inspection and had submitted a report. Thereafter, no direction of the District Magistrate is there to make any search or seizure. Of course Rule 27 empowers the Magistrate to enter in the premises and make inspection of the stock and records but it does not empower the Magistrate to take any consequential steps of sealing the premises. Relevant provisions contained in Section 22 of the Arms Act, 1959 as well as Rule 27 of the Arms Rules, 1962 are extracted as under for better appreciation:

Section 22 of the Arms Act, 1959

“22. Search and seizure by Magistrate.”-(1) Whenever any Magistrate has reason to believe—

(a) that any person residing within the local limits of his jurisdiction has in his possession any arms or ammunition for any unlawful purpose, or

(b) that such person cannot be left in the possession of any arms or ammunition without danger to the public peace or safety,

the Magistrate may, after having recorded the reasons for his belief, cause a search to be made of the house or premises occupied by such person or in which the Magistrate has reason to believe that such arms or ammunition are or is to be found and may have such arms or ammunition, if any, seized and detain the same in safe custody for such period as he thinks necessary, although that person may be entitled by virtue of this Act or any other

law for the time being in force to have the same in his possession.

(2) Every search under this section shall be conducted by or in the presence of a Magistrate or by or in the presence of some officer specially empowered in this behalf by the Central Government.”

Rule 27 of the Arms Rules, 1962

“**27. Inspection of premises, stock and record.**—Every Magistrate and any police-officer not below the rank of Inspector, or if the Central Government so directs, of Sub-Inspectors, 20[acting within the local limits of his authority, or any officer of the Central Government specially empowered in this behalf may]-

(a) enter and inspect the premises in which arms or ammunition are manufactured or in which arms or ammunition are kept by a manufacturer or dealer in such arms or ammunition; and

(b) examine the stock and accounts of receipts and disposals of arms and ammunition or any other register or document.”

So far Section 22 of the Act is concerned that would be attracted only in the cases when the Magistrate has recorded the reasons for his belief that any person residing within the local limits of his jurisdiction has in his possession any arms or ammunition for any unlawful purpose or such person cannot be left in the possession of any arms or ammunition without danger to the public peace or safety.

Admittedly, the Magistrate has not recorded any such



order or finding. He was authorized by the District Magistrate to make an inspection which he has done and has submitted report finding 173 barrels in excess but without assigning any reason he could not have proceeded to seize the arms and ammunition or seal the manufacturing unit either under Section 22 of the Arms Act, 1959 or Rule 27 of the Arms Rules, 1962. Even if it is assumed for the time being that he could have seized the arms and ammunition, there is no provision under the aforesaid Section 22 and Rule 27 to seal the premises itself. The respondents have not denied that after inspection the unit has been sealed and as such it has to be construed that the Sub Divisional Officer under the direction of the District Magistrate had validly inspected the premises under Rule 27 of the Arms Rules and has submitted the report but so far seizure of the arms and ammunition and sealing of the premises is concerned it does not appear to have been done following the proper procedure. However, now another question would arise as to what relief can now be granted to the petitioner in the aforesaid facts and circumstances specially when the petitioner has accepted the guilt that 173 barrels were manufactured in excess and had requested the District Magistrate to condone the irregularity with an assertions that the same would not be repeated in future. That apart, the tenure of arms licence has expired in the month of December, 2012 itself



and has not been renewed whatsoever be the reason. In fact, the concerned authority has already recommended to the Central Government for cancellation of the licence of the manufacturing unit, therefore, there would be no question of its renewal till a decision is taken by the competent authority in favour of the petitioner.

Thus, in my view, even if the sealing of the unit appears to have been made without following proper procedure this Court would be unable to direct for release of the arms and ammunition as the petitioner is no more holding a valid licence unless the Central Government takes a final decision refusing to cancel the licence of the petitioner.

Accordingly, this writ application is being disposed of with a direction to the Central Government to take a decision in accordance with law with respect to the issue of cancellation of licence of the petitioner within a period of four months. Till then, let the arms, ammunition and all the machines and tools which can be used for manufacturing of fire arms, that has been kept in the premises of the petitioner, be taken in safe custody by the competent authority. After doing so, let the seal of the premises be opened and the possession of the premises be given back to the petitioner. However, it would not be allowed to engage itself in

manufacturing of fire arms etc. till a final decision is taken by the competent authority of the Central Government in its favour. If that happens then the competent authority of the State Government would be required to take a decision upon the petitioner’s application for renewal of licence. However, in case a decision is taken against the petitioner and the licence is cancelled then that would not be required to be done but the petitioner would at liberty to assail the same before a competent forum available in law.

(Dr. Ravi Ranjan, J)

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