

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13471 of 2013

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Shyamdeo Sharma Son Of Late Jagdamb Singh Resident Of Village- Bala Bhadra Sarai, P.S. Hilsa, District- Nalanda

.... Petitioner

Versus

1. The State Of Bihar
2. The Commissioner, Patna Division, Patna
3. The District Magistrate Nalanda (Bihar Sharif)
4. The Superintendent Of Police, Patna
5. The Officer-In-Charge, Bahadurpur Police Station, Patna
6. The Sub-Inspector Of Police, Bahadurpur Police Station, Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. Nand Kishore Prasad Sinha, Advocate
For the State : Mr. Faiz Ahmad, A.C. to G.P. 7

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 22-09-2015

Heard learned counsel for the petitioner and the State.

Petitioner is aggrieved by the order dated 26.04.2012, as contained in Annexure 5, passed by the District Magistrate-cum-Licensing Authority by which his arms licence has been cancelled on the ground that he was found with his DBBL gun outside the territory for which licence was granted to him. Petitioner has preferred appeal against the aforesaid order of the licensing authority, which has been dismissed vide Annexure 7 dated 07.05.2013, as contained in Annexure 7, by the Commissioner, Patna, which is also under challenge.

Learned counsel for the petitioner raises a short question.



It is submitted that the licensing authority has cancelled the arms licence upon the recommendation of the Senior Superintendent of Police, Patna, however, without issuing any show cause notice upon the petitioner or granting him reasonable opportunity to defend his case. Learned counsel for the petitioner in support of his aforesaid contention places reliance upon a decision rendered in **Amar Sinha Vs. District Magistrate, Monghyr and another [1990 (1) PLJR 217]**.

Learned counsel further submits that before cancellation of the licence the licensing authority could have suspended the licence after issuing a show cause notice to the petitioner.

From perusal of the averments made in the counter affidavit as well as from the impugned order, it appears that reasonable opportunity was not granted to the petitioner as no show cause etc. was ever issued upon the petitioner. Simply on the ground of the recommendation of the Senior Superintendent of Police, the order appears to have been passed though learned counsel for the State is not in a position to explain the aforesaid, however, he submits that, since the petitioner's arms was seized and Sanha no.516 dated 19.03.2009 was lodged in view of the fact that he was found with his DBBL gun outside the territory for which licence was granted to him, the order cannot be faulted with.



I find force in the submission raised on behalf of the petitioner. Of course, there is a provision under the Arms Act, 1959 that the licensing authority may in writing suspend or revoke the licence if he thinks it fit on the ground that any of the conditions of the licence has been contravened, however, in my considered view, for reaching to such conclusion, the licensee should be given an opportunity to explain the circumstances or deny the allegations before such order could be passed by it. Sub section 17 of Section 5 of the Act lays down that where the licensing authority makes an order under Section (1) varying suspending or revoking the licence under sub-Section 3, it shall be its duty to record in writing the reasons therefor and furnish it to the holder of the licence. Recording of reason does not mean that it should be recorded without considering the case put forward by the affected parties. The recording of reason in my view means that, after granting reasonable opportunity, reasons should be recorded as to why grounds raised by the affected persons are not tenable and are fit to be rejected which has not been done in this case.

As a result, this writ application succeeds. Both the impugned orders as contained in Annexures 5 and 7 are quashed and set aside. However, the matter is remitted back to the licensing authority to take a fresh decision after granting reasonable opportunity

to the petitioner. The aforesaid exercise should be completed within four months from the date of receipt/production of a copy of this order. However, if the petitioner does not co-operate and does not appear on the date fixed and does not file reply to the show cause notice issued by the licensing authority then he would be at liberty to proceed *ex parte* and take a final decision even in the absence of the petitioner. It is further made clear that the impugned orders have been quashed and set aside only on the ground of violation of principle of natural justice and this Court has not expressed any opinion with regard to the merit of the case of the petitioner.

(Dr. Ravi Ranjan, J)

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