

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20160 of 2011

Sarvat Jahan W/O Sri Sarfaraj Alam Resident Of Village- Islam Nagar, Ward No.26, P.O And P.S- Araria, District- Araria.

.... Petitioner

Versus

1. The State Of Bihar
2. The District Magistrate, Araria, District- Araria.
3. The Incharge Deputy Collector, District General And Administration Cell, Araria, District- Araria
4. The Arms Magistrate, Araria, District- Araria.
5. The Station Head Officer, Araria Police Station, District- Araria.

.... Respondents

with

Civil Writ Jurisdiction Case No. 20363 of 2011

Shahnawaz Alam S/O Md. Taslimuddin R/O Ward No. 21, P.O. And P.S.- Araria, District- Araria

.... Petitioner

Versus

1. The State Of Bihar
2. The District Magistrate, Araria, District- Araria
3. The Incharge Deputy Collector District General And Administration Cell, Araria, District- Araria
4. The Arms Magistrate, Araria, District- Araria
5. The Station Head Officer Araria Police Station, District- Araria

.... Respondents

Appearance :

(In CWJC No. 20160 of 2011)

For the Petitioner : Mr. Shashi Bhushan Kumar Manglam, Advocate
For the State : M/s Namrta Mishra GP17 with
Alok Ranjan, AC to GP 17

(In CWJC No. 20363 of 2011)

For the Petitioner : Mr. Shashi Bhushan Kumar Manglam, Advocate
For the State : Mr. Bhashkar Shankar, AC to PG 16

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 04-08-2015

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

Identical issues being involved in both the writ applications they have been considered together and are being disposed of by a common order.

The petitioners are aggrieved by the order contained in Annexure 7 in C.W.J.C. No. 20160 of 2011 and Annexure 6 in C.W.J.C. No. 20363 of 2011 by which a common order cancelling 61 arms licences has been passed in the district of Araria on the ground that the licencees could not produce their arms for verification during the specified period which was required in view of ensuing Assembly Election, 2010. Petitioners claim to have submitted their reply in response to show cause notices issued upon them.

It is contended that though the petitioners could not get the verification done within the stipulated time, however, the same was done on 5.10.2010 before the Assembly Election which is an admitted fact not considered by the licensing authority while passing the impugned order cancelling 61 arms licences including those of the petitioners by one stroke of pen and after recording that the replies are not satisfactory.

Counter affidavits have been filed on behalf of the State



in both the cases. In reply to the petitioner's claim in C.W.J.C. No. 20160 of 2011 that she had produced her arms for verification on 5.10.2010 in the presence of Station House Officer, Araria to the deputed Magistrate and the Circle Officer and the verification report has been made available in the Arms Section of the Collectorate, it has been stated in paragraph no. 10 that the facts given there are true. However, it is contended that the petitioner could not submit the arms verification within the specified period as there has been delay of about 20 days.

In both the cases the firearms were admittedly submitted before competent the authority in terms of Rule 63 (b) of the Arms Rule, 1962. It is contended that there was sufficient compliance as it is admitted fact that the verification report was also sent to the concerned office of the Collectorate.

In above view of the matter, the licensing authority was not required to pass a blanket order of cancellation without assigning any reason as to why even after necessary verification he was of the opinion that the arms licence should be cancelled. It appears that a mechanical order with respect to 61 licensees has been passed only assigning a reason that it is being done in view of non compliance of the direction for getting the arms verified within the specified period, the same was suspended and, thereafter, show

cause notice was again issued for cancellation of licence and which was eventually cancelled after respective reply has been found to be unsatisfactory.

In my considered opinion, the orders aforesaid as contained in Annexures 7 of C.W.J.C. No. 20160 of 2011 and Annexure 6 of C.W.J.C. No. 20363/2011 would not be sustainable in view of the fact that before passing of final order, i.e., on 5.10.2010 itself the firearms of the petitioners were admittedly verified by the competent authority as the same has not been denied. That apart, for non verification within time the licences were already suspended then it would be harsh on the petitioners that even after getting it verified subsequently the same would be cancelled by the authority concerned. In view of the fact that the licences were eventually verified but that has not been considered in the impugned order coupled with the fact that in one sentence it has been stated with regard to 61 persons that their respective replies to the show cause notices are not satisfactory, the licensing authority could not have suspended or cancelled the licences as it is well settled that if any action is to be taken affecting a person then consideration of show cause notice would be must and some reason must be assigned for declaring that the grounds raised by such person or party are not tenable. In such situation the aforesaid

impugned orders as contained in Annexures 6 and 7 in respective writ applications are quashed and set aside but only with respect to the petitioners.

The matter is remitted back to the District Magistrate concerned for fresh consideration in accordance with law within eight weeks from the date of receipt / production of a copy of this order after consideration of the grounds raised in the respective replies of the petitions to the show cause notices in view of Section 17 of the Arms Act, 1959, which clearly lays down in sub section (3) read with sub clause (d) that if any of the conditions of the licence has been contravened then the licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence.

However, it does not mean that there would be automatic release of the firearms of the petitioners as the same would depend upon the nature of the final order that would be passed by the licensing authority. The licensing authority would also consider as to whether the cancellation of licence in such a situation would be necessary in view of the fact that there was no allegation of misuse of weapon by the petitioners and also the fact that for about four years their weapons have remained seized in view of the cancellation of licence.

Accordingly, these writ applications stand allowed to the extent as indicated above.

(Dr. Ravi Ranjan, J)

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