

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.18884 of 2016**

=====

Prayag Singh @ Prayag Ram, S/o Soharayi Singh, R/o-Garuhan, P.S.- Udwant Nagar, Distt.-Bhojpur

.... .... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department, of Home Govt. of Bihar, Patna.
2. Principal Secretary, Department of Home, Govt. of Bihar at Patna
3. Commissioner, Patna Division, Patna
4. District Magistrate, Bhojpur at Arrah
5. Superintendent of Police, Bhojpur at Arrah,
6. Officer In Charge, Udwant Nagar Police Station, Udwant Nagar

.... .... Respondents

=====

**Appearance :**

For the Petitioner/s : Mr. Shashi Bhushan Singh, Advocate  
Mr. Amresh Kumar Sinha, Advocate  
For the Respondent/s : Mr. Prabhat Kumar Verma, AAG-3  
Ms. Divya Verma, AC to AAG-3

=====

**CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN**  
**ORAL JUDGMENT**

**Date: 30-11-2016**

Heard parties.

Though a copy of this writ application was served upon the State on 9.09.2016, no counter affidavit has been filed.

The petitioner is aggrieved by the order dated 18.07.2008 passed by the District Magistrate-cum-Licensing Authority, Bhojpur at Ara in Arms Case No.17/2006, as contained in Annexure-8, by which his firearms licence has been cancelled. He is also aggrieved by the order dated 9.05.2013/8.07.2013 passed by the Commissioner, Patna Division in Arms Appeal No.314 of 2008, as contained in



Annexure-9, by which his appeal, preferred against the aforesaid order of the licensing authority, has been dismissed.

It appears that in view of the involvement of the petitioner in Udwant Nagar P.S. Case No.208/2003 registered under Sections 147, 148, 149, 307, 324, 323 of the Indian Penal Code and Section 27 of the Arms Act, his licence was suspended and a show cause notice was issued as to why his licence should not be cancelled. The petitioner filed his reply to the show cause notice but there was recommendation of the I/C D.C.L.R., Legal Branch that unless the petitioner deposits his firearm as directed in the show cause, his reply should not be considered. Thereafter, the petitioner deposited his firearm and, subsequently, the impugned order has been passed (vide Annexure-8).

One of the grounds taken for cancellation of licence is that the petitioner has kept his firearm for four months even after suspension of his licence.

It appears that a show cause notice was issued to the petitioner vide Annexure-2 dated 3.01.2007. From perusal of the same, it appears that a show cause notice was for cancellation of licence but it was also informed vide such notice that in view of the involvement of the petitioner in Udwant Nagar P.S. Case No.208/2003 registered under Sections 147, 148, 149, 307, 324, 323



of the Indian Penal Code and Section 27 of the Arms Act, his firearms licence is being suspended. He was directed to deposit his firearms in Armory of the police station within a week otherwise the Officer-in-charge of the concerned police station was directed to seize the same. It appears that, through the notice itself, it is being communicated to the petitioner that his licence is being suspended.

The first question would be whether any reasonable opportunity was given to the petitioner before suspending the licence? A coordinate Bench of this Court in ***Amar Sinha Vs. District Magistrate, Monghyr and another [1990 PLJR 217]*** placing reliance upon a decision of Full Bench rendered in ***Kapildeo Singh Vs. The State of Bihar and Ors. [1987 PLJR 385]*** has held that suspension or revocation of arms licence on any ground without affording an opportunity of being heard is bad and in violation of principles of natural justice.

The second question would arise from the reading of the show cause notice and the impugned order conjointly that if a direction for depositing firearms within one week was given to the petitioner then the date on which Annexure-2 was served upon the petitioner has not been noticed in the impugned order at all. As a consequence of non-depositing of firearm as per the direction in the notice, the same was to be seized by the Officer-in-charge but in the



impugned order, it has not been discussed anywhere as to why officer in charge failed to perform his duty by seizing the firearm, if the same was not deposited within one week. If the petitioner is at fault then the officer-in-charge of the concerned police station is also at fault. It is not stated what action was taken against him or if he was not at all informed by the office of the District Magistrate for the consequential action, then what action was taken against such authority because it is admitted that the firearm was never seized rather, after four months, the petitioner had wilfully deposited the same before one of the arms dealer.

Now, the next issue would be whether cancellation of licence was at all necessary in the facts and circumstances of the case? Answer has to be in negative because in this case, though FIR was registered against the petitioner under the Arms Act, however, when the firearm licence was suspended already and, thereafter, the petitioner had deposited the arms before passing of the order, the licensing authority could have kept the concerned licence under suspension awaiting the final outcome of the concerned criminal case. In case of acquittal, he could have considered the issue of revocation of licence in accordance with law or in case of conviction, he could have proceeded to cancel the licence.

In my view, unnecessarily the order of cancellation was



passed. A reference in this regard is made to a decision of the Division Bench of this Court rendered in ***Mahesh Sharma Vs. State of Bihar and Ors. [2008 (3) PLJR 186]*** holding that if FIR is lodged and charge sheet is submitted, the allegation cannot be finally accepted to be true as there may be substance in the defence of the petitioner.

So far as the appellate proceeding is concerned, it was stated in the memorandum of appeal that a compromise has been arrived between the parties. However, placing reliance upon a decision of ***Kerala High Court rendered in V.K. Thomas Vs. Revenue Board, Member [1988 Cri.L.J. 336 (Kerala)]*** holding that acquittal in criminal cases would not bar the authorities from revocation of the licence, the appellate authority has proceeded to dismiss the appeal.

It appears that the appellate authority, though has considered the decision of Kerala High Court but did not consider the Full Bench judgment of this Court rendered in ***Kapildeo Singh Vs. State of Bihar [AIR 1987 Patna 122]***. This aspect of the matter has been considered by this Court in ***Lalan Singh Vs. The State of Bihar and Ors. [2016 (1) PLJR 198]*** holding that the judgment pronounced by the Court are not open to scrutiny by the statutory authority under the Arms Act to reach to a conclusion as to whether licence should be



cancelled or revoked or not if that judgment has attained finality. This Court has considered the aforesaid decision of the Kerala High Court. It is true that the Full Bench of this Court has stated in its judgment that the acquittal or conviction would not have inflexible result on the powers of the licensing authority to grant or revoke licence, however, that can be done only in cases where factors, other than the concerned criminal case in which judgment of acquittal has been passed, are available against the licensee or the applicant. It cannot be presumed by any authority after acquittal in a case that such person is still accused in the case or he is guilty of such crime. However, if some other factors are also available there which renders him unfit to hold licence then that would definitely be considered and, even after acquittal, such decision of revocation or refusal of licence can be taken by the licensing authority but in the case in hand there are no other materials on record.

In the present case, from perusal of the judgment kept at paragraph 10, it appears that the court concerned has stated that the accused persons are entitled for the benefit of doubt but just prior to that it is also stated that after carefully scrutinizing the entire materials on record, the court has reached to the conclusion that the prosecution has miserably failed in proving its case beyond all shadows of doubts. Thus, this judgment cannot be considered on such parameters as it



does not appear that the judgment has been passed on the compromise arrived at between the parties. In fact, the prosecution has failed to produce vital witnesses, such as, doctor concerned and the Investigating Officer as both could not be examined by the prosecution.

Be that as it may, since no counter affidavit has been filed on behalf of the State, this Court intends to dispose of this writ application by giving direction to the licensing authority that the impugned order, as contained in Annexure-8, would deem to be an order in which decision for suspension of licence of the petitioner has been taken and the licence has remained suspended till date as it was absolutely unnecessary to cancel the licence after it was suspended as discussed above. At the cost of reiteration, a reference is again made to a decision rendered by a Division Bench in Mahesh Sharma (Supra).

In view of the subsequent development and the fact that the petitioner has now been acquitted from the criminal charges, he would be at liberty to move before the licensing authority by filing an application for revocation of suspension of licence. On such application having been filed, the licensing authority would take a decision in accordance with law also considering the observations and findings recorded by this Court in the present order and without being



prejudiced by the appellate order, as contained in Annexure-9.

Accordingly, this writ application stands disposed of with the aforesaid observations and directions.

**(Dr. Ravi Ranjan, J)**

V.K. Pandey/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | N.A.       |
| Uploading Date    | 31.03.2017 |
| Transmission Date | N.A.       |

