

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15885 of 2016

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Vijay Kumar Pathak, Son of Late Janardan Pathak, Resident of Village-Bharkhara,
P.S.-Dumraon, District-Buxar All present C/o Vidya Prasad resident of Text Book
Colony, Indrapuri Road No2 (A), House No.30 P.S. Patliputra, Patna 800024

.... Petitioner

Versus

1. The State of Bihar, through the Commissioner , Patna Division Patna
2. The Superintendent of Police Gopalganj, District Gopalganj
3. The District Magistrate, Gopalganj District-Gopalganj
4. District Magistrate, Buxer, District-Buxar

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Bachan Jee Ojha, Advocate

For the Respondent/s : Mr. Iqbal Ashif Niaze, AC to GP-5

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 19-12-2016

Learned counsel for the petitioner is permitted to make
necessary correction with respect to numbering of annexure in course
of the day.

Heard parties.

The petitioner assails the order dated 6.01.2015, as
contained in Annexure-9, by which his licence granted for DBBL gun
has been cancelled. He also assails the order dated 7.06.2016
(Annexure-9A) passed by the Divisional Commissioner, Patna in
Arms Appeal No.61/2015 by which he has upheld the order passed by
the licensing authority.

The petitioner's vehicle met with an accident with another
vehicle at Gopalganj. It is contended that, thereafter, FIR being



Kateya P.S. Case No. 13/2013 was lodged against the petitioner with an allegation that after the accident, the petitioner assaulted the bus driver (informant) with the help of his DBBL Gun. Thereafter, when people of locality assembled there and tried to catch hold of him and started chasing the persons including the petitioner, the petitioner fired from his gun, however, he was captured and his gun was seized. This is admitted fact that the petitioner has been acquitted from the criminal charges vide judgment dated 14.10.2014 passed by a court of competent jurisdiction (Annexure-8/1) holding that the prosecution has miserably failed to prove the charges levelled against the accused persons. It is contended that, even then, licence of the petitioner has been cancelled.

Though this writ application has been filed after serving a copy upon the State on 7.09.2016, no counter affidavit has been filed till date.

From perusal of the order of the licensing authority, it appears that the licence of the petitioner has been cancelled on the basis of the report of the District Magistrate, Gopalganj as well as the Superintendent of Police, Gopalganj which had earlier formed the reason for suspension of his licence and the same ground has now been taken for cancellation of his licence even after his acquittal by a court of competent jurisdiction and for this a reference has been made to a decision of Kerala High Court rendered in 1988 CR.L.J. 336.



It appears that the appellate authority, though has considered the decision of Kerala High Court, it 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. This Court has considered the aforesaid decision of the Kerala High Court and has clarified that, the Full Bench of this Court, though has held 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, if other factors, apart from the concerned criminal case in which acquittal is there, are available against the licensee or the applicant.

In the present case, what has been considered by the District Magistrate is the report of the District Magistrate as well as the Superintendent of Police which was available at the time when the occurrence took place and the FIR was lodged against the petitioner. However, that would not be of much relevance after the petitioner has been acquitted of the criminal charges.

The appellant authority has also upheld the decision of the licensing authority without considering the aforesaid aspect of the matter and, only on the basis of the decision of the Kerala High Court



rendered in 1988 CR.L.J. 336 which has been considered and explained in the decision of this Court rendered in Lalan Singh (Supra), the order has been passed.

As a result, it is held that the orders impugned are not at all sustainable in law and, as such, both the orders as contained in Annexure-9 and 9A are quashed and set aside.

The matter is remitted back to the licensing authority to take a fresh decision in the matter in accordance with law within a period of three months from the date of receipt/production of a copy of this order.

The petitioner would be at liberty to seek release of his gun if no decision is taken by the licensing authority within the aforesaid period.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	07.04.2017
Transmission Date	N.A.

