

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3477 of 2014

=====

Shambhu Nath Thakur @ Dinesh Thakur Son of Sri Kameshwar Prasad
Thakur Resident of Village Kusaiya, P.S.- Baris Nagar, At Present Resident
of Mohalla:- Sri Krishnapuri, P.S.- Muffasil, District- Samastipur

.... Petitioner

Versus

1. The State Of Bihar
2. The Commissioner, Darbhanga Division, Darbhanga
3. The District Magistrate Cum Collector, Samastipur, District- Samastipur
4. The Superintendent Of Police, Samastipur
5. The Inspector Of Police Cum Officer In Charge Of Samastipur Town
Police Station, Samastipur

.... Respondents

=====

Appearance :

For the Petitioner : M/s Viswanath Pd. Sinha, Sr. Advocate, and
Yugal Kishore

For the State : Mr. Satyendra Kumar Jha, AC to G.P. 3

=====

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 04-01-2016

Heard learned counsel for the petitioner and the State.

Despite indulgence granted, no counter affidavit
could be filed on behalf of the State. However, in view of the
proposed order, the matter is being considered for its final disposal
without waiting further for filing of any counter affidavit.

Petitioner's arms licence has been cancelled vide

Annexure 9 dated 4.7.2011. The appeal filed by the petitioner has also been dismissed and order of the licensing authority has been upheld vide Annexure 10 dated 23.12.2013. Both the orders are sought to be challenged in the present writ application.

At the time of hearing a short question has been raised on behalf of the petitioner. It is contended that though show cause notice was issued upon him not on one occasion but twice as would be evident from the impugned order passed by the licensing authority itself and detailed reply thereto were filed by the petitioner on both occasions explaining the circumstances and falsity of the case lodged against him and taking several other grounds also. Copies of the reply to the show cause notices have been appended as Annexures 6 and 8. It is contended that there is absolute lack of consideration of the grounds raised in the replies and the same have been rejected by simply saying that those were not satisfactory. He further contends that no reason has been assigned for cancellation of arms licence. Merely a recommendation of the Superintendent of Police has been referred in the first paragraph of the impugned order.

It is contended that it is well settled that if any action or order of the authority visits consequence upon a party or a person then the consideration of reply to the show cause notice would be required otherwise the order could be held to be suffering

from the vice of non-application of mind by the authority concerned.

Learned counsel appearing for the State has submitted that the petitioner was found wielding his licensed gun while he was in intoxicated condition. However, the question is whether such issue was considered by the licensing authority? Whether there was any test conducted upon the petitioner which shows that he was under intoxication or not at relevant point of time or other aspects which were required to be considered by licensing authority before being satisfied for consideration of licence have been considered or not in the impugned order would be a relevant question. A Full Bench of this court in **Kapildeo Singh vs State Of Bihar And Ors. [AIR 1987 Pat 122]** though has held that even though there is no provision under the Arms Act empowering the licensing authority to cancel licence during the pendency of the criminal case but, since untrammelled discretion has been given to the licensing authority under the statute, even in the case of pendency of the criminal case such action of suspension varying or revocation of licence could be taken by the licensing authority upon his being satisfied. However, strong note of caution has also been sounded as a criminal case may vary from a paltry traffic offence up to horrendous capital crime, therefore, lodgment of the criminal case itself cannot

be a criteria for cancellation of licence but the seriousness of the charges and other materials to the satisfaction of licensing authority would be required to be considered for the said purpose. However, the Full Bench also held that the licensing authority should record in writing the reasons for taking such action.

In my view the aforesaid consideration is completely lacking in the order passed by the licensing authority as neither the grounds raised by the petitioner has been considered nor any reason has been recorded indicating satisfaction of the licensing authority for the relevant purpose.

By way of last attempt, learned counsel appearing for the State has submitted that the appellate authority seems to have considered each and every aspect. However, in my view the mandate is to the licensing authority either to cancel the licence or vary or suspend it and, thus, he would be required to follow the required procedure before passing such adverse order against a person. The lacuna found in the order passed by the licensing authority cannot be cured by the appellate authority.

As a result, this writ application succeeds. The orders impugned are quashed and set aside. However, the matter is remitted back to the licensing authority to take a fresh decision in the matter in accordance with law after granting reasonable opportunity

to the petitioner. It is expected that the entire exercise would be completed within a period of three months from the date of receipt / production of a copy of this order.

(Dr. Ravi Ranjan, J)

Spd/-

U			
---	--	--	--