

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22241 of 2014

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Baleshwar Singh son of Late Sato Singh resident of village - Koiri Bigha, Police Station Parwalpur, District - Nalanda

.... Petitioner

Versus

1. The State of Bihar
2. The Commissioner, Patna Division, Patna
3. The Collector, Nalanda at Biharsharif
4. The Superintendent of Police, Nalanda at Biharsharif
5. The Officer - in - charge, Parwalpur Police Station, Parwalpur, District Nalanda

.... Respondents

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Appearance :

For the Petitioner : Mr. Awadhesh Kumar Singh, Advocate
For the State : Mr. Manoj Kumar Sinha, AC to SC 30

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT
Date: 27-06-2016

I.A. No. 4385 of 2016

This Interlocutory Application has been filed for amendment of the writ petition by addition of relief and for quashing of the order dated 07.09.2015, as contained in Annexure 6, by which the Collector, Nalanda has cancelled the firearm licences of several persons who have been found dead and the name of the petitioner includes at serial no. 71.

In view of the fact that the order which is sought to be quashed has been passed during the pendency of the writ petition, this Interlocutory Application is allowed.

Let the relief mentioned in paragraph no. 1 of the

Interlocutory Application as well as the averments made in support thereof including the copy of the order which has been appended as Annexure 6 form part of the writ petition.

C.W.J.C. No. 22241 of 2014

Ordinarily, after allowing such Interlocutory Application, time would have been granted to learned counsel for the State for seeking instruction but in the facts and circumstances of the case and in view of the nature of the order which is going to be passed and also the fact that a counter affidavit has already been filed on earlier occasion, this writ application is being disposed of without granting such indulgence.

This writ application was initially filed for quashing of the order dated 02.04.2013 passed by the Collector, Nalanda as contained in Annexure 4, by which the firearm licence of the petitioner was cancelled. The petitioner has also assailed the order dated 22.07.2014/13.08.2014 passed by the Commissioner, Patna in Arms Appeal No. 355/2013(Annexure 5) upholding the order passed by the licensing authority and dismissing the appeal.

The factual matrix of the case which is required for consideration of the *lis* stands narrated as under:

The petitioner's licence which was earlier suspended was cancelled by the impugned order by the District Magistrate,



Nalanda, as contained in Annexure 4. Petitioner's licence was suspended on the ground that has been found involved in a criminal case of serious nature registered as Ekangarsarai Police Station Case No. 51 of 1987 under section 307/34 of the Indian Penal Code as well as section 27 of the Arms Act. After suspending the licence the petitioner was issued show-cause notice for explaining as to why his licence should not be cancelled. The petitioner came up with a defence that he has already been acquitted of the criminal charge on 17.05.2000 itself and, thereafter, an order was passed by the Additional Sessions Judge IV, Nalanda on 20.05.2000 for release of the seized rifle and ammunition but the order was not complied. Thereafter, he again approached the court who had directed the petitioner to appear before the licensing authority and on such ground he again filed a petition for release of the firearm and ammunition. In such background of the matter, a request was made for revocation of suspension of the firearm licence by the petitioner and also for release of the gun. However, even though the petitioner has been acquitted in the aforesaid criminal case, on the same ground the licence of the petitioner has been cancelled.

It is contended that such action of the licensing authority is in teeth of the decision rendered by this Court **in Lalan Singh v. The State of Bihar and others**(2016(1) Patna Law Journal



Reports 198). The petitioner, thereafter, filed appeal before the Commissioner, Patna Division, which was also dismissed vide the order contained in Annexure 5 quoting a decision in the Kerala High Court rendered in **V.K. Thomas v. Revenue Board, Member(1988 Cri. L.J. 336(Kerala).**

Hence, this writ application was filed. However, during the pendency of the writ petition, as would be evident from Annexure 6, again an order came to be passed by the licensing authority by which the licences of 116 persons have been cancelled on the ground that all of them are dead.

The petitioner challenges the aforesaid order by filing affidavit on the ground that he is still alive and he himself has sworn affidavit in the aforesaid I.A. No. 4385 of 2016.

In view of the aforesaid action and the orders passed by the authorities, two questions emerge for consideration:

(I) Whether even after acquittal the petitioner's licence could have been cancelled on the ground that he was involved in a criminal case?

(II) Whether the petitioner, who is still alive, could have been considered dead and again an order was required to be passed for cancellation of his licence, when his licence has already been cancelled

by the order contained in Annexure 4 and the same has been affirmed by the appellate authority vide Annexure 5?

Since both the issues are intertwined the same are being considered together.

In my view, the licensing authority could not have gone to cancel the licence on the ground that the petitioner was involved in a case registered under section 307/34 of the Indian Penal Code and section 27 of the Arms Act when there was already a judgment of acquittal passed in favour of the petitioner.

The Full Bench decision of this Court rendered in **Kapildeo Singh v. The State of Bihar and others(AIR 1987 Patna 122)** has held that the conviction or acquittal in a case concerned may not have inflexible result upon cancellation of grant of licence as in certain cases acquittal may be on narrow margin granting benefit of doubt. Therefore, the licensing authority may proceed to cancel the licence even after such judgment having been passed if some other grounds are available against the person for consideration of cancellation of his licence. This Court in **Lalan Singh(supra)** has held that once a judgment of acquittal has been passed by a court of competent jurisdiction, which has attained finality, it cannot be questioned by the statutory authority under the

Arms Act for denying the licence on ground of involvement in such case.

From perusal of the record, it does not appear that any other material was available against the petitioner and in fact, the order has been passed on the ground that the petitioner's acquittal may have been in view of the fact that the witnesses could not have been produced or could have been declared hostile. In my view, this ground is not available to the licensing authority as the same already stands considered and decided in **Lalan Singh(supra)** in detail.

Similarly, another question would arise. If the order of cancellation has already been passed on earlier occasion, how an order of cancellation could again have been passed again considering the petitioner to be dead without stating as to how such information was gathered by the licensing authority. The petitioner claims that he is still alive. Thus, in my view, all the impugned orders are not at all sustainable in law.

As a result, this application is allowed, the orders impugned as contained in Annexure 4, 5 and 6 are quashed and set aside and the matter is remitted back to the licensing authority for fresh consideration in accordance with law. While doing so, he would be obliged to consider the decision rendered in **Lalan**

Singh(supra) and the order, if any, passed by the Additional Sessions Judge, Nalanda for the release of the firearm.

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)

SC/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	01.09.2016
Transmission Date	NA