

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11199 of 2014

=====

Shrwan Kumar Singh, son of late Ram Bachan Singh, resident of village -
Dighwaliya, P.S. - Raghunathpur, District - Siwan.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner, Saran Division at Chapra.
3. The District Magistrate-cum-Collector, Siwan.

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Lakshmi Kant Sharma, Sr. Advocate,
Mr. Lakshmi Kant Sharma, Advocate

For the State : Mr. Prabhat Bharti, A.C. to G.P. 23

=====

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 12-04-2016

Heard parties.

The petitioner was holding two firearm licences one for DBBL gun and one for N.P. bore rifle. Both the firearm licences of the petitioner were suspended vide order dated 19.03.2005 on the ground that some criminal case is pending against him. The order of suspension came to be challenged by the petitioner by filing Arms Appeal No.34/2005-06, however, the appeal was also dismissed and order of Licensing Authority was upheld finding that there is no procedural, legal or substantive infirmity or lacuna in the impugned order. The aforesaid decisions of the Licensing Authority as well as the appellate authority were put to challenge by the petitioner by filing C.W.J.C. No.5372/2006, however, in the meantime, the Licensing



Authority proceeded to cancel the firearm licences of the petitioner vide order dated 06.04.2005. The aforesaid order was also challenged before the Commissioner, Saran Division on the same date, i.e., on 20.02.2006 on which the appeal against the suspension of licence was dismissed. The appellate authority quashed the order of cancellation on the ground that suspension order has already been upheld and criminal cases are still pending. It is contended that C.W.J.C. No.5372/2006 was disposed of vide order dated 17.09.2012 quashing the order of the Licensing Authority as well as the appellate order and remitting back the matter to the Licensing Authority for fresh consideration. Again the licence has been cancelled by the impugned order as contained in Annexure 1 dated 04.04.2014.

Mr. Ramakant Sharma, learned Sr. counsel appearing on behalf of the petitioner has submitted that the order of suspension and the appellate order arising out of such order of suspension were quashed and the matter was remitted back to the authority for fresh consideration would not mean that the court has enlarged the scope of the Licensing Authority so that it could consider cancellation of licence also as the order of cancellation of licence was already quashed in Arms Appeal No.104-105/2005-06. The aforesaid order was never challenged by the State authority, therefore, the order of cancellation became final. However, even assuming that the Licensing



Authority could have gone to cancel the license, there must be some ground upon which such decision could have been taken by it. It is contended that the licences were cancelled on the ground that there is no specific evidence regarding threat perception upon the petitioner. It is submitted that this issue is no longer *res integra* inasmuch as this Court in **Manish Kumar Vrs. State of Bihar and other analogous cases [AIR 2016 Patna 9]** has already considered and decided the issue holding that lack of specific evidence regarding any threat perception does not form a ground for rejection of application for grant of arms licence to the petitioner.

Once having held as such, it is contended that the same principle would also apply while the Licensing Authority would consider cancellation of the licence. It is contended that second ground taken for cancellation is that the petitioner is involved in politics and, therefore, there is always a suspicion of abuse of firearm by him during the election and the election for the parliamentary elections were in the offing and, as such, the decision was taken to cancel the licence.

In my considered view, both the grounds are not tenable. Once the licence is granted to a person then there cannot be cancellation on the ground that there was no threat perception upon such person as licence must have been granted after satisfying the



requirements which are laid down in Sections 13 and 14 of the Arms Act, 1959. Once a decision was taken to grant licence, in my view, now lack of threat perception cannot form a ground for its cancellation as the same cannot form a ground for refusal of licence as has been held in **Manish Kumar (Supra)**. Secondly, if the parliamentary elections were in the offing and the Licensing Authority was not inclined to grant licence to the petitioner during the parliamentary election then the matter could well have been adjourned on that ground and a decision could well have been taken after the parliamentary elections. Similarly, order of cancellation of licence could not have been passed by the Licensing Authority without considering the fact that earlier order of cancellation passed by it was set aside by the appellate authority and the matter which was pending before the High Court was only against the order of suspension of licence, therefore, even if it was inclined to cancel the licence, that could not have been done without consideration of the aforesaid facts. That apart, cases against the petitioner were registered under Sections 341, 323 and 506/34 of the Indian Penal Code. It is contended on behalf of the petitioner that all the offences are bailable and not serious in nature and that cases have not been registered for horrendous crime. This aspect also appears to have been dealt with by the appellate authority while passing the order dated 20.02.2006 in



Arms Appeal No. 104-105/2005-06, a certified copy of which has been produced at the time of hearing by the petitioner after serving a Xerox copy upon the State and which has been taken in record. The Full Bench has already held in **Kapildeo Singh Vs. the State of Bihar and others [1987 BBCJ 274]** that though the Licensing Authority has discretionary power under Section 17(1) for variation, suspension and revocation of the licence but prior to that reasonable opportunity must be given to the petitioner and strong note of caution has been made in this context observing that the criminal case may range from a paltry traffic offence to the most horrendous capital crime. Whilst the pendency of the former may hardly provide an adequate basis under Section 17(3), in the case of latter after noticing and hearing of the explanation such action may well become. Therefore, before taking a decision for cancellation of licence, the Licensing Authority should have examined the gravity of criminal charges but it appears that has also not been done by it at all as nothing has been disclosed in that regard in the order of cancellation.

A counter affidavit has been filed on behalf of the State taking a stand that criminal case is pending against the petitioner but in view of the aforesaid discussion, in my considered opinion, the order impugned is not sustainable in law and, accordingly, the same is quashed and set aside. The matter is remitted back to the Licensing

Authority for taking a fresh decision in accordance with law, however, also considering the discussion made above, within a period of three months from the date of receipt/production of a copy of this order.

This writ application stands allowed to the extent as indicated above.

(Dr. Ravi Ranjan, J)

Sanjay-II/-

U			
---	--	--	--