

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.24282 of 2013

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Raj Kumar Son Of Late Bhuneshwar Prasad R/O Of Mohalla - Prasad Bigha, At, Ps
And District - Nawada

.... Petitioner

Versus

1. The State Of Bihar
2. The Divisional Commissioner, Magadh Division, Gaya
3. The District Magistrate-Cum-Licensing Authority, Nawada
4. The District Arms Magistrate Nawada
5. The Superintendent Of Police, Nawada
6. The Officer-In-Charge, Nawada (Town) Police Station, Nawada

.... Respondents

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Appearance :

For the Petitioner : mr. Alok kumar Sinha- I, Advocate
For the State : Mr. Vinay Kriti Singh, SC 5

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 18-07-2016

Heard learned counsel for the petitioner and the State.

Petitioner seeks quashing of the order dated 7.8.2012 passed by the District Magistrate – cum – licensing authority, Nawada (Annexure 2) as well as the order dated 3.10.2013 passed by the Commissioner, Magadh Division, Gaya (Annexure 1) by which he has upheld the order passed by the licensing authority and rejected the appeal.

From perusal of the impugned order as contained in Annexure 2, it appears that the cancellation of licence is on the ground that Superintendent of Police, Nawada has stated in his report



that he had threatened some police personnel which stands recorded in the police case diary, thus, it has come to the conclusion that the conduct of the petitioner appears to be impulsive in nature. Secondly, it has been stated that the petitioner did not deposit the fire arms when earlier it was suspended though he had furnished a reply to the show cause notice, therefore, it was in violation of the direction passed by the licensing authority on the earlier occasion and last but not the least, the petitioner has not been able to make out any case that there is specific threat upon him.

In my view all the grounds taken by the licensing authority do not appear to be tenable.

A counter affidavit has been filed on behalf of the State but the report of the Superintendent of Police, Nawada has not brought on record. It has been recorded in the impugned order that the petitioner has allegedly threatened a police personnel. Now the question would arise that if the same stands recorded in the case diary, why no action was taken by the police? If in police case diary such event has been recorded why it was not stated in the show cause notice so that the petitioner could file effective reply to that? It is not clear as to whether such statement was recorded in the same case in which the petitioner has eventually been acquitted for the criminal charge or in some other case? It appears that some sort of passing



observation has been made in this regard by the licensing authority which would not be sufficient for taking stern action of cancellation of licence. Of course the licensing authority has got a discretionary power under Section 17 of the Arms Act, 1959 for taking a decision for cancellation of arms licence but in my view he should have kept in his mind that in case of exercise of discretion also cogent reason would have to be assigned by him and order should be speaking one and not a vague. If a person comes and threatens a police officer and personnel on duty, it would be pertinent question as to why a case was not lodged against him? Similarly, it is stated that petitioner did not deposit his rifle within the time even after suspension of his licence but in my view such ground should have been taken for cancellation of his licence on the earlier occasion itself which was not taken by the licensing authority as would be apparent from Annexure 3 which is an order dated 27.2.2012 passed by a Single Judge Bench of this Court in C.W.J.C. No. 4383 of 2009 quashing the order of licensing authority cancelling the licence of the petitioner. The learned Single Judge has noticed that the cancellation was on the ground of ensuing Panchayat elections 2006 and further that the petitioner was an accused in a criminal case. The aforesaid ground was not taken for cancellation of the licence of the petitioner.

It is contended on behalf of the State that since the matter



was remitted back for fresh consideration, aforesaid issue was considered by the licensing authority. In my view, when such ground was not taken in the earlier order of cancellation of licence by the licensing authority, as the issue was that after suspension of the licence the petitioner did not deposit the rifle within time granted to him for depositing the same, that ought to have been taken as a ground for cancellation of the licence. That was not taken for ground of cancellation, in my view, it would mean that such act of the petitioner was condoned by the licensing authority.

It appears that after acquittal of the petitioner from the criminal charges and since the elections were also over and the order of cancellation was set aside by the Single Judge Bench of this Court, now some other ground is being taken for cancellation. Last but not the least, while taking a ground that the petitioner was not able to produce any evidence regarding threat perception, the licensing authority forgot that it was not examining the case for grant of licence of the petitioner rather licence was earlier granted and thereafter, the order of cancellation was also set aside. The matter was remitted back for considering afresh on issue of cancellation not on the issue of grant of licence. The fact that he was earlier granted licence goes to establish that the licence was granted after considering the threat perception aspect. Thus, in my view such

ground also would not be available now. That apart in **Manish Kumar Vrs. State of Bihar and other analogous cases [AIR 2016 Patna 9]** it has already been held that such ground cannot be taken for refusal of licence.

Thus, in my view both the orders impugned cannot be sustained in law in their present form.

Accordingly, this writ application succeeds and both the orders impugned as contained in Annexure 1 and 2 are quashed and set aside.

However, the matter is remitted back to the Licensing Authority for taking fresh consideration in accordance with law within a period of three months from the date of receipt / production of a copy of this order.

(Dr. Ravi Ranjan, J)

Spd/-

AFR/NAFR	NAFR
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