

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3186 of 2015

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Pankaj Kumar Nirala S/o - Shri Ganesh Prasad Mahto resident of ward no. 5, P.O. + P.S. - Murliganj, District - Madhepura.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate-cum-Collector, Madhepura.
3. The District Arms Officer, Madhepura.
4. The Superintendent of Police, Madhepura.
5. The Sub-Divisional Officer, Madhepura.
6. The Officer-in-Charge of Madhepura Police Station, Madhepura.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shri Prakash Srivastava, Advocate
Ms. Anu Priyadarshi, Advocate
For the State : Mr. Dhurjati Kr. Prasad, GP 14

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

10 02-03-2017 Heard learned counsel for the petitioner and learned
counsel for the State.

The present writ application has been filed for quashing of the order dated 26.12.2014 communicated through letter dated 27.12.2014 bearing Memo No. 349 (Annexure -8), passed by the respondent no.2, the District Magistrate-cum-Collector, Madhepura, whereby the licence of N.P. Bore rifle being licence no.05/2001 and N.P. Bore pistol licence bearing licence no. 01/2005 of the petitioner have been cancelled and thereby the earlier order of cancellation of licence has been affirmed.



The factual matrix of the case is that the abovementioned two licences of the petitioner were put under suspension vide orders dated 12.12.2013, as contained in annexures-2 and 2A for non-production of the arms in question for physical verification and consequently vide order dated 21.03.2014 bearing memo no.113/shashtra (annexure-4 series) with respect to N.P. bore rifle and pistol bearing licence nos.05/2001 and 01/2005 were cancelled by the District Magistrate, Madhepura, on the ground that in spite of several opportunities being given for production of both the arms for physical verification the same were not produced. Moreover, the warrant of arrest has been issued against the petitioner in a criminal case lodged for non-payment of energy charge with regard to cold storage of the petitioner. The petitioner challenged the said cancellation order in CWJC No. 7711/2014 and considering the medical reasons advanced by the counsel for the petitioner for not producing the arms for physical verification a co-ordinate Bench of this Court set aside the orders of the cancellation of arms holding that in the facts and circumstances explained by the petitioner for non production of fire arms within stipulated time did not warrant cancellation of licence. The relevant portion of writ application reads as under :-



"The order impugned has been passed by the District Magistrate under Section 17 of the Act but in the opinion of this Court the circumstances explained by the petitioner for non-production of the fire arms within the prescribed period did not warrant any such action as envisaged under section 17 of the act much less a cancellation of his licence. The order passed by the District Magistrate, cannot be upheld and is accordingly set aside. The matter is remitted back to the District Magistrate, Madhepura to pass a fresh order in accordance with law expeditiously and preferably within 8 weeks of receipt/production of a copy of this order after giving opportunity of hearing to the petitioner."

The District Magistrate, on remand, vide order dated 27.12.2014 issued through letter no.349 (annexure-8) again cancelled both the licences of the petitioner on the ground that as per the report of the Superintendent of Police, Madhepura the petitioner is accused in a case registered under sections 39 and 44 of the Electricity Act and warrant of arrest has been issued in a certificate proceeding initiated for non-deposit of the arrears of energy charges with regard to his cold storage. There are two cases pending against the petitioner before the District Consumer Forum, Madhepura, apart from the fact that he absconding and is in company of the anti social elements. It has ultimately been held that by repeated disobedience of the orders of licencing authority



amounts to violation of provisions under sections 19 and 21 of the Arms Act.

It is submitted by learned counsel for the petitioner that the grounds on which earlier cancellation orders were passed, the present order has also been passed by the Collector basically on the same ground of non-production of the fire arms for physical verification which has been held by this Court in earlier writ application to be not a reasonable ground for cancellation of licence. There is nothing on record to suggest that the petitioner is accused in some serious nature of offence or has misused the terms of licence. Moreover, once this Court remanded the matter, the District Magistrate ought to have made the physical verification of the arms, in question.

This court once condoned non-appearance of the petitioner and non-production of the arms for physical verification then the same have erroneously been held to be violation of sections 19 and 21 of the Arms Act. Above all, the District Magistrate has treated the remand order of this court as if he has to exercise the review jurisdiction.

Though, the learned counsel for the respondent-state has filed counter affidavit, but this Court does not find the same as reply to the contentions raised by the



learned counsel for the petitioner.

This Court is not inclined to interfere on the merits of the case since the impugned order is appealable under section 18 of The Arms Act.

Under the circumstances, the writ application is disposed of with a liberty to the petitioner to prefer an Appeal within a period of four weeks. If such an appeal is filed, the learned appellate authority is expected to consider condonation of delay in filing of the appeal since the writ application was pending before this Court. It is expected from the learned appellate authority to consider the contentions of the petitioner and dispose of the Appeal in accordance with law preferably within a period of nine months after giving due opportunity to the petitioner.

Accordingly, the writ application is disposed of.

(Dinesh Kumar Singh, J)

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