

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9097 of 2017

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Dilip Kumar, Son of Basant Singh, Resident of Shanti Kunj, Kurthoul, P.S.
Parsa Bazar, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Home, Bihar, Patna.
3. The District Magistrate, Patna.
4. The Senior Superintendent of Police, Patna.
5. The District Arms Magistrate, Patna.
6. The Officer-in-Charge, Kotwali Police Station- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Adv.
For the Respondent/s : Mr. Saroj Kumar, AC to AAG3

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date : 19-03-2018

Heard learned Counsel for the petitioner and the Respondents.

Since the Writ application was registered on 03.07.2017, but till date no counter affidavit has been filed, this Court is not inclined to adjourn the matter any further.

The present Writ application has been filed to direct the Respondent authorities for issuance of duplicate arms licence to the petitioner which was stolen by some unknown person leading to registration of Kotwali (Patna) P.S. Case No. 398 of 2014, registered under Section 379 of the I.P.C. Further prayer has been made for quashing of Memo no.99, dated 16.04.2016,



whereby, Respondent no.5, the District Arms Magistrate, Patna issued a show cause to the petitioner asking as to why his arms licence be not cancelled.

It is submitted by learned Counsel for the petitioner that the petitioner is a contractor and was granted licence for pistol being Arms Licence No.131 of 2012. Subsequently, the petitioner purchased pistol bearing no. RP-18267. The arms licence was kept in a briefcase which was kept in a car and in absence of the petitioner on 03.07.2014, the briefcase of the petitioner was stolen by some unknown person along with arms licence and other articles, leading to registration of Kotwali (Patna) P.S. Case No.398 of 2014, as contained in Annexure-1. The I.O. of the case, after investigation submitted the final report, found the case of the petitioner true, but no clue. After receipt of the final report, the Respondent no.5, issued a show cause notice to the petitioner, under the signature of Arms Magistrate, Patna, vide Memo no.99, dated 16.04.2016, as contained in Annexure-4, whereby, the petitioner was directed to file show cause as to why his license be not cancelled, since the arms license issued to him was stolen due to his lackadaisical attitude. After receiving the same, the petitioner filed reply to the show cause on 15.06.2016, as contained in Annexure-5,



stating therein that his arms licence was stolen by some unknown person. Thereafter, the petitioner filed another reply to the show cause on 25.07.2016 reiterating the same thing. But despite all the efforts made by the petitioner, the duplicate arms licence has not been issued to him.

Learned AC to AAG-3 submits that at present he is not having any instruction whether the petitioner's application for issuance of arms licence has been processed or not, but if the same has not been processed, it will be disposed of within a time frame.

There is nothing on record to suggest that the petitioner had applied for issuance of duplicate arms licence. However, the issuance of show cause suggests that Respondent no.5 issued notice to the petitioner to show cause as to why his arms licence be not cancelled since it has been lost due to carelessness of the petitioner.

Section 17 of the Arms Act, 1959 (hereinafter referred to as 'the Act') stipulates the procedure of variation, suspension and revocation of licences. Section 17 reads as :-

“17. Variation, suspension and revocation of licences :- (1) The licensing authority may vary the conditions subject to which a licence has been granted except such of them as have been prescribed and may for that purpose require the licence holder by notice in writing to



deliver-up the licence to it within such time as may be specified in the notice.

(2) The licensing authority may, on the application of the holder of a licence, also vary the conditions of the licence except such of them as have been prescribed.

(3) The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence-

(a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force, from acquiring, having in his possession or carrying any arms or ammunition, or is of unsound mind, or is for any reason unfit for a licence under this Act; or

(b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or

(c) if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it; or

(d) if any of the conditions of the licence has been contravened; or

(e) if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver-up the licence.

(4) The licensing authority may also revoke a licence on the application of the holder thereof.

(5) Where the licensing authority makes an order varying a licence under sub-section (1) or an order suspending or revoking a licence under sub-section (3), it shall record in writing the reasons therefor and furnish to the holder of the licence on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

(6) The authority to whom the licensing authority is subordinate may by order in writing



suspend or revoke a licence on any ground on which it may be suspended or revoked by the licensing authority; and the foregoing provisions of this section shall, as far as may be, apply in relation to the suspension or revocation of a licence by such authority.

(7) A Court convicting the holder of a licence of any offence under this Act or the rules made thereunder may also suspend or revoke the licence;

Provided that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void.

(8) An order of suspension or revocation under sub-section (7) may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

(9) The Central Government may, by order in the Official Gazette, suspend or revoke or direct any licensing authority to suspend or revoke all or any licences granted under this Act throughout India or any part thereof.

(10) On the suspension or revocation of a licence under this section the holder thereof shall without delay surrender the licence to the authority by whom it has been suspended or revoked or to such other authority as may be specified in this behalf in the order of suspension or revocation”.

The above provision does not stipulate that if somebody loses his licence in any manner whatsoever, his licence can be cancelled. Hence, *prima facie*, it appears that the issuance of show cause, as contained in Annexure-4, is contrary to the provisions of the Act. Accordingly, Memo no.99, dated 16.04.2016, issued by Respondent no.5, the District Arms Magistrate, Patna, as contained in Annexure-4, is set aside.



Since there is nothing on record to suggest that the petitioner applied for arms licence, the petitioner is permitted to submit fresh application within a period of four weeks, if it has not already been submitted, whereupon, the Respondent no.3, the District Magistrate, Patna, is expected to decide the issue of issuance of duplicate arms licence to the petitioner in accordance with the provisions of the Act within a period of six weeks thereafter.

The Writ application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

