

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2605 of 2006

=====

Shailendra Kumar, Son of Sri Ramadhar Prasad Sinha, Resident of Mohalla-
Munna Chak, P.S.-Patrakar Nagar, (Kankarbagh), Town & Distt.-Patna.

... .. Petitioner

Versus

1. The State of Bihar, through Home Commissioner, Government of Bihar,
Old Secretariate, Patna.
2. The Divisional Commissioner, Patna Division, North West Gandhi Maidan,
Patna.
3. The District Magistrate, Patna.

... .. Respondents

=====

Appearance :

For the Petitioner/s : Mr. (Dr.) Kumar Binode Barior, Adv.
For the Respondent/s : Mr. Binod Kumar, AC to GP-10.

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 22-03-2018

Heard Mr. (Dr.) Kumar Binode Barior, learned counsel for
the petitioner and Mr. Binod Kumar, learned AC to GP-10, for the
Respondent-State.

Through this admitted writ application, the prayer has been
made for quashing the order dated 24.07.1999, issued vide letter
no. 1535/5A dated 26.07.1999, by Respondent no.3, the District
Magistrate, Patna, as contained in Annexure-1 to I.A. No. 617 of
2007, whereby the arms licence of N.P. Bore rifle and DBBL Gun
bearing No. 1369 of 1989 and 1449 of 1992 have been cancelled.
Further prayer has been made for quashing the appellate order



dated 26.07.2005, passed by the Commissioner, Patna Division in Arms Appeal No. 04 of 2004, as contained in Annexure-2, whereby the order of the licensing authority has been upheld.

The factual matrix of the case would unveil that the petitioner being a journalist and apprehending danger to his life and property, concerning the publication of a news by him with regard to criminal activities and corruption, was granted two arms licences, one for N.P. Bore rifle and other for D.B.B.L. Gun in the year 1989 and 1992 itself. In view of the nature of his job, the petitioner was made an accused in Kankarbagh P.S. Case No. 502 of 1987, registered under Sections 448, 379 and 411 of the IPC. The petitioner was convicted for the charge under Section 448 of the IPC by learned Judicial Magistrate, 1st Class, Patna, by judgment and order of conviction and sentence dated 13.02.1991, passed in G.R. Case No. 3069 of 1987, Trial No. 135 of 1991, arising out of Kankarbagh P.S. Case No. 502 of 1987 and sentenced to undergo R.I. for nine months. The said judgment and order of conviction and sentence was challenged by the petitioner and other convicts in Cr. Appeal No. 25 of 1991 and learned Additional District and Sessions Judge, Patna, vide Judgment dated 26.04.1997, giving benefit of Section 4 of the Probation of Offenders Act, 1958, modified the sentence and directed the release of the petitioner on



execution of bond of Rs. 5,000/- with two sureties of like amount for keeping peace and good behaviour in terms of Section 4 of the Probation of Offenders Act. Consequently, the petitioner executed the bond on 19.05.1997, as gets reflected from the order of the learned Judicial Magistrate, 1st Class, Patna, dated 19.05.1997, as contained in Annexure-5. The period of bond got completed on 18.05.1998. Though, the petitioner was also made accused in one other case being Kadam Kuan P.S. Case No. 858 of 1992, registered under Section 353 of the IPC and Sections 25, 26 and 27 of the Arms Act, wherein the petitioner was acquitted, statement to that effect has been made in paragraph no.15 of the writ application, which reads as follows:-

“That two criminal cases vide Kandarbagh P.S. Case No. 502 of 1982 and Kankarbagh (kadam Kuan) P.S. Case No. 858 of 1992 as referred in the arm cancellation order has been taken grounds to cancel the licences in which one case vide Kadam Kuan P.S. Case No. 502 of 1987 has been ended in execution of Promissory Bond (U/s 448 IPC) fro one year on 19.05.1997 which expires on 18.05.1998 and another case vide Kadam Kuan P.S. Case No. 858 of 1992 was ended by clean acquittal to the petitioner.”

Subsequently a notice was issued, vide Memo No. 8806, dated 01.12.1998, under the signature of District Magistrate, Patna, as contained in Annexure-1 to the writ application, to the effect that there is a complaint against the petitioner that he is a



cheat and is having criminal antecedent. Moreover, he was made an accused in Kankarbagh P.S. Case No. 502 of 1982, wherein he has been convicted and since he has resorted to firing on police personnel, hence he should submit a reply to show cause as to why, both the arms licence issued to him be not cancelled, failing which, the licence of both the arms will be cancelled. The petitioner submitted his reply to the show cause on 08.02.1999, as contained in Annexure-8 to the supplementary affidavit, to the effect that the sentence of the petitioner was modified and he has been directed to be released on bail on executing bond for one year and the period of bond has already been completed. But without appreciating the reply to the show caused of the petitioner in true prospects, the licensing authority, the District Magistrate, Patna cancelled both the arms licences of the petitioner, vide order dated 26.07.1999, as contained in Annexure-1 to the Interlocutory Application. The petitioner challenged the said order of cancellation in C.W.J.C. No. 8347 of 1999, but a Bench of this Court, vide order dated 18.12.2003, as contained in Annexure-4 to the writ application, dismissed the aforesaid writ application with liberty to the petitioner to avail the statutory remedy of appeal. Thereafter, the petitioner preferred the appeal, being Arms Appeal No. 04 of 2004, before the Appellate Authority, but the



Commissioner, Patna Division, vide order dated 26.07.2005, as contained in Annexure-2, dismissed the said appeal and thereby upheld the order of the licensing authority. Hence, the present writ application.

It is submitted by learned counsel for the petitioner that the order of the licensing authority does not stipulate any ground for cancellation of arms licence. It only says that the reply to the show cause has been considered and both the arms licences, i.e., DBBL gun and N.P. Bore rifle of the petitioner have been cancelled by resorting to the provisions of Sections 9(a)(iii) and 17(3)(b) of the Arms Act and the petitioner was directed to deposit the arms in Kankarbagh/Kadam Kuan Police Station within a period of one week. The cancellation order reflects that a cryptic order without assigning any ground for cancellation of the same has been passed. The non-application of mind becomes apparent from the fact that the period of the bond got lapsed on 18.05.1998, while the licensing authority passed the order cancelling the arms licences on 24.07.1999.

Section 9(a)(iii) only prohibits any person to possess the firearm during the period of bond, hence the cancellation of licences of the petitioner after completion of bond period in



exercise of jurisdiction under Section 9(a)(iii) of the Arms Act is absolutely misconceived.

Section 17(3)(b) of the Arms Act gives jurisdiction to the licensing authority to vary, suspend and revoke the arms licence. For exercising such jurisdiction, one of the grounds are if the licensing authority deems it necessary for the security of the public peace or public safety, but the impugned order does not suggest that the District Magistrate came to a conclusion that non-cancellation of arms licences of the petitioner will be a threat to the public security or public peace, hence, exercise of such jurisdiction under Section 17(3)(b) of the Arms is also not sustainable in law.

It is further submitted by learned counsel for the petitioner that the Appellate Authority, the Commissioner, Patna Division also did not consider that in one case the petitioner was acquitted and in other case, the period of bond got lapsed in the year 1998 and the impugned order was passed by the licensing authority without examining these aspects of the matter, but came to a hypothetical erroneous finding that the District Magistrate must have examined the things meticulously and after being satisfied, would have passed the cancellation order. The Appellate Authority further failed to appreciate that the show cause issued by the



licensing authority, as contained in Annexure-1, talks about one case against the petitioner, however, the Appellate Authority considered both the cases, which suggests that the Appellate Authority also did not consider the materials on record, in its true perspective. The Appellate order has been passed on the basis of conjectures and surmises, as it has nowhere been held by the licensing authority that it came to the conclusion that the conduct of the licensee is a threat to public peace or public security. Had it been so, then the licensing authority has the power under the Arms Act to cancel the arms licence, but neither the licensing authority nor the Appellate Authority talk a word about how the conduct of the petitioner is a threat to the public security and peace.

A supplementary affidavit has been filed to the effect that till date the petitioner is not an accused in any other case apart from two cases.

Learned AC to GP-10, however, submits that he cannot defend the impugned orders, particularly so far as it does not contain any specific ground on which the arms licences have been cancelled. He is having no objection, if the matter is remanded back to the licensing authority.

Having considered the rival submissions of the learned counsel for the parties, this Court finds that the show cause was



issued to the petitioner on 26.11.1998, as contained in Annexure-1 to the writ application, which talks only about one case being Kankarbagh P.S. Case No. 502 of 1987, against the petitioner, but even accusation of the said has not been discussed in the impugned order by the licensing authority. The impugned order cancelling the arms licences of the petitioner, does not suggest that the licensing authority was aware of the fact that the petitioner is accused in two other cases, and out of them, in one case, wherein the petitioner was convicted for which show cause was issued, the sentence was modified and the petitioner was directed to execute a bond under Section 4 of the Probation of Offenders Act, 1958.

The word 'bond' is not defined in the Probation of Offenders Act. But Section 2(d) of the Probation of Offenders Act mandates that the words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1859 (hereinafter called as 'the Code'), shall have the meanings respectively assigned to them in that Code. Section 2(d) reads as follows:-

“2(d) words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1898, shall have the meanings respectively assigned to them in that Code.”

Section 106 of the Code provides for security for keeping peace on conviction.



Section 9 of the Arms Act, 1959 mandates the prohibition of acquisition or possession of firearms and ammunition. Section 9(1)a of the Act prohibits acquisition, possession, carriage of firearms and ammunition, who has not completed the age of twenty one years or who has been sentenced on conviction any offence invoking violence or moral turpitude to imprisonment for any period during the period of the five years after conviction. Further Section 9 (a)(iii) of the Arms Act, 1959 prohibits a persons to possess arms who has been ordered to execute under Chapter VIII of the Code, a bond for keeping the peace or for good behaviour, at any time during the term of the bond, hence, the jurisdiction under Section 9(a)(i)(ii)(iii) of the Arms Act can only be exercised by the licensing authority till the period of the bond.

In the present case, the period of bond got lapsed on 18.05.1998, whereas the District Magistrate exercised the jurisdiction for cancelling the arms licences on 26.07.1999. Hence, the jurisdiction has wrongly been exercised by the licensing authority. Section 17 of the Arms Act vests jurisdiction of licensing authority for varying, suspending and revoking the arms licence on various grounds. Section 17(3)(b) of the Arms Act mandates that the licensing authority can vary, suspend and revoke the arms licence, if he feels necessary for the security of public



peace and public safety. Such satisfaction which is *sine qua non* for exercise of such jurisdiction has not been recorded in the impugned order either by the Licensing Authority or by the Appellate Authority. Since it has been the consistent stand of the petitioner in the reply of the show cause submitted by him either before the licensing authority, as contained in Annexure-8 to the supplementary affidavit or in the supplementary affidavit filed before this Court that he is not involved in any other case apart from the two cases. This Court does not think that any useful purpose will be served by the licensing authority to exercise the jurisdiction under Section 17(3) of the Arms Act afresh.

In view of the discussions made above and particularly the stand of the learned AC to GP-10, as recorded above both the order of the Licensing Authority and Appellate Authority are hereby set aside.

But it is being made clear that mere setting aside of the impugned orders will not revive the arms licence of the petitioner because the period of arms licence got lapsed for which it was valid.

In the circumstances, the petitioner is permitted to submit an application for renewal of licence before the licensing authority with an application for condonation of delay, such application for



renewal or the condonation of delay will be considered by the
licensing authorities in view of the discussions made above in
accordance with the provisions of the Act and the Rules.

Accordingly, the present writ application is allowed.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	/05/2018
Transmission Date	

