

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1348 of 2017

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Kameshwar Yadav @ Kameshwar Prasad Yadav, son ogf Late Dukhan
Yadav, resident of Mohalla- Parvati P.S. University, District- Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Commissioner, Bhagalpur Division, Bhagalpur.
3. District Magistrate cum Collector, Bhagalpur.
4. Superintendent of Police, Bhagalpur.
5. Arms Magistrate, Bhagalpur.
6. Officer in Charge, University Police Station, Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pankaj Kumar Sinha, Advocate
Mr. Rajiv Kumar Singh, Advocate

For the Respondent/s : Mr. Sheoshankar Prasad, SC-8
Mr. Harshvardhan Shivsundaram, AC to SC-8

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**
ORAL ORDER

05/ 21-12-2018

Heard Mr. Pankaj Kumar Sinha, learned
counsel for the petitioner and Mr. Harshvardhan Shivsundaram,
learned AC to SC-8.

The present writ application has been filed
for quashing the order dated 15.12.2016 passed in Misc. (Arms)
Appeal Case No. 71/2015-16 by Respondent No. 2,



Commissioner, Bhagalpur Division, Bhagalpur affirming the order dated 12.07.2007 passed by Respondent No. 3, District Magistrate, Bhagalpur in Misc. Arms Case No. 13/2006-07, whereby the petitioner's arms licence for N.P. Bore Rifle, bearing Licence No. 2618-115-2002 has been cancelled. Hence, prayer has been made for quashing of both the orders.

The factual matrix of the case would unveil that the petitioner being a social worker was granted Arms Licence No. 2618-115-2002 for N.P. Bore Rifle and it was renewed till 2006-07 and there has never been any complaint with regard to misuse of licence. The petitioner was named along with 12 other persons in Bhagalpur Kotwali University P.S. Case No. 509 of 2006 registered on 16.08.2006 with accusation under Sections 147, 148, 149, 323, 324, 325, 307, 380, 302 and 427 of the Indian Penal Code. The FIR was based on the fardbeyan of Ganga Devi, Wife of Madan Yadav, to the effect that 12 accused persons came armed with Gun, lathi, Garasa at the house of the informant and assaulted the son of the informant. The accused persons took away jewellery and other articles and even the husband of the informant went missing from the house after that. After sometime he was found in a septic tank. The informant's husband died while he was being taken to hospital. On 04.11.2006



the petitioner received a notice against the proposed cancellation of the licence and was asked to submit an explanation. The petitioner submitted the explanation before the licensing authority on 09.11.2016, as contained in Annexure-2, to the effect that he is a social worker, his wife was killed on 28.04.2003 and injury was caused to the nephew leading to registration of Kotwali (University) P.S. Case No. 245 of 2003 with accusation under Sections 147, 148, 149, 302, 307/34 of the Indian Penal Code and 27 of the Arms Act. The accused of aforesaid case are facing trial vide Sessions Trial Nos. 1109/03 and 669/04. The son of the petitioner, Sanjay Yadav was killed in 2002 for which Sessions Trial No. 708/03 is pending. Hence, he is apprehending serious threat to his life. On such show cause, the District Magistrate – cum- Licensing Authority, Bhagalpur called for a report from the Superintendent of Police, Bhagalpur, but vide order dated 12.07.2007, he withdrew that order since the court was not available and the licence of the petitioner was cancelled on the ground that in the criminal case the petitioner was named in the FIR and was charge-sheeted.

The said order was challenged in appeal being Misc. (Arms) Appeal Case No. 71/2015-16 before the Commissioner, Bhagalpur Division, Bhagalpur, who vide order



dated 15.12.2016 upheld the order of the District Magistrate on the ground that the petitioner was named in the FIR and consequently charge-sheeted, hence, he declined to interfere and dismissed the appeal and hence, the present writ application.

It is submitted by learned counsel for the petitioner that mechanically the licence of the petitioner has been cancelled. There is no specific accusation of assault against the petitioner. The FIR does not suggest use of any firearm, though, it is alleged that the petitioner was armed with firearm, but neither any firearm was seized nor any ballistic report was submitted. He further submits that once the licensing authority, in view of the show cause submitted by the petitioner, called for a report, then there was no occasion for him to rescind the said order and cancel the licence of the petitioner merely on the ground that the petitioner was named in the FIR and was consequently charge-sheeted.

It is further submitted by learned counsel for the petitioner that now the petitioner has been acquitted in Bhagalpur Kotwali (University) P.S. Case No. 509 of 2006 vide Sessions Trial No. 1611 of 2006/726 of 2017 by 7th Additional District & Sessions Judge, Bhagalpur vide judgment dated 21st of August, 2018 on the ground that no specific overt act has been



alleged against the accused persons. The informant did not appear during trial to support the prosecution case nor the I.O. has been examined. Since the prosecution failed to establish the case particularly the time of the occurrence, hence, it is an honourable acquittal on the merits of the case.

Though, in exercise of jurisdiction under Section 17(2) of Arms Act, 1959 for cancelling the arms licence the subjective satisfaction of the licensing authority is of prime importance, but sub-section 5 of Section 17 mandates the reasons to be recorded by the licensing authority. In the present case, no cogent reason has been recorded and once the licensing authority after submission of reply to the show cause by the petitioner called for a report then he should have awaited for the police report. One of the police reports dated 10.12.2006, has been brought on record which was submitted to the licensing authority by the Officer-in-Charge of Bhagalpur Town P.S. to the effect that during investigation the witnesses did not suggest that the accused terrorized the informant side, no case under Arms Act was registered for use of firearm and above all even assuming the accusation, it is nowhere mentioned that the arms of the petitioner was used or was carried at the place of occurrence.

Learned counsel for the petitioner has drawn



the attention of this Court towards paragraph 8 of the judgment in which the injury reports of the husband and nephew of the informant of the said case were considered, which does not suggest that either the injured or the deceased received any firearm injury. The Appellate Authority has mechanically upheld the order of the District Magistrate and Appellate Authority has also not considered the nature of the allegations levelled against the petitioner in the said case, but upheld the cancellation of licence due to the involvement of the petitioner. Hence, both the orders are fit to be set aside.

Mr. Harshvardhan Shivsundaram, learned AC to SC-8 submits that the provision of cancellation of arms licence under Section 17(3) of the Arms Act, 1959 has to be exercised by the licensing authority, primarily on the basis of subjective satisfaction. In view of the ratio laid down in the case of Kapildeo Singh Vs. The State of Bihar, reported in 1987 PLJR 385 the arms licence can be cancelled even on mere involvement in a serious criminal case. The case was registered against the petitioner for the offences punishable under Section 302 of the Indian Penal Code also. Moreover, the petitioner was not only named in the FIR but on conclusion of investigation he was charge-sheeted also. Hence, the licensing authority as well as the



appellate authority have rightly exercised the jurisdiction under the statute. However, Mr. Shivsundaram has not controverted this fact that the petitioner has already been acquitted by the learned trial Court.

Considering the rival submissions of the parties, this Court is of the view that no doubt the licensing authority can vary, cancel or suspend the licence of arms in exercise of the power under Section 17(3) of the Arms Act, 1959 (hereinafter referred to as the 'Act'), (i) if the licensing authority is satisfied that the holder of the licence is either 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, (ii) if the licensing authority deems it necessary for the security of public peace or public safety or, (iii) if licensing authority comes to a conclusion that the licence has been obtained by suppressing the material information or on the basis of wrong information, or (v) if any condition of licence has been contravened, or (v) if the licensee has failed to comply with a notice under sub-section (1) requiring him to deliver up the licence. The licensing authority may also revoke a licence on the application of the holder thereof.



Apart from this provision of variation, suspension or revocation of the licence by the licensing authority under Section 17(3) of the Act, the other relevant provision is stipulated under Section 17(7) of the Act, whereby the Court convicting the holder of a licence of any offence under this Act or the Rules may also suspend or revoke the licence, but revocation or cancellation of licence, gets revoked on unsettling of the judgment and order of conviction. However, sub-section (8) of Section 17 stipulates that this power of suspension or revocation under Section 17(7) of the Act can be exercised by the Appellate Court also or by the High Court while exercising revisional power.

In the present case cancellation of licence has been done by the licensing authority in exercise of jurisdiction under Section 17(3) of the Act for misuse of the condition of licence, but the same is subject to the provision of sub-section (5) of Section 17 which mandates that the licensing authority while revoking the licence or cancelling the licence has to record in writing the reason thereof and furnish to the holder of the licence on demand a 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.

Section 17 of the Arms Act, 1959 reads as



follows:-

“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 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.”

From perusal of Section 17 it appears that while exercising jurisdiction under Section 17(3) of the Act, the subjective satisfaction of the licensing authority is of paramount



importance, but the said subjective satisfaction is not of any avail, if it is not supported by reasons. The impugned order does not suggest that the subjective satisfaction is based on a reasonable exercise of the jurisdiction. Firstly, on the ground that after receiving the reply to the show cause from the petitioner, which stipulated that the son and wife of the petitioner were killed and the Sessions trial is going on, a report was called for, from the S.P., hence under such circumstances, there was no occasion for the licensing authority to rescind that order and pass the order of cancellation of licence without appreciating the life threat which the petitioner's family was receiving since last few years, which necessitated for the grant of arms licence. There is no doubt that the petitioner was named in the FIR in question but from perusal of the FIR which has been brought on record it does not contain any specific accusation against the petitioner of making assault or an allegation to the effect that the licensed arms of the petitioner was used or was seized during investigation, rather the report was submitted by the Officer-in-Charge of local police station to the effect that no evidence was collected during investigation, that the petitioner used the firearms. This fact has further been corroborated from the medical report examined by the learned trial Court in paragraph 8 of the judgment, which reads as follows:-



“P.W. 7 is Dr. Sandeep Lal who has stated that he examined Madan Yadav aged about 52 years and found four injuries and multiple small abrasions all caused by hard blunt object and also examined Krishna Yadav and found three injuries and opined all the injuries were causes of death and during cross he has admitted that there is no original post-mortem report before him and such type of injuries may be caused by fall from a good height and his report does not state about plaster and bandage found with the dead body of Krishna Yadav and his injuries might have caused by fall from a good height.”

The above quoted finding clearly suggests that no firearm was used in the crime. In view of this Court, the licensing authority ought to have reached to a very conclusive subjective satisfaction as he called for the injury report before exercising the jurisdiction under Section 17(3) of the Act.

A useful reference may have of a Full Bench judgment of this Court rendered in the case of **Kapildeo Singh Vs. The State of Bihar, reported in 1987 PLJR 385**. The Full Bench has adequately dealt with, on the issue:- i.e. “would the registration and pendency of a criminal case for a major or capital



offence justify the suspension or revocation of a licence under Clause (a) of sub-section (3) of Section 17 of the Arms Act?” The Court while considering the issue has come to a conclusion that the grounds incorporated under Section 17(3) does not incorporate the ground of implication in a criminal case or being charge sheeted in a serious criminal case as a ground for exercise of jurisdiction of cancellation under Section 17 (3) of the Act for cancellation of the licence, but it is very difficult for the legislature to visualize all the eventualities and incorporate it in the Act, for exercise of such jurisdiction. In a such condition the Full Bench came to a conclusion that the implication in a serious criminal case can be considered by the licensing authority to form an opinion, for forming a subjective satisfaction that allowing such person to hold a licence will be against the public peace and public safety. In the circumstances, paragraph nos. 10 and 11 of the judgment quoted herein below for preferential use:-

“10.The issue, thus, is whether the pendency of a major or capital crime case may not, in the opinion of the District Magistrate, satisfy him that such a person is unfit for holding the licence further. Plainly enough such discretion given by the statute cannot be put in a strait-jacket. It cannot possibly be said that in a particular case the implication of the



holder in serious or horrendous capital crime may not furnish an adequate ground for the licensing authority for being satisfied that the former holder of the weapon is now unfit for the privilege of the licence granted under the Act. This is more so in the light of the fact that Subsection (1) requires the licensing authority to give notice in writing to deliver up the licence to it within such time as may be specified in the notice in the event of variation, suspension and the revocation of licences. That would invariably give an opportunity to the licensee, as in the present case to show some cause against such action. It is after consideration of this explanation that the licensing authority may, on the overall circumstances, be satisfied from the nature of the case that the person is now unfit for continuing as a licensee for arms. A further safeguard is provided by subsection (5) of Section 17. The licensing authority must record in writing reasons therefor and also furnish to the holder of the licence on demand a brief statement of the same unless in exceptional cases he is of the opinion that it will not be in the public interest to furnish such statement. Nevertheless the requirement of recording reasons in writing is inflexibly mandatory. Therefore, it cannot be easily said



that the subjective satisfaction of the licensing authority hedged in by the statutory requirement cannot be exercised on the basis of the pendency of the serious or capital criminal charge. If such subjective satisfaction has been broadly and reasonably exercised, to my mind, it would come within the parameters of the statute under Clause (a) of Sub-section (3) of Section 17.

11. A strong note of caution, however, must be sounded in this context. It is not the pendency of any and every criminal case which would inflexibly warrant the suspension or revocation of a licence validly granted. A 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 the latter after notice and hearing of the explanation such action may well become necessary. Equally, the use or employment of the licensed weapon in the alleged crime might well be a relevant and added factor for consideration in the exercise of the discretion by the licensing authority. There is no gainsaying that licensed weapons are not to be allowed to degenerate into crime weapons. It bears repetition that Sub-section (3) puts the matter in the subjective satisfaction of the



licensing authority and inevitably the issue cannot be put in the procrustean bed of a precise definition or an exhaustive enumeration of situations in which such discretion may be exercised.”

The Full Bench also came to a conclusion that there is no requirement that there must be a formal conviction on a criminal charge for holding a person unfit for possessing an arms licence. Paragraph no. 12 reads as follows:-

“12.It is not the requirement of Clause (a) aforesaid that there must be a formal conviction on a criminal charge only for holding a person as unfit. There is a wide gap betwixt the two, namely, a reasonable subjective satisfaction and an objective conviction on a criminal charge resting on the basis of acceptable evidence. One cannot go to the length of holding that because the matter is as yet pending trial the licensing authority could not be subjectively satisfied about the unfitness of the holder. If the argument of Mr. Mishra were to be accepted then in the context of even a most horrendous crime committed with licensed weapons, the licensing authority would be denuded of all powers of suspending or revoking the licence till the completion of the trial and a conviction therein. Perhaps, the



matter can even be elongated so long as an appeal against such conviction may be pending. Indeed, it appears to me that under, Sub-section (3) the actual conviction or acquittal on the criminal charge does not have an inflexible or conclusive impact on the exercise of the discretion by the licensing authority thereunder. Even if the holder of this licence may be acquitted by narrowly giving the benefit of doubt, the licensing authority could, perhaps, still take the view that along with other factors such a person may not be fit for holding an arms licence. Equally, conviction on any and every criminal charge would not provide an inflexible rule that the licensing authority must revoke the same and it may well be justified in allowing the continuance of the said licence. As is noticed hereafter, conviction and acquittal are issues of relevance under Sub-section (7) for the criminal Court and not conclusive for the licensing authority who is governed by the provisions of Sub-section (3).”

From the ratio laid down by the Full Bench, it is true that mere acquittal from a criminal charge will not provide an inflexible rule that the licensing authority must revoke or cancel the licence, when such exercise of power has been made



under Section 17(3) of the Act. However, in view of the discussions made above, this Court is of the view that the licensing authority exercised the jurisdiction under Section 17(3) without coming to a conclusive finding that the petitioner has misused any condition of the licence or the petitioner's arms has been used or anyone in the alleged criminal case received any firearm injury. Thus, prima facie, the subjective satisfaction was arrived at without any objective finding, which gets reflected from the fact that neither the licensing authority nor the appellate authority cared to record in the impugned order as to what was the nature of accusation against the petitioner for which the criminal case was registered. From both the orders it does not appear that both the courts below even cared to go through the FIR or examine the nature of accusation or to call for a report either from the police or the doctor, who examined the injured. Moreover, in view of the subsequent development as the petitioner has been acquitted since the prosecution has failed to prove the charge, the matter requires revisiting. The above mentioned facts further support the contention of the learned counsel for the petitioner that the exercise of jurisdiction under Section 17(3) of the Act was not properly exercised.

In the circumstances and in view of the



discussions made above, this Court has no other option than to set aside both the orders and accordingly, order dated 12.07.2007 passed by District Magistrate, Bhagalpur in Misc. Arms Case No. 13/2006-07 and order dated 15.12.2016 passed by Commissioner, Bhagalpur Division, Bhagalpur in Misc. (Arms) Appeal Case No. 71/2015-16 are set aside.

The petitioner is permitted to submit an application under the new format for renewal of the licence under Rule 24 of Arms Rules, 2016 within a period of ten days from the date of receipt/production of a copy of this order when the licensing authority will consider the renewal of licence in view of the present order in accordance with law.

Though, the counter affidavit and the writ application do not suggest that the petitioner is involved in any other case apart from the case which has been acknowledged by the licensing authority.

Accordingly, this writ application is allowed.

(Dinesh Kumar Singh, J)

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