

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4201 of 2015

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Ramayan Chaubey son of Late Ram Sagar Chaubey, resident of village-
Dhanadhi, Police Station- Sasaram (M), District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner, Patna Division, Patna, Bihar.
3. The District Magistrate, Rohtas at Sasaram.
4. The Superintendent of Police, Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Tiwary
For the Respondent/s : Mr. S.A. Alam

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 01-05-2018

Heard Mr. Rajnikant Singh, learned counsel for
the petitioner and Mr. Arvind Kumar Sinha, learned AC to SC-14.

The present Writ application has been filed for
setting aside the order dated 27.08.2013/30.10.2013 passed in
Arms Appeal No. 131 of 1999 by Respondent no. 2,
Commissioner Patna, Division Patna, as contained in Annexure-6,
as well as the order dated 22.06.1999/28.06.1999 passed in Arms
Case No. 02 of 1998 by Respondent no. 3, District Magistrate,
Rohtas at Sasaram, whereby the D.B.B.L. Gun Licence No.
989/76 of the petitioner has been cancelled and the said order has
been affirmed by the Appellate Authority.

The factual matrix of the case would unveil that



the petitioner got a D.B.B.L. Gun Licence in 1976 vide Licence No. 989/76. Subsequently the petitioner was made accused in Sasaram (Muffasil) P.S. Case No. 314 of 1997 registered for the offences punishable under Sections 307, 324, 504/34 of the Indian Penal Code and Section 27 of the Arms Act. The F.I.R. has been brought on record as Annexure-1 to the writ application. The prosecution case is based on the fardbeyan of one Dharmendra Kumar Choubey recorded by S.I. Sasaram P.S. to the effect that on 07.06.1997 at 12.00 P.M. the petitioner being the neighbour of Ramayan Choubey started demolishing the structure of the informant and on protest being made, the petitioner brought a gun from his house and resorted to firing, while one Binod Choubey also resorted to firing from country made pistol. The firing of the petitioner caused injury on the forehead of the informant. After registration of the aforesaid criminal case, Arms Case No. 02 of 1998 was initiated by the District Magistrate, Rohtas for cancellation of Arms licence of the petitioner and on the basis of the report of the S.P., Rohtas, S.I. of Sasaram (Muffasil) P.S. and Dy.S.P., Rohtas at Sasaram, the licence of the petitioner was suspended. However, the suspension order has not been brought on record.

Consequently, the petitioner deposited the arms on



23.05.1998 to an arms dealer, namely, M/s Jay Shastragar, Arms and Ammunition Dealers, Sasaram. The deposit receipt has been brought on record as Annexure-2 to the writ application. The information of deposit of arms was given to the licensing authority. But the petitioner was finally acquitted of the criminal charges vide judgment dated 26.02.1999 passed in Sessions Trial No. 97 of 1998 by 5th Additional Sessions Judge, Rohtas at Sasaram, as contained in Annexure-3 to the writ application. The operative portion of the judgment suggests that the informant did not support the charge and hence, it was held that the prosecution has failed to prove the charges beyond all reasonable doubts. Hence, basically on the ground of benefit of doubt, the petitioner was acquitted.

The petitioner submitted his show cause in Arms Case No. 02 of 1998, before the licensing authority suggesting that for a petty dispute the accusation of firing has been levelled. The informant of the criminal case was the nephew of the petitioner, but he retracted from the initial version as during trial he deposed that he could not see who had actually resorted to firing, but considering the fact that the petitioner was acquitted by virtue of benefit of doubt, hence, the Licensing Authority –cum- District Magistrate vide order dated 22.06.1999/28.06.1999



passed in Arms Case No. 02 of 1998 cancelled the arm licence of the petitioner, as contained in Annexure-4. The said order was challenged in appeal by the petitioner in Arms Appeal No. 131 of 1999, which was initially dismissed for default but it appears that the same was restored by virtue of order passed in C.W.J.C. No. 23356 of 2011. The Commissioner, Patna Division, Patna vide order dated 27.08.2013/30.10.2013 passed in Arms Appeal No. 131 of 1999, as contained in Annexure-6, upheld the order of the District Magistrate on the ground that the Licensing Authority – cum- Collector has examined the issue elaborately, particularly in view of the ground of acquittal in criminal trial, which was only on the basis of benefit of doubt. It was further held in the appellate order that the acquittal in criminal case would not entail automatic revival of licence. Hence, the present Writ application.

It is submitted by learned counsel for the petitioner that the Arms licence was issued in 1976, while the criminal case was registered in 1997, whereupon the Arms licence was suspended in 1998, as such, for 19 years there was neither any complain nor any criminal case was registered against the petitioner. However in the background of a petty dispute the above mentioned case was registered at the behest of the agnate of the petitioner. Hence, mechanically without recording the



subjective satisfaction, the Licensing Authority ordered for cancellation of licence and the Appellate Authority also could not appreciate the issue involved. Learned counsel for the petitioner has relied upon a judgment of this Court in the case of Shri Baijnath Singh Vs. The State of Bihar and others, reported in 2012(2) PLJR 717, wherein, in similar circumstance, in spite of the acquittal in criminal trial, the Arms licence was cancelled but a Bench of this Court remanded back the matter to the licensing authority on the ground that the licensing authority cannot read between the lines of the judgment of acquittal, for reaching to subjective satisfaction for cancelling the licence.

Learned counsel for the respondents submits that the petitioner misused the arm licence in an incident leading to registration of criminal case and since he was acquitted by virtue of benefit of doubt, hence, the licensing authority did not consider it a clean acquittal as a result it was under the domain of the licensing authority to cancel the licence. Hence, the orders of Licensing Authority as well as Appellate Authority do not deserve to be interfered with.

Considering the rival submissions of the parties, this Court is of the view that the conditions for suspension, revocation and cancellation of arms licence, as stipulated under



Section 17(3) of the Arms Act, are one and the same. There is no doubt that for resorting to the power of cancellation of arm licence under Section 17(3) of the Arms Act, the paramount consideration is the subjective satisfaction of the licensing authority. Section 17(3) of the Arms Act stipulates five conditions in which the licensing authority can cancel, revoke or suspend the licence. Section 17(3) of the Arms Act reads as follows:-

“17. Variation, suspension and revocation of licences.-

- (1).....
- (2).....
- (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.

X X X X X.....”

The Licensing Authority is empowered to resort to the power conferred in Section 17(3)(a) of the Arms Act, when the Licensing Authority is satisfied that the holder of the licence is prohibited by this Act or 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. Undoubtedly, the Licensing Authority in the present case has not resorted to the power under Section 17(3) (a) of the Arms Act. However, Section 17(3)(b) of the Arms Act mandates for exercise of such jurisdiction if the Licensing Authority deems it necessary for the security of the public peace and public safety to suspend or revoke the licence. There is no finding recorded to this effect as is required under Section 17(3) (b) of the Act, either in the original order of the Licensing Authority or in the order of the Appellate Authority. There is no application of Section 17 (3)(c) of the Act in the present case,



which mandates exercise of power of suspension, cancellation or revocation of the licence on suppression of material facts at the time of application or grant of licence. Section 17(3)(d) of the Arms Act stipulates exercise of such power when the conditions of licence has been contravened. There is no finding recorded in the present case to this effect also. However, Section 17(3)(e) of the Arms Act stipulates that the power for suspending a licence may also be exercised if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver-up the licence, but, in the present case this was not the reason for cancellation of licence. The reason for cancellation of licence which has been mentioned in the order of the licensing authority is that the petitioner was acquitted by virtue of benefit of doubt. However, the Licensing Authority has not recorded that as to how it would be a threat for security of public peace and public safety, if the petitioner is allowed to retain the licence. There is no doubt that even acquittal in criminal case will not automatically set aside the suspension or cancellation or revocation, of the Arms licence of the licensee. Even in case of acquittal from a criminal charge, the licensing authority may not allow the licensee to retain the licence or can cancel the licence and otherwise also even in case of conviction the licensing authority can allow the



licensee to retain the licence, as has been held by a Full Bench of this Court in the case of Kapildeo Singh Vs. The State of Bihar and others, reported in 1987 PLJR 385. The relevant portion of paragraph 12 reads as follows:-

“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 the 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 licensing authority who is governed by the provisions of sub-section (3).”

There is no doubt that the cancellation of Arms licence under Section 17 (7) of the Arms Act is based on the objective fact that, the power of suspension or revocation can also be exercised by the Court convicting the holder of licence, if the licensee is charged for any offence under the Arms Act or the



Rules while the proviso to Section 17 (7) of the Arms Act stipulates that the cancellation automatically gets restored if the judgment of conviction is unsettled by the superior court. Hence, on bare reading, it becomes apparent that the power under Section 17(3) of the Arms Act cannot be exercised without recording specific reason by the Licensing Authority for reaching to a subjective satisfaction to the effect that allowing the petitioner to hold arm licence will be prejudicial for the public peace.

From the factual matrix of the case it appears that the petitioner was granted Arms licence in 1976 and there was no complaint against him till 1997, meaning thereby that, for 20 years his licence was renewed without any complaint of violation of the terms and conditions of the licence. There is nothing on record to suggest that except the present case, the petitioner was made an accused in any other case. The mechanical approach of the Licensing Authority is apparent from the fact that the Licensing Authority has not even mentioned in the order, about the charge for which the petitioner was put on criminal trial, yet the Appellate Authority has recorded that the licensing authority has elaborately dealt with the criminal charge of the petitioner.

Though the Full Bench in Kapildeo Singh (supra) has elaborately discussed about exercise of jurisdiction under Section 17(3) of the Arms Act



and has held that sub-section (3) of Section 17 does not in terms provide that the pendency of a criminal charge is a ground for the revocation of licence. However, it is equally true that it is not possible for the legislature to conceive every situation arising in future which may render the suspension or revocation of a licence, granted earlier, necessary. Hence, this discretion lies with the licensing authority and this has to be resorted to when the licensing authority is satisfied that the holder of the licence is, for any reason, incorporated in Section 17(3)(a)(b)(c)(d)(e) of the Act, unfit for the licence. Paragraphs 9, 10 and 11 of the judgment read as follow:-

“9. Now it is true that sub-section (3) does not in terms provide that the pendency of a criminal charge is a ground for the revocation of licence. However, it is equally true that it is not possible for the legislature to conceive every situation in the future which may render the suspension or revocation of a licence granted earlier necessary. It is, therefore, that the residuary discretion is left in the licensing authority. On this score, the language employed is again of the widest amplitude. Clause (a) warrants revocation if the licensing authority is satisfied that the holder of the licence “is for any reason unfit for the licence under the Act.”

10. Now the employment of such phraseology in the



statute by the farmers can leave no manner of doubt that a wide residuary discretion has been vested in the licensing authority to remove provided it is satisfied that the holder is unfit for the licence under the Act. 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 sub-section (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 sub-section (5) of section 17. The licensing authority must record in writing reasons therefore 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 requirements 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.”

In view of the discussions made above, this Court finds that the safeguard provided to the licensee from the arbitrary exercise of the power of suspension/revocation or cancellation of arms licence by the licensing authority under sub-section(5) of Section 17 of the Act, which stipulates that the licensing authority must record in writing the reason for exercise of such power and furnish 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. But, in the instant case, no reason has been assigned in the impugned orders for cancelling the licence and the licensing authority, the Collector has exercised the jurisdiction under Section 17(3) of the Act by interpreting the judgment and making a distinction between the clean acquittal and the acquittal based on the benefit of doubt. Such distinction has not been incorporated under Section 17(3) of the Act being a ground for exercise of such jurisdiction. Hence, if it is not provided under the Act, to make a



distinction between the clean acquittal and acquittal based on the benefit of doubt for reaching to a conclusion, then in such circumstance, the Licensing Authority cannot make such distinction to exercise his wide residuary discretion.

In the circumstances, this Court is not inclined to uphold the impugned orders. Accordingly, both the orders are set aside and matter is remanded back to the Licensing Authority to examine the entire issue in view of the ratio laid down in the case of Kapildeo Singh (supra).

It is expected from the Licensing Authority to decide the issue within a period of three months from the date of receipt/production of a copy of this order.

Accordingly, this application is allowed

(Dinesh Kumar Singh, J)

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Uploading Date	
Transmission Date	

