

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2537 of 2006

Hari Om Kumar, Son of late Yogi Singh, Resident of Village-Sakarbar Tola,
Mokamah, Police Station-Mokamah, District-Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Commissioner, Koshi Division, Saharsa.
3. District Magistrate, Saharsa.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Adv. Md. Imteyaz Ahmad, Adv. Mr. Shashank Shekhar, Adv. Ms. Babita Kumari, Adv.
For the Respondent/s	:	Mr. Anwar Karim, AC to GP-10

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

Date : 24-05-2018

Heard Mr. Ajay Kumar Thakur, learned counsel for the
petitioner and Mr. Anwar Karim, learned AC to GP-10 for the
respondents.

The application was admitted by a Bench of this Court, vide
order dated 22.01.2009.

The present writ application has been filed for setting aside
the order dated 25.06.2005, passed by Respondent no.3, District
Magistrate-cum- Licensing Authority, Saharsa, vide Memo No.
594-2, as contained in Annexure-6, whereby the petitioner's
licence for M.P. Bore rifle, bearing Licence No. 30/4758 has been
cancelled. Prayer has also been made for setting aside the order
dated 07.01.2006, passed by Respondent no.2, the Commissioner,
Koshi Division, Saharsa in Arms Appeal No. 21 of 2005, as



contained in Annexure-7, whereby the order dated 25.06.2005, passed vide Memo No. 594-2, by Respondent no.3, the District Magistrate, Saharsa, as contained in Annexure-6, has been upheld.

The factual matrix of the case would unveil from the pleadings made in the writ application as well as the submissions of the learned counsel for the petitioner to the effect that the father of the petitioner was killed due to a land dispute, in the year 1997. Thereafter, the joint family property was partitioned, but the petitioner got a small share, due to which the petitioner got himself engaged as Teacher in Nehru Academy Residential School, Saharsa for a livelihood and worked there from 01.01.1998 to 31.12.2003. A certificate to that effect has been issued by the Principal of the said school, which has been brought on record as Annexure-1. Initially the petitioner was residing in the premises of the said school, but subsequently, when the number of the students increased, the authority of the school asked the petitioner to make alternative arrangement and thereafter the petitioner shifted in the house of Sri Nirmal Kumar, Shankar Chowk, Saharsa as a tenant on rent, where the petitioner resided from 1998 to 2003. A certificate to that issued by the Landlord, Sri Nirmal Kumar, has been brought on record as Annexure-2. In the year 2003, the petitioner decided to shift to his native village due to compelling



family circumstances. However, apprehending threat to his life, he applied for arms licence of N.P. Bore rifle and the then District Magistrate-cum-Licensing Authority, Saharsa granted the arms licence of N.P. Bore rifle, bearing Licence No. 30/4758. Consequently, the petitioner purchased N.B. Bore rifle and subsequently entry to that effect was made by the then District Magistrate-cum-Licensing Authority, Saharsa. The petitioner never misused the arms licence or condition of licence. In the year 2004, the petitioner fell seriously ill, when initially he was treated at Patna and subsequently, referred to AIIMS, Delhi, where he was treated for considerable period and from there he was taken to Leelawati Hospital, Mumbai. The medical prescription to that has been brought on record as Annexure-3(series).

During the period of his treatment, the District Magistrate, Saharsa issued a show cause notice, vide Memo No. 114-1, dated 29.04.2005, as contained in Annexure-4, at his permanent address stipulating therein that the licence of the petitioner has been issued without obtaining the police verification report, hence, the petitioner was asked to submit show cause as to why the arms licence granted to him be not cancelled. In case of non-submission of the show cause, it will be presumed that the petitioner has nothing to say and accordingly, ex-parte action will be taken for



cancellation of arms licence granted to the petitioner. Since the petitioner was not well and was not residing at his permanent address, hence he did not receive the notice. After recovery, when the petitioner returned to his native village, he came to know about the said notice and accordingly, he deposited his arms before the Arms dealer, namely, M/s Navin & Company and submitted the relevant receipt before the District Magistrate, Saharsa. The petitioner also came to know that the District Magistrate, Saharsa has cancelled his arms licence, vide order dated 25.06.2005, as contained in Annexure-6. Thereafter, the said order was obtained when it was found that the arms licence was cancelled on the ground that the petitioner had given a wrong temporary address and has been implicated in Saharsa P .S. Case No. 112 of 2005. The show cause notice issued vide Memo No. 114-1, dated 29.04.2005 was transmitted through the registered post, but it was returned unserved, which amounts to violation of the conditions as stipulated under Sections 17 (3)(C)(E) and (D) of the Arms Act. The Superintendent of Police, Saharsa, vide Memo No. 1930/C.R, dated 14.06.2005, was requested for cancellation of the arms licence of the petitioner, since he was made accused in Saharsa P.S. Case No. 112 of 2005 and consequently, on that ground, the arms licence of the petitioner was cancelled.



It is submitted by learned counsel for the petitioner that the only ground which was mentioned in the show cause issued to the petitioner was that the arms licence was issued to him without police verification whereas the arms licence was cancelled on the ground that the petitioner submitted wrong temporary address and the Superintendent of Police, Saharsa recommended for cancellation of arms licence since the petitioner has been made accused in Saharsa P.S. Case No. 112 of 2005, which was not stipulated in the show cause, hence the impugned order is absolutely misconceived since the petitioner was not given opportunity to answer the queries. The impugned order does not suggest that after issuance of show cause, any notice was issued before passing order by the licencing authority, hence, such order cannot be sustained in the eye of law.

Subsequently, the petitioner filed an appeal being Arms Appeal No. 21 of 2005, against the order of licencing authority dated 25.06.2005 before Respondent no.2, the Commissioner, Koshi Division, Saharsa and there he submitted the document to the effect that the petitioner was residing at temporary address and certificate to that effect issued by the then Land Lord was also produced. After 2003, the petitioner was residing at his permanent



address, but he could not receive the notice since he was seriously ill and was outside the State.

Respondent no.2, the Commissioner, Koshi Division, Saharsa, after going through the records, came to a finding that the petitioner did not mention the date of submission of his application form and in place of temporary address, it was only mentioned as Sankar Chawk, Saharsa. Moreover, the application form was partially filled up. The certificate issued by the then land lord of the petitioner was relied upon. Respondent no.2, the Commissioner, Koshi Division, Saharsa further considered that the petitioner never gave information that he is not residing at his temporary address after 2003 and since the petitioner did not deposit the arms within time, hence he violated the conditions of licence, hence, Respondent no.2 dismissed the appeal and upheld the order of the licencing authority.

Mr. Thakur, learned counsel for the petitioner further submits that all the ground, considered for cancellation of arms licence of the petitioner either by the licencing authority or by the Appellate Authority, were not incorporated, in his show cause issued to the petitioner except one ground that licence was obtained without police verification, for which the petitioner cannot be held liable, as under Section 13(2) of the Arms Act, it is imperative on the part



of the licensing authority to call for the report from the officer of the nearest police station and for that the petitioner cannot be penalized. Hence, on these scores, both the orders are bad in law.

Learned AC to GP-10 submits that admittedly the petitioner was not residing at his temporary address on the date show cause was issued and in the application form, the petitioner mentioned his occupation as contractor, whereas after cancellation of arms licence, he claims himself to be a teacher in the school. However, he does not controvert this fact that the licensing authority has cancelled the arms licence of the petitioner on the ground which was mentioned in the show cause, and hence, on this score alone, the order of the licensing authority as well as the Appellate Authority cannot be sustained in the eye of law.

Having heard the learned counsel for the parties and perusing the materials on record, particularly the show cause notice, issued vide Memo No. 114-1, dated 29.04.2005, it appears that the only ground which was mentioned that the petitioner obtained the arms licence without police verification. So far as this ground is concerned, for this the petitioner cannot be held responsible, because, Section 13 (2) of the Arms Act clearly stipulates that on receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on that



application, and such officer shall send his report within the prescribed time, which was imperative on the part of the licensing authority to call for the report and if the report was not called for or without considering the police report, the arms licence was issued for the same, the licensee cannot be held responsible.

Section 13(2) reads as follows:-

“13. (2) On receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.”

Section 13 (2-A) of the Arms Act stipulates that the licensing authority, after such inquiry, if any, as it may, consider necessary, and after considering the report received under Sub-section (2), shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same. Section 13(2-A) reads as follows:-

“ 13(2-A). The licensing authority, after such inquiry, if any, as it may, consider necessary, and after considering the report received under Sub-section (2), shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same.”

The order of the licensing authority dated 25.06.2005 stipulates that on two grounds the licensing authority cancelled



the arms licence of the petitioner,(i) the petitioner gave a wrong temporary address and (ii) that he was made accused in Saharsa P.S. Case No. 112 of 2005. Though, the FIR of the said case is not on record, but the photocopy of the same has been produced, which suggests that the said FIR was lodged by Anil Kumar Yadvendu, the Sub-Inspector of Police stipulating therein that altogether eight persons including the petitioner obtained the arms licence by virtue of their political patronage by playing fraud. The said FIR was registered with accusation under Sections 109, 419, 420, 467, 468, 471 and 120B of the IPC.

It appears that the licensing authority in the impugned order has not even referred to about issuance of licence without police verification report, which was the ground for issuance of show cause.

Hence, on this ground alone the impugned order cannot be sustained in law as the conditions in the show cause allows the licensee to know the grounds for the action being taken against him, hence the petitioner was not given appropriate opportunity to defend his case. Though, the appellate order stipulates that the arms licence was issued without police verification report but the appeal was dismissed also on the ground of non-filling of the form



correctly by giving insufficient address and the petitioner being made accused in one criminal case.

From perusal of the materials on record, it appears that the FIR was lodged for preparing ground for cancellation of the licence, hence on the sole ground that the show cause was issued on one ground whereas arms licence has been cancelled on the other grounds by Licensing Authority and the same was mechanically upheld by the Appellate Authority, the order of the licensing authority as well as the appellate authority, as contained in Annexure- 6 and 7 are hereby set aside.

Accordingly, the present writ application is allowed.

However, it is made clear that this order will not preclude the licensing authority to initiate a proceeding to exercise the jurisdiction for cancellation of licence under Section 17 of the Arms Act afresh after giving the petitioner due opportunity or to renew the licence in accordance with the provisions of the Arms Act.

(Dinesh Kumar Singh, J)

Amrendra/-Anil/

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

