

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24307 of 2013

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MATHURA PRASAD SON OF SRI PARMESHWAR PRASAD RESIDENT
OF VILLAGE - BALI, POLICE STATION - KASHICHAK IN THE
DISTRICT OF NAWADA

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Department Of Home,
Government Of Bihar, Patna
2. The Principal Secretary, Departmental Of Home, Government Of Bihar,
Patna
3. The Commissioner, Magadh Division, Gaya
4. The District Magistrate-Cum-Collector, Nawada
5. The Superintendent Of Police, Nawada

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar

For the Respondent/s : Mr. Umesh Narayan Dubey, AC to GP 27

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 24-05-2018

Heard learned counsels for the parties.

The present writ application has been filed for quashing the order dated 3.10.2013 passed by the Respondent no. 3 the Commissioner, Magadh Division, Gaya in Arms Appeal No. 233 of 2012, whereby the order dated 23.8.2012/29.8.2012 passed by the Respondent no.4, District Magistrate, Nawada in Arms Case No. 134(M) of 2012 cancelling the arms licence of petitioner of NP Bore Rifle bearing Licence No. 11/1999 has been affirmed, whereby the Respondent no. 4 has cancelled the arms licence of



NP Bore Rifle vide Licence No. 11/1999 of the petitioner. Hence, quashing of both the orders has been prayed for.

The factual matrix of the case would unveil that the petitioner being a social worker, was granted NP Bore Rifle vide Licence No. 11/1999 by the licensing authority, i.e. Respondent no. 4, the District Magistrate, Nawada on the recommendation of the then Superintendent of Police, Nawada. In 2005, the Respondent no. 5, Superintendent of Police, Nawada submitted a report to the Respondent no. 4, the District Magistrate, Nawada recommending that the petitioner is accused in Kashichak P.S. Case No. 68 of 1999 and he has been chargesheeted in the case, hence, his licence may be cancelled. Consequently, the Respondent no. 4, the District Magistrate, Nawada vide order dated 21.1.2005, as contained in Annexure 3, directed the petitioner to submit an explanation as to why his arms licence be not cancelled.

In pursuance to the order as contained in Annexure 3, the petitioner submitted his explanation, as contained in Annexure 4, stating therein that he is not accused in Kashichak P.S. Case No. 68 of 1999 and is an elected Member of Zila Parishad, Nawada from Warshaliganj, which is a crime prone area. Hence, request was made for revoking the suspension of his arms licence. Consequently, the Respondent no. 4 vide order issued vide Memo



No. 265 dated 2.5.2005, as contained in Annexure 5, revoked the suspension of licence of the petitioner on the ground that the petitioner is not accused in Kashichak P.S. Case No. 68 of 1999. Thereafter, on 24.2.2006 the Respondent no. 5, Superintendent of Police, Nawada again recommended for cancellation of arms licence of the petitioner on the same ground that the petitioner is accused in Kashichak P.S. Case No. 68 of 1999 registered under Sections 341,323 and 324 of the IPC. Thereafter, the licence of the petitioner was again suspended and vide order issued through Memo No.297 dated 19.4.2006 under the signature of Respondent no. 4, the District Magistrate, Nawada, as contained in Annexure 7, the petitioner was directed to submit an explanation as to why his arms licence be not cancelled. In pursuance thereto, the petitioner submitted his explanation dated 29.5.2006, as contained in Annexure 8, that he is not accused in Kashichak P.S. Case No. 68 of 1999 and for the same a proceeding was earlier initiated which was dropped in 2005. Thereafter, no action was taken and the matter regarding revocation of suspension of licence of the petitioner was kept pending.

The petitioner filed C.W.J.C. No. 14632 of 2007 which was permitted to be withdrawn by a bench of this Court vide order dated 30.1.2009, as contained in Annexure 10, in view of the stand



taken in paragraph 13 of the counter affidavit to the said writ application, that a reasoned order would be passed by the District Magistrate in case the petitioner filed a show cause. Even after filing of show cause, no order was passed by the Respondent no. 4, upon which the petitioner filed an application for initiation of proceeding of contempt, numbered as MJC No. 557 of 2012 wherein notices were issued. Thereafter, as a retaliatory measure vide orders dated 23.8.2012/29.8.2012 in CaseNo. 134M of 2012 passed by District Magistrate as contained in Annexure 2, cancelled the arms licence of the petitioner.

In the said order dated 23.8.2012/29.8.2012 this fact was considered by the Respondent no. 4, the District Magistrate, Nawada that the petitioner was not accused in Kashichak P.S. Case No. 68 of 1999 rather he is accused in Kashichak P.S. Case No. 62 of 1999 and by mistake, wrong case number was recorded, but cancelled the licence of the petitioner on the ground that the petitioner has been chargesheeted in Nawada P.S. Case No. 561 of 2012. Hence, it was assumed that the petitioner was misusing the privilege of arms licence.

The order of the Respondent no. 4, District Magistrate, Nawada was challenged by the petitioner in Arms Appeal No. 233 of 2012 before the Respondent no.3, Commissioner, Magadh



Division, Gaya who vide order dated 3.10.2013, as contained in Annexure 1 affirmed the order of the Respondent no. 4, District Magistrate, Nawada finding no error therein. Hence, the writ application.

It is submitted by learned counsel for the petitioner that arms licence of the petitioner was suspended twice vide orders dated 21.1.2005 and 19.4.2006 passed by the Respondent no. 4, as contained in Annexures 3 and 6, respectively, on the ground that the petitioner is accused in Kashichak P.S. Case No. 68 of 1999. Thereafter, the matter was kept pending and since the petitioner filed a writ application wherein it was submitted on behalf of the respondents that reasoned order will be passed, but the same was not done and thereafter, when notices were issued in the contempt application by this court, then hurriedly without thorough inspection of records, the arms licence of the petitioner has been cancelled on the ground that the petitioner is accused in Nawada P.S. Case No. 561 of 2012 registered under Sections 341,323,324,307,504 and 384/34 of the IPC and Section 27 of the Arms Act, which was filed as counter blast to Nawada P.S. Case No. 560 of 2011. However, chargesheet was submitted under Sections 341,323,337,307,504/34 of the IPC and consequently, order of cognizance was passed under Sections 341,323,337 and



504/34 of the IPC but neither chargesheet was submitted under Section 27 of the Arms Act nor cognizance was taken. But the District Magistrate has not even referred the accusation in the said case. The Divisional Commissioner affirmed the order of the District Magistrate by referring to another case being Kashichak Shahpur O.P. Case No. 19 of 2011 under Sections 341,323,379,504 and 448/34. It is further submitted that Case No. 35 of 2006 has been filed for political reasons. In none of the cases there is accusation of misuse of the licenced arm nor any report has been called for by the District Magistrate from Shahpur O.P. with regard to Kashichak Shahpur O.P. Case No. 19 of 2011 which reveals that the petitioner has misused the privilege of arms licence. Though the petitioner is accused in Shahpur OP Case No. 19 of 2011 in which final form has been submitted and the petitioner has not been sent up for trial. The Commissioner has also mechanically upheld the order of the District Magistrate.

Learned counsel for the respondents submits that though initially show cause notice was issued and licence of the petitioner was suspended twice on the ground that the petitioner was accused in Kashichak P.S. Case No. 68 of 1999, however, actually he was not accused in the said case but the case number was wrongly recorded due to typographical mistake and that fact was



considered by the District Magistrate. Subsequently, on the basis of a report of the concerned police station dated 24.2.2006, the District Magistrate got satisfied that the petitioner is accused in other case namely Nawada P.S. Case No. 561 of 2012, hence cancelled the licence of the petitioner, apprehending the misuse of the arms licence. However, learned counsel for the State is not controverting the fact that both the orders do not reveal that there is any accusation of misuse of the arms licence or there is likelihood of breach of the terms of the licence.

Considering the rival submissions of the parties, it would be necessary to appreciate the parameters for variation, suspension and revocation of licence which has been incorporated in Section 17 of the Arms Act. Section 17(3) of the Act deals with the ground on which the licence can be suspended, cancelled or revoked or varied by the licensing authority. Section 17 of the Arms Act reads as follows:

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

(3) The licensing authority may by order in writing suspend a license for such periods it thinks fit or revoke a license –

(a) if the licensing authority is satisfied that the holder of the license 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 license 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 license; or

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

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

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

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

(5) Where the licensing authority makes an order varying a license under sub-Section (1) or an order suspending or revoking a license under sub-Section (3), it shall record in writing the reasons therefor and furnish to the holder of the license 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 license 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 license by such authority.

(7) A court conviction the holder of a license of any offence under this Act or the rules made thereunder may also suspend or revoke the license :

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 licenses granted under this Act throughout India or any part thereof.

(10) On the suspension or revocation of a license under this Section the holder thereof shall without delay surrender the license 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.”



Section 17 of the Act suggests that the arms licence can be suspended, revoked or varied firstly under five conditions mentioned in sub-Section (3), which is solely based on the subjective satisfaction of the licensing authority whereas the court which convicts the holder of the licence under any of the offence under the Arms Act may also suspend or revoke the licence under Section 17(7) of the Act but such revocation/cancellation is based on the objective facts, that is to say, the licensee has to be convicted for any charge under the provisions of the Arms Act though such revocation or suspension of licence gets unsettled on the conviction of the holder being set aside.

The provision of Section 17(3) of the Act further suggests that the licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence, if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law, or if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or remove the licence; or 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, the licensing authority may cancel the licence.



The order of the licensing authority, the Collector, does not suggest that he has reached to the subjective satisfaction that allowing the petitioner to retain the arms licence will be adverse to the public peace or public safety though Section 17(3) of the Act does not provide that the pendency of a criminal charge is a ground for revocation of the licence. This issue was considered by a Full Bench of this Court in the case of Kapildeo Singh Vs. The State of Bihar and Ors., reported in 1987 PLJR 385, where it has been held that it is not possible for the Legislature to conceive every situation in future which may render the suspension or revocation of licence granted earlier a necessity. Hence, such jurisdiction can be exercised by way of residuary discretion but such discretion cannot be exercised for a petty offence and in a routine manner. Paragraphs 9, 10 and 11 of the judgment read as follows:

“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.”

Hence, it was ultimately held by the Full Bench (supra) that pendency of a criminal case for major or capital offence, may not justify the licensing authority in suspending or revoking the arms licence beyond the parameters of Section 17(3) of the Act.

A safeguard to the licensee has also been provided in sub-Section (5) of Section 17 of the Act, which envisages 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. That the requirement of recording reasons is mandatory has been held by the Full Bench (supra) in paragraph 10 of the judgment, relevant portion of which reads as follows:

“.....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....”

From perusal of the impugned orders, it does not appear that the licensing authority or the Appellate Authority had come to a conclusion that any of the conditions which is required for exercise of the power of suspension of licence has been found in the instant case, except the fact that the case is pending against the petitioner. Initial report of the S.P., Nawada dated 17.1.2005 and 24.2.2006 as contained in Annexure 6 reflect that it was wrongly



recommended that the petitioner was accused in Kashichak P.S. Case No. 68 of 1999 and on that basis the suspension order was passed. Subsequently, on the same ground the licence of the petitioner was suspended and the matter was kept pending for several years and when notices were issued in the contempt application then hurriedly the impugned orders have been passed.

From perusal of the order of the District Magistrate it appears that he has passed the order of cancellation of arms licence on the ground that he apprehended that the petitioner may misuse the arms licence. The mechanical approach of the District Magistrate as well as the Divisional Commissioner appears from the fact that the cases in which the petitioner is accused, have not been referred properly, nor the accusation has been appreciated including the materials which have come against the petitioner giving rise to the cancellation of arms licence of the petitioner.

Considering the fact that the power vested in the licensing authority has to be exercised in the manner prescribed in Section 17 of the Arms Act but the same has not been done as such, the very initial order of suspension of arms licence passed on wrong ground and the relevant facts not having been considered by the appellate authority in true perspective, this Court has no option but to set aside the orders dated 23.8.2012/29.8.2012 passed by the



Respondent no.4, District Magistrate, Nawada in Arms Case No. 134(M) of 2012 as well as the order dated 3.10.2013 passed by the Respondent no. 3 the Commissioner, Magadh Division, Gaya in Arms Appeal No. 233 of 2012. They are quashed, accordingly, and the matter is remitted back to the licensing authority, i.e. the Respondent no. 4, District Magistrate, Nawada to pass fresh order after taking fresh police report and considering the same in true perspective preferably within a period of three months from the date of receipt/production of a copy of this order.

With the aforesaid observation/direction, this writ application stands allowed.

(Dinesh Kumar Singh, J)

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Uploading Date	
Transmission Date	

