

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11442 of 2007

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Hari Nandan Singh @ Hari Nandan Yadav, son of Chandradeep Singh @ Chandradeep Yadav, Resident of Village-Yadoo Bigha (Chaurahi), P.S. -Haspura, District-Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner Magadh Division, Gaya
3. The District Magistrate, Aurangabad
4. The Superintendent of Police, Aurangabad
5. The Sub-Divisional Officer, Daudnagar, Aurangabad
6. The Inspector of Police, Daudnagar, Aurangabad
7. The Assistant Inspector of Police, Haspura
8. The Officer In-charge, Haspura, Aurangabad

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ramchandra Prasad, Bharti
For the Respondent/s : Mr. Sitaraman, GP-16

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 24-05-2018

Heard learned Counsels for the petitioner and the respondent-State.

The Writ application was admitted vide order dated 28.01.2009 by a co-ordinate Bench of this Court.

The present Writ application has been filed for quashing of the order dated 03.03.2005, passed by the Respondent no.3, the District Magistrate, Aurangabad, as contained in Annexure-3, whereby, the petitioner's 12 Bore D.B.B.L. Gun licence bearing Licence No. 740706B has been cancelled, on the basis of the



report of Superintendent of Police, Aurangabad, SDO, Daudnagar, Assistant Police Inspector, Haspura and Inspector of Police, Daudnagar, since the gun of the petitioner has been seized in connection with Haspura P.S. Case No.122 of 2003. Further prayer has been made for setting aside the order dated 05.04.2007, passed by the Respondent no.2, the Commissioner Magadh Division, Gaya, in Arms Appeal No.29 of 2006, as contained in Annexure-4, whereby, the Commissioner has dismissed the Arms Appeal of the petitioner preferred against the order dated 03.03.2005, passed by the licensing authority the District Magistrate, Aurangabad.

It is submitted by learned Counsel for the petitioner that the petitioner was granted licence for double barrel gun for the protection of his life and property. The petitioner has never been found misusing the arms. However, in the background of land dispute, going on between the petitioner's agnates and the petitioner Haspura P.S. Case No.122 of 2003 dated 14.12.2003, was registered under Sections 147, 148, 149, 341, 323, 324, 307 of the Indian Penal Code and Section 27 of the Arms Act, alleging therein that concerning a dispute over cutting of crops, the petitioner and others came armed with deadly weapons and assaulted the informant's side, whereas, it is alleged against the petitioner that he resorted to firing causing injury to the grand-father and the uncle of the informant.



Learned Counsel for the petitioner further submits that in the said case, the licensee gun of the petitioner was seized from his house. However, there was a counter version of the occurrence being Haspura P.S. Case No.124 of 2003, registered under Sections 144, 447, 504 and 379 of the I.P.C. against the informant of Haspura P.S. Case No. 122 of 2003, which was lodged at the behest of the petitioner side.

Thereafter, the petitioner was never served any notice by the licensing authority and without affording any opportunity of being heard and even without issuing any show cause the arms licence of the petitioner was cancelled vide order dated 03.03.2005, as contained in Annexure-3, on the basis of the report submitted by the Superintendent of Police, Aurangabad, SDO, Daudnagar, Assistant Police Inspector, Haspura and Inspector of Police, Daudnagar.

Subsequently, the petitioner preferred Arms Appeal No.29 of 2006, before the Commissioner, Magadh Division, Gaya, against the aforesaid order, which was dismissed vide order dated 05.04.2007, as contained in Annexure-5, on the ground of delay and laches in filing the Appeal.

Learned Counsel for the petitioner further submits that in fact, in the FIR, it is alleged that the accused persons were armed with country made pistol, but it is not specifically alleged that the



petitioner was armed with his licensed double barrel gun. Moreover, statement has been made in paragraph no.6 of the petition that none received any injury in the incident of firing. The impugned order does not suggest that the report of the police ever suggested that the arms of the petitioner was ever sent to the ballistic expert nor, there is anything on record to suggest that it was used in the occurrence of firing or that anyone received any injury. The licensing authority without application of mind, cancelled the licence of the petitioner. The Divisional Commissioner has not dismissed the appeal of the petitioner on merit, rather it has been dismissed on the ground of delay and laches in filing of the Appeal.

Learned Counsel for the respondent-State submits that on the basis of arms being seized in Haspura P.S. Case No.122 of 2003, the recommendation was made by Officer In-charge, Haspura Police Station for cancelling the arms licence of the petitioner and on that basis, his arms licence was cancelled. Hence, the impugned order does not warrant any interference.

Having heard learned counsels for the parties, this Court is dismayed to find that neither the writ application nor the counter affidavit filed on behalf of the Respondents stipulate as to when the licence of double barrel gun was granted to the petitioner. However, the order of the licensing authority as contained in Annexure 3



reflects that the arms licence bearing no. 36/75 / 30/76, hence, it appears that it was granted in 1975-76. The criminal case was registered in 2003, hence, it appears that for about 30 years the licensee was allowed to use the licensed arms without any complain. The order of the licensing authority suggests that on mere recommendation of the police officers investigating the criminal case registered against the petitioner, the arms licence of the petitioner has been cancelled. In This connection, useful reference may have to be made to Section 17(3) of the Arms Act,1959 which 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.....”

Provision of Section 17(3) of the Act 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....”



There is no doubt that no reason has been assigned in the order impugned for cancellation of arms licence of the petitioner. There is nothing on record to suggest that any notice was given to the petitioner or the gun of the petitioner was sent for ballistic expert for coming to the conclusion whether the licensed gun of the petitioner has been used in the said occurrence of firing.

The impugned order does not suggest that the grounds for exercise of jurisdiction for cancellation of licence as stipulated under Section 17(3) of the Act has been resorted to by the licensing authority. Moreover, it is not in dispute that the petitioner was not given an opportunity to present his case before the licensing authority.

Hence, it appears that the licensing authority, the District Magistrate has not cancelled the licence of the petitioner on any of the grounds incorporated under Section 17(3)(a)(b)(c)(d)(e) of the Act and has cancelled it only on the recommendation of the police officials without recording any reason for being subjectively satisfied that due to pendency of the criminal case against the petitioner he is satisfied that it is prejudicial for public peace and public safety.

From the materials available on record, it does not appear that either from the FIR or from the impugned order, the licensing



authority or the police authority came to a conclusion that the licensee gun of the petitioner was used in the incident of firing or anyone received any injury from the licensee gun of the petitioner. The petitioner had the licence since last 2-3 decades, but there is no material on record to suggest that he ever misused the same nor there is anything to suggest the stage of the case.

However, since the Appellate Authority has not considered the appeal of the petitioner on merits and has not examined that the Collector has exercised the jurisdiction in the manner mandated under Section 17(3) of the Act but has mechanically dismissed the appeal only on the ground of limitation. Hence, this Court has no option but to hold that the licensing authority has not exercised the jurisdiction as mandated under Section 17(3) of the Act and has exercised the same in a most casual manner and by a cryptic order the licence of the petitioner has been cancelled.

In view of the discussions made above, both the orders of the licensing authority as well as the appellate authority as contained in Annexures 3 and 4 are set aside. The licensing authority, i.e. the District Magistrate, Aurangabad is expected to pass a fresh order after giving due opportunity of hearing to the petitioner in accordance with the provisions of the Act as discussed above within a period of four months on receipt/production of a copy of this order.



Accordingly, the Writ application is allowed.

(Dinesh Kumar Singh, J)

Ashwini/-Anil/

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

