

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3934 of 2018

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Sudarshan Chaudhary @ Sudarshan Yadav, son of Ram Ratan Chaudhary,
Resident of Village- Siyarhi Khurd, Police Station- Barharia, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Divisional Commissioner, Saran Division, Chapra.
3. The Collector, Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raghav Prasad
For the Respondent/s : Mr. Ajay Kumar AC to GP 4

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 04-10-2018

Heard learned counsels for the parties.

The present writ application has been filed for setting aside the order dated 21.11.2013 passed by the Respondent No. 3, District Magistrate, Siwan in Misc. Licence Case No. 17 of 2012-13, as contained in Annexure 4, whereby the petitioner's licence for 315 Bore Rifle No. AB004688 has been cancelled. Further prayer has been made for setting aside the order dated 10.8.2017 passed by the Respondent No. 2, Divisional Commissioner, Saran Division in Restoration Case No. 1 of 2016, as contained in Annexure 5, whereby the Commissioner has declined to restore the Arms Appeal No. 3 of 2014 on the ground of dismissal of earlier restoration application vide order dated 8.4.2016



passed by Commissioner, Saran Division, Chapra and since no fresh ground has been made out for restoration.

I.A. No. 5860 of 2018 has been filed for amendment of the prayer to the effect of setting aside the order dated 15.2.2016 passed by the Respondent No. 2, Divisional Commissioner, Saran Division, as contained in Annexure 6 whereby the Arms Appeal No. 3 of 2014 was dismissed for non-prosecution. Further prayer has been made for setting aside the order dated 8.4.2016 passed by Respondent No. 2, Divisional Commissioner, Saran Division in Restoration Case No. 54 of 2016 whereby the restoration application has been dismissed for non-prosecution.

AC to GP 4 does not object to the amendment of prayer to the above effect.

Accordingly, prayer made in I.A. No. 5860 of 2018 stands allowed to the extent of amendment of the prayer in the writ application. I.A. stands disposed of.

It is submitted by learned counsel for the petitioner that the petitioner was holding a licence for 315 Bore Rifle bearing No. 189 of 2000. The petitioner never misused the conditions of the licence, though he was made an accused in Barharia P.S. Case No. 156 of 2004 registered



under Sections 447,341,323,324,504 and 427/34 of the IPC and Section 27 of the Arms Act, but in the said case, the petitioner was granted anticipatory bail vide order dated 4.8.2005 passed in ABP No. 431 of 2005 by the learned Sessions Judge, Siwan holding that no offence either under Section 307 IPC or Section 27 of the Arms Act is made out against the petitioner. Ultimately, the case was tried by the learned Judicial Magistrate, Siwan wherein the petitioner was acquitted in the aforementioned case vide judgment dated 27.11.2012 passed in Trial No. 4980 of 2012. However, in spite of the fact that the petitioner preferred an application before the licensing authority for revocation of suspension of the said licence, but without considering the contention of the petitioner that the arms of the petitioner was not found to be used in the aforementioned case, the licence of the petitioner was cancelled vide order dated 21.11.2013, as contained in Annexure-4, only on the ground that the petitioner was made an accused in the aforementioned case and was acquitted only on the basis of compromise.

The petitioner preferred Arms Appeal No. 3 of 2014 before the Respondent No. 2, Divisional Commissioner, Saran Division against the order of the



licensing authority cancelling his licence which was dismissed for default vide order dated 15.2.2016, as contained in Annexure-6, since the petitioner, as well as his counsel was absent. Thereafter, the petitioner preferred Restoration Case No. 54 of 2016 for restoration of Arms Appeal No. 3 of 2014. The said restoration case was taken up on 28.3.2016 when the appellant was again absent and as a last indulgence, the matter was posted on 8.4.2016, but even on 8.4.2016 none appeared, as a result, the same was dismissed for default. Thereafter, it appears that the petitioner preferred another restoration application before the Commissioner which too was dismissed vide order dated 10.8.2017 on the ground that earlier appeal was dismissed for default and restoration was also dismissed but the second restoration application has been filed without any fresh ground. Hence, the second restoration was not allowed.

It is submitted by learned counsel for the petitioner that the laches, if any, was on the part of the learned counsel who was representing the petitioner and the petitioner cannot be faulted with and made to suffer due to the laches on the part of counsel for the petitioner, as he has deposited his arms before the arms dealer and is paying rent



for the same. If the Commissioner heard first restoration then he could have also heard second restoration. Moreover, from the order dated 10.8.2017 it appears that the petitioner was present in court.

AC to GP 4 submits that the petitioner's appeal and restoration was dismissed for default and in spite of the fact that the restoration Case No. 54 of 2016 was adjourned on 28.3.2016, as last indulgence due to absence of the petitioner, the petitioner chose not to pursue the second restoration and consequently, the same was also dismissed.

It is a settled principle of law that no legislative enactment dealing with procedure can provide for all the eventualities that may possibly arise while exercising power under the said Act. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. There is no doubt that the Commissioner while hearing an appeal under Section 18 of the Act is exercising the quasi-judicial powers and is a Court in a limited sense. The Courts, therefore, have the inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. All Courts, whether civil or



criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principles *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything it gives him that without which it cannot exist) and such inherent power has to be exercised to do real and substantial justice for the administration of which alone courts exist.

Having heard learned counsels for the parties, keeping in view the fact that the appeal of the petitioner could not be heard on merit and it appears that the appeal as well as both the restoration applications were dismissed due to non-appearance of the counsel and moreover, from the order sheet of the appellate authority it does not appear that due to non-appearance any notice was issued to the petitioner, in the interest of justice, the orders dated 15.2.2016 passed in Arms Appeal No. 3/2014, order dated 8.4.2016 passed in Restoration Case No. 54 of 2016 and order dated 10.8.2017 passed in second restoration as contained in Annexures 6 and 5 are hereby set aside.

Accordingly, Arms Appeal No. 3 of 2014



stands restored. It is expected from the Respondent No. 2, the Divisional Commissioner, Saran Division to dispose of the appeal within a period of six weeks from the date of receipt/production of a copy of this order.

It is made clear that if the petitioner defaults this time, then in the given circumstances this Court would be reluctant to interfere in the matter, any further.

(Dinesh Kumar Singh, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

