

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16475 of 2013

MD. SIDDIQUE, SON OF MD. NIZAMUDDIN, RESIDENT OF
VILLAGE- KHIRI BANDH, POLICE STATION- JAGDISHPUR,
DISTRICT- BHAGALPUR

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Commissioner, Bhagalpur Division, Bhagalpur
3. The District Magistrate, Bhagalpur
4. The Senior Superintendent Of Police, Bhagalpur
5. The Sub Divisional Officer, Bhagalpur

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 15746 of 2013

MD. ANWAR SON OF MD. NIZAMUDDIN RESIDENT OF VILLAGE -
KHIRI BANDH, POLICE STATION - JAGDISHPUR, DISTRICT -
BHAGALPUR

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Divisional Commissioner, Bhagalpur
3. The District Magistrate, Bhagalpur
4. The Sub Divisional Officer, Bhagalpur
5. The Superintendent Of Police, Bhagalpur

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 16475 of 2013)

For the Petitioner/s : Mr. S.K. Sinha

For the Respondent/s : Mr. Ravi Ranjan, AC to SC-22

(In Civil Writ Jurisdiction Case No. 15746 of 2013)

For the Petitioner/s : Mr. S.K. Sinha

For the Respondent/s : Mr. Aditya Nath Jha, AC to SC-18

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 24-09-2018

In both the writ applications, most of the
factual details are common since licences of both the petitioners
have been cancelled by separate order by the Respondent No. 3,



the District Magistrate, Bhagalpur and the same having been affirmed by the Respondent No. 2, the Commissioner, Bhagalpur Division, Bhagalpur. However, for the sake of convenience, facts from C.W.J.C. No. 16475 of 2013 may be briefly stated. The petitioner Md. Siddique was granted licence no. 275-08/2001 for N.P. Bore Rifle no. 37588, whereas petitioner Md. Anwar was granted licence no. 300-7-2003 for N.P. Bore Rifle No. A.B.03-1729 and both the licenses were being renewed from time to time. Both the petitioners received notice dated 12.1.2007 issued under the signature of Respondent No. 3, the District Magistrate, Bhagalpur to show cause as to why their licences be not cancelled for their being named as an accused in Jagdishpur P.S. Case No. 275 of 2006, registered under Sections 147,148,149,323,324 and 307 of the IPC and Section 27 of the Arms Act, concerning which the petitioners submitted their reply. After considering the reply of the petitioners, and also the police report, the Respondent No. 3, the District Magistrate, Bhagalpur cancelled the arms licences of the petitioners vide order dated 8.12.2009 passed in Misc. Arms Case No. 12 of 2006-07 and Misc. Arms Case No. 11 of 2006-07. The petitioners preferred Arms Appeal Nos. 16 of 2009-10 and 17 of 2009-10 before the Respondent no.2, the Divisional



Commissioner, Bhagalpur. In the meantime, judgment of acquittal dated 19.7.2010, as contained in Annexure 3, was passed in Jagdishpur P.S. Case No. 275 of 2006 by the learned J.M. Ist Class, Bhagalpur. Thereafter, the Divisional Commissioner vide order dated 1.12.2010 disposed of the aforesaid Arms Appeals of the petitioners, directed the Respondent No. 3, the District Magistrate, Bhagalpur to reconsider the matter in view of the fact that the petitioners have been acquitted in Jagdishpur P.S. Case No. 275 of 2006.

Consequently, the Respondent No. 3, the District Magistrate, Bhagalpur after remand of the matter, vide order dated 8.2.2013, as contained in Annexure 5 declined to interfere with the initial order of cancellation of licence dated 8.12.2009 on the ground that the petitioners have been made accused in Jagdishpur P.S. Case No. 131 of 2009 registered under Sections 341,323,504/34 of IPC and Jagdishpur P.S. Case No. 55 of 2011 registered under Sections 341,323,504 and 506/34 of the IPC and in both the cases, they have been chargesheeted on 31.12.2009 and 26.4.2012, respectively, but statement has been made in the memo of appeal to the effect that they are not having any criminal antecedent. The said order dated 8.2.2013 was challenged in Misc. (Arms) Appeal Case



No. 135 of 2012-13 and 134 of 2012-13 which were dismissed by the Respondent No. 2, the Divisional Commissioner, Bhagalpur on the ground that the petitioners had criminal antecedent and there is likelihood of threat to law and order. Hence, the present writ applications.

It is submitted by learned counsel for the petitioners that initially the licences of the petitioners were cancelled on the ground that the petitioners being involved in Jagdishpur P.S. Case No. 275 of 2006 registered under Sections 147,148,149,323,324 and 307 of the IPC and Section 27 of the Arms Act though charge sheet was not submitted under the Arms Act and subsequently, the petitioners were finally acquitted and in that view of the matter, the Commissioner remanded the matter for reconsideration before the District Magistrate but the District Magistrate considering the subsequent cases lodged against the petitioner declined to interfere with the initial order, cancelling the licences of the petitioners, which was passed on the ground of their involvement in Jagdishpur P.S. Case No. 275 of 2006, wherein chargesheet was not submitted under Section 27 of the Arms Act and they have subsequently been acquitted in the said case. Hence, the subsequent order of the District Magistrate was not



in true spirit of the remand order by the Appellate Authority. It is further pointed out that one of the petitioners, namely Md. Siddique is an accused only in Jagdishpur P.S. Case No. 55 of 2011, whereas the District Magistrate, Bhagalpur passed the order dated 8.2.2013 declining to interfere with the earlier order on the ground that the petitioner Md. Siddique is also accused in Jagdishpur P.S. Case No. 131 of 2009 and the said order has been affirmed by the Commissioner, hence, both the orders are based on error of facts, and therefore, both the orders cannot be sustained. It is further submitted that in both the cases there was no accusation under the Arms Act, hence, cancelling the arms licence on the ground of mere involvement in petty offence is simply an abuse of the jurisdiction under Section 17(3) of the Arms Act by the Licensing Authority.

Learned counsels for the Respondents submit that from the impugned order it appears that the Licensing Authority failed to pass the order in consonance with the spirit of the remand order and committed an error of fact, however the licensing authority is not precluded from considering the fact that subsequently licensee got,, involved in other criminal case.

Having heard learned counsels for the parties, this Court finds that a Full Bench of this Court, in



Kapildeo Singh Vs. The State of Bihar, reported in 1987 PLJR 385, has adequately dealt on the issue, i.e. “would the registration and pendency of a criminal case for a major or capital offence justify the suspension or revocation of a licence under Clause (a) of sub-section (3) of Section 17 of the Arms Act?”

While dealing with this issue it has been held in paragraph nos. 9, 10, 11 and 17 of the said judgment in the following words:-

“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.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 Subsection (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 subsection (5) of [Section 17](#). The licensing authority must record in writing reasons therefor 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 requirement 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.”

17. To finally conclude, the answer to the question posed at the outset is rendered in the affirmative. It is held that the registration and pendency of a criminal case for a major or capital offence may for adequate reasons justify the suspension or revocation of a licence under clause (a) of sub-section (3) of section 17 of the Act.”

The jurisdiction of variation, suspension and revocation of licences can be exercised by the licensing authority under Sub-Section 3 of Section 17 of the Arms Act on the basis of subjective satisfaction whereas the arms licence can be suspended or revoked by the criminal court after convicting the licensee under Sub-Section (7) of Section 17 of the Arms Act. Hence, such discretion can be exercised based on objective fact of conviction under the Arms Act. Such power can be exercised by the Appellate Court or the High Court under Sub-section 8 of Section 17 of the Act. Meaning thereby, neither sub-section (3) nor sub-section (7) or (8) of Section 17 of the Act prescribes for suspension or cancellation of arms licence on mere lodging of FIR against the licensee.

Thus, it can very well be concluded, by appreciating the ratio of what has been held by the Full Bench,



that acquittal from a charge renders the suspension or revocation of licence void in itself. Moreover, it has specifically been held in paragraph no.11, by the Full Bench in Kapildeo Singh (supra) that it is not the pendency of any and every criminal case which would inflexibly warrant the suspension or revocation of licence validly granted. A criminal case may range from a paltry traffic offence to the most horrendous capital crime. Hence, pendency of a criminal case, particularly, of paltry nature against the licensee hardly provide adequate basis for exercise of jurisdiction and under sub-section (3) of Section 17 of the Act by the licensing authority.

However, in view of the discussions made above, this Court is of the view that exercising the jurisdiction under Section 17(3) of the Arms Act without coming to conclusive finding that the petitioners have misused any licence or the petitioners' arms were used in any criminal case.

Hence, the subjective satisfaction has been arrived without an objective finding which gets reflected from the fact that neither the licensing authority nor the appellate authority cared to record in the impugned order as to what was the nature of accusation against the petitioners for which criminal case was registered.



From the impugned order, it does not appear that both the authorities even tried to go through the FIR or to examine the nature of the accusation or to call for a report from the police.

This is not disputed by learned counsel for the respondents that now the petitioner has been acquitted in Jagdishpur P.S. Case No. 275 of 2006, which was the sole ground for cancellation of licence in the first round, hence, on this score also, the impugned orders cannot be sustained.

This Court finds that in all the three cases, charge sheet was not submitted under the Arms Act whereas the subsequent two cases were not even registered under the Arms Act. Moreover, accusation in both the cases are of the petty nature. In the first case, i.e., Jagdishpur P.S. Case No. 275 of 2006, the petitioners have now been acquitted and one of the petitioners namely Md. Siddiquie is accused only in one of the subsequently lodged cases. Hence, this Court finds it fit to interfere on the ground that the licensing authority, subsequent to the remand order by the Appellate Authority has failed to consider the facts in true spirit of the remand order and secondly, both the orders are based on factual error, hence, cannot be sustained. Moreover, both the subsequent cases have



been lodged with accusation of petty nature.

Hence, both the impugned orders dated 8.2.2013 and 13.6.2013, passed by District Magistrate, Bhagalpur and the Divisional Commissioner, Bhagalpur Division, Bhagalpur in both the writ applications, being bereft of adequate reasons are hereby set aside.

Accordingly, these writ applications are allowed. However, this order does not preclude the licensing authority to pass fresh order under the provisions of the Act, after taking fresh police report.

(Dinesh Kumar Singh, J)

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