

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4255 of 2017

=====

Kameshwar Prasad, Son of Late Banwari Prasad, Resident of Village-
Khiraunti, P.S.- Ghoshi, District- Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Government of Bihar, Old, Secretariat, Patna.
2. The Divisional Commissioner, Magadh Division, Gaya.
3. The District Magistrate, Jehanabad.
4. The Superintendent of Police, Jehanabad.
5. The Sub-Divisional Officer, Jehanabad.
6. The S.D.P.O., Jehanabad.
7. Officer-in-Charge, Ghoshi Police Station, Dist- Jehanabad.

... .. Respondent/s

=====

with
Civil Writ Jurisdiction Case No. 3205 of 2017

=====

Ram Nandan Prasad, son of Kameshwar Prasad Resident of Village -
Khiraunti, P.S. - Ghoshi, District - Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Divisional Commissioner, Magadh Division, Gaya.
3. The District Magistrate, Jehanabad.
4. The Superintendent of Police, Jehanabad.
5. The Sub-Divisional Officer, Jehanabad.
6. The S.D.P.O., Jehanabad.
7. Officer-in-charge, Ghoshi Police Station, Dist - Jehanabad.

... .. Respondent/s

=====

Appearance :

(In Civil Writ Jurisdiction Case No. 4255 of 2017)

For the Petitioner/s : Mr.Dronacharya, Adv.
For the Respondent/s : Mr. Md. Harun Quareshi, AC to SC-01
(In Civil Writ Jurisdiction Case No. 3205 of 2017)



For the Petitioner/s : Mr. Dronacharya, Adv.
: Mr. Vijay Bardhan Pandey, Adv.
For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 23-05-2019

Heard the parties.

2. These writ petitions have been filed by the petitioners under Article 227 of Constitution of India to quash the order dated 11.01.2017 passed by the learned Divisional Commissioner, Magadh Division, Gaya in Arms Appeal No. 236/2015 and 233/2015 by which he has affirmed the order dated 08.09.2015 and 09.09.2015 passed by learned District Magistrate, Jehanabad, cancelling the licence of Arms of petitioners under Section 17(3)(b) of Arms Act, 1959 r/w Rule 63(a) of Arms Rules with a further prayer to restore the licence for D.B.B.L gun and N.P. Bore rifle to petitioners.

3. Petitioners were granted Arms licence being Arms Licence No. 131/129/1972 for D.B.B.L. gun and Licence No. 430/455/199 for N.P. Bore rifle as they were in constant threat of their life and liberty by criminals and anti social elements and murderous attack were made upon them for which Ghosi P.S. Case No. 64/1998 under different Sections of IPC and 27 Arms Act were instituted against the accused and subsequently attack



on their life was made in which they suffered grievous firearm injury for which Gardanibagh (Shashtri Nagar P.S. Case No. 289/2003) was lodged.

4. On the eve of general assembly elections in Bihar in the year 2015 a general direction was issued by letter dated 17.06.2015 by the Election Commission Bihar, for physical verification of all the Arms for holding free, fair and peaceful election and accordingly notices were published by District Administration, Jehanabad in two local daily news paper on 26.06.2015 and 27.06.2015 for physical verification of arms of all the arms licence holders before the local police station on specified date and time and thereafter again publication of notice was made on 08.08.2015 in three local news paper for physical verification of the arms of the licence holder on 10.08.2015 and 14.08.2015 otherwise a proceeding will be initiated for cancellation of their arms licence.

5. In Ghoshi police station there were 116 arms licence holder out of which 47 including petitioners did not get their arms physically verified and accordingly their arms licence were cancelled by order dated 08.09.2015 and 09.09.2015 by the learned District Magistrate, Jehanabad for violation of provisions of 17 (3)(b) Arms Act 1959 r/w Rule 63(a) of Arms



Rules, 1962 and they were directed to get their arms deposit within a week in the local police station.

6. After getting the knowledge about order dated 08.09.2015 and 09.09.2015 of cancellation of their Arms Licence and direction of the learned District Magistrate, Jehanabad to deposit their arms within a week in the local police station, petitioners deposited their D.B.B.L. gun No. 1/2/632/1384 having licence No. 131/129/1972 and one N.P. Bore rifle having licence No. 430/455/1999 in Ghoshi Police Station on 21.09.2015.

7. Aggrieved by the order passed by the learned District Magistrate, petitioners filed Arms Appeal before the learned Divisional Commissioner, Magadh Division, Gaya under Section 18 of Arms Act being Arms Appeal No. 236/2015 and 233 of 2015 but the appellate authority dismissed the appeal filed by petitioners by impugned orders dated 11.01.2017 against which petitioners have moved this Hon'ble High Court for setting aside the orders passed by the Licensing Authority learned District Magistrate, Jehanabad as well as the appellate authority Divisional Commissioner, Magadh Division, Gaya.

8. It has been submitted on behalf of petitioners that it was their specific plea that due to lack of knowledge and



information they could not get their arms physically verified in the local police station as such there was no lapses or negligence or violation of any terms and conditions for grant of Arms Licence on their behalf but due to lack of knowledge and information with respect to notice issued and published by the District Administration, petitioners could not get their arms physically verified in the police station.

9. It has been submitted that petitioners were never intimated either by the officer-in charge of Ghoshi P.S. either through local Chaukidar/Dafadar that they have to get their arms physically verified in police station as directed by Election Commission on account of ensuing, assembly elections, 2015, nor they could know about it from the publications made in news paper but ignoring the specific denial of petitioners that neither any personal notice was served upon them nor they were informed on mobile as claimed by Officer-in-charge of the police station and, as such, they could not produce their arms for physical verification. The District Magistrate without verifying the fact has accepted the report of Officer-in-charge of police station as contained in Annexure-D of counter affidavit that petitioners were informed by the local Chaukidar/Jamadar and also on their mobile without any proof of personal service or



mobile printout.

10. It has been submitted on behalf of petitioners that their arms were verified and inspected at regular intervals on specified date and lastly their arms were inspected on 07.02.2014 and bonafide of petitioners can be appreciated as no sooner they came to know about the order dated 08.09.2015 and 09.09.2015 passed by the learned District Magistrate, Jehanabad cancelling their Arms Licence they immediately deposited their arms on 21.09.2015 in the Ghoshi police station and there had been no proceeding against petitioners for violation of any terms and conditions of their arms licence previously.

11. Counter affidavit has been filed on behalf of respondents that notices were published in leading news paper dated 26.06.2015, 27.06.2015, 10.08.2015 and 15.08.2015 instructing the holders of arms licence to get their arms inspected in Ghoshi police station which is presumed to be valid service of notice to the petitioner. A report dated 28.09.2015 of S.H.O. Ghoshi police station was received in which it was mentioned that all the licence holders were informed on mobile but they did not get their arms inspected within prescribed time and considering it to be violation of Rule 63(a) of Arms Rules, 1962, the licence of petitioners were cancelled under Section



17(3)(b) of Arms Act, 1959 which was affirmed by the learned Commissioner the appellate authority.

12. Section 17 (3)(b) of Arms Act, 1959 reads as follows:-

17. Variation, suspension and revocation of licences.-

(1) the licensing authority may vary the conditions subject to which a licence has been granted except such of them as have been prescribed and may for that purpose require the licence holder by notice in writing to deliver-up the licence to it within such time as may be specified in the notice.

(3) The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence-

(a)--

(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)-----

(d)----

(e)----

13. Rule 63(a) of Arms Rules reads as follows:-

Production of Arms:- “the authority by whom any license



in form-II, form-III, form-IV or Form-V, or Form-VI has been granted or renewed, may for the purpose of satisfying itself that any Arms covered by such licence are still in the possession of the licensee, at any time while the license is in force, by order in writing require the licensee.

(c) To produce the arms at such time and place for inspection of such officer as may be specified in the order or,

(d) at the option the licensee, to produce a certificate from

(i) a magistrate or the officer-in-charge of the nearest police station in whose jurisdiction the licensee resides or has his occupation, or

(ii) If he is Government Servant, a gazette officer to whom he is subordinate,

to the effect that he has seen the arms in the possession of the licensee and that they correspond to the description given in the licence.

14. After hearing the parties and considering the materials available on record, it is an admitted fact that on direction dated 17.06.2015 of election commission due to ensuing general assembly election, 2015 a notice was issued by the District Magistrate, Jehanabad in the news paper to all the



arms licence holder to get their arms physically verified in the local police station on a specified date for peaceful conduct of elections which was scheduled to be held in the local assembly constituency on 16.10.2015. The arms were to be physically verified on 26.06.2015 and 27.06.2015 and thereafter on 10.08.2015 and 15.08.2015. The service report with respect to personal service made on petitioners as contained in Annexure -D the report of S.H.O. is vague and unspecific and it does not confirm of any personal service of notice made on petitioners. Physical verification of the arms were to be made for peaceful election on direction of election commission and same remain valid till conclusion of election. Even otherwise the petitioners have shown their bonafide by depositing their arms in the local police station on 21.09.2015 soon after order passed by District Magistrate much before the date of election which was held on 16.10.2015, as such keeping the arms licence cancelled of petitioners any further will frustrate the very objective of grant of licence to the petitioners, accordingly the order dated 08.09.2015 and 09.09.2015 passed by District Magistrate, Jehanabad as well as order dated 11.01.2017 passed by Divisional Commissioner, Magadh Division are set aside and District Magistrate, Jehanabad is directed to restore the licence



of petitioners within three months from the date of receipt/production of a copy of order passed by this Court.

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA.
Uploading Date	30.05.2019
Transmission Date	N.A.

