

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21544 of 2014

=====

Dharmnath Singh son of Sri Lakhan Singh Resident of village - Ramlila
Mathi, P.S. Bhagwan Bazar, District – Saran.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. The District Magistrate, Madhepura
3. The Sub-Divisional Magistrate, Madhepura
4. The District Arms Magistrate, Madhepura
5. The District Arms Magistrate, Saran, Chapra
6. The Superintendent of Police, Madhepura null null
7. The officer - in - Charge, Madhepura Police Station -

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Anil Kumar Mukund
For the Respondent/s : Mr. D.B. Singh

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 24-04-2019 Heard learned counsel for the petitioner and the
counsel appearing on behalf of the State.

Petitioner is aggrieved by cancellation of gun license.

Learned counsel for the petitioner submits that the
gun license was canceled without compliance of the principles
of natural justice inasmuch as he was not given any opportunity
of hearing before passing the order of cancellation of gun
license. Immediately after the knowledge of cancellation of gun
license, petitioner has deposited the gun with Pratap Gun,
Chapra.

Learned counsel appearing on behalf of respondents
with different paragraphs in counter affidavit submits that the



present application is not maintainable as alternative appeal is available. On merit there is no whisper in the counter affidavit that the petitioner has ever abused the privilege of license. So far as the plea of the respondents as to maintainability of the present application when the appellate statutory forum was available the law with regard to exhausting of alternative remedy was considered by the constitution Bench of Apex Court in State of U.P. Vs. Md. Nooh AIR 1958 SC 86. The Supreme Court has carved out three exceptions (1) when the order is totally without jurisdiction (2) when the order is violative of principles of natural justice (3) when the order is violative of fundamental right.

In view of the above, the objection as to maintainability of the writ application stands overruled.

The other submission of the learned counsel for the respondents that petitioner has not intimated the changed address to the licensing authority and as such the license was rightly canceled after giving notice on the earlier address.

Considering the spirit of the scheme of the act, the Court find that the act of canceling the license without any allegation of abuse of the privilege of the arms license and without compliance of principles of natural justice is unsustainable.



Accordingly, the order of cancellation of gun license contained in Annexure-1 to the writ petition is quashed. The matter is remitted back to the District Magistrate, Madhepura to take fresh decision after opportunity of hearing to the petitioner, if the petitioner files application before the District Magistrate, Madhepura alongwith the copy of this order on or before 10.05.2019. The District Magistrate, Madhepura shall provide opportunity of hearing and pass appropriate order within the parameters of Section 17 of the Arms Act. Fresh decision must be taken by the respondent District Magistrate, Madhepura within a maximum period of 60 days after the general election.

With the aforesaid, the present writ application stands disposed of.

(Anil Kumar Upadhyay, J)

mdrashid/-

U			
---	--	--	--

