

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 9580 of 2022

Md. Kaisar Warsi S/o- Md. Kasim Siddhique, resident of Village- Bhada,
P.O.- Routa, P.S.- Sour Bazar, District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through Home Secretary, Govt. of Bihar.
2. Commissioner, Koshi Division, Saharsa.
3. Superintendent of Police, Saharsa.
4. Additional District Magistrate (Arms), Saharsa.
5. District Arms Magistrate, Saharsa.
6. S.H.O. Sour Bazar Police Station, District- Saharsa.
7. The District Magistrate, Saharsa.

... .. Respondent/s

Appearance:

For the Petitioner : Ms. Manisha Pandey, Advocate
For the State : Mr. Manoj Kumar, AC to GP-4

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 05.09.2023

1. The present writ petition has been filed for quashing the order dated 05.08.2021, passed by the District Magistrate, Saharsa, whereby and whereunder the N.P. Bore rifle license of the petitioner, bearing License No.35/4869 has been cancelled. The petitioner has also prayed for quashing of the appellate order dated 03.06.2022, passed by the learned Commissioner, Koshi Division, Saharsa, whereby and whereunder the



appeal filed by the petitioner has been rejected.

2. The brief facts of the case according to the petitioner are that he was granted arms license on 28.2.2004 & since then, he has been in possession of one N.P. Bore rifle for safety of his life and property. It is stated that the petitioner was given a show-cause notice dated 19.03.2021 by the District Magistrate, Saharsa, whereby he was asked to furnish date wise utilization of 1350 cartridges, purchased by him for being used in the aforesaid rifle, whereupon the petitioner had submitted his reply stating therein that he had purchased the cartridges in between the years 2005 to 2020 from various arms dealers and as far as use of the said cartridges is concerned, he had fired on various occasions to check the efficiency of the arms as also had fired the said cartridges on the eve of Eid, Deepawali and marriage ceremonies. The petitioner had also stated that he was left with 48 cartridges in his possession. The District Magistrate, Saharsa, had then by the impugned order dt. 5.8.2021, cancelled the arms



license of the petitioner on the ground that the petitioner has admittedly used 1302 cartridges on the occasion of Eid and other festivals as also during the course of marriage ceremonies by way of celebratory firing, which is illegal and against the arms rules. The petitioner had then filed an appeal, however, the same has also stood dismissed by an order dt. 03.06.2022.

3. The learned counsel for the petitioner has submitted that prior to the amendment of the Arms Act, 1959, which came into effect from 14.12.2019, celebratory firing was not prohibited. It is also submitted that only with effect from 14.12.2019, Section 25 of the Arms Act, 1959 was amended and sub-section (9) was added thereto, which reads as follows:-

“(9) Whoever uses firearm in a rash or negligent manner or in celebratory gunfire so as to endanger human life or personal safety of others shall be punishable with an imprisonment for a term which may extend to two years, or with fine which may extend to rupees one



lakh, or with both.

Explanation.—For the purposes of this sub-section, “celebratory gunfire” means the practice of using fire-arm in public gatherings, religious places, marriage parties or other functions to fire ammunition.]”

It is thus submitted that since celebratory firing was not prohibited prior to 14.12.2019, the petitioner could not have been penalized by cancelling the arms license, hence the order dated 05.08.2021, passed by the District Magistrate, Saharsa, as also the appellate order dated 03.06.2022 are fit to be set aside.

4. *Per contra*, the learned counsel appearing for the respondent-State has submitted, by referring to the counter affidavit, filed in the present case that a show-cause notice dated 19.03.2021 was issued by the District Magistrate, Saharsa, directing the petitioner to submit his reply regarding utilization of the cartridges purchased by him from the years 2005 to 2020, to which the petitioner had submitted a reply, but in the



meantime, the District Magistrate, Saharsa had also called for an enquiry report from the Superintendent of Police, Saharsa, who had submitted his report and then, the District Magistrate, Saharsa had passed the impugned order dated 05.08.2021, cancelling the arms license of the petitioner, whereupon the petitioner had filed an appeal, but the same has also stood dismissed by the impugned order dt. 03.06.2022.

5. I have heard the learned counsel for the parties and perused the materials on record. The admitted facts are that the District Magistrate, Saharsa had issued a show-cause notice dated 19.03.2021 to the petitioner to show-cause as to how many cartridges have been used in between the years 2005 to 2020 out of 1350 cartridges purchased by him and how many cartridges are remaining unutilized with him, to which the petitioner had filed his reply dated 03.04.2021, wherein he had stated that out of 1350 cartridges purchased by him in between the years 2005 to



2020, he has fired cartridges during the festivals of Eid and Deepawali as also for checking the efficiency of the arms and only 48 cartridges were remaining with him.

6. Now coming to the legal aspect of the matter, this Court finds that though it is true that after the Arms Act, 1959 was amended with effect from 14.12.2019, sub-section (9) was added to Section 25, whereby celebratory firing has been arrayed as an offence and made punishable, nonetheless, this Court finds that the Arms Rules, 2016 prescribes the requisite conditions for possessing arms license, which can be found under Rule 112 of the Arms Rules, 2016 and in Schedule III, Form III, thereof (license for the acquisition, possession, carrying and use of arms or ammunition for sport/ target practice/ protection/ display of categories I(B), I(C), III, V, VI of Schedule I), additional conditions have been prescribed for possessing arms license, relevant conditions being Condition Nos. 6 to 9 are being reproduced herein below:-



“(6) Without prejudice to the voidance of this license for breach of any of the foregoing conditions, it shall be void if-

(a) the licensee dies, or

(b) any weapon-covered thereby-

(i) is sold or transferred; or

(ii) is attached in execution of a decree;

Provided that where a weapon is sold or transferred, the licensing authority may permit the holder of the license to acquire a fresh weapon of the same description within such period as may be specified by him in this behalf & subject to fulfillment of condition (3) mentioned above.

(7) The licensee shall not carry any firearm to a fire-arm free zone licensed under these rules. Further, the licensee shall not carry a fire-arm in a public place unless the fire-arm is carried -

(a) in the case of a handgun -

(i) in a holster or similar holder designed, manufactured or adapted for the carrying of a handgun & attached to his person; or

(ii) in a rucksack or similar holder; or

(b) in the case of another fire-arm, in a holder designed, manufactured or adapted for the carrying of a firearm.



Further the fire-arm must be completely covered & the person carrying the fire-arm must be able to exercise effective control over such firearm.

(8) The licensee shall not resort to brandishing of fire-arms in public place nor shall he carry or discharge a fire-arm in a built up area or any public place on the occasion of marriage, public assembly, fair or procession or any public event.

(9) The licensee shall not point out any fire-arm, whether or not it is loaded or capable of being discharged, at any other person, without a good reason to do so."

7. In fact, Arms Rules, 1962 also prescribes the conditions required to be adhered to for the purposes of holding arms license, which can be found in Schedule III, Form III (license for the acquisition, possession, carrying & use of arms or ammunition for sport/target practice/ protection/ display). Condition No.5, thereof being relevant, is being reproduced herein below:-

"5. The licensee or any retainer acting under this license shall not carry any arms covered thereby otherwise than in a



good faith for the purpose of sport/ protection/ display; and, save where he is specially authorised in this behalf by the District Magistrate concerned, he shall not take any such arms to a fair, religious procession or other public assemblage (or within the campus or precinct of any educational institution)."

8. This Court finds from the records that the petitioner has admitted to using firearms and the cartridges in question for celebratory firing during Eid and Deepawali festivals and moreover, the cartridges have been purchased by him in between the years 2005 to 2020. It is also apparent from the order dated 03.06.2022, passed by the learned Commissioner, Koshi Division, Saharsa that during the course of hearing, the petitioner had referred to the report submitted by the police officer, Sour Bazar Police Station, upon the direction of the Superintendent of Police, Saharsa in which it has been stated that the villagers had stated that the petitioner is a gentle and a social person and moreover, the petitioner had himself disclosed that



his son has been engaging in celebratory firing on the occasion of festivals and marriage ceremonies.

9. Having considered the factual aspect of the matter as also the legal aspect, this Court finds that the period during which the petitioner had purchased cartridges lies in between the years 2005 to 2020 and the show-cause was issued to him on 19.03.2021, directing him to submit his reply regarding the number of cartridges used by him and the manner in which the same have been used as also the number of cartridges remaining in his possession. The petitioner had thereafter submitted his reply dated 03.4.2021, stating therein that he has used 1302 cartridges in between the years 2005 to 2020, for not only testing his rifle but also on the occasion of Eid and Deepawali. This Court finds that the amendment in the Arms Act, 1959 has come into force with effect from 14.12.2019, whereby sub-section (9) has been added to Section 25, which prohibits celebrating firing, hence, considering the fact that



the petitioner has submitted his reply dated 03.04.2021, admitting therein that he has engaged in celebratory firing on the occasion of Eid and Deepawali in between the years 2005 to 2020, he is definitely liable for penal consequences/ cancellation of his arms license, inasmuch as the year 2020 is definitely covered by the aforesaid amendment. Nevertheless, this Court finds that under the old Arms Rules, 1962, certain conditions have been prescribed as pre-requisites for possessing arms license and one of the conditions is that the licensee shall not carry any arms to a fair, religious procession or other public assemblage or within the campus or precincts of any educational institutions, meaning thereby that no arms can be taken to a religious procession or in marriage festivities. In fact, the amended Arms Rules, 2016, which undeniably covers the present case, also postulates various conditions required to be adhered to for possessing an arms license and the same not only prohibits carrying of fire-arms to a fire-arm free zone or in a public place but also



prohibits brandishing of fire-arms in public place or firing fire-arms in any public place on the occasion of marriage, public assembly, fair or procession or any public event.

10. In the present case, the petitioner has admitted to celebratory firing on the occasion of Eid and Deepawali festival, apart from having engaged in such firing on the occasion of marriage ceremony as is apparent not only from the reply of the petitioner dated 03.04.2021, but also from the order dt. 03.6.2022, passed by the Commissioner, Koshi Division, Saharsa and from the report of the Police Officer, Sour Bazar Police Station annexed as annexure-4 series to the writ petition, which has been heavily relied upon by the learned counsel for the petitioner, wherein it has been stated that the petitioner has himself informed the said police officer that on the occasion of Eid and other festivals as also on the occasion of marriage ceremonies, he has been engaging in firing in the air. Thus, this Court finds that the petitioner has



not only violated the conditions prescribed for the purposes of possessing an arms license, as postulated under the Arms Rules, 1962 and the Arms Rules, 2016 but has also contravened Section 25 (9) of the Arms Act, 1959, as amended with effect from 14.12.2019, thus the license of the petitioner has rightly been cancelled by the District Magistrate, Saharsa, by the impugned order dt. 05.08.2021. Consequently, the appellate order dated 03.06.2022 also does not suffer either from jurisdictional error or any illegality.

11. Having regard to the facts and circumstances of the case and for the reasons mentioned, hereinabove, I do not find any merit in the present writ petition, hence the same stands dismissed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	27.02.2023
Uploading Date	05.09.2023
Transmission Date	NA

