

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25836 of 2019

=====

Amitabh Singh S/o Late Akhileshwar Prasad Singh Resident of Village-
English, P.S.- Mufassil Aurangabad, District- Aurangabad, at present
Mohalla- Ganj Nawadih Road, P.S.- Aurangabad Town, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Govt. of Bihar, Patna
2. The Commissioner Magadh Division, Gaya
3. The District Magistrate Aurangabad
4. The District Arms Magistrate Aurangabad
5. The Superintendent of Police Aurangabad

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. P.N. Shahi, Sr. Advocate with Mr. Ravindra Kumar, Advocate
For the Respondent/s	:	Mr. Shailesh Kumar, AC to GP-5

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 16-05-2023

Heard Mr. P.N. Shahi, learned senior counsel duly assisted by Mr. Ravindra Kumar, learned counsel for the petitioner and Mr. Shailesh Kumar, learned counsel representing the State of Bihar.

2. The petitioner is a super stockiest of eight Multinational Companies having business floating across within the District of Aurangabad, Rohtas, Kaimur and Arwal, has invoked the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking quashing of the order dated 04.11.2017 passed by the learned District



Magistrate, Aurangabad, whereby Fire Arms Licence No. 01/2005 (Mufassil) of N.P. Bore Rifle and Licence No. 1163/2003 (Nagar) of N.P. Bore Pistol issued in the name of petitioner have been cancelled and he has been directed to deposit his licences vide Memo No. 1934 dated 27.11.2017 passed by the District Arms Officer, Aurangabad. He also seeks quashing of the order dated 14.11.2019 passed by the learned Commissioner, Magadh Division, Gaya in Arms Appeal No. 184 of 2017, whereby he has confirmed the order passed by the District Magistrate, Aurangabad.

3. Having considered his nature of business and genuine requirement to protect his life and/or property, the petitioner had applied for Arms Licence and the Licencing Authority after thorough inquiry and, on being satisfied, issued Arms Licence No. 01 of 2005 (Mufassil) of N.P. Bore Rifle and further Licence No. 1163 of 2003 (Nagar) of N.P. Bore Pistol.

4. Having receipt of the aforementioned licence, the petitioner purchased arms for his safety and, since then, he is possessing the same after getting proper renewal time to time.

5. It is the case of the petitioner that there had never been any complaint either of misuse of the arms or having been indulged in any crime, whatsoever. However, in the year 2017,



the petitioner received a notice duly issued by the District Arms Magistrate vide Memo No. 1557 dated 05.10.2017, seeking his explanation as to why not his licence bearing no. 01 of 2005 (Mufassil) be cancelled on the possibility of breach of peace because of his conduct. Subsequently, further notice has been served upon the petitioner issued by the same Authority vide Memo No. 1163 of 2003 (Nagar) dated 12.10.2017, seeking show-cause explanation on the same and similar ground for cancellation of Licence No. 1163 of 2003 (Nagar).

6. The aforesaid show-cause notices reveal that the petitioner is found indulge in provoking the communities by making some messages viral on social media, which may lead to communal discord and law and order problem. Hence, show-cause notices have been issued as to why not his licence be cancelled with immediate effect invoking the power prescribed under Section 17 of the Arms Act.

7. In response to the aforesaid notices, the petitioner immediately responded and filed a detailed representation with a categorical assertion that he never tried to create any communal disharmony leading to any disturbance in public peace. In order to buttress his submission, the copy of the message(s) and comments made thereupon have been brought on record.



8. The District Magistrate, Aurangabad, after receipt of the representation filed on behalf of the petitioner passed the impugned order dated 04.11.2017 (Annexure-1), cancelling the Arms Licence of the petitioner and subsequently vide Memo No. 1934 dated 27.11.2017, the petitioner is directed to deposit his arms.

9. Being aggrieved by the aforesaid order of the District Magistrate, Aurangabad, the petitioner preferred Arms Appeal No. 184 of 2017, before the Commissioner, Magadh Division, Gaya within the stipulated period.

10. However, when the aforementioned appeal was not disposed of, the petitioner preferred C.W.J.C. No. 1855 of 2019, seeking a direction upon the respondent no.2 to expeditiously conclude the Arms Appeal No. 184 of 2017.

11. The writ application was finally disposed of by the learned Court on 01.02.2019, with a direction to the respondent no.2 to pass appropriate order in accordance with law within a period of three months.

12. Despite the order of this Court, when the Authorities did not pass any appropriate order, the petitioner compelled to file a Contempt Petition which is still sub judice being M.J.C. No. 2537 of 2019.



13. The learned Commissioner, Magadh Division, Gaya, in course of the aforementioned appeal, directed the District Magistrate, Aurangabad as also the Superintendent of Police, Aurangabad to inquire the matter and submit a report and, accordingly, vide Office Order containing letter no. 3356 dated 09.08.2019, a report has been submitted that the petitioner without having any basis or evidence tried to instigate the members of a specific community.

14. The learned Commissioner, having taken note of the aforesaid report came to the conclusion that there was apprehension of public peace on account of the post(s) made by the petitioner on social media. He further came to the conclusion that the petitioner also does not have any threat perception. Hence, there is no reason for revival of his Arms Licence and has accordingly, dismissed the Arms Appeal No. 184 of 2017 vide order dated 14.11.2019, as contained in Annexure-P/3 to the writ petition.

15. Mr. Shahi, learned senior counsel while assailing the aforesaid orders, has drawn the attention of this Court towards the post(s)/message(s) posted on social media and made categorical submission that from none of the message(s) shows that any act has been made on the part of the petitioner to



instigate any specific community or discord the communal harmony. So far the comments are concerned, which are nothing to do with the petitioner, inasmuch as, for the aforementioned posting of the message(s), there had never been any complaint or any FIR has been registered against anyone including the petitioner. It is the further case of the petitioner that it is not the case of the respondents that the petitioner had ever been found involve in misusing the firearms and from bare perusal of the impugned order passed by the District Magistrate, Aurangabad, *prima facie*, it appears that there is no consideration of the submissions made on behalf of the petitioner.

16. Learned senior counsel, further submits that the appellate order is also not sustainable as the same is based on an inquiry report, which only talks about apprehension and not substantiated by any substantial complaint/FIR. The appellate order also suffers from consideration of irrelevant materials that there is no threat perception against the petitioner, which at all was not ground for cancellation of the licence by the Licencing Authority, while invoking the Provision of Section 17 of the Arms Act, 1959.

17. *Per contra*, learned counsel for the State, vehemently, opposed the contention of the petitioner and



submitted that the impugned order has been passed after affording proper opportunity of hearing to the petitioner. However, the petitioner failed to demonstrate that he was not indulged in provoking the two communities, which may resulted into communal riots and breach of peace and law & order problem. He next submitted that Section 17 of the Arms Act empowers the Licencing Authority to revoke the licence of the person, where the security of the public peace and public safety are at danger. He further submitted that the learned Commissioner, Magadh Division, Gaya, also sought information as to whether there is any threat to life and property of the petitioner and when no proper explanation has been put forth by the petitioner, the appellate order has been passed in accordance with law.

18. This Court has given anxious consideration to the submissions made on behalf of the parties and also perused the materials on record.

19. Admittedly, the petitioner is a proprietor of various business, like M/S Akhileshwar Traders, Akhileshwar Builders Pvt. Ltd. etc. and earlier he had faced attack on his life resulting into lodging of Aurangabad P.S. Case No. 389 of 2005 and, on being found threat to his life and property, Arms Licence



were obtained way back in the year 2003 and 2005, respectively.

20. Undoubtedly, Section 17(3)(b) of the Arms Act provides that Licencing Authority may by order suspend a licence or revoke the same, if it becomes necessary for the security of public peace or public safety. However, once a person has been granted a licence and he acquires the arms, it becomes one of his properties and, as such, a statutory legal right to acquire, hold and dispose of the property unless reasonable restriction has been imposed by any law.

21. From perusal of the message(s) posted on the social media, *prima facie*, this Court is not satisfied that there was any intentional instigation or provocation on the part of the petitioner to cause any communal disharmony though it may be said to be unwarranted. Had there been any genuine apprehension of the breach of peace or law & order problem, the respondent-authorities must have had come with a substantive complaint/FIR, which is not the case of the respondent-authorities.

22. This Court also finds that the case of the respondents leading to cancellation/revocation of licence is not based upon the misuse of the arms or the petitioner having been found involve in any criminal case or there has ever been any



complaint by anyone facing threat of his life or property at the hands of the petitioner. Further the cancellation/revocation of the Arms Licence on being found no threat perception after more than 17-18 years, was a non existent ground to the appellate authority, thus wholly unsustainable in the eyes of law.

23. It is needless to observe that the very nature of business, profession and job are one of the relevant consideration while issuing Arms Licence in favour of the applicant and the case in hand clearly suggests that the petitioner is a prominent businessman, whose business spread across various districts. Hence, the necessity of the Arms Licence cannot be said to be not required at all.

24. For the aforementioned reasons, this Court *prima facie*, finds substance in the submissions made on behalf of the petitioner and, accordingly, set aside the impugned order dated 04.11.2017 passed by the District Magistrate, Aurangabad, as also the appellate order dated 14.11.2019 passed by the learned Commissioner, Magadh Division, Gaya.

25. The matter is remitted to the Licencing Authority, the District Magistrate, Aurangabad, to consider the case of the petitioner afresh in the light of the observations made hereinabove and pass appropriate order in accordance with law



restoring the Arms Licence of the petitioner, preferably within a period of three months, from the date of receipt/production of a copy of this order.

26. The writ application stands allowed.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24-05-2023
Transmission Date	

