

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15590 of 2023

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Jitendra Swamy Son of late Uma Shankar Singh Resident of Village- Sawan
Bighrah, P.S. Daraunda, District - Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. Principal Secretary Department of Home, Government of Bihar, Patna.
3. Divisional Commissioner, Saran at Chapra.
4. District Magistrate, Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Raghwendra Pratap Singh, Advocate
For the State	:	Mr.Md. Nadim Seraj (GP-5)
		Mr. Dhurendra Kumar, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 02-07-2024

The present writ petition has been filed for quashing the order dated 12.01.2022 passed by the District Magistrate, Siwan, whereby and whereunder the arms license of the petitioner has been cancelled by invoking the powers conferred upon him under Section 17(3)(b) of the Arms Act, 1959 (hereinafter referred to as the 'Act, 1959'), as also for quashing the appellate order dated 23.12.2022 passed by the learned Court of Commissioner, Saran Division at Chapra in Arms Appeal Case No. 95 of 2022, whereby and



whereunder appeal filed by the petitioner has been dismissed.

2. The brief facts of the case, according to the petitioner, are that one Maharajganj P.S. Case No. 22 of 2005 was registered against the petitioner and others on 26.02.2005 for the offences punishable under Sections 25(1-A), 25(1-B), (A26(1),26(2) and 35 of the Arms Act, whereupon the arms of the petitioner was seized and then the trial of the aforesaid criminal case had taken place and ultimately the petitioner was acquitted from all charges, by a judgment dated 11.06.2015, passed by the learned Additional District & Sessions Judge-III, Siwan in Sessions Trial No. 361 of 2009. It is stated that the petitioner was holding a valid arms license bearing Arms License No. 56 of 1993 and was possessing N.P. Bore Revolver, which was though seized on account of filing of the aforesaid Maharajganj P.S. Case No. 22 of 2005 but was released only on 23.05.2022 by the S.H.O., Maharajganj in compliance of the release order dated 23.05.2022 passed by the



learned Trial Court. It is the further submission of the petitioner that though the District Magistrate, Siwan is stated to have issued a general notice dated 22.07.2021, directing all the arms license holder to deposit the arms before the Magistrate for verification, however, the petitioner was not in a position to produce the arms before the District Magistrate since the same was lying at Maharajganj Police Station, nonetheless, the District Magistrate, Siwan had cancelled the arms license of the petitioner by the impugned order dated 12.01.2022 on account of the fact that the petitioner had failed to produce the arms before the Magistrate for physical verification. The petitioner had then filed an appeal, however, the same has also stood dismissed by the impugned order dated 23.12.2022. This is how the petitioner is before this Court.

3. It is the contention of the learned counsel for the petitioner that the principle of natural justice has not been complied with inasmuch as no opportunity of hearing has been



granted to the petitioner prior to cancellation of the arms license under Section 17(3)(b) of the Act, inasmuch as no specific notice was ever issued to the petitioner by the District Magistrate, Siwan. In this connection reliance has been placed on a judgment reported in **1990 PLJR 217 (Amar Sinha vs. The District Magistrate, Munger & Anr.)**, paragraphs no. 5, 8 and 9 whereof are reproduced herein below:-

*"5. Mr. Radha Mohan Prasad submits that from perusal of the impugned order (Annexure-3), it is clear that the petitioner was not given any opportunity of hearing before suspending his gun licence and thus there has been a violation of principle of natural justice as held in **Nripendra Narayan Roy vs. The State of Bihar and others**, 1974 P.L.J.R. 296, and thus the said order is liable to be quashed.*

*8. In **Kapildeo Singh vs. The State of Bihar and others** A.I.R. 1987 Patna 122: 1987 PLJR 385 a Full Bench of our High Court observed thus:-*

"...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 S 17 (3), in the case of the latter after notice and hearing of the explanation such action may well become necessary."

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"..It has to be kept in mind that the prescribed statutory conditions for suspension and revocation of a licence are identical. The provisions of Clauses (a), (b), (c), and (d) of sub-section (3) are with absolute uniformity applicable to the grounds for suspension as well as for revocation of a licence." (Emphasis added).

9. Learned counsel appearing for the respondents does not dispute the aforementioned propositions of law."

4. The learned counsel for the petitioner has also relied on a judgment rendered by a coordinate Bench of this Court dated 09.01.2017 rendered in the case of **Amarjeet Kumar Singh vs. The State of Bihar & Ors. (CWJC No. 10093 of 2016)**, relevant paragraphs whereof are being



reproduced herein below:-

“Now the issue being raised by the petitioner is as to whether any notice for cancellation of the licence on the ground that he could not purchase the firearms was ever issued? The counter affidavit does not disclose it that any notice for that particular purpose was ever issued upon the petitioner rather the general notice indicates that all the persons who were possessing firearms under valid licence were required to produce their weapons for verification but the case of the petitioner that he has not purchased firearm at all, therefore, there would be no question of producing the same for verification.

*In my view, for cancellation or suspension of licence, a reasonable opportunity is required to be given to the licensee before taking a punitive action. A reference in this regard is made to a decision of this Court rendered in **Amar Sinha Vs. The District Magistrate, Monghyr & Anr. [1990 PLJR 270]**. Learned Single Judge after appreciation of the law laid down by the Full Bench in **Kapildeo Singh vs State of Bihar and Ors. 1987 [AIR 1987 Pat 122]** has opined that suspension or revocation of arms*



licence on "any ground" without affording an opportunity of being heard is bad and in violation of principles of natural justice."

5. The learned counsel for the petitioner has next contended that the license of the petitioner has been cancelled by the District Magistrate, Siwan by invoking the powers conferred upon him under Section 17(3)(b) of the Act, 1959, however, no specific reason has been recorded by the licensing authority for reaching at a subjective satisfaction to the effect that allowing the petitioner to hold an arms license will be prejudicial for the security of the public peace or for public safety.

6. At this juncture, it may be relevant to reproduce Section 17(3)(b) of the Act, 1959 herein below:-

"17.Variation, suspension and revocation of licences.

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

(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."*

7. *Per contra*, the learned counsel for the respondent-State has submitted that since notices were issued by the District Magistrate, Siwan in the daily newspaper calling upon the arms license holder of the district in question to appear before the concerned police station for verification of their respective arms and the petitioner had failed to do so, his license has rightly been cancelled by the District Magistrate, Siwan by the impugned order dated 12.01.2022, however, the learned counsel for the respondents has not denied the fact that the arms in question, belonging to the petitioner, were in fact in possession of the S.H.O., Maharajganj, during the said period i.e. on the date of issuance of notice dated 22.07.2021, on account of filing of the aforesaid criminal case against the petitioner and others on 26.02.2005 and the same was released only on 23.05.2022.

8. I have heard the learned counsel for the parties and perused the materials on record. This



Court finds that a very interesting and peculiar situation has arisen in the present case inasmuch as though the arms belonging to the petitioner were in custody of the S.H.O. Maharajganj during the relevant period, however, oblivious of the said fact, the District Magistrate, Siwan has, on account of nonest reason, cancelled the arms license of the petitioner by the impugned order dated 12.01.2022. In fact the District Magistrate, Siwan while passing the impugned order dated 12.01.2022 ought to have realised that the petitioner could not have produced the arms in question since the same had stood deposited with the S.H.O. Maharajganj in the year 2005 itself, which was released only on 23.05.2022, thus, on this ground alone, the impugned order dated 12.01.2022 is fit to be set aside. This Court further finds that admittedly no personal notice was ever issued to the petitioner nor any opportunity of being heard was granted to the petitioner, hence on this ground as well the impugned order dated 12.01.2022 is bad in law and is fit to be set aside.



This aspect of the matter stands fully covered by the law laid down by coordinate Benches of this Court in the case of Amar Sinha (supra) and Amarjeet Kumar Singh (supra).

9. Now, coming to the other legal issue raised by the learned counsel for the petitioner i.e. to the effect that under Section 17(3)(b) of the Act, 1959, it is necessary for the licensing authority to record his subjective satisfaction to the effect that allowing the petitioner to hold arms/ arms license will be prejudicial for the public peace, however, no such reason has been recorded either by the licensing authority or the appellate authority while passing the impugned orders dated 12.01.2022 and 23.12.2022 respectively. In this connection, reference be had to a judgment rendered by a coordinate Bench of this Court on 01.05.2018 passed in the case of ***Ramayan Chaubey vs. The State of Bihar & Ors. (CWJC No. 4201 of 2015)***, relevant paragraphs whereof are reproduced herein below:-

“The Licensing Authority is empowered to resort to the power conferred in



Section 17(3)(a) of the Arms Act, when the Licensing Authority is satisfied that the holder of the licence is prohibited by this Act or any other law for the time being in force, from acquiring, having in his possession or carrying any arms or ammunition, or is of unsound mind, or is for any reason unfit for a licence under this Act. Undoubtedly, the Licensing Authority in the present case has not resorted to the power under Section 17(3)(a) of the Arms Act. However, Section 17(3)(b) of the Arms Act mandates for exercise of such jurisdiction if the Licensing Authority deems it necessary for the security of the public peace and public safety to suspend or revoke the licence. There is no finding recorded to this effect as is required under Section 17(3)(b) of the Act, either in the original order of the Licensing Authority or in the order of the Appellate Authority. There is no application of Section 17 (3)(c) of the Act in the present case, which mandates exercise of power of suspension, cancellation or revocation of the licence on suppression of material facts at the time of application or grant of licence. Section 17(3)(d) of the Arms Act stipulates exercise of such power when the conditions of licence



has been contravened. There is no finding recorded in the present case to this effect also. However, Section 17(3) (e) of the Arms Act stipulates that the power for suspending a licence may also be exercised if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver-up the licence, but, in the present case this was not the reason for cancellation of licence. The reason for cancellation of licence which has been mentioned in the order of the licensing authority is that the petitioner was acquitted by virtue of benefit of doubt. However, the Licensing Authority has not recorded that as to how it would be a threat for security of public peace and public safety, if the petitioner is allowed to retain the licence. There is no doubt that even acquittal in criminal case will not automatically set aside the suspension or cancellation or revocation, of the Arms licence of the licensee. Even in case of acquittal from a criminal charge, the licensing authority may not allow the licensee to retain the licence or can cancel the licence and otherwise also even in case of conviction the licensing authority can allow the licensee to retain the licence, as has



been held by a Full Bench of this Court in the case of Kapildeo Singh Vs. The State of Bihar and others, reported in 1987 PLJR 385. The relevant portion of paragraph 12 reads as follows:-

"Indeed, it appears to me that under sub-section (3) the actual conviction or acquittal on the criminal charge does not have an inflexible or conclusive impact on the exercise of the discretion by the licensing authority thereunder. Even if the holder of the licence may be acquitted by narrowly giving the benefit of doubt, the licensing authority could, perhaps, still take the view that along with other factors such a person may not be fit for holding an arms licence. Equally, conviction on any and every criminal charge would not provide an inflexible rule that the licensing authority must revoke the same and it may well be justified in allowing the continuance of the said licence. As is noticed hereafter, conviction and acquittal are issues of relevance under sub- section (7) for the licensing authority who is governed by the provisions of sub-section (3)."



There is no doubt that the cancellation of Arms licence under Section 17 (7) of the Arms Act is based on the objective fact that, the power of suspension or revocation can also be exercised by the Court convicting the holder of licence, if the licensee is charged for any offence under the Arms Act or the Rules while the proviso to Section 17 (7) of the Arms Act stipulates that the cancellation automatically gets restored if the judgment of conviction is unsettled by the superior court. Hence, on bare reading, it becomes apparent that the power under Section 17(3) of the Arms Act cannot be exercised without recording specific reason by the Licensing Authority for reaching to a subjective satisfaction to the effect that allowing the petitioner to hold arm licence will be prejudicial for the public peace."

10. In the case of **Shailendra Kumar vs. The State of Bihar & Ors. (CWJC No. 2605 of 2006)**, a coordinate Bench of this Court vide judgment dated 22.03.2018 has held that Section 17(3)(b) of the Act, 1959 mandates that the licensing authority can vary, suspend or revoke the



arms license, if he feels necessary for security of public peace and public safety, however, such satisfaction is required to be recorded in the impugned order being passed by the licensing authority or by the appellate authority while passing the order cancelling the arms license. In this connection, relevant paragraphs of the said judgment dated 22.03.2018 are being reproduced herein below:-

“In the present case, the period of bond got lapsed on 18.05.1998, whereas the District Magistrate exercised the jurisdiction for cancelling the arms licences on 26.07.1999. Hence, the jurisdiction has wrongly been exercised by the licensing authority. Section 17 of the Arms Act vests jurisdiction of licensing authority for varying, suspending and revoking the arms licence on various grounds. Section 17(3)(b) of the Arms Act mandates that the licensing authority can vary, suspend and revoke the arms licence, if he feels necessary for the security of public peace and public safety. Such satisfaction which is sine qua non for exercise of such jurisdiction has not been recorded in the impugned order



either by the Licensing Authority or by the Appellate Authority.”

11. In the present case, the licensing authority has not recorded any specific reason for reaching to a subjective satisfaction to the effect that allowing the petitioner to hold arms license will be prejudicial for the public peace, thus he could not have exercised the powers conferred upon him under Section 17(3)(b) of the Act, 1959, hence the impugned order dated 12.01.2022 is liable to be set aside.

12. Having regard to the facts and circumstances of the case and for the foregoing reasons, this Court finds that the impugned order dated 12.01.2022 has, first of all, been passed in breach of the principles of natural justice and secondly, contrary to the provisions contained under Section 17(3)(b) of the Act, 1959, hence is set aside being unlawful. Consequently, the appellate order dated 03.12.2022 passed by the learned Court of Commissioner, Saran Division at Chapra, has got no legs to stand, hence is also set



aside.

13. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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