

**(2013) 03 PAT CK 0044**

**In the Patna High Court**

**Case No :** LPA No. 288 of 2013 in CWJC No. 5075 of 2012

|                                                     |            |
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| Chandan Kumar Yadav @ Chandan Yadav @ Chandan Kumar | APPELLANT  |
| Vs                                                  |            |
| The State of Bihar and Others                       | RESPONDENT |

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**Date of Decision :** 07-03-2013

**Acts Referred:**

Arms Act, 1959 — Section 17, 17(1), 17(3)(a)  
Constitution of India, 1950 — Article 226  
Penal Code, 1860 (IPC) — Section 302, 307, 34, 379, 384

**Citation :** (2013) 2 PLJR 605

**Hon'ble Judges :** Shivaji Pandey, J;Navin Sinha, J

**Bench :** Division Bench

**Advocate :** Shashi Priya Pathek and Mr. Rajesh Kumar Pandey, for the Appellant;  
H.S. Sundaram, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Navin Sinha, J.—We have heard Counsel for the appellant and the State. The present appeal arises from the order dated 7.1.2013 dismissing CWJC No. 5075 of 2012 affirming the order dated 11.11.2011 passed by the Commissioner, Bhagalpur Division, in Misc. (Arms) Appeal Case No. 11 of 2009-2010 declining to interfere with the order for cancellation of his arms licence by the District Magistrate dated 12.10.2009. Learned Single Judge held that acceptability of the explanation furnished by the appellant was the prerogative of the respondents and if they were not satisfied with the explanation it would not be proper exercise of jurisdiction for the Court to interfere in the matter.

2. Learned Counsel for the appellant submitted that a show cause notice was issued on 4.7.2009 on the ground that the appellant was charge-sheeted in Gopalpur P.S. Case No. 175 of 2009, under Sections 302, 307 and other provisions of the Penal Code, Gopalpur P.S. Case No. 76 of 2008 under Sections 379, 447 and 34, Indian Penal Code, Gopalpur P.S. Case No. 386 of 2008 under Sections 384, 504 and other provisions of the Penal Code. Out of 315 cartridges

purchased only 100 were available with the appellant and there was no satisfactory explanation with regard to user of the same. Information had been received about misuse of the licensed arms by the appellant and his brothers.

3. The appellant submitted his reply denying that he was an accused or that his name figured during investigation in Gopalpur P.S. Case No. 175 of 2009. With regard to the remaining two cases it was contended that they were outcome of a village property dispute which had been subsequently compromised and settled. On the issue of cartridges, it was submitted that 100 cartridges per year were permissible to him under the licence, when the number of cartridges purchased by him from the year 2003 to 2009 were all well below the permissible limit. The District Magistrate rejected the explanation by only stating that it was not found satisfactory. There was no merit consideration of the grounds furnished. In appeal, the appellate authority again did not consider the issue of his non-involvement in Gopalpur P.S. Case No. 175 of 2009, the compromise in the other two cases and the user of the cartridges as explained.

4. Learned Counsel for the appellant has relied upon Ram Badan Singh @ Ram Balak Singh Vs. The State of Bihar and Others, to submit that being an accused in a criminal case by itself could not be absolute justification to declare the person unfit to hold an arm licence. Holding it not to be a rigid and inflexible rule it was observed that it would depend on the facts and circumstances of each case. If a defence was put up it was required to be appropriately examined by the authorities. Failure to consider the cause shown appropriately on merit would invalidate the order.

5. Counsel for the State opposing the application submitted that the appellant did not have the absolute right to hold a firearm and it was subject to statutory limitations. If the authorities were not satisfied of his suitability for possession of firearm licence mentioned in the order, the Court may not interfere with the subjective decision of the authorities. Reliance was placed on Kapildeo Singh Vs. State of Bihar and Others, to submit that registration and pendency of a criminal case for a major or capital offence may have been adequate justification for suspension or revocation of the licence u/s 17(3)(a) of the Arms Act.

6. We have considered the submissions on behalf of the parties. The right to possess an arm in this country is not a fundamental right but is regulated by statutory provisions. If the right to possess is regulated by statute, the authority to interfere with the possession is also regulated by statutory provisions. Section 17 of the Arms Act provides for variation, suspension and revocation of licences. Section 17(3)(a) to (e) provide for conditions under which the licence may be revoked. The conditions inter alia are unsoundness of mind or for any reason unfit for a licence, if it is deemed fit for the public peace or public safety, licence was obtained by suppression of material information or on basis of wrong information provided by the holder, contravention or failure to comply with a notice u/s 17(1) requiring him to deliver-up the licence.

7. The power for judicial review under Article 226 is primarily concerned with the decision making process rather than the merits of the decision initially. Natural justice does not mean giving a show cause and acceptance of a reply only. The tenets of natural justice equally require that the cause shown has to be considered by application of mind, displaying due consideration and reasons for its non-acceptability. To hold that mere reference that the cause shown was not satisfactory shall suffice would be vesting arbitrary and encanalized powers in the statutory authority. Unable to meet the cause shown he would conveniently simply hold that it was unacceptable.

8. The order of District Magistrate simply states that the cause shown was not satisfactory. There is no discussion with regard to the cause shown by the appellant, the application of mind on it coupled with the reason for its non-acceptability. The appellant had denied that he was an accused in Gopalpur P.S. Case No. 175 of 2009. The District Magistrate did not consider or deal the issue and therefore failed to apply his mind to a relevant material vitiating the order. Likewise the appellant had contended that the other two cases were result of a village feud and had been compromised has not been dealt with. No further discussion is required that the order of the District Magistrate was itself unsustainable in law.

9. If that were not sufficient, the appellate authority likewise clubbed all the three criminal cases together to hold that the appellant was charge-sheeted without considering the reply of the appellant about Gopalpur P.S. Case No. 175 of 2009 and the compromise in the other two cases. He did not notice the contention that pursuant to compromise the appellant had been acquitted. In an inter se dispute the appellant had allegedly used his firearm which was not appropriate from the social point of view. The defence that he had spent some cartridges by firing in the air to discourage persons cutting his crops was not acceptable because no FIR had been lodged or that the police had not submitted any report to conclude that he had utilised the cartridges irresponsibly.

10. If the defence of the appellant with regard to Gopalpur P.S. Case No. 175 of 2009 had been considered and rejected on merits we would have had no difficulty in the matter in view of Kapildeo Singh (supra). It is for the respondents to consider why they did not apply their mind to relevant issues and were negligent in passing orders at two successive stages. The counter affidavit states that the appellant was charge-sheeted in Gopalpur P.S. Case No. 76 of 2008 and Gopalpur P.S. Case No. 386 of 2008. There is no reference even in the counter affidavit to Gopalpur P.S. Case No. 175 of 2009. That was sufficient for us to hold for invalidity of the orders for cancellation.

11. We fail to understand that if the appellant had allegedly used his firearm to scare any person in a petty village dispute, there being no allegation of firing by him for the purpose aimed at any individual but in the air, how it would constitute misuse of the firearm endangering public peace or public safety, words which definitely to our mind have a much larger connotation in its application

and cannot be limited or confined. There is no allegation for suppression of information in having obtained licence or that he had contravened any conditions of the licence. If the explanation for firing in the air to scare away those who illegally came to cut crops was not disbelieved rejection of the defence on the ground that there was no police report, to our mind is fanciful and arbitrary.

12. Upon consideration of the issues involved we are satisfied to hold that the order for cancellation dated 12.10.2009 and the appellate order affirming the same dated 11.11.2011 are not sustainable and are accordingly set aside. The jurisdiction not having been exercised in accordance with statutory provisions as also violation of the principles of natural justice, the orders being unreasoned and failing to take into consideration relevant materials, the conclusion of the single Judge that the exercise of subjective discretion could not be interfered with by the Court automatically becomes unsustainable. The order dated 7.1.2013 is also set aside and the appeal is allowed.