

(2004) 02 PAT CK 0052
In the Patna High Court
Case No : C.W.J.C. No. 11519 of 2001

Lalu @ Lalan Ray and Another	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 04-02-2004

Acts Referred:

Arms Act, 1959 — Section 17

Citation : (2004) CriLJ 1651 : (2004) 2 PLJR 322 : (2004) 3 RCR(Criminal) 255

Hon'ble Judges : Chandramauli Kumar Prasad, J

Bench : Single Bench

Advocate : Sudama Singh and Rajani Kant Singh, for the Appellant; J.D. Singh, GPI, for the Respondent

Judgement

Chandramauli Kumar, J.—This application has been filed for quashing the notice dated 9-7-2001 in Arms Case No. 20 of 2001 whereby while suspending the arms licence of the petitioners they have been asked to show cause as to why their licences be not cancelled.

2. Mr. Sudama Singh appearing on behalf of the petitioners contends that the order suspending the licences have been vitiated on account of the fact that the same has been done without giving any opportunity to the petitioners. In support of his submission he has placed reliance on a Division Bench judgment of this Court in the case of Jagdamba Singh alias Markandva v. The State of Bihar (1993) 2 BLJR 107 and my attention has been drawn to paragraph 14 of the Judgment which reads as follows :--

"Thus in my considered opinion, before cancelling or suspending the licence of firearms, the licence holder must be given an opportunity of being heard. In other words, the licence should be suspended or cancelled after giving notice and hearing of the explanation of the licence-holder. The view taken by me finds support from the binding precedent. In the case of Kapildeo Singh (supra) it was held by a Full Bench of this High Court that before cancellation/suspension of the licence notice to the licence holder and (sic).

3. From a reading of the aforesaid passage of the judgment it can be safely said that as a general rule in case of suspension of licence opportunity of hearing is to be given to the licensee, but the aforesaid rule is not of universal application and in the facts of a given case the requirement of giving prior notice before suspension of licence can be dispensed with. Here in the present case the licensing authority had decided to suspend the licence in view of the allegation made against the petitioners and the report of the police authority that firearm was used in the occurrence. In fact in the case of Jagdamba Singh (supra) this Court itself has observed as follows :--

"However, the aforesaid requirement of giving prior notice before cancellation or suspension of licence can be dispensed with in certain circumstances and the licensing authority after cancellation or suspension of the licence will afford subsequently an opportunity of hearing and making a representation against the order of cancelling or suspending the licence. After all, the rules of natural justice are not the ends in themselves, they are means to achieve ends of justice. Its object is to advance cause of justice and to keep the arbitrary actions within limits. It is well settled that in public interest and in emergent situation the observance of natural justice can be excluded absolutely or it can be regulated in such a way which would preserve the rule of law. It is equally well settled that the Court has been circumvent in extending the rules of audi alteram partem in a situation where it would cause more injustice than justice. If in an emergent situation where the activities of the licence holders of the firearms cannot be prevented otherwise than by taking recourse to cancel or revoke the licence and direct him to deposit the arms the licensing authority in such a situation would be justified in cancelling/revoking the licence and directing the licence-holder to deposit the arms even without affording a prior opportunity of hearing for the reason that giving of an opportunity of hearing prior to passing of the said order would not be possible in such a situation and giving prior notice will defeat the very object of the action proposed to be taken."

(Underlining mine.)

4. In that view of the matter I am not inclined to interfere with the order at this stage.

5. Petitioners, if so advised, may file their show cause within six weeks. Needless to state that the licensing authority shall consider the show cause of the petitioners and pass order in accordance with law within four months from the date of filing of the show cause.

Application stands disposed of with the observation aforesaid.