
(2012) 05 AHC CK 0067

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 122 of 2010

Mulayam Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 14-05-2012

Acts Referred:

Arms Act, 1959 — Section 17, 17(3)(b)

Penal Code, 1860 (IPC) — Section 504, 506

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 198

Citation : (2013) 2 ALJ 401 : (2013) 3 RCR(Criminal) 397

Hon'ble Judges : Sunita Agarwal, J

Bench : Single Bench

Advocate : Umesh Chandra Mishra, Sushil Kumar Dubey, Akhilesh Kumar Pandey, for the Appellant; G.K. Pandey, (S.C.), C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Sunita Agarwal, J.—Heard Sri. Sushil Kumar Dubey, learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents. This writ petition has been filed by Mulayam Singh, (hereinafter called the "petitioner") praying that the order dated 31.12.2007 passed by the District Magistrate, Etawah and the order dated 13.7.2009 passed by the Commissioner, Kanpur Division, Kanpur may be quashed.

2. The petitioner held a licence of rifle. On a report submitted by the Senior Superintendent, Etawah dated 3-8.2007, a show cause notice dated 8.8.2007 was issued to the petitioner suspending the licence of firearm of the petitioner and directing him to deposit the same in the concerned police station. The petitioner was called upon to show cause as to why his licence be not cancelled. It has been stated in the said show cause notice that a Case Crime No. 79/2007 u/s 198, ZA & LR Act and 504 /506, IPC has been registered against him in Police Station, Saifai. The petitioner submitted reply to the show cause notice and denied the charges levelled against him.

3. The District Magistrate, however, on the basis of FIR recorded a finding that the licensee petitioner used the firearm to threaten one Bare Lal son of Kali Charan who lodged the FIR against him. On the basis of said FIR he concluded that the petitioner cannot be allowed to retain the firearm as it would be detrimental to public peace and public safety. The firearm licence of the petitioner was cancelled on this ground in exercise of powers u/s 17(3)(b) of the Arms Act, 1959 (herein after referred to as the "Act"). The petitioner preferred an appeal before the Commissioner, Kanpur Division, Kanpur who however concurred with the District Magistrate and dismissed the appeal.

4. A counter-affidavit has been filed on behalf of the respondents wherein reliance has been placed upon the FIR lodged against the petitioner. In paragraph 4 of the counter-affidavit it has been stated that the District Magistrate has rightly cancelled the firearm licence of the petitioner after considering the report submitted by the police authorities, especially on the ground that the petitioner is having criminal record and used to breach the peace of the village.

5. Reply has been submitted to the counter-affidavit and the contents of counter-affidavit have been denied. In the rejoinder affidavit, the petitioner has brought on record the order dated 2.7.2011 passed by the Additional Sessions Judge, Court No. 2, Etawah.

6. A perusal of the order dated 2.7.2011 passed by the Additional Sessions Judge, Etawah, Court No. 2, Etawah shows that the petitioner has been acquitted in the case registered against him u/s 504 /506, IPC as the persons who lodged the criminal case against the petitioner, have failed to produce satisfactory evidences. The statement of the witnesses were disbelieved by the Court below.

7. Even otherwise, it is well settled that mere involvement in a criminal case is no ground for cancelling a licence u/s 17 of the Act.

8. The petitioner relied upon the judgment of this Court reported in 2004 (1) JIC 507 (Bhagwan Das v. Commissioner, Agra Division, Agra) wherein it has been held that once, the licensee has been acquitted, even if it is assumed to be a ground justifying cancellation the same is no more in existence.

9. The provision of sub-sections (3) & (4) of Section 17 of the Arms Act provides various conditions for variation/cancellation or suspension of the arms licence. Sub-sections (1) to (5) of Section 17 of the Act are reproduced as under:--

17. Variation, suspension and revocation of licences -- (1) The licensing authority may vary the conditions subject to which a licence has been granted except such of them as have been prescribed and may for that purpose require the licence holder by notice in writing to deliver-up the licence to it within such time as may be specified in the notice.

(2) The licensing authority may, on the application of the holder of a licence, also vary the conditions of the licence except such of them as have been prescribed.

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

(a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by 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; or

(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; or

(c) if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it; or

(d) if any of the conditions of the licence has been contravened; or

(e) if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver-up the licence.

(4) The licensing authority may also revoke a licence on the application of the holder thereof.

(5) Where the licensing authority makes an order varying a licence under sub-section (1) or an order suspending or revoking a licence under sub-section (3), it shall record in writing the reasons therefor and furnish to the holder of the licence on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

10. The question as to whether mere involvement in a criminal case or pendency of a criminal case can be a ground for revocation of licence under the Arms Act, has been dealt with by a Division Bench of this Court reported in Sheo Prasad Misra Vs. The District Magistrate and Others, . The Division Bench relied upon the earlier decision of another Division Bench of this Court in the case of Masiuddin Naimuddin Vs. Commissioner, Allahabad Division, Allahabad and Another, wherein it has been held:--

A licence may be cancelled, inter alia, on the ground that it is "necessary for the security of public peace or for public safety, to do so. The District Magistrate has not recorded a finding that it was necessary for the security of the public peace or for public safety to revoke the licence. The mere existence of enmity between a licensee and another person would not establish the "necessary" connection with security of the public peace or public safety.

In the case before us also the District Magistrate has not recorded any finding that it was necessary to cancel the licence for the security of public peace or for public safety. All that he has done is to have referred to some applications and reports lodged against the petitioner. The mere fact that some reports had been lodged against the petitioner could not form basis for cancelling the licence. The

order passed by the District Magistrate and that passed by the Commissioner cannot, therefore be upheld on the basis of anything contained in Section 17(3) (b) of the Act.

11. Similar view has been taken by this Court in various decisions relying upon the Division Bench judgment passed in Sheo Prasad Mishra (supra). There is no doubt that the District Magistrate and the Commissioner i.e. administrative authorities are bound to take appropriate action in the matter of grant of licence and also its cancellation for the purpose of maintaining peace and harmony in the society. The assessment of administrative authorities with regard to grant or cancellation of licence should not be interfered in usual course by the Court in its extraordinary jurisdiction unless there is illegality or arbitrariness.

12. However, in the present case, the fire-arm licence of the petitioner has been cancelled on the charges of mere involvement in a solitary criminal case that too a case which arose out of personal enmity between the petitioner and the complainant who are related to each other. A perusal of the order passed by the District Magistrate shows that there was no material on record to indicate that the possession of firearm by the petitioner would be detrimental for public peace and tranquility, and therefore, public safety would be affected. Finding recorded by the District Magistrate is only based upon the FIR lodged against the petitioner. The commissioner simply upheld the order of the District Magistrate.

13. In the aforesaid view of the matter, the order passed by the District Magistrate and the Commissioner cannot be justified under Clause 17(3)(b) of the Act. In the result, the writ petition is allowed. The order dated 31.12.2007 passed by the District Magistrate, Etawah and the order dated 13.7.2009 passed by the Commissioner, Kanpur Division, Kanpur are hereby quashed.

No order as to costs.