

(1960) 03 PAT CK 0003

In the Patna High Court

Case No : Misc. Judicial Case No. 756 of 1958

Nageshwar Prasad Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-03-1960

Acts Referred:

Arms Act, 1959 — Section 18

Citation : AIR 1960 Patna 359 : (1960) CriLJ 1131

Hon'ble Judges : V. Ramaswami, C.J.; R.K. Choudhary, J

Bench : Division Bench

Advocate : Gorakhnath Singh, for the Appellant; G.P. Sahi, for the Respondent

Final Decision : Allowed

Judgement

1. In this case the petitioner has obtained a rule from the High Court asking the respondents to show cause why the notification of the State Government, No. II/A5-7050/57 pp. 6593, dated 22-8-1958, cancelling a rifle licence and a revolver licence in the name of the petitioner u/s 18 of the Indian Arms Act, should not be quashed by a writ in the nature of certiorari under Article 226 of the Constitution. Cause has been shown by the Additional Government Pleader on behalf of the respondents.

2. The notification of the State Government dated 22-8-1958, is annexure A to the application and reads as follows:

Government of Bihar, Political Department, Police Branch. Notification, The 22nd August, 1958.

No. II/A5-7050/57 pp. 6593. In exercise of the powers conferred by Section 18 of the Indian Arms Act, 1878 (XI of 1878) read with Government of India, Ministry of Home Affairs, notification No. 19/1/ 58-Police (iv) dated 23rd April, 1958, the Governor of Bihar is pleased to cancel the (i) licence No. 379 of P.S. Kotwali, District Gaya, dated 7th March, 1953, for a rifle, and (ii) licence No. 103/, 19 of 1954 of P. S. Banka, District Bhagalpur, D/-"26-11-1954, for a

revolver in name of Sri Nagesh war Prasad Singh of Lakhpura. P. S. Banka, District Bhagalpur with effect from the date of publication of the notification in the Bihar Gazette.

By order of the Governor of Bihar, Sd. K. Ramanujam, Addl. Dy. Secy, to Government. Memo No. 17050. Bhagalpur, the 14th September, 1958.

Copy forwarded to Sri Nageshwar Prasad Singh of Lakhpura, P. S. Banka, District Bhagalpur, for information. He is directed to deposit the firearms covered by the licenses mentioned in the Government notification with the Officer-in-charge of Banka P. S. or with the Sub-Divisional Officer, Bankn, within seven days from the date of receipt of this order. If he fails to deposit the fire-arms within the time-limit mentioned above, he will make himself liable to prosecution under S. 19 of the Indian Arms Act, 1878.

Sd. Illegible. District Magistrate.

The argument on behalf of the petitioner that the notification is illegal and ultra vires because as a matter of construction the latter part of Section 18 of the Indian Arms Act should be interpreted as conferring a general power of cancellation on the Central Government on the ground of policy or on the ground of emergency and that the power of the Central Government cannot be used to cancel the arms licence in any individual case.

It was alternatively contended that if the latter part of Section 18 is not construed in this manner then Article 14 of the Constitution would be attracted and the latter part of the provisions of Section 18 of the Arms Act would violate the right of equal protection conferred by Article 14 of the Constitution. In our opinion the argument of learned counsel for the petitioner is well founded and must be accepted as correct. As a matter of construction we think that the power conferred upon the Central Government by the latter part of Section 18 of the Arms Act is a power of disarming all the inhabitants of a particular locality either on the ground of policy or on die ground of emergency or in a condition of insecurity arising in the State. The power of the Central Government cannot, therefore, be applied so as to cancel the licence of any individual in a particular case. The reason is that the power of cancellation of an individual licensee is granted by Section 18, Sub-sections (a) and (b) of the Indian Arms Act, which reads as follows:

"18. Any licence may be cancelled or suspended -- (a) by the officer by whom the same was granted or by any authority to which he may be subordinate, or by any Magistrate of a district, or Commissioner of Police in a Prasidency town, within the local limits of whose jurisdiction the holder of such licence may be when, for reasons to be! recorded in writing, such officer, authority, Magistrate or Commissioner deems it necessary for the security of the public peace to cancel or suspend such licence; or (b) by any Judge or Magistrate before whom the holder of such licence is convicted of an offence against this Act, or against the rules made under this Act; and the Central Government may by a notification in

the Official Gazette cancel or suspend all or any licences throughout India or any part thereof."

The power of cancellation or suspension of licence granted to the Central Government by the last part of Section 18 must, therefore as a matter of construction, exclude the case of cancellation and suspension covered by Section 18 (a) and Section 18 (b) of the Act. Any other interpretation of the section would lead to startling results, because the Central Government may without giving reasons cancel or suspend licence of any individual even if there is no threat to the security of public peace. Such an interpretation will nullify the provisions of Section 18 (a) and Section 18 (b) which provide safeguards to the licensee before his licence is cancelled or suspended. We are, therefore, of opinion "that the power of the Central Government conferred by the latter part of Section 18 is confined only to those cases which are not covered by Section 18 (a) and Section 18(b). If this conclusion is correct, it follows that the action of the State Government in this case in cancelling the licence of the petitioner by notification No. II/A5-7050/57 pp. 6593, dated the 22nd August, 1958, is ultra vires and without jurisdiction and must be quashed by a writ in the nature of certiorari.

3. We accordingly allow this application. There will be no order as to costs.

4. We were informed during the hearing of this case that the petitioner has applied for the renewal of the revolver licence and the rifle licence before the proper authorities. We desire to say that it would be open to the authorities concerned to deal with the application for renewal in accordance with law.