
(2009) 02 AHC CK 0030
In the Allahabad High Court

Raj Bahadur Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-02-2009

Acts Referred:

Arms Act, 1959 — Section 18
Constitution of India, 1950 — Article 226
Criminal Law (Amendment) Act, 1932 — Section 7
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 504

Citation : (2009) 3 AWC 2130

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ran Vijai Singh, J.—This writ petition has been filed for issuing a writ of certiorari quashing the order dated 16.8.2007 passed by Divisional Commissioner, Chitrakoot Dham, Banda the respondent No. 2 and the order dated 30.1.2006 passed by District Magistrate, Banda the respondent No. 3. Vide order dated 30.1.2006 petitioner's D.B.B.L. Gun licence was cancelled by the respondent No. 3 and by the subsequent order dated 16.8.2007 the petitioner's appeal against the cancellation has been dismissed.

2. The petitioner is retired military personnel and happens to be D.B.B.L. gun licence holder. On the basis of the police report dated 11.5.2005 the petitioner's fire arm licence was suspended by the District Magistrate, Banda and pursuant thereto a show cause notice was issued to the petitioner on 24.5.2005. The police report dated 11.5.2005 was based on an F.I.R. which was registered as Case Crime No. 85 of 2005 u/s 147/148/149/307/504/506, I.P.C. and Section 7 of Criminal Law Amendment Act.

3. The petitioner has submitted his reply to the show cause notice before the District Magistrate, Banda stating therein that he was not at all involved in the said incident and was only sitting on a tea stall shop where the police came and

snatched his D.B.B.L. gun and arrested him. The District Magistrate, Banda after considering the petitioner's reply has found that it was absolutely necessary in order to maintain the law and order to cancel the fire arm licence of petitioner and passed the impugned dated 30.1.2006.

4. Aggrieved from that order the petitioner has filed an appeal u/s 18 of the Indian Arms Act. The appeal was barred by time. The Divisional Commissioner, Banda has found that no sufficient reason has been given in the application for condonation of delay for condoning the delay but simultaneously he has also examined the order of District Magistrate cancelling the fire arm licence of the petitioner on merit and dismissed the petitioner's appeal.

5. Sri Surendra Singh learned Counsel for the petitioner submitted before the Court that the District Magistrate Banda as well as Divisional Commissioner, Banda both have not cared to consider the reply of the petitioner and examined the matter on merit and passed the order only on the basis of F.I.R. lodged against the petitioner. In his submissions mere lodging of an F.I.R. the petitioner's fire arm licence could not be cancelled unless the District Magistrate has recorded definite finding to the effect that the petitioner was involved in the said case crime on the basis of material available before him. In his submissions the petitioner is peace loving citizen and till date no F.I.R. has been lodged against him. In paragraph 13 of the writ petition it has been stated that petitioner is an Ex. Army man and served the Army with utmost sincerity and devotion. He has also invited the attention of the Court towards the decision of the Additional Sessions Judge, Fast Track Court No. 1, Fatehpur in S.T. No 192/2006, State v. Hasan Mohammad and Ors. where the petitioner has been acquitted from the charges levelled against him. In his submissions the impugned orders passed by the District Magistrate, Banda as well as Divisional Commissioner Banda deserves to be quashed.

6. Refuting the submissions of learned Counsel for the petitioner, learned standing counsel has submitted that mere acquittal is not sufficient for restoring the fire arm licence of the petitioner unless the authorities are satisfied that the petitioner deserves to hold the fire arm licence.

7. I have gone through the contents of the writ petition as well as counter affidavit filed by the State respondent and considered the submissions of learned Counsel for the parties.

8. From the narration of the facts made in the writ petition as well as contents of the police report one thing is apparent that the petitioner's fire arm licence was cancelled only on the basis of police report and the police report was based on the basis of Case Crime No. 85 of 2005 under Sections 147/148/149/307/504/506, I.P.C. and Section 7, Criminal Law Amendment Act. Now the petitioner has been acquitted by the order of Additional Sessions Judge, Fast Track Court No. 1, Fatehpur dated 30.11.2007 therefore, the cause of action to cancel the fire arm licence do not survive any more. There is nothing on the

record to indicate that there was anything more than the F.I.R.. which was made basis for cancellation of fire arm licence of the petitioner.

9. Otherwise also the petitioner's reply to the show cause notice has not been considered on merit and no finding on the strength of the petitioner's reply given in the show cause notice has been recorded by the District Magistrate, Banda while cancelling the fire arm licence, the only reason which has been assigned in the impugned order is the maintenance of law and order and the breach of public peace that too on the basis of police report which was vehemently disputed by the petitioner and finally resulted in acquittal by Court concerned.

10. It is well-settled that a decision reached without proper-self-direction or in ignorance of relevant material on record, detracts from a decision in the eye of law and is termed as perverse. Such a decision impugning upon civil rights is open to judicial review under Article 226 of the Constitution in that the error committed permeates and vitiates the decision-making-process itself.

11. Otherwise also I am of the view that the impugned orders suffer from non-consideration of the relevant materials available on the record. The Apex Court in the case of Garrison Engineer (Utility) v. Narinder Singh (2007) 11 SCC 35 has observed as under:

Para 6 : From a perusal of the orders of the Labour Court and the High Court, it is noticed that the factual position has not been analysed in detail and an abrupt conclusion has been arrived at. Additionally, the legal issue regarding maintainability of the reference was not considered. Right from the beginning of the proceedings before the labour court and in the High Court, the appellant had taken specific plea that the Act was not applicable to it and it was not an industry. Unfortunately, as noted above, neither the labour court nor the High Court dealt with this issue.

Para 7 : Above being the position, we set aside the orders of the labour court and the High Court and remit the matter to the labour court to decide the objection raised by the appellant about the maintainability of the proceedings under the Act, founded on the claim that it is not an industry. The other factual aspects shall also be considered on evidence being led by the parties.

12. In the case of Narinder Singh Vs. State of Haryana and Others, Kusheshwar Prasad Singh v. State of Bihar (2007) 11 SCC 447 and Arun Kumar Vs. The State of Bihar and Another, same view has been reiterated by the Apex Court.

13. In view of that I do not find any reason to sustain the orders passed by respondents No. 2 and 3.

14. In the result the writ petition succeeds and is allowed. The impugned orders dated 30.1.2006 passed by District Magistrate, Banda as well as the order dated 16.8.2007 passed by Divisional Commissioner, Chitrakoot Dham Mandal Banda are hereby quashed.

The matter is remitted back before the District Magistrate, Banda to pass an appropriate order for restoring the petitioner's fire arm licence in view of the observation made in this judgment.