
(2012) 04 AHC CK 0212

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3259 of 2010

Raj Kumar Verma

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 23-04-2012

Acts Referred:

Constitution of India, 1950 — Article 141, 226

Citation : (2012) 7 ADJ 230

Hon'ble Judges : Saeed-Uz-Zaman Siddiqi, J

Bench : Single Bench

Advocate : R.K. Chaudhary and Ashutosh Shukla, for the Appellant;

Final Decision : Allowed

Judgement

Hon"ble Saeed-Uz-Zaman Siddiqi, J.—By means of this writ petition under-Article 226 of the Constitution of India, the petitioner has prayed for issuing a writ in the nature of certiorari quashing the orders dated 15.11.2008 & 24.2.2010 passed by the opposite party Nos. 2 and 3 contained in Annexures 1 and 2 respectively and for issuing a writ of mandamus directing the respondents to return the Arm Licence of the writ petitioner. Heard both the parties and have gone through the records.

2. Briefly stated the relevant facts, for the purpose of deciding this writ petition are that the petition was issued an armed licence which was suspended by the District Magistrate and a show-cause notice was issued to the petitioner to which he replied. The petitioner could not satisfy to the whims of the District Magistrate and ultimately his licence was canceled vide order in question which he preferred an appeal before the Commissioner, but in vain. Hence, the petitioner has approached to this Court.

3. The ground for issue of show-cause notice, suspension and ultimately cancellation of the licence is that one and precisely one criminal case was registered against the petitioner. The District Magistrate has also held that the

petitioner has been enlarged on bail. He has gone further to observe that if the licence remained intact, the petitioner, may disturb public peace and tranquility. The same findings have been given by the Commissioner, Unmindful of the fact that this Court is repeating the law of the land, but the deaf ears of the administrative officers do not ready to succumb the law of the land. The settled law is that mere involvement in a criminal case without any finding that involvement in such criminal case shall be detrimental to public peace and tranquility shall not create the ground for the cancellation of Armed Licence. In *Ram Suchi v. Commissioner, Devipatan Division*, 2004 (22) LCD 1643, it was held that this law was relied upon in *Balram Singh v. State of U.P.*, 2006 (24) LCD 1359. Mere apprehension without substance is simply an opinion which has no legs to stand. Personal whims are not allowed to be reflected while acting as a public servant.

4. In some earlier decisions, two full benches of this Court have held in *Kailash Nath and Others Vs. State of U.P. and Another*, , a right is distinct from a mere privilege. The case of licence to possess or use fire-arm is materially different from a case of licence to deal in or sell fire-arm. Nevertheless, the act of canceling or refusing to renew a licence leads to grave consequences. It was further held, the withdrawal or refusal to renew the subsisting licence is intrinsically a quasi-judicial act and, therefore, it attracts the rules of natural justice. That is why, the statute also insists on such action being taken in a most circumspect and cautious manner. In *Chhanga Prasad Sahu Vs. State of Uttar Pradesh and Others*, , full bench of this Court relied upon various earlier authorities of this Court and the High Courts of Orissa, Kerala and Punjab, wherein it has been held that the licencing authority is, before making an order revoking/suspending of arms licence under-Section 17 (3) of the Act is bound to follow the principles of natural justice and to afford an opportunity to the licensee.

5. Any Constitutional or statutory authority acts judicially while determining the rights of citizen or imposing any penalty. They are expected to perform their judicial functioning in accordance with law of the land without causing any undue harassment. In *Punjab National Bank and others Vs. Surendra Prasad Sinha*, , it has been held, "Judicial process should not be an instrument of oppression or needless harassment".

Recently in *Gurdev Kaur and Others Vs. Kaki and Others*, , the Hon"ble Apex Court has given a note of caution to such orders which are stigmatic on the justice delivery system in the mind of the public at large and has held; "Judges must administer law according to the provisions of law. It is the bounder duty of judges to discern legislative intention in the process of adjudication. Justice administered according to individual's whim, desire, inclination and notion of justice would lead to confusion, disorder and chaos.

Recently in *East Coast Railway and Another Vs. Mahadev Appa Rao and Others*, , Hon"ble Supreme Court has held that "Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the

authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary, hence legally unsustainable."

In another case, Mohd. Yunus Khan Vs. State of U.P. and Others, , it has been held that "Arbitrariness is an anathema to the principles of reasonableness and fairness enshrined in our constitutional provisions. The rule of law prohibits the exercise of power in an arbitrary manner and/or in a manner that travels beyond the boundaries of reasonableness. Thus, a statutory authority is not permitted to act whimsically/arbitrarily. Its actions should be guided by the principles of reasonableness and fairness. The authority cannot be permitted to abuse the law or to use it unfairly.

6. A perusal of both the orders, in question, compels this Court to mention that the above-mentioned law is binding on all Courts under-Article 141 of the Constitution of India. This provision cannot be dissolved in any case by any public authority and any deviation amounts to treason. this Court wishes to emphasize upon the opposite parties that the Rule of law has to be maintained and followed by public authority in all situations which can never be overpowered by whim or administrative exigency. The apathy of the public at large is converting into disillusionment with the State.

7. With these observations, both the orders contained in Annexures 1 and 2 deserves to be quashed. In result, the writ petition deserves to be allowed.

8. The writ petition is allowed. Let a writ be issued in the nature of certiorari quashing both the orders and a writ in the nature of mandamus is issued directing both the opposite parties to pass fresh orders strictly in accordance with law within two weeks of the production of the copy of this order before District Magistrate.