

**(2019) 10 PAT CK 0046**

**In the Patna High Court**

**Case No : Civil Writ Jurisdiction Case No. 2132 Of 2017**

Raj Kumar Yadav @ Mantu Yadav

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

**Date of Decision : 17-10-2019**

**Acts Referred:**

Arms Act, 1959 — Section 3, 4, 5, 13, 13(A), 14, 17, 17(3), 17(3)(a), 17(3)(b), 17(3)(c), 17(3)(d), 17(4), 17(5), 17(7)

**Citation : (2019) 4 PLJR 977**

**Hon'ble Judges : Mohit Kumar Shah, J**

**Bench : Single Bench**

**Advocate : Mrigank Mauli, Sanjay Kumar, Sheoshankar Prasad**

**Final Decision : Allowed**

## **Judgement**

1. The present writ petition has been filed for quashing the order dated 20.10.2016 passed in Arms Appeal no. 49 of 2015 by the learned Commissioner, Magadh Division, Gaya, whereby and whereunder the learned Commissioner has been pleased to confirm the order dated 28.02.2013 passed by the Collector, Gaya who has canceled the Gun License no. 3426 of 1991 and the Rifle License no. 3389 of 1990 of the petitioner herein on the ground that 11 criminal cases are pending against the petitioner.

2. The brief facts of the case are that the petitioner was granted two arms license, after following the due process of law, one for the D.B.B.L. gun bearing Gun License no. 3426 of 1991 and another for Rifle bearing Rifle License no. 3389 of 1990. Both the licenses were renewed from time to time as per the provisions of law. The petitioner along with others was named in Rampur PS case no. 232 of 2012 pursuant to which search was conducted by the police at Petitioner's residence and D.B.B.L. gun along with some empty cartridges were recovered. Subsequently, the petitioner in the month of January, 2015 went to the office of the District Collector, Gaya to get the aforementioned arms licenses renewed, where he was informed by the office clerk of the District Magistrate's

office that his licenses have already been cancelled. On being given the information about the cancellation of the arms licenses, the petitioner applied for the copy of the cancellation order passed by the District Collector, Gaya dated 28.02.2013 vide Memo no. 65 dated 01.03.2013 and got the certified copy of the same on 08.01.2015. The arms licenses of the petitioner was cancelled with immediate effect and the petitioner was directed by the District Magistrate, Gaya to deposit the arms in the Civil Lines police station. The order was passed in light of recommendation made by the SHO, Rampur vide Letter no. 2077/12 dated 31.12.2012, where it was stated that petitioner was named in Rampur PS case no. 232 of 2012 and was person with a criminal background, having eleven criminal cases pending against him, which was further affirmed by the Superintendent of Police (City), Gaya vide letter no. 318 dated 28.01.2013. The petitioner had then deposited his arms having Rifle License no. 3389 of 1990 along with 10 rounds of ammunition in the Civil Lines PS on 10.01.2015.

It is the further case of the petitioner that being aggrieved by the ex-parte and arbitrary order dated 28.02.2013, passed by the District Magistrate, Gaya, the petitioner filed an appeal assailing the said order before the Commissioner, Magadh Division, Gaya vide Arms Appeal no. 49 of 2015 on 19.03.2015. The learned Commissioner in mechanical manner has affirmed the order of the District Magistrate, Gaya canceling the arms licenses of the petitioner on the sole ground of criminal cases being pending against him by an order dated 20.10.2016, passed in Arms Appeal no. 49 of 2015. It has been further submitted that the petitioner was not granted any opportunity to defend his case before the District Magistrate, Gaya and the order was passed behind his back in complete violation of the principles of natural justice.

The learned counsel for the petitioner has submitted that out of eleven cases mentioned by the District Magistrate, Gaya, which are the reason for cancellation of the arms licenses of the petitioner, in eight cases namely Rampur PS cas no. 95 of 2012, Kotwali PS case no. 169 of 2007, Rampur PS case no. 172 of 2003, Bodhgaya PS case no. 135 of 2000, Rampur PS case no. 2 of 2000, Rampur PS case no. 75 of 1995, Rampur PS case no. 39 of 1987 and Rampur PS case no. 26 of 1984, the petitioner has already been acquitted, hence the arms licenses of the petitioner has been cancelled arbitrarily by the respondents. As far as other cases namely Rampur PS case no. 26 of 1984, Rampur PS case no. 39 of 1987 and Rampur PS case no. 172 of 2003 are concerned, the petitioner has been acquitted by the order of this Court. With regard to remaining cases, it is stated that they are pending at different stages and the petitioner is on bail in these cases. It is further submitted that in all the cases mentioned above, none of the cases are for misuse of the arms by the petitioner and as such, same cannot be a ground to cancel the arms licenses of the petitioner. The learned counsel for the petitioner has also submitted that criminal antecedent cannot be a ground to cancel the arms license especially when the present petitioner had been acquitted in the criminal cases which had been the basis for cancellation of the arms licenses. Lastly, the learned counsel for the petitioner has relied upon a

judgment reported in 2008(3) PLJR 186, rendered by the learned Division Bench of this Court, in the case of Mahesh Sharma v. State of Bihar and Ors., wherein this Court has held that criminal case cannot be a ground to cancel the license of a person.

3. I have heard the learned counsel for the parties and perused the materials on record. First, coming to the order dated 28. 02.2013 passed by the District Magistrate, Gaya, whereby and whereunder two arms licenses of the petitioner has been cancelled, it is noticed that the reason for cancellation is pendency of 11 criminal cases against the petitioner herein. This Court has also perused the order dated 20.10.2016 passed by the learned Commissioner, Magadh Division, Gaya in Arms Appeal no. 49 of 2015, wherein the submission of the petitioner to the effect that out of the 11 pending criminal cases, he has been acquitted in 08 criminal cases and only 03 cases are pending for investigation, in which the petitioner is on bail, has been considered, however it has further been noted that out of the 11 criminal cases, the petitioner has produced acquittal orders of only 06 cases, however there is nothing on record to suggest that the petitioner has been acquitted in the rest of the criminal cases, hence five other criminal cases are pending against the petitioner herein, thus the learned Commissioner has come to a conclusion that the petitioner herein has got a criminal antecedent, hence there is no reason to interfere with the order passed by the District Magistrate, Gaya dated 28.02.2013.

4. At this juncture, it would be relevant to quote the relevant provision of law hereinbelow i.e. Section 17 of the Arms Act, 1959 :-

"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.

(6) The authority to whom the licensing authority is subordinate may by order in writing suspend or revoke a licence on any ground on which it may be suspended or revoked by the licensing authority; and the foregoing provisions of this section shall, as far as may be, apply in relation to the suspension or revocation of a licence by such authority.

(7) A court convicting the holder of a licence of any offence under this Act or the rules made thereunder may also suspend or revoke the licence: Provided that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void.

(8) An order of suspension or revocation under sub-section (7) may also be made by an appellate court or by the High Court when exercising its powers of revision.

(9) The Central Government may, by order in the Official Gazette, suspend or revoke or direct any licensing authority to suspend or revoke all or any licences granted under this Act throughout India or any part thereof.

(10) On the suspension or revocation of a licence under this section the holder thereof shall without delay surrender the licence to the authority by whom it has been suspended or revoked or to such other authority as may be specified in this behalf in the order of suspension or revocation.

5. As far as judgment relied upon by the learned counsel for the petitioner, rendered in the case of Mahesh Sharma (*supra*) is concerned, the same postulates that during the pendency of a criminal case, arms licence shall be treated to be under suspension till conclusion of the criminal case pending against the licence holder and in case, the licence holder is acquitted, then he would be entitled to seek revocation of the suspension order and in case, he is convicted then the licensing authority may pass appropriate orders in accordance with law.

However, this Court finds that the law in this regard has been settled long back by the learned Full Bench of this Court in a case reported in 1987 PLJR 385 (FB)::AIR 1987 PAT 122 (FB), rendered in the case of (Kapildeo Singh v. State of Bihar and others), paragraphs no. 5, 6, 7, 9, 10, 11, 13, 15, 17 and 18, whereof are reproduced hereinbelow :-

5. Before one proceeds to microscopically examine the provisions under Section 17 of the Arms Act, 1959 (hereinafter referred to as the 'Act') the broad approach to the issue may be first settled. In our Constitution and jurisprudence there is no fundamental right to bear arms unlike the Second Amendment to the American Constitution which at least suggests such a right in the following terms : "A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed." In construing the aforesaid provision the Supreme Court of the United States in *Presser v. Illinois*, (1884-85) 116 US 252 has observed as under:

"It is undoubtedly true that all citizens capable of bearing arms constitute the reserved military force or reserve militia of the United States as well as of the States, and, in view of this prerogative of the Federal Government, as well as of its general powers, the States cannot, even laying the constitutional provision in question out of view, prohibit the people from keeping and bearing arms, so as to deprive the United States of their rightful resource for maintaining the public security, and disable the people from performing their duty to the General Government. But..... we think it clear that the sections under consideration do not have this effect." However, it is apt to notice that in modern times even in the United States any constitutional right to possess and bear arms has now come under carping criticism in view of the raising of the ugly heads of gun-running, I gangsterism and the mafia. In sharp contrast therewith there is no such analogous provision in other jurisprudential system and indeed under the Indian law the right to carry arms is privilege conferred by the Act and other similar statutes which primarily leave the grant thereof in the discretion of the licensing authority. Reference in this connection may instructively be made to the relevant parts of Sections 3, 13 and 14 of the Act:

"3. Licence for acquisition and possession of firearms and ammunition.

(1) No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder:

13. Grant of licences. -- (1) An application for the grant of a licence under Chapter II shall be made to the licensing authority and shall be in such form contain such particulars and be accompanied by such fee, if any, as may be prescribed.

(2) On receipt of an application, the licensing authority shall call for the report of the officer-in-charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.

(2A) The licensing authority, after such inquiry, if any, as it may consider necessary, and after considering the report received under Sub-section (2), shall, subject to the other provisions of this chapter, by order in writing either grant the licence or refuse to grant the same :

14. Refusal of licences. -- (1) Notwithstanding anything in Section 13, the licensing authority shall refuse to grant--(a) a licence under Section 3, Section 4 or Section 5 where such licence is required in respect of any prohibited arms or prohibited ammunition;

(b) a licence in any other case under Chapter II,

(i) where such licence is required by a person whom the licensing authority has reason to believe--

(1) to be 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

(2) to be of unsound mind; or

(3) to be for any reason unfit for a licence under this Act; or

(ii) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

It would be manifest from the aforesaid provisions that under the Act there is first a legal bar for having in possession or carrying a firearm unless a valid licence is first secured in accordance with the provisions of the Act. Secondly, even the original grant under Section 13(2A) is vested entirely in the licensing authority and it seems that the widest discretion has been given to it. Even after conforming to the procedural requirements, the licensing authority may, as regards the general category of arms, either grant the licence or refuse to grant the same. This discretion in this context has perhaps been deliberately kept untrammelled. Further, under Section 14 the law mandates a refusal to grant licence even where the licensing authority has reason to believe that the applicant is for any reason unfit for licence under the Act. The larger tilt of the law in this context is thus somewhat too plain to call for further elaboration.

6. On the basis of the aforesaid provision, the learned Government Advocate for the respondent State has forcefully contended that if the very original grant or refusal of a licence is thus entirely rooted in the wide discretion of the licensing authority, its subsequent suspension or revocation has to be viewed in the identical light. This submission, however, tends to an unwarranted extreme. It has to be kept in mind that the requirements of the original grant or refusal and those of the subsequent suspension or revocation of a licence are not wholly identical. The conditions for suspension and revocation are spelt out under Section 17 and have, indeed to be satisfied. However, there is no gainsaying the fact that as a matter of larger approach the issue of suspension and revocation would take some hue from the provisions of the original grant or refusal of a

licence as well.

7. Inevitably one may now advert to the relevant parts of Section 17 and sub-sections (3), (4) and (7) thereof may be noticed in extenso : --

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

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(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, (7) A Court convicting the holder of a licence of any offence under this Act or the rules made thereunder may also suspend or revoke the licence :

Provided that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void."

9. Now it is true that Sub-section (3) does not in terms provide that the pendency of a criminal charge is a ground for the revocation of licence. However, it is equally true that it is not possible for the legislature to conceive every situation in the future which may render the suspension or revocation of a licence granted earlier necessary. It is, therefore, that the residuary discretion is left in the licensing authority. On this score, the language employed is again of the widest amplitude. Clause (a) warrants revocation if the licensing authority is satisfied that the holder of the licence "is for any reason unfit for the licence under the Act".

10. Now, the employment of such phraseology in the statute by the framers can leave no manner of doubt that a wide residuary discretion has been vested in the licensing ; authority to revoke provided it is satisfied that the holder is unfit for the licence under the Act. The issue, thus, is whether the pendency of a major or capital crime case may not, in the opinion of the District Magistrate, satisfy him that such a person is unfit for holding the licence further. Plainly enough such discretion given by the statute cannot be put in a strait-jacket. It cannot possibly

be said that in a particular case the implication of the holder in serious or horrendous capital crime may not furnish an adequate ground for the licensing authority for being satisfied that the former holder of the weapon is now unfit for the privilege of the licence granted under the Act. This is more so in the light of the fact that Subsection (1) requires the licensing authority to give notice in writing to deliver up the licence to it within such time as may be specified in the notice in the event of variation, suspension and the revocation of licences. That would invariably give an opportunity to the licensee, as in the present case to show some cause against such action. It is after consideration of this explanation that the licensing authority may, on the overall circumstances, be satisfied from the nature of the case that the person is now unfit for continuing as a licensee for arms. A further safeguard is provided by subsection (5) of Section 17. The licensing authority must record in writing reasons therefor and also furnish to the holder of the licence on demand a brief statement of the same unless in exceptional cases he is of the opinion that it will not be in the public interest to furnish such statement. Nevertheless the requirement of recording reasons in writing is inflexibly mandatory. Therefore, it cannot be easily said that the subjective satisfaction of the licensing authority hedged in by the statutory requirement cannot be exercised on the basis of the pendency of the serious or capital criminal charge. If such subjective satisfaction has been broadly and reasonably exercised, to my mind, it would come within the parameters of the statute under Clause (a) of Sub-section (3) of Section 17.

11. A strong note of caution, however, must be sounded in this context. It is not the pendency of any and every criminal case which would inflexibly warrant the suspension or revocation of a licence validly granted. A criminal case may range from a paltry traffic offence to the most horrendous capital crime. Whilst the pendency of the former may hardly provide an adequate basis under Section 17(3), in the case of the latter after notice and hearing of the explanation such action may well become necessary. Equally, the use or employment of the licensed weapon in the alleged crime might well be a relevant and added factor for consideration in the exercise of the discretion by the licensing authority. There is no gainsaying that licensed weapons are not to be allowed to degenerate into crime weapons. It bears repetition that Sub-section (3) puts the matter in the subjective satisfaction of the licensing authority and inevitably the issue cannot be put in the procrustean bed of a precise definition or an exhaustive enumeration of situations in which such discretion may be exercised.

13. Reference may now be instructively made to Sub-section (7) of Section 17. This empowers the Court convicting the holder of a licence of any offence under the Act, to suspend or revoke the same. However, the proviso to the sub-section equally mandates that if the conviction is set aside on appeal or otherwise, the suspension or revocation would also become void. It is manifest therefrom that the statute has vested a different power in a different authority in the event of a conviction narrowly for offences under the Act or the rules framed thereunder. This is thus a separate power in the event of an objective conviction for a



criminal offence under the Act. It is rightly rested on the substantiation of such a charge and on acquittal therefrom automatically renders the suspension or revocation void in itself. What has to be kept in mind is that the requirement or position under Sub-section (7) is distinct and different. Whilst the discretion under Sub-section (3) is based on the subjective satisfaction of the District Magistrate, the other is rested on the objective fact of a conviction under the Arms Act and the power of the criminal Court to do so. The two things are distinct and apart.

15. A closer analysis of the aforesaid submission would indicate that this strongly boomerangs upon the petitioner. It has to be kept in mind that the prescribed statutory conditions for suspension and revocation of a licence are identical. The provisions of Clauses (a), (b), (c) and (d) of Sub-section (3) are with absolute uniformity applicable to the grounds for suspension as well as for revocation of a licence. No finical distinction can thus be drawn betwixt the two. Therefore, if the pendency of a criminal case can be an adequate ground for the suspension of the licence, the same would be equally adequate for its revocation as well. No logical distinction can be drawn to hold that what is adequate for suspension would not be adequate for revocation. Herein the discretion as to which of the two would be more appropriate is vested in the licensing authority and ordinarily it would not be easy for the Court to intrude into that arena.

17. To finally conclude, the answer to the question posed at the outset is rendered in the affirmative. It is held that the registration and pendency of a criminal case for a major or capital offence may for adequate reasons justify the suspension or revocation of a licence under Clause (a) of Sub-section (3) of Section 17 of the Act.

18. Once it is held as above, it would be plain that the case of the petitioner is devoid of merit. It is well to recall that the licensing authority had in the first instance applied its mind to the facts and revoked the licence. On appeal the matter was remanded on the ground of the reasons having not been adequately stated under Sub-section (5) of Section

17. The licensing authority has thereafter considered the matter afresh and given adequate reasons including its satisfaction that the licensed weapon had apparently been carried hi the course of a criminal transaction. The appellate authority of the Commissioner has affirmed those reasons. In the writ jurisdiction I find not the least reason of interfering in the concurrent orders of the authorities below. The petition fails and is hereby dismissed without any order as to costs.

6. Having gone through the aforesaid judgment rendered by the learned Full Bench of this Court, in the case of Kapildeo Singh (*supra*) as also the one rendered by the learned Division Bench of this Court in the case of Mahesh Sharma (*supra*), this Court is of the view that the arms licence can either be suspended or revoked during the pendency of the criminal cases against the

arms licence holder, however as per Section 17 (5) of Arms Act, 1959, the licensing authority, making an order varying a licence in sub-section (1) or an order suspending or revoking a licence under Sub-section (3), has to record in writing, the reasons therefor and furnish to the holder of licence, a draft submission of the same. Now, coming back to the instant case, it is apparent that the learned District Magistrate, Gaya, by the impugned order dated 28.02.2013, has not furnished any reason whatsoever for cancelling the arms licence of the petitioner herein and infact, has merely relied upon the recommendation of the Superintendent of Police (Town), Gaya as also the report of the Officer-in-charge, Rampur PS stating that 11 criminal cases are pending against the petitioner herein, however neither any independent application of mind is reflected from the said order dated 28.02.2013, passed by the learned District Magistrate, Gaya nor the same depicts any ground/ reason for cancelling arms licence of the petitioner herein, hence the impugned order dated 28.02.2013 is quashed and the matter is remanded back to the learned District Magistrate, Gaya for passing an order afresh, in accordance with law, considering the ambit and scope of Section 17 of the Arms Act, 1959 as also the judgment rendered by the learned Full Bench of this Court in the case of Kapildeo Singh (supra). It is made clear that till the passing of the final order, afresh, by the learned District Magistrate, Gaya, as aforesaid, the suspension of the arms licence of the petitioner shall not be revoked and shall remain suspended. Consequently, as a result of quashing of the order dated 28.02.2013 passed by the District Magistrate, Gaya, the appellate order dated 20.10.2016, passed by the learned Commissioner, Magadh Division, Gaya has got no legs to stand, hence is also set aside.

7. The writ petition stands allowed on the aforesaid terms.