

(1999) 12 PAT CK 0014
In the Patna High Court
Case No : C.W.J.C. No. 5175 of 1998

Ram Badan Singh @ Ram Balak Singh	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 07-12-1999

Acts Referred:

Arms Act, 1959 — Section 27
Penal Code, 1860 (IPC) — Section 109, 120, 147, 148, 149
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(2)

Citation : (2000) 1 PLJR 818

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Rama Kant Sharma and S. Kishore, for the Appellant; A.K. Choudhary for the State, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—The petitioner seeks to challenge the orders cancelling his fire arm licence, bearing no. 25/1990, for a rifle. The petitioner received a notice from the licensing authority, the Collector, Nawadah, under his memo no. 233, dated 27.8.1996 (Annexure 3) asking to show cause why his licence be not cancelled for being accused in a criminal case being Nardiganj P.S. Case No. 56/1996, dated 20.7.1996 for alleged offences punishable under sections 147, 148, 149, 364, 302, 120 and 109 of the Penal Code and Section 27 of the Arms Act and Section 3(2) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act. It appears that the petitioner did not make any response to this notice and he was then given another notice under memo no. 311, dated 19.9.1996. In response to the notices, the petitioner filed a show cause. However, the Collector by his order dated 15.11.1996 (Annexure 2) found the show cause unsatisfactory and cancelled the petitioner's arms licence. The order passed by the Collector is quite brief and it does not state anything beyond the fact that the petitioner was an accused in the aforesaid case and the show cause

filed by him in response to the notices was wholly unsatisfactory.

2. The petitioner then filed an appeal before the Commissioner, Magadh Division, Gaya which was registered as District Nawadah Case No. 67/1996. The petitioner's appeal was dismissed by order dated 16.4.1998 passed by the Commissioner. Though the appellate order is in much greater detail, it affirmed the order of cancellation of the licence mainly on the ground that the petitioner was an accused in a criminal case arising from an occurrence in which three Harijans were murdered.

3. Aggrieved by the aforesaid two orders, the petitioner has come to this court in this writ petition.

4. Mr. Rama Kant Sharma, learned counsel appearing on behalf of the petitioner submitted that the orders of cancellation of the petitioner's fire arm licence were passed without properly considering his show cause. Learned counsel pointed out that the occurrence in question had given rise to three cases, namely, Nardiganj P.S. case Nos. 54, 55 and 56 of 1996. He further submitted that an hour before the time of occurrence given in the F.I.R. of Nardiganj P.S. Case No. 56/1996 (in which the petitioner was an accused) a wireless message was sent by the Nardiganj police station to the district head quarters informing that village Pachiya (of which the petitioner is a resident) was surrounded by several hundred extremists and the situation was explosive. Learned counsel further submitted that the F.I.Rs. of Nardiganj P.S. Case Nos. 54 and 55 of 1996, which relate to the same occurrence, present an altogether different story concerning the occurrence and from those two F.I.Rs. it is evident that the residents of Pachiya village were attacked by the extremists and whatever action they took was purely in their self defence. Mr. Sharma further submitted that if viewed from that angle, the orders of cancellation of the petitioner's fire arm licence would amount to not only punishing him unduly but also depriving him of lawful means of self defence and leaving him exposed and vulnerable to the attacks of the extremists and terrorists.

5. Leaving aside, for the moment, the merits of the different versions of the occurrence as given in the three F.I. Rs., it is undeniable that this aspect of the matter has not been taken into consideration either by the licensing authority or the appellate authority.

6. It is indeed true that the well established legal position is that being accused in a criminal case may normally be a sufficient ground for the licensing authority to hold that the concerned person was not fit to hold a fire arm licence and in cases where a fire arm licence is revoked on the ground of the licensee being accused in a criminal case, this court normally does not interfere. But this, like many other principles in law, cannot be a rigid and inflexible rule. In appropriate cases the concerned person may plead that the prosecution's allegations were prima facie false or that from the facts and circumstances of the case it was clear that he was acting within the lawful limits of self defence. In such a case the

defence taken by the proceedee is required to be at least considered by the licensing authority. In this case there are three F.I.Rs. which are said to arise from the same occurrence. The three F.I.Rs. give different version of the occurrence and in two of them the petitioner is not an accused. In my view, the licensing authority was required to examine the petitioner's show cause based on the other two F.I.Rs. and he should have taken into consideration whether or not the residents of village Pachiya were acting in self defence, as claimed by the petitioner. The failure to consider the petitioner's show cause makes the impugned orders liable to be set aside.

7. I accordingly set aside the orders passed by the Collector, Nawadah and the Commissioner, Magadh Division, Gaya as contained in Annexure 2 and 1 respectively and remit the matter to the Collector, Nawadah to re-examine the matter in the light of this order and to pass a fresh order in accordance with law. In order to facilitate an early disposal of the matter, the petitioner is directed to appear before the Collector, Nawadah within one month from today. The Collector will either hear him on that date or fix a suitable date of hearing. After hearing the petitioner on the date so fixed, he will pass appropriate orders in accordance with law. In the result, this writ petition is allowed with the aforesaid observations and directions.