

(2016) 02 AHC CK 0158

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 647 of 2016.

Satyendra Bahadur Singh @ Guddu Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Arms Act, 1959 — Section 17(3)
Constitution of India, 1950 — Article 226

Citation : (2016) 96 ACrC 790 : (2016) 94 ACrC 721 : (2016) 5 ADJ 163 :
(2016) 3 AllWC 3236 : (2016) 117 ALR 357 : (2017) 1 CriCC 79

Hon'ble Judges : Ran Vijai Singh, J.

Bench : Single Bench

Advocate : Satyendra Narayan Singh, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Ran Vijai Singh, J. - Heard Sri Satyendra Narayan Singh, learned counsel for the petitioner and learned Standing Counsel appearing for the State respondents.

2. Through this writ petition, prayer has been made to issue a writ of certiorari quashing the order dated 5.11.2014 passed by the District Magistrate, Varanasi in Case No. 35 of 2004 and order dated 28.9.2015 passed by the Divisional Commissioner Varanasi Division Varanasi in Appeal No. C 20141400001738 of 2014.

3. Vide order dated 5.11.2014, the District Magistrate has cancelled the fire arms licence of the petitioner with the liberty to the petitioner to sell the revolver within thirty days. Whereas by the subsequent order dated 28.9.2015, the Divisional Commissioner has dismissed the appeal of the petitioner filed against the order dated 5.11.2014.

4. The facts giving rise to this case are that the petitioner was having Revolver No. 5864/32-Bore on the strength of licence no. 4315. A report was submitted by the police authorities on 16.1.1998 for cancelling the fire arms licence of the

petitioner on the basis of lodging of an F.I.R being Case Crime No. 1 of 1998 under Sections 147, 148, 149, 307, 302, 506, Indian Penal Code read with 7 Criminal? Law Amendment Act. Pursuant thereto, petitioner's licence was suspended on 23.1.1998 pending inquiry and he was required to show cause as to why his licence be not cancelled.

5. After the aforesaid order, the petitioner has filed an application seeking permission to sell his fire arm. The licensing authority, after cancelling the licence of the petitioner, has granted permission to sell the fire arm. Aggrieved by the aforesaid order of cancellation, the petitioner herein has filed Appeal No. 17 of 2000 before the Divisional Commissioner, Varanasi Division Varanasi. The appeal was allowed on 10.2.2004 by setting aside the order dated 13.8.1999 and the matter was remitted before the licensing authority for reconsideration. The licensing authority thereafter, vide order dated 18.5.2004, has recalled the order of cancellation dated 13.8.1999 with the liberty to the petitioner to sell the fire arms within thirty days. While doing so, he has also observed that the suspension order be continued till the disposal of the criminal case. In due course, the criminal case was decided and it resulted in acquittal of the petitioner vide judgment and order dated 1.7.2011.

6. The Additional District and Sessions Judge, Court No. 4, Varanasi, thereafter, vide order dated 5.10.2011, had directed the authorities to release the fire arms of the petitioner.

7. The petitioner, after the order of release, has filed an application for renewal of the licence. The licensing authority instead of renewing the license has cancelled the same on the ground that in case, license is renewed and fire arms is returned back to the petitioner, it may provoke the family of the complainant. This order was passed on 5.11.2014.

8. Aggrieved by the aforesaid order, the petitioner had filed Appeal No. C 20141400001738 of 2014 under Section 18 of the Arms Act. The appeal too has been dismissed on 28.9.2015.

9. While assailing this order, learned counsel for the petitioner made following submissions :-

(i) Sub-Section 3 of Section 17 of the Act enumerates the conditions under which fire arms license can be cancelled and none of the condition exists in the petitioner's case, therefore the fire arms licence could not be cancelled.

(ii) The fire arms licence cannot be cancelled on the basis of the assumption and presumption of the licensing authority but it can only be cancelled after recording satisfaction that cancellation is necessary for securing the public peace and public safety or on the ground contained in Sub-Section (3) of Section 17 of the Act.

10. Counter affidavit has been filed by learned Standing Counsel duly sworn by one Sri Jeewan Kumar Pandey, Tehsildar Sadar District Varanasi.

11. I have gone through the entire counter affidavit and in none of the paragraph, it is stated that after giving a show cause notice to the petitioner, the petitioner's fire arms licence has been cancelled. Further in view of Sub-Section 3 (a to e) of Section 17 of the Act, the licensing authority may cancel the licence provided he is satisfied that in case license is not cancelled and fire arms licence is allowed to be in possession of licensee, it may break the public peace and safety but for recording the satisfaction regarding breach of public peace and safety, there must be concrete material to show that there is strong likelihood of breach of public peace and safety.

12. The only ground under which petitioner's fire arm licence has been cancelled is apprehension of annoyance of the family of the complainant, in whose family, murder took place and the petitioner has been acquitted in the criminal trial. After acquittal of the petitioner by no stretch of imagination it can be assumed that having license by the petitioner in any manner may lead to disturbance of public peace and public safety or put the members of the complainant family in danger, likelihood of anger and anguish of a third person cannot be ground on which fire arm licence can be cancelled by the licensing authority.

13. Otherwise also, the petitioner's application before the licensing authority was for renewal of the licence. The licensing authority utmost could refuse the renewal of fire arm license provided there was material to do so but under no circumstance it could cancel the same in contravention of Sub-Section 3 of Section 17 of the Act. The appellate authority too has ignored this aspect of the matter. In my opinion, both the orders i.e. the order dated 5.11.2014 passed by the licensing authority as well as order dated 28.9.2015 passed by the appellate authority cannot be sustained in the eye of law.

14. In the result, the writ petition succeeds and is allowed. The impugned orders dated 5.11.2014 passed by the District Magistrate, Varanasi in Case No. 35 of 2004 and order dated 28.9.2015 passed by the Divisional Commissioner Varanasi Division Varanasi in Appeal No. C 20141400001738 of 2014 are hereby quashed. The consequential follow up action shall be taken by the licensing authority expeditiously but not later than six weeks from the date of receipt of certified copy of the order of this Court.