
(2015) 07 AHC CK 0022
In the Allahabad High Court
Case No : Writ Petition No. 5425 of 2006

Surya Narain Mishra

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 21-07-2015

Acts Referred:

Arms Act, 1959 — Section 17, 17(3), 17(3)(b)
Penal Code, 1860 (IPC) — Section 147, 148, 307, 504, 506

Citation : (2015) 7 ADJ 510 : (2015) 91 ALLCC 186 : (2015) 6 AWC 5944

Hon'ble Judges : Devendra Kumar Arora, J

Bench : Single Bench

Advocate : Amit Chandra, for the Appellant

Final Decision : Allowed

Judgement

Dr. Devendra Kumar Arora, J—By means of present writ petition, the petitioner is seeking a writ in the nature of certiorari for quashing the impugned order dated 20.12.2002, whereby the petitioner's Arms License was cancelled by the District Magistrate, Gonda. Petitioner also prays for quashing of order dated 4.3.2006, by which the Commissioner, Devi Patan Mandal, Gonda had rejected the appeal of the petitioner against the order dated 20.12.2002. Petitioner further seeks direction against opposite parties to restore Arm License No. 2164 in his favour. Submission of learned counsel for the petitioner is that petitioner was holder of Gun License No. 50182 (Arm License No. 2164) since 1974 and he never misused or violated the terms and conditions of the licence. On 4.9.2002, a false F.I.R. was lodged against the petitioner with the allegation that he fired a shot at Manoj Kumar Dwevidi, causing deadly injuries for which a Case Crime No. 224 of 2002 under Section 147, 148, 307, 504 and 506 I.P.C. was registered at P.S. Kotwali Dehat. As a matter of fact, the petitioner was not at all involved in the above mentioned case as at that time he was deputed on Government Duty in Wazirganj, Gonda for spraying pesticides to eradicate Malaria, which was organized by the Village. In this regard a certificate was also issued by Shri R.V.

Singh, Pradhan, Block Wazirganj, Gonda to the petitioner.

2. Learned counsel for the petitioner further submitted that a report to cancel the license was forwarded by the Superintendent of Police., Gonda to the District Magistrate, Gonda under Section 17(3) of Arms Act. In the Police report, petitioner was blamed for misusing his fire arm. Consequently, a show-cause notice was issued to the petitioner on 20.9.2002. Petitioner immediately submitted his reply to the show-cause notice on 16.10.2002 and stated that his rifle was not used in the incident and no one has suffered any injury. It has been pointed out that complainant and witnesses have also filed an affidavit in support of petitioner that no other persons were involved in the above noted Case Crime No. 224/2002 except Arvind Kumar Mishra. It is further submitted that Manoj Kumar Dubey (mentioned as Manoj Kumar Dwevidi in the affidavit) had given an affidavit, indicating therein that he and Arvind Kumar Mishra have entered into a compromise and there is no dispute between them.

3. From the perusal of record it reveals that the District Magistrate on the basis of report dated 17.9.2002 submitted by the Superintendent of Police, Gonda regarding misuse of firearm by the petitioner issued a show-cause notice on 20.9.2002 and after submission of reply by the petitioner to the show-cause notice, the District Magistrate, by the impugned order dated 20.12.2002 cancelled the arm license of the petitioner on the ground that an F.I.R. was lodged against the petitioner bearing case crime No. 224/2002 under Section 147, 148, 307, 504 and 506 I.P.C.

4. Sri Badrul Hasan, learned Additional Chief Standing counsel, while opposing the writ petition, submitted that the impugned orders dated 20.12.2002 and 4.3.2006 have been passed in consonance with provisions of the Act as the licensing authority after considering the material facts on record has given a categorical finding of fact that the petitioner has violated the terms and conditions of arms license. It is submitted that the impugned orders are absolutely valid and the same are legal, valid and justified as the same have been passed after affording due opportunity to the petitioner. Therefore, the writ petition is liable to be dismissed.

5. Thus, the trivial question involved in this writ petition is as to whether licensing authority is vested with the power under the Arms Act to revoke/cancel the license of a public person mere on involvement in a criminal case or pendency of a criminal case.

6. To answer the aforesaid question, it would be apt to refer relevant paragraphs of Rakesh Kumar Vs. District Magistrate and Others, (2014) 2 ALJ 102 : (2013) 83 ALLCC 225 : (2013) 101 ALR 181 , wherein it has been held that merely because of pendency of a criminal case, the arms- licenses of the petitioner cannot be cancelled. Relevant paras 12, 13, 14 and 15 read as under:

"12. Further, this Court in the case of Sahab Singh Vs. Commissioner Agra Region, District Magistrate, Station House Officer and Shyam Babu held as under:

The submission of the petitioner is That merely because of pendency of a criminal case, the arms licence of the petitioner cannot be cancelled in support of the said submission, learned counsel for the petitioner has placed reliance on two decisions of this Court in the case of Hausla Prasad Tiwari v. State of U.P. and Ishwar @ Bhuri v. State of U.P. It has further been submitted that in view of the Full Bench decision of this Court in the cases of Kailash Nath and Others Vs. State of U.P. and Another, AIR 1985 All 291 : (1985) AWC 493 as well as the Division Bench decision of this Court in the case of Sadri Ram v. District Magistrate, Azamgarh and others, the arms licence of the petitioner cannot be placed under suspension pending enquiry."

13. In the case of Mulayam Singh and Others Vs. State Of U.P. and Another and 12 held as under:

"Para No. 11 - The question as to whether mere involvement in a criminal case or pendency of a criminal case can be a ground for revocation of licence under the Arms Act, has been dealt with by a Division Bench of this Court in Sheo Prasad Misra Vs. The District Magistrate and Others, (1978) AWC 122 . The division Bench relied upon the earlier decision of another Division Bench of this Court in the case of Masi Uddin v. Commissioner, Allahabad, 1972 ALJ 573 wherein it has been held:

"A licence may be cancelled, inter alia, on the ground that it is "necessary for the security of public peace or for public safety, to do so. The District Magistrate has not recorded a finding that it was necessary for the security of the public peace or for public safety to revoke the licence. The mere existence of enmity between a licensee and another person would not establish the "necessary" connection with security of the public peace or public safety.

In the case before us also the District Magistrate has not recorded any finding that it was necessary to cancel the licence for the security of public peace or for public safety. All that he has done is to have referred to some applications and reports lodged against the petitioner. The mere fact that some reports had been lodged against the petitioner could not form basis for cancelling the licence. The order passed by the District Magistrate and that passed by the Commissioner cannot, therefore, be upheld on the basis of anything contained in Section 17(3) (b) of the Act."

Para No. 12- Similar view has been taken by this Court in various decisions relying upon the Division Bench judgment passed in Sheo Prasad Mishra (supra). There is no doubt that the District Magistrate and the Commissioner i.e. administrative authorities are bound to take appropriate action in the matter of grant of licence and also its cancellation for the purpose of maintaining peace and harmony in the society. The assessment of administrative authorities with regard to grant or cancellation of licence should not be interfered in usual course by the Court in its extraordinary jurisdiction unless there is illegality or arbitrariness."

14. In the case of Raj Kumar Verma Vs. State of U.P., (2012) 7 ADJ 230 , this Court in paragraph No. 3 held as under:

"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."

15. Further, in the case of C.P. Sahu v. State, 1984 AWC 145, this Court while interpreting the provisions of Section 17(3) of the Act held as under:

"The object of the enquiry that a licensing authority may, while proceeding to consider the question as to whether or not an arms licence should be revoked or suspended, like to make, clearly is to enable the licensing authority to come to a conclusion as to whether or not the facts stated in clauses (a) to (e) of Section 17(3) exist and as already explained, it is not obliged to before considering that a case for revocation/suspension of license has been made out, associate the licensee in such enquiry, in this view of the matter it can safely be taken that where a licensing authority embarks upon such an enquiry it is, till then not convinced about existence of the conditions mentioned in clauses (a) to (e) of Section 17(3), of the Act. So long as it is not so convinced no case to make an order either revoking or suspending an arms licence as contemplated by the Section will be made out."

7. The aforesaid view has been reiterated in Hridaya Narain Tiwari Vs. State of U.P., (2014) 4 ADJ 744 : (2014) 5 ALJ 414 : (2014) 86 ALLCC 757 ; Rama Kushwaha vs. State of U.P. and Others 2011 (89) ALR 333 ; Hiramani Singh v. State of U.P. and others, in 2011(29) LCD 829 and Rajendra Singh v. Commissioner, Lucknow Division, Lucknow and others, 2011 (29) LCD 1041, wherein it has been propounded that involvement in criminal case or pendency of criminal case cannot be a ground for cancellation/revocation of firearm license.

8. In the case of Jageshwar Vs. State of U.P. and Others, (2009) 3 ACR 3051 , it has been held that mere involvement in criminal case cannot in any way affect the public Security or public interest.

9. In *Thakur Prasad v. State of U.P. and others*, 2013 (31) LCD 1460, this Court propounded that "Public Peace" or "Public Safety" do not mean ordinary disturbance of law and order, but the public safety means safety of the public at large and not safety of few persons only. Relevant paras 9, 10 and 11 of the said case read as under:

"9. Further, while passing the impugned order also the licensing authority has not given any adequate finding that if petitioner holds the arms license then the same shall be against the public peace or public safety.

"10. Public peace" or "public safety" do not mean ordinary disturbance of law and order public safety means safety of the public at large and not safety of few persons only and before passing of the order of cancellation of arm license as per Section 17(3) of the Act the Licensing Authority is under an obligation to apply his mind to the question as to whether there was eminent danger to public peace and safety involved in the case in view of the judgment given by this Court in the case of *Ram Murli Madhukar v. District Magistrate, Sitapur*, 1998(16) LCD 905, wherein it has been held that license can not be suspended or revoked on the ground of public interest (Jan-hit) merely on the registration of an F.I.R. and pending of a criminal case.

11. Further, this Court in the case of *Habib v. State of U.P.*, 2002 ACC 783, held as under:

"The question as to whether mere Involvement in a criminal case or pendency of a criminal case can be a ground for revocation of the licence under Arms Act, has been dealt with by a Division Bench of this Court in *Sheo Prasad Misra Vs. The District Magistrate and Others*, (1978) AWC 122 , wherein the Division Bench relying upon the earlier decision in *Masi Uddin v. Commissioner, Allahabad*, 1972 ALJ 573, found that mere involvement in criminal case cannot, in any way, affect the public security or public interest and the order cancelling or revoking the licence of fire arm has been set aside. The present impugned orders also suffer from the same infirmity as was pointed out by the Division Bench in the above-mentioned cases. I am in full agreement with the view taken by the Division Bench that these orders cannot be sustained and deserve to be quashed and are hereby quashed.

There is yet another reason that during the pendency of the present writ petition, the petitioner has been acquitted from the aforesaid criminal case and at present there is neither any case pending, nor any conviction has been attributed to the petitioner, as is evident from Annexure SA-I and II to the supplementary-affidavit filed by the petitioner. In this view of the matter, the petitioner is entitled to have the fire-arm licence. It is submitted by petitioner's counsel that the petitioner has been acquitted of the charges."

10. At this juncture, it would be relevant to add that *Ram Karpal Singh v. Commissioner, Devi Patan Mandal, Gonda and others*, 2006 (24) LCD 114, is quite applicable in the present case as in the present case, the District Magistrate

while cancelling the license has not recorded any finding based on cogent material relating to breach of public peace or tranquility on account of continuance of Arms license in petitioner's possession. The mere existence of enmity between a licensee and another person would not establish "necessary" connection with security of public peace or public safety.

11. As averred above, in the case at hand, the District Magistrate, has not recorded any finding that it was necessary to cancel the licence for the security of public peace or for public safety. All that he has done is, have referred to some applications and reports lodged against the petitioner. The mere fact that some reports had been lodged against the petitioner could not form basis of cancelling the licence. The order passed by the District Magistrate and that passed by the Commissioner cannot, therefore, be upheld on the basis of anything contained in Section 17(3) of the Act.

12. Having considered the submissions made by the learned counsel for the parties and the case laws, referred to above, I am of the view that the Appellate Court has committed an error in not considering the facts in its correct prospective and has also failed to appreciate the grounds mentioned in Section 17(3) of the Arms Act regarding revocation or for suspending a licence. In the backdrop of the aforesaid facts, the order passed by the Appellate Authority cannot be legally sustained. For the reasons stated hereinabove, the writ petition is allowed and the order dated 20.12.2002 passed by the District Magistrate, Gonda as also the order dated 4.3.2006 passed by the Commissioner, Devipatan Mandal, Gonda are hereby set aside. The District Magistrate shall pass a fresh order after taking into account all relevant aspects and the prescription provided under Section 17 of the Arms Act.