

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9891 of 2007

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UPENDRA KUMAR SINGH, Son of Tribhuwan Narayan Singh, Resident of
Village Masrak, Police Station – Masrak, District Saran

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. The Commissioner, Saran Division, Chapra
3. The District Magistrate, Saran, Chapra

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vindhya Keshari Kumar, Sr. Advocate
For the Respondent/s : Mr. Harish Kumar, Govt. Pleader No. 8

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
C.A.V. JUDGMENT

Date :21-12-2021

In this application, under Article 226 of the Constitution of India, the petitioner has sought for quashment of the order dated 22.06.1995/01.07.1995 passed in Arms Case No. 02 of 1995 whereby respondent no.3-the District Magistrate, Saran at Chapra-cum-Licensing Authority has cancelled the Arms Licence No. 113 of 1989 relating to D.B.B.L. Gun No. 15302 of the petitioner. The petitioner has further sought for quashment of the ex parte order of the Appellate Authority (respondent no. 2) dated 08.04.2006 passed in Arms Appeal No. 33 of 1995-96 (Upendra Kumar Singh Versus the State of Bihar) whereby the Commissioner affirmed the order of the District Magistrate-cum-Licensing Authority. The petitioner prays for issuance of mandamus to the respondent-authorities to restore the Arms Licence No. 113 of 1989.



2. The case and claim of the petitioner is that to protect his life and property from invaders, the petitioner applied for Arms Licence of a D.B.B.L. Gun and, after proper police verification, Arms Licence No. 113 of 1989 was issued in favour of the petitioner. Petitioner has stated on oath that the said Arms was never misused and the same was kept by the petitioner only for the self defence of his person and property. No criminal prosecution was ever instituted against the petitioner prior to a case of property dispute. The petitioner and his family members were monitoring the ongoing construction on Plot No. 113 under Khata No. 227. At the same time, Tara Singh and others came heavily armed and forcefully stopped the construction. On protest, Tara Singh and others made indiscriminate firing and caused injury to several persons. The petitioner escaped and went to the police station and lodged Ishuapur P.S. Case No. 109 of 1993 under Section 307 of the Indian Penal Code and Section 27 of the Arms Act besides other ancillary sections of the Indian Penal Code.

In retaliation, one Ram Ayodhya Singh lodged Ishuapur P.S. Case No. 110 of 1993 against the petitioner and others alleging therein that his nephew Tara Singh had purchased the above referred Plot No. 113, under Khata No. 233, area 2



Katha 10 Dhur. The petitioner and others were forcefully making construction on that and when Ram Ayodhya Singh and others stopped, the petitioner and others made indiscriminate firing. However, Ayodhya Singh escaped and lodged FIR.

This Ishuapur P.S. Case No. 110 of 1993 was main consideration by respondent no. 3 to cancel the licence of the petitioner besides report of the Superintendent of Police, Saran at Chapra submitted therewith.

It would be worth to notice that Ram Ayodhya Singh, the informant of Ishuapur P.S. Case No. 110 of 1993, was examined during trial (in Sessions Trial No. 179 of 1995, a copy of the judgment at Annexure-1) and stated that, in fact, he had not lodged any FIR. His signature was obtained on blank papers. The trial resulted in acquittal.

3. The report of the Superintendent of Police, Saran, dated 31.12.1994, at Annexure-B, would reveal that he had simply forwarded the report of the Officer-in-Charge, Ishuapur (Annexure-B). The Superintendent of Police, Saran reported as follows:-

“In the matter of cancellation of licence of accused Upendra Singh (the petitioner) of his double barrel gun, the Investigating Officer



has submitted a proposal which is enclosed in original. The accused has wrongfully used his gun and caused injury. The accused is hot headed man and off and on takes out his gun.”

4. The Investigating Officer reported that the petitioner wants to use his gun on simple quarrel but he could not cite any instance wherein the petitioner was found using his gun nor any witness came forward to substantiate the aforesaid statement.

5. It is worth to note that there is no allegation in the FIR of Ishuapur P.S. Case No. 110 of 1993 that the petitioner had used his licensee gun or had caused injury to anyone. Thus, the report of the authority on which the Licensing Authority relied was based on conjectures and surmises.

6. The Licensing Authority rejected the show cause of the petitioner for the reason that the petitioner did not produce any evidence that he had not used his gun in the occurrence for which Ishuapur P.S. Case No. 110 of 1993 was registered. The Licensing Authority did not properly consider that from the statement made in the case and counter case, it was evident that land dispute was there between the parties and even if it is assumed that the



petitioner used the gun, the act of the petitioner cannot be treated as an act beyond the area of protection of his right to property.

7. Mr. Vindhya Keshri Singh, learned Senior Counsel for the petitioner contends that the order of the Licensing Authority is based on surmises and conjectures and suffers from non-application of mind. Moreover, the order has been passed in mechanical manner, arbitrarily without giving opportunity of hearing to the petitioner. The petitioner was not supplied with the copy of the FIR or the report of the Superintendent of Police, Saran. Hence, proper opportunity to defend was not given to the petitioner.

8. The respondents have filed counter affidavit and, Mr. Harish Kumar, learned G.P.-VIII appearing for the respondents contends that mere institution of a criminal case against the holder of licence is a good ground for cancellation of the Arms Licence. This has been settled by a Full Bench of this Court in **Kapildeo Singh v. State of Bihar & Ors. reported in AIR 1987 Patna 122**. However, learned counsel does not controvert the statement on oath of the petitioner that report of the Superintendent of Police etc. was never supplied to the petitioner while asking for cause to be shown.



9. Section 17(1) of the Arms Act, 1959 empowers the licensing authority to vary the conditions of licence. Such variation is possible on application of the holder of a licence also under sub-section (2) of Section 17 of the Arms Act. Section 17(3) of the Arms Act empowers the licensing authority to suspend or revoke a licence on the ground mentioned in Clause (a) to (e) of sub-section (3). Sub-section (5) of Section 17 of the Arms Act provides that where the licensing authority makes any 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.

10. It is not the fundamental right of a citizen to acquire, carry or possess the firearm. The licence for the aforesaid purpose is granted under the provisions of the Arms Act and Rules made thereunder on fulfillment of the conditions for the grant of licence.

11. On a bare perusal of Section 17 of the Arms Act, it is clear that a wide discretion has been conferred on the Licensing Authority to grant or not to grant licence under the Arms Act. This does not mean that the Licensing Authority has to exercise power



whimsically or arbitrarily but this shows that the power is to be exercised by the authority on fulfillment of the certain conditions for grant of licence. In fact, it is a statutory privilege given to the citizens to hold or carry a licence in accordance with the provisions of the Arms Act and Rules. “While revoking the licence, the only requirement from the Licensing Authority is recording of reason in writing”. Thus, by necessary implication, the reason must be supported by cogent and trustworthy material on the record. Moreover, opportunity of hearing to the affected party must be given before resorting to the exercise of power of revocation of the licence. An identical issue was there before a Division Bench of this Court in **Jagdamwa Singh @ Markandya Singh Vs. The State of Bihar & anr.** reported in **1993(2) PLJR 107.**

12. The question before the Division Bench was whether the Licensing Authority can suspend the licence and ask the licensee to deposit the firearm without affording opportunity of hearing during the pendency of the cancellation/revocation proceeding. Paragraph 9 of the judgment is being reproduced below:-

“9. It is well settled that if a statutory authority has power to do any Act which adversely affect the citizen, then, although there are no two parties apart from the



authority and the contest is between the authority deciding the matter and the person opposing it the final determination by the authority will be a quasi judicial act provided the authority is required by the statute to act judicially (See AIR 1950 SC 222- Province of Bombay v. Khushaldas S. Advani). In other words an administrative proceeding will assume the nature of quasi judicial proceeding if the authority is required to adopt a judicial approach. However, it is not necessary to deal this issue in detail for the reason that the distinction between the quasi judicial proceeding and the administrative proceeding has practically obliterated. In this connection reference may be made to the case of A.K. Kraipak v. Union of India (AIR 1970 SC 150). In that case the Supreme Court observed as follows:-

“The aim of the rules of natural justice is to secure justice or to put negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely, (1) no one shall be



judge in his own cause (Nemo debet case judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the Courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made applicable to administrative enquiries.

Often times it is not easy to draw the line that demarcates administrative enquiries from quasi judicial enquiries. Enquiries which were considered administrative at one time are now being considered quasi judicial in character.



Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry."

Recently in the case of Km. Neelima Misra v. Dr. Harinder Kaur Paintal and Ors. (AIR 1990 SC 1402) it has been held that :-

"The shift now is to a broader notion of "fairness" or "fair procedure" in the administrative action. The administrative officers are concerned, the duty is not so much to act judicially as to act fairly. For this concept of fairness, adjudicative setting are not necessary, nor it is necessary to have lites inter parties. There need not be any struggle between two opposing parties giving rise to a 'lis'. There need not be resolution of lis inter parties. The duty to act judicially or to act fairly may arise in widely different circumstances. It may arise expressly or impliedly depending upon the context and considerations. All these types of non-adjudicative administrative decision making are now covered under the general rubric of fairness in the administration. But when even such



an administrative decision unless it affects one's personal rights or one's property rights, or the loss of or prejudicially affects something which would judicially be called at least a privilege does not involve the duty to act fairly consistent with the rules of natural justice. We cannot discover any principle contrary to this concept.”

Thus, from the aforesaid decisions it is clear that the shift in the present days is to adopt the notion of fair procedure in the administrative action and if an order, whether it is called quasi-judicial or an administrative one affects the right of the parties or visits with civil consequences or affects even the privileges then a duty is cast on the authority to act fairly consistent with the rules of natural justice. No doubt, the rules of natural justice are not embodied rules. Application of these rules depends upon the statutory frame-work under which a jurisdiction has been conferred upon the authority. It can operate in an area not covered by any law validly made. Its application can be excluded either expressly or by implication in the public interest or in an emergent and urgent situation. As noticed above, Section 17 of the Arms Act itself does not provide for giving an opportunity of hearing before suspension or revocation of licence,



but, from perusal of Sub-section (5) of Section 17 it is clear that recording of reasons is a must. The requirement of giving reason, in my opinion, requires the authority to act judicially or fairly in the matter and this requirement cannot be complied with unless the affected person is given an opportunity of hearing before passing the order of suspension/revocation. Nobody can dispute the fact that the cancellation or suspension of licence leads to a grave consequence. The licence of arms is granted to the person for the protection of his life and property and withdrawal of the said privilege without observing the principles of natural justice will deprive the holder of the licence to carry arms for protection and safety of his life and property as well as the life and properties of others, as permissible in law.”

13. Thus, it is well settled that before revoking the licence, the holder of the licence must have fair opportunity of hearing and that includes supply of all the materials which was to be relied upon by the Licensing Authority for revocation of the licence. The petitioner categorically asserted that the police report nor a copy of the FIR, which were basis for revocation of the licence, were never supplied to the petitioner.

14. Moreover, as referred above, the police report does not reveal that the same was based on any substantive and tangible



material, rather the same was based on conjectures and surmises. The FIR of Ishuapur P.S. Case No. 110 of 1993 or its counter case clearly depicts that whatever was alleged in the FIR was due to claim and counter claim on the same property and there was no allegation to make a case of misuse of the licence. Even the informant disowned the FIR as noticed above and the FIR does not show that the petitioner was using his licensee gun.

15. Therefore, in my view, there was no tangible material before the Licensing Authority to make out a case that discretion was exercised judicially. There is no denial that proper opportunity to defend was not given to the petitioner by supply of entire materials which were relied by the Licensing Authority for revocation of the licence, hence, authority did not act fairly. Therefore, the impugned orders suffers from arbitrariness which cannot be allowed to be sustained. Consequently, the orders, under challenge, are hereby quashed.

16. The respondent-authorities are directed to restore the licence and gun in favour of the petitioner at once. The petitioner would be liable to pay the licence fee from the date of restoration of the licence only and not for the period in between the date of revocation of licence and restoration of licence.



17. With the aforesaid observation, this application stands allowed.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	A.F.R.
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