

MANU/BH/0012/1987

Equivalent Citation: AIR1987Pat122, 1987(35)BLJR443, 1987PLJR385

**IN THE HIGH COURT OF PATNA
FULL BENCH**

Civil Writ Jurn. Case No. 6294 of 1985

Decided On: 16.01.1987

Appellants:**Kapildeo Singh
Vs.**

Respondent:**State of Bihar and Ors.**

Hon'ble Judges/Coram:

S.S. Sandhawalia , C.J., S.S. Hasan and R.C.P. Sinha , JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Yogendra Mishra, Mithilesh Kumar Khare and P.K. Thakur, Adv.

For Respondents/Defendant: J.N.P. Sinha, Govt. Adv., Indu Prabha Singh, Govt. Pleader No. 6 and Subodh Prasad, Jr. Counsel to Govt. Adv.

JUDGMENT

S.S. Sandhawalia, C.J.

1. Would the registration and pendency of a criminal case for a major or capital offence justify the suspension or revocation of a licence under Clause (a) of Sub-section (3) of Section 17 of the Arms Act -- is the significant question necessitating this reference to the Full Bench.

2. The facts lie in a narrow compass. Kapildeo Singh petitioner was the holder of a licence for D. B. B. L. gun granted by District Magistrate of Sitamarhi. On the 14th of November, 1978 a case under Sections 302, 307, 147, 148, 149 and 436 of the Indian Penal Code, Section 27 of the Arms Act and Section 3 of the Explosive Substances Act was registered at Police Station Dumra against the petitioner and others. Therein inter alia, allegation had been made that the petitioner Kapildeo Singh armed with his gun was a member of the unlawful assembly and in the transaction gunshots were fired at Tribeni Baitha, though the actual fatal injuries were attributed to the gun of Mangru Singh, co-accused. Later the police after investigation submitted charge-sheet and the Chief Judicial Magistrate, Sitamarhi, took cognizance and committed the petitioner and his co-accused to the Court of Session where the trial is still pending.

3. During the pendency of the aforesaid case respondent No. 3, District Magistrate, Sitamarhi, issued show cause notice to the petitioner as to why the gun licence in his favour be not cancelled. In response thereto the petitioner showed cause which did not find favour with the District Magistrate who cancelled the petitioners' licence by order dated the 15th of September, 1981. On appeal the learned Commissioner set aside that order and remanded the same primarily on the ground that the District Magistrate had not complied with Sub-section (5) of Section 17 by recording the reasons in writing for the cancellation. On remand respondent No. 3 reconsidered the

matter and after recording reasons again revoked the petitioners' licence vide Annexure 3 to the writ petition, dated the 22nd April 1985. On appeal, respondent No. 2, the Commissioner, upheld the order of the District Magistrate on the ground that the order was now well reasoned and there was more than enough cause to cancel the licence of the petitioner (vide Annexure 4, dated 23rd July, 1985).

4. Aggrieved by the orders aforesaid the present writ petition has been preferred. At the threshold stage of admission it was noticed that the question whether the pendency of a criminal case would justify cancellation or suspension of the licence under Section 17 of the Arms Act had been a matter of some controversy which should be authoritatively resolved by a Full Bench and the case was accordingly referred to the Full Bench.

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:

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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 :

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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.

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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, --

(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."

8. In the light of the aforesaid provisions the primal contention of Mr. Mishra for the petitioner was that in the aforequoted Section 17 there is no provision or mandate that the pendency of a serious criminal case would warrant the revocation of a licence. Counsel, therefore, submitted that the mere registration of a criminal case or its continued pendency was no ground for the extreme step of revoking the licence.

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 therefore 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.

12. Mr. Mishra had then sought to contend that the actual use or misuse of the licensed weapon in the alleged murder and even the petitioner's participation therein is as yet sub judice before the Court of Session. Therefore, the licensing authority could draw no sustenance from what as yet are only allegations in a pending case, for revoking the licence. This argument loses sight of the fact that under Sub-section

(3)(a) it is the subjective satisfaction of the District Magistrate that for some reason the holder has become unfit for the licence. It is not the requirement of Clause (a) aforesaid that there must be a formal conviction on a criminal charge only for holding a person as unfit. There is a wide gap betwixt the two, namely, a reasonable subjective satisfaction and an objective conviction on a criminal charge resting on the basis of acceptable evidence. One cannot go to the length of holding that because the matter is as yet pending trial the licensing authority could not be subjectively satisfied about the unfitness of the holder. If the argument of Mr. Mishra were to be accepted then in the context of even a most horrendous crime committed with licensed weapons, the licensing authority would be denuded of all powers of suspending or revoking the licence till the completion of the trial and a conviction therein. Perhaps, the matter can even be elongated so long as an appeal against such conviction may be pending. Indeed, it appears to me that under, Sub-section (3) the actual conviction or acquittal on the criminal charge does not have an inflexible or conclusive impact on the exercise of the discretion by the licensing authority thereunder. Even if the holder of this licence may be acquitted by narrowly giving the benefit of doubt, the licensing authority could, perhaps, still take the view that along with other factors such a person may not be fit for holding an arms licence. Equally, conviction on any and every criminal charge would not provide an inflexible rule that the licensing authority must revoke the same and it may well be justified in allowing the continuance of the said licence. As is noticed hereafter, conviction and acquittal are issues of relevance under Sub-section (7) for the criminal Court and not conclusive for the licensing authority who is governed by the provisions of Sub-section (3).

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.

14. Lastly Mr. Mishra with some ingenuity had attempted to seek the aid of Sub-section (7) for an ancillary argument. It was contended that during the pendency of the criminal trial the licensing authority could at best suspend the arms licence and then in the event of the petitioner's acquittal such suspension should be automatically withdrawn. It was sought to be submitted that the revocation of the licence tends to pre-judge the issue and the result of the pending trial.

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.

16. In fairness to the learned counsel for the petitioner, it must be noticed that his reliance on M/s. Govind Saran & Sons v. State of Bihar, MANU/BH/0028/1983 : AIR 1983 Pat 96 seems to be wholly ill-placed. Therein the Division Bench was considering the suspension of the registration certificates granted under the Fertilizer Control Order, 1957. A perusal of the judgment would indicate that Clauses 6 and 17 of the Order aforesaid pertaining to the grant and refusal of registration and the power to cancel the registration are wholly and entirely different from the corresponding provisions of the Arms Act. There is nothing even remotely equivalent therein to the wide ranging discretion given to the licensing authority to revoke the licence if he is satisfied that for any reason the holder is unfit therefor. Even otherwise it is somewhat manifest that the considerations under the Fertilizer Control Order would be wholly alien to what one has to consider under the provisions of the Act. The judgment, apart from being distinguishable, indeed appears to be of little or no relevance.

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.

S.S. Hasan, J.

19. I agree.

R.C.P. Sinha, J.

20. I agree.

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