

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3709 of 2020

Rajnish Singh

... .. Petitioner/s

Versus

1. The State of Bihar through Home Secretary, Govt. of Bihar.
2. Divisional Commissioner, Patna Division, Patna.
3. District Magistrate, Patna.
4. Senior Superintendent of Police, Patna.
5. Additional District Magistrate (Arms), Patna.
6. District Arms Magistrate, Patna.
7. Sub- Divisional Magistrate, Barh, Patna
8. Addl. S.P. Barh, Patna.
9. S.H.O. Barh Police Station, Barh, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. P. N. Shahi, Sr. Advocate with
Ms. Shweta Pandey, Advocate

For the State : Mr. Suman Kumar Jha, AC to AAG 3

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 19-05-2023

Heard Mr. P. N. Shahi, learned senior counsel duly assisted by Ms. Shweta Pandey, learned counsel appearing on behalf of the petitioner. The State is represented by Mr. Suman Kumar Jha, learned Assistant Counsel to Additional Advocate General-3.

2. The petitioner, by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, sought a direction to implement the order dated



30.07.2019 passed in Arms Appeal No. 70 of 2019 by the Divisional Commissioner, Patna Division, Patna to restore the Arms Licence No. 278 of 2004.

3. The short matrix of the case is, that though the application of the petitioner for restoration of the arms licence was rejected by the learned Collector, Patna *vide* order dated 06.04.2019, however, the same has been set aside by the learned court of the Divisional Commissioner, Patna Division *vide* order dated 25.06.2019/17.07.2019 and the case of the petitioner was remanded back to the District Magistrate, Patna for fresh consideration. However, the learned District Magistrate, Patna *vide* his order dated 21.09.2020, despite being remand, rejected the case of the petitioner for restoration of arms licence, thus, the same has been challenged by way of Interlocutory Application No. 1 of 2021.

4. At this juncture, submission has been advanced on behalf of learned counsel for the State that the order impugned dated 21.09.2020 passed by the District Magistrate, Patna is assailable before the Divisional Commissioner, hence the writ application is not maintainable.

5. However, the aforesaid contention has been vehemently refuted by the learned senior counsel appearing on



behalf of the petitioner and submission has been made that the learned District Magistrate, Patna who has rejected the case of the petitioner *vide* order dated 21.09.2020 is at present also holding the post of Divisional Commissioner, Patna Division, hence filing an appeal against the said order would be a futile exercise. This Court finds substance in the submission made on behalf of the petitioner.

6. It is submitted that the arms licence bearing No. 278 of 2004 was granted in favour of the petitioner way back in the year 2004 and the same had been continuously renewing time to time till 2019-21. However, in the year 2019, the Assistant Superintendent of Police, Barh *vide* Memo No. 198/2019 dated 12.01.2019 submitted a report that in course of raid conducted at the house of the petitioner, who was found absconder in a criminal case, one N.P. Bore rifle and 32 live cartridges were seized, apart from other currency notes and jewelleryes; accordingly a seizure list was prepared. On the aforesaid police report, as contained in memo no. 1348 dated 22.02.2019, notice was served upon the petitioner directing him to file his reply within 3 days as to why not his arms licence be cancelled.

7. In response thereto, the petitioner filed a detailed



show-cause reply dated 19.03.2019, the copy of which is annexed to the writ application and he categorically denied the charges levelled against him and pleaded his innocence. He submitted that the arms and ammunitions which were seized was legally licensed and it has never been misused.

8. The licensing authority however, passed the order cancelling the arms licence of the petitioner which was assailed by the petitioner in Arms Appeal No. 70/2019 before the Divisional Commissioner, Patna Division under Section 18 of the Arms Act, 1959. The learned Divisional Commissioner, Patna Division having considered the submissions of the petitioner as also taking note of the mandate of law, as settled by this Court in various judgments, has set aside the order of the District Magistrate *vide* his order dated 25.06.2019/17.07.2019 and remanded the matter to the District Magistrate for fresh consideration. While remanding the matter, it has been made clear that while passing any order of cancellation the authorities are under obligation to assign specific reason for the same and in absence thereof, the impugned order of cancellation is not sustainable.

9. It is the case of the petitioner that the remand, on being made, the learned District Magistrate without asking for a



fresh police report, relying upon the earlier reports submitted by the ASP again rejected the claim of the petitioner and cancelled the arms licence issued in favour of the petitioner. The learned District Magistrate, while passing the impugned order has taken note of Barh P.S. Case No. 260 of 2014 for the offences punishable under Sections 147, 148, 149/302 of the Indian Penal Code and further Bihta P.S. Case No. 859 of 2014 for the offences under Sections 363/364 of the Indian Penal Code said to have been instituted against the petitioner as also one *sanha* was lodged alleging therein that the petitioner was found involve in intimidating the voters in Bihar Assembly Election of 2020.

10. Learned senior counsel appearing on behalf of the petitioner drawn the attention of this Court towards the judgment rendered by the Additional District and Sessions Judge 4th, Barh in Sessions Trial No. 353 of 2016 wherein the petitioner has been acquitted from all the charges levelled in connection with Barh P.S. Case No. 260 of 2014. He next submitted that so far Bihta P.S. Case No. 859 of 2014 is concerned, the petitioner is all along on bail and so far *sanha* is concerned, the same has not been instituted by any voters, rather *sanha* entry has been made at the behest of the SHO, Barh P.S.,



Patna. He next submitted that since the very consideration of the arms licensing authority is based upon a fact which was not in existence, hence the order cancelling the arms licence is wholly perverse and not sustainable in law. He next submitted that the arms and ammunitions which were said to have been recovered from the house of the petitioner is a licensee arms and the said arms licence was produced before all the concerned authorities, however, it has been wrongly stated that it has never been produced before the police officials. He also submits that despite the remand being made, the learned District Magistrate, failed to appreciate the fact that the petitioner has never been found involve in misusing the arms and so far *sanha* is concerned it has not been resulted into any substantive FIR nor it is based upon the complaints made by any private person.

11. *Per contra*, learned counsel for the State vehemently refuted the submissions made on behalf of the petitioner and submission has been made that on remand being made to the licencing authority for fresh consideration of the matter, a fresh report was called for, which discloses the fact of petitioner having close nexus with the criminals/antisocial elements and the petitioner is found involve in intimidating the people of the locality by means of firearms. It is further



submitted that in Barh police station, *sanha* no. 592/2(2) dated 22.08.2020 has been lodged, on account of petitioner being found involve in threatening the voters and report has been made against him for taking needful action under Section 3(3) of the Bihar Control of Crimes Act, 1981.

12. This Court has given careful consideration to the submissions made on behalf of the parties and also perused the materials available on records. It is needless to observe that though a *sanha* regarding intimidating the voters in connection with the Assembly Election 2020 was registered and report has been made for taking needful action under Section 3(3) of the Bihar Control of Crimes Act, 1981, but it is the admitted fact that no further action has been taken against the petitioner in absence of any cogent materials. Further, this Court also finds that with regard to Barh P.S. Case No. 260 of 2014 which has taken note of while passing the impugned order of cancellation of licence, the petitioner has been discharged from all the charges and the trial resulted into acquittal of the petitioner way back in the year 2016.

13. It is needless to observe that once a person has been granted a licence and he acquires a gun it becomes one of his property and he has the statutory right to acquire, hold and



dispose of the same. The petitioner accordingly should not be deprived of his statutory right unless reasonable restriction has been imposed by any law made by the State.

14. It is to be remembered that a law which imposes restriction on any statutory/legal right of the citizen of the country has to be strictly scrutinized before it is applied to curtail the statutory rights. In the present case, this Court further finds that the impugned order also does not reflect any discussion/consideration of the reply filed on behalf of the petitioner and as such, the impugned order suffers from vice of non-application of mind. Even though, a *sanha* might have been lodged but that could not be said to be sufficient reason to cancel the licence of the petitioner unless which causes incidence of breach of security of the public peace or public safety at the behest of the petitioner. Needless to observe that no incidence of breach of public peace or public safety has been cited either in the notice or in the impugned order. Moreover, the order of the District Magistrate is based upon non-existent materials.

15. This Court also cannot lose sight of the fact that while granting arms licence to the petitioner, the authority has taken into consideration, the life threatening attack against the



petitioner and his father.

16. In the aforementioned reasons, assigned and discussed, this Court *prima facie* finds substance in the submissions of the petitioner and accordingly set aside the impugned order passed by the District Magistrate, Patna as contained in Memo No. 2373 dated 21.09.2020 and remitted the matter to the licensing authority (District Magistrate, Patna) to re-consider the matter afresh after obtaining a fresh police report and pass a reasoned order taking into consideration the observation made hereinabove. It is needless to say that the aforesaid exercise must be completed within a period of three months.

17. Accordingly, the writ application stands disposed of with the aforesaid observations and directions.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	N.A.
CAV DATE	N.A.
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