

Sita Ram Dixit Vs Divisional Commissioner, Allahabad Division and others

Court: Allahabad High Court

Date of Decision: July 31, 1991

Acts Referred: Arms Act, 1959 " Section 17, 18

Constitution of India, 1950 " Article 226

Penal Code, 1860 (IPC) " Section 186, 453, 504, 506

Citation: AIR 1992 All 252

Hon'ble Judges: D.P.S. Chauhan, J

Bench: Single Bench

Advocate: Dilip Kumar, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner, who is freedom fighter, has invoked the jurisdiction of this Court under Art. 226 of the Constitution challenging the legality of the

order dated 16-1-1987 passed by the Addl. District Magistrate (City) Kanpur Nagar revoking his fire arm licence in respect of a DBBL gun

(licence No. 2909) and a revolver (licence No. 8757) and the order dated 26-2-1990 passed by the Commissioner Allahabad Division,

Allahabad in appeal directed against the aforesaid order of revocation seeking the relief for quashing these orders.

2. Brief facts leading to the controversy in the petition are that :

(a) the petitioner, who is a freedom fighter, political and social worker having received a recognition for his service from the people of Kanpur, was

elected as Corporator in the Municipal Corporation, Kanpur Nagar and was also elected as Dy. Mayor.

(b) The petitioner was a licensee in respect of a gun and a revolver. On account of a criminal case (crime No. 824/76) under Ss,

147/148/149/307, IPC the fire arms of the petitioner were deposited with the local dealer M/s. Swadeshi Gun House, Meston Road, Kanpur and

after a lapse of about five years, the petitioner was issued two separate show cause notices for revocation of his two fire arm licences, In both

these notices, the foundation for revocation of the fire arm licences was involvement of the petitioner in criminal case (crime No. 824 of 1976) as

reported by the police. The notices were duly replied to by the petitioner on 15-7-1981.

(c) The Sessions trial No. 255/M of 1977 State v. Kishan Sharma and others under Ss. 147/148/149/307, IPC wherein the petitioner was one of

the accused, resulted in acquittal and the petitioner filed a certified copy of the judgment relating to his acquittal in the above case before the

District Magistrate along with an application for restoration of his fire arms and dropping of the proceedings for revocation of his licences. A report

was asked from the Senior Stipdt. of Police, Kanpur regarding acquittal, which was submitted on 11-4-1984 confirming the fact of the acquittal of

the petitioner in the above case and recommending for restoration of the fire arm licences of the petitioner. There was another case (crime No. 609

of 1981) under Ss. 453/186/504/506, IPC which was subsequent one and it also resulted in acquittal on 13-12-1984. The petitioner filed a

certified copy of the judgment relating to his acquittal before the Addl. District Magistrate.

(d) Addl. District Magistrate (City), Kanpur Nagar (hereinafter referred to as the District Magistrate) passed an order revoking both the fire arm

licences of the petitioner. This order was challenged by the petitioner by way of appeal u/ S. 18 of the Arms Act, 1959 (hereinafter referred to as

the Act) before the Commissioner Allahabad Division, Allahabad, (hereinafter referred to as the Commissioner), In appeal the order of the District

Magistrate was maintained and the appeal was dismissed on 20-2-1984.

(e) The aforesaid two orders were challenged by way of a writ petition No. of 1988 (Sita Ram Dixit v. Commissioner) in this court, wherein this

court while setting aside the order of the Commissioner dated 20-4-1987 and 5-1-1988 directed for deciding the appeal on merit after affording

adequate opportunity of being heard to the petitioner. Consequent upon the remand by this Court, the Commissioner decided the appeal on 26-2-

1990. These two orders dated 16-1-1987 and 26-2-1990 are subject matter of controversy in the present petition.

3. The District Magistrate while accepting the position of acquittal of the petitioner in criminal cases (crime No. 824 of 1976) and (crime No. 609

of 1981) revoked the fire arm licences of the petitioner on the assumption that the petitioner has got enmity with other persons and his son Sri Alok

Kumar Dixit is a noted criminal and the possibility of the misuse of the fire arms cannot be ruled out. The Commissioner dismissed the appeal

saying that the petitioner is a person of criminal tendency and his son is a notorious criminal and the possibility of the misuse of the fire arm by him

cannot be ruled out. Further it was stated that in the criminal cases the petitioner was given benefit of doubt and there was no recommendation of

the police for restoration of the licences and the Senior Supdt. of Police did not submit any such report. He only forwarded the police report to the

District Magistrate without making any recommendation.

4. Heard the learned counsel for the petitioner and learned standing counsel.

5. Learned counsel for the petitioner in respect of his submission regarding invalidity of the impugned orders raised twofold objections :--

(a) That the impugned orders of the District Magistrate dated 16-1-1987 and that of the Commissioner are arbitrary based on no material germane

to the requirement of law relating to the grounds for revocation as provided under sub-sec. (3) of S. 17 of the Act.

(b) the petitioner was not afforded any opportunity to meet the police report dated 15-6-1981, which was made on the basis for drawing an

inference that the petitioner is a person of criminal tendency having enmity with other person and his son is a noted criminal.

6. The fact that the petitioner was acquitted in criminal cases (crime No. 824 of 1976) and (crime No. 609 of 1981) which were the basis for

revocation against the petitioner is not in dispute. After acquittal the very basis is non est. In the revocation order no specific ground as

contemplated in sub-sec. (3) of S. 17 of the Act is disclosed. After acquittal of the petitioner in both the cases, there remained no material for

holding the petitioner to be a person of a criminal tendency and having enmity with other persons. Even a criminal tendency or enmity by itself

cannot be a ground for revocation. In the present case learned counsel for the petitioner submitted that there existed no material apart from the

aforesaid two cases, wherein the petitioner was acquitted, which could form the basis for conclusion that the petitioner was a person having

criminal tendency and was having enmity with other person. Learned Standing Counsel could not point out any such material so to justify the basis

of conclusion of the District Magistrate regarding criminal tendency of the petitioner and enmity with other person. So far as the antecedents of the

petitioner's son Sri Alok Kumar Dixit are concerned the same have no relevance for revocation of the licences of the petitioner. The police report

dated 15-6-1981 was made basis for recording the finding that the son of the petitioner Alok Kumar Dixit is a noted criminal. No material has

been disclosed so to justify such a finding. The finding is without any material and the petitioner was not afforded opportunity against the aforesaid

police report to establish that the police report, which contained no material, could not be made basis for any adverse inference against the

petitioner. The order of the District Magistrate was thus not in accordance with the provisions of the Act and the revocation of the licences was for

consideration other than provided by law.

7. There is no material for misuse of the fire arm by the petitioner on record of the case and any speculative likelihood regarding misuse of the fire

arm unfounded on any material cannot be a ground for revocation of the licences.

8. Learned Counsel for the petitioner further submitted that the Commissioner has misdirected himself by saying that the petitioner was given

benefit of doubt in the two cases in which he was involved. In fact, the petitioner was given clean acquittal and the words to the effect that the

prosecution has failed to establish the guilt of the accused persons beyond reasonable doubt, as mentioned in the judgment, were taken by the

Commissioner that the petitioner has been given the benefit of doubt. There is a distinction between the words ""benefit of doubt"" and

establishment of guilt beyond reasonable doubt"". The petitioner was acquitted in both the cases and the courts recorded the finding that the

prosecution has failed to establish the guilt of the accused persons beyond reasonable doubt. These words by any stretch of imagination cannot be

considered that the petitioner was given the benefit of doubt. The other reasoning given by the Commissioner that the police did not recommend

for restoration of the licences of the petitioner is also unfounded. There is recommendation of the police saying that if licences of the petitioner are

restored then the police has no objection. It clearly means that the police had no objection for restoration of the licences of the petitioner and it

amounts to recommendation.

9. For the above consideration, the order passed by the Addl. District Magistrate, Kanpur revoking the fire arm licences of the petitioner in

respect of a gun and a revolver dated 16-1 -1987 and the order of the Commissioner, Allahabad Division, Allahabad passed in appeal dated 26-

2-1990 cannot be sustained and the same are liable to be quashed.

10. In view of what has been stated above, the writ petition is allowed. The order of the Addl. Distt. Magistrate (City), Kanpur Nagar dated 16-

1-1987 and the order dated 16-2-1990 passed by the Commissioner, Allahabad Division Allahabad are hereby set aside. The weapons and

licences of the petitioner shall be restored to him and he shall be entitled for getting his licences renewed in accordance with law. In the

circumstances of the case, there will be no order as to costs.

11. Petition allowed.