

**(2013) 05 AHC CK 0184**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 30553 of 2008

Sochan Prasad Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** May 30, 2013

**Hon'ble Judges:** Sibghat Ullah Khan, J

**Final Decision:** Dismissed

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### **Judgement**

Sibghat Ullah Khan, J.

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

Initially this writ petition was filed against order dated 08.04.2008 passed by D.M./Collector, Azamgarh, copy of which is Annexure 8 to the writ petition. Through the said order, petitioner's fire arm licence to hold and carry a rifle was suspended on the basis of report of Police Station, Incharge dated 29.02.2008 and holding that Indrajeet Yadav son of petitioner was a criminal and on 12.02.2008, Indrajeet Yadav was going in a Motor Vehicle and on seeing the police party in a Jeep he ran away leaving his car and on search the rifle of the petitioner was found in the car. It is not mentioned that why the son of petitioner was so afraid of the police and in connection of which case he was required to be arrested. For more than two years no final order was passed. Accordingly, following order was passed on 14.05.2010 on the order sheet:

"This writ petition is directed against order dated 03.04.2008 suspending the Arms licence of the petitioner who is retired military personnel and asking him to show cause against cancellation. Learned counsel for the petitioner states that till date final order has not been passed. If it is so then it is very bad. However, the worse thing is that inspite of order dated 09.07.2008 counter affidavit has not been filed. Counter affidavit shall positively be filed within six weeks from today otherwise Court may take a serious view of the matter. The District Magistrate/Collector Azamgarh is also directed to fix the responsibility for not filing the counter affidavit

for about two years and the name of concerned officer/official must be indicated in the counter affidavit so that in case it is found appropriate, Court may direct initiation of disciplinary proceedings against him.

Office is directed to supply a copy of this order free of cost to Sri Susheel Kumar, learned standing counsel within three days for being sent to the D.M./Collector Azamgarh.

List peremptorily in the week commencing 12.07.2010."

For several dates no information was supplied by the D.M. Thereafter on 07.11.2012, the licence of the petitioner was cancelled. Thereafter, learned counsel for the petitioner filed amendment application dated 26.11.2012 seeking to challenge the cancellation order. The amendment application is allowed.

In the impugned order dated 07.11.2012 cancelling licence it was mentioned that 15 criminal cases were pending against Indrajeet Yadav son of the petitioner. Learned standing counsel was directed to supply a list of the said cases. The said list was supplied on 21.05.2013 containing 18 cases, out of which 14 have already been decided resulting in acquittal. Case No.191 of 2008 under Sections 25/27, Arms Act is in relation to the same incident, in respect of which licence was suspended and thereafter cancelled. Three cases, one of 2005, one of 2007 and the third of 2008 are stated to be pending. The first is under Sections 3/4, U.P. Gunda Act and both the remaining cases are under Section 323/504/506, I.P.C.

Petitioner retired from the post of Subedar Major of Indian Army.

It was improper on the part of the respondents to keep the licence suspended for several years. Order of cancellation was passed only upon persistent directions issued in this writ petition for passing final order. The cases, which are pending against the son of the petitioner are not of serious nature. In no case, the allegation is of use of the gun or intimidation by the same. The licence has been cancelled mainly on the basis of general allegations that son of the petitioner is of criminal nature.

Accordingly, writ petition is allowed. Impugned order cancelling the fire arm licence is set aside. However, petitioner is restrained from permitting any of his sons to carry the rifle or even to touch it. The moment it is found that any of the sons of petitioner is seen outside the house with the gun, the licence shall immediately be cancelled.