
AIR 1992 All 335 : (1992) 3 AWC 1518

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 788 of 1992

Ramji Singh

APPELLANT

Vs

The District Magistrate,
Ghazipur

RESPONDENT

Date of Decision: May 4, 1992

Acts Referred:

- Arms Act, 1959 - Section 17, 17(3), 18

Citation: AIR 1992 All 335 : (1992) 3 AWC 1518

Hon'ble Judges: P.P. Gupta, J

Bench: Single Bench

Advocate: Rajendra Pratap, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. By this petition, the petitioner, Ram Ji Singh, has prayed for quashing the order dated 11-10-1991, passed by the District Magistrate, Ghazipur, by which the petitioner's Arms Licence No. 1046/80 for a single Barrelgun bearing number 8897 was suspended and he was called upon to show cause also within 15 days from the date of the order as to why his licence may not be cancelled. Instead of showing any cause to the aforesaid notice, the petitioner has filed the present writ petition.

2. Despite sufficient time having been granted, no counter affidavit has been filed by the respondent in this case. The learned counsel for the petitioner and the learned Standing Counsel were heard at length at the stage of admission and the record of the case

3. The only submission made by the learned counsel for the petitioner was that under the Arms Act there is no provisions for suspending the arms licence pending enquiry regarding cancellation/suspension of the licence. Reliance was placed on a Division

Bench decision of this Court in the case of Raghuvir Sahai v. District Magistrate, Jhansi 1986 AllWC 1074 : (1986 ALJ 1442). In this case it was held --

"If the District Magistrate was, On the material that had been placed before him satisfied that it was necessary for the security of public peace or public safety to revoke or suspend the petitioners" licence for any specified period, it was open to him TO pass such an order straightway. However, if he chose to suspend the licences only pending on enquiry and before being fully satisfied on the material brought on the record that it was necessary to revoke or suspend the licence in order to secure public peace and safety, he would certainly have no jurisdiction to suspend the petitioner"s licence pending such an enquiry."

Relying on a Full Bench decision of five Judges in the case of [Kailash Nath and Others Vs. State of U.P. and Another](#), it was argued on behalf of the State that the licensing authority can for the furtherance of his immediate remedial action exercise the incidental power of suspending the licence during the period of enquiry.

4. The precise question for determination in this case whether there is power to suspend an arms licence pending enquiry into its cancellation or suspension?

5. In a Full Bench decision consisting of three Judges in the case of [Chhanga Prasad Sahu Vs. State of Uttar Pradesh and Others](#), it was held:

"Having regard to the scheme and purpose of the provisions contained in Ss. 17 and 18 of the Act and the nature of the enquiry that a licensing authority is to make before directing revocation/suspension of an arms licence, it has no power to suspend the arms licence pending enquiry into its cancellation/suspension.

The aforesaid decision came up for consideration of Larger Bench consisting of five Judges in the case of [Kailash Nath and Others Vs. State of U.P. and Another](#), . In this case also precisely the same question was for consideration of the Bench. Hon"ble M.N. Shukla, C.J., as he then was observed -

"The law laid down in paragraph 16 in [Chhanga Prasad Sahu Vs. State of Uttar Pradesh and Others](#), extracted in the earlier part of this judgment must be supplemented by the further observations that after taking the provisional action of immediate revocation of the licence the licencing authority must issue notice to the licence holder giving him an opportunity to file objections against the preliminary order and after hearing him proceed to pass the final order which may either affirm or revoke the provisional order. In other words, it is incumbent upon the licencing authority to refrain from attaching finality to the order of cancellation until the aggrieved petitioner has been heard by such authority and his objections have been adjudicated. The licencing authority can also for the furtherance of his immediate remedial action exercise the incidental power of directing the licence holder to surrender his licence until the objections have been decided. It follows that in the event of the objections being allowed the licence as well as the fire arm must be

restored to the licence holder. In [Mrs. Maneka Gandhi Vs. Union of India \(UOI\) and Another](#), the Supreme Court in its final order did not set aside the impugned order of impounding the passport, instead it merely allowed the petitioner to make a representation and issued direction that the representation should be dealt with expeditiously by the passport Authority."

6. From the decision of the full bench in the above case it becomes absolutely clear that audi alteram partem rule of natural justice does not, in all cases, oblige the authority to give an opportunity of hearing to the concerned party before arriving at a decision adverse to it. If the exigencies and practical necessities of the case so require the rule would stand even if a post decisional hearing remedial in aim is given.

7. It may be mentioned that the law laid down by the Division Bench in Raghuvir Sahai's case (1986 AILLJ 1442) (supra) was not followed by another Division Bench of this Court in the case of Awadhesh Kumar Misra v. District Magistrate, Kanpur Nagar AIR (1988) 14 KAN 37 : (1988 AHLJ 363). It was held by this Division Bench that power of suspension is a necessary concomitant of power of cancellation for effective control and regulation. It was observed (at p. 364 of All LJ) -

"It was necessary and expedient that the licencing authority should be clothed with power to suspend a licence when it detects or finds it to be in the interest of law and order. Otherwise, a licence-holder can commit breach of the terms and conditions of his licence with impunity, without any check or control. What appears to be following from S. 17(3) of the Arms Act the power of suspension is a necessary adjunct to the power to grant a licence."

On this reason it was held that the District Magistrate can out-right cancel a licence and call upon the licence-holder to surrender the arm obtained under it. The authorities can give a notice to a licence holder for showing cause against the cancellation already ordered.

8. It may be worth noting that the Division Bench decision in the case of Raghuvir Sahai (1986 AILLJ 1442) (supra) on which the reliance was placed by the learned counsel for the petitioner was overruled by another Full Bench decision of this Court in the case of Balram Singh v. State of U.P. 1989 AILLJ 23. The Full Bench observed that the power of the licencing authority to suspend the Arms licence for the entire period during which the proceedings for its revocation is going on before him is implicit. The power of suspension is a necessary concomitant of power of revocation for effective control and regulation as also for security of public peace of public safety.

9. For the aforesaid decisions it is now settled that the licencing authority has power to suspend an arms licence pending enquiry into its cancellation or suspension provided a post-decisional opportunity of hearing is given to the arms licence holder.

10. In the instant case where while suspending the arms licence of the petitioner he was also afforded a post-decisional opportunity of hearing. I think, the audi alterem partem rule of natural justice stands satisfied. The petitioner can still avail of the opportunity of showing that the impugned order directing suspension of the licence during the enquiry was not justified and deserves to be set aside. In the event of his objections being allowed, the natural consequence will be that his licence for the fire arms shall stand restored.

11. The learned counsel for the petitioner has also placed reliance on a Division Bench decision of this Court in the case of Awadhesh Kumar v. District Magistrate, (1989) 15 ALLR 519 : (1989 ALLJ 1053). In this case the licence of the petitioner was cancelled on mere suspicions or on possibility of its abuse by person other than the licence holder. The Division Bench held in that case that there was no positive evidence available that the brother of the licence holder used to handle the gun and that remote possibility had been indicated that the cartridges might be given to anti-social elements. On these facts, the Division Bench held that in the absence of any report against the licence holder or his brother, indicating their involvement in a criminal case or use of gun with some criminal design, there was no justifiable ground for cancellation or revocation of the licence u/s 17(3)(b) of the Arms Act. It was a case for cancellation of the licence which was cancelled on suspicion that the arms might be used by the brother of the licence holder. In this case the facts are different. Here, as has been stated above, the licence of the petitioner has been suspended pending enquiry regarding cancellation of his licence. The petitioner has been called upon to show cause within 15 days. The petitioner may take up appropriate defence in reply to the notice that has been served on him, he however, does not get any benefit from the decision of the Division Bench case on which reliance has been placed by him.

12. In view of the above discussion, the petition is devoid of merits and is accordingly dismissed. However if the petitioner approaches the District Magistrate, Ghazipur, he shall afford him an opportunity of showing that the impugned order directing suspension of his licence was not justified and deserves to be set aside. In case, the petitioner makes such an application within a period of three weeks from the date of this order, the District Magistrate, Ghazipur, must after hearing him, dispose of his application in accordance with law within three weeks from the date of receipt of such application. Under the circumstances of the case, I direct the parties to bear their own costs.

13. Petition dismissed.