

(2011) 11 AHC CK 0341

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 37913 of 2009

Bhupendra and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Nov. 3, 2011

Acts Referred:

- Arms Act, 1959 - Section 17, 17(3)
- Constitution of India, 1950 - Article 12, 226

Citation: (2012) 1 ACR 856 : (2011) 11 ADJ 581 : (2011) 10 ADJ 607

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Final Decision: Disposed Of

Judgement

Hon"ble Sudhir Agarwal, J.

The writ petition is directed against the order dated 22.11.2007 passed by the respondent No. 2 suspending the petitioners" firearm licence in purported exercise of power u/s 17(3) of Arms Act, 1959 (hereinafter referred to as "Act 1959"). The grievance of the petitioners is that he submitted his reply as long back as on 18.12.2007 but no final order has been passed by District Magistrate so far. He also drew my attention to the fact that raising his grievance against arbitrary and illegal action on the part of District Magistrate, Farrukhabad petitioners approached this Court in Writ Petition No. 35112 of 2008 which was disposed of on 22.7.2008 with the following direction :

Proceedings for cancellation of petitioners" fire-arm licence have been undertaken vide show-cause notice dated 22.11.2007. Petitioners submit that they have submitted reply to show-cause notice but till date Licensing Authority has not taken any final decision in the matter.

Consequently, in these circumstances and in this background, in case till date no final decision has been taken, then in that event, Licensing Authority is directed to

take final decision after taking into consideration the reply so submitted by petitioners, within two months from the date of receipt of a certified copy of this order.

In terms of above order and direction, present writ petition is disposed of.

2. It is said that despite the said order more than three years have now passed but no final order has been passed by the District Magistrate so far. The respondents have filed counter-affidavit wherein nothing has been said about final order of District Magistrate. The case of respondents is that petitioners had obtained firearm licence by giving wrong information about original residence and for this reason firearm licence was suspended. However, entire counter-affidavit is conspicuously silent on the fact whether any final order has been passed by District Magistrate so far or not.

3. This sheer inaction on the part of District Magistrate failing to discharge its statutory obligation can be examined from two angles. Firstly; this Court has held in catena of decisions that there is no power of suspension of firearm licence u/s 17(3) of Act 1959. In a decision dated 9.9.2005 of this Court in Civil Misc. Writ Petition No. 58216 of 2005 (Ajay Kumar Gupta v. State of U.P. and others), after considering the Full Bench decision of this Court in the cases of Balaram Singh v. State of U.P and others, 1988 AWC 1481; [Kailash Nath and Others Vs. State of U.P. and Another](#), as well as the Division Bench decision of this Court in the case of Sadri Ram v. District Magistrate, Azamgarh and others, 1998 ACJ 1449, it has been held that the licensing authority has no power to suspend the arms licence.

4. Yet ignoring the said exposition of law laid down by this Court the District Magistrate has come ahead to place the firearm licence of the petitioners under suspension. It is ex facie contrary to the aforesaid law laid down by this Court and is contemptuous also 5. The second aspect; assuming that power of suspension exist pending enquiry regarding cancellation of firearm licence, the same would be in the nature of intermediary step in aid and assistance to achieve final objective i.e. decision on the question whether firearm licence granted to an individual require to be cancelled or not This power of suspension in such circumstances cannot be usurped as a substitute of cancellation. Considering similar kind of power of suspension of an employees in a pending or contemplated departmental enquiry, in [Smt. Anshu Bharti Vs. State of U.P. and Basic Shiksha Parishad](#), this Court has observed :

9..... The prolonged suspension of the petitioner is clearly unjust and unwarranted The question deals with the prolonged agony and mental torture of a suspended employee where inquiry either has not commenced or proceed with snail pace. Though suspension in a contemplated or pending inquiry is not a punishment but this is a different angle of the matter, which is equally important and needs careful consideration. A suspension during contemplation of departmental inquiry or

pendency thereof by itself is not a punishment if resorted to by the competent authority to enquire into the allegations levelled against the employee giving him an opportunity of participation to find out whether the allegations are correct or not with due diligence and within a reasonable time. In case, allegations are not found correct, the employee is reinstated without any loss towards salary, etc., and in case the charges are proved, the disciplinary authority passes such order as provided under law. However, keeping an employee under suspension, either without holding any enquiry, or In a prolonged enquiry is unreasonable. It is neither just nor in larger public interest. A prolonged suspension by itself is penal. Similarly an order of suspension at the initial stage may be valid fulfilling all the requirements of law but may become penal or unlawful with the passage of time, if the disciplinary inquiry is unreasonably prolonged or no inquiry is initiated at all without there being any fault or obstruction on the part of the delinquent employee. No person can be kept under suspension for indefinite period since during the period of suspension he is not paid full salary. He is also denied the enjoyment of status and therefore admittedly it has some adverse effect in respect of his status, life style and reputation in society. A person under suspension is looked with suspicion in the society by the persons with whom he meets in his normal discharge of function.

10. A Division Bench of this Court in [Gajendra Singh Vs. High Court of Judicature at Allahabad](#), observed as under :

We need not forget that when a Government officer is placed under "suspension, he is looked with suspicious eyes not only by his colloques and friends but by public at large too.

11. Disapproving unreasonable prolonged suspension, the Apex Court in Public Service Tribunal Bar Association v. State of U.P. and others, 2003 (1) UPLBEC 780 (SC) observed as under :

If a suspension continues for indefinite period or the order of suspension passed is mala fide, then it would be open to the employee to challenge the same by approaching the High Court under Article 226 of the Constitution.....(Para 26)

12. The statutory power conferred upon the disciplinary authority to keep an employee under suspension during contemplated or pending disciplinary enquiry cannot thus be interpreted in a manner so as to confer an arbitrary, unguided an absolute power to keep an employee under suspension without enquiry for unlimited period or by prolonging enquiry unreasonably, particularly when the delinquent employee is not responsible for such delay. Therefore, I am clearly of the opinion that a suspension, if prolonged unreasonably without holding any enquiry or by prolonging the enquiry itself, is penal in nature and cannot be sustained.

13. The view I have taken is supported from another Judgment of this Court in Ayodhya Rai and others v. State of U.P. and others, 2006 (3) ESC 1755.

(emphasis added)

6. Though the above observations are in the context of a service matter but qua power of suspension in pending enquiry vis-a-vis final order, the observations are broadly applicable to this case also. Here also one cannot be allowed to make an order of suspension as a tool to deprive the licensee benefit thereof in the garb of suspension by keeping it pending for years together by not passing a final order. Any view otherwise would be discriminatory and shall defeat the very objective and purpose of the power conferred u/s 17 of Act 1959.

7. In the case in hand though petitioners' firearm licence was suspended almost four years back but the District Magistrate could not find time or occasion to pass a final order in the matter though it is the ultimate and statutory function he is supposed to discharge. In absence of any explanation whatsoever for not taking final decision for the last four years, inaction on the part of District Magistrate is highly condemnable and depreciated. It is nothing but sheer harassment to an individual who has no control over the statutory authority like District Magistrate. This is per se arbitrary.

8. This Court time and again has commented strongly against such attitude of the State and its authorities. This kind of attitude demean and denigrate individuals respect and honour. The respondents being "State" under Article 12 of the Constitution of India, its officers are public functionaries. As observed above, under our Constitution, sovereignty vest in the people. Every limb of constitutional machinery therefore is obliged to be people oriented. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour. It is high time that this Court should remind respondents that they are expected to perform in a more responsible and reasonable manner so as not to cause undue and avoidable harassment to the public at large. The respondents have the support of entire machinery and various powers of statute. An ordinary citizen or a common man is hardly equipped to match such might of State or its instrumentalities. Harassment of a common man by public authorities is socially abhorring and legally impressible. This may harm the common man personally but the injury to society is far more grievous. Crime and corruption, thrive and prosper in society due to lack of public resistance. An ordinary citizen instead of complaining and fighting mostly succumbs to the pressure of undesirable functioning in offices instead of standing against it. It is on account of, sometimes, lack of resources or unmatched status which give the feeling of helplessness. Nothing is more damaging than the feeling of helplessness. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match inaction in public oriented departments gets frustrated and it erodes the credibility in the system. This is unfortunate that matters which require immediate attention are being allowed to linger on and remain unattended. No authority can allow itself to act in a manner which is arbitrary. Public administration no doubt involves a vast amount of

administrative discretion which shields action of administrative authority but where it is found that the exercise of power is capricious or other than bona fide, it is the duty of the Court to take effective steps and rise to occasion otherwise the confidence of the common man would shake. It is the responsibility of Court in such matters to immediately rescue such common man so that he may have the confidence that he is not helpless but a bigger authority is there to take care of him and to restrain arbitrary and arrogant, unlawful inaction or illegal exercise of power on the part of the public functionaries.

9. In our system, the Constitution is supreme, but the real power vest in the people of India. The Constitution has been enacted "for the people, by the people and of the people". A public functionary cannot be permitted to act like a dictator causing harassment to a common man and in particular when the person subject to harassment is his own employee.

10. Regarding harassment of a common man, referring to observations of Lord Hailsham in *Cassell and Co. Ltd. v. Broome*, 1972 AC 1027 and Lord Devlin in *Rooks v. Barnard and others*, 1964 AC 1129, the Apex Court in [Lucknow Development Authority Vs. M.K. Gupta](#), held as under:

An Ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the Rule of law.....A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it.....Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous.(para 10)

11. The above observations as such have been reiterated in [Ghaziabad Development Authority Vs. Balbir Singh](#) .

12. In a democratic system governed by Rule of law, the Government does not mean a lax Government The public servants hold their offices in trust and are expected to perform with due diligence particularly so that their action or inaction may not cause any undue hardship and harassment to a common man. Whenever it comes to the notice of this Court that the Government or its officials have acted with gross negligence and unmindful action causing harassment of a common and helpless man, this Court has never been a silent spectator but always reacted to bring the authorities to law.

13. In [Common Cause A Registered Society Vs. Union of India and others](#), the Apex Court said :

No public servant can say "you may set aside an order on the ground of mala fide but you cannot hold me personally liable" No public servant can arrogate in himself

the power to act in a manner which is arbitrary.

14. In [Shivsagar Tiwari Vs. Union of India \(UOI\) and Others](#), the Apex Court has held :

An arbitrary system indeed must always be a corrupt one. There never was a man who thought he had no law but his own will who did not soon find that he had no end but his own profit.

15. In [Delhi Development Authority Vs. Skipper Construction and another](#), has held as follows :

A democratic Government does not mean a lax Government. The Rules of procedure and/or principles of natural justice are not mean to enable the guilty to delay and defeat the just retribution. The wheel of justice may appear to grind slowly but it is duty of all of us to ensure that they do grind steadily and grind well and truly. The justice system cannot be allowed to become soft, supine and spineless.

16. In view of the above discussion, the impugned order cannot sustain. The writ petition is allowed. The impugned order dated 22.11.2007 is hereby quashed to the extent it suspends the firearm licence of the petitioner.

17. However quashing of order of suspension will not prevent Licensing Authority to proceed and conclude proceeding, if any, for cancellation of firearm licence of the petitioner pursuant to impugned order dated 22.11.2007.

18. The petitioners shall be entitled to cost which I quantify to Rs. 10,000/-against respondents 1 and 2. It is made clear that at the first instance costs shall be paid by respondent No. 1 but it shall be at liberty to recover the same from concerned District Magistrate held office at Farrukhabad during the relevant period and found responsible for inaction in the matter, after making such enquiry as permissible in law.