

(2011) 11 MP CK 0049
Madhya Pradesh High Court
Case No: Writ Petition No. 8729 of 2006

Ashok Panda

APPELLANT

Vs

The Commissioner, Jabalpur and
another

RESPONDENT

Date of Decision: Nov. 15, 2011

Acts Referred:

- Arms Act, 1959 - Section 17, 18
- Constitution of India, 1950 - Article 22, 227
- Criminal Procedure Code, 1973 (CrPC) - Section 110, 116(3), 117
- Penal Code, 1860 (IPC) - Section 307, 332, 34, 353

Hon'ble Judges: Sanjay Yadav, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Sanjay Yadav, Judge

1. This petition under Article 22/227 of the Constitution of India is directed against the order dated 27-02-2006 and 16-05-2006.
2. Vide order dated 27-02-2006 passed by the District Magistrate, Narsinghpur, in exercise of powers u/s 17 of the Arms Act, 1959 (for short "Act of 1959") has revoked the gun licence No. 223/1994. An appeal preferred by the petitioner u/s 18 of the Act of 1959 has been dismissed by the impugned order dated 16-05-2006.
3. Petitioner, holder of gun licence No. 223/1994, was subjected to a show cause notice on 12-01-2006; whereby, he was called upon to show cause as to why for the offences registered against him vide Crime No. 51/1983 under sections 117/116(3) Cr.P.C., Crime No. 89/1997 under sections 117/116(3) Cr.P.C., Crime No. 411/1997 under sections 117/116(3) Cr.P.C., Crime No. 42/2001 under sections 307, 332, 353 I.P.C. & 25 Arms Act, Crime No. 33/2001 under sections 117/116(3) Cr.P.C., and Crime

No. 24/2001 u/s 110 Cr.P.C. his licence be not cancelled. The said notice was issued in purported exercise of power under the Act of 1959.

4. The petitioner submitted his reply wherein he stated that he has held the licence for more than 15 years and there was no report of his being misused. It was further contended that the petitioner holds 30 acres of land and it was the neighbour landholders who out of enmity lodged a false complaint against him which led to registration of case under sections 117/116(3) Cr.P.C. In respect of the case registered u/s 307/34 I.P.C. it is stated that the petitioner has been acquitted of the said offence by judgment dated 26-11-2002.

5. The District Magistrate after considering the reply filed by the petitioner and after taking into consideration the number of cases registered against him on formulating an opinion that the holding of gun licence by the petitioner will not be in the larger interest of public and that if the petitioner is allowed to continue to hold the arms licence, the same would endanger public peace and security, cancelled the arms licence by order dated 27-02-2006. An appeal preferred by the petitioner u/s 18 of the Act of 1959 was also dismissed by order dated 16-05-2006. The appellate authority also taking into consideration the nature of offences registered against the petitioner and the record furnished by the Superintendent of Police, Narsinghpur, found that it will not be congenial to public peace and security if the petitioner is allowed to keep the arms.

6. The petitioner challenges the order of cancellation of arms licence on the ground that the authorities below have failed to appreciate the facts in right perspective. It is urged that petty offence registered against the petitioner at the instance of the neighbour has led the authorities to believe that the petitioner is not a peace loving and law abiding citizen. It is contended that the complaint lodged against the petitioner is without any substance. In the case for an offence registered against the petitioner u/s 307/34, I.P.C. it is contended that the petitioner already been acquitted by an order dated 26-11-2002. (Pertinent it would be to note that the order of acquittal recorded in Criminal Case No. 82/2001 in respect of an offence u/s 307/34. Whereas, as per the report furnished by Superintendent of Police, regarding the offence registered vide Crime No. 42/2001 under sections 307, 332, 353, I.P.C. and 25 of the Act of 1959 there is no reply by the petitioner as to whether the said case is still pending against him. Learned counsel for the petitioner, however, is at loss to make any statement in respect of the fact that the petitioner has been exonerated of the offence registered vide Crime No. 42/2001 u/s 307, 332, 353, I.P.C. and 25 of the Act of 1959 be that as it may.)

7. Question is whether the District Magistrate has failed to exercise the jurisdiction vested in him u/s 17 in revoking the gun licence of the petitioner. Section 17 whereunder power to revoke licence vests in the District Magistrate, stipulates :

17. Variation, suspension and revocation of licences.-(1) The licensing authority may vary the conditions subject to which a licence has been granted except such of them as have been prescribed and may for that purpose require the licence-holder by notice in writing to deliver-up the licence to it within such time as may specified in the notice.

(2) The licensing authority may, on the application of the holder of a licence, also vary the conditions of the licence except such of them as have been prescribed.

(3) The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence,

(a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force, from acquiring, having in his possession or carrying any arms or ammunition, or is of unsound mind, or is for any reason unfit for a licence under this Act; or

(b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or

(c) if the licence was obtained by the suppression of material information or on the W.P.8729.06 basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it; or

(d) if any of the conditions of the licence has been contravened; or

(e) if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver-up the licence.

(4) The licensing authority may also revoke a licence on the application of the holder thereof.

(5) Where the licensing authority makes an order varying a licence under sub-section (1) or an order suspending or revoking a licence under sub-section (3), it shall record in writing the reasons therefor and furnish to the holder of the licence on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

(6) The authority to whom the licensing authority is subordinate may by order in writing suspend or revoke a licence on any ground on which it may be suspended or revoked by the licensing authority; and the foregoing provisions of this section shall, as far as may be, apply in relation to the suspension or revocation of a licence by such authority.

(7) A court convicting the holder of a licence of any offence under this Act or the rules made thereunder may also suspend or revoke the licence:

Provided that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void.

(8) An order of suspension or revocation under sub-section (7) may also be made by an appellate court or by the High Court when exercising its powers of revision.

(9) The Central Government may, by order in the Official Gazette, suspend or revoke or direct any licensing authority to suspend or revoke all or any licences granted under this Act throughout India or any part thereof.

(10) On the suspension or revocation of a licence under this section the holder thereof shall without delay surrender the licence to the authority by whom it has been suspended or revoked or to such other authority as may be specified in this behalf in the order of suspension or revocation.

8. Clause (b) of sub-section (3) of section 17 stipulates that the licensing authority if deems it necessary for the security of public peace or public safety to suspend or revoke the licence. The exercise of power under the said provision contemplates a fact finding enquiry to satisfy regarding existence of circumstances that if the incumbent is allowed to hold the licence, the same would cause breach of peace and security. It is the objective satisfaction of the District Magistrate which is contemplated vide the provision contained u/s 17 regarding existence of the circumstances. In the case at hand barring Crime No. 42/2001 no offence seems to have been registered against the petitioner except the prohibitory orders under sections 117/116(3), Cr.P.C. Not a single offence has been shown to have been committed by the petitioner after 2001 as would warrant action under the provisions of the Indian Penal Code. No specific incident also has been shown as would lead to form an opinion that the peace and security is at imminent danger if the petitioner is allowed to hold the gun licence. The petitioner, as the record reveals owns 30 acres of land and held the licence for a period since 1994. Not a single incident from 1994 till 2001 has been reported against the petitioner as would lead to draw an inference that the petitioner has been misusing the licence. Unless it is shown through cogent material that there is imminent threat to peace and security if the incumbent is allowed to hold the licence/arms, the District Magistrate in the considered opinion of this Court is not justified in forming an opinion of contemplated breach of peace and security.

9. In view whereof the order of cancellation of licence cannot be given the stamp of approval.

10. In the result the impugned order dated 27-02-2006 is hereby quashed. Consequently, the order passed in appeal is also set aside.

11. The petition is allowed to the extent above.