

Chattar Mohan Singh Vs. Additional District Magistrate (Rural) Allahabad and Others

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Court : Allahabad

Decided On : Aug-24-1990

Reported in : AIR1991All111

Judge : D.P.S. Chauhan, J.

Acts : Arms Act, 1959, Sections 17(3); [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ No. 3217 of 1982

Appellant : Chattar Mohan Singh

Respondent : Additional District Magistrate (Rural) Allahabad and Others

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : V.P. Goyal, Adv.

Judgement :

ORDER

1. The petitioner has invoked the jurisdiction of this Court under Art. 226 of the [Constitution of India](#) challenging the order passed by the Additional Collector (Rural), Allahabad dated 1-1-1982 cancelling the fire arm licence together with the order of affirmation dated 2-3-1982 passed in appeal by the Commissioner,

Allahabad Division, Allahbad, and seeking the relief for quashing the same.

2. Brief facts leading to the controversy, as set out in the petition, are --

(i) that the petitioner, who is permanent resident of village Kanihar, P.S. Mau, District Banda, started living in village Parwejabad, P. S. Bara, District Allahabad, involving himself in Thekedari work of railway coal at Jasra, Allahabad, and also in the business of Tendu leaves. Realising the need of a fire arm for his protection, he, in the year 1974-75, applied in the prescribed form for the grant of a licence for a single barrel gun wherein he clearly mentioned his present address of village Parwejabad, District Allahabad and permanent address of Village Kanihar, District Banda. The Licensing Authority after obtaining the police report from both the police stations and having satisfied granted him a licence No. 4015 in Form 3 whereupon the petitioner purchased SBBL Gun No. 10256.

(ii) Subsequently one Sri Mahendra Pratap Singh, resident of village Kanihar, District Banda, who was inimical with him and subsequently committed murder of his brother, made an application to the district authorities at Allahabad on 20-11-1977 for cancellation of the fire arm licence of the petitioner saying that the petitioner is original resident of village Kanihar, P.S. Mau, District Banda and he, by showing wrong address of Village Parwejabad, District Allahabad, had obtained the licence for the gun. On this application the proceedings for cancellation of the fire arm licence of the petitioner were set in motion by the Additional District Magistrate (Rural), Allahabad, who directed the Sub Divisional Magistrate, Karchhana, for making an enquiry with regard to truthfulness of the said complaint and also for issuing a show cause notice to the petitioner for showing cause as to why his licence be not cancelled.

(iii) The Sub Divisional Magistrate, Karchhana, submitted ex parte report to the Additional District Magistrate without any enquiry from the petitioner and without serving any show-cause notice on the petitioner. The licence of the petitioner was cancelled on 1-1-1982 by the Additional District Magistrate without affording any opportunity of showing cause to the petitioner. On appeal, the appellate authority maintained the order.

3. In spite of sufficient opportunity having been given, no counter affidavit controverting the facts as stated in the petition, was filed, and as a result of which the averments made in the petition have to be accepted as correct.

4. Heard the learned counsel for the petitioner and also the learned Standing Counsel and perused the record of the petition.

5. Learned counsel for the petitioner has made three fold submissions challenging the validity of the impeached order:--

(i) The order of cancellation of the gunlicence dated 1-1-1982 having been passed in violation of the principles of natural justice, is null and void inasmuch as the petitioner was not afforded any opportunity to show cause and no show cause notice was ever served on him.

(ii) In the application Form A for the grant of licence the petitioner disclosed his permanent address of Village Kanihar, District Banda and present address of Village Parwe-jabad, District Allahabad and no fraud was played by him on obtaining the licence on wrong address and he did not suppress any material information and did not give any wrong information at the time of applying for the grant of licence, and as such the order cannot be sustained under c). (c) of sub-sec. (3) of S. 17 of the Arms Act, 1959 (hereinafter referred to as 'the Act').

(iii) There was no material whatsoever against the petitioner whereupon any opinion could be formed that the cancellation of licence is necessary for security of public peace and for public safety which fact is apparent from the impugned order which contains no reason as to how the cancellation was considered necessary for the security of public peace or for public safety and the order cannot be sustained under cl. (b) of sub-sec. (3) of S. 17 of the Act.

6. The first ground raised by the petitioner has got substance. The petitioner, in paragraph 5 of the petition, has clearly stated that no show-cause notice was issued and served upon the petitione and the licence was cancelled behind his back without affording any opportunity. Since no counter affidavit has been filed, the fact remains unrebutted and has to be accepted as correct. Apart from it, the

fact that the petitioner was not served with any show cause notice is also substantiated from the order of cancellation which itself recites that the enquiry officer has given the report that the notice was sent to the Superintendent of Police, Banda, but could not be served on the petitioner. Thus, it is [clearly established that the petitioner was not (served with any show-cause notice. Thenature of power which is conferred under sub-s. (3) of S. 17 of the Act and the manner of exercise of that power creates a right on the licensee to establish non-existence of the ground. Since the petitioner was not served with a show cause notice and he was not apprised of the grounds of cancellation of licence he was deprived of the opportunity apparently to establish non-existence of the grounds.

7. Apart from what has been stated above, the observance of principle of natural justice is a condition of procedural reasonableness. In the present case, it is established that the petitioner was not served with show-cause notice and he was not made known about the fire arm licence cancellation proceedings, nor made known about the ex parte report of the Sub Divisional Magistrate, Karchana, and nor made known about the application of Sri Mahendra Pratap Singh. Therefore, the procedural requirement of reasonableness was also breached in this case.

8. In these circumstances, I come to the conclusion that the principles of natural justice were violated and the requirement of procedural reasonableness were not observed in this case. The order of cancellation of fire arm licence of the petitioner was bad.

9. The second point raised by the learned counsel for the petitioner has also got substance. The petitioner, in paragraph 1 of the petition, has clearly stated that he is a law abiding citizen and originally belonged to village Kanihar, P. S. Mau District Banda and presently residing in Village Parwejabad, P. S. Bara, District Allahabad. Further, in para 2 of the petition he states that in the year 1974-75 he applied for grant of a licence and in the application gave his permanent address of village Kanihar, District Banda and present address of village Parwejabad, District Allahabad and after enquiry the petitioner was granted the licence. Since no counter affidavit has been filed, these facts remain uncontroverted and have to be accepted as correct.

10. The fact that the show cause notice sent to the petitioner at his permanent address of Village Kanihar, Banda, through the Superintendent of Police, Banda, was not served on the petitioner, itself establishes that the petitioner was not residing there. The record does not show that any notice was sent to the petitioner at his address of Village Parwejabad, District Allahabad. The order only discloses that on enquiry, the Enquiry Officer came to know that the petitioner is residing in district Banda, but the order does not say that the petitioner is not residing in village Parwejabad. District Allahabad.

11. The application form A contains four parts. Part A relates to the identity of the applicant. The question is only of identity of a person. In the said form, the column No. 5 requires giving the present address and nearest police station. Column No. 6 requires giving permanent address and nearest police station. These two requirements demonstrate that a person can apply for a fire arm licence from any place, but he has to disclose in the application his permanent address as well. The petitioner, as per requirement, disclosed his permanent address as well as present address in the application form and from these facts it is established that the petitioner did not play any fraud and the licence was not obtained by him by suppression of material information or on the basis of wrong information.

12. The legal position is also clear that the Act does not lay down any restriction in the matter of grant of a licence to a person that the Licensing Authority of the place where the applicant permanently resides alone can grant the licence. The position is that the licence can be granted by the Licensing Authority of any district but in the application the applicant has to disclose his present as well as his permanent address. Thus, I find that the petitioner has not played any fraud and did not obtain the licence by suppression of material information or on the basis of wrong information, and as such the impugned order cannot be sustained under cl. (c) of sub-s. (3) to S. 17 of the Act.

13. In support of the third submission, learned counsel for the petitioner states that in para 6 of the petition the petitioner has stated that there was no allegation of misuse of the weapon or an iota of criminal incidence against the petitioner regarding the said weapon and the Licensing Authority erred in law in cancelling

the licence of the petitioner under cl. (b) of sub-s. (3) of S. 17 of the Act. The order of cancellation does not disclose any material whatsoever against the petitioner whereupon one could come to the opinion that there was any danger or threat to public peace or public safety necessitating the cancellation of fire arm licence. Mentioning of present and permanent addresses in the application, which is requirement under the prescribed form, could not be taken to be the material endangering the security of public peace or public safety, and no opinion can be formed in the absence of any material. The ground for cancellation of licence on danger to the public peace and public safety cannot be sustained as there existed no material. The cancellation of the licence of the petitioner is thus not covered under cl. (b) of sub-s. (3) of S. 17 of the Act and the order is illegal.

14. For the reasons stated above, the writ petition is allowed and the order of the Additional District Magistrate (Rural), Allahabad dated 1-1-1982 cancelling the fire arm licence of the petitioner No. 4015 and the appellate order dated 2-3-1982 passed by the Commissioner, Allahabad Division, Allahabad are hereby quashed. There will be no order as to costs.

15. Petition allowed.