

**AFR**

Neutral Citation No. - 2024:AHC-LKO:8776

**Court No. - 5****Case :-** WRIT - C No. - 1614 of 2023**Petitioner :-** Raj Kumar Gautam**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Home Lko. And 3 Others**Counsel for Petitioner :-** Pramod Kumar Shukla, Ashish Kumar Mishra, Pradeep Kumar**Counsel for Respondent :-** C.S.C.**Hon'ble Abdul Moin, J.**

1. Heard learned counsel for the petitioner and learned Standing counsel appearing on behalf of the State-respondents.

2. Instant writ petition has been filed praying for the following main reliefs:-

*"(i) Issue a writ order or direction in the nature of Certiorari quashing thereby the impugned order dated 26.03.2021 and Order dated 06.08.2022 passed by opposite party no. 2 & 3 which are annexed as Annexure No. 1 & 2 to this writ petition.*

*(ii) Issue a writ order or direction in the nature of mandamus commanding the opposite party no. 2 to 4 to revoke the suspension/revocation of the Arms License of the petitioner forthwith.*

*(iii) Issue a writ order or direction in the nature of Mandamus commanding the opposite party no. 2 to 4 to release the Arms/12 bore DBBL Gun No. 19536-BE2007 Katra Bazar, District Gonda which is surrendered at Police Station Katara Bazar, District Gonda since 08.01.2022 forthwith."*

3. The case set forth by the petitioner is that he was having an arms license which was issued to the petitioner on 17.12.2002. The arms license has been renewed from time to time the last renewal having been made upto 17.12.2025.

4. It is contended that on 20.10.2018, two FIRs have been lodged bearing Case Crime No. 357 of 2018 & 358 of 2019 under Sections 147, 148, 332, 153-A, 295-A, 504 & 506 I.P.C and Section 7 Criminal Law Amendment Act, 1972 against ten named persons and 40 to 50 unknown persons. However, the petitioner was not named.

5. Another FIR bearing Case Crime No. 359 of 2018 under

Sections 147, 148, 307, 332, 333, 336, 153-A, 323, 325, 504, 427 I.P.C read with Section 7 Criminal Law Amendment Act, 1972 and Section 3 (1) of the Public Properties Act, 1984, respectively had been lodged against the 35 named persons and 31 unknown persons. In the said FIR also, the petitioner was not named in the said FIR.

6. The further contention is that the authorities of Police Station Katra Bazar recommended the suspension and cancellation of the arms license of the petitioner. In pursuance thereof, a notice was issued to which the petitioner submitted his reply but the competent authority vide order dated 26.03.2021 revoked the arms license of the petitioner. Being aggrieved, the petitioner filed an appeal which has been rejected vide order dated 06.08.2022, a copy of which is annexure 2 to the writ petition. Being aggrieved by both the orders, the instant writ petition has been filed.

7. The argument of learned counsel for the petitioner is that it is settled proposition of law that an arms license cannot be cancelled on the basis of pendency of criminal proceedings.

8. Reliance has also been placed on a judgment of this Court dated 19.12.2022 passed in **Writ-C No. 7078 of 2004 Inre; Ram Pratap Singh Vs. State of U.P and Ors** wherein the said proposition of law has been laid down.

9. On the other hand, learned Standing counsel on the basis of averments contained in the counter affidavit argues that the arms license of the petitioner has not been cancelled solely on the ground of pendency of criminal proceedings against him. Learned Standing counsel states that the name of the petitioner does not find place in any of the FIRs which have lodged. However, in the instant case, the competent authority has

categorically recorded the conduct of the petitioner as finds place in the order impugned dated 26.03.2021 which has prevailed upon the authority to cancel the arms license of the petitioner upon a specific finding that continuance of the arms license with the petitioner would be detrimental to public peace and public safety. The said order has been upheld with the dismissal of the appeal vide order dated 06.08.2022 and there is no illegality or infirmity in the same. It is thus prayed that the writ petition deserves to be dismissed.

10. Heard the learned counsels appearing on behalf of the contesting parties and perused the records.

11. From a perusal of records it emerges that the petitioner was having an arms license issued to him in the year 2002 which has been renewed upto 17.12.2025. The arms license has been cancelled after due notice to the petitioner on account of the reasons which emerge from a perusal of the order dated 26.03.2021.

12. It is the specific case of the learned counsel for the petitioner, to which there cannot be any dispute, that the arms license cannot be cancelled merely on the ground of pendency of criminal case(s).

13. However, a perusal of the order impugned would indicate that it is not only the criminal cases which have been considered rather the competent authority has categorically recorded the conduct of the petitioner which has led to the authority to come to the conclusion that continuance of the arms license with the petitioner would be detrimental for the security of the public peace and for public safety and hence he has cancelled the said license.

14. In order to appreciate the order of the competent authority

dated 26.03.2021 the Court may have to consider the provisions of the Arms Act, 1959 ( hereinafter referred to as "Act, 1959") which empowers the authority concerned to cancel the license.

15. In this regard, Section 17 of the Act, 1959 is reproduced below:-

***"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 be 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 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."*

16. From a perusal of Section 17 of the Act, 1959 it emerges that the licensing authority has been given the power to vary the conditions subject to which a license has been granted. The licensing authority, on an application of a holder of a license can also vary the condition of the license. The licensing authority has also been given the power under Sub section (3) of Section 17 of the Act, 1959 to suspend a license for such period as it thinks fit or revoke a license, where the licensing authority is satisfied that the holder of the license is prohibited by the Act, 1959 or by any other law from acquiring or having in his possession or carrying any arms or ammunition, or is of unsound mind, or is for any reason unfit for a license and if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the license or license has been obtained by the suppression of material information or on the basis of wrong information provided by the holder of the license or if any of the conditions of the license has been contravened or if the holder of the license has failed to comply with a notice requiring him to deliver up the license.

17. In the case in hand, it emerges that the licensing authority has categorically recorded in his order dated 26.03.2021, after considering the reply which has been filed by the petitioner, that on 15.09.2018, an order under Section 144 of the Cr.P.C had been issued in the area which is a sensitive area . The petitioner has been charged of having actively spread rumors and having

stood with his personal weapon along with various other persons and having instigated the villagers and stopped the traffic movement on the State highway and continued to remain on the spot from 12 mid night till 3 A.M. On 20.10.2018 during the religious festival he spread communal tension with the result that the District Magistrate himself went to the spot thrice at 8 PM, 10 PM and 11.30 PM but despite the request made by the District Magistrate for removal of the crowd and he having informed the petitioner about Section 144 being in force, the petitioner continued to stand at the spot and also instigated the crowd. This conduct of the petitioner has been found to be of such nature as being threat to public peace and for public safety which entailed the competent authority to cancel the arms license.

18. For the sake of convenience, the relevant portion of the impugned order dated 26.03.2021 indicating the conduct of the petitioner is being reproduced below:-

*विपक्षी को नोटिस निर्गत कर यह आरोप लगाया गया था कि जनपद गोण्डा में विगत इतिहास रेखांकित करता है कि दशहरा/दुर्गापूजा के अवसर पर हिन्दू मुस्लिम धार्मिक आधार पर साम्प्रदायिक तनाव रहता है। विगत में जनपद के विभिन्न भागों में साम्प्रदायिक आधार पर उत्पन्न वैमनस्य के चलते हिंसक घटनायें हुई हैं। इतिहास को देखते हुए वर्ष 2018 में सम्पन्न होने वाले दशहरा, दुर्गापूजा व दुर्गापूजा के उपरान्त मूर्ति विर्सजन के कार्यक्रम शान्तिपूर्ण ढंग से सम्पादित हो इसके लिए जिलाधिकारी के आदेश संख्या 372/जे०ए० (धारा-144)/2018 दिनांक 15.09.2018 के माध्यम से सम्पूर्ण क्षेत्र में भारतीय दण्ड संहिता की धारा 144 के तहत आधिकारिक घोषणा की गयी थी। आपको जनपद का एक सम्भ्रान्त नागरिक मानते हुए व आपकी सामाजिक क्रिया-कलापो की साफ सुथरी धर्मनिर्पेक्ष छवि के सापेक्ष आपको जिला मजिस्ट्रेट कार्यालय से दिनांक 10.12.2002 को शस्त्र अनुज्ञप्ति संख्या 342 स्वीकृत व निर्गत किया गया था। एक सम्भ्रान्त और अच्छे नागरिक होने के नाते आपसे यह अपेक्षा थी कि इस प्रकार की साम्प्रदायिक तनाव की घटना के समय आप प्रशासन का सहयोग करते हुए लोक प्रशान्ति क्षुब्ध करने वाले तत्वों के विरुद्ध जनमत तैयार करते व लोक प्रशान्ति बनाये रखने का प्रयास करते, परन्तु आप अपने नागरिक कर्तव्यों के निर्वहन में पूर्णतया विफल रहे और आपने शासन व प्रशासन का साथ देने के स्थान पर कोरी अफवाह फैलाने वालों को रोकने के स्थान पर अफवाह फैलाने में बढचढ कर योगदान किया और लोक प्रशान्ति क्षुब्ध करने हेतु न केवल स्वयं अपने व्यक्तिगत हथियार सहित खड़े हुए वरन समस्त ग्रामवासियों को भी उकसाते हुए उन्हें ग्राम से गुजरने वाले स्टेट हाईवे के किनारे खड़ा करने हेतु प्रेरित किया व रात 12.00 बजे से 03.00 बजे तक वहीं भीड़ के साथ स्वयं*

मौजूद रहे। दिनांक 20.10.2018 को ग्राम बरौव में स्थापित दुर्गापूजा की मूर्ति विर्सजन को लेकर आप न केवल आवेशित हुए वरन आपने अपने अड़ोस-पड़ोस तथा समस्त ग्रामवासियों को साम्प्रदायिक आधार पर उकसाया। तत्कालीन जिला मजिस्ट्रेट द्वारा लगातार 3 बार 08 बजे रात्रि 10 बजे रात्रि व 11.30 बजे रात्रि स्वयं उपस्थित होकर आपको व आपके साथ एकत्र जन समूह, जो लाठी डण्डे से लैस थे, (जो कि धारा 144 के तहत पूर्ण प्रतिबन्धित था) को वहाँ से हटने का अनुरोध करने के बावजूद आप लगातार न केवल वहाँ बने रहे बल्कि उस आक्रोशित भीड़ की मोर्चाबन्दी में अपने असलहा सहित बढ़ चढ़कर भाग लेते हुए नेतृत्व प्रदान किया गया। इस दौरान आपने अपने शस्त्र के साथ मौके पर मौजूद रहकर भीड़ को भड़काने व उकसाने का कार्य किया, जो एक अच्छे नागरिक होने के नाते आपसे अपेक्षित नहीं था और जो धारा 144 सी०आर०पी०सी० का उल्लंघन व 188 आईपीसी के अन्तर्गत दण्डनीय अपराध है व आम्रस एक्ट की धारा 30 के विरुद्ध था। उपरोक्त आरोपों के सम्बन्ध में विपक्षी द्वारा कोई संतोषजनक उत्तर, साक्ष्य व गवाह प्रस्तुत नहीं किया गया है जिससे यह सिद्ध हो सके कि नोटिस में उल्लिखित आरोप सत्य नहीं हैं। पत्रावली पर नोटिस वापस लिए जाने का कोई कारण विद्यमान नहीं है। नोटिस पुष्टि किये जाने योग्य है। आयुध अधिनियम 1959 की धारा "17(3)(ख) में प्राविधान है कि लोक शान्ति की सुरक्षा के लिए या लोक-क्षेम की अनिवार्यता के सापेक्ष-(घ) अनुज्ञप्ति की शर्तों में से किसी का भी उल्लंघन किया गया हो। अनुज्ञप्ति को निलम्बित या प्रतिसंहत किया जा सकता है।"

पत्रावली पर उपलब्ध अभिलेखीय साक्ष्यों से स्पष्ट है कि विपक्षी स्वयं के सुरक्षार्थ प्रदान किये ये शस्त्र अनुज्ञप्ति के शर्तों का उल्लंघन किया गया है, जो लोक प्रशान्ति बनाये रखने के विरुद्ध है। किसी भी अनुज्ञप्ति धारक से इस प्रकार का आचरण न तो वांछनीय है और न ही विधि सम्मत। अतएव अद्योहस्ताक्षरी इस निष्कर्ष पर पहुँचता है कि अनुज्ञापि उपरोक्त को स्वीकृत किया गया अनुज्ञप्ति बने रहने योग्य नहीं है और न्यायहित में व बृहत्तर सामाजिक समरसता व लोक प्रशान्ति बनाये रखने हेतु ऐसा किया जाना अनिवार्य है।

19. Keeping in view the aforesaid conduct of the petitioner, the competent authority while exercising the power as vested with him under the provisions of Section 17 (3) (b) of the Act, 1959 has revoked the license of the petitioner.

20. Interestingly a bald averment has been made in paragraph 15 of the writ petition of the petitioner not being present on the spot. However, there is no averment in the petition as to why the authorities concerned would specifically name the petitioner while passing the order impugned. No malafides have been alleged in the writ petition nor any officer has been impleaded by name. Moreover, the order impugned itself indicates that the order was being passed after considering the reply of the

petitioner which was not found to be satisfactory and no witness or evidence was produced by petitioner in this regard. Thus, the order impugned indicates objective satisfaction of the authority concerned while cancelling the arms license of the petitioner. Thus, the Court has no option but to treat the version as has been indicated by the authorities in the order dated 26.03.2021 to be correct.

21. So far as the judgment of this Court in the case of **Ram Pratap Singh (supra)** is concerned, the Court may only indicate that there cannot be any cancellation of the arms license on account of pendency of the criminal case. There cannot be any quarrel to the aforesaid proposition of law as enunciated by this Court even on earlier occasion. However, as already indicated above, this is not the case in which arms license of the petitioner has been cancelled solely on the ground of pendency of criminal cases or lodging of FIR rather the entire conduct of the petitioner has been gone into objectively and given in detail in the order impugned dated 26.03.2021.

22. Moreover, the judgment of **Ram Pratap Singh (supra)** would have no applicability inasmuch as the authority concerned has not cancelled the license of the petitioner merely on the ground of pendency of criminal case rather perusal of the order impugned would indicate that the competent authority has applied his mind to the reply filed by the petitioner meaning thereby that there has been objective consideration of all facts by the authority concerned and after considering the same, the authority has decided that continuance of arms license with the petitioner would cause threat to public peace and security and considering this aspect, the arms license of the petitioner has been revoked. These all are the findings of fact and in the



absence of anything to show that the aforesaid inference drawn by the competent authority is per se illegal, the Court does not find any reason to interfere with the same as if sitting in appeal, since the scope of judicial review in such matters in exercise of power under Article 226/227 of Constitution of India is very limited and narrow.

23. This aspect of the matter has been considered by this Court in the case of **Thakur Das Yadav Vs. State of U.P and Ors** passed in **Writ-C No, 55352 of 2009** decided on **16.07.2024**. For the sake of convenience, the relevant observations of this Court in the case of **Thakur Das Yadav (supra)** are reproduced below:-

*8. In D. N. Banerji Vs. P. R. Mukherjee 1953 SC 58 the Court said: "Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under articles 226 and 227 of the Constitution to interfere."*

*14. In Ajaib Singh Vs. Sirhind Co-operative Marketing cum Processing Service Society Ltd., (1999) 6 SCC 82, the Court has held that there is no justification for the High Court to substitute its view for the opinion of the Authorities/ Courts below as the same is not permissible in proceedings under Articles 226/227 of the Constitution.*

*16. In Indian Overseas Bank Vs. Indian Overseas Bank Staff Canteen Workers' Union (2000) 4 SCC 245, the Court observed that it is impermissible for the Writ Court to reappraise evidence liberally and drawing conclusions on its own on pure questions of fact for the reason that it is not exercising appellate jurisdiction over the awards passed by Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose ordinarily should be considered to have become final. The same cannot be disturbed for the mere reason of having based on materials or evidence not sufficient or credible in the opinion of Writ Court to warrant those findings. At any rate, as long as they are based upon some material which are relevant for the purpose no interference is called for. Even on the ground that there is yet another view which can reasonably and possibly be taken the High Court can not interfere.*

*22. In Abdul Razak (D) through Lrs. & others Vs. Mangesh Rajaram Wagle and others (2010) 2 SCC 432, Court reminded that while exercising jurisdiction under Article 226 or 227, High Courts*

*should not act as if they are exercising an appellate jurisdiction.*

*24. In Commandant, 22nd Battalion, CRPF and others Vs. Surinder Kumar (2011) 10 SCC 244, Apex Court referring to its earlier decision in Union of India Vs. R.K. Sharma (2001) 9 SCC 592 observed that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Articles 226 or 227.*

24. Accordingly, keeping in view the aforesaid discussion more particularly seeing the conduct of the petitioner as stands recorded in the order dated 26.03.2021, no case for interference is made out with the orders impugned. Accordingly, the writ petition is dismissed.

**Order Date :-** 30.1.2024

Pachhere/-