2025:AHC:207131

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 21944 of 2022

Yogendra Prasad

.....Petitioner(s)

Versus

State Of U.P. And 4 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Kailash Singh Kushwaha, Ramesh Chandra Yadav
Counsel for Respondent(s)	:	C.S.C.

Court No. - 29

HON'BLE KUNAL RAVI SINGH, J.

1. Sri R.C. Yadav, learned counsel for the petitioner and learned Standing Counsel for the State respondents.

2. The present writ petition has been filed inter-alia for the following relief :

> *"(i) Issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 13.07.2022 passed by Commissioner, Varanasi Division, Varanasi in Appeal bearing Case No.1329/2021, Computerized Case No.202114000001329, Yogendra Prasad Vs. State of U.P., under Section 18 of the Indian Arms Act and the order dated 09.08.2021 passed by District Magistrate, Ghazipur in Case No.D-202014290000593 under Section 17(3) of the Indian Arms Act, State of U.P. Vs. Yogendra Prasad (Annexure No.9 and 6 to the writ petition respectively) with all its consequential effects.*
>
> *(ii) Issue a writ, order or direction in the nature Mandamus directing the respondents authorities to hand over the arms licence and arms to the petitioner for security of his life and property."*

FACTS:

3. In brief, the facts are that the petitioner was granted arm licence for N.P.B. Revolver .32 bore bearing no.F.G.42495/2005 vide Licence No.1821/P-II dated 16.07.2005, which was renewed from time to time by the competent authority and was valid up to 14.09.2020. Notice dated 22.09.2020 was issued by the District Magistrate, Ghazipur based on the report of the S.H.O., Police Station Mohammadabad, District Ghazipur. In

the said notice, it was directed that the licence of the petitioner was suspended with a direction to deposit his weapon with the police station and a further direction was issued for him to appear before the court of District Magistrate, Ghazipur and submit his reply. The petitioner replied to the aforesaid notice in detail and denied all the allegations levelled against him in the notice. The petitioner in his reply specifically stated that he has never used the weapon in contravention of any conditions of the licence and he has always used his weapon for his personal safety. Furthermore, there is no criminal case pending against the petitioner and the factum of celebratory firing in marriage in the public occasions has never taken place. The weapon of the petitioner was also taken in possession by SHO, Police Station Mohammadabad, Ghazipur on 17.08.2020 in pursuance of the notice dated 22.09.2020. Ultimately, by means of order dated 09.08.2021, the gun licence of the petitioner was cancelled by District Magistrate, Ghazipur. Aggrieved by the said order, cancelling his licence, the petitioner has preferred an appeal before the Commissioner, Varanasi, Division Varanasi. The appeal also came to be dismissed by means of order dated 13.07.2022 passed by Commissioner, Varanasi Division Varanasi. Aggrieved by both the orders cancelling the licence, the petitioner has preferred the present writ petition challenging the said orders is per se arbitrary and illegal.

SUBMISSIONS:

4. Learned counsel for the petitioner has contended that the order dated 09.08.2021 cancelling his gun license is based on surmises and conjectures and, as such, is per se arbitrary and illegal. He has referred to the specific ground taken in the impugned order, in which, Rule 32 under the Arms Rules, 2016, has been invoked to cancel the licence of the petitioner and seize the fire arm forthwith. He submits that a bare perusal of Rule 32 would show that nothing as contemplated in the said Rule has been violated by the petitioner and as such, Rule 32 is inapplicable in the present case of the petitioner. He further submits that on 17.08.2020, the petitioner was called to the concerned police station and read out Order No.Memo/Reader/2020 dated 22.09.2020 in Case No.D202014290000593/2020 and in pursuance of the same, the cartridges and the weapon were taken in police custody. He submits that the said custody of the weapon and cartridges is also against Rule 32 as it is only against the cancellation of the licence, the said process can be adopted. He further submits that the order of the Commissioner is similar to the order passed by the District Magistrate and both the orders

clearly show that there is no appreciation of the material facts as well as of the reply of the petitioner before passing of the impugned orders.

5. Per contra, learned Standing Counsel stated that the order dated 09.08.2021 was passed after considering all the material records of the case as well as the police report on the basis of which, the show cause notice was issued. He further submits that the order dated 09.08.2021 has been upheld by the appellate court namely, the Commissioner, in Case No.1329 of 2021 by means of order dated 13.07.2022 and, as such, the impugned orders require no interference from the Court and the writ is liable to be dismissed.

ISSUES INVOLVED:

6. Heard the rival submissions and perused the record. The following issues are framed for adjudication of the present dispute:

(i) Whether the petitioner can be penalised with cancellation of the license and seizure of weapon without meeting the essential requirements of Rule 32?

(ii) Whether the cancellation of the gun license of the petitioner is justified by invocation of Rule 32 of the Rules 2016?

ANALYSIS:

7. Looking into the facts and circumstances of the case and from perusal of the record, it is clear that the cancellation of the licence took place on the basis of Rule 32 of the Arms Rule, 2016 and the impugned order states that the licence holder has committed certain acts, which are in violation of Rule 32 as a result of which, the licence of the petitioner has been cancelled. Before appreciating the ground on which the licence can be cancelled under Rule 32, the relevant Rule 32 is being reproduced herein :

"**32. Restrictions on carrying of firearm in public place.**-*(1) No person shall carry a firearm in a public place unless the firearm is carried –*

(a) in the case of a handgun –

(i) in a holster or similar holder designed, manufactured or adapted for the carrying of a handgun and attached to his person; or

(ii) in a rucksack or similar holder; or

(b) in the case of any other firearm, in a holder designed, manufactured or adapted for the carrying of a firearm.

(2) A firearm contemplated in sub-rule (1) must be completely covered and the person carrying the firearm must be able to exercise effective control over such firearm.

(3) Brandishing or discharge of firearms or blank-firing firearms in any public place or a firearm free zone is strictly prohibited.

(4) Any violation of this rule shall be liable to revocation of the licence and seizure of the firearm in addition to the penalty specified under the Act."

8. A perusal of the Rule 32 would show that it mentions restrictions on carrying of fire arm in public place and has a negative connotation that no person can carry a firm arm in public place unless the fire arm is carried in a holster or a holder of any other equipment i.e. designed, manufactured or adopted for carrying of a fire arm. Furthermore, sub-rule 3 of Rule 32 puts a prohibition on brandishing or discharging of fire arms or blank-firing fire arms in public place or firearm free zone and the consequences of such violation are the cancellation of the licence and seizure of the weapon.

9. In the order passed by the District Magistrate, 09.08.2021, the authority has relied upon Rule 32 of Arms Rule, 2016 to cancel the licence. Relying upon the fact that public firing or violation of any of the licensing conditions would render the licence to be cancelled, the authorities have relied upon the statements made by the petitioner that the cartridges were expended during cleaning and testing of the weapon and, as such, it is a violation of Rule 32. In this regard, the reply of the petitioner submitted in pursuance of notice dated 22.09.2022 is also to be considered in as much as in the reply specifically, the petitioner has submitted that the cartridges were expended only during testing and cleaning of the weapon. The petitioner has specifically denied that the petitioner has ever used the weapon for public firing in any wedding or any other public place.

10. From the reading of Rule 32, it is clear that before a licence can be cancelled under Rule 32, it is necessary that the authority forms an opinion as to whether any licensed fire arm was either not carried in the proper protective gear or was brandished, discharged or whether any blank firing took place in any public place or fire arm free zone. Such considerations and

opinions are sine qua non for invocation of Rule 32 under the Rules, 2016.

11. In the impugned order, such finding is clearly missing and as such, on this ground alone impugned order is liable to be quashed. Without clearly specifying as to which of the sub-rules under Rule 32 is being violated by the petitioner, the petitioner cannot be fastened upon the liability of cancellation of his licence and seizure of his weapon. Furthermore, from the perusal of the order passed by the District Magistrate, it is also clear that due appreciation of the reply submitted by the petitioner has also not been accorded by the District Magistrate before passing of the impugned order. The finding that the petitioner is not a person of good standing is also not borne out from the record.

12. The District Magistrate has not given any finding with regard to any of the conditions enumerated under Rule 32. It is specifically required under Rule 32 that either the weapon being carried in a holster or any equipment manufactured, designed to carry the same as required was not done so or if the weapon was discharged in any public place. There is no finding with regard to the essential ingredients of Rule 32, violation of which would allow the authority to pass an order for cancellation and seizure. As a result of this, the entire order is liable to be set aside.

13. The order of the Commissioner passed in Appeal No.1329 of 2021 dated 13.07.2022 has not considered the reply of the petitioner and has passed the order on mere surmises and conjectures. The appellate authority has also failed to indicate as to how Rule 32 is applicable in the present case and also failed to give a clear finding with regard to violations of any of the conditions as enumerated under Rule 32. The order is cryptic in this regard.

14. Since, both the orders are devoid of any findings as to the applicability of Rule 32, therefore, this Court is of the opinion that the orders are not passed in accordance with law and are arbitrary & perverse in law.

ANSWERS TO ISSUE (I) & (II):

15. The answer to issues frame above are as follows :

(i) Since the Authorities have failed to meet out the essential ingredients of Rule 32 of Rules, 2016, therefore, the petitioner cannot be penalized with cancellation of license and seizure of weapon.

(ii) On the basis of findings above, the invocation of Rule 32 to cancel the gun license of the petitioner is per-se illegal and both the orders are quashed.

RELIEF:

16. In the light of above discussion, this Court is of the considered opinion that the orders dated 09.08.2021 and 13.07.2022 are liable to be set aside and are hereby set aside. The writ petition stands allowed. As a result of writ petition being allowed, the licence of the petitioner is restored, if it is valid today, and the seized weapon and the cartridges are to be returned forthwith upon the valid licence being produced by the petitioner.

17. The instant writ petition stands **allowed** in light of the above said directions.

November 19, 2025
Priya

(Kunal Ravi Singh,J.)