

Mohammad Kasim Khan vs State Of U.P. And 3 Others on 2 January, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?A.F.R.

Neutral Citation No. - 2025:AHC:400

Court No. - 33

Case :- WRIT - C No. - 9562 of 2023

Petitioner :- Mohammad Kasim Khan

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Priti Singh, Satyendra Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Vikram D. Chauhan, J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State.
2. Learned counsel for the petitioner submits that petitioner's full name is Mohammad Kasim Khan, however, in the writ petition by mistake Mohammad Kasim has been stated as name of the petitioner.
3. Learned counsel for the petitioner submits that in this respect array of parties may be permitted to be corrected.
4. Learned Standing Counsel has no objection to the same.
5. Accordingly, learned counsel for the petitioner is permitted to correct the name of the petitioner as Mohammad Kasim Khan in place of Mohammad Kasim during course of the day.
6. The writ petition is filed with the following prayer:

"Issue a writ, order or direction in the nature of certiorari quash the order dated 16.11.2022 in Case No. 1692 of 2019 passed by District Magistrate, Siddharth Nagar i.e. respondent no.3.

Issue a writ, order or direction in the nature of certiorari quash the order dated 11.01.2023 in Case No. 714 of 2022 passed by Commissioner Basti Region, Basti i.e. respondent no.2.

Issue a writ, order or direction in the nature of mandamus directing the concerned respondents to renew the gun licence of the petitioner."

7. It is submitted by learned counsel for the petitioner that petitioner is a arms licence holder which was granted in the year 2009. It is submitted that arms licence of the petitioner has been cancelled by the impugned order dated 16.11.2022 on the ground that criminal cases being Case Crime No. 152 of 1998, Case Crime No. 187 of 1998, Case Crime No. 323 of 1998, Case Crime No. 177 of 1999, Case Crime No. 471 of 2000, Case Crime No. 613 of 1998 and N.C.R. No. 26 of 1999 were pending against petitioner and at the time of filing of application for grant of arms licence, same were not disclosed by petitioner.

8. It is submitted by learned counsel for petitioner by referring to para-11 of writ petition that in criminal cases which were lodged prior to filing of the application for grant of arms licence, acquittal was recorded in favour of the petitioner details of which has been stated in para-11 of the writ petition.

9. Learned counsel for the petitioner has drawn attention of the Court to para-12 of the counter affidavit filed by learned Standing Counsel to submit that event the factum with regard to acquittal has narrated in para-11 of the writ petition has not been denied by the State. Further, by referring to The Arms Rules, 1962 it is submitted that the only requirement in the application form for grant of arms licence was that the applicant was required to disclose whether the applicant has been convicted for any offence and has been sentenced. Learned counsel for the applicant submits that as per Arms Rule, 1962, in the application form there was no column with regard to disclosure of previous cases in which acquittal has been recorded. He submits that even otherwise once the acquittal has been recorded then the same relates back to the date of FIR and as such under law it would be treated that no offence was committed by applicant as such there cannot be any concealment of fact.

10. Learned counsel for the petitioner submits that appellate authority and the arms licence cancelling authority has not considered these aspects of the matter and have cancelled the licence on non-existing grounds. He submits that order of appellate authority dated 11.01.2023 is an order passed in a mechanical manner and is illegal.

11. Learned Standing Counsel has opposed the writ petition and submits that arms licence of the petitioner has been cancelled as the petitioner has obtained licence by concealing the fact of pendency of criminal cases which have been stated in the order dated 16.11.2022. Learned Standing

Counsel further does not dispute the fact that all the cases were prior to the application being filed by the petitioner for grant of arms licence. Learned Standing Counsel also could not dispute the fact that in the criminal cases lodged against petitioner acquittal has been recorded in favour of the petitioner.

12. In the present case, it is to be seen that licence was granted in the year 2009 and at the relevant time Arms Rules, 1962 was in operation. Learned counsel for the petitioner has relied upon form-A which has been appended to Arms Rules, 1962.

13. Clause-9 of the aforesaid form provides for disclosure of the particulars where the applicant has been convicted for an offence and has been sentenced. Relevant portion of Form-A is quoted herein below:

"9. Where the applicant has been:

(a) convicted if so, the offence (s), the sentence and date of sentence;

(b) ordered to execute a bond under Chapter VIII of Code of Criminal Procedure, 1973 (2 of 1974) for keeping the peace or for good behaviour-if so, when and for what period;

(c) prohibited under the Arms Act, 1959, or any other law from having the arms/ammunition."

14. It is to be seen that in the aforesaid Form-A details of the conviction and sentence recorded against petitioner are required to be disclosed. Learned Standing Counsel could not point out any clause in the form which would require the petitioner to disclose particulars of the cases in which acquittal had been recorded in favour of the petitioner. Learned Standing Counsel further could not dispute the fact that acquittal has been recorded prior to the application being filed by the petitioner for grant of arms licence in the year 2009. Once the acquittal has been recorded in favour of the petitioner then under law it cannot be said that petitioner has not disclosed the same as the relevant Form-A does not require the disclosure of the previous criminal cases in which acquittal has been recorded. The licencing authority and the appellate authority has not considered these aspect of the matter and have in cursory manner passed the impugned orders which is not acceptable under law.

15. Accordingly, the writ petition is allowed. The impugned order dated 1.11.2022 passed by District Magistrate, Siddharth Nagar and order dated 11.01.2023 passed by Commissioner, Basti Region, Basti are hereby quashed. The arms licence of the petitioner is hereby restored, however, at the time of renewal of licence of the petitioner, the licencing authority would be at liberty to examine the conduct of the petitioner from the date of cancellation of arms licence till today and thereafter assess, as to whether, renewal can be granted or not.

Order Date :- 2.1.2025 S.Prakash