

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19226 of 2014

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Siya Ram Rai S/o Kedar Nath Rai, resident of Village- Tiway, P.S. - Rajpur
District- Buxar.

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Department of Home, Govt. of Bihar, Patna.
2. The Commissioner, Patna Division Patna.
3. The District Magistrate, Buxar.
4. The Superintendent of Police, Buxar.
5. The S.D.O. Buxar.
6. The Officer-in-Charge, Rajpur Police Station- Rajpur District - Buxar.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Bishwa Nath Chaudhary, Advocate
For the Respondent/s : Mr. G.P. OJHA, G.P.-22

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 15-01-2015

Heard Mr. Bishwa Nath Chaudhary, learned counsel
appearing on behalf of the petitioner and learned counsel for the State.

With the consent of the parties the writ petition has been
heard on merits and is being finally disposed of at the stage of
admission itself, by this judgment.

The petitioner by way of this writ petition has questioned
the order dated 2.8.2014 passed by the licensing authority cum the
District Magistrate, Buxar in Arms Case No. 79 of 2008 whereby the
application filed by the petitioner for grant of arms license in respect
of Non Prohibited Bore ('N.P.B.' in short) rifle has been rejected *inter*

alia on grounds of absence of threat perception. The order is impugned at Annexure-8 to the writ petition.

Facts of the case briefly stated is that the petitioner applied for grant of arms license in respect of his N.P.B. rifle in the year 2007, a copy of which is placed at Annexure-1 to the writ petition. The application of the petitioner was duly recommended by the Station House Officer of the local police station who has categorically mentioned that the petitioner does not hold any other license and that his house and property lies within a criminal infested region. The recommendation made by the Station House Officer of the local police station was duly forwarded by the Superintendent of Police, Buxar to the District Magistrate, Buxar, the licensing authority on 26.5.2008, a copy of which is placed at Annexure-3. The application filed by the petitioner was also duly recommended by the Sub-Divisional Officer, Buxar placed at Annexure-3/A. Despite the circumstances, the District Magistrate, Buxar vide order passed on 11.9.2008 rejected the application on grounds of absence of threat perception to the petitioner and which order is placed at Annexure-4. The order was questioned by the petitioner before the appellate authority being the Commissioner, Patna Division in Arms Appeal No. 438 of 2008 and the appellate authority taking note of the police report as also the circumstances discussed therein that the house and



property lies within a criminal infested area required a re-consideration of the matter by the licensing authority and the matter was remitted back for disposal within six months. The appellate order is dated 14.9.2010 and upon remand a fresh report was called for by the District Magistrate, Buxar from the Superintendent of Police who again reiterated nothing adverse against the petitioner vide letter dated 20.12.2011 but despite these circumstances it took three years for the District Magistrate, Buxar to again reject the application of the petitioner on the self same grounds regarding absence of threat perception and this time the District Magistrate has relied upon a guideline issued by the Government of India in its Ministry of Home Affairs dated 31st March, 2010 which in its Clause-II requires the licensing authority to also bear in mind any threat perception suffered by an applicant while granting licenses. Relying on the said guidelines that the District Magistrate has again rejected the prayer of the petitioner by the order impugned and being aggrieved the petitioner is before this Court.

The only issue which requires consideration by this Court is whether in view of the police report submitted by the local police station at Annexure-2 with no adverse recommendation by the Superintendent of Police, Buxar as manifest from the letter dated 26.5.2008 of the Superintendent of Police reiterated again at the stage



of consideration of the matter on remand dated 20.12.2011 placed at Annexure-7, as well as considering the circumstances discussed by the appellate authority to remand the matter for re-consideration by the licensing authority, whether the order of rejection on the grounds of absence of threat perception relying upon the guideline of the Government of India in its Ministry of Home Affairs dated 31.3.2010, is sustainable.

Section 13 of the Arms Act provides for grant of license and creates no such categories or classification as a pre-condition to filing of such application that the applicant should be facing imminent danger to his life. Section 13 is a legal right vested in a citizen of this country to apply for a license without any pre-conditions and even when the discretion is vested in the District Magistrate under Section 14 of the Act to refuse the same, the field is clearly described therein. The provisions of Section 14 makes it eloquent that absence of perceived threat is no condition to refuse a license. Even the circular dated 31.3.2010 relied upon by the District Magistrate issued by the Government of India does not create any bar. Paragraph ii(a) of the circular in fact merely provides that applications from persons who have perceived threats may be considered. Such requirement in no manner would mean or can be interpreted to exclude such persons who do not face any such threat for the simple reason that any such condition

being imposed through a circular of the department, would be contrary to the statutory provisions.

Thus where neither Section 13 creates any pre conditions that an applicant should establish imminent danger to his life or perceived threat before he can apply for grant of license and in absence of any such provision in Section 14 which would disentitle any such applicant having no imminent danger to life to grant of arms license, the order impugned rejecting the prayer of the petitioner cannot be upheld and is accordingly set aside. In fact this issue already has been deliberated before this Court and stands answered in the judgment reported in **2007(4) BBCJ 244 (Amrendra Kumar Singh vs. State of Bihar)**.

For the reasons aforementioned, the order dated 2.8.2014 passed by the District Magistrate, Buxar in Arms Case No. 79 of 2008 is set aside. The licensing authority i.e. the District Magistrate, Buxar is directed to consider the case of the petitioner and pass a fresh order within three months from the date of receipt / production of a copy of this order bearing in mind the observations made hereinabove.

The writ petition is allowed.

(Jyoti Saran, J)

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