

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.286 of 2015

=====

Sushil Kumar Singh, son of Late Sambhu Nath Singh, resident of Village-
Mathurapur, Police Station - Bidupur, District - Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Home Department, Govt. of Bihar, Old Secretariat, Patna.
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate, Vaishali.
4. The District Arms Magistrate, Vaishali.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Dwivedy Surendra
Mr. Phulena Ray

For the Respondent/s : Mr. Amit Kumar Anand, AC to GP-15

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 09-03-2015

Heard the parties.

With the consent of the parties this writ petition has
been taken up for final disposal at the stage of admission itself.

The petitioner is aggrieved by the order dated 28.2.2013
passed by the District Magistrate, Vaishali, whereby his application
for grant of arms licence stands rejected and which order stands
affirmed by the appellate authority under the Arms Act, 1959
(hereinafter referred to as 'the Act') and 'the Rules' framed
thereunder who, in the present case is the Commissioner, Tirhut
Division, Muzaffarpur, who vide order passed on
25.8.2014/15.9.2014 in Arms Appeal No.147 of 2013 has dismissed
the appeal and affirmed the order passed by the District Magistrate.



The facts of the case briefly stated is that the father of the petitioner was holder of an arms licence and consequent upon his death on 27.10.2011 the fire-arm was deposited with the arms dealer. It is thereafter that an application was filed by the petitioner for grant of licence on 15.3.2012 and which has been rejected by the District Magistrate vide order dated 28.2.2013 as contained in Annexure-3 and which refusal has been affirmed by the appellate authority vide order passed on 25.8.2014/15.9.2014 as contained in Annexure-4 .

The only ground on which the application of the petitioner for grant of arms licence was rejected is the absence of threat perception. It is rather surprising that even when the issue that an application for grant of arms licence cannot be rejected only on account of absence of threat perception stands settled by a Bench decision of this Court reported in **2007 (4) BBCJ 244 (Amrendra Kumar Singh Vs. State of Bihar)** followed in subsequent orders of this Court but yet the statutory authorities under the Arms Act stand blindfolded to the judicial pronouncements.

It is not the case of the statutory authority that the petitioner was found ineligible on either of the counts as provided under section 14 of 'the Act' which lists down the grounds for refusal of licence. On the contrary the District Magistrate in a four



line order passed on 28.2.2013 placed at Annexure-3 has rejected the application on the sole ground that there is no covert/overt threat faced by the petitioner or his family members and such order which is dehors the statutory provisions has been mechanically affirmed by the appellate authority.

The only issue which requires consideration by this Court is whether in absence of any adverse recommendation against the petitioner from any quarters of the district administration on his application for grant of arms licence, the orders impugned can be upheld which rests exclusively on absence of threat perception to the petitioner or his family.

Section 13 of 'the Act' provides for grant of licence and creates no such categories or classification as a pre-condition for filing of such application that the applicant or his family members 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 licence without any pre-condition and even when the discretion is vested in the licensing authority i.e. the District Magistrate under section 14 of 'the Act' to refuse a licence, the field is clearly described therein. The provision of section 14 makes it eloquent that absence of perceived threat is no condition to refuse a licence.

Thus where neither section 13 creates a pre-condition

that an applicant should establish imminent danger to his life or perceived threat before he can apply for grant of licence and in absence of any such provision in section 14 which would disentitle any such applicant for grant of arms licence the order passed by the licensing authority as affirmed by the appellate authority cannot be upheld.

For the reasons aforementioned, the order dated 28.2.2013 passed by the District Magistrate, Vaishali as contained in Annexure-3 as well as the order passed by the Commissioner, Tirhut Division, Muzaffarpur in Arms Appeal No.147 of 2013 dated 25.8.2014/15.9.2014 as contained in Annexure-4 are set aside. The matter is remitted back to the District Magistrate, Vaishali to consider the case of the petitioner and pass a fresh order in accordance with law within a period of three months from the date of receipt/production of a copy of this order bearing in mind the observations of this Court made hereinabove.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

U			
---	--	--	--