

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11586 of 2015

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Shashikant Singh, Son of Dev Sharan Singh, Resident of village- Machhgara,
Police Station- Baniyapur, District- Saran at Chapra.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar.
2. The Divisional Commissioner, Saran at Chapra.
3. The District Magistrate, Saran at Chapra.
4. The Superintendent of Police, Saran at Chapra.
5. Sub-Divisional Magistrate cum Sub-Divisional Officer, Sadar, Chapra.
6. The Arms Magistrate, Saran at Chapra.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Choudhary Shyam Nandan, Advocate

For the Respondent/s : DR. A.K. Upadhyaya, SC-20

Mr. Naresh Prasad, AC to SC-20

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT

Date: 05-10-2015

Heard learned counsel for the petitioner and the State.

This writ application was filed after serving a copy upon
the State on 21.07.2015, however, no counter affidavit has been filed
till date.

Learned counsel appearing for the State seeks
adjournment for filing counter affidavit, however, in view of nature of
order which is proposed to be passed in this case, the same is being
considered without waiting for filing of the counter affidavit.

The petitioner is aggrieved by the order dated 2.09.2009
passed by the District Magistrate-cum-Licensing Authority, Saran at



Chapra (respondent no.3) refusing arms licence to the petitioner. He also challenges the appellate order dated 9.06.2015 as contained in Annexure-8 passed in Arms Appeal Case No.121/2009 by the Commissioner, Saran Division, Chapra by which he has upheld the order passed by the District Magistrate, Saran at Chapra and dismissed the appeal being devoid of any merit.

It is urged on behalf of the petitioner that when the matter was not being disposed of by the Licensing Authority, CWJC No.8285/2005 came to be filed by him, which was disposed of vide order dated 20.01.2009 (Annexure-4) by a Single Bench of this Court directing the District Magistrate to take a decision upon the application of the petitioner. Thereafter, the impugned order has been passed.

It is contended that the impugned order is unreasoned one and thus, is fit to be set aside.

It is contended on behalf of the State that the appellate order has also been passed on the pretext that it is the subjective satisfaction of the Licensing Authority which is of prime consideration for granting or refusing arms licence and, as such, the order passed by the Licensing Authority does not require to be interfered with and that the petitioner could not give convincing reply to the District Magistrate.



However, from perusal of the order passed by the District Magistrate, it appears that it has been casually stated that, during the interview, he could not answer the questions asked by him in satisfactory manner. He has neither pointed the questions which were asked nor had he disclosed as to what answers were given by the petitioner. That apart, it has also been stated that neither he could say anything regarding any threat perception nor the police report speak about it and, as such, he is not required to be granted licence.

In my view, the aforesaid order cannot be sustained in law. If the statutory authority is going to reject the application of a person for grant of arms licence, he has to comply the provisions contained in Section 14 of the Arms Act, 1959 (hereinafter referred to as “the Act” and has to record reasons. Merely a bald statement has been made that the petitioner could not answer the question satisfactorily. If the order is challenged before the superior authority then it would be impossible to ascertain as to what were the questions which were asked from the petitioner and what were the replies which were given by him for coming to the conclusion that the same were not tenable in law. So far the threat perception is concerned, in my view, threat perception does not mean that the applicant should suffer actual threat upon his life or there should be an overt act upon him for entitling him for grant of arms licence. Mere apprehension of threat



would also be enough. In this regard, reference is made to a decision of this Court dated 11.08.2015 rendered in ***CWJC No.18535 of 2011 (Manish Kumar Vs. The State of Bihar and Ors.) and other analogues matters*** holding that lack of production of any documentary or positive evidence cannot form a ground for refusal of licence by the Licensing Authority as neither Section 13 of the Act speaks that at the time of making an application for grant of arms licence, the applicant should be ready with the documentary evidence regarding any threat perception upon him nor does the Section 14 of the Act disclose it as one of the grounds for refusal of arms licence.

Accordingly, this writ application succeeds. The impugned orders are quashed and set aside. The matter is remitted back to the Licensing Authority to take a fresh decision in accordance with law within a period of four months from the date of receipt/production of a copy of this order.

However, while dealing with the matter, the Licensing Authority must peruse the aforesaid decision of this Court and also the grounds laid down in Sections 13 and 14 of the Act for grant or refusal of arms licence.

It is made clear that in the impugned order passed by the Licensing Authority no other ground has been stated by him disentitling the petitioner from grant of arms licence except that he

could not answer the queries of the Licensing Authority or he could not produce positive evidence regarding any threat perception upon him.

However, this order would not refrain the Licensing Authority from seeking a fresh police report in the matter to ensure that any subsequent event or act of the petitioner after passing of the impugned order has not incurred any disqualification upon him for holding the arms licence.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

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