

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1689 of 2014

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Raj Kumar Singh S/O Sri Shambhu Singh At Present Residing At House No. A/4,
Mohalla- Chatterjee Lane, Ward No. 6D, P.S- Gardanibagh, District- Patna
..... Petitioner

Versus

1. The State Of Bihar Through Chief Secretary Of Bihar, Government.
2. The District Magistrate, Patna.

..... Respondents

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Appearance :

For the Petitioner : Mr. DR. AJAY SHANKAR RAJOO, Advocate
For the State : Mr. Krishna Kumar, AC to GP 26

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 14-09-2015

Heard learned counsel for the petitioner and the State.

This writ application was initially filed for a direction to
the licensing authority to consider his application dated
09.02.2011 filed for grant of licence for N.P. bore pistol as the
same has remained pending for about three years without passing
any order.

On the last occasion, learned counsel for the State had
submitted, on instruction, that the order rejecting the licence of
the petitioner was passed even prior to filing of the writ petition in
the year 2014 and on that submission having been made, by order
dated 25.08.2015, this Court had granted adjournment to enable
learned counsel for the State to seek instruction and file counter
affidavit, however, it was clearly directed that the counter
affidavit must disclose the fact that if the order rejecting the



application of the petitioner was already passed by the licensing authority, whether it was communicated to the petitioner or not should also be stated and if it was communicated to the petitioner then the evidence regarding its communication must be brought on record. However, in complete ignorance of the direction, the counter affidavit has been filed today appending therewith the order dated 26.07.2013 as contained in Annexure D passed in the case of the petitioner by the District Magistrate, Patna. Learned counsel for the State has not been able to show from it that any averment has been made in it regarding the aforesaid query of this Court. No evidence regarding its communication to the petitioner has also been brought on record merely an averment has been made that the order was already communicated to the petitioner vide memo no. 3118/Arms dated 08.08.2013, however, no evidence of any service of the aforesaid memo has been brought on record. It is also not stated as to whether the aforesaid memo was actually served upon the petitioner under a registered post or by hand or by any other mode.

The petitioner has now filed Interlocutory Application No. 7706 of 2015 seeking amendment in the writ petition for challenging the aforesaid order.

In view of a mere bald statement that memo no.



3118/Arms dated 08.08.2013 was communicated to the petitioner and since no evidence of its service upon the petitioner, as directed by this Court in its earlier order dated 25.08.2015, has been brought on record, this Court does not have any option than to accept the claim of the petitioner that the copy of the aforesaid order rejecting the application of the petitioner was never communicated to him.

In such a situation, this Court does not have any option than to allow this Interlocutory Application and, accordingly, the same is allowed. Let the relief mentioned in paragraph no. 1 of the aforesaid Interlocutory Application along with the averments made in its support and documents brought on record would form part of the writ petition.

In view of the nature of the order which is going to be passed in this case, the writ application is being disposed of without granting any opportunity to learned counsel for the State to file further counter affidavit taking into the consideration the amendment allowed in the writ petition.

From bare perusal of the impugned order, it appears that the application of the petitioner for grant of licence has been refused on the ground that there was no evidence regarding any threat perception upon him. In the counter affidavit the report of



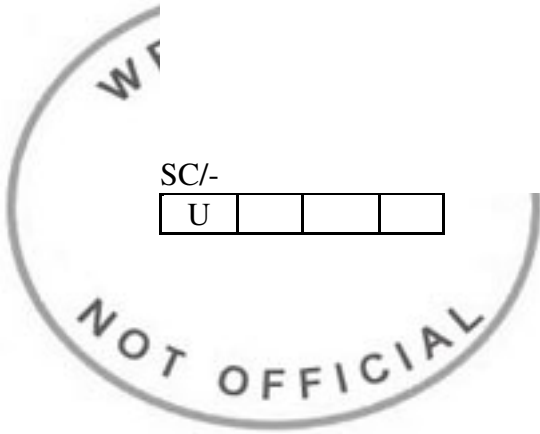
the Officer-in-charge of the concerned Police Station has been appended as Annexure B. The report clearly shows that there is recommendation by the Officer-in-charge of the concerned Police Station for granting licence and the reason has been shown for protection of life and property. It cannot be deciphered from the counter affidavit as to why the Superintendent of Police, Patna even after receipt of such recommendation by the Officer-in-charge of the concerned Police Station, forwarded it without any recommendation. There is no counter affidavit on behalf of the Superintendent of Police. However, Section 13(2) of the Arms Act (hereinafter to be referred to as “the Act”) clearly lays down that on receipt of the application for grant of licence for arms the licensing authority shall call for the report of the Officer-in-charge of the nearest police station seeking its view for grant of licence. In the case in hand, the Officer-in-charge has recommended for the same. However, the aforesaid application of the petitioner has been rejected on the ground of lack of threat perception. The petitioner has appended a copy of the First Information Report in Interlocutory Application No. 7706 of 2015 appended as Annexure 4 to impress upon this Court that there was a threat perception upon him as he had been assaulted and in that connection Gardantibagh Police Station Case No. 247 of 1999

was registered in the year 1999. The petitioner had received injuries also in the aforesaid occurrence for which he has appended Annexure 5 which is a discharge ticket of the Department of Surgery, Patna Medical College and Hospital.

It appears that these aspects could not be considered by the licensing authority or even by the Superintendent of Police concerned. That apart, this Court has already held in C.W.J.C. No. 18535 of 2011 (Manish Kumar v, The State of Bihar and others) and analogous matters that threat perception does not mean that there should be actual or specific over act upon the applicant for grant of licence for arms and without that the licence cannot be granted. That apart, it has further been held in the aforesaid case that lack of evidence regarding threat perception does not form any ground for refusal of licence to the applicant under section 14 of the Act.

Accordingly, this writ application stands allowed in terms of the aforesaid decision rendered in in C.W.J.C. No. 18535 of 2011 (Manish Kumar v, The State of Bihar and others) and analogous matters. The matter is remitted back to the licensing authority, i.e., the respondent no. 2, for fresh consideration in accordance with law. He may seek a fresh police report in accordance with law and take a decision by passing a reasoned

order. The aforesaid exercise must be completed within ten weeks from the date of receipt/production of a copy of this order.



(Dr. Ravi Ranjan, J)