

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17700 of 2014

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Sheo Prasad Chaudhary, son of late Ram Sagar Chaudhary resident of village-Mangolpur, P.S. Itarhi 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, Itarhi Police Station, Itarhi, District - Buxar

.... Respondent/s

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With

Civil Writ Jurisdiction Case No.17704 of 2014

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1. Dhananjay Kumar Chaubey S/o Sri Ramjee Chaubey resident of village - Mangolpur, P.S. Itarhi, 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, Itarhi Police Station, Itarhi, District - Buxar

.... Respondent/s

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Appearance :

(In CWJC No.17700 of 2014)

For the Petitioner/s : Mr. Bishwa Nath Chaudhary, Adv.

For the Respondent/s : Mr. S.A. Alam, S.C. 3

(In CWJC No.17704 of 2014)

For the Petitioner/s : Mr. Bishwa Nath Chaudhary, Adv.

For the Respondent/s : Mr. Md. Raisul Haque, SC-4

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL ORDER

2 10-03-2015 Heard Mr. Bishwa Nath Choudhary learned counsel for the

petitioners as well as learned counsel for the State in the two writ

petitions.

Since the two writ petitions raise a common issue of fact and law hence they have been heard together and are being disposed of by the common order at the stage of admission itself.

Facts of the case are in a very narrow compass.

The father of the two writ petitioners are holder of licence under the Arms Act, 1959 and the rules framed thereunder. Whereas the father of the petitioner in C.W.J.C. No. 17700 of 2014 holds a DBBL gun licence bearing Licence No. 272/75, the father of the petitioner in the other writ petition holds N.P. rifle under a Licence No. 16 of 1979. The father of the petitioner in C.W.J.C. No. 1770 of 2014 deceased on 24.12.2014 whereafter the DBBL gun was deposited with the district arms dealer on 10.3.2008 while the father of the other writ petitioner is alive. The petitioners applied for grant of arms licence as well as for transfer of the respective arms registered in the name of their respective fathers in their name.

Whereas the application filed by the petitioner in C.W.J.C. No. 17700 of 2014 was registered as Case No. 149 of 2008, the application of the petitioner in other writ petition was registered as Case No. 150 of 2008. The application of these two petitioners were rejected by the separate order both passed on 16.10.2008 and

copies whereof are placed at Annexures- 5 and 3 respectively in the two writ petitions.

The petitioners preferred statutory appeal giving rise to Arms Appeal No. 439 of 2008 and Arms Appeal No. 429 of 2008 respectively before the appellate authority i.e. the Commissioner, Patna Division and the appellate authority finding merit in the claim of the petitioner remanded the matter back to the Licensing Authority i.e. the District Magistrate, Buxar for reconsideration of the matter in the light of the observations made in the order of remand and which orders are placed at Annexure-6 and Annexure-4 respectively to the two writ petitions.

A report was called for from the policing authority who again recommended the case of the respective petitioners but the Licensing Authorities maintaining his original stand has again rejected the prayer of the petitioner vide order dated 20.6.2014 placed at Annexure-9 and Annexure-7 to the two writ petitions and in each of the cases the prayer has been rejected on solitary ground of absence of threat perception. The petitioners being aggrieved are before this Court.

The issue that an application for arms licence cannot be rejected on sole ground of absence of threat perception stands concluded by a bench decision of this Court reported in **2007(4)**



BBCJ (Amrendra Kumar Singh Vs. State of Bihar) and in subsequent judgments of this Court but the Licensing Authority remains oblivious of the judicial pronouncement. The orders impugned have been passed by the District Magistrate relying upon a circular of the Union of India in its Ministry of Home Affairs dated 31.3.2010. In my opinion there is nothing in the circular which would disentitle the petitioner for arms licence specially in view of the recommendations and there being no adverse reports against these two petitioners.

An identical issue emanating from an order passed by the same Licensing Authority i.e. the District Magistrate, Buxar came up for consideration before this Bench in C.W.J.C. No. 19226 of 2014 and this Court taking note of the statutory provisions as well as the Circular of the Union of India and in its Ministry of Home Affairs dated 31.3.2010 allowed the prayer of the petitioner and which opinion of this Court would govern the present set of writ petitions. The relevant part of the judgment is being reproduced herein below:-

“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.”

In view of legal position discussed above, the two writ petitions are allowed. The orders dated 20.6.2014 passed by the District Magistrate, Buxar in the case of the petitioners placed at Annexure-9 and Annexure-7 respectively to the two writ petitions are set aside. The matter is remanded back to the District Magistrate, Buxar to consider the prayer 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.

(Jyoti Saran, J)

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