

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.755 of 2015

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1. Sushil Kumar Singh Son of Late Ram Narayan Singh Resident of Village + P.O.
- Matihani, District - Begusarai

.... Petitioner/s

Versus

1. The State of Bihar
2. The Divisional Commissioner, Munger Division, Munger
3. The District Magistrate - cum - District Arms Licensing Authority, Begusarai
4. Principal Secretary, Home (Special) Dept. Bihar, Patna.
5. Union of India

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Dular Sah, Adv.

For the Respondent/s : Mr. Avinash Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 26-06-2015

Heard learned counsel for the parties.

The petitioner by way of this writ petition has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 13.8.2010 passed by the Divisional Commissioner, Munger in Arms Appeal No. 47 of 2010 whereby the Divisional Commissioner while dismissing the appeal preferred by the petitioner has affirmed the order dated 9.7.2010 passed by the District Magistrate, Begusarai in Misc. Case No. 62 of 2009 whereby the prayer of the petitioner for renewal of his Arms Licence has been rejected in view of an advisory issued by the Home(Special) Department, Patna vide letter No. 12477 dated 16.11.2006 putting a restraint on renewal of all licenses issued by the Government of Nagaland. Copies of the orders are placed at

Annexure-1 series to the writ petition.



It is the case of the petitioner that Arms Licence No. 22/M/1974, Kohima, Nagaland along with Gun No. 4440450 U.S.A. was transferred in his favour by Capt. C.M. Uthaiay under the orders of the statutory authority under the Arms Act, Government of Nagaland on 21.2.1985 and thereafter it was entered in the O.D. Register maintained in the office of the District Magistrate-cum-District Arms Licensing Authority, Begusarai bearing No. 587 dated 29.1.1987, a copy of which is placed at Annexure-2 series. The licence of the petitioner was renewed regularly until the year 2007 but since thereafter it is not being renewed in the backdrop of a letter No. 12477 dated 16.11.2006 issued by the Home (Special) Department, Government of Bihar whereby a restraint order has been issued against renewal of licence issued by the Government of Nagaland.

It is the case of the petitioner that a communication was issued by the Government of India in 2011 listing 352 licences which according to the Government of India had been issued illegally by the Government of Nagaland in between the period 24.8.1987 to 9.1.2007 but the name of the petitioner does not figure in the list, a copy of which is placed at Annexure-7 to the writ petition. It is thus the contention of the petitioner that simply on the basis of a directives and without there existing any circumstances to withhold the renewal of



his arms licence that he has been harassed for all the past 8 years. He submits that questioning the action he had earlier approached this Court through C.W.J.C. No. 11076 of 2009 which was dismissed on 1.9.2009 with a direction to respond to the show cause issued by the statutory authority. It is submitted that although the petitioner has responded but it has resulted in the impugned orders which is legally not sustainable in absence of any accompanying circumstances which disentitles the petitioner to a renewal.

A counter affidavit has been filed by the State enclosing orders of the Government of India in its Ministry of Home Affairs whereby a direction had been issued to verify the genuineness of the licenses issued by the Government of Nagaland, a copy of such letter dated 4.10.2015 is placed at Annexure-B to the counter affidavit. The District Magistrate, Begusarai in the light of the advisory issued by the Government of India sought information from the Deputy Commissioner, Kohima as regarding the genuineness of the arms licence held by the petitioner but which letter has not yet been responded to by the Deputy Commissioner, Kohima. Considering that the non renewal was in the backdrop of the directives issued by the Government of India that they were added as a party to the present proceedings. A counter affidavit has been filed by the Deputy Secretary, Ministry of Home Affairs reiterating the position discussed



and while enclosing a letter dated 13.5.2015 addressed to the Deputy Commissioner it is stated that he has been requested to expedite the matter. The fact remains that despite requests made by the State of Bihar as well as the Union of India, the Deputy Commissioner, Kohima has sat tight over the matter not bothering to respond to either of the request.

I have heard learned counsel for the parties and I have perused the materials on record.

It is admitted position that right since after the transfer of licence of the petitioner from Nagaland to Bihar in the District of Begusarai and its entry in the official register maintained for the purpose in 1987, for the next 20 years until 2007 and in fact until today there is no instance reported by the respondents, of either misuse by the petitioner of the arms licence or of violation of any condition of licence. The only impediment coming in the way of the petitioner in receiving renewal of his arms licence is the advisory issued by the Government of India requiring a verification as to the genuineness of the arms licence. The request made by the Government of India as reflecting from the counter affidavit as well as the District Magistrate as reflecting from the counter affidavit of the State requiring a report from the Deputy Commissioner, Kohima has remained unattended.



Section 15 of the Arms Act, 1959 deals with issue of renewal of licence and provides that unless it is revoked it shall be renewed continuously for three years from time to time on its expiry and that the conditions underlying Sections 13 and 14 shall apply to such renewal. Section 13 of the Act provides for grant of licence and Section 14 provides for refusal of licence in the circumstances enumerated under Sub-section 1(a) and (b). Apparently, the fire arm in possession of the petitioner does not fall in the category of prohibited arm for had it been such, it would not have been renewed in the last 20 years. The issue would be whether the case of the petitioner would fall under Sub section 14(1)(b) for refusal of renewal of the arms licence. It is not disputed that the case of the petitioner does not fall in this category either for there is no such finding in the orders impugned.

The fact remains that except for the advisory issued by the Government of India there is nothing on record for refusal of renewal of licence of the petitioner. The claim of the petitioner cannot be kept on a hold endlessly simply because there is no response from the Government of Nagaland. In my opinion, since there is no evidence on record which disentitles the petitioner to renewal of his arms licence, a mere circumstance that it was issued by the Government of Nagaland on its own, can not be sufficient reason to deny him such

renewal more particularly, in the backdrop of the fact that in the past two decades since the licence stood transferred to Begusarai in 1987 and was being renewed until 2007, the statutory authorities under the Arms Act in the District of Begusarai have not found anything adverse against the petitioner for disentitling him to a renewal.

In the circumstances discussed hereinabove, I am of the opinion that in absence of any adverse report against the petitioner, merely on account of non confirmation by the Government of Nagaland to the letter of the District Magistrate, Begusarai may not be sufficient reason to deny renewal of arms licence to the petitioner which has been admittedly renewed by the licensing authority in the District of Begusarai right since after 1987 until 2007.

In the light of the discussion made hereinabove, this Court would direct the District Magistrate, Begusarai to grant renewal to the arms licence to the petitioner with clear stipulation that in case any adverse report is received from the Government of Nagaland, the same shall be revoked. The renewal should be granted to the petitioner with effect from 2007 until date within a period of three months from the date of receipt/production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

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