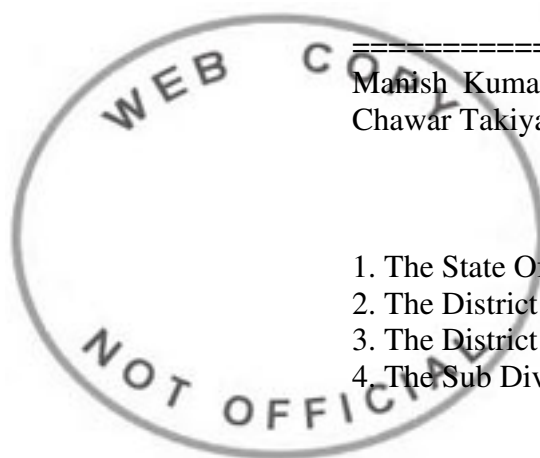




IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18535 of 2011

Manish Kumar Son Of Shri Suresh Prasad Gupta Resident Of Village/Mohalla-Chawar Takiya, Sasaram, Police Station-Sasaram Town, District-Rohtas (Bihar).

.... Petitioner

Versus

- 1. The State Of Bihar Through The Commissioner, Patna Division, Patna.
- 2. The District Magistrate, Rohtas (Sasaram).
- 3. The District Magistrate, Rohtas (Sasaram).
- 4. The Sub Divisional Officer, Sasaram.

.... Respondents

with

Civil Writ Jurisdiction Case No. 18790 of 2011

Jamshed Ansari @ Md.Jamshed Ansari Md. Yunus Nayagaon, P.S. Kotwali, Distt. Monghyr

.... Petitioner

Versus

- 1. The State Of Bihar Through Commissioner, Monghyr, Division, Monghyr
- 2. Commissioner, Monghyr, Division, Monghyr
- 3. District Arms Magistrate, Monghyr
- 4. The District Magistrate, Monghyr

.... Respondents

with

Civil Writ Jurisdiction Case No. 20294 of 2011

Shambhu Prasad Singh S/O Late Anirudh Singh R/O Vill:- Chitaini, P.O. :- Dighita, P.S. :- Kochas, Distt.:- Rohtas

.... Petitioner

Versus

- 1. The State Of Bihar
- 2. The District Magistrate, Sasaram, Rohtas
- 3. The Superintendent Of Police, Rohtas
- 4. The Sub-Divisional Officer, Sasaram
- 5. Officer-In-Charge, Sasaram Town, Sasaram, Rohtas

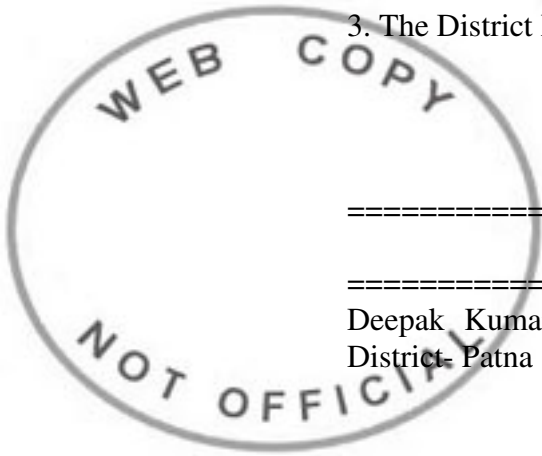
.... Respondents

with

Civil Writ Jurisdiction Case No. 20521 of 2011

Dhanantar Rai Son Of Bhuneshwar Rai Resident Of Village - Panapur, P.S. - Kargahar, District - Rohtas

.... Petitioner



Versus

1. The State Of Bihar Through The Home Secretary, Government Of Bihar, Patna
2. The Commissioner, Patna Division, Patna
3. The District Magistrate, Rohtas At Sasaram, District- Rohtas

.... Respondents

with

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Civil Writ Jurisdiction Case No. 21473 of 2011

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Deepak Kumar S/O Late Dwarika Lal R/O Village- Khadalpur, P.S.- Bihta,
District- Patna

.... Petitioner

Versus

1. The State Of Bihar Through Commissioner, Patna Division, Patna
2. Commissioner, Patna Division, Patna
3. District Superintendent Of Police, Patna
4. Senior Superintendent Of Police, Patna
5. Sub-Divisional Police Officer, Danapur, Patna
6. Officer In-Charge, Bihata, P.S.- Patna

.... Respondents

with

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Civil Writ Jurisdiction Case No. 22071 of 2011

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Md.Naiyer Alam Son Of Haji Md. Abbas Resident Of Village - Surigaon, P.O. &
P.S. Baisi, District - Purnea

.... Petitioner

Versus

1. The State Of Bihar
2. The Commissioner, Purnea Division, District - Purnea
3. District Magistrate, Purnea
4. District Arms Officer, Purnea

.... Respondents

with

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Civil Writ Jurisdiction Case No. 12405 of 2012

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Md. Salim S/O Late Haji Md. Alimuddin Resident Of M/S Bharat Medical Hall,
Ashok Raj Path, P.O. Mahendru, P.S. Sultanganj, Town And District- Patna- 6

.... Petitioner

Versus

1. The State Of Bihar Through Home Secretary, Govt. Of Bihar
2. The Divisional Commissioner, Patna

3. District Magistrate, Patna
4. District Arms Magistrate, Patna
5. Additional District Magistrate (Arms), Patna

.... Respondents

Appearance :

(In CWJC No. 18535 of 2011)

For the Petitioner : Mr. GAJENDRA NATH OJHA, Advocate

For the Respondents : Mr. Bishwa Bibhuti Kumar Singh, AC to PAAG

(In CWJC No. 18790 of 2011)

For the Petitioner : Mr. PRAMOD KUMAR SINGH, Advocate

For the Respondents : Mr. Santosh Kumar, AC to GP9

(In CWJC No. 20294 of 2011)

For the Petitioners : Mr. VISHAL SAURABH, Advocate

For the Respondents : Mr. MD. IRSHAD, AC to SC18

(In CWJC No. 20521 of 2011)

For the Petitioner : Mr. AMRENDRA NARAYAN RAI, Advocate

For the Respondents : Mr. Sunil Kumar, AC to AAG6

(In CWJC No. 21473 of 2011)

For the Petitioner : Mr. PRAMOD KUMAR SINGH, Advocate

For the Respondent/s : Mr. KUNDAN BHADUR SINGH, SC22

(In CWJC No. 22071 of 2011)

For the Petitioner : M/s S.A. Nasar Warsi, Obaidur Rahman, Janki Nandan Prasad, Brij Nandan Prasad, Advocates

For the Respondents : Mr. Anil Kumar, GP23

(In CWJC No. 12405 of 2012)

For the Petitioner : Mr. MD. SHAKIR AHMAD, Advocate

For the Respondents : Mr. Akhileshwar Singh, AC to GA 3

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 11-08-2015

I have heard learned counsel for the petitioners and the State.

In view of identical issues having been involved, all the writ petitions have been considered together and are being disposed of by a common judgment.

The necessary facts for consideration of the cases are being enumerated as under :

C.W.J.C. No. 18535 of 2011

The petitioner had applied for grant of licence for D.B.B.L. gun before the District Magistrate, Rohtas. The matter was sent for verification to the police. The superintendent of Police, Rohtas, Dehri-on-Sone recommended for grant of license. However, the District Magistrate rejected the application of the petitioner vide order dated 06.07.2006 appended as Annexure-2 on the ground that there does not appear to be any threat perception upon the petitioner. The petitioner preferred Appeal No.422 of 2006 assailing the aforesaid order which was disposed of and remitted back the matter to the District Magistrate, Rohtas for fresh consideration after granting reasonable opportunity to the petitioner. Thereafter, when the District Magistrate was not disposing of the matter, the petitioner approached this Court by filing C.W.J.C. No.1476 of 2009 which was disposed of vide order dated 05.02.2009 (Annexure-8) directing the District Magistrate, Rohtas to pass a final order in the matter. However, when the same was not passed then the petitioner again approached this Court by filing M.J.C. No.3573 of 2009 which was disposed of vide order dated 28.07.2011 as, in the meantime, final order was passed by the District Magistrate again rejecting the prayer of the petitioner. It appears from the impugned order passed by the District Magistrate dated 10.01.2011 (Annexure-11) that the

application has been rejected on the ground that there is no threat perception upon the petitioner. Hence, the present writ application has been filed.

C.W.J.C. No. 18790 of 2011:

The petitioner applied for grant of licence for D.B.B.L. gun, however, the District Magistrate, Munger, rejected the claim and, as per the communication to him vide Annexure 1 dated 10.05.2008, the reason assigned is that he has not been able to establish that there is a threat perception upon the petitioner. Arms Appeal No. 29/2011 filed before the Divisional Commissioner, Munger was also dismissed vide order dated 23.07.2011 simply stating that the appellant could not set forth any valid reason for grant of licence.

C.W.J.C. No. 20294 of 2011:

The claim of the petitioner is that his father was licence holder of D.B.B.L. gun and after his death in the year 1994 the concerned gun was deposited before the Hindustan Arms, Dealer of Arms and Ammunitions, Rohtas at Sasaram and, thereafter, he filed an application for grant of licence in his name for the D.B.B.L. gun, however, the same was rejected on the ground that nothing stands stated in the verification report regarding the threat perception. The petitioner preferred Appeal No. 356 of 2006 which was allowed and the order dated 29.07.2006 passed by the District Magistrate, Rohtas



at Sasaram was quashed. The matter was remitted back to him for taking a fresh decision keeping in view the recommendation of the police authority and also after granting reasonable opportunity to the petitioner. Petitioner's case was re-numbered as Arms Case No. 33/2011, however, again his application was dismissed vide order dated 19.09.2011 on the ground that he has not been able to establish that there is threat perception upon him. A reference has been made in that connection to the direction of the Ministry of Home, Central Government dated 31.03.2010 by which a direction was given to the licensing authority that before granting any arms licence under the Arms Act it would have to be satisfied that there is threat perception upon the applicant. The aforesaid order is sought to be challenged.

C.W.J.C. No. 20521 of 2011:

It appears that the petitioner's application for grant of licence for D.B.B.L. gun was rejected on 09.08.2006 contained in Annexure 6 by the District Magistrate, Rohtas at Sasaram on the ground that there appeared no threat perception against him. An appeal was filed by the petitioner against the aforesaid order. The appellate authority remanded the matter vide order dated 12.06.2007 for fresh determination. The District Magistrate passed the order dated 30.07.2009 again rejecting the application of the petitioner in view of lack of threat perception. The petitioner, thereafter,



approached this Court by filing C.W.J.C. No. 1022 of 2010 which was disposed of on 15.03.2011 vide Annexure 10 granting liberty to the petitioner to file a fresh application for grant of arms licence which should be considered in accordance with law by the concerned authority. The petitioner again filed an application for grant of licence for D.B.B.L. gun which was registered as Case No. 32/2011, however, the said application was again rejected on the ground that he has not been able to establish that there is threat perception upon him. A reference has been made in that connection to the direction of the Ministry of Home, Central Government dated 31.03.2010. Hence this writ application.

C.W.J.C. No. 21473 of 2011

Petitioner has approached this Court by filing C.W.J.C. No. 2957 of 2007 for grant of arms licence as the matter remained pending before the licensing authority, however, the writ application was disposed of vide order dated 28.01.2009 contained in Annexure 1 granting liberty to the petitioner to withdraw the same to take a recourse to the remedy of appeal in view of the fact that, during the pendency of the writ petition, petitioner's application for grant of licence was rejected. The petitioner preferred Appeal No. 60 of 2009 before the Commissioner, Patna Division which was also dismissed upholding the decision of the District Magistrate on the ground that

the police report does not indicate anything regarding the threat perception upon the petitioner. Hence this writ application.

C.W.J.C. No. 22071 of 2011:

In this case also, petitioner's prayer for grant of licence for D.B.B.L. gun has been rejected on the ground that the police has failed to point out any threat perception upon the petitioner in its verification report. Petitioner preferred an appeal which was disposed of vide order dated 01.06.2011 contained in Annexure 7 directing the District Magistrate to pass a reasoned order after properly analysing the matter. Thereafter, again the petitioner's claim has been rejected vide order dated 06.09.2011 contained in Annexure 8 passed by the District Magistrate making a reference to the letter of the Ministry of Home, Central Government dated 31.03.2010 holding that the report of the Superintendent of Police or the petitioner has miserably failed to set out that there was any threat perception upon his life or property. The aforesaid order is under challenge.

C.W.J.C. No. 12405 of 2012:

In this case also, petitioner's application for grant of licence for D.B.B.L. gun has been rejected by the licensing authority on the ground that the police verification report does not disclose any threat perception upon the petitioner. The appeal preferred by the petitioner was dismissed in default. The case of restoration of appeal was filed

which was dismissed vide order dated 28.11.2011 contained in Annexure 2. Thereafter, the petitioner has approached this Court for the relief sought for in this writ application.

Considering the contentions raised in the writ petitions and also the counter affidavits filed in some of the cases, the issue which falls for consideration in all the writ applications is as to whether dissatisfaction of the licensing authorities on the point of threat perception upon the applicants for grant of arms licences can form a ground for refusal of the same?

Learned counsel for the petitioners have stated that the licensing authority has misdirected himself by recording in almost all the impugned orders, that there is no evidence regarding threat perception upon the petitioners. It is contended that threat perception would not necessarily mean that there should be actual attempt on lives of the petitioners or upon their properties, therefore, in case there is no actual attempt on lives or properties there cannot be any documentary evidence to prove and satisfy the licensing authority regarding threat perception. Learned counsel has placed reliance upon a decision of a Single Bench rendered in **Birendra Singh Kushwaha v. The State of Bihar and others (2013(2) Patna Law Journal Reports 927)** in support of the aforesaid submission. It is contended that the learned Single Judge has held that for obtaining

arms licence the applicant need not suffer actual assault or any other overt act. Even the apprehension is enough for establishing that there is a threat upon him.

That apart, it has also been submitted that threat perception is not one of the statutory grounds set forth in section 14 of the Arms Act (hereinafter to be referred to as “the Act”) for refusal of grant of arms licence. Learned counsel have placed several decisions of this Court on the aforesaid issue.

Per contra, learned counsel for the State has submitted that in view of the direction of the Department of Home, Central Government, issued vide letter dated 31.03.2010 to settle the issue of grant of licence only after being satisfied regarding the threat perception, the licensing authorities are asking for proof regarding threat perception and only on being satisfied regarding such, they are issuing arms licences. It is also contended that the licensing authority has been given very vast untrammelled discretion in the matter of grant of arms licence which also appears to be the intention of the legislature as would appear from the plain reading of section 13 of the Act. Learned counsel has placed reliance upon a decision rendered by a Full Bench of this Court in **Kapildeo Singh v. The State of Bihar and others (1987 Patna Law Journal Reports 385)**. It is contended that the Full Bench has opined that even after

conforming to the procedural requirements, the licensing authority may, as regards the general category of arms, either grant the licence or refuse to grant the same and the discretion in this context has perhaps been deliberately kept untrammelled.

Having regards to the facts and circumstances of these cases and upon deeper scrutiny of the matter and the authoritative pronouncements on the point, I find substance in the submissions raised on behalf of the petitioners. The Full Bench has, of course, dealt with the matter regarding the discretion of the licensing authority in this context and has opined that the same has deliberately been kept untrammelled. After scrutiny of section 14 of the Act, the Full Bench has observed that section 14 of the Act mandates refusal to grant licence even when the licensing authority has reason to believe that the applicant for any reason is unfit for licence under the Act, however, the issue to be decided in these matters is as to whether lack of evidence regarding threat perception makes the applicant unfit for grant of licence under the Act?

The aforesaid issue of refusal of licence on the ground of lack of evidence regarding threat perception to the satisfaction of the licensing authority was not in issue before the Full Bench in the aforesaid case rather that was a case of revocation of licence and the issue was registration and pendency of criminal cases for a major or



capital offence justifying the suspension or revocation of a licence under clause (a) of sub-section (3) of section 17 of the Act. However, while making a scrutiny of the relevant provisions of the Act, the Full Bench in paragraph no. 5 has also discussed about refusal of licence and has observed that even if all the procedural requirements are complete the licensing authority may refuse to grant the same when it has reasons to belief that the applicant for any reason is found unfit for licence under the Arms Act. Finally, after scrutiny of various provisions including section 17 of the Act, the Full Bench has also observed that in the cases of pendency of criminal cases, i.e., before any conviction by a Court of law, upon subjective satisfaction there can be revocation of arms licence, however, strong note of caution has been given by stating that it is not the pendency of any and every criminal case which would inflexibly warrant the suspension or revocation of a licence validly granted as a criminal case may range from a paltry traffic offence to the most horrendous capital crime. While the pendency of the former may hardly provide an adequate basis under section 17(3) of the Act but in the case of the latter, only after notice and hearing of the explanation, such action may well be found to be necessary. Similarly, the use or employment of the licensed weapon in the alleged crime might well be a relevant and added factor for consideration in the exercise of the discretion

by the licensing authority.

However, in the present matter, the question would be as to whether the lack of evidence indicating presence of the actual threat perception to the satisfaction of the licensing authority can form a ground for refusal of arms licence?

For better appreciation the provisions which have been laid down in Chapter III contained in the Act for grant of arms licence under section 13 of the Act and the provisions for refusal of licence under section 14 of the Act are extracted as under:

“S.13. Grant of licences.—(1) An application for the grant of a licence under Chapter II shall be made to the licensing authority and shall be in such form, contain such particulars and be accompanied by such fee, if any, as may be prescribed.

¹⁷ [(2) On receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.

(2A) The licensing authority, after such inquiry, if any, as it may consider necessary, and after considering the report received under subsection (2), shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same: Provided that where the officer in charge of the nearest police station does not send his report on the application within the prescribed time, the licensing authority may, if it deems fit, make such order, after the

expiry of the prescribed time, without further waiting for that report.]

(3) The licensing authority shall grant—

(a) a licence under section 3 where the licence is required—

(i) by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of a muzzle loading gun to be used for bona fide crop protection: Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle loading gun will not be sufficient for crop protection, the licensing authority may grant a licence in respect of any other smooth bore gun as aforesaid for such protection; or

(ii) in respect of a point 22 bore rifle or an air rifle to be used for target practice by a member of a rifle club or rifle association licensed or recognised by the Central Government;

(b) a licence under section 3 in any other case or a licence under section 4, section 5, section 6, section 10 or section 12, if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same.

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S. 14. Refusal of licences.— (1) Notwithstanding anything in section 13, licensing authority shall refuse to grant—

(a) a licence under section 3, section 4 or section 5 where such licence is required in respect of any prohibited arms or prohibited ammunition;

(b) a licence in any other case under Chapter II,—

(i) where such licence is required by a person whom the licensing authority has reason to believe—

(1) to be prohibited by this Act or by any other law for the time being in force from acquiring, having in his possession or carrying any arms or ammunition, or

(2) to be of unsound mind, or

(3) to be for any reason unfit for a licence under this Act; or

(ii) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

(2) The licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or possess sufficient property.

(3) Where the licensing authority refuses to grant a licence to any person it shall record in writing the reasons for such refusal and furnish to that person on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.”

A perusal of the provision contained in section 13 of the Act discloses that the licensing authority, upon consideration of inquiry or verification report of a competent authority, can grant a licence after being satisfied that the person by whom the licence is required has a good reason for obtaining the same.

Similarly, section 14 of the Act lays down that, notwithstanding anything contained in section 13, the licensing authority may refuse to grant the arms licence, on certain grounds. Section 14 of the Act nowhere discloses that lack of any evidence

regarding threat perception upon the applicant may also form a ground for refusal of the arms licence.

However, learned counsel for the State has pointed out that the provisions contained in section 14(1)(b)(i)(3) indicates that refusal can even be for the reason that the applicant is found to be unfit for a licence under the Act by the licensing authority.

Indeed, the subjective satisfaction of the licensing authority on the reasons set forth in section 13 or 14 of the Act would form a condition precedent for grant of licence or refusal to grant licence but the so-called evidence regarding threat perception does not find specific place either in section 13 or 14 of the Act. So far section 14(1)(b)(i)(3) of the Act is concerned, that is only applicable in case the applicant is found to be unfit on any reason provided under the statute but so-called threat perception, not being any ground either in section 13 or section 14, one would wonder as to how it can form a ground for refusal of licence. Similarly, even the directive of the Central Government or any authority for such consideration would also not be meaningful in the absence of any statutory provision in that regard. The letter dated 31.03.2010 issued by the Ministry of Home, Central Government, has been considered by a Single Bench of this Court while considering the issue of threat perception for refusal of licence in C.W.J.C. No. 2503 of 2013 (Ram Bachan Rai v.

The State of Bihar and others). While disposing of the aforesaid writ application vide order dated 25.08.2014 the learned Single Judge has opined as under:-

“Even the circular 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 exclude such persons who do not face any such threat and for the simple reason that any such condition being imposed in a circular issued by the department, would be contrary to the statutory provisions.”

This Court is in agreement with the aforesaid views expressed by the learned Single Judge.

Another Single Bench of this Court in **Birendra Singh Kushwaha(supra)**, as has been discussed above, has already held that threat perception does not mean that the applicant should actually suffer any assault or any overt act. Mere apprehension is enough for the grant provided the applicant is not otherwise unfit for such grant of licence.

In a decision rendered in **Braj Bhushan Sharma v. The State of Bihar and others (2004(2) Patna Law Journal Reports 473)**, a Division Bench of this Court, while dealing with the matter of renewal of arms licence, has held that when the law provides certain conditions for refusal of renewal of the licence then only

that condition or ground alone can be looked into for refusal and no other grounds can be looked into to deny a person to carry on business.

Similarly, a Single Bench of this Court in a decision rendered in **Amrendra Kumar Singh v. The State of Bihar and others (2008(1) Patna Law Journal Reports 151)** has also opined that failure to submit any cogent documentary evidence in support of threat perception is a very vague term and the licensing authority cannot hold that the licence can only be grant if there is actual threat to life or property.

In yet another decision rendered in **Raj Kumar Singh v. The State of Bihar and others (2012(2) Patna Law Journal Reports 695)** a Single Bench of this Court has held that the licensing authorities have of course discretion in the matter of granting licence but such discretion vested in it is circumscribed by the provision of the Act and requirement of arms licence for self- protection is not a circumstance which can be brushed aside easily as every citizen has a right to protect himself and if the right is supported by legal provisions, the same has to be respected. It has been held that such discretionary power vested in the licensing authority under section 14 of the Act cannot be expanded to such an extent so as to render the very provision redundant. The same learned Single Judge in yet



another decision rendered in **Sushil Kumar Singh v. The State of Bihar and others (2015(2) Patna Law Journal Reports 549)** has held that if the petitioner is not ineligible on any of the grounds provided under section 14 of the Act for refusal of licence and if section 13 of the Act does not provide a pre-condition for filing of such application that applicant or his family members should be facing imminent danger to their life, the ground of threat perception cannot be taken as a ground for refusal of licence.

Learned counsel for the State has not been able to demonstrate either from the Arms Act, 1959 or Arms Rules, 1962 that the threat perception can form a ground for refusal of arms licence.

This Court is in agreement with the aforesaid decisions as a conjoint reading of sections 13 and 14 of the Act does not disclose anywhere that the absence of any evidence regarding threat can form a condition for refusal to grant arms licence. In my considered opinion, the licensing authority cannot apply its discretion in a manner to hold that lack of evidence regarding threat perception would make the applicant unfit for grant of licence under section 14(1)(b)(i)(3) of the Act. The provision has to be read necessarily as the same is there without substituting or taking away anything therefrom. It clearly lays down that the licence can be refused if the

applicant is found unfit for any reason under the Act. However, since none of the provisions of the statute discloses that imminent danger or actual threat perception may form a ground for refusal of licence, it cannot be held that the same may form a reason declaring the applicant unfit for grant of licence under the Act in view of the provisions contained in section 14(1)(b) (i) (3).

As a result, all the writ applications succeed, the impugned orders in all the writ applications are quashed and set aside and the matter is remitted back to the licensing authorities to take a fresh decision in accordance with law within a period of three months from the date of receipt/production of a copy of this order by passing reasoned orders.

(Dr. Ravi Ranjan, J)

SC/-
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