

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14016 of 2013

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Tarkeshwar Prasad Chaudhary, Son of Late Ram Kishun Chaudhary, Resident of Chaudhary Bhawan, Mohalla - Muradpur, P.S. Pirbahore, Town And District - Patna (Bihar)

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Department of Home, Govt. of Bihar, Patna
2. The Commissioner, Tirhut Division, Muzaffarpur
3. The District Magistrate Vaishali at Hajipur

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dhanendra Chaubey, Advocate

For the Respondent/s : Mr. Prabhat Kumar Singh, SC-12

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT

Date: 12-10-2015

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

The petitioner seeks quashing of the order dated 22.11.2012 passed by the Commissioner, Tirhut Division, Muzaffarpur in Arms Appeal No.5/2009 by which he has dismissed the appeal of the petitioner on the ground of limitation as well as also on merit upholding the order dated 31.05.2007 passed by the District Magistrate, Vaishali at Hajipur (respondent no.3).

The petitioner applied for grant of licence for NP bore pistol on 20.05.1997 but when no decision was taken upon his application, he approached this Court by filing CWJC No.7462 of



2006. During the pendency of the writ petition, a final order came to be passed by the licensing authority, i.e., the District Magistrate, Vaishali at Hajipur dated 31.05.2007 (Annexure-3) rejecting the application of the petitioner. Thereafter, the writ petition was disposed of vide Annexure-3 dated 23.01.2009 permitting him to withdraw the writ petition with a liberty to prefer statutory appeal which was preferred by the petitioner but vide impugned order 22.11.2012 (Annexure-5), the Arms Appeal No.5/2009 was dismissed both on the ground of limitation as well as also on merit.

Since the appellate order is non-speaking on the issue of limitation as it has not stated anywhere as to why the grounds raised by the petitioner for condoning the delay in preferring the appeal could not find favour of the authority concerned, the original record was directed to be produced. It appears from perusal of the record that the matter was heard on the point of admission on 2.06.2009 and delay was condoned and the appeal was admitted. In such a situation, there was no authority with the Commissioner, Tirhut Division, Muzaffarpur for dismissing the appeal on the ground of limitation.

So far as merit is concerned, it appears that the arms licence has been refused by the licensing authority on several grounds. It has been stated that the petitioner was not able to produce any evidence regarding his profession or service and his annual income

was very low being Rs.55,000/- per annum only and his age has been written as 64 years. It has further been stated that the petitioner was not looking physically fit when he appeared before the licensing authority. It has also been stated that the police in its report has not stated anything specific indicating that there is any threat perception upon the petitioner.

In my view, the order impugned cannot be sustained in law. It appears from perusal of the impugned order that the petitioner was granted time for producing evidence regarding his profession as well as income, however, one Chandra Bhusan Gupta appeared and filed an affidavit for grant of next date but the same was not granted and a decision was taken saying that no evidence could be produced.

It is surprising that since 1997 nothing was done for about nine years. The authority concerned was sleeping for a long period but on one occasion, when an adjournment was sought on 15.12.2006 for producing evidence, the same was not allowed and the matter was treated as if the petitioner failed to produce any evidence.

Secondly, it has been stated that income of the petitioner is very low. In my view, that can also not form a ground for refusal of arms licence in view of provision contained in Section 14 (2) of the Arms Act which indicates in clear term that the licensing authority shall not refuse to grant any licence to any person merely on the

ground that such person does not own and possess sufficient property.

So far as the physical condition of the petitioner is concerned, in my view, such stand could not have been taken by the licensing authority without help of any medical examination by competent authority. He could have asked the petitioner to appear before the Civil Surgeon and obtain a physical certificate of the petitioner. On a particular day, any person can fall ill and may not look physically fit but that does not mean that he is not fit to hold even small arms. Such type of assessment with regard to medical condition of the petitioner was not correct in the absence of any cogent material.

Another ground on which the petitioner's licence has been refused is that the petitioner's age appears to be 64 years but no rule or provision could be shown specifying that a person of 64 years of age cannot be granted licence for holding small firearms.

So far as the threat perception is concerned, it is not a ground for refusal of arms licence as has been held by this Court in a decision dated 11.08.2015 rendered in ***CWJC No.18535 of 2011 (Manish Kumar Vs. The State of Bihar and Ors.) and other analogous matters.***

Accordingly, this writ application is allowed. Both the impugned orders are quashed and set aside. The matter is remitted back to the District Magistrate-cum-Licensing Authority 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.

However, now the petitioner has reached an age of about 73 years and whether he would be capable for holding a firearm now at this age or not would be a thing to be decided by the licensing authority as his subjective satisfaction is of utmost importance but that satisfaction should be based upon some sound reason.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

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