

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15069 of 2016

=====

Dheeraj Kumar Singh, Son of Shri Ajay Kumar Singh, resident of Village/
Mohalla- Shri Nandan Path Sahitya Press Dahiyawan Tola, Police Station- Chapra
Town, District- Saran (Chapra).

.... Petitioner

Versus

1. The State of Bihar.
2. The Divisional Commissioner, Saran Division at Chapra.
3. The District Magistrate, Saran at Chapra.
4. The District Arms Magistrate, Saran at Chapra.
5. The Superintendent of Police, Saran at Chapra.
6. The Sub- Divisional Officer, Chapra Sadar, District- Saran.
7. The S.H.O. Town Police Station Chapra, District- Saran.

.... Respondents

=====

Appearance :

For the Petitioner	:	Mr. Bashishtha Narayan Mishra, Mr. B. K. Mishra, Advocates
For the State	:	MD. Harun Quareshi, A.C. to S.C. 1

=====

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 08-12-2016

Heard parties.

Petitioner is aggrieved by the order dated 28.01.2016, as contained in Annexure 2, passed by the District Magistrate-cum-Licensing Authority, Saran at Chapra by which his application for grant of firearm licence has been rejected. He also assails the appellate order dated 08.06.2016 passed in Arms Appeal No.70 of 2016, as contained in Annexure 1, by which the appeal filed against the aforesaid order has also been dismissed by the Commissioner, Saran Division, Chapra.



From perusal of the impugned order (Annexure 2), it appears that rejection is on the ground that Superintendent of Police has not given any specific recommendation with respect to threat perception on the petitioner. It is also stated that it is not clear as to when the maternal grandfather of the petitioner was killed, what is the F.I.R. number of that case and what has happened in that case. Thereafter, he has come to the conclusion that it appears that the petitioner has applied for grant of licence as he wants to keep firearm as status symbol. Thereafter, the Licensing Authority, as it appears, has held that if everybody would be given firearm then there can be unprecedented increase in violent incident.

In my view, such stand taken by the Licensing Authority is wholly erroneous. This Court vide order dated 01.02.2016 passed in **C.W.J.C. No.13391 of 2014 (Deepak Kumar Vs. the State of Bihar & Ors.)** has held that there is no presumption that a gun of permitted bore in the hand of a lawful citizen would be detrimental for the public peace and tranquility of the society. That apart, the Licensing Authority has to consider to grant or reject the licence within the **four corners** of the statute. Section 13 of the Arms Act, 1959 (hereinafter referred to as “the Act”) has empowered Licensing Authority discretionary power to grant licence but Section 14 of the Act lays down in clear terms the ground under which licence is to be refused.



He has not referred any report, study or research on the issue which indicate that, even if a law abiding citizen is granted firearm licence, there would be increase in violent incidence. These aspects are to be discussed by the Legislature while enacting the law. The Licensing Authority, being the creature of that statute, has merely to act in accordance with the will of the Legislature. If the Legislature has not stated under Section 13 or 14 of the Act that law abiding citizen should not to be granted licence then, in my opinion, such stand cannot be taken by the Licensing Authority. He has not quoted any provision of law except Section 14(3)(ii) of the Act where the Licensing Authority, if deems necessary for the security of the public peace or for public safety, can refuse arms licence.

From perusal of the aforesaid provision, it is apparent that if the Licensing Authority is of the view that refusal of licence to a person would be necessary for security of public peace and safety then he can do so, however, what has been held by him is just reverse to that, i.e., if the law abiding citizen is granted licence then there may be increase in violent incidence. If he has to rely upon Section 14(3)(ii) for refusal then he will have to record good reasons for showing as to how he has come to such conclusion. Reason or finding has to be recorded for rejecting the licence. If the petitioner is a law abiding citizen and is not in conflict with anybody or does not



have any criminal background then how such stand under Section 14(3)(ii) of the Act can be taken is intriguing.

So far the recommendation of the Superintendent of Police is concerned, the statute does not provide that there should be such recommendation by the Superintendent of Police. It stands envisaged in Section 13(2) of the Act that that on receipt of an application, the licensing authority shall call for a report from the officer-in-charge of the nearest police station. All that is required would be to seek report from the officer-in-charge. However, even after receipt of such report, if further inquiry is required, the Licensing Authority, may well request the Superintendent of Police to send such report. The applicant cannot be put at fault if the Superintendent of Police does not give specific report recommending grant of licence. For the inaction on part of the police authority or the Licensing Authority, the petitioner cannot be faulted with. The Licensing Authority may well have sought further report from the Superintendent of Police requesting him to give specific recommendation either for grant or refusal of licence but in place of doing that, he has rejected the application of the petitioner.

The appellate authority has also not considered the aforesaid fact and has simply endorsed the views of the District Magistrate.



Accordingly, the impugned orders as contained in Annexure 2 and 1 are quashed and set aside. The matter is remitted back to the Licensing Authority for taking fresh decision in accordance with law within a period of three months from the date of receipt/production of a copy of this order.

This writ application stands allowed.

(Dr. Ravi Ranjan, J)

Sanjay-II/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.03.2017
Transmission Date	NA

