

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2403 of 2016

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Shasthi Sharan Singh son of Late Babu Ram Singh resident of Mohalla -
Sidharthpuri Colony, P.S. Muffasil, District Gaya.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, State of Bihar, Patna.
2. The Commissioner, Magadh Division, Gaya.
3. The District Magistrate, Gaya.
4. The Superintendent of Police, Gaya.
5. The District Arms Magistrate, Gaya.

.... Respondents

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Appearance :

For the Petitioner : Mr. Rakesh Kumar Singh, Advocate
For the State : Ms. Nutan Sharma, A.C. to G.A. 9

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 22-02-2016

Heard learned counsel for the petitioner and the State.

Petitioner seeks quashing of the order dated 29.10.2015

(Annexure 7) passed by the respondent no.2, the Commissioner, Magadh Division, Gaya by which he has dismissed the appeal preferred by the petitioner against the order of the Collector dated 26.09.2014. Petitioner also assails the order dated 26.09.2014 (Annexure 3) passed by the Collector, Gaya by which his application for grant of firearm licence for DBBL gun has been rejected by the Licensing Authority. The appellate authority has dismissed the appeal on the ground of delay. The impugned order was passed on 26.09.2014. The petitioner appears to have filed appeal on

09.04.2015, i.e., after delay of about six months.



It is contended on behalf of the petitioner that the order passed was never communicated to the petitioner and, as such, he filed an application before the District Magistrate in Janta Darbar under Right to Information Act on 16.10.2014. The information was granted to him on 04.03.2015 regarding rejection of his case on 26.09.2014 but it has nowhere stated in the Annexure 6 which is the information dated 04.03.2015 given to the petitioner under Right to Information Act that such order was ever communicated to him. However, even otherwise, had the order been communicated to the petitioner there was no occasion for him to file a petition under Right to Information Act for getting the information regarding any decision having been taken by the Licensing Authority. The appellate authority has simply said that delay has not been justified but it has nowhere stated as to why the grounds raised by the petitioner in the petition could not find favour of the appellate authority.

In above view of the matter, it is urged that the delay in filing the appeal was not of such magnitude that it was not fit to be condoned. A reference in this regard is made to a decision of Apex Court rendered in **S. Ganesharaju Versus Narasamma [(2013) 11 Supreme Court Cases 341]** in which it has been held that period of short delay, if not condoned, then it would tantamount to rendering

injustice and, thus, such short delay as a routine should be condoned and the matter should have been heard on merit.

Ordinarily, after observing the aforesaid, this Court would have quashed the appellate order and remanded back the matter to the appellate authority for fresh consideration, however, in view of the nature of order which is proposed to be passed in this case in its facts and circumstances, the writ petition is being heard and considered on merit.

From the perusal of the Annexure 3 dated 26.09.2014 passed by the District Magistrate, Gaya, it appears that the refusal is on the basis of non-production of any specific evidence regarding any threat perception upon the petitioner though it is admitted that he is residing near extremist affected area. The petitioner's father was possessing a DBBL gun under a valid licence. After his death, the gun was deposited with the arms dealer and the petitioner has applied for grant of licence. Thus, in my view, the Family Heirloom Policy of the Central Government should have been considered by the Licensing Authority for grant of licence to the petitioner. That apart, this Court in a decision rendered in **Manish Kumar Vrs. State of Bihar and other analogous cases [AIR 2016 Patna 9]** has held that non-production of a specific evidence regarding threat perception does not form a ground for refusal of licence under Section 14 of the Arms

Act, 1959.

Accordingly, in view of the fact that this Court itself is satisfied that the order impugned is not sustainable in law, no fruitful purpose would be served if the matter is relegated to the appellate authority.

Accordingly, this application succeeds. Both the impugned orders are quashed and set aside. The matter is remitted back to the 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.

(Dr. Ravi Ranjan, J)

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