

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3673 of 2016

Arvind Kumar Singh, son of Sri Yogendra Singh, resident of Mahatma Gandhi Nagar, Kanti Factory Road (Anand Park) P.S- Agamkuan, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar.
2. The District Magistrate, Patna.
3. The Arms Magistrate, Patna.

.... Respondents

Appearance :

For the Petitioner : M/s Kumar Rajeev and
Binay Kumar Singh, Advocates
For the State : M/s Rajiv Roy- GP5 and
Suresh Kumar AC to GP 5

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 14-03-2016

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

Petitioner seeks quashing of the order dated 11.1.2016 by which District Magistrate, Patna, who happens to be the licensing authority, has rejected the application for grant of firearms licence of N.P. Bore categories on the ground that there is no specific recommendation by the police authorities and no reason could be assigned on the basis which licence should be granted to the petitioner. Therefore, there has been refusal under Section

14(1)(B) (ii) of the Arms Act, 1959.



In my view the approach adopted by District Magistrate is erroneous. No presumption can be drawn that a firearm in possession of a law abiding citizen would be detrimental for the peace and tranquility of the society. Of course legislature has provided discretion to the licensing authority specially under Section 14(1)(B)(ii) of the Arms Act for refusal of licence on the ground where it deems necessary for security of public peace and tranquility but for that specific reason has to be assigned as to why the licence in the hand of the applicant would be detrimental for public peace. Such type of general observation that increasing number of arms would be detrimental for the society would not at all be acceptable as, though there is no fundamental right to a citizen to hold licence of firearms but it is still a statutory right.

Thus, in my view application made for grant of firearms should not be brushed aside in such a routine and casual manner. Of course, the moment a person makes an application for grant of licence, the licensing authority has to make some inquiry to satisfy himself regarding such request including seeking a report from the police authority i.e., Officer-in-Charge of the nearest police station and if he does not send the report in time then the licensing authority can even proceed to decided in its absence but



that does not necessarily mean that if the police does not send report or if it sends incomplete report then that would disqualify the applicant even though there is no fault on his / her part. Such type of stand or view cannot be acceptable in our democratic system that if some authority errs in performing its duty then applicant has to face adverse order. The District Magistrate may well have sought another specific report from the police.

Apart from the above, he would be required to proceed without any prejudice. He should not search a way and manner for rejecting a licence rather he should independently apply his mind for reaching to a conclusion as whether licence should be granted or not. In the present case it does not appear that he has proceeded in such manner. He has simply stated at one place that though the petitioner was interviewed regarding requirement for arms licence but he could not give satisfactory reply. The petitioner claims to be a contractor and he feels that he has threat in view of the profession itself which has been adopted by him. Now question would emerge as to whether a person engaged in a profession of contractor does have a threat perception at all? Are the contractors of the Bihar are free from threat perception if such is the case his observation may be right but one would wonder if that is true or not.



Having regards to the aforementioned facts, I am of the opinion that the order suffers from vice of arbitrariness as no specific reason has been assigned for reaching to the conclusion that grant of firearms licence to the petitioner would be detrimental for the public peace and tranquility. The power to be exercised by the authority may be discretionary but it is well settled that discretion has also to be exercised wisely.

The Full Bench of this Court in **Kapildeo Singh vs State Of Bihar And Ors. [AIR 1987 Pat 122]** has of course held that there is untrammelled discretion has been given to the licensing authority but he has to assign reason. Simply saying that a firearm in his hand would be detrimental for the peace and tranquility of the society would not be acceptable unless that is supported by specific reason for reaching to such conclusion which is not shown in the impugned order.

As a result, this writ application succeeds. The impugned order is quashed and set aside. The matter is remitted back to the District Magistrate – cum – licensing authority, Patna to take a decision in accordance with law. While doing so he would be at liberty to seek a fresh report from the Officer in Charge of the nearest police station and, if he thinks necessary, from the Superintendent of Police also. He would also be at liberty to do all

necessary inquiry as he deems fits and proper. Thereafter, he would be obliged to take a 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)

Spd/-

U			
---	--	--	--