

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.230 of 2009

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Bihari Roy, Advocate son of Sri Hiralal Rai, resident of Prechand Road, Panjabi Mohalla, Gourrachni, Sasaram, District Rohtas,

.... Petitioner

Versus

- 1 The State of Bihar through the Divisional Commissioner, Patna,
2. The Divisional Commissioner, Patna,
3. The District Magistrate, Rohtas at Sasaram,
4. The Superintendent of Police, Rohtas,
5. The District Arms Magistrate, Sasaram,
6. The Deputy Superintendent of Police, Rohtas at Sasaram,

.... Respondents

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Appearance :

For the Petitioner : Mr. Manish Kumar No. 2,

For the State : Mr. S. Arshad Alam, SC 3
Ms Anjum Parveen, AC to SC 3
Mr. Fakhruddin Ali Ahmad, AC to SC 3

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 29-02-2016

I have heard the parties.

It is submitted on behalf of the petitioner that an application for grant of firearm licence for DBBL gun was made by him for a simple reason that his father was having a licence for the same and, as he has become old, he wanted to transfer the firearm in favour of the petitioner. The police authorities have recommended the case of the petitioner which would be evident from Annexure 5 dated 29th of July 2005 written by the Superintendent of Police, Rohtas to the District Magistrate, Rohtas at Sasaram, however, it is contended that his application has been rejected on a flimsy ground that the same is

not supported by information required under section 13(2A) of the Indian Arms Act (hereinafter to be referred to as “the Act”).

It appears from the impugned order dated 12.12.2005 contained in Annexure 5 passed by the Collector, Rohtas at Sasaram that he had dealt with certain Constitutional provisions and has come to the conclusion that grant of firearm licence is not a fundamental right. He has further gone to observe, in view of the provisions contained in Article 19(1)(g) of the Constitution of India, that reasonable restriction can be imposed in the issue of granting arm licence and has further gone to hold that in view of a Full Bench decision of this Court rendered in **Kapildeo Singh v. The State of Bihar and others(1987 PLJR 385)** he has untrammelled discretion for grant or refusal of licence. In paragraph 5 of the order he has set out certain conditions which were required to be considered before granting licence. First is physical capability. No doubt, a person who is not physically capable for carrying and using firearm cannot be granted licence but, at the same time, he has not gone to hold that the petitioner is incapable, thus, this issue is redundant one. Second is income and property. Under this head, he has stated that it is required for filtering out to surrogate arms licence cases where some wealthy people can use their money and power to avail licence facility in the name of other people by proxy name, however, there is

no finding as to whether somebody is trying to get licence in the proxy name of the petitioner.

On this Mr. S. Arshad Alam, learned Standing Counsel No. 3, has submitted that under section 13(2A) of the Act the licensing authority has power to make inquiry. There is no reason for not accepting such proposition that the licensing authority has power to inquire into the matter and he has to look at the application himself and the document filed along with the application such as income tax return, which is required to be filed along with the application for grant of firearm licence. That apart, whether somebody is trying to obtain licence in the name of other person is to be inquired by the licensing authority. The police authority has already filed a report which is contained in Annexure 2. It appears that the petitioner is not a fictitious person and he merely wants to possess the arm which is held by his father under a valid licence.

Third issue is arms availability in the family. I wonder as to how such issue can be raised that if somebody is holding firearm licence in one's family, a firearm in the hand of another member of the family would be detrimental to the public peace as section 3(2) of the Act permits in clear terms that even a single person can carry at any time upto three firearms.

However, in the case of the petitioner, since his father wants



to transfer his firearm in his favour there is no issue of multiplicity of firearms as, when he would get the licence, his father would have to forego his licence. It has also been stated in the impugned order that Rohtas is a naxal affected district and it is also ridden by caste and class conflicts. I do not understand as how, even after writing this, he could have come to the conclusion that the licence should not be granted in favour of the petitioner as the petitioner's case has been recommended by the police also. It has been stated in the order that the district of Rohtas is a naxal affected and it is also ridden by caste and class conflicts but it is nobody's case that the petitioner is engaged in such caste and class conflicts and some case has been lodged against him also in the past. As such, it cannot be presumed that the petitioner, after getting firearm, will become aggressor.

Lastly, the licensing authority has rejected his application for grant of licence also on the ground that the petitioner has not answered the questionnaire.

However, in such a situation, the licensing authority could have gone for further inquiry or could have considered the materials on record for allowing or rejecting the application of the petitioner for grant of licence as the information required under the statute must have been submitted by the petitioner along with his application form

itself.

Be that as it may, since the rejection is only on the ground that certain questionnaire was not filled and furnished by the petitioner, let the petitioner file a fresh application for grant of licence as much time has elapsed since then which should be considered and disposed of on its own merit and in accordance with law by the licensing authority without being prejudiced by the earlier order or refusal passed by it or the appellate authority. While doing so, the licensing authority would be obliged to consider the decision rendered in **Manish Kumar v. The State of Bihar and others and its analogous cases (2015(4) PLJR 212)** and also the “Family Heirloom Policy” of the Central Government.

It is expected that the entire exercise would be completed within a period of four months from the date of receipt/production of a copy of this order.

However, it is made clear that, in case certain information is required by the licensing authority, then the petitioner would be obliged to furnish it.

This disposes of the writ petition.

(Dr. Ravi Ranjan, J)

SC/-

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