

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.24244 of 2013

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Nagendra Yadav @ Nagendra Singh, Son of Sri Ajab Singh, Resident of Village
Chotta Hasanpur, Police Station- Khusrupur, District Patna

.... Petitioner

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Commissioner, Patna
3. The Collector, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ashutosh Kumar Jha, Advocate
Mr. Sandeep Kumar, Advocate

For the Respondent/s : Mr. Rajendra Shekhar, AC to GP-24

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 18-07-2016

Heard parties.

Through this writ application, the petitioner seeks quashing of the order dated 19.07.2011 passed by the Commissioner, Patna in Arms Appeal Case No.118/2009 by which the appeal filed by the petitioner against the order dated 17.12.2005 passed by the Collector-cum-Licensing Authority, Patna has been dismissed.

It is contended on behalf of the petitioner that the order of the licensing authority was never communicated to him rather it appears that communication was made by the District Arms Magistrate informing him that the licensing authority has been pleased to refuse grant of arms licence. It is further contended that though the aforesaid was communicated on 17.12.2005 but the same was never received by the petitioner and, in fact, it was received by him in the year 2009 itself and on such receipt of the same, he had filed appeal

before the Commissioner which has been dismissed saying that there is no error in the order passed by the licensing authority. The records of the appellate authority show that the lower court record was called for and after looking into the records, the order has been passed.

The original records have been produced before this Court for perusal. It appears therefrom that the District Magistrate had taken a decision on 30.11.2005 rejecting the application of the petitioner for grant of firearm licence on the ground that he has not been able to produce any evidence regarding specific threat perception and that apart his father is already having a firearm under valid licence.

In my view, the order passed by the Commissioner cannot be sustained in law. He has come to the conclusion that the order passed by the licensing authority is in accordance with law and there is no need to interfere with the same, whereas, the order is in teeth of the ratio laid down by this Court in ***Manish Kumar Vs. The State of Bihar and Ors. reported in 2015 (4) PLJR 212*** holding that lack of evidence regarding specific threat perception upon the applicant cannot form a ground for refusal of arms licence under Section 14 of the Arms Act, 1959. It indicates towards non-application of mind. The order passed by the licensing authority suffers from another fatal error as another ground for refusal is that the petitioner's father is already having a firearm licence. In my view, such ground cannot be taken for refusal as the firearm of the father of

the petitioner cannot be utilized by the petitioner in any situation.

Ordinarily, this Court would have quashed the appellate order and would have remitted the matter to the appellate authority for fresh consideration as the petitioner only seeks quashing of the appellate order, however, in my view, that would not be proper in the present case when this Court is satisfied after perusal of the original record that the order passed by the licensing authority suffers from two vital lacuna stated above.

Accordingly, this Court *ex debito justitia* would be inclined to quash the order of licensing authority also to save time as the order impugned is in teeth of the decision rendered by this Court, as indicated above, and also suffers from another fatal lacuna.

As a result, this application succeeds. The order of the Commissioner, Patna dated 19.07.2011 and order of the licensing authority dated 30.11.2005 are quashed and set aside. The matter is remitted back to the licensing authority for taking 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)

V.K. Pandey/-

AFR/NAFR	N.A.F.R.
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