

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13099 of 2016

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Sanjay Kumar, S/o late Subhash Prasad, Residing (Permanently) At Chandi, P.O. Birndawan, P.S Ariari, District Sheikhpura and Presently residing at Loco colony Qr. No. 256/ A P.S. Jakkanpur, Karbigahia, Patna-800001

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary (Home Special, Government of Bihar, Patna.
2. The District Magistrate, Patna Collectorate Campus, Patna.
3. The District Arms Officer, Patna, Patna Collectorate Campus, Patna.
4. The Superintendent of Police, Patna, Patna.
5. The S.H.O. Jakkanpur Police Station, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Binod Kumar,
Mr. Dhananjay Mishra, Advocates
For the State : Mr. H. S. Sundaram, A.C. to S.C. 8

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 05-12-2016

I.A. No.9268/2016:

This interlocutory application has been filed by the petitioner for amendment in the writ petition by introduction of relief mentioned in paragraph no. 1(i).

This writ application was originally filed seeking direction to the licensing authority to grant arms licence to the petitioner. However, during the pendency of this writ petition the order dated 3.10.2016 was passed by the District Magistrate, Patna, rejecting the same.



Since the order has been passed during the pendency of the writ petition, aforesaid interlocutory application is allowed. The relief mentioned in paragraph 1(i) of the interlocutory application and the statements made therein would form part of the writ application.

C.W.J.C. No. 13099 of 2016

Heard parties.

Despite clear recommendation by the officer-in-charge of the Jakanpur Police Station, the licence has not been granted to the petitioner on the ground that there is no specific recommendation by the Senior Superintendent of Police. This Court has held time without number that law does not require any recommendation by the Superintendent of Police rather Section 13(2) of the Arms Act, 1959 (hereinafter referred to as “the Act”) clearly lays down that, on receipt of an application the licensing authority shall call for the report of the officer in charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.

The officer-in-charge has merely sent his recommendation through Superintendent of Police, therefore, no specific recommendation by the Superintendent of Police was required in the aforesaid case. That apart, even after submission of report by the officer-in-charge, the Licensing Authority would always



be at liberty to make further inquiry as it deems fit for the said purpose and one of the modes may be that it asks the Superintendent of Police to give specific report but that has not been done in the present case. It is nowhere stated that he had requested the Superintendent of Police to make an inquiry in the matter himself and submit a report which was not submitted by him. Even if it is assumed that the Police has not made a clear recommendation then a question would arise that what was the fault on part of the petitioner? If a statutory functionary fails to perform its duty, the applicant cannot be penalized who has no role play in it specially when there is no allegation made against him that he did not cooperate in the matter. In my view, aforesaid action of Licensing Authority suffers from vice of arbitrariness.

The second ground taken by the Licensing Authority is that on the basis of provision contained in Section 13(3)(B) of the Act, if the licensing authority is satisfied that the person, who requires a licence, has a good reason for obtaining the same then he would grant licence. He is completely mum on the issue as to what are the materials available in record forming the basis for his satisfaction that the petitioner does not have any good reason for obtaining a licence save and except that there is no specific recommendation by the Superintendent of Police which has already been discussed as above.



He has taken another ground that under Section 14 (1)(b)(ii) of the Act the Licensing Authority may refuse to grant licence if it deems it necessary for the security of the public peace or for public safety.

In my view, such ground cannot have been taken in this case as the police has already recommended vide Annexure C to the counter affidavit that petitioner is not in conflict with anybody and he is of not of violent nature. Again nothing has been specified by him as to how he came to the conclusion that grant of licence in favour of the petitioner would be detrimental for the public peace and tranquility.

The Full Bench in **Kapildeo Singh vs. State of Bihar and Ors.** [AIR 1987 Pat 122] has clearly laid down that Licensing Authority, while cancelling or refusing of licence, would have to record reasons for cancelling or refusing a licence. The provision of law is always there but one would have to act in accordance with law. Simply stating that grant of licence to the petitioner would be detrimental to the public peace and tranquility would be in arbitrary exercise of such discretionary power which has been vested in the Licensing Authority.

Thus, in my considered opinion, the impugned order dated 03.10.2016, as contained in Annexure 5, is not at all sustainable in law and, accordingly, the same is quashed and set aside.



However, the matter is remitted back to the Licensing Authority for taking a fresh decision on its own merit and in accordance with law within a period of three months from the date of receipt/production of a copy of this order.

The Licensing Authority would be at liberty to seek fresh report from the police but he would also consider Annexure 1 which is an F.I.R. lodged by the petitioner and has been registered by the Police under Sections 341, 323, 504 and 34 of the Indian Penal Code and Section 3(1)(x)/4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

This writ application, accordingly, stands allowed.

(Dr. Ravi Ranjan, J)

Sanjay-II/-

AFR/NAFR	NAFR
CAV DATE	NA
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