

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5895 of 2016

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Sanjeev Kumar, son of Sri Bhola Prasad Yadav, resident of Mohalla-Padri Ki
Haveli, P.S.-Khajekalan, P.O.-Jhauganj, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Home Secretary, Govt. of Bihar.
2. The District Magistrate, Patna.
3. The Divisional Commissioner, Patna Division, Patna.
4. The Senior Superintendent of Police, Patna.
5. The Additional District Magistrate (Arms), Patna.
6. The District Arms Magistrate, Patna.
7. S.H.O., Khajekala Police Station, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Ms. Manisha Pandey, Advocate
Mr. Deepak Kumar, Advocate
For the Respondent/s : Mr. Ajay Bihari Sinha, SC-19
Mr. Neeraj Raj, AC to SC-19

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT

Date: 05-04-2016

Heard parties.

The petitioner is aggrieved by the order dated 25.02.2016 communicated to him vide Memo No.572 dated 2.03.2016, as contained in Annexure-4, by which his request for grant of licence for N.P. Bore revolver/pistol has been refused on the ground that his case has not been recommended by the police authorities including the Sub-Divisional Police Officer, Patna City, whereas, the Officer-in-charge of Khajekala Police Station has only stated that the petitioner is a contractor but nothing has been stated regarding special threat perception upon him. He has referred to a letter dated 31.03.2010 issued by the Home Ministry, Government of India to come to the

conclusion that no licence can be issued without police verification and reached to further conclusion that the petitioner has not been able to establish that there is special threat upon his person or property.

Learned counsel appearing for the State has submitted that the petitioner's application should be dismissed on the sole ground that he has approached this Court without availing the provision of statutory appeal.

The aforesaid submission is noted only to be rejected inasmuch as the order impugned appears to be in teeth of the decision of this Court rendered in ***Manish Kumar Vs. The State of Bihar and Ors. [2015 (4) PLJR 212]*** wherein this Court has held that non-production of specific evidence regarding threat perception upon the applicant cannot form a ground for refusal of arms licence under Section 14 of the Arms Act, 1959. While considering the aforesaid issue, this Court has also considered the letter dated 31.03.2010 issued by the Home Ministry, Government of India and has come to the conclusion that such direction is only to the extent that the persons who are receiving threat may also be considered for grant of licence and the same does not eliminate others for the reason that no authority can bend or substitute the provision of law which is will and mandate of legislature. The licensing authority being statutory authority under the Arms Act is required to act, consider and decide the issue within

the four corners of statute itself. In such a situation, it would not at all be proper now to relegate the petitioner to the appellate authority.

When it was not clear from the impugned order as to whether the Officer-in-charge of Khajekalan Police Station has recommended the case of the petitioner or not, the entire records of the concerned case were called for. It appears from perusal of the records that the Officer-in-charge has recommended the case of the petitioner by stating that he is a Government Contractor of high class and he has to go the labourers for the purpose of distribution of wages etc. and, as such, he requires a pistol for protection of his life and property. The Sub-Divisional Police Officer and the Superintendent of Police have forwarded the recommendation made by the Officer-in-charge of Khajekalan Police Station.

Section 13 (2) of the Arms Act mandates that a Licensing Authority shall call for a report from the Officer-in-charge of the nearest Police Station on the application for grant of licence but it is not required under such provision that there should be recommendation of the Sub-Divisional Police Officer or the Superintendent of Police. For that reason, it appears, the Sub-Divisional Police Officer and Superintendent of Police have forwarded the recommendation of the Officer-in-charge of Khajekala Police Station, however, in case the licensing authority needed some

enquiry by the Superintendent of Police also then he could have well sought that by making such request but he does not appear to have done that. Be that as it may, the petitioner cannot be faulted with for such action as has been taken by the authorities.

Accordingly, this writ application succeeds. The impugned order is quashed and set aside. The matter is remitted back to the licensing authority for taking a fresh decision in the matter in accordance with law within a period of three months from the date of receipt/production of a copy of this order considering the observations made in this order as well as the decision of this Court rendered in *Manish Kumar Vs. The State of Bihar and Ors. [2015 (4) PLJR 212.*

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

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