

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3379 of 2016

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Brijendra Kumar, S/o- Sri Bhudeva Singh, Resident of Mohalla- Anwarpur (West),
P.S.- Hajipur Town, District- Vaishali

.... Petitioner

Versus

1. The State of Bihar
2. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate, Vaishali at Hajipur
4. The District Arms Magistrate, Vaishali at Hajipur
5. The Sub-Divisional Magistrate, Hajipur, District- Vaishali
6. The Superintendent of Police, Vaishali at Hajipur
7. The Deputy Superintendent of Police, Hajipur, District- Vaishali

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Amaresh Kumar Singh, Advocate

For the Respondent/s : Mr. Kuber Pathak, AC to SC-14.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 04-04-2016

Heard parties.

The petitioner seeks quashing of Annexure-4, which is an order passed by the District Magistrate-cum-Licensing Authority, Vaishali at Hajipur by which he has refused to grant licence for N.P. Bore revolver/pistol in favour of the petitioner. He also assails the appellate order dated 22.11.2012 passed in Arms Appeal No.344 of 2012 by the Commissioner, Tirhut Division, Muzaffarpur as contained in Annexure-7 by which his appeal has been dismissed and the order passed by the Licensing Authority has been upheld.

From perusal of the order passed by the Licensing



Authority, it appears that the licence has been refused on the ground that the police authorities have not recommended for licence and also the petitioner could not produce any specific evidence regarding threat upon his life and property.

A counter affidavit has been filed on behalf of the respondent no.6, however, surprisingly, no counter affidavit has been filed on behalf of the District Magistrate, Vaishali at Hajipur.

In my view, the order passed by the Licensing Authority is not at all sustainable in law as it is admitted position that the petitioner has already been granted a licence for DBBL Gun. It appears from the impugned order as well as the appellate order that the authorities do not grant licence without any threat perception. Thus, it has to be assumed that in the eye of the Licensing Authority, there was threat perception upon the petitioner and, therefore, the licence for DBBL Gun was granted to him. Thus, the petitioner's claim cannot be ousted in such a casual manner by the respondent authorities especially when this Court in ***Manish Kumar Vs. The State of Bihar and Ors. [2015 (4) PLJR 212]*** has already 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.

That apart, the provisions as contained in Section 3 (2) of

the Arms Act also lays down in clear terms that a person can hold diverse firearms up to maximum of three but of course of non-prohibited category.

So far as the recommendation by the police authorities is concerned, incorrect statement appears to have been made in the impugned order by stating that the police authorities including the Officer-in-charge, Town Police Station, Hajipur have not recommended for grant of arms licence. Annexure-3, which is written by the Superintendent of Police, Vaishali at Hajipur and is addressed to the District Magistrate, Vaishali at Hajipur discloses in clear terms that the Officer-in-charge has recommended for grant of arms licence, but the Dy.S.P. (Headquarter) and S.D.P.O., Hajipur have not recommended it and, thus, the Superintendent of Police has merely forwarded all the materials to the District Magistrate.

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 receipt of an 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 Deputy Superintendent of Police or the Superintendent of Police. However, though it is stated that Deputy Superintendent of Police or the Sub-Divisional Police Officer have not recommended for grant of arms



licence but no reason has been assigned for not recommending the same. It is not stated that the petitioner's conduct has been questioned or he has been found to have involved in the criminal cases. In such a situation, in my view, there was sufficient material before the Licensing Authority for grant of arms licence as there was already recommendation of the Officer-in-charge of the nearest Police Station.

The Appellate Authority has also stated that the petitioner is already holding one firearm and his financial position as a Junior Engineer or a social status does not support the acquisition of another arms licence. In my view, such type of observation is totally uncalled for. The Arms Act does not speak anything about the social status or financial position of a person for grant of a licence rather Section 14 (2) of the Arms Act lays down in clear terms that the licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or possess sufficient property.

In my view, both the orders are not at all sustainable in law and, as such, both are quashed and set aside. The matter is remitted back to the Licensing Authority to take a fresh decision in the matter of the petitioner 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.*

This application stands allowed.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

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