

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.129 of 2016**

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Raj Kumar Gupta S/o Late Kailash Prasad Resident of Nai Sarak, Gulzarbagh, ( Khajekalan ), District - Patna

.... .... Petitioner

Versus

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

.... .... Respondents

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**Appearance :**

For the Petitioner : Ms Manisha Pandey, Advocate  
Mr. Deepak Kumar, Advocate  
For the State : Mr. Sanjeev Kumar Singh, AC to SC 12

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**CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN**

**ORAL JUDGMENT**

**Date: 18-01-2016**

Heard learned counsel for the petitioner and the State.

Original records have been produced by learned counsel for the State. It appears that a copy of letter no. 5583 dated 17.12.2009, by which it is claimed that the order of rejection has been communicated to the petitioner with liberty that he can again file an application for grant of licence, is there, however, learned counsel for the State could not demonstrate from the original records that such letter was actually served upon the petitioner.

Petitioner has filed I.A. No. 441 of 2016 stating that information has been supplied to him on 16.01.2016 under the Right

to Information Act which discloses that his application was rejected on 21.11.2009 itself and, as such, the petitioner seeks leave to challenge the order of rejection.

In the facts and circumstances of the case, leave is granted. I.A. No. 441 of 2016 is allowed. The petitioner is permitted to assail the order of rejection dated 21.11.2009.

Learned counsel for the State vehemently argued that the petitioner has got alternative statutory remedy under section 18 of the Indian Arms Act, 1959(hereinafter to be referred to as “the Act”) to prefer an appeal against the order of rejection.

However, in view of fatal lacuna, which is apparent on face of the records as well as the nature of the order, this Court is of the opinion that no benefit could be derived by relegating the petitioner to the appellate authority as original records have been produced by learned counsel for the State before me. It is apparent from the records that no reason has been assigned in the impugned order by the licensing authority, i.e., the District Magistrate, Patna. The licensing authority is duty bound to record reasons for refusal of licence under section 14(3) of the Act but it appears from the record that the Arms Magistrate has made a recommendation that in view of lack of any report from the Senior Superintendent of Police and six months already having elapsed, the application of the petitioner

should be rejected. That has been forwarded by the Additional Collector by stating that the recommendation of the District Arms Magistrate can be approved. The District Magistrate appears to have merely put his signature on the notesheet.

In my considered view, the entire proceeding suffers from fatal lacuna as approval of the licensing authority is not required rather the requirement under law is that he should pass an order recording reasons for refusal of licence. In absence of that, in my considered view, the order cannot be said to have been passed in accordance with law. A reference is made in this regard to an unreported decision of this Court rendered in **C.W.J.C. No. 23109 of 2013 (Munna Jaiswal v. The State of Bihar and others)** disposed of on 09.11.2015 in which the concerned issue has been delved upon in detail. That apart, there is requirement under section 13(2) of the Act that upon receipt of the application for grant of arm licence a report shall be called for from the Officer-in-charge of the nearest Police Station. In the present case, it appears that the Police Officer has already recommended the matter. It is not clear that, thereafter, how and under which provision of law the report of the Senior Superintendent of Police was required, however, even if it was required, the petitioner cannot be held to be at fault. He cannot be penalized for any inaction on the part of the authority, therefore,

a reminder could have been sent and the Senior Superintendent of Police, Patna again could have been asked to submit his report.

In above view of the matter, in my considered opinion, the order impugned is not at all sustainable in law and, as such, the same is quashed and set aside. The matter is remitted back to the licensing authority to take 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.

Accordingly, this application stands disposed of.

**(Dr. Ravi Ranjan, J)**

SC/-

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