

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1925 of 2017

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

.... Petitioner/s

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. Sub - Divisional Officer, Patna City, Patna
8. S.H.O. Khajekalan Police Station, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. B. N. Pandey, Advocate
Mr. Deepak Kumar, Advocate

For the Respondent/s : Mr. Md. Nadeem Seraj, GP-5
Mr. Dhurendra Kumar, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

02/ 29-10-2018

Heard Mr. B.N. Pandey, learned counsel for

the petitioner and Mr. Dhurendra Kumar, learned AC to GP-5.

The present writ application has been filed for quashing the order dated 02.08.2016 contained in Memo No. 143/Mu dated 02.08.2016 passed by Respondent No. 2, District Magistrate, Patna, as contained in Annexure-10, whereby the petitioner's application submitted for grant of N.P. Bore Revolver/Pistol has been rejected on the ground that there is no sufficient reason for grant of arms licence and grant of licence is



likely to affect public peace and security.

The factual matrix of the case is that the petitioner being a businessman and a contractor applied for grant of arms licence for N.P. Bore Revolver/Pistol on 20.11.2008 before the Respondent No. 2, District Magistrate, Patna –cum-licensing authority under the Arms Act. Subsequently, the police report was submitted recommending the case of the petitioner, but decision was not taken on the application of the petitioner nor information was supplied to the petitioner under Right to Information Act. Thereafter, the petitioner preferred writ application being C.W.J.C. No. 129 of 2016 for a direction to the licensing authority, District Magistrate, Patna to take a decision on his application pending for grant of N.P. Revolver/Pistol. During the pendency of the writ application the District Magistrate, Patna rejected the application of the petitioner on 21.11.2009 which the petitioner came to know through information supplied under Right to Information Act hence the same was challenged through I.A. No. 441 of 2016 filed in C.W.J.C. No. 129 of 2016. A Bench of this Court permitted the petitioner to assail the order during pendency of the writ application and the writ application was entertained in spite of the fact that it was vehemently argued that the petitioner is having an alternative and efficacious remedy



under Section 18 of the Arms Act, 1959 (hereinafter referred to as the 'Act'). However, in view of the lacuna and the fact that the application was rejected since police report was not received and no specific reason was assigned by the licensing authority, hence, this Court set aside the order and the matter was 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 after obtaining police report from the Superintendent of Police, Patna, consequently the impugned order has been passed. The writ application was disposed of vide order dated 18.10.2016 in following terms:-

“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.”

The District Magistrate, the licensing



authority, after the matter being remitted back to him, has rejected the application of the petitioner in exercise of jurisdiction under Sections 13(3)(b) and 14(1)(b)(ii) of the Arms Act on the ground that the petitioner has not shown adequate reason for grant of licence and the grant of licence to the petitioner will affect the public peace and public security, hence, the present writ application.

It is submitted by learned counsel for the petitioner that in spite of the matter being remanded back to the licensing authority, by this Court, the application has mechanically been rejected by the licensing authority. The petitioner has not been given an opportunity of hearing and hence, the writ application is maintainable and availability of alternative remedy will not act as a bar for the petitioner.

It is further submitted by the learned counsel for the petitioner that the police recommended the case of the petitioner. The Sub-divisional Officer, Patna City vide letter No. 1671 dated 27.05.2016 submitted that the petitioner is not having any criminal antecedent. In the police report, as contained in Annexure-7, at serial 9 there is specific column which suggests that the concerned Officer-in-charge has to give report whether grant of licence will adversely affect the public peace and security,



concerning which the report is in favour of the petitioner. Serial no. 15 stipulates the recommendation of the police which reflects that the police has recommended in favour for grant of licence to the petitioner. In the above circumstances, the forwarding of enquiry report by the Sub-Divisional Officer, Patna City (as is contained in Annexure-8) to the Senior Superintendent of Police, Patna, without any recommendation, in opinion of this Court is sans rationale or reasoning, particularly when the police report suggests recommendation in favour of the petitioner. The S.S.P. has acted upon the report of S.D.O., in spite of having considered the report of the police. Under Section 13 of the Arms Act as well as under Rule 13 of Arms Rules, 2016, the licensing authority has to take decision on the application for grant of arms licence on the basis of police report. Hence, again the order has mechanically been passed, which is apparent on the face of it.

Learned AC to GP-5 submits that considering the fact that the petitioner has not given adequate reason for grant of licence and the grant of licence would have affected the public peace and security the application of the petitioner has been rejected and petitioner has alternative remedy of appeal.

Having heard the learned counsel for the parties, usually this Court is of the view that the discretionary



jurisdiction under Article 226 of the Constitution of India is sparingly exercised, when there is an availability of alternative and efficacious remedy, but in the present case this Court is inclined to interfere on two grounds. Firstly, in earlier round the matter was entertained by this Court and remitted back with specific direction to obtain police report from Superintendent of Police and to pass reasoned order, and secondly, this Court finds that the licensing authority has not given any opportunity to the petitioner to present his case and has mechanically passed the order contrary to the police report. Hence, this Court is inclined to interfere.

Section 13 of the Arms Act, 1959 (hereinafter referred to as the 'Act') stipulates the provision for grant of licence. Section 13(2) of the Act mandates that on receipt of the application for grant of arms licence licensing authority shall call for a report from the Officer-in-Charge of the nearest police station. Section 13(2-A) mandates that the licensing authority after enquiry, if any, after considering the report received under sub-section (2) shall, subject to the other provisions of Chapter III of the Act, by an order in writing either grant the licence or refuse to grant the same. However, the proviso of sub-section (2-A) also prescribes that in case the police report is not received within the prescribed time, the licensing authority after expiry of the



prescribed time, without further waiting for that report shall pass order. It is not the case that the police report was not received. After the matter was remanded by this Court the police report was received by the licensing authority but impugned order suggests that it has not been considered at all.

Section 14 of the Act prescribes the parameter when the licensing authority can refuse to grant arms licence to any person which includes non-grant of prohibited arms and ammunitions where such licence is required by a person and the said persons to be prohibited by this Act or by any other law for the time being in force from acquiring, having in his possession or carrying any arms or ammunition or the person is unsound mind or for any reason unfit for a licence or the licensing authority deems it necessary for the security of the public peace and public safety to refuse to grant such licence. Section 14(3) (ii) reads as follows:-

“Where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.”

This Court finds in the police report of the Officer-in-Charge, as contained in Annexure-7, there is specific column under 9 in consonance to the stipulation under Section 14(3)(ii), which reads as follows:-



“आवेदक को अनुज्ञप्ति देने से लोक शांति एवं सुरक्षा पर प्रतिकूल प्रभाव पड़ेगा अथवा नहीं – नहीं।”

The above column suggests that the Officer-in-Charge has to give his opinion whether the grant of licence would adversely affect the public peace and security or not, to which the Officer-in-Charge replied in the negative and in favour of the petitioner. Similarly, column 15 contains the recommendation part by the Officer-in-Charge which suggests that he has recommended for grant of licence for the security of live and property. Column 15 reads as follows:-

“थाना प्रभारी की अनुशंसा – आवेदक को जान माल की सुरक्षा हेतु रिवाल्वर/पिस्टल की अनुज्ञप्ति दी जा सकती है।”

However, it appears that contrary to the police report the S.D.O., Patna City vide letter No. 1671 dated 27.05.2016, as contained in Annexure-8, and the S.S.P., Patna vide letter No. 873 dated 03.07.2016 transmitted the application of the petitioner without any recommendation, which suggests that both the officers have either not gone through the report of the Officer-in-Charge or they deliberately committed this gross error which speaks volumes on their manner of functioning while exercising their discretionary jurisdiction under the Act. It further appears that the impugned order was passed on 02.08.2016 when the Arms



Rules, 2016, had come into force from 15th of July, 2016 whereby the Arms Rules, 1962 was superseded. It appears that in the first round the S.S.P., Patna vide letter No. 1518 dated 06.12.2009 recommended for grant of licence to the petitioner, as contained in Annexure-2 series.

Rule 12 of Rules, 2016 prescribes the obligation of the licensing authority in certain cases. Sub-Rule 3 of Rule 12 suggests the grounds of consideration for grant of licence by licensing authority, based on the police report and in certain cases by considering the nature of his business, profession, job or otherwise has genuine requirement to protect his life and property, but it appears that the obligation under Rule 12 has also not been discharged by the licensing authority. Rule 12(3) reads as follows:-

(3) For grant of a licence for the permissible arms or ammunition specified in category III in Schedule I, and without prejudice to the provisions contained in clause (a) of sub-section (3) of section 13, the licensing authority, based on the police report and on his own assessment may consider the applications of-



- (a) any person who by the very nature of his business, profession, job or otherwise has genuine requirement to protect his life and/or property or
- (b) any dedicated sports person being active member for the last two years, of a shooting club or a rifle association, licensed under these rules and who wants to pursue sport shooting for target practice in a structured learning process; or
- (c) any person in service or having served in the Defence Forces, Central Armed Police Forces or the State Police Force and has genuine requirement to protect his life and/or property.”

From the above discussions, it is apparent that the consideration of the police report is sine qua non for exercise of jurisdiction, either for grant or refusal of the licence and in the present case on both the occasions the licensing authority has failed to discharge its statutory obligation in the manner as is prescribed under the Act. This Court finds such dereliction in exercise of discretion by the authorities concerned to be very



shocking and in spite of the matter being remanded by this Court, the licensing authority and the S.S.P. and the S.D.O. have acted in the utmost casual and arbitrary manner. It is high time that the slumber of the licensing authority and S.S.P., Patna should break. From the next time if this Court finds such repetition, this Court would have no other option but to draw an adverse inference against the licensing authority –cum- District Magistrate, Patna and S.S.P., Patna.

In view of the above discussions, the impugned order dated 02.08.2016 passed by Respondent No. 2, District Magistrate, Patna is set aside. It is expected from the licensing authority to pass reasoned order keeping in view the provisions and the statutory mandate within a period of six weeks from the date of receipt/production of a copy of this order.

Accordingly, the present writ application is allowed.

(Dinesh Kumar Singh, J)

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