

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4653 of 2017

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Ramesh Kumar Singh, Son of Late Shashi Shekhar Kumar Singh, Resident of Village- Manikpur, P.O.- Ratnapur, Manikpur, P.S.- Shahkund, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Commissioner, Bhagalpur Division, Bhagalpur.
4. The District Magistrate-cum-Collector, Bhagalpur.
5. The Superintendent of Police, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S. Azeem, Adv.
		Mr. Sanjeev Kumar, Adv.
For the Respondent/s	:	Mr. Dhuvendra Kumar, AC to GP 5.

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 20-11-2018

Heard Mr. S. Azeem, learned counsel for the petitioner and Mr. Dhuvendra Kumar, learned AC to GP 5 for the Respondent-State.

The present writ application has been filed for a direction to Respondent No.4, the District Magistrate, Bhagalpur -cum-Licensing Authority, under the Arms Act to take a decision on the application of the petitioner for grant of arms licence for revolver under the heirloom policy since the father of the petitioner is a licensee.

The factual matrix of the case, as pleaded in the writ application, is that the petitioner, being an agriculturist besides having some business, apprehending threat to his life and property,



with consent of other heirs of the licensee, submitted an application for grant of arms licence for revolver on 19.11.2014, before Respondent No.4, the District Magistrate, Bhagalpur -cum- Licensing Authority. The father of the petitioner, who retired from the post of Assistant Commissioner, Excise, was a licensee having N.P. Bore Revolver Licence No. 66 of 1960. Since the father of the petitioner became old, he expressed his desire to transfer the revolver to the petitioner and consequently, after taking no objection from other heirs of the licensee, the petitioner submitted an application to that effect. Subsequently, the father of the petitioner, namely, Shashi Shekhar Kumar Singh died on 27.05.2016. It is further submitted by learned counsel for the petitioner that the police recommended for grant of licence to the petitioner, but till date no decision has been taken.

A counter affidavit has been filed on behalf of Respondent No. 5, the Superintendent of Police, Bhagalpur stipulating therein that the police has already submitted the report making recommendation in favour of the petitioner. It has been further contended that vide Letter No. V-11016/16/2009, issued by the Ministry of Home, Government of India, certain directions were issued to the licensing authority as well as the appellate authority under the Arms Act which stipulates the category of



persons who should be given preference for grant of arms licence, one such category being that the person should be having threat perception.

Learned counsel for the petitioner further submits that the arms licence can be refused only on the ground incorporated under Section 14 of the Arms Act, 1959 (hereinafter referred to as 'the Act') and threat perception is not one of the conditions which is incorporated under Section 14 of the Act and in this connection he has relied upon the judgment reported in 2015(4) PLJR 204.

Learned AC to GP 5 submits that at present, he is not having any instruction from the licensing authority, however, a counter affidavit has been filed on behalf of Respondent No.5, the Superintendent of Police, Bhagalpur. He further submits that if no decision has been taken on the application of the petitioner then it will be taken within a time frame.

Having heard learned counsels for the parties, though neither under Section 13 nor under Section 14 of the Arms Act nor under Rule 51 of the Arms Rules, 1962, any time frame has been fixed for the licensing authority to take a decision on the application submitted for grant of arms licence. However, after coming into force of Arms Rules, 2016 (hereinafter referred to as Rules, 2016) a time frame has been fixed in this regard. Both



Rules 13 and 14 of the Rules 2016 as well as Schedule V, which has been framed under Rule 16 of Rules, 2016, mandate the duty of the licensing authority under NDAL (National Database of Arms Licence). Rule 14 prescribes the time limit for police report to be submitted by the Officer-in-Charge of the nearest police station, wherein it is specifically laid down that on the receipt of application for grant of a licence under Sub-section (1) of Section 13 or on every subsequent renewal thereof under Section 15, the licensing authority shall call for a report from the officer-in-charge of the nearest police station, and such officer shall send his report in Form S-4, within a period of 30 days from the date of receipt of application by him, whereas Rule 13 of Rules, 2016 prescribes the time limit for licensing authority to grant licence which stipulates that the licensing authority after considering the application and on being satisfied that the applicant has fulfilled the eligibility conditions, shall grant or refuse to grant licence by a reasoned speaking order in writing within a period of 60 days of the receipt of the police report.

Schedule V, which has been framed under Rule 16 of the Rules 2016, prescribes the time limit for the various services for licensing authority under Schedule II. It prescribes 16 various types of services or types of orders which can be passed by the



licensing authority, whereas Serial No. 17 prescribes the time limit of 7 days for any other services which are not defined in Schedule V.

Serial No.1 stipulates police verification under Rule 14 which also stipulates 30 days time for submission of police report from the date of receipt of application. Serial No. 2 prescribes the nature of services for grant or refusal of a licence under Rule 13 and it prescribes 60 days period for the licensing authority after receipt of the police report.

It appears that time frame has been prescribed since the licensing authorities were functioning in a callous manner in spite of several judicial pronouncement one of such pronouncement being reported in **2007(3) PLJR 76 (Dwivedy Surendra Advocate Vs. State of Bihar)**, wherein a Division Bench of this Court, after having considered the pendency of applications for grant of arms licence for years, directed for disposal of applications pending before the District Magistrates, within two months. The other applications, which were pending for police verification, were directed to be disposed within four months, but in spite of that, the licensing authority used to keep the application for months and years together resulting into incorporation of time frame in Rule, 2016. The action or inaction of the respondent



authority reflects that either the licensing authority is not bothered about the statutory provisions or he is still ignorant about the coming into force of Rules, 2016.

Earlier neither in the Act nor in the Rule, 1962, there was any provision for giving preference to the heirs of the licensee, However, such preference was directed to be given by the licensing authority and the appellate authority, vide Letter No. V-11016/16/2009, issued by the Ministry of Home, Government of India, wherein it was directed to give preference to such applicants on the death of the licensee or if the licensee has attained the age of 70 years or if the licensee is holding the licence for more than 25 years. Similar provision has been incorporated under Rule 25 of the Arms Rule, 2016.

In the present case, it appears that the father of the petitioner was granted arms licence in the year 1960 and about after 54 years of retaining the licence by the father of the petitioner, the petitioner submitted an application on 19.11.2014. It appears that when the petitioner submitted the application, father of the petitioner was not only above 70 years of age, but was holder of licence for more than 54 years.

The counter affidavit filed on behalf of Respondent No.5, the Superintendent of Police suggests that the



recommendation was made for grant of licence to the petitioner, but even then, there is nothing on record to suggest that the licensing authority has exercised its discretionary jurisdiction.

In view of the discussions made above, this Court is really dismayed to find the manner in which the licensing authority is heeding to the provisions of the Act and the Rule.

In the circumstance, since there is nothing on record to suggest that any final decision has been taken by the licensing authority on the application of the petitioner, it is expected from the Respondent No.4, the District Magistrate-cum-licensing authority, Bhagalpur to take a decision on the application of the petitioner, particularly keeping in view the preference to be given to the heirs of the licensee, within a period of four weeks from the date of receipt/production of a copy of this order.

Accordingly, with the above observations and directions, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	29.11.2018
Transmission Date	

