

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18044 of 2017

=====

Nirbhay Kumar Singh, Son of Late Sachida Nand Singh, Resident of Village- Bandhua (Mahdipur Campus, Manpur), P.S.- Muffasil, District-Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through thr Principal Secretary, Department of Home, Patna.
2. The Commissioner, Magadh Range, Gaya.
3. The District Magistrate, Gaya.
4. The Arms Magistrate, Gaya.
5. The Sub Divisional Magistrate, Gaya.
6. The Senior Superintendent of Police, Gaya.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Onkar Nath

For the Respondent/s : Mr. Sheo Shankar Prasad - Sc-8

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

02/ 22-03-2018

Heard Mr. Onkar Nath, learned counsel for the petitioner and Mr. Harshvardhan Singh Sundaram, learned AC to SC-8.

Since the writ application was registered on 6.12.2017 but till date no counter affidavit has been filed, this Court is not inclined to adjourn the matter any further.

The present Writ application has been filed for a direction to the respondents, particularly, respondent no. 3, the District Magistrate, Gaya to dispose of the application of the petitioner submitted for grant/transfer of arm licence of 12 Bore



D.B.B.L Gun No. 55511 on 19.08.2016.

The factual matrix which necessitated to the filing of the present writ application appears from the pleading of the writ application and the submission of learned counsel for the petitioner is that the father of the petitioner late Sachida Nand Singh had a licence for 12 Bore D.B.B.L. Gun bearing Gun No. 55511, Licence No. 215. The petitioner deposited the gun in question during 2016 Panchayat Election with Gaya Muffasil Police Station. The father of the petitioner past away on 16.04.2016 and thereafter the petitioner made an application for transfer/grant of licence before licensing authority on 19.08.2016. Consequently the police report was transmitted to the licensing authority recommending the grant of licence to the petitioner but till date the application of the petitioner has not been disposed of, hence, this writ application.

It is submitted by learned counsel for the petitioner that the then Principal Secretary, Home, Govt. of Bihar vide Memo No. 8212 dated 30th October, 2014 directed all the District Magistrates in the State of Bihar referring to the circular issued by the Department of Home, Government of India stipulating therein the situation in which under 'Heirloom', policy the heirs of the licensee can get the licence, which stipulated that



the licensee on reaching the age of 70 or being the holder of arm licence for 25 years, his heir can apply for transfer or grant of licence. Initially the heir only including husband, wife, son and daughter, but subsequently the policy of heir-ship was extended to son-in-law, daughter-in-law, brother and sister.

In the circumstances, there was undue delay in disposal of the application of such heirs there was complaint and hence, the direction was given for disposing such application which has been submitted by the heirs of the licensee for transfer or grant of such licence in a fast track mode. The said circular was also transmitted to all the S.Ps. for transmitting the police report immediately to the licensing authority. The said circular was also transmitted to the Divisional Commissioner for information and needful action. But in spite of that it appears that the such direction has no impact on the licensing authority as such the petitioner application for grant of such licence under the heirloom policy is pending since more than one and half years.

Learned AC to SC-8 submits that at present, he is not having any instruction that the application of the petitioner has been disposed of or not, but if the same has not been disposed of till date, it will be disposed of by the licensing authority within a time frame.



The provision for grant of licence is stipulated under Section 13 of the Arms Act, 1959, which stipulates on receipt of the application the licensing authority call for a report from the officer-in-charge of the nearest police station and on receipt of the such report the licensing authority has to pass an order in writing either to grant licence or refused to grant licence. The proviso of Section 13(2) (a) mandates that if the police report is not transmitted to the licensing authority within the prescribed time then the licensing authority may proceed without the police report. Rule 51 of Arms Rule, 1962 prescribes the format of the application being submitted for grant of licence of different categories of the arms. It is true that neither Section 13 of the Arms Act, 1959 nor Rule 51 of the Arms Rule, 1962 prescribe any time limit for grant of licence. Visualizing the undue delay at the end of licensing authority, the Principal Secretary issued directives as discussed above, particularly, in the case of heirs claiming licence on the death or the licensee becoming old.

It appears that the legislature visualizing the fact that the directives did not have any impact on the licensing authority, fixed a time limit for disposal of the application submitted for grant of licence, under Rule 13 of the Arms Rule, 2016. Rule 13 of Arms Rule, 2016 reads as follows:-



“The time limit for grant of licence. – The licensing authority, after consideration the application and on being satisfied that the applicant has fulfilled the eligibility conditions, shall grant or refuse to grant a licence for permissible category of arms or ammunition satisfied in category III of Schedule I, to any person by recording in writing the reasons for such grant or refusal by passing a speaking order, within a period of sixty days of the receipt of the police report.

Provided that the licensing authority was specify, the type of arms and ammunition to be procured by the applicant after assessing the reason and the need for possession of the type of arms and ammunition applied for by the applicant, considering the lethality or fire-power.”

Rule 14 of the Arms Rules, 2016 prescribes the time limit of thirty days for the Officer-in-charge of the police station to send his report in Form S-4, from the date of receipt of



application by him, on the asking of the licensing authority. Though Sub-Rule (2) of Rule 14 of the Arms Rules, 2016 stipulates that such time limit can be extended to ninety days, but only in certain areas and States, for any appropriate reasons. Rule 14 of Arms Rules, 2016 reads as under:-

“Time limit for police report for grant of licences:- (1) On receipt of an application for grant of a licence under sub-section (1) of section 13 or every subsequent renewal thereof under section 15, the licensing authority shall call for a report of the officer-in-charge of the nearest police station on that application, and such officer shall send his report in Form S-4, within a period of thirty days from the date of receipt of application by him.

(2) The Central Government may by issuance of a general or special order, extend the period of thirty days as specified in sub-rule (1) up to ninety days for certain areas or States for any reason deemed appropriate by it.

(3) The licensing authority may in case of non-receipt of police report within the period of



thirty days under sub-rule (1) or within the extended period under sub-rule (2), make an order in writing for grant or refusal of licence, without further waiting for the report.”

From perusal of the above Rule it appears that licensing authority after considering the application and on being satisfied that the applicant has fulfilled the eligibility conditions, shall grant or refuse to grant a licence for permissible category of arms or ammunition to any person by recording in writing the reasons for such grant or refusal, by passing a speaking order, within a period of sixty days of the receipt of the police report.

However, a Division Bench of this Court about a decade ago Court in the case of Dwivedy Surendra Vs. The State of Bihar and another (CWJC No. 13496 of 2004) reported in 2007(3) PLJR 76, directed all the licensing authority to dispose of all the pending applications for licence within a period of two months in which the police report has been received and in the case of non-receipt of the police report within a period of four months and consequently an advisory was issued by the State Government but in spite of that the applications for grant of arm licences are kept pending for month and years together by the



licensing authority for the reason best known to them.

In case of heir of licensee claiming a licence has to be treated differently because it is true that it is a grant of licence but it is more in a nature of transfer from the initial grant of licence. In Arms Rule, 2016 the specific provision for grant of licence to the legal heirs has been stipulated in Rule 25 of the Arms Rule, 2016, which reads as follows:-

“Grant of licences to legal heirs. – ((1) The
licensing authority may grant a licence-

(a) after the death of the licensee, to his legal heir; or

(b) in any other case, on the licensee attaining the age of seventy years or on holding the fire-arm for twenty-five years, whichever is earlier, to any legal heir nominated by him:

Provided that notwithstanding the provisions contained in Rule 12 of these Rules, the licensing authority may grant a licence to such legal heir if the eligibility conditions under the Act and these Rules were fulfilled by the said legal heir and there are no adverse remarks in the police report.

(2) Where a licensee leaves behind more than one legal heir and the legal heirs decided amongst themselves to



retain the arm or arms of the deceased, one of the legal heirs nominated by all other legal heirs may apply for a licence under sub-rule (1) along with the following documents, namely:-

- (i) a declaration of no-objection from the remaining legal heirs;
- (ii) an indemnity bond executed by the applicant giving full details of the licence and the arm or arms endorsed thereupon; and
- (iii) a copy of the death certificate of the deceased licensee.

(3) Where the legal heirs decide to dispose of the arm or arms endorsed on the license of the deceased licensee, they may apply to the licensing authority for grant of a limited period permission to sell the arm or arms, within the time allowed by such authority, to any licensed dealer or to any other person entitled to possess an arm under these rules.

Explanation. – For the purposes of this rule, “legal heirs” includes husband, wife, son, daughter, son-in-law, daughter-in-law, brother, sister and grandchildren of the licensee or the deceased licensee.”



Arms Rule 2016 came into force on 15.07.2016 by publication of the said Rule in the Gazette of India, but even after more than one and half years of its having come into force, it does not appear to have made any impact on the licensing authorities.

In view of the discussion made above, it is imperative on the part of the licensing authority, the District Magistrate, Gaya to dispose of the application of the petitioner for grant of arm licence within a period of four weeks from the date of receipt/production of a copy of this order.

Accordingly, this Writ application is disposed of.

(Dinesh Kumar Singh, J)

DKS/-

U			
---	--	--	--

