

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15274 of 2017

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Anjani Kumar Singh S/o Girja Pd. Singh at Present Resident of Village-Sattar P.S.-Maner, P.O.-Sarai District-Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary of Bihar Govt. Old Secretariat, Patna.
2. District Magistrate, Patna.
3. Commissioner, Patna Division Patna.
4. Arms Magistrate Collectorate, Patna
5. Senior Superintendent of Police, Patna.
6. Additional District Magistrate, Collectorate, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dr. Ajay Shankar Rajoo, Advocate
For the Respondent/s : Mr. Md. Nadeem Seraj, GP-5
Mr. Shailesh Kumar, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

02/ 01-10-2018

Heard Dr. Ajay Shankar Rajoo, learned counsel for the petitioner and Mr. Shailesh Kumar, learned AC to GP-5.

The present writ application has been filed for a direction to respondent no. 2, District Magistrate, Patna to take a decision on the application of the petitioner submitted for grant of arms licence for DBBL gun.

It is submitted by learned counsel for the petitioner that the grand father of the petitioner was holder of an arms licence bearing Licence No. 600/1982 and is having a DBBL



gun bearing Gun No. 118055. The petitioner submitted an application for grant of arms licence for DBBL gun in 2009 after obtaining no objection certificate from the respondent authorities. The said application of the petitioner was rejected vide order dated 05.09.2013 passed in Misc. (Arms) Licence Case No. 9-529/2009 on the ground that, at present, the petitioner is not having any threat to his life and property and that the petitioner had not filled up all the columns of the application. Besides this it was also stated that the petitioner is not having any specific threat perception and has not provided reason for the grant of arms licence, as contained in Annexure-4. The said order was challenged by the petitioner in Arms Appeal No. 559 of 2013. The Divisional Commissioner, Patna vide order dated 26.04.2016 passed in Arms Appeal No. 559 of 2013, remanded the matter directing the District Magistrate, Patna to consider the application of the petitioner in terms with heirloom policy and direction to that effect has been issued vide various judgments but even after obtaining a fresh police report, the District Magistrate, Patna is sitting tight over the matter. Hence, the present writ application.

Learned AC to GP-5 submits that, at present, he is not having any instruction whether any decision has been taken on the application of the petitioner or not, but he further



submits that if any decision has not been taken till date after being remanded back to the District Magistrate, Patna, it will be taken by the licensing authority within a reasonable time frame.

This Court is dismayed to find that the application was submitted in 2009, whereas the District Magistrate passed the order in 2013 and thereafter on remand the matter is pending before the District Magistrate since 26.04.2016 for about two and half years, but there is nothing on record to suggest that any decision has been taken by the District Magistrate, Patna.

It is true that there is no provision under Arms Act, 1959 for the transfer of licence but any person cannot seek to transfer the arms in his name, without a licence being granted in his name as per the provisions of the Act. Though, there was absence of any provision either in Arms Act, 1959 or Arms Rules, 1962 with regard to giving preference while considering the grant of licence to the heirs or nominee of the licensee, but the Ministry of Home, Govt. of India issued vide letter No. V-11019/23/95/Arms dated 25.03.1995 and letter No. V-11016/16/2009, Arms dated 31.03.2010 issued an advisory to the effect that the licensing authority was to give preference to such applicants, while considering the grant of licence to the heirs or the nominee of the licensee, who has either attained the age of 70



years or has retained the licence for 25 years. Consequently, an advisory was issued by the Department of Home, Govt. of Bihar under the signature of the then Principal Secretary, Home, but it appears that such advisory did not bear any impact on the licensing authorities. Realizing the same the Central Government while drafting Arms Rules, 2016 introduced specific provision under Rule 25 of the Arms Rules, 2016 providing the manner in the grant of licence has to be considered to the legal heirs or nominee of the licensee. Rule 25 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.”

The above provision indicates that the licence to the heirs or nominee has to be granted if the licensee has either attained the age of 70 years or retained the licence for 25 years.

The time frame was prescribed either under Section 13 or 14 of the Arms Act, 1959 which incorporates the procedure for grant of licence or refusal to grant licence or under Rule 51 of Arms Rules, 1962 which prescribes the mode for application of grant of licence, but the time limit has been prescribed under Rules 13 and 14 of the Arms Rules, 2016. Rule 14 of Arms Rules, 2016 stipulates that on receipt of the application for grant of arms licence, the licensing authority shall call for a report from Officer-in-Charge of the nearest police station, who shall submit the report within thirty days of receipt of the application by him, whereas Rule 13 of Arms Rules, 2016 stipulates that the licensing authority after considering the application and on being satisfied that the applicant has fulfilled the eligibility condition shall take a final decision by a speaking and reasoned order in writing either granting or refusing to grant the arms licence within sixty days of the receipt of police report.

In view of the discussions made above, it is expected from respondent no. 2, the District Magistrate, Patna to



take a final decision on the application of the petitioner within a period of four weeks from the date of receipt/production of a copy of this order, keeping in view the provisions under Rules 13 and 25 of the Arms Rules, 2016.

With the above observation and direction, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

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