

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12552 of 2018

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Rakesh Kumar, Son of Late Jai Nath Prasad, R/o House- Champaran Kothi,
Mohalla- Old Jakkanpur, P.S.- Jakkanpur, P.O.- G.P.O., District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Home Department, Govt. of Bihar, Patna.
3. The District Magistrate, District- Patna, at Patna.
4. The Arms Magistrate, Patna, District- Patna.
5. The Sub-Divisional Magistrate, Sadar Sub-Division, Patna.
6. The Senior Superintendent of Police, District- Patna at Patna.
7. The S.H.O., Jakkanpur Police Station, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar, Advocate
Mr. Satyeshwar Prasad, Advocate
For the Respondent/s : Mr. Manish Kumar- GP4

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

02/ 17-07-2018

Heard Mr. Satyeshwar Prasad, learned
counsel for the petitioner and Mr. Manish Kumar, GP-4.

Though the prayer has been made by the
petitioner for directing Respondent No. 3, the District Magistrate,
Patna to issue arms licence for NP Bore Rifle in favour of the
petitioner. However, this Court is of the confirmed view that such



direction cannot be issued by this Court. This Court can only direct the licensing authority to take a decision on the application of the petitioner.

The factual matrix of the case is that the father of the petitioner, late Jai Nath Prasad was issued an arms licence for NP Bore Rifle being Licence No. 1639/1981, which was renewed up to 31.12.2016 by Respondent No. 4, the District Arms Magistrate, Patna and it was never misused. The father of the petitioner died on 27.06.2016, thereafter, the said rifle was deposited before the Arms dealer namely, Patna Gun House, Frazer Road, Patna on 25.07.2016. The receipt has been brought on record as 'Annexure-P/3'. The petitioner made an application for the licence in July, 2016, but till date, no final decision has been taken and hence, the present writ application.

It is submitted by learned counsel for the petitioner that in spite of the best effort, he could not get the licence issued in his favour and the said arm is rotting with the Arms dealer.

It is submitted by Mr. Manish Kumar, GP-4 that, at present, he is not having any instruction whether a decision on the application of the petitioner has been taken or not, but if no decision has been taken on the application of the petitioner, it will



be taken by the licensing authority within a time frame.

To have a licence for arms is not a fundamental right and the parameters to grant such licence or refuse to such grant has been laid down under Sections 13 and 14 of the Arms Act, 1959. There was no provision for giving preference to the heirs or nominee of the licence in Arms Rules, 1962. However, Ministry of Home, Govt. of India vide letter No. V-11019/23/95. – Arms, dated 28.02.1995 and letter No. V-11016/16/2009, Arms, dated 31-03-2010 issued guidelines to give preference to such application, who were/are the heirs or nominee of the licensee when either the licensee attains the age of 70 years or he has licence for 25 years. Consequently, Department of Home, Govt. of Bihar also issued directives in this regard. But, it appears that the licensing authority did not bother to give preference to such applications. Hence, in Rule 25 of Arms Rules, 2016 a specific provision has been incorporated with regard to grant licence to heirs/nominee of the licensee. Rule 25 of Arms Rules, 2016 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.”

Rules 13 and 14 of Arms Rules, 2016 stipulate the time frame for exercise of such jurisdiction by the licensing authority, as Rule 14 stipulates that the Officer-in-charge of the nearest police station has to submit the report within thirty days of receipt of the application and Rule 13 stipulates the decision should be taken by the licensing authority either to grant or to refuse to grant licence by speaking and reasoned order within sixty days of the receipt of police report.

In the circumstances, it is expected from Respondent No. 3, District Magistrate, Patna to take a decision on the application of the petitioner keeping in view the directions laid



down under Rules 13, 14 and 25 of Arms Rules, 2016 within a period of six weeks from the date of receipt/production of a copy of this order.

Accordingly, this writ application is disposed of.

(Dinesh Kumar Singh, J)

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