

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6441 of 2017

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Vikash Narayan Sinha Son of Late Shatrughan Prasad Sinha, Resident of Village- Basantpur Patti, P.S.- Saraiya, District- Muzaffarpur. Presently residing at Mohalla- Sahjanand Colony, Bhagwanpur, P.S.- Muzaffarpur Sadar, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate- Cum- District Arms Magistrate, Muzaffarpur, District- Muzaffarpur.
4. The Incharge Arms Magistrate, Muzaffarpur, District- Muzaffarpur.
5. The Senior Superintendent of Police, Muzaffarpur, District- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pushpendra Kumar Singh
For the Respondent/s : Mr. Partha Sarthi-Ga4

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 24-05-2018

Heard Mr. Awadhesh Kumar Singh, learned counsel for the petitioner and Mr. Utsav Kumar, learned AC to Mr. Partha Sarthi, learned GA-4.

The Writ application has been filed for quashing the order dated 16.10.2015 passed by respondent no. 3, District Magistrate, Muzaffarpur, whereby petitioner's application for grant of N.P. Bore Revolver licence has been rejected on the ground that the petitioner had not been able to explain as to what kind of threat perception is being faced by the petitioner, when he was called for the interview and that in the police report also no specific circumstance concerning arms threat



perception to the petitioner, has come forth. The prayer has also been made for a direction to the licensing authority to grant N.P. Bore Revolver licence to the petitioner.

It is submitted by learned counsel for the petitioner that the petitioner is a practicing Advocate of Civil Court, Muzaffarpur and is at present Additional Public Prosecutor. The petitioner is having a double barrel gun licence from before. In order to have adequate security for the safety of life and property of the family, the petitioner submitted an application for grant of N.P. Bore Revolver on 19.06.1996, as contained in Annexure-P/1. Vide Memo No. 192 dated 19.06.1996, the Station House Officer of Muzaffarpur Sadar Police Station was directed to send verification report after proper verification. After proper verification the Station House Officer transmitted the report to the Deputy Superintendent of Police, Muzaffarpur on 24.08.1996. The same was forwarded with recommendation for grant of licence by Deputy Superintendent of Police, Muzaffarpur on 25.08.1996, but in spite of that several years passed, but the application of the petitioner was kept pending and ultimately the petitioner filed writ application being C.W.J.C. No. 13039 of 2005 before this Court. During the pendency of the writ application the respondent no. 3 passed order dated 28.02.2006, as contained in Annexure-P/2, whereby the petitioner's application for



grant of N.P. Bore Revolver was rejected on the ground that the petitioner is already holding a licence of double barrel gun which is sufficient for the safety of the petitioner. The said order dated 28.02.2006 passed by District Magistrate, Muzaffarpur was challenged by the petitioner in Arms Appeal No. 36 of 2006 before respondent no. 2, Commissioner, Tirhut Division, Muzaffarpur, who dismissed the appeal of the petitioner in Arms Appeal No. 36 of 2006 vide order dated 01.11.2006 on the ground that the petitioner has challenged the order of the District Magistrate before this Court. A Bench of this Court after hearing the counsel for the parties deprecated the manner in which the claim of the petitioner was rejected by the District Magistrate and vide order dated 26.07.2013, quashed the order of the District Magistrate dated 28.02.2006 order dated 01.11.2006 passed by Commissioner, Tirhut Division, Muzaffarpur as contained in Annexure-5 and 6 and remanded back the matter to the District Magistrate, Muzaffarpur to consider the matter afresh, within a reasonable time frame. The relevant portion of the order reads as under:-

“With due respect to the licensing authority, there is no prohibition in the Arms Act not to possess a second weapon. The overall assessment has to be made depending on the requirement of a citizen and the surrounding circumstance. Mere possession of a Double Barrel Gun cannot be said to be injurious to the request of the petitioner for a licence of a



Revolver.

The impugned order contained in Annexures-5 and 6 are quashed. The matter is remanded back to the District Magistrate, Muzaffarpur to consider the matter afresh within a reasonable time frame.”

On remand the present impugned order has been passed by the District Magistrate on 16.10.2015, whereby the application of the petitioner for grant of N.P. Bore Revolver has been rejected on the ground that the petitioner is already having a licence of Double Barrel Gun which is sufficient for his safety. No factual detail has been given for grant of second Arms licence, moreover, during interview petitioner failed to place on record the specific reason with regard to the threat perception, nor any specific reason has been assigned in the police report with regard to the threat perception. However, this order was passed by the District Magistrate when the petitioner preferred M.J.C. No. 2241 of 2015 when his application for grant of Arms licence was not being disposed of by the District Magistrate, despite the order dated 26.07.2013 passed in C.W.J.C. No. 13039 of 2005, as contained in Annexure-P/4. Admittedly, after filing of the contempt application the impugned order was passed, and consequently the contempt application was disposed of vide order dated 20.01.2017 with liberty to the petitioner to assail the order dated 16.10.2015, hence, the present Writ application.

It is further submitted by learned counsel for the



petitioner that bare reading of Section 3(2) of the Arms Act, 1959 clarifies and stipulates that no person, other than those specified in sub-section (3), shall acquire in his possession or carry, at any time, more than three fire-arms, meaning thereby that a citizen of the country has the liberty to acquire in his possession three fire-arms at a time. Yet, contrary to the said provision, the earlier rejection order of the District Magistrate dated 28.02.2006 suggests that the application for grant of second arms licence was rejected only on the ground that the petitioner is having a arms licence from before, while in the present impugned order also, it has again been made one of the grounds for rejection of petitioner's application for arms licence, which gets reflected from last few paragraphs of the order dated 16.10.2015. This ground of rejection has been repeated, in spite of the fact that this Court had already deprecated the attitude of the District Magistrate and had held that there is no bar under law to have second Arms licence. The other ground of rejection, in the present impugned order under consideration, is that the petitioner has not been able to specify the threat perception being faced by him, but such ground of rejection of application for grant of arms licence is absolutely unknown and alien to the provisions under Sections 13 and 14 of the Arms Act, which provides the parameters for grant and refusal, respectively, for grant of Arms licence. Moreover, the said order has been passed when



contempt application was filed, which depicts the manner in which the District Magistrate has passed the impugned order, which is contrary to the direction of this Court and is in contravention to the stipulations of the Arms Act.

Learned counsel for the respondents, however, submits relying upon the counter affidavit that reasoned order has been passed and petitioner ought to have preferred appeal against the impugned order passed by the District Magistrate.

Having heard the learned counsels for the parties, it is well settled law that where efficacious remedy is available, the Court should not exercise the discretionary jurisdiction under Article 226 of the Constitution of India which is subject to certain self-imposed restrictions. But the alternative remedy cannot operate as a bar in certain exigencies, such as, where the writ petition is filed for enforcement of any of the Fundamental Rights or where there is violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is under challenge as has been dealt in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors. reported in (1998) 8 Supreme Court Cases 1.

Section 3(2) of the Act specifically envisages that a citizen can acquire or possess three fire-arms at a time, hence, that



cannot be a ground to deprive the petitioner from acquiring the second Arms licence particularly in view of the fact that the police did recommend for grant of licence. So far as the second ground of rejection of application of the petitioner for grant of arms licence is concerned, it has been said that the petitioner has not been able to specify the threat perception being faced by him. Such ground is not stipulated under Section 14 of the Arms Act, 1959, which deals with the refusal of licences. The ground of threat perception for refusal of licence does not figure out in Section 14 of the Arms Act which stipulates the grounds on which the licensing authority can refuse licence, and moreover, time and again it has been reiterated by the Apex Court and the High Courts that the ground of threat perception for refusal of grant of arms licence, is absolutely alien to the stipulations and provision under Section 14 of the Act.

A useful reference may have to be made to Section 14 of the Act which stipulates the grounds on which arms licence can be refused, which reads as follows:

“14. Refusal of licences. – (1) Notwithstanding anything in section 13, the licensing authority shall refuse to grant-

(a) a licence under section 3, section 4 or section 5 where such licence is required in respect of any prohibited arms or prohibited ammunition;

(b) a licence in any other case under Chapter II, --



(i) where such licence is required by a person whom the licensing authority has reason to believe —

(1) 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

(2) to be of unsound mind, or

(3) to be for any reason unfit for a licence under this Act; or

(ii) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

(2) The licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or possess sufficient property.

(3) Whether the licensing authority refuses to grant a licence to any person it shall record in writing the reasons for such refusal and furnish to that person on demand a brief statement to the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.”

In the present case, since the licencing authority has failed to exercise the jurisdiction vested in him as mandated under Section 13 of the Act and exercised the jurisdiction while refusing to



grant arms licence on the ground of the petitioner having no threat perception, does not amount to an order without jurisdiction but contrary to the repeated directions of this Court deprecating the attitude of the licensing authority in refusing to grant of licence to such applicants having no threat perception. Since under the Arms Act, 1959 or in Arms Rules, 1962 there was no provision for considering the grant of licence to such applicants who has the threat perception, the Ministry of Home Affairs, Government of India vide letter no. V-11016/16/2009-Arms dated 6th April, 2010 transmitted directives to the Secretary (Home Department), All States/Uts wherein Clause (ii) stipulates for grant of Arms License for Non-Prohibited Bore weapons. Sub-clause(a) of Clause (ii) stipulates that the applications for grant of NPB arms licences may be considered from persons, who may face or perceive grave and imminent threat to their lives. Clause (ii) reads as follows:

“ii) Grant of Arms License for Non-Prohibited Bore (NPB) weapons

The arms licences for acquisition of NPB weapons are considered by the State Government/DM concerned. At present, there are no norms for grant of NPB weapons and some State Govts. may be issuing arms licences liberally. It has been decided that:

(a) Applications for grant of NPB

arms licences may be considered from persons, who may face or perceive grave and imminent threat to their lives,



for which the licensing authority will obtain an assessment of the threat faced by the persons from the police authorities.....”

Though it is well settled law that executive instruction cannot override the statutory provision, however, the executive instruction can supplement and not supplant the statutory provision. Hence, the above mentioned instruction or advisory amounts to supplement or explaining the statutory provisions. However, since the jurisdiction for grant of arms licence has been exercised arbitrarily by the licensing authority, the legislature thought it proper to incorporate in Arms Rules, 2016 the obligation of licensing authority in certain cases to give preference, particularly, if the applicant has threat perception. Rule 12 of Arms Rules, 2016 reads as follows:

“12. Obligations of licensing authority in certain cases.- (1) Save as otherwise provided in the Act, every licensing authority granting a licence in Form III to an individual for the restricted or permissible arms or ammunition as specified in category I(b) and I(c) or category III respectively in Schedule I, shall have due regard to the application of norms specified in sub-rules (2) and (3).

(2) For grant of a licence for the restricted arms or ammunition specified in category I(b) and I(c) in Schedule I, the licensing authority, may consider the application of-



(a) any person who faces grave and anticipated threat to his life by reason of-

(i) being resident of a geographical area or areas where militants, terrorists or extremists are most active; or

(ii) being the prime target in the eyes of militants, terrorists or extremists; or

(iii) facing danger to his life for being inimical to the aims and objectives of the militants, terrorists or extremists; or

(b) any Government official who by virtue of the office occupied by him or by the nature of duty performed by him and/or in due discharge of his official duty is exposed to anticipated risk to his life; or

(c) any Member of Parliament or Member of Legislative Assembly, who by virtue of having close or active association with anti-militant, anti-terrorist or anti-extremist programmes and policies of the Government or by mere reason of holding views, political or otherwise, exposed himself to anticipated risk to his life; or

(d) any family member or kith and kin of a person who by the very nature of his duty or performance (past or present) or position occupied in the Government (past or present) or even otherwise for known or unknown reasons exposed himself to anticipated risk to his life; or

(e) any other person, for any legitimate and genuine reason, to the satisfaction of the licensing authority, by passing of a speaking order in this regard:

Provided that before grant of a licence under this sub-rule, the licensing authority based on the recommendations of the district magistrate and of the



State Government concerned and on examination of the police report and after conducting a separate verification from its own source, shall satisfy itself that the applicant requires such licence.

(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.”

The above provision under Rule 12 of Rules, 2016 also suggests that preference has to be given to the persons who are having threat to their life or property, but that does not mean that a person having no threat perception will not get licence.

This Court has deprecated this view of the



licensing authority of refusing the licence to persons if they do not have any threat perception, such as, in the case of Amrendra Kumar Singh Vs. State of Bihar & Ors. reported in 2008(1) PLJR 151. In another decision rendered in the case of Raj Kumar Singh Vs. The State of Bihar & Ors. reported in 2012(2) PLJR 695, a Bench of this court held that the licensing authority should exercise the discretion vested in it for grant of licence under the provisions of the Act and the provisions under section 14 of the Act cannot be expanded to the extent that it makes the very provision a redundant. This Court, in the case of Sushil Kumar Singh Vs. The State of Bihar & Ors., reported in 2015(2) PLJR 549 held that the arms licence can be refused only within the parameters of Section 14 of the Act. Similar view has been taken in the case of Manish Kumar & Ors. Vs. The State of Bihar through the Commissioner, Patna Division & Ors. and analogous cases, reported in 2015(4) PLJR 212.

True it is that neither Section 13 of the Act nor Rule 51 of Rules 1962 prescribes any time limit for the licencing authority for disposal of such applications. However, this Court on several occasions has prescribed the time limit for disposal of such applications. In one of such cases, is the case of Dwivedy Surendra, Advocate Vs. The State of Bihar and Ors., 2007(3) PLJR 76, this Court directed the Home Secretary, Government of Bihar to write a letter to the Inspector



General of Police of all the Divisions with a copy to all the Superintendents of Police directing them to issue direction to the concerned police officers to send the verification report to the District Magistrate of the concerned district within a period of one month. In case of disobedience of the order, the court directed to take stern action against the concerned police officer. The Licencing Authorities were directed to hold court for the purpose and to dispose of 5538 pending applications for grant of arms licence including the applications filed by the heirs of the deceased licensee within two months and other applications which were awaiting police verification report, within a period of four months.

Since the Licencing Authorities were absolutely insensitive in prompt and due disposal of application for grant of arms licence, hence, the Ministry of Home, Government of India had issued advisory/directive vide Letter No. 11016/16/2009 dated 31.3.2010 for quick disposal of such applications to all the District Magistrates/the Inspector Generals/the Regional Deputy Inspector Generals and the Superintendents of Police, but it appears from analyzing the facts of the case that such advisory/directive did not bear any result nor the same has had any impact on the Licencing Authority, particularly, the District Magistrate, Muzaffarpur.

The Principal Secretary, Home, Government of Bihar vide



Memo No. 10010 dated 4th of December, 2014 directed all the District Magistrates and Superintendent of Police in the State of Bihar on the basis of directives of Department of Home, Government of India, issued vide Letter No. 11016/16/2009 dated 31.3.2010 to send the application for grant of arms licence to the concerned Superintendent of Police immediately on receipt of police application. The concerned Superintendent of Police will transmit the report within 45 days to the concerned District Magistrate, whereupon the concerned District Magistrate will take final decision within 30 days of receipt of police report, meaning thereby that the whole exercise has to be completed within a period of 75 days. But, vizualizing that the executive instruction has no impact on the respondent authorities, time limit was prescribed under Rules 13 and 14 of Rule 2016. Rule 13 of the Rules, 2016 prescribes time limit for exercise of discretion by Licencing Authority for grant of licence, which specifically suggests that the Licencing Authority, on considering the application and on being satisfied that the applicant has fulfilled the eligibility conditions, shall grant or refuse to grant a licence by a speaking order, within a period of sixty days of the receipt of the police report.

In view of the discussions made above, the order dated 16.10.2015 as contained in Annexure-P/10, passed by District Magistrate, Muzaffarpur, is, hereby, quashed. The District Magistrate,



Muzaffarpur is expected to decide the issue of grant of arms licence within the parameters of the provisions of the Arms Act within a period of four weeks from the date of receipt/production of a copy of this order.

Accordingly, this Writ application is allowed.

(Dinesh Kumar Singh, J)

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