

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9659 of 2017

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Md. Ishtiyaque Alam, S/o Md. Kalimuddin, R/o Village + P.O.- Harna Bujurgah, P.S.- Rajoun, District- Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Bhagalpur Division, Bhagalpur. null null
2. Commissioner, Bhagalpur Division, Bhagalpur.
3. The District Magistrate, Banka.
4. Superintendent of Police, Banka.
5. Station House officer (S.H.O.), Rajoun, Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar Singh
For the Respondent/s : Mr. Manish Kumar- Gp4

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 24-05-2018

Heard Mr. Pramod Kumar Singh, learned counsel for the petitioner and Mr. Manoj Kumar, learned AC to GP-4.

The present Writ application has been filed with a prayer for quashing the order dated 19.04.2017 passed in Arms Appeal No. 4/2016-17 by Respondent no. 2, Commissioner, Bhagalpur Division, Bhagalpur affirming the order dated 18.03.2016 passed vide Memo No. 42/Sastra dated 18/19.03.2016 by Respondent no. 3, District Magistrate, Banka, whereby the application of the petitioner for grant of licence of a non-prohibited (N.P.) Bore rifle has been rejected.

The factual matrix of the case is that the petitioner being



an agriculturist by profession submitted an application for grant of non-prohibited (N.P.) Bore rifle in prescribed form with prescribed fee to Respondent no. 3, the licensing authority –cum- District Magistrate, Banka in terms of Section 13(2) of the Arms Act, 1959 (hereinafter called as the ‘Act’). The District Magistrate, Banka called for a report from Officer-in-charge, Rajoun Police Station and Police Inspector, Baunsi, who submitted their reports to the Superintendent of Police, Banka who ultimately transmitted the report to the District Magistrate, Banka suggesting that there has been no report of threat to life and property and the petitioner has not submitted any foundational facts for grant of license. The District Magistrate after considering the report came to a conclusion that the petitioner does not have any threat to his life and property and the Superintendent of Police has not recommended for issuance of arms licence. Moreover, he has also suggested that the petitioner has not received any threat to life and property. The petitioner has failed to produce any fact suggesting the necessity of grant of arms licence and thirdly petitioner has failed to produce any fact which mandates the issuance of licence in his favour and ultimately vide Memo No. 42/sastra dated 18/19.03.2016, the application of the petitioner for issuance of licence has been rejected by the District Magistrate, Banka.

Being aggrieved by the order of District Magistrate, Banka, the petitioner preferred Misc. (Arms) Appeal No. 04/2016-17 before the Commissioner, Bhagalpur Division, Bhagalpur, who vide order dated



19.04.2017 upheld the order of the District Magistrate on the ground that at the request of counsel for the petitioner a report was called for, from the Superintendent of Police, Banka to the effect whether the residential area of the petitioner is naxal affected or not and Superintendent of Police, Banka vide letter No. 1198 dated 16.03.2017 reported that Rajoun Police Station does not fall within the naxal affected area and further upheld the order on the ground on which the District Magistrate had rejected the claim of the petitioner. The Commissioner, Bhagalpur Division, Bhagalpur concluded that there is no foundational fact for issuance of licence in favour of the petitioner. Hence, the present Writ application.

Learned counsel for the petitioner submits that Section 13 of the Arms Act stipulates the procedure being adopted by the Licensing Authority for consideration of grant of licence. Section 13 (1) of the Act stipulates the procedure for submitting application for grant of licence under Chapter II of the Act. Section 13(2) of the Act prescribes that on receipt of an application, the licensing authority is supposed to call for a report of the Officer-in-charge of the nearest police station on that application, and such officer shall send his report within the prescribed time. Section 13(2-A) of the Act prescribes that licensing authority, after such enquiry, if any, as it may, consider necessary, and after considering the report received under subsection 2, shall, subject to the other provisions of this Chapter, by order in writing either grant licence or refuse to grant the same. It is further submitted



that there are three grounds on which the prayer for issuance of licence can be refused by the Licensing Authority. Those are when a licence under Sections 3, 4 and 5 where such licence is required in respect of any prohibited arms or prohibited ammunition, where such licence is required by a person whom the licensing authority has reason to believe 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, secondly to a person of unsound mind and thirdly when there is reason to believe that such person, for any reason, is unfit for a licence under this Act or where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence. The petitioner's application for grant of licence has been refused on the ground which is not incorporated under Section 14 of the Act. Hence, both the orders passed by the District Magistrate and the Divisional Commissioner have been passed with absolute non-application of mind and contrary to the procedure provided under Sections 13 and 14 of the Act.

It is further submitted by learned counsel for the petitioner that neither the licensing authority nor the Appellate Authority have considered this fact that there is specific procedure prescribed under Section 13 of the Act for grant of licence and there are three conditions mentioned in Section 14 of the Act on which the licence can be refused. The case of the petitioner does not come in any of such conditions enumerated in



Section 14 of the Act but despite that, the petitioner's application for grant of licence has been rejected. The counsel for the petitioner has relied upon a decision of this Court in the case of Amrendra Kumar Singh Vs. State of Bihar and Ors, reported in 2008(1) PLJR, 151 where it has been held that it will suggest that the actual threat perception is not a sine qua non for grant of licence.

Learned counsel for the State submits that the police report submitted by the Superintendent of Police, Banka suggests that neither there is any incidence of threat perception to life and property of the petitioner nor the petitioner has produced any useful material for issuance of license.

Considering the rival submissions of the parties, it is true that the acquiring of arms license is not a Fundamental Right of a person but it is a Statutory Right. The parameters for grant of licence and its refusal has been incorporated under Sections 13 and 14 of the Arms Act, 1959 (hereinafter referred to as the Act). Section 14 of the Act 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.”

The above provision suggests that the licensing authority can refuse to grant licence in respect of any prohibited arms or prohibited ammunition under Sections 3, 4 or 5 of the Act or if such licence is required by a person whom the licensing authority has reason to believe that he is prohibited by this Act or by any other law for the time being in force from acquiring or having in his possession or carrying any arms or ammunition or



he is of unsound mind, or the person concerned is found, for any reason, unfit for a licence under the Act or if the licensing authority deems it necessary to refuse to grant such licence for the security of the public peace or for public safety.

Section 14(2) of the Act clearly stipulates that arms licence cannot be refused to a person merely because he does not possess sufficient property, meaning thereby the arms licence can be granted for personal safety only. The order passed by the Licensing Authority suggests that the licence has been refused in view of the executive instruction of the Government of Bihar issued vide Letter No. V-11016/16/2009 Arms inasmuch as the recommendation of the Superintendent of Police, Banka does not suggest that the petitioner had any threat perception and that no fact has been brought to the notice of the Licensing Authority which suggests that the grant of licence is compulsory.

The perusal of proviso to Section 13 suggests that the licensing authority may proceed if the prescribed report is not received from the concerned police station. Section 13(2-A) of the Act reads as follows:

“13. Grant of licences. -(1) ..

[(2) On receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.

(2-A) The licensing authority, after such inquiry, if any, as it may, consider necessary, and after considering



the report received under sub-section(2), shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same:

Provided that where the officer in charge of the nearest police station does not send his report on the application within the prescribed time, the licensing authority may, if it deems fit, make such order, after the expiry of the prescribed time, without further waiting for that report.]”

So far as the executive instruction of the Ministry of Home, Government of India is concerned, the whole purport of the same is to give preference in grant of arms licence to a person who has life threat. 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 there was no provision in the Act or in Arms Rules, 1962 to give preference to such persons who have life threat but since the licensing authorities were arbitrarily exercising power under the Act hence, such executive instructions were issued. However, it is well settled law that executive instruction cannot override the provisions of the Act or the statutory Rule though the legislature visualizing the issue, under Rule 12 of the Arms Rules, 2016, cast obligation upon the licensing authority in certain cases including the persons who have life threat have to be given preference. This Court feels that useful reference can be made to Rule 12 of Arms Rules, 2016 which 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 Appellate Court called for a report on the request of the counsel for the petitioner with regard to the fact that whether the area in question is naxal affected or not which suggests that the report of the S.P., Banka was not a complete report. Moreover, the report of S.P. is not based on any factual figure of the case. Hence, the said report appears to be unreasonable and an attempt by the S.P. to justify his earlier report. Moreover, Section 13 of the Act does not stipulate that the licence can only be granted if the applicant's place of residence is affected by naxals.

In view of the above discussion, it appears that both the licensing authority as well as the Appellate Authority have not exercised the jurisdiction in the manner prescribed in the Act and Rules. Hence, both the orders dated 18.03.2016 and 19.04.2017 passed by District Magistrate, Banka and Commissioner, Bhagalpur Division, Bhagalpur, as contained in Annexure-1 and 2 respectively are set aside. The District Magistrate, Banka



is expected to reconsider the prayer of the petitioner for issuance of arms licence in the true perspective as per the parameters laid down under Section 13 of the Arms Act and the discussions made above.

Accordingly, this Writ application is allowed.

This Court hopes and expects that the whole exercise will be done within a period of three months from the date of receipt/production of a copy of this order.

(Dinesh Kumar Singh, J)

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