

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2587 of 2018

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Manish Kumar, S/o-Late Pramod Kumar Yadivanshi, Resident of Mohalla-Kumhrar, P.O.-Bahadurpur Colony, P.S. Agamkuan, District-Patna.

.... Petitioners.

Versus

1. The State of Bihar through Home Secretary, Govt. of Bihar.
2. District Magistrate, Patna.
3. District Arms Magistrate, Patna.
4. Additional District Magistrate (Arms), Patna.
5. Divisional Commissioner, Patna.
6. Sr. Superintendent of Police, Patna.
7. Sub-Divisional Magistrate, Patna City.
8. District Magistrate, Supaul.
9. S.H.O. Agamkuan P.S. Patna.

.... Respondents.

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Appearance :

For the Petitioner : Mr. P. N. Pandey, Advocate
Mr. Hansa Jha, Advocate

For the Respondent/s : Md.N.H.Khan, SC-1
Mrs. Babita Kumari, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

02/ 21-08-2018

Heard Mr. P. N. Pandey, learned counsel for

the petitioner and Mrs. Babita Kumari, learned AC to SC-1.

The present writ application has been filed for a direction to Respondent No. 2, District Magistrate, Patna to take a final decision on the application of the petitioner submitted for grant of licence for N.P. Bore Revolver/Pistol.

The factual matrix of the case is that the father of the petitioner, late Pramod Kumar Yadivanshi had a licence of N.P. Bore Revolver/Pistol bearing licence No. 226/2004. He never misused the arms licence, but his name sprang up in a criminal



case being Agamkuan P.S. Case No. 98 of 2012 and he was directed to surrender the arms. The arms was deposited in the Malkhana of Agamkuan Police Station. The father of the petitioner died on 29.04.2017. The petitioner submitted application in the new format along with indemnity bond and the required fee under Arms Rules, 2016 on 21.06.2017 but till date no decision has been taken in spite of several representations submitted before the licensing authority even bringing to the notice of the licensing authority Rule 25 of Arms Rules, 2016 which mandates that preference has to be given to the heirs/nominee of the licensee. Hence, the present writ application.

Mrs. Babita Kumari, learned AC to SC-1 submits that, at present, she is not having any instruction whether any decision has been taken on the application of the petitioner or not, but if no decision has been taken till date, it will be taken by the licensing authority within a reasonable time frame.

The provisions of the Arms Act and the Rules clearly mandates that nobody can have firearms, unless he holds a licence issued in accordance with the provisions of this Act and the Rules made thereunder. Chapter III of the Arms Act, 1959, basically deals with the provisions relating to licences, which runs from Section 13 to Section 18, wherein the procedure has been



stipulated for grant of licences, refusal of licences, duration and renewal of licences, fees for licence, variation, suspension and revocation of licences and appeals against an order of the licensing authority refusing to grant a licence or other such varying orders in the nature of suspension or revocation of licence. Arms Rules, 2016 prescribes the manner and process in which the provisions stipulated under the Arms Act, 1959 has to be conducted. Rules 13 and 14 of the Rules, 2016 stipulate about the time limit for grant of licence. So far as the grievance of the present petitioner is concerned, the same is basically in the nature of transfer of arms licence of the father of the petitioner, in the name of the petitioner, concerning which the petitioner had initially made an application on 21.06.2017. Such grant of licence to legal heirs is guided by Rule 25 of the Arms Rules, 2016. 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.”

From perusal of Rule 25 it appears that to grant licence to the heirs or the nominee of the licence is more in the nature of transfer of licence if he/she is otherwise eligible for the same. The licensing authority is expected to discharge the statutory obligation as per the prescribed provisions under the Rules and the Act. Rules 13 and 14 of Arms Rules, 2016 prescribe the period of thirty days for transmission of the police report by the Station House Officer of nearest Police Station of the receipt of the application and sixty days for passing a speaking and reasoned order in writing by the licensing authority either granting or refusing to grant licence after receipt of the police report. In the present case the application is pending since 21.06.2017. This Court has on numerous occasions reminded the licensing authority to discharge their statutory function, by strictly adhering to the



manner prescribed in Arms Rules, 2016.

In the backdrop of the above discussion, it is expected from the licensing authority, Respondent No. 2, District Magistrate, Patna to take a final decision on the application of the petitioner, keeping in view the provisions under Rule 25 of the Arms Rules, 2016 within a period of six weeks of the receipt/production of a copy of this order.

Accordingly, the present writ application is disposed of.

DKS/-

(Dinesh Kumar Singh, J)

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