

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9863 of 2018

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Amar Nath Choudhary, Son of Sri Laxmi Choudhary, Resident of Village Bahilbasa, Bhuwal, P.S. Saraiya, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner, Tirhut Commissioner, Muzaffarpur.
3. The District Magistrate, Muzaffarpur.
4. The District Arms Magistrate, Muzaffarpur.
5. The Senior Superintendent of Police, Muzaffarpur.
6. The Sub Divisional Officer, West Muzaffarpur.
7. The Officer Incharge, Saraiya Police Station, Muzaffarpur.
8. The Anchal Adhikari, Saraiya, District- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suresh Kumar Ishwar
For the Respondent/s : Mr. Ravi Verma, AC to GP 4

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 19-06-2018

Heard learned counsels for the parties.

This writ application was registered on 16.5.2018 but no counter affidavit has been filed till date, hence, this Court is not inclined to adjourn the matter any further.

The present writ application has been filed for a direction to the respondent authorities to take a decision on the application of the application of the petitioner for grant/transfer of licence of gun in favour of the petitioner which is pending before the Licensing Authority, Respondent no. 2, the District Magistrate, Muzaffarpur.



The factual matrix of the case, as gets reflected from the pleadings in the writ application, is that the petitioner's father was granted licence for gun on 3.7.1982, but when the father of the petitioner attained the age of seventy years, the petitioner applied for arms licence for the purpose of retaining the said gun. Subsequently, a report was called for, from Respondent no. 5, the Senior Superintendent of Police, Muzaffarpur and the police recommended for the grant of such licence, but no final decision has been taken by the Licensing authority. Hence, the present writ application.

It is submitted by learned counsel for the petitioner that the father of the petitioner never violated the terms and conditions of the licence but in spite of the fact that application of the petitioner has remained pending for about four years, no decision has been taken.

A.C. to GP 4 submits that at present he is not having any instruction whether the application of the petitioner, as contained in Annexure 2, has been disposed of or not, but submits to say that if the application of the petitioner has not been disposed of, it will be disposed of within a time frame.

Having heard learned counsels for the parties, this Court is of the view that either in Arms Act, 1959 or in the Arms Rules, 1962,



there was no provision with regard to giving preference to the heirs of licensee, however, the Ministry of Home Affairs, Government of India vide Circular No. V-11016/16/2009-Arms issued directives to all the Secretary (Home Department) of all the States/Union Territories stipulating different parameters under different categories for grant of Arms Licences for acquisition/possession of arms. Clause (iii) of the said circular deals with grant of licence under family heirloom policy which reads as follows:

“iii) Grant of Licences under family heirloom

Attention is invited to the instructions contained in MHA's letter No. V-11019/23/95-Arms dated 28-02-1985 regarding grants of licences to the legal heir of existing licensee, after the death of the licensee or the licensee has attained the age of 70 years or had held the weapon for 25 years or more. Normally, the scope of legal heirs is extended to husband, wife, son & daughter. It has been decided to extend the scope of legal heir ship of the son-in-law, daughter-in-law, brother and sister of the existing licensee. Accordingly, the applications for transfer of weapons from the said categories or relatives of the licensee may also be considered subject to other conditions stipulated in the said letter.”

By such policy, the ambit of heirs of licensee has been expanded and criteria has been laid down for the heirs of licensee



to make an application for grant of licence, if the licensee has attained the age of 70 years or had held the weapon for 25 years or more. Consequently, the Principal Secretary, Home (Police) Department, Government of Bihar vide Memo No. 8212 dated 13th October, 2016 directed all the District Magistrates, since the heirs of licensee were facing immense difficulties and there was delay in such grant, to dispose of such applications submitted on behalf of the heirs of the licensee on preferential basis. But, it appears that the said advisory had no impact on the respondent authorities, hence, the legislature thought it proper to reduce the same into Rule 25 of Arms Rules, 2016, whereby preference has to be given to such applicants. Rule 25 of Arms Rules, 2016 reads as follows:

“25. 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 firearm for twentyfive 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 are 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 decide 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 licence 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 heir’ includes husband, wife, son, daughter, son-in-law, daughter-in-law, brother, sister and grandchildren of the licensee or the deceased licensee.”

In view of the above discussion, the Respondent no. 3, the District Magistrate, Muzaffarpur is expected to take a decision on the application of the petitioner for grant/transfer of licence in view of the provisions under Rule 25 of Arms Rules, 2016 within a period of two months from the date of receipt/production of a copy of this order.

This writ application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	10.07.2018
Transmission Date	

