

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2344 of 2018

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Naveen Sharma, Son of Barij Nandan Singh, Resident of Village- Musauli,
Police Station- Hulasganj in the district of Jehanabad.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Commissioner, Magadh Division, Gaya.
4. The District Magistrate-cum-Collector, Jehanabad.
5. The Superintendent of Police, Jehanabad.
6. The Sub-Divisional Magistrate, Jehanabad.
7. The Deputy Superintendent of Police, Jehanabad.
8. The District Arms Magistrate, Jehanabad.
9. The Inspector-cum-Officer-in-Charge, Hulasganj P.S., Jehanabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar, Advocate
For the Respondent/s : Mr. Partha Sarthi, GA-4
Mr. Apurva Kumar, AC to GA-4

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

02/ 25-09-2018

Heard Mr. Sunil Kumar, learned counsel for
the petitioner and Mr. Apurva Kumar, learned AC to GA-4.

The present writ application has been filed for
a direction to respondent no. 4, the District Magistrate –cum-
Collector, Jehanabad –cum- Licensing Authority under the Arms
Act to take a decision on the application of the petitioner for grant
of N.P. Bore Revolver under heirloom policy since the application
for such grant was submitted by the petitioner before respondent
no. 4 on 13.07.2011.



The factual matrix of the case is that the petitioner is owning ancestral agricultural land in the village Musauli and Lat in the district of Jehanabad which is affected by the extremists and hence, the father of the petitioner namely, Barij Nandan Singh was granted licences for two arms, i.e., N.P. Bore Rifle and DBBL gun in 1969 and 1978, bearing licence nos. 102/5/69 and 220/1978, which have been renewed periodically, but since the father of the petitioner is above 80 years of age, he expressed his desire to transfer the same in favour of the petitioner, who is the only son. As a result, the petitioner submitted an application before respondent no. 4, District Magistrate, Jehanabad, as contained in Annexure-1, whereupon, the licensing authority called for no objection from other family members vide order dated 07.01.2015 passed in Arms Case No. 02 and 03 of 2015, as contained in Annexure-2. Thereafter, the petitioner submitted the said no objection certificate. Subsequently, the police also made recommendation in favour of the petitioner but in spite of that decision has not yet been taken on the application of the petitioner. Hence, the present writ application.

Learned AC to GA-4 submits that, at present, he is not having any instruction whether any decision has been



taken on the application of the petitioner or not, but he further submits that if any decision has not been taken till date, it will be taken by the licensing authority within a reasonable time frame.

There is no provision under Arms Act, 1959 for the transfer of licence, and nobody can get a firearm transferred in his name, without having a licence for the same. Though either in Arms Act, 1959 or in Arms Rules, 1962, there was absence of any provision with regard to giving preference while considering the grant of licence to the heirs or nominee of the licensee, but the Ministry of Home, Govt. of India issued vide letter No. V-11019/23/95/Arms dated 25.03.1995 and letter No. V-11016/16/2009, Arms dated 31.03.2010 issued an advisory to the effect that the licensing authority while considering the grant of licence to the heirs or the nominee of the licensee, who has either attained the age of 70 years or has retained the licence for 25 years, has to be given preference. Consequently, an advisory was issued by the Department of Home, Govt. of Bihar under the signature of the then Principal Secretary, Home, but it appears that advisory did not bear any impact on the functioning of the licensing authorities. Realizing the same the Central Government while drafting Arms Rules, 2016 introduced a specific provision under Rule 25 of the Arms Rules, 2016, stipulating therein the



manner in which the grant of licence to the legal heirs or nominee of the licensee, has to be considered. Rule 25 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.”

The above provision indicates that the licence to the heirs or nominee has to be granted if the licensee either attains the age of 70 years or has retained the licence for 25 years. In the present case the father of the petitioner was granted licence in 1969 and 1978 and is aged about 80 years. Hence, on both the counts, the petitioner’s application has to be considered by the



licensing authority. A specific statement has been made in the petition that the petitioner is only son of the licensee.

The time frame was prescribed either under Section 13 or 14 of the Arms Act, 1959 which incorporates the procedure for grant of licence or refusal to grant licence or under Rule 51 of Arms Rules, 1962 which prescribes the mode for application of grant of licence, but the time limit has been prescribed under Rules 13 and 14 of the Arms Rules, 2016. Rule 14 of Arms Rules, 2016 stipulates that on receipt of the application for grant of arms licence the licensing authority shall call for a report from Officer-in-Charge of the nearest police station, who shall submit the report within thirty days of receipt of the application by him, whereas Rule 13 of Arms Rules, 2016 stipulates that the licensing authority after considering the application and on being satisfied that the applicant has fulfilled the eligibility condition shall take a final decision by a speaking and reasoned order in writing either granting or refusing to grant the arms licence within sixty days of the receipt of police report.

In the present case it appears that the application was submitted in 2011, the arms case was initiated in 2015 and the police report was also submitted in 2015 but even after more than two years of implementation of the Arms Rules,



2016 the licensing authority has not disposed of the application of the petitioner as there is nothing on record to suggest that the application of the petitioner has been disposed of.

In view of the discussions made above, it is expected from respondent no. 4, the District Magistrate, Jehanabad to take a final decision on the application of the petitioner within a period of four weeks from the date of receipt/production of a copy of this order keeping in view the provisions under Rule 25 of the Arms Rules, 2016.

With the above observation and direction, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

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