

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9823 of 2007

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Bijendra Kumar Singh, Son of Late Ram Charitar Singh, Resident of
Mohalla-Adarah Vihar Coloney-Rukanpura, P.S.-Danapur, District-Patna.

... .. Petitioner

Versus

1. The State Of Bihar
2. The Commissioner, Patna Division, Patna
3. The District Magistrate, and Collector, Patna
4. The Superintendent of Police, Patna.
5. Officer-in-Charge of Danapur Police Station, District-Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Sinha-10
For the Respondent/s : Mr. Vinod Kumar Sinha, AC to GP-8.

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 06-03-2018

Heard Mr. Ashok Kumar Sinha, learned counsel for the
petitioner and Mr. Vinod Kumar Sinha, learned AC to GP-8 for the
Respondent-State.

The writ application was admitted by a co-ordinate Bench of
this Court vide order dated 28.01.2009.

The present writ application has been filed for quashing the
order dated 24.03.2007, passed by Respondent no.3, the District
Magistrate, Patna, as contained in Annexure-7, whereby the
petitioner's application for grant of arms licence of N.P. bore pistol
was rejected. The said order was challenged in Arms Appeal No.
336 of 2007, before Respondent no.2, the Commissioner, Patna



Division, but Respondent no.2, the Commissioner, Patna Division, vide order dated 05.06.2007, as contained in Annexure-8, upheld the order of Respondent no.3, the District Magistrate, Patna, hence quashing of both the orders, as contained in Annexures- 7 and 8, has been prayed for.

The factual matrix of the case is that the petitioner being a contractor in Road Construction Department and owner of brick kiln, applied for arms licence of N.P. Bore pistol in the year 2004 in the prescribed format. Subsequently, Sub-Divisional Police Officer, Circle Officer as well as Sub-Divisional Officer, vide Memo No. 692, dated 25.04.2005 and Memo No. 1530, dated 09.12.2004, as contained in Annexures-4 and 4/1, recommended for grant of arms licence to the petitioner. The Senior Superintendent of Police, Patna, vide Memo No. 187, dated 25.06.2005, as contained in Annexure-5 also recommended for grant of arms licence to the petitioner, but the then Additional District Magistrate, Patna, vide Memo No. 11/85-1033, dated 11.02.2006, as contained in Annexure-6, intimated the petitioner about the rejection of the application. The petitioner challenged the same before Respondent no.2, the Commissioner, Patna Division in Arms Appeal No. 60 of 2006. Respondent no.2, the Commissioner, Patna Division, vide order dated 05.08.2006, set



aside the order of the Collector and remanded the matter back. On remand, Respondent no.3, the District Magistrate, Patna, vide order dated 24.03.2007, as contained in Annexure-7, again rejected the application of the petitioner on two grounds, firstly that the petitioner is having arms licence of N.P. Bore rifle from before and secondly that the police verification report does not mention any specific threat perception. The said order of the District Magistrate, Patna was challenged in Arms Appeal No. 336 of 2007 before Respondent no.2, the Commissioner, Patna Division, who, vide order dated 05.06.2007, upheld the order of Respondent no.3, the District Magistrate, Patna and dismissed the appeal of the petitioner on the ground that since the District Magistrate has given the opportunity of hearing to the petitioner and disposed of the application of the petitioner by a reasoned order, there is no need of interference. Hence, the present writ application.

It is submitted by learned counsel for the petitioner that the application for grant of arms licence of the petitioner has been rejected on non est grounds. Section 3 of the Arms Act, 1959 (hereinafter referred to as 'the Act') deals with the licence for acquisition and possession of fire-arms and ammunition. Sub-section (2) of Section 3 of the Act stipulates that no person can acquire arms licence, or have in his possession, or carry, at any



time, more than three fire-arms. While, Section 14 of the Act prescribes the grounds on which the licensing authority can refuse grant of arms licence. The ground of threat perception is not a precondition for refusal to grant licence, as stipulated in Section 14 of the Act, hence, the order of the Collector rejecting the prayer of the petitioner for grant of arms licence of N.P. Bore pistol is based on grounds, which on the face of it, are non est. The Appellate Authority did not appreciate that the prayer for grant of licence of arms was rejected on non est ground and has only considered this fact that in earlier round of appeal, the Appellate Authority directed the licensing authority to hear the petitioner and once he was heard, and thereafter the reasoned order was passed hence, there is no need to interfere again. The appeal of the petitioner was rejected without considering the fact that the grounds on which the prayer of the petitioner was rejected by the licensing authority is not stipulated under Section 14 of the Act.

Learned AC to GP-8, relying upon the counter affidavit filed on behalf of Respondent no.2, the Commissioner, Patna Division, has defended the order under challenge, taking the same ground, which is mentioned in the impugned order, little realizing that licence cannot be refused on either of the two grounds.



Having heard the learned counsels for the parties, this Court is of the view that Section 13 of the Act prescribes the parameter for grant of arms licence. Section 13 reads as follows:-

“13.**Grant of licences.** -(1) An application for the grant of a licence under Chapter II shall be made to the licensing authority and shall be in such form, contain such particulars and be accompanied by such fee, if any, as may be prescribed.

[(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.]

(3) The licensing authority shall grant-

(a) a licence under section 3 where the licence is required-

(i) by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of a muzzle a loading gun to be used for *bona fide* crop protection:

Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle



loading gun will not be sufficient for crop protection, the licensing authority may grant a licence in respect of any other smooth bore gun as aforesaid for such protection, or (ii) in respect of a point 22 bore rifle or an air rifle to be used for target practice by a member of a rifle club or rifle association licensed or recognized by the Central Government;

(b) a licence under section 3 in any other case or a licence under section 4, section 5, section 6, section 10 or section 12, if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same.”

From perusal of the above, it appears that 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 on receipt of such enquiry report and considering the same subject to the provisions of the Act, by order in writing will either grant the licence or will refuse to grant the same. It further provides that without police verification report also, if it is not submitted within prescribed time, the order can be passed by the licensing authority.

Whereas parameter for refusal of licence has been incorporated in Section 14 of the Arms Act, which reads as under :-

“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) Where 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 of 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.”

Section 14 of the Act gives liberty to the licensing authority to refuse to grant arms licence under Sections 3, 4 or 5 of the Act where such licence is required in respect of any prohibited arms or prohibited ammunition or a licence in any other case under Chapter II, 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, or to be of unsound mind or to be for any reason 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 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. This provision makes imperative on the part of the licensing authority to record in writing the reason for such refusal and furnish to that person on demand a brief statement of 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.

On conjoint reading of Sections 13 and 14 of the Act, it does not appear that a person, who holds an arms licence at one time from before, cannot be granted second arms licence or the person having no threat perception cannot be granted arms licence.

Though, the counter affidavit does not stipulate about any executive instruction with regard to issuance of licence to only such applicants who have threat perception. However, this issue was considered by a Bench of this Court in case of Ram Bachan Rai Vs. The State of Bihar and Others passed in C.W.J.C. No. 2503 of 2013, wherein it was held that letter dated 31.03.2010,



issued by the Ministry of Home, Central Government does not create any bar for issuance of arms licence, rather, the said circular, at best, stipulates vivid preference to such persons while considering the grant of arms licence who is facing threat perception. The issue was also considered by this Court in the case of Amrendra Kumar Singh Vs. State of Bihar & Ors. reported in 2008 (1) PLJR, 151, where the Court while considering the rejection of the application for grant of arms licence on the ground that there is no threat perception to the applicant, held that it is absolutely a case of misconstrued jurisdiction. Paragraph no.2 of the said judgment reads as follows:-

“2. The petitioner had applied for an arms licence which has been refused by the impugned order dated 05.08.2006 passed in Arms Act Case No. 197 of 2006 by the District Magistrate-cum-Collector, Rohtas. The only ground given is that even though the petitioner had valid recommendations from all concerned, he had failed to file any cogent documentary evidence in support of any threat to him. A bare perusal of the order shows total non-application of mind. This Court wonders what the learned licensing authority means by the aforesaid. Does he mean that an arms licence would only be granted if there has been threat to life and property or does he mean that people have to be killed in order to qualify for getting arms licence? I am afraid, he has totally misconstrued his jurisdiction in this



regard. An arms licence is for protection and is a statutory right. It is not dependent on any actual incident having occurred. For if that were so, the Act and the Rules framed thereunder would have clearly specified that as a policy for grant of licence. That is not so. It is not a grant of privilege by the licensing authority on his own sole subjective discretion.”

While considering the similar issue, a Bench of this Court, in the case of Raj Kumar Singh Vs. The State of Bihar & Ors. reported in 2012(2) PLJR 695, has held that if the statute prescribes an action to be taken in a particular manner, it has to be performed in that manner alone. No doubt the discretionary power is vested in the licensing authority under the Act for grant or refusal of arms licence, however, the issue remains whether the discretion so vested under the Act has been appropriately exercised. Paragraph no. 18 of the judgment reads as follows:-

“18. It is not the stand of the Licensing Authority that the petitioner falls within either of the category as set out in Section 14 of the Act. The law is well settled that when a statute prescribes an action to be taken in a particular manner, it has to be performed in that manner alone. In the present case, the provisions of Section 14 of the Act categorizes the circumstance in which an arms licence can be refused and also vests power in the authority to exercise discretion while refusing the licence under the provisions of Section 14 (b)(3) of the Act holding a person unfit for grant of licence. It is not



a case where the petitioner has been held unfit for grant of licence. The stand taken by the respondents relying upon the discretionary power vested in the Licensing Authority under Section 14 of the Act, cannot be expanded to such an extent so as to render the very provisions redundant. The power vested in the Licensing Authority and the provisions of Section 14(3) of the Act to refuse licence for the reasons recorded in the order has to be read in consonance and stipulation as set out in sub section (1) thereof.”

Though, there is no such provisions under the Arms Rules, 1962 that an applicant can be refused arms licence if he is not having threat perception. The Arms Rules, 2016, which came into force on 15.07.2016, prescribes preference to certain categories for consideration of applications where the person who faces grave and anticipated threat to his life on certain grounds. Rule 12 of Arms Rules, 2016 also does not stipulate that the persons who do not face life threat cannot be granted arms licence, rather the meticulous reading of the same suggests that persons of specified various category anticipating threat to life will be given preference in grant of arms licence. Moreover, it is well settled law that Rule cannot override the main provision. There is no amendment in Sections 13 and 14 of the Act till date, hence, even assuming the provision under Rule 12 of Arms Rules, 2016, it cannot override the main provision. Moreover, Rule 12 only mandates to give



preference to such applicants having threat perception. It is well settled law that the Rule can only supplement the main provision of the Act, hence the licensing authority has only to consider the grant or refusal to grant of arms licence within the parameters of Sections 13 and 14 of the Act. In spite of several pronouncements deprecating refusal to grant arms licence on the ground that a person is already having an arms licence from before or if the police report does not stipulate any threat perception, but the licensing authorities are still rejecting the application for grant of arms licence, merely on the ground of absence of any threat perception, which is, *prima facie*, not only illegal, but also appears to be contemptuous.

In view of the discussions made above, this Court is of the view that Respondent no.3, the District Magistrate, Patna has failed to exercise the jurisdiction vested in him and has not considered the application of the petitioner within the parameters of Sections 13 and 14 of the Act.

In the circumstances, the impugned order as contained in Annexures- 7 and 8 are hereby set aside.

The licensing authority is expected to take a decision by reasoned order on the application of the petitioner within a period



of two months from the date of receipt/production of a copy of this order, in accordance with the stipulations and provisions of law.

Accordingly, the present writ application is allowed.

(Dinesh Kumar Singh, J)

Amrendra/-Anil/

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

