

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19041 of 2017

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Binod Kumar Singh, Son of Shri Chaturbhuj Prasad Singh, Resident of
Village- Puchhari, P.S.- Baniapur, District- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Commissioner, Saran Division at Chapra.
3. The District Magistrate, Saran at Chapra.
4. The Superintendent of Police, Saran at Chapra.
5. The Arms Magistrate, District Saran at Chapra.
6. The Sub-Divisional Police Officer, Sadar, Chapra, District- Saran.
7. The Sub-Divisional Officer, Sadar Chapra, District- Saran.
8. The Officer-in-Charge, Police Station- Baniapur, District- Saran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Singh
For the Respondent/s : Mr. Md.Nadeem Seraj -Gp5

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

4 30-11-2018 Heard Mr. Sanjay Kumar Singh, learned counsel

for the petitioner and Mr. Nadeem Seraj, learned counsel for

the State.

The petitioner is aggrieved by the orders passed by

the District Magistrate, Saran at Chapra and the

Commissioner, Saran Division, Chapra, dated 18.02.2016

and 11.07.2017 respectively in the Arms Act case, whereby

the request of the petitioner for transferring the licence,

standing in the name of his father, in his name, has been

rejected.



The only ground which has weighed with the learned District Magistrate in refusing the prayer of the petitioner as well as the learned Commissioner, who has affirmed the order of the learned District Magistrate, is that there is no threat perception to the petitioner for being accorded the privilege of licence.

Learned counsel for the petitioner has submitted that the aforesaid sole ground which has led to the rejection of the claim of the petitioner is absolutely untenable.

The case of the petitioner is that his father is the holder of a licence of DBBL gun and he along with his father resides by the side of a canal which is infested with criminals.

Under such circumstances, a request was made by the petitioner that considering that his father has become old, for his and his family safety, the licence be transferred in his name.

Instead of looking at the aforesaid aspect as also the requirements under Section 25 of the Arms Rules, 2016, which deals with the grant of licences to legal heirs,



both the authorities have only gone on the issue of threat perception.

Several times, this Court as well as the Apex Court has held that there is no requirement of any overt action displaying threat to the life and property of a claimant for grant of licence. The perception is different from actual threat. This aspect has been completely ignored by the learned Collector as well as the Commissioner in rejecting his claim. A refusal to grant licence can only be under certain circumstances, namely, that the claimant is of unsound mind or for any reason to be recorded his being unfit for holding such license or that the issuing authority is of the view that grant of licence to a particular person would not be in the interest of public peace or public safety.

No doubt, the rules/guidelines issued by the Home, Police Department describes that unless there is a threat perception, no person shall be given licence for non-prohibited arms, nonetheless, the authorities ought to have considered other aspects as well.

It has also been submitted on behalf of the



petitioner that he has not been made accused in any case so far and has an absolutely clean antecedent. This aspect also had to be taken into account before refusing to grant licence to the petitioner.

Learned counsel for the petitioner, in this connection, has argued that such administrative instructions can not supplant the statutory provisions with regard to the requirement of the grant of licence.

Section 25 of the 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 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 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."



The aforeindicated provision makes it very clear that unless there are special reasons, the heirs or the nominee cannot be refused licence.

For the aforesaid reasons, both the orders impugned in the present petition is unsustainable in the eyes of law and are, therefore, set aside.

The petitioner is directed to file an application before the District Magistrate along with the necessary particulars, making a request for grant of licence within a period of four weeks from today and the District Magistrate shall, after observing necessary formalities with respect to seeking a police report pass a reasoned order in accordance with law, preferably within a period of three months of the receipt of an application in that regard by the petitioner.

With the aforesaid observation, this writ petition stands allowed.

(Ashutosh Kumar, J)

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