

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17873 of 2018

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Ashok Kumar Singh, S/o Nand Kishore Singh, R/o-Mohalla-Mohammadpur,
P.O.-Kothiya, P.S.-Deedarganj, Disreict-Patna.

... .. Petitioner/s

Versus

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

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. B.N. Pandey

For the Respondent/s : Mr. Shailendra Kumar, AC to GP 5

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 27-09-2018

Heard learned counsels for the parties.

As prayed for, learned counsel for the petitioner is permitted to make correction in paragraph 3 of the writ petition.

The present writ application has been filed for a direction to the Respondent No. 3, the District Magistrate, Patna to take a final decision on the application of the petitioner submitted for grant of licence for N.P. Bore rifle.

The factual matrix of the case as stipulated in the writ application is that the grandfather of the petitioner, namely, Hari Sharan Singh was granted licence for N.P. Bore rifle vide Licence No. 143/1977. The grandfather of the petitioner passed



away on 02.11.1995. After the demise of grandfather, the arms in question was deposited before the Arms Dealer, namely, M/s Ram Ekbal Rai and Sons, Arms & Ammunition Dealer, Nizamuddin Market, Daud Bigha, Patna on 21.02.1996 and receipt of the same has been brought on record as Annexure 1.

The petitioner submitted an application for grant of licence before the licensing authority, Respondent No. 3, the District Magistrate, Patna in the year 2008. Consequently, Arms Case No. 9-774/08 was initiated, but till date, no decision has been taken. However, after coming into force of Arms Rules, 2016 (hereinafter referred to as 'Rules, 2016') with effect from 15.07.2016, the petitioner submitted an application in view of the provisions under Rule 25 in Form A-1 along with an affidavit, indemnity bond, No Objection of all the legal heirs and the requisite fee as per Rules, 2016 on 13.08.2016/06.10.2017 before the licensing authority, Respondent No. 3, the District Magistrate, Patna, the details of which has been brought on record as Annexure-2 series, but since then no intimation has been received by the petitioner in spite of the representation made, as contained in Annexure-2 series. Hence the present writ application.

Mr. Shailendra Kumar, Learned AC to GP 5



submits that at present he is not having any instruction whether the application of the petitioner has been disposed of or not, but if any decision has not been taken on the application of the petitioner, the same will be taken within a reasonable time frame.

It is not in dispute that no citizen can have arms without having a licence. If a licensee wants to transfer his arms to anyone, then in that circumstance, the recipient has to obtain a licence to get a valid transfer. Before coming into force of Rules, 2016, such persons who wanted to get the arms transferred from a licensee, had to make an application under Section 13 of the Arms Act, 1959. However, the Ministry of Home, Government of India in 2009 vide Notification No. V-11016/16/2009- Arms issued a directive stipulating therein to give preference to the heirs and nominee of such licensee who has either attained the age of 70 years or has been a licensee for 25 years. Consequently, the Principal Secretary, Home, Government of Bihar issued a consequential instruction to the licensing authorities but such executive instruction did not bear any impact on the licensing authorities and realizing the same, the Government of India while drafting Rules, 2016 included specific provision with regard to grant of licence to heirs and



nominees of the licensee in Rule 25 of Rules, 2016, which 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.”

The above Rule suggests that the heirs and nominee, who are defined under Rule 25 of the Rules, 2016 itself, can make an application for grant of licence under Section 13(1) of the Arms Act provided the licensee has attained the age of 70 years or has remained licensee for 25 years, as also in the case of death of the licensee but there are certain conditions with regard to No Objection Certificate from all the legal heirs of the licensee, filing of indemnity bond and death certificate, if required. Rule 25 of Rules, 2016 further puts an obligation on



the licensing authority to the effect that it may grant licence to such legal heirs, who fulfill the eligibility conditions under the Act and Rules and if there is no adverse remark by the police report.

For incorporating a separate provision under Rule 25 of Rules, 2016 the whole purpose is to give preference to the heirs and nominees of the licensee. Even the heirs and nominees of the licensee are granted licence in exercise of power under Rule 13 of Rules, 2016 by the licencing authority. Prior to coming into force of Rules, 2016, there was no stipulation of any time frame for such exercise by the licensing authority. However, Rule 14 of Rules, 2016 stipulates that as soon as the application is received by the licensing authority, it will call for a report from the Officer Incharge of the nearest police station who, on receipt of such application shall transmit police report with thirty days in Form S-4 which contains 14 column whereunder numerous information including antecedent report of the applicant has to be provided by the police. Similarly, Rule 13 of Rules, 2016 stipulates time limit for the licensing authority for considering the application and after being satisfied with the applicant fulfilling the eligibility conditions and taking final decision on the application for grant of licence



within a period of sixty days of its receipt.

In the present case, initially the application was submitted in 2008. However, in the new Form under Rule 2016 it was submitted along with all the requisite information as stipulated under Rule 25 on 13.8.2016/6.10.2017, but there is nothing on record to suggest that any decision has been taken on the application of the petitioner.

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

With the aforesaid observation/direction, this writ application is disposed of.

(Dinesh Kumar Singh, J)

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CAV DATE	
Uploading Date	
Transmission Date	

