

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19156 of 2018

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Sanjay Bihari Singh, S/o Sri Vijay Bihari Singh, resident of Nitibagh Colony, P.O. B.V. College, P.S. Rupaspur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Divisional Commissioner, Patna Division, Patna.
2. The District Magistrate, Patna District, Patna.
3. The Arms Magistrate, Patna District, Patna.
4. The Superintendent of Police Patna, District Patna.
5. The Officer-In-Charge, Rupaspur, Police Station, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Shankar Pradhan, Sr. Advocate
Mr. Vijay Kumar Singh, Advocate

For the Respondent/s : Mr. Sheo Shankar Prasad, SC-8
Mr. Harshvardhan Shivsundaram, AC to SC-8

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

02/ 04-10-2018

Heard Mr. Ram Shankar Pradhan, learned

Senior counsel for the petitioner and Mr. Harshvardhan Shivsundaram, learned AC to SC-8.

The present writ application has been filed for a direction to Respondent No. 2, District Magistrate, Patna to take a decision on the application of the petitioner submitted for grant of arms licence for N.P. Bore Rifle.

It is submitted by learned counsel for the petitioner that the father of the petitioner was a licensee, bearing



Licence No. 126 of 1967, for one N.P. Bore Rifle and the same has been renewed from time to time. Since the father of the petitioner grew old, the petitioner being the son of the licensee submitted an application on 10.07.2014 for grant of arms licence for the said N.P. Bore Rifle in his name but till date in spite of the administrative directions given by the Divisional Commissioner, decision has not been taken by the District Magistrate –cum-licensing authority, Patna. Since the application for grant of licence has been pending and the licensee of the N.P. Bore Rifle was not in a position to handle the arms, it has been deposited before the Arms dealer. Hence, the present writ application.

It is submitted by learned counsel for the respondents 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.

The only issue involved in the present writ application is whether the licensing authority can keep the application submitted for grant of arms licence pending for indefinite period or whether the heirs of the licensee ought to be given preference by the licensing authority while considering the



application for grant of licence. It is true that there is no provision under Arms Act, 1959 for the transfer of licence, but any person cannot get the arms transferred in his name, without becoming a licensee under the Act. Though, there is no provision either in Arms Act, 1959 or Arms Rules, 1962 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, 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 or more, has to be given preference. Consequently, an advisory in that regard was issued by the Department of Home, Govt. of Bihar under the signature of the then Principal Secretary, Home, but it appears that such advisory has had insignificant impact on the licensing authorities. Realizing the same the Central Government while drafting Arms Rules, 2016 introduced specific provision under Rule 25 of the Arms Rules, 2016, stipulating therein the manner in which the grant of licence has to be considered to the legal heirs or nominee of the licensee. 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 has either attained the age of 70 years or has retained the licence for 25 years.

No time frame is 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, in the Arms Rules, 2016, 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.

It appears that in the present case, the application was submitted in 2014 but there is nothing on record to suggest that any decision has been taken by the licensing authority on the application of the petitioner, till date.

In view of the discussions made above, it is expected from respondent no. 2, the District Magistrate, Patna 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, while adhering to 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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