

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16238 of 2017

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Shailendra Kumar Son of Ram Ashray Singh, Resident of Village- Manjhar,
Police Station- Main, District- Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Commissioner, Magadh Division, Gaya
2. The District Magistrate-cum-Collector, Gaya.
3. The Senior Superintendent of Police, Gaya.
4. The Officer in Charge, Main Police Station, District- Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Manish Kumar No-2, Advocate
For the Respondent/s	:	Mr. Mithlesh Prasad Singh AC to GA-4

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date : 27-05-2019

Heard learned counsel for petitioner and the State.

This writ application has been filed for setting aside the order dated 29.09.2014 passed by learned District Magistrate, Gaya in case no. 18 of 2014 as contained in Annexure-3, by which prayer for issuance of licence of DB barrel gun in favour of the petitioner has been rejected as also the order dated 05.07.2017 passed by learned Commissioner, Magadh Division, Gaya in Arms Appeal No. 328 of 2014 whereby the order of District Magistrate Gaya has been affirmed and upheld.

Learned counsel for petitioner submits that after filing of application by petitioner for obtaining Arms licence the Senior Superintendent of Police Gaya by letter no. 35 dated 26.6.2012



recommended his application. The police verification was also done and everything was found genuine. Thereafter, the police recommended for grant of licence and, accordingly, Senior police officials also recommended for grant of licence to the petitioner.

The learned District Magistrate has rejected the prayer of the petitioner for grant of licence on the ground that petitioner has not shown any cogent ground for issuance of licence and there is no threat perception of life and property.

The petitioner filed revision before the Commissioner, Magadh Division, Gaya against the order dated 29.9.2014 passed by the District Magistrate, Gaya being Arms Appeal No. 328 of 2014, which was also rejected, on the same ground that there is no threat perception faced by the petitioner or his family members.

There is no such ground mentioned for refusal of the licence in section 14 of the Arms Act, 1959 that if there is no threat perception then applicant is not entitled for grant of licence. Section 13 of the Arms Act, 1959 provides the provision for grant of licences and Section 14 provides the provisions for refusal of licences.

This Court deems it fit to quote both the Sections which



read as under :

“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 subsection(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.”

“14. Refusal of licenses-(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.”

From perusal of Section 14 of the Arms Act, it does not appear that there is any provision for refusal of licence on the ground that there is no threat perception to applicant for safety



of life and property.

This Court is of the view that threat perception is totally uncertain as to when a person get threat for safety of his life and property. Therefore, it cannot be taken as ground for refusal of licence.

The petitioner has brought on record the police verification report of Sr. Superintendent of police, Gaya dated 10.2.2012 which is annexed as Annexure -2 series to the writ petition, wherein, it is clearly mentioned that the petitioner bears good character and there is no adverse entry made against the petitioner in the Belaganj police station.

In the aforesaid facts and circumstances of the case, this Court is of the view that the grounds taken by respondent to reject the application filed by petitioner for grant of licence was not valid ground. The learned Commissioner, Magadh Division in an appeal preferred by the petitioner, affirmed the order of the District Magistrate, Gaya in mechanical manner.

Therefore, the order dated 29.09.2014 passed by District Magistrate, Gaya in Case No. 18 of 2014 as contained in Annexure-3 as well as the order dated 05.07.2017 passed by Commissioner, Magadh Division, Gaya, in Arms Appeal No. 328 of 2014, upholding the order of the District Magistrate,



Gaya, as contained in Annexure-4, are not in accordance with law and the same are hereby set aside.

Learned District Magistrate, Gaya (respondent no.2) is directed to re-consider the case of petitioner for grant of licence in terms of provisions as contained in Section 13 of the Arms Act 1959 and in the event petitioner is found eligible for grant of licence in terms of the aforesaid provision, the licence shall be granted to the petitioner within a period of one month from the date of receipt/production of a copy of this order, without being prejudiced by earlier order passed by him as well as order passed by the Divisional Commissioner, Magadh Division, Gaya.

The writ application is, accordingly, allowed.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	N/A
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Transmission Date	N/A

