

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1778 of 2017

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Bhim Shankar Tiwary Son of Late Rameshwar Tiwary, resident of Kanyani
Co-operative New Area Harnichak, P.O. Anisabad, P.S. Beur, District-Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Patna.
3. The Senior Superintendent of Police, Patna
4. The Arms Magistrate, Patna
5. The Station House Officer, Beur, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Chakrapani, Advocate
		Mr. Prabhat Kumar Munna, Advocate
For the Respondent/s	:	Mr.Mrigendra Kumar, AC to GA-4

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 15-05-2019 Heard learned counsel for the petitioner and the

State.

The petitioner is aggrieved by the order dated 29.5.2017 passed by the District Magistrate, Patna rejecting application filed by the petitioner for grant of arms licence on the ground of lack of threat perception.

Learned counsel for the petitioner submits that brother of the petitioner was brutally murdered by anti-social element in Patna and facing the threat perception he applied for arms licence on 9.3.2013. His application for grant of gun licence was rejected during the pendency of the writ petition. The petitioner



filed I.A No. 8753 of 2018 for amendment of the writ petition. Referring to the order dated 29.5.2017 as contained in Annexure-4. Mr. Chakrapani, learned counsel for the petitioner would submit that the application for grant of arms licence was rejected firstly, on the ground that there is no specific recommendation of the SHO as to requirement for grant of gun licence , secondly, his application was rejected on the ground that brother of the petitioner is already holder of arms licence and, thirdly, there is a Section 107 Cr. P.C. proceeding and as such the petitioner's application for grant of arms licence has been rejected vide Annexure-4.

Referring to the counter affidavit, Mr. Chakrapani submitted that from the materials available in the counter affidavit, it is evident that the petitioner has not been asked to submit undertaking as to maintaining piece and tranquility in terms of requirement of 107 Cr.P.C. proceeding and moreover, such proceeding was ex parte and conducted behind the back of the petitioner and without hearing him. He next submitted that in the instant case the SHO recommended for grant of arms licence and in the report of the SHO there is reference that both brothers are residing separately. The report of the SHO was taken note by the SDPO and SSP and they have forwarded the application of



the petitioner for appropriate action by the licensing authority but unfortunately, the District Magistrate on 29.5.2017 passed order refusing arms licence totally ignoring the materials on the records.

Learned counsel for the petitioner would further submit that the licensing authority has power of grant of licence while exercising power he is exercising the power of quasi judicial authority and as such in the decision making process, he is required to take into consideration all the objective materials and not supposed to take into account the subjectively in the decision making objectivity is totally lacking in the order of District Magistrate dated 29.5.2017.

Learned counsel for the state has not been able to dispute the legal position that individual can hold license for three arms at a time and grant of license to one brother disentitle to another brother.

Considering the totality of the facts situation, the Court is of the considered view that the order dated 29.5.2017 is not based on objective consideration rather based on the individual conviction and such decision on personal feeling cannot sustain. The order dated 29.5.2017 is, accordingly, quashed and the matter is remitted back to the District



Magistrate to take appropriate decision in the light of the report of the SHO, Beur, Patna forwarded by the SDPO, Phulwarisharif and SSP, Patna. The necessary fresh decision must be taken by the licencing authority within a maximum period of 60 days after the General Parliamentary Election.

With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

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