

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.758 of 2018

1. The State Of Bihar and Ors
2. The District Magistrate, Patna.
3. The Additional District Magistrate, Arms, Patna.

... .. Appellant/s

Versus

Deepak Kumar S/o Lt. Dwarika Lal, R/o Vill. Khadalpur, P.S. Bihta, Dist. Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Suman Kumar Jha Ac To Aag 3
For the Respondent/s : Mr.

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-01-2019

L.A. No. 4169 of 2018

Having heard the learned Advocate General as well as the learned counsel for the respondent-petitioner, we find sufficient cause having been shown to condone the delay in filing of the appeal.

The delay condonation application is allowed and the delay in filing of the appeal is condoned. The appeal shall be treated to be within time.

L.P.A. No. 758 of 2018



Heard learned Advocate General for the appellant-State and Sri Pramod Kumar Singh, learned counsel for the respondent-petitioner.

At the very outset, we may point out that against the same very impugned judgement, L.P.A. No. 459 of 2018 (State of Bihar and others vs. Manish Kumar) has been filed and is connected with this appeal where, upon a consideration of the materials on record, a Division Bench on 2nd August, 2018 stayed the operation of the impugned judgement and order of the learned Single Judge.

In the wake of the aforesaid interim order and in the background of the grounds raised, this Court was also pleased to issue notices upon which learned counsel has appeared and resisted this appeal.

Learned Advocate General, Sri Lalit Kishore, while advancing his submissions has laid emphasis on the finding recorded by the learned Single Judge while interpreting the provisions of Section 14(1)(b)(i)(3) of the Arms Act, 1959, where the learned Single Judge has held that since the aforesaid section does not incorporate within itself the ground of imminent danger or actual threat perception as a ground of refusal, therefore, a licensing authority cannot refuse to grant a license on such a



ground declaring the person to be unfit. Learned Advocate General has taken exception to this interpretation contending that this universal direction, as contained in the judgment, is trenching upon the discretion to be exercised by the licensing authority who can, after examining the police report and such other materials that may be available before him, proceed to refuse to grant license inasmuch as the grant of the permission to possess a fire arms license does not partake the nature of a fundamental right inasmuch as a person does not have any such right of carrying fire arms. He submits that since the law is regulated under the Arms Act, 1959, in that view of the matter, the interpretation given by the learned Single Judge would impinge upon the power to be exercised by the licensing authority while making an assessment with regard to the genuineness of a request for grant of a license. The contention, therefore, is that the omnibus declaration made by the learned Single Judge takes away the discretionary power vested in the licensing authority as conferred by the statute by reading into it such words which necessarily take away the discretion of the licensing authority to refuse a license even if an applicant has been unable to place any material on record to justify the grant of such license. He, however, contends that the genuineness or otherwise of the purpose of license, if it exists, the



same has to be taken into consideration for grant of a license and, for that, the licensing authority will have to take into consideration the materials on record, including the police report as also the purpose for which the license has been sought by the applicant.

As noted above, a Division Bench of this Court had stayed the operation of the judgement and order impugned herein. It appears that after the judgement was delivered by the learned Single Judge on 11th August, 2015, the Central Government, in exercise of the powers conferred under the 1959 Act and in supersession of the Arms Rules, 1962 promulgated the Arms Rules, 2016 that came to be published in the gazette on 15th July, 2016.

Learned counsel for the respondent-petitioner would submit that the learned Single Judge has not committed any error inasmuch as the Rules of 2016 came later on and as on the date when the judgement was delivered, the learned Single Judge was fully justified in observing that a refusal to grant a license so as to declare a person unfit cannot be on the ground of a complete lack of threat perception or imminent danger. He submits that the learned Single Judge was, therefore, justified in arriving at the conclusion that such a ground for declaring the applicant unfit being not decipherable in Section 14 of the 1959 Act, the licensing



authority cannot proceed to carve out this ground for the purpose of refusal of license.

We have considered the submissions raised and in the background aforesaid and with the promulgation of Arms Rules, 2016, what we find is that the Rules that have been enforced now take care of the guidelines which are to be followed by the licensing authority as an obligation while proceeding to consider the grant or refusal of a license. We may gainfully reproduce Rule 12 of 2016 Rules along with Sub Rule (1) and Sub Rule (3) thereof which are relevant for the purpose of present controversy as the present set of appeals relate to grant of license for permissible arms and ammunition specified in Category-3 of Schedule-1 of the said Rules. The same is reproduced hereinunder :

“12. Obligations of licensing authority in certain cases.

— (1) Save as otherwise provided in the Act, every licensing authority granting a licence in Form III to an individual for the restricted or permissible arms or ammunition as specified in category I(b) and I(c) or category III respectively in Schedule I, shall have due regard to the application of norms specified in sub-rules (2) and (3).

(3) For grant of a licence for the permissible arms or ammunition specified in category III in Schedule I, and without prejudice to the provisions contained in clause (a) of sub-section (3) of section 13, **the licensing authority, based on the police report and on his own assessment, may consider the applications of —**

(a) any person who by the very nature of his business, profession, job or otherwise has genuine requirement to protect his life and/or property; or

(b) any dedicated sports person being active member for the last two years, of a shooting club or a rifle association,



licensed under these rules and who wants to pursue sport shooting for target practice in a structured learning process; or

(c) any person in service or having served in the Defence Forces, Central Armed Police Forces or the State Police Force and has genuine requirement to protect his life and/or property.”

In addition thereto, the third Schedule along with the relevant proforma meant for grant and renewal of such licenses also indicates that apart from the normal conditions as prescribed under the Act and Rules, the conditions mentioned in the said forms have to be fulfilled. A perusal thereof would indicate that it also requires the applicant to clearly mention the purpose for which the license is required.

This is clearly in consonance with Sub-Rule (3)(a) of Rule 12 extracted hereinabove, where the very purpose of the acquisition of arms has to be assessed by the licensing authority on the basis of a police report or on his own assessment. This, therefore, leaves no room for doubt that there is an obligation cast on the licensing authority now to consider these elements as referred to in the aforesaid Rules for either granting or refusing to grant a license and for that the police report and the own assessment of the licensing authority in terms thereof has to be guided in accordance with the 2016 Rules. It appears that the Rule making authority was aware of such situations that would require an assessment by the officer and, so far as the present case is



concerned, the respondent-petitioner had sought the license keeping in view his profession which was disclosed in paragraph-3 of the writ petition as follows :

“3. That the petitioner is a citizen of India and a business man by Profession dealing in gold business and is invoking the Jurisdiction of this Hon'ble High Court in its writ Jurisdiction.”

The order of the District Magistrate, as communicated, does not indicate the existence of any valid reason, but, at the same time, the order in appeal passed by the Commissioner indicates that there was no mention of any specific security threat or danger to the appellant in the police report. Such a ground, in our opinion, would be contrary to the intent of grant of license inasmuch as it is not necessary that a person should have an actual threat or imminent threat perception, but it would suffice if the applicant is able to persuade the authority to take into consideration the nature of his trade, profession and calling for the purpose of grant of license which situation has now been taken care of under Sub-Rule (3)(a) of Rule 12 of the 2016 Rules. In this view of the matter, the question of grant or refusal of license will have to be revisited by the licensing authority where the licensing authority will have the power to make an assessment as per the aforesaid Rules, keeping in view the police report or such other factors which may be necessary for the said purpose. The Advocate General is, therefore,



right in his submission to the extent that there cannot be an omnibus declaration in respect of a reason which can also possibly form part of the refusal or grant of license, namely the possibility or probability of any threat or imminent danger to the life or property of an individual. Such factors, in our opinion, are admissible factors, especially in the light of the 2016 Rules which now take care of the situation.

Accordingly, the impugned judgement of the learned Single Judge, to that extent, would stand modified, subject to the direction of the learned Single Judge to consider the grant of license to the respondent-petitioner in accordance with the 2016 Rules and take a fresh decision in the matter within the time period given therein.

The appeal stands disposed of, subject to above.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/Nasimul

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