

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22187 of 2019

=====

Rameshwar Nath Mishra Son of late Krishna Dayal Mishra, Resident of Village- Aruhi, P.S. Kargahar, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Govt. of Bihar, Patna.
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Rohtas.
4. The Superintendent of Police, Sasaram, Rohtas.
5. The Sub Divisional Officer, Sasaram, Rohtas.
6. Deputy Superintendent of Police, Sasaram, Rohtas.
7. Officer-in-Charge, Kargahar Thana, Rohtas.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Nikhil Kumar Agrawal
	:	Ms.Aditi Hansaria
For the Respondent/s	:	Mr.Sheo Shankar Prasad (SC8)
	:	Mr.Anil Kumar (A.C. to SC8)

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

4 21-01-2020 Heard learned counsel for the parties.

2. The petitioner had applied for grant of arms licence under the Arms Act, 1959 (hereinafter referred to as ‘the Act’) for N.P. Bore SBBL gun in 2001, for his self defence and protection of his family. It is his case that despite the fact that there was a favourable report of the Police on due verification, his application was rejected in the year 2006 on specious ground that he could not produce any cogent documentary evidence in support of his threat perception, requisite for grant of such



licence. He had preferred an appeal against the said order of the District Magistrate before the Commissioner, Patna Division, which was disposed of by an order dated 01.06.2012, remitting the matter back to the District Magistrate, Rohtas. The District Magistrate, Rohtas again rejected the petitioner's application by an order dated 08.05.2013 on the same ground of the petitioner's inability to produce any cogent documentary evidence to justify any threat to his life or property. The petitioner thereafter approached this Court by filing a writ application, giving rise to CWJC No. 14628 of 2013. The writ application was allowed by an order dated 28.09.2015 (Annexure-5) in following terms:-

“Accordingly, this writ application stands allowed. The impugned order, as contained in Annexure-1, is quashed and set aside. The matter is remitted back to the licensing authority for taking a fresh decision in accordance with law. However, it is made clear that, since no ground has been specified, in the impugned order dated 08.05.2013 (Annexure-1) for refusal of licence other than the aforesaid lack of evidence regarding threat perception, thus, if there is no event subsequent to the date of the impugned order which disqualifies the



petitioner either under Section 13 or 14 of the Act from getting the arms licence, the petitioner would be entitled for grant of licence as the same cannot be refused again on the selfsame ground. However, if the authority comes to the conclusion that there was some involvement of the petitioner in some criminal cases which could not be looked into during the earlier proceeding than that can also be considered by it. It is expected that the whole exercise would be completed within two months from the date of receipt/production of a copy of this order.”

(Underlining for emphasis)

3. The petitioner again approached the District Magistrate, Rohtas in the light of this Court's order dated 28.09.2015. After having received a notice from the office of the District Magistrate, he is said to have appeared before him on 15.03.2016 in the proceeding for grant of arms licence. As no decision was being taken despite the Court's order dated 28.09.2015, the petitioner filed a contempt application before this Court, giving rise to M.J.C. No. 3896/2016. It was during the pendency of the contempt petition that another notice was issued dated 27.08.2018, asking the petitioner to appear before



the District Magistrate along with certain documents.

4. It is the petitioner's case that in response to the said notice dated 27.08.2018, the petitioner presented himself in the office of the District Magistrate on 31.08.2018 and intimated the office that because of short time (4 days) allowed for production of documents, he had not been able to arrange all the documents. It is the petitioner's further case that he was made to wait for the interview with the District Magistrate but finally he had to leave the place under the assurance of the office that a subsequent date would be given for his appearance. This stand of the petitioner has been denied in the counter affidavit filed on behalf of the District Magistrate and it has been stated that when the petitioner was asked to appear on 31.08.2018, he did not appear.

5. Fact remains that the petitioner's application for grant of license again has been rejected by an order dated 31.08.2018, this time on the ground that the petitioner failed to produce training certificate as specified in Rule 10 (1) of the Arms Rules, 2016 and also because he failed to appear before the licensing authority. The said order dated 31.08.2018 is under challenge in the present writ application.

6. It is evident from the facts noted above, which are



not in dispute, that the petitioner's application for grant of Arms licence was filed much before coming into force of the Arms Rules, 2016. The impugned order refers to absence of a certificate as contemplated under Rule 10 (1) of Arms Rules, 2016. The Arms Rules have been framed by the Central Government in exercise of powers conferred under Sections 5,9,10,11,12, 13,16,17,18,21,41 read with section 44 of the Arms Act, 1959. As the absence of certificate stipulated under Rule 10 (1) of the Rules has been made as a ground for rejection of petitioner's application, the said provision needs to be taken note of at this juncture. Rule 10 (1) reads thus:-

“10. Safe use and storage of firearms.— (1) Every applicant applying for a licence in Form II, Form III and Form IV; or a rifle club or association or firing range or staff employed by such club, association or firing range, applying for a licence in Form V; or a manufacturer or dealer or gunsmith or staff employed by such manufacturer, dealer or gunsmith applying for a licence in Form VII, Form VIII, Form IX or Form IX-A, shall be required to complete arms and ammunition safety training course which shall include –

(a) basic arms and ammunition safety practices, including safe handling and carry procedures;

(b) firing techniques and procedures;

(c) care of arms and ammunition;

(d) safe storage and transportation of arms and ammunition;



(e) reasonable working knowledge of important provisions of the Act and these rules; and

(f) responsibilities of the arms owner or user, particularly in relation to children.”

7. It is evident on reading of Rule 10 (1) that every applicant applying for a licence for fire arms is required to complete arms and ammunitions safety training course as indicated therein. Sub-rule (2) of the Arms Rules requires that a safety training course under sub-rule (1) shall have to be conducted by an accredited trainer or a master accredited trainer having licence under Rule 39 of the Rules, who shall issue a certificate in Form S-1 to a person, on successful completion of the course.

8. Sub-rule (3) of Rule 10 is a significant provision for the purpose of adjudication of the present case, which mandates that the effective date and duration of safety training course as laid down in sub-rule (1) shall be notified by the Central Government by issuing a general and special order, in this regard.

9. This is an admitted fact that the Central Government has not notified, till date the effective date and duration of the safety training course as laid down in sub-rule (1) of Rule 10.



Since, the petitioner's application was rejected on the ground of non-compliance of requirement under sub-rule (1) of Rule 10 of the Rules, 2016, the Court out of curiosity wanted to know from the District Magistrate, Rohtas who is the licensing authority as to whether any licence has been granted to any person in the district after 15.07.2016 with effect from which the Arms Rules, 2016 came into force.

10. A counter affidavit has been filed accordingly on behalf of the District Magistrate, Rohtas, wherein it has been vaguely stated that some licences have been allowed by the then District Magistrate, Rohtas, after 15.07.2016 till 03.05.2018 whereafter the present incumbent has taken over the post of District Magistrate, Rohtas. It is the case of the District Magistrate, Rohtas that since, 03.05.2018 no Arms licence has been granted in the district of Rohtas. If the said statement is to be accepted, the provisions under the Arms Act, 1959, which deal with grant of Arms licence has been rendered meaningless as no arms licence could be granted in absence of certificate in form S-1 because of the said sub-rule (1) of Rule 10. After coming into force of the said Rules, according to the District Magistrate, no licence can be granted even in favor of those, who had submitted their applications much before coming into



force of the Rules. It is noteworthy, as has already been mentioned above, that under the orders of the Court dated 28.09.2015, the District Magistrate was expected to take a decision on the petitioner's application for grant of licence within two months. The said order of this Court has admittedly been flouted by the District Magistrate and there is no explanation on record to justify the defiance of the said Courts' order.

11. Understandably, the difficulties were arising because of incorporation of the provision of requirement of a certificate for an applicant to apply for Arms licence in the State of Bihar in the absence of any notification issued by the Central Government as stipulated under sub-rule (3) of Rule 10 of the Rules. Accordingly, a clarification was sought by the Home Department (Police) Government of Bihar from the Ministry of Home, Government of India through letter dated 20.06.2017, a copy of which has been brought on record by way of part of Annexure 11th series. In response to the clarification sought, the Ministry of Home Affairs, Government of India wrote a letter to the Under Secretary Home, Government of Bihar dated 07.07.2017 to the following effect:-

“ To
Shri Girish Mohan Thakur



Under Secretary (Home)

Government of Bihar

Secretariat, Patna

Subject:-Clarification sought by the State Government of Bihar regarding Rules 10 & 39 of the Arms Rules, 2016.

Sir,

I am directed to refer to Government of Bihar letter No.7/Anu-10-12/2017/5053 dated 20th June, 2017 on the above subject.

2. With regard to the clarification sought by the State Government of Bihar, the following are clarified:

Clarification on Rule 10 and Rule 39 of the Arms Rules, 2016

The Central Government in the Ministry of Home Affairs has to issue detailed guidelines by passing a general or special order in consultation with Ministry of Sports and Youth Affairs for deciding the norms, syllabus and other functionalities for Accredited Trainers and Master Accredited Trainers under rule 39 of the Arms Rules, 2016. Till such guidelines are circulated, the licensing authorities may be allowed to get the weapon handling training from the armours working with state police departments, CAPFs and defence forces and the certificate S-1 in the prescribed Proforma as mentioned in the Arms Rules, 2016 may be issued by a committee/mechanism established by the State Government for such purpose. Further, the State Government may not put up any additional requirements of furnishing of documents or eligibility norms to what has been specified in the Arms Rules, 2016.

Yours faithfully

Sd/-

(Rajesh Ranjan)

Under Secretary to the Govt. of India”

(Underlining for emphasis)



12. It is evident that the Government of India clarified that till such guidelines were circulated as contemplated under Rule 10 (3) of the Rules, the Licensing Authorities may be allowed to arrange the weapon handling training from the armours working with the State Police Departments, CAPFs and defence forces and the certificate S-1 in the prescribed proforma as mentioned in the Arms Rules, 2016 may be issued by a committee/mechanism established by the State Government for such purpose.

13. For the reasons not known to the Court , more than one year after the said clarification was issued by the Government of India, the Home Department, Government of Bihar wrote to the Director General of Police, Patna, quoting the clarification of the Government of India, to submit a proposal for training for handling etc. of Arms, requisite for the purpose of issuance of certificate in form S-1. It is also not known whether any proposal has been submitted by the Director General of Police in the light of the said letter dated 05.09.2018 or not.

14. The District Magistrate in his counter affidavit has not referred to the clarification issued by the Government of India.



There is no clue from his affidavit as to whether he has any knowledge about the clarification issued by the Government of India or not. The clarification issued by the Government of India mentions that “licensing authorities may be allowed to get the weapon handling training from armours...”. It is manifest from the said clarification that the Licensing Authorities are required to be given permission to get the weapon handling training from the armours with the State Police Departments, CAPFs etc.

15. On analysis of uncontroverted facts noted above it is manifest beyond doubt that the petitioner’s application has been rejected for non-compliance of something, which was impossible for him to comply with. He could not have submitted certificate in form S-1. When he had submitted his application for grant of licence there was no such requirement. The District Magistrate has nowhere stated that he had arranged for the training as clarified by the Government of India, which could have led to the grant of a certificate in form S-1. He has stated in the counter affidavit that the petitioner was asked through notice dated 26.08.2018 to appear before him on 31.07.2018 with the documents. Subsequently on 27.08.2018, the petitioner was directed to produce the required training certificate as provided in Rule 10 (1) of the Arms Rules, 2016. As has already



been indicated, it was impossible for the petitioner to have produced a certificate under S-1 on 31.08.2018 after having received the notice dated 27.08.2018, in view of the above mentioned discussion. The stand of the District Magistrate that the petitioner did not appear on 31.08.2018, in Court's opinion, lacks *bona fide*. It is evident from the uncontroverted facts that the petitioner is pursuing his matter right from 2002 for grant of arms licence. In most likelihood, the petitioner could not have missed his chance to appear on the date fixed before the District Magistrate for his appearance for grant of arms licence, without any reason. In any event, on the ground of absence for a day, the petitioner's application for grant of arms licence ought not to have been rejected.

16. In my view, none of the reasons assigned by the District Magistrate in his order rejecting the petitioner's application for grant of arms licence is legally sustainable. The impugned order, therefore, in my view wholly arbitrary and unreasonable and is, accordingly, set aside.

17. This application is accordingly allowed with the following directions, in the facts and circumstances noted above:-

(I) The petitioner shall appear before the District



Magistrate, Rohtas along with a copy of this order on 03.02.2020 in his office at 10.30 A.M. The District Magistrate shall ensure that he is available in his office at 10.30 A.M. The District Magistrate will be duty bound to inform the petitioner the training which he is required to undergo and the place where such training is being imparted for issuance of a certificate in Form S-1.

(II) In the event, no arrangement has been made for imparting training as stipulated in terms of clarification issued by the Government of India, he will be required to adjourn the hearing of the petitioner's application for grants of arms licence by two weeks. In the meanwhile, he shall be under obligation to ensure that adequate arrangements are made for imparting training as stipulated in the said clarification of the Government of India.

(III) If the Licensing Authorities have not been allowed so far to arrange for training as stipulated in the clarification of the Government of India, the District Magistrate shall be duty bound to seek guidelines in this regard, from the Home Department, Government of Bihar.

(IV) If no final decision has been taken by the Respondents, allowing the Licensing Authorities to arrange



weapon handling training from the armours, working in the State Police Department etc, as stipulated in the clarification, the Home Department Government of Bihar shall be duty bound to ensure that necessary orders are issued within two weeks of receipt of any such requests from the District Magistrate, Rohtas, who is the licensing authority.

(V) It is clarified that the District Magistrate shall not reject the petitioner's application for grant of arms licence on the ground of non-availability of certificate in Form S-1 unless he records a finding that despite necessary arrangements having been made in terms of the clarification and opportunity having been given to the petitioner to receive such training, the petitioner has refused to receive the requisite training.

(VI) The petitioner's application shall be considered afresh accordingly.

(VII) The Additional Chief Secretary, Home Department, Government of Bihar shall examine as to why petitioner's application had remained pending, which was expected to be disposed of within two months of the order of this Court dated 28.09.2015 and consider initiating disciplinary action against the then District Magistrate, of Rohtas who failed to carry out the direction of the Court.



(VIII) I express my strong displeasure over the manner in which the petitioner's application for grant of Arms licence has been handled, despite judicial orders of this Court. Such irresponsible behaviour of the licensing authority may have the consequence of public losing faith in the system founded on Rule of law, altogether. I, therefore, forewarn the Respondents to be more cautious and careful in future while discharging statutory functions, so as to avoid evil consequences.

18. Considering the manner in which the petitioner's application has been rejected by the licensing authority as has been discussed above, I find it to be a fit case where cost should be imposed.

19. Accordingly, this application is allowed with a cost of Rs.10,000/-(ten thousand) to be paid by the District Magistrate, Rohtas to the petitioner within four weeks from the date of receipt/production of a copy of this order.

20. Learned counsel for the State shall ensure that the District Magistrate, Rohtas is communicated about the fact that under today's order of the Court, dictated in the Court room in this case, the District Magistrate has to remain present in his office at 10.30 A.M. on 03.02.2020, when the petitioner will be



required to be given an audience by him.

arun/akash-

(Chakradhari Sharan Singh, J)

U			
---	--	--	--

