

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1183 of 2020

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Sudarshan Rai Son of Rambali Rai @ Rambali Ray Resident of Village-
Balwan Tola, Kotwa Patti, Rampur, P.S.- Doriganj, District- Saran at Chapra.
... .. Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Saran Division, Chapra.
3. The District Magistrate, Saran at Chapra.
4. The District Arms Magistrate, Saran at Chapra.
5. The Superintendent of Police, Saran at Chapra.
6. The Officer-in-Charge, Doriganj Police Station, Saran at Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Dewendra Narayan Singh, Advocate
For the Respondent/s	:	Mr.Md. N. H. Khan (SC-1)
		Mr. Md. Irshad, AC to SC-1
		Smt. Babita Kumari, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date: 23-10-2024

The present writ petition has been filed for quashing the order dated 11.02.2016, passed by the District Magistrate, Saran at Chapra in Arms License Case No. 82 of 2015, whereby and whereunder the application of the petitioner for grant of arms license has been rejected on the ground that the petitioner is not having any threat perception. The petitioner has also challenged the appellate order dated 01.06.2018, passed by the Commissioner, Saran Division, Chapra in Arms



Appeal No. 120 of 2016, whereby and whereunder the appeal filed by the petitioner has also stood rejected on the ground that the petitioner has failed to show any specific evidence of threat to his life and property, before the licensing authority.

2. The learned counsel for the petitioner has submitted that absence of threat perception cannot be a ground for rejecting the application of the petitioner for grant of arms license. The learned counsel for the petitioner has also submitted that the petitioner is a businessman engaged in sale and purchase of building construction materials such as sand, stone chips, iron rods etc., hence he has to face day to day risk when he is required to carry cash amount in discharge of his functions as a businessman, thus for his security and safety, he requires arms license so that he can protect himself and his business activities.

3. The learned counsel for the petitioner, at this juncture, has referred to Rule 12(1) and (3) of the Arms Rules, 2016, which is reproduced



hereinbelow:-

"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."

4. The learned counsel for the petitioner has also referred to a judgment reported in **2008(1) PLJR 151 (Amrendra Kumar Singh vs.**



State of Bihar & Ors.) to submit that it is not necessary that threat perception should be present, so as to warrant grant of arms license to the applicant.

5. The learned counsel for the petitioner has also referred to a judgment rendered by a coordinate Bench of this Court, reported in **2015(4) PLJR 212 (Manish Kumar & Others vs. The State of Bihar & Ors.)**, to submit that in absence of any evidence regarding threat perception, grant of arms license cannot be refused. In this connection, it would be apt to reproduce paragraph no. 29 of the said judgment hereinbelow:-

“29. This Court is in agreement with the aforesaid decisions as a conjoint reading of Sections 13 and 14 of the Act does not disclose anywhere that the absence of any evidence regarding threat can form a condition for refusal to grant arms licence. In my considered opinion, the licensing authority cannot apply its discretion in a manner to hold that lack of evidence regarding threat perception would make the applicant unfit for



grant of licence under Section 14(1) (b)(i)(3) of the Act. The provision has to be read necessarily as the same is there without substituting or taking away anything therefrom. It clearly lays down that the licence can be refused if the applicant is found unfit for any reason under the Act. However, since none of the provisions of the statute discloses that imminent danger or actual threat perception may form a ground for refusal of licence, it cannot be held that the same may form a reason declaring the applicant unfit for grant of licence under the Act in view of the provisions contained in Section 14(1) (b)(i)(3)."

6. The learned counsel for the petitioner has next submitted that the aforesaid judgment rendered in the case of Manish Kumar (supra) was challenged in appeal by the State i.e. in LPA 758 of 2018 (The State of Bihar & Ors. vs. Deepak Kumar) as also in another appeal bearing LPA No.459 of 2018 (State of Bihar & Others vs. Manish Kumar) and the learned Division Bench of this Court, by a judgment dated 21.1.2019, has clearly held therein that absence of any specific security threat or



imminent danger to an applicant cannot be a ground for rejection of the application of an applicant for grant of arms license inasmuch as, the same would be contrary to the intent of grant of license, as postulated by the Arms Rules, 2016. The learned Division Bench of this Court has also held that a person should not 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 and profession for the purposes of grant of license, which situation has now been taken care of under Rule 12(3)(a) of the Arms Rules, 2016. In this regard, it would be apt to reproduce the relevant portion of the aforesaid judgment dated 21.1.2019 hereinbelow:-

"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."

7. *Per contra*, the learned counsel for the respondent-State submits that since the petitioner is not having any threat perception, he has rightly not been granted arms license, thus the impugned orders dated 11.02.20216 and 01.06.2018, do not suffer from any infirmity.

8. I have heard the learned counsel for the parties and perused the materials on record, from which it is apparent that the only ground on which the application of the petitioner for grant of arms license has been rejected, is absence of threat perception, however, this Court finds that it has



been clearly held by a learned Division Bench of this Court by a judgment rendered in the case of Deepak Kumar (supra) as also by a co-ordinate Bench of this Court by a judgment rendered in the case of Amrendra Kumar Singh (supra) that absence of threat perception cannot be a ground for rejecting the application of an incumbent for grant of arms license and, moreover, the nature of trade and profession of an applicant is also required to be considered by the licensing authority while considering an application for grant of arms license, hence this Court finds that the impugned order dated 11.02.2016, passed by the District Magistrate, Saran at Chapra in Arms License Case No. 82 of 2015 and the one dated 01.06.2018, passed by the Commissioner, Saran Division, Chapra in Arms Appeal No. 120 of 2016 are not sustainable in the eyes of law, being contrary to the law laid down by the Hon'ble High Court, as aforesaid.

9. Having regard to the facts and circumstances of the case and for the foregoing



reasons, the impugned order dated 11.02.2016, passed by the District Magistrate, Saran at Chapra in Arms License Case No. 82 of 2015 and the one dated 01.06.2018, passed by the Commissioner, Saran Division, Chapra in Arms Appeal No. 120 of 2016, being contrary to law, are set aside and the case of the petitioner for grant of arms license is remanded back to the District Magistrate, Saran at Chapra for fresh consideration, who shall, after grant of an opportunity of hearing to the petitioner, pass a reasoned and a speaking order, in accordance with law, within a period of eight weeks of receipt/production of a copy of this order.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
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