

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5324 of 2022

Prabhat Kumar Srivastava Son of Suchun Prasad Srivastava Resident of
Village- Jadopur Shukl, P.S. Yadopur, District Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner, Saran, Chapra.
3. The District Magistrate, Gopalganj.
4. The Superintendent of Police, Gopalganj.
5. The Arms Magistrate, Gopalganj.
6. The Officer-in-Charge, Jadopur Police Station, Gopalganj.
7. The Block Development Officer, Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ranjan Kumar Srivastava, Adv. Mr. Shashwat Srivastava, Adv. Mrs. Rajanigandha Akhouri, Adv.
For the Respondent/s	:	Mr. Shiv Shankar Prasad, SC-8

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 12-11-2024

The present writ petition has been filed for quashing the order dated 30.5.2017, passed by the District Magistrate, Gopalganj, in New Arms Case No. 18 of 2017, whereby and whereunder the application of the petitioner for grant of arms license has been rejected. The petitioner has further prayed for quashing the order dated 25.2.2020, passed by the learned Court of Divisional Commissioner, Saran Division, Chapra, in Arms



Appeal Case No. 98 of 2019, whereby and whereunder the appeal, filed by the petitioner, has been dismissed on the ground that the petitioner is not having any threat perception.

2. The learned counsel for the petitioner submits that the petitioner is a railway contractor, hence, needs an arms license to possess arms for the safety of his life and security of his property as also in order to safely enable him to carry out his day to day activities as a contractor, thus, the petitioner had applied for grant of arms license on 23.12.2015, in the prescribed format, before the District Magistrate, Gopalganj, whereafter the application of the petitioner was sent to the Officer-in-Charge, Jadopur, for enquiry, who had recommended the case of the petitioner for grant of arms license, vide letter dated 4.11.2016, nonetheless, the District Magistrate, Gopalganj, has rejected the application of the petitioner for grant of arms license on the ground that no reason has been shown by the petitioner so as to warrant grant of arms license to him.

3. The petitioner had then challenged the aforesaid order dated 30.5.2017, by filing an appeal bearing Arms Appeal Case No. 98 of 2019, before the learned Court of Divisional Commissioner, Saran Division, Chapra, however, the same has



also stood dismissed, by an order dated 25.2.2020, on the ground that the police report does not show that the petitioner is having any threat perception.

4. The learned counsel for the petitioner has submitted that it is a well-settled law that absence of threat perception cannot be a ground for denial of arms license and in this connection, reference has been made to the judgment, rendered by the learned Division Bench of this Court in the case of ***State of Bihar & Ors. vs. Deepak Kumar***, reported in ***2019(1) PLJR 664***, relevant paragraph whereof is reproduced hereinbelow:-

“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.”

5. The learned counsel for the petitioner has also relied on a judgment dated 4.10.2024, rendered by this Court in the case of ***Shakeel Ahmad vs. The State of Bihar & Ors.*** (CWJC No. 17068 of 2023), paragraph No.3 whereof is reproduced herein below:-

“3. The petitioner had then challenged the aforesaid order dated 28.10.2018, by filing an appeal, bearing Appeal Case No.135 of 2022, before the Commissioner, Tirhut Division, Muzaffarpur, however, the same has also stood dismissed by the impugned order dated 20.02.2023 on the ground that the District Magistrate, West Champaran at Bettiah has passed a reasoned order and has correctly recorded therein that the petitioner has not produced any evidence to show that he is having imminent threat, apart from the fact that right from the time, the petitioner had filed an application for grant of arms license, i.e. in the



year 2008, till date, neither the petitioner has ever been attacked nor any First Information Report has been registered from which it is apparent that the petitioner is not having any danger. In such view of the matter, the Commissioner, Tirhut Division, Muzaffarpur found that the order dt. 28.10.2018, passed by the District Magistrate, West Champaran at Bettiah does not suffer from any infirmity, hence had rejected the appeal by the impugned order dt. 20.02.2023. The Ld. Counsel for the petitioner has submitted that it is not necessary that threat perception should be present, so as to warrant grant of arms license to the petitioner. In this connection, reference has been made to a judgment dated 14.07.2022, rendered in the case of Vijay Kumar Singh Vs. The State of Bihar & Ors. (CWJC No.10784 of 2021), paras no.4 & 5 whereof are reproduced herein below:-

“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 & Ors. 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 para no. 29 of the said judgment herein below:-

"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 further submitted that neither the District Magistrate, Gopalganj, nor the Divisional Commissioner, Saran Division, Chapra, have, in the impugned orders dated 30.5.2017 and 25.2.2020, considered the nature of trade / profession/business being carried out by the applicant for the purposes of grant of arms license, a situation which has now been taken care of under Rule 12(3)(a) of the Arms Rules, 2016. In this regard, reference has again been made to the judgment, rendered by the learned Division Bench of this Court in the case of **Deepak Kumar** (supra), relevant paragraphs whereof are reproduced 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. Thus, the submission of the learned counsel for the petitioner in nutshell is that the learned District Magistrate, Gopalganj, as also the learned Court of Divisional Commissioner, Saran Division, Chapra, in the impugned orders dated 30.5.2017 and 25.2.2020, have failed to take into consideration the aforesaid aspect of the matter i.e. nature of the trade and profession of the petitioner, who is a railway contractor and is required to carry cash for payment to the labours etc. hence, the impugned orders dated 30.5.2017 and 25.2.2020 are fit to set aside.

8. *Per contra*, though the learned counsel for the Respondent-State has vehemently opposed the present writ petition, however, he has not denied the fact that the matter can be remanded back to the District Magistrate, Gopalganj, for fresh consideration of the aforesaid aspect of the matter, which has admittedly not been considered in the impugned orders dated 30.5.2017 and 25.2.2020.

9. I have heard the learned counsel for the parties and perused the materials on record. This Court finds that the contention put forth, especially by the learned counsel for the petitioner as also reliance placed by him on the judgment, rendered by the learned Division Bench of this Court in the case



of *Deepak Kumar* (supra) as also by this Court in the case of *Shakeel Ahmad* (supra), definitely makes out a case for interference with the impugned orders dated 30.5.2017 and 25.2.2020, which are contrary to the principles of law, as have been enunciated in the aforesaid cases by the learned Division Bench of this Court and this Court.

10. Having regard to the facts and circumstances of the case, for the foregoing reasons and considering the law laid down by the Ld. Division Bench of this Court in the case of *Deepak Kumar* (supra) as also by this Court in the case of *Shakeel Ahmad* (supra), this Court finds that mere absence of any evidence regarding threat perception cannot be a ground for refusal to grant arms license, apart from the fact that the aforesaid authorities have failed to consider the case of the petitioner in terms of the Rule 12(3)(a) of the Arms Rules, 2016, hence I deem it fit and proper to quash the order dated 30.5.2017, passed by the District Magistrate, Gopalganj, as also the order dated 25.2.2020, passed by the learned Court of Divisional Commissioner, Saran Division, Chapra and remand the matter back to the District Magistrate, Gopalganj, to reconsider the aforesaid aspect of the matter and pass a fresh order, in accordance with law, within a period of six weeks of



receipt / production of a copy of this order.

11. The present writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	4.12.2024
Transmission Date	NA

