

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 17068 of 2023

Shakeel Ahmad Son of Late -Shabbir Ahmad Resident of Village- and P.O.-
Sabeya P.S.-Ramnagar District-West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Home, Govt. of Bihar, Patna.
3. The Commissioner, Tirhut Division, Muzaffarpur
4. The District Magistrate, West Champaran at Bettiah
5. The Arms Magistrate, West Champaran at Bettiah
6. The Sub-Divisional Magistrate, Bagha District-West Champaran.
7. The Superintendent of Police, Bagha District-West Champaran.
8. The Sub-Divisional Police Officer, Ramnagar District-West Champaran.
9. The Station House Officer, Ramnagar Police Station Dist.-West Champaran.

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Md. Anish Akhtar, Advocate

For the Respondent/s : Mr. Md. N.H. Khan (SC-1)

Mr. Md. Irshad, AC to SC-1

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 04-10-2024

1. The present writ petition has been filed for quashing the order dt. 28.10.2018, passed by the District Magistrate, West Champaran at Bettiah in Case No.05 of 2018, whereby and whereunder the application, filed by the petitioner for grant of arms license has been rejected. The petitioner has also prayed for quashing of the appellate order dt. 20.02.2023, passed by the Commissioner, Tirhut Division, Muzaffarpur in Arms Appeal Case No.135 of 2022, whereby and whereunder, the appeal filed by the



petitioner has been dismissed.

2. The brief facts of the case, according to the petitioner, are that the petitioner, who is a local politician and owner of about 50 acres of land had filed an application for grant of arms license for protection of his life and property in the year, 2008. In the meantime, the petitioner was elected as Up-Mukhiya of Gram Panchayat Raj, Sabeya and at the same time, i.e. on 22.05.2011, his wife was also elected as Up-Mukhiya of Gram Panchayat Raj, Sabeya, whereafter the petitioner was again elected as Mukhiya of Gram Panchayat Raj, Sabeya on 05.06.2016. Apprehending threat to his life and property, the petitioner had again applied for grant of arms license for possessing pistol and double barrel gun, in the month of August, 2016, however, since neither the application filed by the petitioner for grant of arms license in the year, 2008 nor his application filed in the year 2016 were being decided by the respondent-authorities, the petitioner had filed a writ petition before this Court bearing CWJC No.2900 of 2018, which was disposed of by an order dated 28.08.2018, directing the District Magistrate West Champaran at Bettiah to take a decision on the application of the petitioner within a period of six weeks of receipt/production of a copy of the said order. The petitioner was then compelled to file a contempt petition, however, the District



Magistrate, West Champaran at Bettiah had passed the impugned order dated 28.10.2018, rejecting the application of the petitioner for grant of arms license on the ground that the petitioner is neither facing any grave threat to his life nor fulfils the conditions mentioned in Rule 12 (2) (a) of the Arms Rules, 2016.

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).”

4. Per contra, the learned counsel for the respondent-State has submitted that the petitioner has failed to submit any cogent evidence, regarding threat perception, before the District Magistrate, West Champaran at Bettiah. In fact the Superintendent of Police, West Champaran at Bettiah had also submitted a report dated 30.05.2018, which also did not mention about the petitioner having any sort of threat perception, hence the District Magistrate, West Champaran at Bettiah had passed the impugned order dated 28.10.2018, in light of Rule 12 (2)(a)(1 to 3) of the Arms Rules, 2016 rejecting the application of the petitioner for grant of arms license. The said order dated 28.10.2018, passed by the District



Magistrate, West Champaran at Bettiah, was challenged by the petitioner by filing an appeal, before the Commissioner, Tirhut Division, Muzaffarpur, however, the same has also stood dismissed by the impugned order dated 20.02.2023.

5. The learned counsel for the respondents has relied on a judgment, rendered by the learned Single Judge of the Hon'ble High Court of Delhi, New Delhi dated 22.05.2023, in the case of Advocate Shiv Kumar Vs. The Union of India and Ors. [W.P. (C) No. 7034 of 2023 & CM APPL, 27372 of 2023], to submit that grant of license for acquisition and possession of fire arm is only a statutory privilege and not a matter of Fundamental Right, under Article 21 of the Constitution of India and grant of license by the licensing authority involves the exercise of discretionary licensing powers, which are concerned with privileges and not rights, as also no citizen has a blanket right to carry firearms.

6. I have heard the learned counsels for the parties and perused the materials on record, from which it is apparent that the application of the petitioner for grant of arms license has been rejected by the District Magistrate, West Champaran at Bettiah by the impugned order dated 28.10.2018, only on the ground that the petitioner is not having any imminent threat perception, however, this Court finds that not only a co-ordinate Bench of this Court in



the cases of Amrendra Kumar Singh (Supra), Vijay Kumar Singh (Supra) and in the case of Manish Kumar (Supra) but also a learned Division Bench of this Court in the case of **State of Bihar and Ors. Vs. Deepak Kumar**, reported in **2019 (1) PLJR 664**, have consistently held that absence of any evidence regarding threat perception to an applicant cannot be a ground for rejection of an application for grant of arms license, inasmuch as the same would be contrary to the intent of the scheme for grant of arms license, as postulated under the Arms Rules, 2016. In this regard, it would be apt to reproduce the relevant portion of the said judgment, rendered in the case of Deepak Kumar (Supra), herein below:-

“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 para-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. Having regard to the facts and circumstances of the case and considering the law laid down by this Court in the case of Vijay Kumar Singh (Supra) as also in the case of Deepak Kumar (Supra), this Court finds that mere absence of any evidence regarding threat perception cannot be a ground for refusal to grant arms license, hence the order dated 28.10.2018, passed by the District Magistrate, West Champaran at Bettiah, being contrary to law, is quashed. Consequently, the appellate order dated



20.02.2023, passed by the Commissioner, Tirhut Division, Muzaffarpur has also got no legs to stand, which has also been passed on same and similar ground, hence the same is also set aside.

8. The matter is remitted back to the District Magistrate, West Champaran at Bettiah, who shall re-examine the case of the petitioner, in light of the law laid down by this Court in the case of Vijay Kumar Singh (Supra) and Deepak Kumar (Supra) as also by the Hon’ble High Court of Delhi, New Delhi in the case Shiv Kumar (Supra) and pass a reasoned and a speaking order afresh, forthwith.

9. The writ petition stands allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

Saurav/-

AFR/NAFR	AFR
CAV DATE	24.07.2024
Uploading Date	04.10.2024
Transmission Date	NA

