
(2018) 05 PAT CK 0121

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10103 Of 2017

Dr. Shailendra Kumar

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 24-05-2018

Acts Referred:

Arms Rules, 2016 — Rule 12, 13, 14, 25
Arms Act, 1959 — Section 13, 14

Citation : (2018) 3 PLJR 455

Hon'ble Judges : Dinesh Kumar Singh, J

Bench : Single Bench

Advocate : Vishal Saurabh, Prabhat Kr. Verma

Final Decision : Disposed Of

Judgement

Heard Mr. Vishal Saurabh, learned counsel for the petitioner and Mr. Saroj Kumar Sharma, learned AC to AAG-3.

The present Writ application has been filed for a direction to the Respondent no. 2, District Magistrate, Sasaram, Rohtas â?"cum- Licensing Authority

under the Arms Act to dispose of the application for grant/transfer of Arms licence of N.P. Bore Rifle since the Commissioner, Patna Division vide

order dated 26.04.2016 passed in Arms Appeal No. 52 of 20-13 remanded the matter to District Magistrate, Sasaram.

The factual matrix of the case would unveil that the father of the petitioner being a Doctor is a licensee of N.P. Bore Rifle being Licence No. 3/88

and was posted in Uttar Pradesh. After his retirement, the father of the petitioner come to his native place at Sasaram and intended to transfer the

said rifle licence in favour of the petitioner. Thereafter, the petitioner submitted an application before the District Magistrate, Sasaram on 07.04.2012

for grant/transfer of the Arms licence. The police submitted the verification report on 03.05.2012 recommending for grant of licence. In view of the valid recommendation the District Magistrate, Sasaram vide order dated 21.09.2012 passed in Arms Case No. 177 of 2012 rejected the application of the petitioner on the ground that the petitioner failed to produce any evidence with regard to the threat as well as on the ground that he is already having another licence in his favour, hence, there is likely to be disturbance of breach of peace in grant of licence. The said order of the District Magistrate was challenged by the petitioner in Arms Appeal No. 52 of 2013 which was disposed of by the Divisional Commissioner, Patna vide order dated 26.04.2016, whereby the matter was remanded back to the District Magistrate to examine the matter on these issues and pass appropriate order after obtaining a fresh police report, in view of the provisions under Sections 13 and 14 of the Arms Act and order being in contravention of the orders passed by the Honâ??ble High Court in this regard and since then the matter is pending before the District Magistrate, Sasaram.

Learned AC to AAG-3 submits that, at present, he is not having any instruction whether the application of the petitioner has been disposed of by the District Magistrate or not.

Having heard the learned counsel for the parties, though there is no specific provision under the Arms Rule 1962 for taking a decision on the application made for grant of arms licence but in the past several directions have been issued by this Court fixing the time frame for disposal of such applications, one of such cases being Dwivedy Surendra, Advocate Vs. The State of Bihar and Ors., 2007(3) PLJR 76 wherein a direction has been given for disposal of application for arms licence where police report has been received within a period of two months and where police report is awaited, within a period of four months but it appears that it has no impact on the licensing authority.

It appears that visualizing the apathetic attitude of the licensing authority, the Legislature thought it proper to incorporate Rules 13 and 14 of Arms Rules, 2016 prescribing time limit to the police to transmit the police report within 45 days and further prescribed the period of thirty days for the licensing authority to take decision on such application by passing speaking/ reasoned order in writing.

So far as grant of licence to the heirs of the licensee is concerned, there was no specific provision under the Arms Act, 1959 or the Arms Rules, 1962

but realizing that grant of such licence is more in the nature of transfer to the heirs of the licensee, the Principal Secretary, Home (Police) Department,

Government of Bihar vide Memo No. 7 dated 13th October, 2014 issued a directive for expediting the grant of licence to all the District Magistrates

and copy to all the Divisional Commissioners and Superintendents of Police. The said directive reads as follows:

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However, parameters for grant of arms licence to the legal heirs of the licensee has been incorporated in Rule 25 of Rules, 2016. Rule 25 reads as

follows:

25. Grant of licences to legal heirs. (1) The licensing authority may grant a licence ?

(a) after the death of the licensee, to his legal heir; or

(b) in any other case, on the licensee attaining the age of seventy years or on holding the firearm for twentyfive years, whichever is earlier, to any

legal heir nominated by him:

Provided that notwithstanding the provisions contained in rule 12 of these rules, the licensing authority may grant a licence to such legal heir if the

eligibility conditions under the Act and these rules are fulfilled by the said legal heir and there are no adverse remarks in the police report.

(2) Where a licensee leaves behind more than one legal heir and the legal heirs decide amongst themselves to retain the arm or arms of the deceased,

one of the legal heirs nominated by all other legal heirs may apply for a licence under sub-rule (1) along with the following documents, namely:-

(i) a declaration of no-objection from the remaining legal heirs;

(ii) an indemnity bond executed by the applicant giving full details of the licence and the arm or arms endorsed thereupon; and

(iii) a copy of the death certificate of the deceased licensee.

(3) Where the legal heirs decide to dispose of the arm or arms endorsed on the licence of the deceased licensee, they may apply to the licensing

authority for grant of a limited period permission to sell the arm or arms, within the time allowed by such authority, to any licensed dealer or to any

other person entitled to possess an arm under these rules.

Explanation. ? For the purposes of this rule, â??legal heirâ?? includes husband, wife, son, daughter, son-in-law, daughter-in-law, brother, sister and grandchildren of the licensee or the deceased licensee.â??

This Court is dismayed to find that such directions/advisories have fallen on deaf ears and have remained unheeded by the licensing authorities, as in the present case the issue is pending before District Magistrate, Sasaram since 26.04.2016.

In the circumstances discussed above, Respondent no. 2, District Magistrate, Sasaram, Rohtas is expected to dispose of the application of the petitioner, keeping in view the above quoted directives of Principal Secretary, Home as well as provisions in exercising such jurisdiction stipulated under Sections 13 and 14 of the Arms Act within a period of eight weeks from the date of receipt/production of a copy of this order.

Accordingly, this Writ application is disposed of.