

(2016) 09 PAT CK 0045

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10385 of 2016

S.M. Fakhrul Islam

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 19-09-2016

Acts Referred:

Arms Act, 1959 — Section 13(2)

Citation : (2017) 1 PLJR 460

Hon'ble Judges : Dr. Ravi Ranjan, J.

Bench : Single Bench

Advocate : Ms. Manisha Pandey and Ms. Shweta Pandey, Advocates, for the Petitioner; Mr. A. Ujjwal, S.C.-IV and Mr. Upendra Pratap Singh, A.C. to S.C.-IV, for the Respondents

Final Decision : Allowed

Judgement

Dr. Ravi Ranjan, J. (Oral) - I have heard the parties and perused the records of the case.

2. Petitioner is aggrieved by the order dated 13.05.2016.

3. On earlier occasion, petitioner had approached this Court by filing C.W.J.C. No. 16535 of 2015 which was disposed of vide order dated 03.11.2015 (Annexure-5) directing the District Magistrate-cum-Licensing Authority, Patna to take a decision upon the application of the petitioner that had remained pending before the Licensing Authority since 2005 i.e. for about ten years. Thereafter, the order impugned has been passed which has been appended as Annexure-10 rejecting the request of the petitioner chiefly on the ground that there is no clear and unambiguous recommendation by the Officer-in-Charge, Sultanganj as well as the Sub-Divisional Police Officer, Patnacity and Senior Superintendent of Police, Patna for grant of firearm licence. Since the said stand was taken by the Licensing Authority, this Court had directed the State to bring on record of the recommendations made by the different police officials which have been brought

on record appended to the counter affidavit. The first police report, which was submitted by the Officer-in-Charge, Sultanganj, reveals that he was of the opinion that grant of firearm in favour of petitioner would not be detrimental for public peace and safety and the petitioner was also in the hit list of dreaded criminals. In fact, he was subjected to overt act for which Sultanganj Police Station Case No. 171 of 2002 was lodged on 24.07.2002 under Section 392 of the Indian Penal Code. Thus, there was clear and unambiguous recommendation that there was threat upon the life and property of the petitioner, thus, he should be granted firearm licence. It is intriguing as to what more was required as specific recommendation as has been observed by the Licensing Authority. From the documents brought on record as Annexure-A and B series, it appears that Officer-in-Charge, Sultanganj Police Station once again on 05.04.2016 had made a recommendation that the petitioner is of good character and is in fishing trade. It is the Sub-Divisional Police Officer, Patna city who had forwarded the recommendation of the Officer-in-Charge and the same thing has been done by the Superintending Officer. This Court has held time without number that the requirement under the statute in particular Section 13(2) of the Arms Act, is that on receipt of application, the Licensing Authority shall call for report of the Officer-in-Charge of the nearest police station which should send its report within the prescribed time. There is no requirement of seeking report from or recommendation from the Senior Superintendent of Police. However, if in any specific case it is required then the Licensing Authority may ask him to send a report but that situation was not there in the present case that there was something with respect to the petitioner which was required to be clarified and, thus, a report was sought from the Senior Superintendent of Police. It is merely a procedure adopted by the police that the report of Officer-in-Charge goes through the proper channel i.e. through the Sub-Divisional Police Officer and, thereafter, the Senior Superintendent of Police to the Licensing Authority. Therefore, there was no requirement at all of separate recommendation of Senior Superintendent of Police. Therefore, it is not understandable at all as to how and why the Licensing Authority was expecting a recommendation by the Senior Superintendent of Police when no such request was made for sending a report. It is further intriguing that when there was specific and clear recommendation by the Officer-in-Charge, Sultanganj that there is threat perception upon the petitioner who is in the hit list of the dreaded criminals and in fact, he has been subjected to overt act for which First Information Report has been lodged, what else was required for grant of licence specifically when the police report further discloses that his conduct is unblemished ?

4. The aforesaid startling revelation of facts goes to indicate towards non-application of mind by the Licensing Authority, which gives a colour of arbitrariness to the order impugned. In my considered opinion, the impugned order is not at all sustainable and, accordingly, the same is quashed and set aside. The matter is remitted back to the Licensing Authority to take a fresh decision within a period of two months.

5. This writ application stands allowed with the aforesaid observation and direction.