

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5335 of 2016

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1. Krishna Dutt Prasad Son of late Ambika Dutt Sharma Resident of Mohalla-
Rajendra Path, Dhankutti Road, Behind Ramruchi Girls School, Police Station
Kotwali, District Gaya.

.... Petitioner/

Versus

1. The State of Bihar
2. The Commissioner, Magadh Division, Gaya.
3. The District Magistrate , Gaya.
4. The District Arms Magistrate Gaya.
5. The Sub-Divisional Officer, Sadar Gaya
6. The Senior Superintendent of Police, Gaya.
7. The Officer-in-Charge, Kotwali Police Station Gaya.

.... Respondents

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Appearance :

For the Petitioner : Mr. Sanjay Kr. Sinha, Advocate
For the State : Mr. Manish Kumar, AC to GP 28

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 02-05-2016

I have heard the parties and have perused the records.

The petitioner is aggrieved by the order dated 15.01.2016 passed by the Commissioner, Magadh Division, Gaya in Arms Appeal No. 239/2015 by which the aforesaid Arms Appeal preferred by the petitioner assailing the order dated 26.09.2014 passed by the District Magistrate, Gaya, by which the petitioner's application for grant of licence was rejected, has been dismissed on the ground of delay of more than three months.

Original records have been produced by the State for perusal of this Court.



It appears from the records and also from the order dated 29.12.2015 passed by the appellate authority that a petition was filed for condoning the delay, however, there is no consideration of the grounds raised by the petitioner for condoning the delay in filing the appeal and without doing that the appeal has been dismissed on the ground of delay of about three months.

The Apex Court in **State of Bihar v. Kameshwar Prasad Singh (2000(3) PLJR(SC) 81)** has expressed its view that requirement of explaining of delay does not mean that a pedantic approach should be made and ordinarily, a litigant does not stand to benefit by lodging an appeal late, and, as such, if by refusal to condone the delay, a meritorious matter is thrown out at the threshold then cause of justice would be defeated. The Apex Court in its another decision rendered in **S. Ganesharaju v. Narasamma [(2013) 11 Supreme Court Cases 341]** has held that the delay of 53 days would not fall in the category of exorbitant or inordinate delay and, thus, the same should be condoned in routine manner.

In my view, the order impugned suffers from diverse flaws. The first is that there is no consideration at all of the grounds for condoning the delay raised by the petitioner. Secondly, the delay is not of such magnitude that the same would fall in the category of exorbitant or inordinate delay, which, in view of the aforesaid



decisions of the Apex Court, should be condoned in routine manner. That apart, the licensing authority has rejected the petitioner's application for grant of firearm licence on the ground that he has not been able to show any evidence regarding threat perception. This issue has been decided in **Manish Kumar v. The State of Bihar and others (AIR 2016 Patna 9)** by this Court holding that the same does not form a ground for refusal of arms licence.

Thus, in view of the decisions rendered by the Apex Court in **State of Bihar v. Kameshwar Prasad Singh(supra)**, it has to be held that it was a meritorious matter which has been thrown out at the threshold on the ground of limitation and has caused justice being defeated.

On such a finding and observation, ordinarily this Court after setting aside the impugned order, would have remitted back the matter to the appellate authority for taking a decision on its own merit and in accordance with law, however, in view of the fact that the order passed by the licensing authority though has not been assailed in the present application but was assailed in appeal which was dismissed on ground of delay but the same suffers from the fatal flaw, no useful purpose would be served in relegating the petitioner to the appellate authority.

Accordingly, this writ application succeeds. The orders

passed by the licensing authority as contained in Annexure 7 as well as the appellate authority as contained in Annexure 9 both are quashed and set aside and the matter is remitted back to the District Magistrate-cum-Licensing Authority, Gaya(respondent no. 3) to take a fresh decision on the application for grant of licence filed by the petitioner on its own merit and in accordance with law within a period of three months from the date of receipt/production of a copy of this order.

(Dr. Ravi Ranjan, J)

SC/-

AFR	AFR
CAV DATE	NA
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