

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.5678 of 2018**

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Ajit Kumar Singh S/o Sri Ram Suresh Singh Resident of Village-  
Fatehpur,P.S.-Raghopur, District-Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The District Magistrate, Vaishali.
3. District Arms Magistrato, Vaishali.
4. S.P. vaishali.
5. S.H.O. Raghopur.

... .. Respondent/s

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**Appearance :**

|                      |   |                            |
|----------------------|---|----------------------------|
| For the Petitioner/s | : | Mr. Ibrahim Kabir          |
|                      |   | Mr. Shruti Sinha           |
| For the Respondent/s | : | Mr. Ajay Kumar, AC to GP 4 |

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH**  
**ORAL JUDGMENT**

**Date : 14-05-2018**

Heard learned counsels for the parties.

The present writ application has been filed for quashing the communication vide Memo No. 305/Dist (Arms) dated 5.8.2017 issued under the signature of Respondent no. 3, District Arms Magistrate, Vaishali, as contained in Annexure 3, whereby the petitioner has been informed that the Respondent no.2, District Magistrate, Vaishali did not find any substantial ground for allowing the application of the petitioner filed for grant of arms licence. The relief prayed for in paragraph 1 of the writ application reads as follows:



“That this is an application for issuance of an appropriate writ, order or direction for quashing memo no. 305/Dist(Arms) dtd. 5.8.17 issued by District Arms Magistrate Vaishali whereby it has been informed that the District Magistrate, Vaishali has rejected the application of the petitioner for issuance of arms licence to him as the same is highly illegal arbitrary malafide and discriminatory and for a further direction to the respondents to grant arms licence of Revolver to the petitioner immediately and also transfer the in petitioners name the Revolver of his brother late Manoj Kumar Singh as not doing so is highly illegal in the facts and circumstances of this case.”

It is submitted by learned counsel for the petitioner that the brother of the petitioner, namely Manoj Kumar Singh was murdered on 1.2.2015, leading to the registration of Raghopur P.S. Case No. 4 of 2015 under Sections 302/34 of the IPC and Section 27 of the Arms Act. It is further submitted that when charge sheet was submitted in the aforementioned case, the petitioner apprehended serious threat to life of his family members, hence, he filed an application on 17.12.2016, as contained in Annexure 2 series, for grant of arms licence as well as for transfer of arms licence in the name of the petitioner, which was earlier in the name of his brother late Manoj Kumar Singh. The petitioner came to know that police report has been submitted recommending for



grant of arms licence in favour of the petitioner, still, the application of the petitioner has not been disposed of. However, the petitioner has been communicated vide Memo No. 305/Dist (Arms) dated 5.8.2017 issued under the signature of respondent no. 3, District Arms Magistrate, Vaishali, as contained in Annexure 3, whereby the petitioner has been informed that the Respondent no.2, District Magistrate, Vaishali did not find any substantial ground for allowing the application of the petitioner, submitted for grant of arms licence.

The petitioner has relied upon the order dated 13.5.2013 passed in CWJC No. 5620 of 2013 by a Bench of this Court, as contained in Annexure 4, whereby direction has been given for issuance of arms licence to the petitioner of the said case.

It is submitted by AC to GP 4 that at present he is not having any instruction, however, the order of the Licencing Authority is appealable under Section 18 of the Arms Act, 1959. Hence, on this score alone, the present writ application is not maintainable.

Considering the rival submissions of the learned counsels for the parties, this Court is dismayed to find that the writ application has been filed even without the order of the District Magistrate. The quashing of the communication vide Memo No.



305/Dist (Arms) dated 5.8.2017 issued under the signature of Respondent no. 3, District Arms Magistrate, Vaishali, as contained in Annexure 3, has been prayed for, which is simply a communication that the District Magistrate has not found any substantial ground for grant of arms licence to the petitioner. Though, said communication also appears to be absolutely unreasonable as it does not depict the date of order of the licencing authority, i.e. the District, Magistrate, Vaishali.

It is well settled that no provision under any other law can override the constitutional discretionary jurisdiction under Article 226 and 227 of Constitution of India. However, such discretionary jurisdiction is subject to self-imposed restrictions, one of which is that, if an effective alternative efficacious remedy is available then in such circumstance, writ jurisdiction cannot be exercised. However, the alternative remedy does not operate as a bar in certain circumstances, such as, for enforcement of any of the Fundamental Rights, or where there is violation of Principles of Natural Justice, or where the order or proceedings are wholly without jurisdiction, or when the vires of an Act is under challenge, as has been dealt with in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., reported in (1998) 8 Supreme Court Cases 1.



In the present case, this Court is not inclined to exercise the discretionary jurisdiction under Article 226 of the Constitution of India. However, since there is nothing on record to suggest that the order passed by the District Magistrate, Vaishali has been supplied to the petitioner, the petitioner is permitted to submit an application for supply of the order of the District Magistrate, Vaishali passed on the application of the petitioner, as contained in Annexure 2 series within a period of ten days from the date of receipt/production of a copy of this order, whereafter, the Respondent no. 2 the District Magistrate, Vaishali, is expected to ensure that the petitioner is supplied the order taking decision on the application for grant of arms licence and within a period of four weeks, thereafter, the petitioner is permitted to file an appropriate appeal before the Appellate Authority, i.e. the Commissioner, Tirhut Division, Muzaffarpur along with an application for condonation of delay. It is further expected from the Appellate Authority that if an appeal is filed by the petitioner within the time stipulated above, he will consider the plea for condonation of delay in view of the fact that the petitioner was not communicated the order passed by the District Magistrate, Vaishali.



From the pleadings, it appears that the family of the petitioner is apprehending life threat in the background of murder of the brother of the petitioner, the Appellate Authority is expected to decide the appeal preferably within a period of six weeks from the date of its filing.

With the aforementioned observation/direction, this writ application is disposed of.

**(Dinesh Kumar Singh, J)**

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