

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3377 of 2018

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Lal Babu Bhagat S/o Jang Bahadur Bhagat, R/o Village-Kunari, P.S.-
Ganga Bridge, District-Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar, through the District Magistrate, Vaishali Hajipur.
2. The District Magistrate, Vaishali, Hajipur
3. The District Arms Magistrate, Vaishali, Hajipur
4. The In-Charge, Arms Magistrate, Vaishali, Hajipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suraj Narain Yadav

For the Respondent/s: Mr. Anil Kumar, AC to SC-8

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date : 28-08-2018

Heard learned counsels for the parties.

The present writ application has been filed for quashing the Memo No. 238 dated 07.07.2017, issued under the signature of Respondent No. 4, the In-charge, Arms Magistrate, Vaishali, whereby the petitioner has been informed about rejection of his application submitted for grant of arms licence.

In view of this Court the impugned memo as contained in Annexure-5 is only a communication. The order passed by the Licensing Authority is not on record. The callous manner in which



the office of the Licensing Authority is functioning is apparent from the fact that the impugned communication issued vide Memo No. 238 dated 07.07.2017 as contained in Annexure-5, under the signature of Respondent No. 4, the In-charge, Arms Magistrate, Vaishali, informing the petitioner that the Licensing Authority has rejected the application of the petitioner, but that letter does not even depict the date of rejection. Moreover, the letter also does not suggest the communication of the rejection order to the petitioner.

Furthermore, it is well settled law that discretionary jurisdiction under Article 226 of the Constitution of India can be exercised usually when there is no alternative efficacious remedy except in certain circumstances which has been discussed by the Supreme Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., reported in (1998) 8 Supreme Court Cases 1. Paragraph 15 of the judgment reads as follows:

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this



Court not to operate as a bare in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

Since there is specific provision of appeal under Section 18 of the Arms Act, 1959, it is expected from the Licensing Authority that if the petitioner submits requisition for supply of order the same will be supplied within seven days from the submission of the application and thereafter the petitioner, if so advised, may file an appeal before the Appellate Authority within a period of two weeks of the receipt of the order along with an application for condonation of delay. Thereafter, the Appellate Authority will consider the appeal as well as the application for condonation of delay in filing the appeal in accordance with law in view of the fact that the order was not communicated to the petitioner and the fact that the writ application was pending before this Court for a considerable period.



Accordingly, this writ application is disposed of.

(Dinesh Kumar Singh, J)

anil/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

