

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13276 of 2017

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Ashok Kumar, Son of late Bankey Lal @ Bankay Lal Bihari Prasad @ Banke Bihari Prasad Singh, Resident of Village-Hakikatpur, Police Station-Bakhtiyarpur, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Patna Division, Patna
3. The District Magistrate-Cum-Collector, Patna.
4. The Sub Divisional Officer, Barh, Patna
5. The Senior Superintendent of Police, Patna.
6. The Police In Charge-Cum-SHO, Bakhtiyarpur, Police Station, Bakhtiyarpur, District-Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Dr. Anshuman,
Mr. Sanjay Kumar

For the Respondent/s : Mr. Dhurendra Kumar, AC to GP 5

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 20-11-2018

Heard learned counsels for the parties.

The present writ application has been filed for a direction to Respondent No. 3, the District Magistrate, Patna cum licensing authority under the Arms Act to take a decision on the application of the petitioner in view of the remand order dated 26.04.2016 passed by the Divisional Commissioner, Patna Division in Arms Appeal No. 147 of 2015.

The factual matrix of the case is that the father of the petitioner late Bankey Lal @ Bankay Lal Bihari Prasad @ Banke Bihari Prasad Singh was having a N.P. Bore rifle bearing



Licence No. 440/73. The father of the petitioner died sometime in 2011 and thereafter on 14.02.2011 the petitioner deposited the arms before the arms dealer, namely, M/s Manik Chand & Sons, Arms Ammunition Dealer, Patna, as contained in Annexure-P 1. The petitioner submitted an application for grant of licence for N.P. Bore rifle before the Respondent No. 3, the District Magistrate, Patna cum licensing authority in 2011 itself and consequently, the petitioner submitted the other required documents demanded by the office of the licensing authority. The police made recommendation in favour of the petitioner, yet the application of the petitioner for grant of arms licence was kept pending. Consequently, the petitioner filed a writ application being CWJC No. 13360 of 2013, but during pendency of the writ application, the application filed by the petitioner for grant of licence was rejected vide order dated 12.11.2013, as contained in Annexure-5 on the ground that petitioner is not having any threat perception, leading to filing of I.A. No. 9383 of 2013, challenging the order of the licensing authority dated 12.11.2013, but the writ application was permitted to be withdrawn with liberty to the petitioner to prefer appeal against the said order. Consequently, the petitioner preferred Arms Appeal No. 147 of 2015 before the



Commissioner, Patna Division, Patna who vide order dated 24.04.2016 allowed the appeal, remanding the matter back to the licensing authority to consider the application of the petitioner in view of the provisions under Sections 13 and 14 of the Arms Act, 1959 and various orders passed, whereby the practice of rejection of application for grant of licence on the ground of absence of threat perception has been deprecated and it was also directed to keep in view the policy of preference being given to the heirs of the licensee under the heirloom policy. But since then the application of the petitioner for grant of arms licence remained pending in spite of the representation being submitted by the petitioner on 30.06.2017, as contained in Annexure-8. Hence the present writ application

Learned counsel for the respondent submits that at present, he is not having any instruction whether any decision has been taken on the application of the petitioner. However, if no decision has been taken on the application of the petitioner till date, the same will be taken within a reasonable time frame.

Considering the fact that the writ application was registered on 08.09.2017 and no counter affidavit has been filed, this court is not inclined to adjourn the matter any further.

This is not in dispute that the matter was



remanded by Appellate Authority as far back as on 24.04.2016 with a liberty to the licensing authority to obtain fresh police reports, but there is nothing on record to suggest that any police report has been called for or any decision has been taken after the matter being remanded back to the Appellate Authority.

The action or inaction of the licensing authority, the District Magistrate, Patna is in complete derogation to the provisions of the Rules 13 and 14 of the Arms Rules, 2016 (hereinafter referred to as the Rules, 2016) and speaks volumes about the arbitrary manner in which the licensing authorities, under the Act, have been functioning.

Though the petitioner submitted application for grant of arms licence in 2011, much prior to the coming into force of Arms Rules, 2016 with effect from 15th July, 2016, but in view of the enforcement of the Rule, 2016, Arms Rules, 1962 has been superseded, except as respect to things done or omitted to be done. Though there was no time limit prescribed for taking decision on the application for grant of arms licence in Arms Rules, 1962, but Rule 13 of the Rules, 2016 prescribes the time limit for grant of licence. According to this Rule the licensing authority after considering the application submitted for grant of licence and on being satisfied that the applicant has fulfilled the



eligibility condition, shall within sixty days of the receipt of the police report by a speaking and reasoned order in writing shall either grant or refuse to grant arms licence, while Rule 14 of the Rules, 2016 prescribes the time limit for submission of police report to licensing authority within thirty days.

It appears that though the matter was remanded before one and half years back, but it is shocking to note that till date decision has not been taken, which reflects that either the licensing authority is not bothered about the provisions of the Rules, 2016 or is not aware of the manner in which he has to discharge his statutory duty.

It is well settled legal principle that when a statute provides for a particular procedure, for doing a thing in a particular manner, then it has to be done in that particular manner and not in any other manner at all. The aforesaid legal proposition is based on the legal maxim "*Expressio unius est exclusio alterius*"

In this regard, a useful reference may be made to the case of Selvi J. Jayalalithaa Vs. State of Karnataka & Ors., (2014) 1 PLJR (SC) 531. Paragraph no. 29 of the judgment reads as :

“29. We find force in the submissions advanced by the learned Attorney General that this Court generally



should not pass any order in exercise of its extraordinary power under Article 142 of the Constitution to do complete justice if such order violates any statutory provisions. We do not intend to say that it would be illegal to extend the term of the Special Judge, but that it is a matter within the jurisdiction of the State in accordance with the relevant law.

There is yet an uncontroverted legal principle that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. In other words, where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to it at all, are impliedly and necessarily forbidden. The aforesaid settle legal proposition is based on a legal maxim “Expressio unius est exclusio alterius”, meaning thereby that if a statute provides for a thing to be done in a particular way, then it has to be done in that manner and in no other manner and following any other course is not permissible.

In State of Uttar Pradesh vs. Singhara Singh & Ors., AIR 1964 SC 358, this court held as under:-

“8. The rule adopted in Taylor vs. Taylor, (1876) 1 Ch D 426 is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision



might as well not have been enacted.” [See also: Accountant General, State of Madhya Pradesh vs. S.K. Dubey & Anr.*, (2012)4 SCC 578]”

In the circumstances, the Respondent No. 3, the District Magistrate, Patna is expected to take a decision on the application of the petitioner particularly in view of the provision of Rule 25 of the Arms Rules, 2016 within a period of four weeks from the date of receipt/production of a copy of this order.

Accordingly, the present writ application is disposed of with aforesaid observation and direction.

(Dinesh Kumar Singh, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

