

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15919 of 2018

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Ashok Kumar, Son of Sita Ram Singh, resident of Village- Karul, P.O. Babhani, P.S. Kargher, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Home, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Home, Govt. of Bihar, Patna.
3. The District Magistrate, Rohtas at Sasaram.
4. District Arms Magistrate, Rohtas at Sasaram.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Naresh Dikshit
		Mr. Lalan Kumar
For the Respondent/s	:	Mr. Md.Nadim Seraj -GP5
		Mrs. Shalini, AC to GP 5

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 21-12-2018

Heard Mr. Naresh Dikshit, learned counsel
for the petitioner and Mrs. Shalini, learned AC to GP-5.

The present writ application has been filed
for a direction to Respondent No. 3, the District Magistrate,
Rohtas at Sasaram –cum- Licensing Authority under the Arms
Act to register the licence no. 7202/NL/DMR for 32 bore
revolver issued in favour of the petitioner in the OD Register of
Rohtas District.

It is submitted by learned counsel for the
petitioner that the petitioner is a licensee, vide Licence No.
7202/NL/DMR issued by the District Magistrate, Dimapur,



Nagaland and consequently the petitioner purchased 32 Bore Revolver bearing No. T-8016. The licence of the petitioner is valid up to 26.02.2019. Statement to that effect has been made in para 13 of the petition. Since the petitioner is a permanent resident of Rohtas district, hence, he made an application before Respondent No. 3, the District Magistrate, Rohtas at Sasaram on 21.06.2016 for registration of his licence being a licensee by outside licence holder. Though, the District Arms Magistrate, Rohtas vide letter No. 05.08.2016 made a query from District Magistrate, Dimapur, who in turn, submitted his report vide letter dated 31.08.2016, as contained in Annexure-5, issued by Assistant Commissioner of Police, Special Branch, Nagaland but in spite of that the licence of the petitioner has not been registered in O.D. register in the district of Rohtas. Lastly, the District Arms Magistrate, Rohtas at Sasaram vide letter dated 26.11.2016 again made a query from Assistant Commissioner of Police, Dimapur, Nagaland, who in turn, transmitted the required information vide letter dated 20.01.2017, as contained in Annexure-7, but in spite of that it has not been registered.

Learned AC to GP-5 submits that, at present, she is not having any instruction whether any decision has been taken on the application of the petitioner or not, on the issue of



registration of the licence, but she further adds to say that if any decision has not been taken till date, it will be taken by the licensing authority within a reasonable time frame.

The only issue involved in the present writ application is whether an outside licensing authority can withhold the registration of the licence on change of residence temporary or permanent basis for any indefinite period. Rule 17 of Arms Rules, 2016 (hereinafter referred as Rules,2016) provides the mechanism for the registration of the licence with an outside licensing authority and change of address with existing licensing authority. Rule 17 reads as follows:-

“17. Registration of licence with an outside licensing authority and change of address with existing licensing authority.- (1) If a person who holds a licence in Form III changes his place of residence, permanently, or temporarily for a period of more than six months, and carries with him the arms covered by the licence, to a place falling, other than within the jurisdiction of the existing licensing authority indicated in the licence, he shall, immediately before the expiry of a period of six months, send intimation about such change to the licensing authority of the place of his new residence and shall on demand, forthwith produce the licence and the arm or arms to the new licensing authority by applying in Form B-1,



indicating therein the particulars of his new residence.

(2) The licensing authority of the new place of residence of the licensee on receiving an application in Form B-1 under sub-rule (10), shall within a period of fifteen days, register the licensee in the NDAL system whereby the UIN of the licensee shall stand activated and transferred to its jurisdiction and de-activated from the records of the original licensing authority or the last renewing authority, as the case may be and thereupon a new license book shall be issued to the licensee and such new authority shall be the licensing or the renewing authority in relation to the said license.

(3) Where the licensee changes his permanent place of residence within the jurisdiction of the existing licensing authority, he shall forthwith inform the same to the licensing authority with the proof of his new place of residence and if such change has resulted in change of jurisdiction of police station, along with information of the police station of his new place of residence and the licensing authority shall within a period of fifteen days, register the change of residence of the licensee in the NDAL system whereby the UIN of the licensee shall stand activated under the new police station and de-activated from that of the last police station.”



From the above quoted provision under Rule 17 of Rules, 2016, it appears that Sub-rule (1) and (2) of Rule 17 prescribe the mode of registration of the licence with an outside licensing authority and change of address with the existing licensing authority, whereas Sub-rule (3) prescribes the mode when the licensee changes his permanent place of residence within the jurisdiction of the existing licensing authority, but from one police station to the other police station. Sub-rule (1) mandates that if a person who holds a licence in Form III changes his place of residence, permanently, or temporarily for a period of more than six months, and carries his arms covered by the licence, to a place falling, other than within the jurisdiction of the existing licensing authority indicated in the licence, he shall, immediately before the expiry of a period of six months, send intimation about such change to the licensing authority of the place where his new residence is situated and on demand being made by the new licensing authority, will forthwith produce the licence and the arms by applying in Form B-1, indicating therein the particulars of his new residence. It thus gets culled out that Rule 17(1) of Rules, 2016 stipulates that it is imperative upon the licensee if he changes his place of residence, permanently or temporarily for a period more than



six months, to send such information to the licensing authority immediately before the expiry of a period of six months whereas Rule 17(2) of the Rules, 2016 stipulates that it is imperative upon the licensing authority of the new place of residence of the licensee that on receiving an application under Form B-1 under sub-rule (1), he shall, within a period of fifteen days of receiving such information, register the licensee in NDAL system whereby UIN of the licensee shall stand activated and transferred to its jurisdiction and de-activated from the records of the original licensing authority or the last renewing authority and thereupon, a new licence book will be issued to the licensee and thereafter the new authority will become the licensing authority. Sub-rule (3) of Rule 17 of the Rules, 2016 mandates that it is imperative upon the licensee to immediately inform the licensing authority about his change of residence if such change is within the jurisdiction of the original licensing authority. If such change of residence results in the change of police station, then the licensee has to inform about such change of police station to the licensing authority and in turn, it is also imperative upon the licensing authority to register such change of residence of the licensee in the NDAL system within fifteen days of receipt of information from the licensee and thereby



UIN of the licensee shall stand activated under the new police station and de-activated from the last police station.

Hence, the only difference between the shifting of residence by the licensee from one jurisdiction of licensing authority to another and within the territorial jurisdiction of the same licensing authority, is that, in first case, the change is required even if the licensee is not permanently shifted or temporarily shifted for a period more than six months, whereas in the second case, there is only change with regard to the police station within the jurisdiction of the State licensing authority in the NDAL system.

In the present case, the petitioner has changed his place of residence from the jurisdiction of licensing authority of Dimapur in the State of Nagaland to that of the licensing authority, Rohtas, hence the case of the petitioner comes within the purview of Rule 17(1) and (2) of the Rules, 2016. It is, however, made clear that the cut off date incorporated under Rules 15(2) and 15(4), which relates to maintenance of records in electronic format by the licensing authority, were substituted as 1st of April, 2018 by GSR (E) dated 28.11.2017 w.e.f. 28.11.2017 and the said cutoff date has now been substituted as 1st April, 2019 vide Ministry of Home



Affairs, Notification No. G.S.R. 644(E) dated July 12, 2018 published in Gazettee of India on 13th July, 2018.

It further appears that in the present case, the petitioner submitted application on 21.06.2016 and thereafter Unique Identification Number (UIN) was generated being 051920029542042016 in the district of Rohtas but till date the licensee has not been registered.

Schedule V prescribes the time limits for the various services for discharging the statutory obligation by the licensing authorities. Item No. 6 of Schedule V prescribes time of 15 days for registration of the licensee under Rule 17 on receipt of the application of the registration by the new licensing authority. A conjoint reading of Rule 17 and Serial No. 6 of Schedule V clearly mandates that the registration of licensee by outside licensing authority has to be done within 15 days, but there is nothing on record to suggest that the registration has been done by the outside licensing authority. The licensing authority has to act in accordance with the mandate of Arms Act, 1959 and Arms Rules, 2016 and the law laid down in this regard is apt and clear that a thing which is prescribed under a statute to be done in a particular manner, then it has to be done in that particular manner or not at all. A useful reference in this



regard may have to in the case of Selvi J. Jayalalithaa & Ors Vs. State of Karnataka & Ors, reported in 2014 (1) PLJR (SC) 531.

The relevant portion of paragraph 29 reads as follows:-

“ 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 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 stature 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. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled 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 view of the discussions made above, it is expected from Respondent No. 3, the District Magistrate, Rohtas at Sasaram –cum- licensing authority under the Arms Act to take a final decision on the application of the petitioner with regard to registration of the licensee within a period of 15 days from the date of receipt /production of a copy of this order.

With the above observation and direction, this writ application is disposed of.

(Dinesh Kumar Singh, J)

anil/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

