

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18437 of 2016

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Babita Devi, Wife of Raj Kumar @ Raj Kumar Singh, Resident of Village-
Shajahanpur, P.O. Benibigha, P.S. Bikram, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar, through the District Magistrate Patna.
2. The District Magistrate, Patna.
3. The District Arms Magistrate, Patna.
4. The Senior Superintendent of Police, Patna.
5. The Deputy Superintendent of Police, Paliganj, District- Patna.
6. The Officer In-charge, Bikram Police Station, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sheo Kumar Prabhakar, Adv.
For the Respondent/s : Dr. Anand Kumar, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

4 05-03-2018 Heard learned Counsels for the petitioner and the
Respondent-State.

The present Writ application has been filed for a direction to the Respondent authorities to issue a firearm licence and to provide security guard in view of constant life threat to the petitioner.

It is submitted by learned Counsel for the petitioner that the petitioner applied for issuance of Firearm License/Revolver on 05.02.2014, as contained in Annexure-1, before the Licensing Authority, the District Magistrate, Patna (Respondent no.2). The brother-in-law of the petitioner, namely, Luv Kumar was murdered in 2009, whereupon the mother-in-law and other



family members also began facing threat perception. Hence, the petitioner made an application before Respondent no.2, the District Magistrate, Patna on 06.09.2014, as contained in Annexure-2. for providing the security guard also but, despite several efforts made by the petitioner, the licensing authority did not take any steps for issuance of firearm license or to provide security guard to the petitioner. Hence, the petitioner preferred CWJC No. 9109 of 2016 before this Court. The same was disposed of by a co-ordinate Bench of this Court vide judgment dated 27.06.2016, directing the licensing authorities i.e. Respondent no.2 to take a final decision with regard to grant of firearm licence to the petitioner within a period of two months, the operative portion of the judgment aforesaid reads as under :-

“Accordingly, this writ application is being disposed of with a direction to the District Magistrate-cum-Licensing Authority, Patna to take a final decision in the matter of the petitioner on its own merit and in accordance with law within a period of two months from the date of receipt/production of a copy of this order. So far the issue to depute bodyguard/security guard is concerned, it would be open for the petitioner to approach the appropriate authority for that purpose



which should take a decision in accordance with law.”

Even thereafter the decision was not taken and ultimately the petitioner got the present Writ application registered on 16.11.2016 and then the application of the petitioner for grant of arm licence for pistol was rejected by the District Magistrate, Patna vide order dated 23.02.2017 as contained in Annexure 13.

It is further submitted by learned Counsel for the petitioner that considering the criminal cases pending against the husband of the petitioner, the application of the petitioner was rejected. Moreover, non-application of judicial mind by the Respondent no.2, the District Magistrate, Patna, appears from the fact that the petitioner's case was being considered vide Miscellaneous Arms Case No. 09-221/2014, but in the impugned order it has been recorded as Miscellaneous Arms Case No. 09-835/2014. Moreover, the casual approach of District Magistrate further becomes apparent from the fact that the application of the petitioner has been rejected by stating that the petitioner has applied for licence for DBBL gun, whereas, in fact, the petitioner has applied for licence for revolver. The petitioner submitted an application on 08.03.2017 before the Respondent no.2, the District Magistrate, Patna, as contained in Annexure-



14, for rectification of the same, but the same is still pending, which suggests the callous manner and the laid back approach in which the Respondent no.2, the District Magistrate, Patna is discharging his duties.

Learned AC to AAG-3 submits that necessary correction in the impugned order will be made within a period of two weeks.

From perusal of the material available on record, it appears that a co-ordinate Bench of this Court vide judgment dated 27.06.2016 directed the District Magistrate, Patna to take final decision with regard to issuance of arms licence to the petitioner and the present Writ application was registered on 16.11.2016 and thereafter, only with the intent of filing of counter affidavit, the impugned order dated 23.2.2017 was passed and the bare perusal of the impugned order suggests complete non-application of mind by Respondent no.2, the District Magistrate, Patna. Moreover, in the impugned order the Respondent no.2 did not mention the case number, the specific arms for which the petitioner has applied for.

The discretionary jurisdiction under Article 226 of the Constitution of India is usually exercised where there is no alternative efficacious remedy. However, such jurisdiction can be exercised if the alternative remedy is available 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 held 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, the order was not passed by the licensing authority in spite of the direction of this Court in the earlier round and now the order has been passed by the District Magistrate much after the filing of writ application, only with the intent of filing of counter affidavit. Moreover, when there is a specific provision under Section 14(3) of the Act to the effect that where the licensing authority refuses to grant a licence to any person, it shall record in writing the reason for such refusal and furnish to that person on demand a brief statement of the same, unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement, yet the impugned order is bereft of any reason for refusal of licence to the petitioner. There is nothing on record to suggest that the order impugned was supplied to the petitioner. Hence, in view of the above circumstances, the exercise of such



jurisdiction by the licensing authority appears to be an empty formality and in violation of principles of natural justice.

In the circumstances, this Court is constrained to quash the impugned order issued vide Memo No.329 dated 23.02.2017 by Respondent no.2, the District Magistrate, Patna, without expressing any opinion with regard to the merits of the claim for grant of licence to the petitioner.

It is expected from the Respondent no.2, the District Magistrate, Patna to pass a fresh order within a period of eight weeks from the date of receipt/production of a copy of this order, in accordance with law and to be careful in future in discharging of quasi judicial function.

The Writ application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

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