

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18251 of 2017

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Santosh Kumar Singh, S/o Sri Vishwanath Singh, Resident of Banshi Bhawan, Ram Nagar Road, Chiraiyatand, P.S.- Jakkanpur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Home Secretary, Govt. of Bihar.
2. Divisional Commissioner, Patna Division, Patna.
3. District Magistrate, Patna.
4. District Magistrate, Vaishali.
5. Additional District Magistrate (Arms), Patna.
6. District Arms Magistrate, Patna.
7. District Arms Magistrate, Vaishali.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. B.N. Pandey
For the Respondent/s : Mr. Manoj Kumar, AC to GP 4

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 21-12-2018

Heard Mr. B.N. Pandey, learned counsel for
the petitioner and Mr. Manoj Kumar, learned AC to GP-4.

Since the writ application has been
registered on 11.12.2017 but no counter affidavit has been filed
till date, this Court is not inclined to adjourn the matter any
further.

The present writ application has been filed
for directing the respondent authorities, particularly, respondent
No. 3, District Magistrate, Patna to take a final decision on the
application filed by the petitioner for Registration of the
licensee by making O.D. Entry of the licence of his DBBL gun



in the District of Patna.

The factual matrix of the case is that the petitioner is having a licence for DBBL gun bearing Licence No. 02/2000. Initial licence was issued by the licensing Authority at Bokaro but subsequently vide O.D. Entry No. 06/2003, after the change of the residence of the petitioner, the licence was continued to be renewed by the District Arms Magistrate, Vaishali and it was lastly renewed for the period 2015-17 by District Arms Magistrate, Vaishali. The petitioner being a businessman shifted to Patna in 2014, however, specific date has not been mentioned in the writ application. The petitioner submitted an application in 2014 before Respondent No. 3, District Magistrate, Patna, the licensing authority under the Arms Act for making an O.D. Entry on his licence. The petitioner has also submitted application form by filling up the particulars to enable the authority to enter data with regard to the petitioner in the electronic format as specified by the Central Government, as contained in Annexure- 2 series so that Unique Identification Number (UIN) be generated. Subsequently, the office of licensing authority at Patna issued Memo No. 2840/Arms, Patna dated 01.11.2014 under the signature of District Arms Magistrate, Patna, whereby



certain queries were made from District Arms Magistrate, Vaishali and District Arms Magistrate, Bokaro from where initial licence was granted and was subsequently renewed, and copy of the same was also transmitted to the petitioner, as contained in Annexure-2 series. The petitioner was under the impression that on his application O.D. Entry has been made, but when no O.D. Entry was made, ultimately a requisition was filed by the petitioner under Right to Information Act on 30.11.2017 before the Public Information Officer of the licensing Authority, District Magistrate, Patna but till date the information has not been supplied to the petitioner. On 06.12.2017 the petitioner submitted a representation before the District Magistrate, Patna intimating that his licence is going to expire on 31.12.2017 and hence, request was made for making O.D. Entry as well as for renewal of his arms licence for 2017-2019 for which the petitioner also deposited the requisite fee as per the Arms Rules, 2016 by way of bank challan, as contained in Annexure-4 but till date neither the Unique Identification Number (UIN) number has been generated, as mandated under Rule 15 of Rules, 2016 nor the O.D Entry has been made.

A supplementary affidavit has been filed to the effect that the petitioner came to know that the Central



Government has again extended the period of submission of form for preparing National Data Base (in short 'NDAL') till 31.03.2018 and in pursuance to that petitioner submitted application on 11.12.2017 annexing the copy of the NDAL form before the District Magistrate, Vaishali, and by way of reminder another representation was also filed on 21.03.2018 annexing the copy of the NDAL form, as contained in Annexure-5, before the District Magistrate, Vaishali but neither Unique Identification Number (UIN) number has been created nor O.D. Entry has been made till date nor the licence of the petitioner has been renewed in spite of compliance of all the preconditions for such entry. Hence, the present writ application.

Learned AC to GP-4 submits that, at present, he is not having any instruction whether O.D. Entry has been made or not, but if till date it has not been made then appropriate decision will be taken by the licensing authority within a time frame.

The Central Government, in exercise of power conferred under Sections 5,9,10,,11,12,13,16,17,18,21,41 read with Section 44 of the Arms Act, 1959 (54 of 1959) made Rules, 2016 superseding the



Arms Rules, 1962 (hereinafter referred to as Rules, 1962) saving the things done or omitted to be done under Rules, 1962 before such supersession. Rules, 2016 was published in the Gazette of India on 15.7.2016 and it was enforced from that day. Though in the present case, the petitioner submitted the initial application in 2014, but, in view of the fact that after coming into force of Rules, 2016, he deposited the required fee as per Rules, 2016, hence his case will be governed by the provisions of Rules, 2016.

Rule 54 of Arms Rules, 1962 (hereinafter referred to as Rules, 1962) provided the provision with regard to renewal of licence. Sub-rule (5) of Rule 54 of Rules, 1962 which is inserted vide G.S.R. 585(E) dated 24th July, 2012 w.e.f. 25.9.2012, stipulates that the licensing authority and the renewing authority at the Centre or at the State level, while granting a licence or renewing a licence, shall enter the data of the record in an electronic format duly approved by the Central Government of the State Government whereas Sub-rule (6) of Rule 54 of Rules, 1962 stipulates that the licensing authority and the renewing authority shall also enter such data as are required in an electronic automated system, as developed by the National Informatics Centre for this purpose and the



aforesaid electronic automated system shall generate a unique number without which no arms licence shall be considered as valid with effect from 1st October, 2015. Sub-rule (5) and (6) of Rule 534 of Rules, 1962 read as follows:

“54. Renewal of licence. -

(1).....

(2).....

(3).....

(4)....

(5) The licensing authority and the renewing authority at the Centre or at the State level, while granting a licence or renewing a licence, as the case may be, shall enter the data of the record in an electronic format duly approved by the Central Government of the State Government, as the case may be.

(6) The licensing authority and the renewing authority shall also enter such data as are required in an electronic automated system as developed by the National Informatics Centre for this purpose and the aforesaid electronic automated system shall generate a unique number without which no arms licence shall be considered as valid with effect from the 1st October, 2015.”

Hence, it appears that even under the superseded Rules, 1962 there was a provision of making entry



of data of licences into the system in electronic format at the time of grant or renewal of the same and that also provided the method for generating Unique Identification Number (UIN).

It is relevant to mention here that though the petitioner made an application for O.D. Entry in 2014 but, after coming into force of Arms Rules, 2016 from 15.07.2016, he submitted that required fee as per the provisions of Rules, 2016 and opted to be governed by new Rule.

A useful reference may have to Rules, 15, 17 and 24 of Arms Rules, 2016. Rule 15 reads as follows:-

“15. Maintenance of records in electronic format and consolidation of licences. – (1) Every licensing authority and the renewing authority specified in Schedule II, while granting a licence or renewing a licence, thereof, shall enter the date of the record locally in an electronic format specified by the Central Government.

(2) Every licensing authority and the renewing authority shall also enter such data in the NDAL system which shall generate a unique identification number (UIN) and with effect from the 1st day of April, 2017, any arms licence without UIN shall be considered invalid.

(3) The UIN so generated under sub-rule (2) shall be unique for a licensee.



(4) Any existing licensee holding multiple licences in Form III shall on or before the 1st day of April, 2017, make an application for grant of a single licence in respect of all the fire-arms held by him under his UIN, to the concerned licensing authority:

Provided that where the applicant applying a licence for restricted category of arms or ammunition specified in Schedule I is also a holder of a licence for permissible category of arms or ammunition specified in the said Schedule; or where the applicant, applying for permissible category of arms or ammunition is also a holder of a licence for restricted category of arms or ammunition specified in the said Schedule, the licensing authority concerned shall issue a new licence for which restricted or permissible category of arms or ammunition, as may be applicable, under the existing UIN of the licensee:

Provided further that separate licence books shall be generated in case of each licence in Form II, Form III and Form IV and in case of a licence in Form III, separately for restricted and permissible categories of arms and ammunition specified in Schedule I, with an overall ceiling of three fire-arms under a single UIN.

(5) The licensing authority on receipt of an application form a multiple licence



holder under sub-rule (4) shall cancel the existing multiple licences of the applicant and issue in lieu thereof, a new licence endorsing therein, all the existing fire-arms of the said licensee.

(6) The period of validity of the new licence so issued by the licensing authority under sub-rule (5) shall be the farthest period as mentioned in any of the cancelled licences and the area validity endorsed on the new licence shall be more extensive area in any of the cancelled licences.”

Rule 15(1) mandates that every licensing authority and the renewing authority specified in Schedule II, while granting a licence or renewing a licence, thereof, shall enter the date of the record locally in an electronic format specified by the Central Government. Sub-rule (2) of Rule 15 mandates that every licensing authority and the renewing authority shall also enter such data in the NDAL system which shall generate a unique identification number (UIN) and with effect from the 1st day of April, 2017. Sub-rule (3) of Rule 15 mandates that the UIN so generated under sub-rule (2) shall be unique for a licensee. The period of submission of the form for generating the UIN number was extended till 31.03.2018.

It is made clear that the cut off date i.e. 1st



day of April, 2017 as incorporated under Rules 15(2) and 15(4) were substituted as 1st of April, 2018 by GSR (E) dated 28.11.2017 w.e.f. 28.11.2017 and the said cut off 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.

Rule 16 of Arms Rules, 2016 prescribes the duty of the licensing authority under NDAL which suggests that the licensing authority, while granting or renewing a licence or at the time of providing any allied service to any licensee under these Rules shall ensure that the data of the transaction approved by him, is simultaneously updated in the electronic format locally and on the NDAL system under its log-in ID.

The proviso of Rule 16 (1) provides that the licensee shall not be held accountable for failure on the part of the licensing authority to update such data. Sub-rule 2 of Rule 16 mandates that the licensing authority shall ensure compliance of delivery of different services specified in column (2) of Schedule V, within the time specified in column (4) of Schedule V has been prepared under Rule 16.

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 an indefinite period.

Rule 17 of Arms 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 prescribes 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. Hence, 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 of 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 basic 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 the 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 of police station in the NDAL system if the licensee changes his/her permanent place of residence. In the first case, the licensing authority changes whereas in the second case only the police station changes with activation of new Unique Identification Number (UIN) number under the new police station.

Rule 24 of Arms Rules, 2016 deals with the renewal of licences, which reads as follows:-

“24. *Renewal of licences-* (1)

Every licence may, at its expiration and subject to the same conditions (if any) as to the grant thereof, be renewed by the authority mentioned in Scheduled-II as renewing authority within a period of thirty days of receipt of the police report.

Provided that the licence so renewed may be signed in the appropriate column of the licence by such officer as may be specifically empowered in this behalf by the State Government under rule 5.



(2) An application for renewal of a licence for arms or ammunition shall be filed in the Form wherein specified at least sixty days prior to the expiry of the said licence with the licensing authority along with the documents wherein specified in the Form.

Provided that in the case of arms and ammunition deposited under sub-rule (1) of rule 48, the renewal application may be filed either by the depositor, or where it is not practicable to make the application direct, through the dealer or any other person authorized by him in writing in this behalf, while the arms or ammunition continue to be so deposited.

(3) The authority issuing a licence shall ordinarily be responsible for watching all future renewals of the licence:

Provided that where a licensee notifies a change of this place of residence, permanently or temporarily for a period of more than six months, to the licensing authority of the district in which the renewal is sought, the licensing authority of that district shall thenceforth become responsible for watching all future renewals of his licence.

(4) The new renewing authority shall, in respect of a licensee who notifies a change of his place of residence under sub-rule (3), register the licensee under its own



jurisdiction in accordance with the provisions specified in rule 17 and carry out the renewal thereof and forthwith, inform the original issuing or last renewing authority.

(5) The licensing authority may consider an application for renewal of a licence, if the period between the date of its expiry and the date of application is not, in his opinion, unduly long with due regard to the circumstances of the case, and all renewal fees are paid; otherwise the application may be treated as one for grant of a fresh licence.

(6) The licensing authority may, in accordance with any instructions issued by the State government in respect of all or any class of fire-arms, require the personal attendance of the applicant before renewing the licence under this rule.”

The application for renewal of the licence has to be submitted within sixty days prior to the expiry of the said licence with the licensing authority along with the documents wherein specified in the form. Sub-rule (3) of Rule 24 mandates that the authority issuing a licence shall ordinarily be responsible for monitoring all future renewals of the licence. Proviso to the said sub-rule stipulates that where a licensee notifies a change of his place of residence, permanently and temporarily for a period of more than six months, to the



licensing authority of the district in which the renewal is sought, the licensing authority of that district shall thenceforth become responsible for monitoring all future renewals of his licence. Sub-rule (4) of Rule 24 further prescribes that the new renewing authority shall, in respect of a licensee who notifies a change of his place of residence under sub-rule (3), register the licensee under its own jurisdiction, in accordance with the provisions specified in Rule 17 and carry out the renewal thereof and forthwith, inform the original issuing or last renewing authority. Sub-rule 5 of Rule 24 mandates for condoning the delay in submission of the application for renewal.

In the present case, it appears that the petitioner submitted the application for renewal in 2014, prior to the expiry of the licence. Hence, it appears that the licensing authority being District Magistrate, Patna, Respondent No. 3 has failed to adhere to the time frame prescribed for making O.D. Entry or registration of the licence of the petitioner on NDAL system on the change of the place of the residence of the petitioner.

In view of the discussions made above, it is expected from Respondent No. 3, District Magistrate, Patna to



take a decision on the application of the petitioner with regard to O.D. Entry as well as for registration of the licence within a period of two weeks of the receipt/production of a copy of this order. It is also expected that expeditious decision on the renewal of the licence of the petitioner also be taken within time frame prescribed under the Rules, 2016.

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

(Dinesh Kumar Singh, J)

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