

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13470 of 2018

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Mahmood Alam, Son of Nazir Alam @ Najeer Ahmad, resident of
Village/at- Jangalia Ward No. 18, P.S.- Gopalganj, District- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Director General of Police Govt. of Bihar, Patna.
2. The Divisional Commissioner, Saran Region, Saran at Chapra.
3. The Superintendent of Police, Gopalganj.
4. The Officer-in-Charge of Gopalganj Town Police Station, District- Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Javed Aslam, Advocate

For the Respondent/s : Mr. Nadim Seraj, GP-5

Mr. Shailesh Kumar, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH
ORAL ORDER

02/ 24-07-2018

Learned counsel for the petitioner is permitted

to implead District Magistrate, Gopalganj as respondent no. 5.

Heard Mr. Javed Aslam, learned counsel for the
petitioner and Md. Shailesh Kumar, AC to GP-5.

The present writ application has been filed for
quashing the order dated 09.02.2016 passed in Arms Licence Case
No. 66 of 2016 passed by Respondent No. 5, District Magistrate,
Gopalganj, whereby the application of the petitioner for grant of
licence for rifle has been rejected.

This Court is not inclined to interfere on the
sole ground that there is a statutory provision of appeal under



Section 18 of the Arms Act, 1959 against the order passed by the licensing authority.

It is well settled law that the discretionary jurisdiction under Article 226 of the Constitution of India can be exercised when there is no alternative efficacious remedy. However, there are certain exceptions to this established principle of law which has been described by the Supreme Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others reported in (1998) 8 SCC 1. Paragraph 15 reads as follows:-

“Under Article 226 of the Constitution of India, 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 restriction one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar 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”

In view of the discussion made above, the writ application is disposed of with liberty to the petitioner to prefer an appeal before the Appellate Authority, i.e., Divisional Commissioner, Saran Division, Chapra within a period of two weeks from the date of receipt of a copy of this order along with application for condonation of delay. It is expected from the Appellate Authority to consider the application for condonation of delay in view of the fact that the writ application was pending before this Court. It is further expected from the Appellate Authority to decide the appeal after condoning the delay in filing the appeal within a period of two months of its filing.

(Dinesh Kumar Singh, J)

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