

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.407 of 2018

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Kaushal Kumar, S/o Sri Kailash Prasad Singh, Resident of Rukanpura,
Bailey Road, P.O. - B.V. College, P.S. - Rupaspur, District - Patna.

.... Petitioner.

Versus

1. The State of Bihar through Home Secretary, Govt. of Bihar.
2. Divisional Commissioner, Patna Division, Patna.
3. District Magistrate, Patna.
4. Senior Superintendent of Police, Patna.
5. Additional District Magistrate (Arms), Patna.
6. District Arms Magistrate, Patna.
7. Sub-Divisional Magistrate, Danapur.
8. S.H.O., Rupaspur Police Station, Patna.

.... Respondents.

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Appearance :

For the Petitioner : Mr. P. N. Pandey, Advocate
Mr. Hansa Jha, Advocate
For the Respondents : Mr. P.K. Verma, AAG-3
Mr. S.K. Jha, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

02/ 20-08-2018

Heard Mr. P. N. Pandey, learned counsel for

the petitioner and Mr. S.K. Jha, learned AC to AAG-3.

The present writ application has been filed for quashing the order dated 07.09.2017 passed by Respondent No. 3, District Magistrate, Patna issued vide Memo No. 1763/Arms, dated 07.09.2017, as contained in Annexure-3, whereby the petitioner's application for grant of licence for N.P. Bore Revolver/Pistol has been rejected on the ground that the petitioner has not submitted any cogent reason for grant of arms licence and grant of such licence will be a threat to public peace and security.

I.A. No. 5962 of 2018 has been filed for a



direction to Respondent No. 3, District Magistrate, Patna to take a final decision on the application of the petitioner submitted in Form A-1 for grant of licence for N.P. Bore Revolver/Pistol which has been submitted in pursuance to Arms Rules, 2016.

It is submitted by learned counsel for the petitioner that the petitioner deals in real estate business and he is having threat perception to his life and property, concerning which he submitted an application for grant of licence for N.P. Bore Revolver/Pistol before Respondent No. 3, the District Magistrate, Patna in 2013. Subsequently, a Police report was submitted recommending in favour of the petitioner for the grant of arms licence but in spite of several representations made by the petitioner no decision was taken and ultimately the District Magistrate, Patna vide order dated 07.09.2017 rejected the application of the petitioner on the ground that the petitioner failed to submit a cogent reason for grant of arms licence and therefore, the licensing authority in his considered view came to the conclusion that the grant of licence to the petitioner without having any cogent reason will have an adverse impact on the public peace and security. However, the petitioner after coming into force of Arms Rules, 2016 submitted an application in new format under new Rules and hence, prayer has been sought for to



amend the prayer.

This Court is of the view that the discretionary jurisdiction under Article 226 of the Constitution of India can usually be not exercised where there is an alternative efficacious remedy. Since the impugned order is amenable to be challenged in appeal under Section 18 of the Arms Act, 1959, this Court is reluctant to interfere. A useful reference may have to 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”

So far as question of re-consideration of the application of the petitioner for grant of arms licence by



Respondent No. 3, the District Magistrate, Patna under new format under Arms Rules, 2016 which has been submitted by the petitioner immediately after passing of the order is concerned, in my view, the petitioner can also agitate the issue before the Appellate Authority since the application of the petitioner was submitted prior to coming into force of Arms Rules, 2016 and the District Magistrate has already taken a decision on the application of the petitioner.

In view of the discussions made above, the writ application is disposed of with liberty to the petitioner to prefer an appeal before the Appellate Authority, i.e., Respondent No. 2, the Divisional Commissioner, Patna within a period of three weeks from the date of receipt of a copy of this order along with an 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 eight months of its filing.

(Dinesh Kumar Singh, J)

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