

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3904 of 2018

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Rajiv Raj son of Late Bhushan Prasad Resident of Mohalla - Chailital, P.O.
Gulzarbagh, P.S. Alamganj, Town & District - Patna.

... .. Petitioner/s

Versus

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

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Deepak Kumar
For the Respondent/s : Mr. Suman Kumar, AC to AAG 3

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 21-06-2018

Heard learned counsels for the parties.

The present writ application has been filed for quashing the order dated 1.11.2017 passed by the respondent no. 2, District Magistrate, Patna, whereby the petitioner's application for grant of licence for NP bore rifle has been rejected.

It is submitted by learned counsel for the petitioner that in view of the chequered history of the present case, the petitioner's writ application may be entertained waiving the statutory remedy of appeal under Section 18 of the Arms Act, 1959. The petitioner is a business man and income-tax payee. The father of the petitioner was granted licence for NP bore rifle bearing Licence No. 528/2004. The father of the petitioner died on



28.5.2012, whereafter the rifle was deposited with the Arms dealer, namely, M/s City Fire Arms on 25.6.2012, receipt of which is annexed as Annexure 2. Thereafter the petitioner represented before the Licensing Authority Respondent no.2 the District Magistrate, Patna for grant of NP bore rifle for the safety of life and property on 21.7.2012. The petitioner's application for grant of licence was kept pending for a considerable period by the Licensing Authority, as a result the petitioner preferred CWJC No. 21315 of 2012, which was disposed of by a bench of this Court vide order dated 23.11.2012, as contained in Annexure 4, with a direction to the Licensing Authority that the application of the petitioner for grant of arms licence be disposed of within a reasonable time.

Consequently, the petitioner filed application before the Licensing Authority which was rejected by the Respondent no. 2, District Magistrate, Patna vide order dated 23.1.2014, as contained in Annexure 5 on the ground that the petitioner does not have any threat perception. The aforesaid rejection order was challenged before the Commissioner, Patna Division in Arms Appeal No. 430 of 2014. The said appeal also remained pending for a considerable period, hence the petitioner had to file CWJC No. 17850 of 2015 which was disposed of by a bench of this Court vide order dated



30.11.2015 as contained in Annexure 6, whereby the Divisional Commissioner, Patna was directed to take a final decision on the pending appeal of the petitioner within a period of one month from the date of receipt/production of a copy of the order. Consequently, the Divisional Commissioner, after considering different judgments of this court, vide order dated 26.4.2016, remanded the matter back to the Licensing Authority. Thereafter, the District Magistrate, Patna again rejected the prayer of the petitioner for grant of licence on the ground that the petitioner is resident of peaceful area, therefore, grant of arms licence will create an unnecessary atmosphere of rivalry for obtaining arms licence. Hence, the present writ application.

It is submitted by learned counsel for the petitioner that in view of the above factual position the petitioner, instead of preferring appeal, has filed the present writ application. More over, the petitioner claimed the licence under Family Heirloom Policy for which now Rule 25(2) of Arms Rules, 2016 stipulates that preference has to be given to the heirs of the licensee. Hence, grant of such licence is more in the nature of transfer. Learned counsel for the petitioner has placed reliance on the order passed by a bench of this Court in C.W.J.C. No. 13391 of 2014 (Deepak Kumar Vs. The State of Bihar and Ors.).



Learned counsel for the respondents submits that since there is statutory remedy of appeal, hence, the present writ application is not maintainable.

The preliminary issue which arises for consideration in the present writ application is whether this Court in exercise of discretionary jurisdiction under Article 226 of the Constitution of India can entertain the present writ application when the petitioner has an alternative efficacious remedy. This issue has been dealt with by the Apex Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors. reported in (1998) 8 Supreme Court Cases 1 wherein it has been held that the High Court has a discretion to entertain or not to entertain a writ petition but the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available but the alternative remedy does not operate as a bar in certain circumstances, such as, 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 the vires of an Act is under challenge. Paragraph 15 of the judgment reads as follows:

“15. Under Article 226 of the Constitution, 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 restrictions one of which is that if an effective and efficacious remedy is available, the Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bare 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. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

Though reliance is being placed by the learned counsel for the petitioner on the order passed by a bench of this Court in C.W.J.C. No. 13391 of 2014 (Deepak Kumar Vs. The State of Bihar and Ors.) but since this court is not expressing any opinion on the merits of the case, hence, it is not necessary to be deliberated upon.

In the circumstances, without expressing any opinion on the merits of the case, this Court disposes of the present writ application with a liberty to the petitioner to prefer an appeal against the impugned order before Appellate Authority within a



period of three weeks of receipt/production 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 and dispose of the appeal within a period of six weeks of its filing in view of the fact that this writ application remained pending before this Court as also the fact that the matter remained pending since 2012.

(Dinesh Kumar Singh, J)

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CAV DATE	
Uploading Date	
Transmission Date	

