

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11623 of 2017

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Rinku Rani W/o Sri Hari Shankar Singh, Resident of Village- Chota
Bariyarpur, P.S. Chatauni, District- East Champaran, Motihari.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home (Police), Government of Bihar, Patna.
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. Sri Anupam Kumar, at present the Transport Commissioner, Bihar, Patna and the then District Magistrate, East Champaran at Motihari.
4. The District Magistrate, East Champaran at Motihari.
5. The Superintendent of Police, East Champaran at Motihari.
6. The District Arms Magistrate, East Champaran at Motihari, namely, Sri Mahmood Alam.
7. The Department of Cabinet Vigilance through the Director General, Vigilance, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Tej Bahadur Singh, Senior Advocate Mr. Maruth Nath Roy
For the Respondent/s	:	Mr. Md.Nadeem Seraj -GP5 Mr. Shailesh Kumar, AC to GP 5

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 24-07-2018 Heard learned counsels for the parties.

The present writ application has been filed for a direction to the respondent authorities, particularly Respondent No.4, the District Magistrate, East Champaran, Motihari to take a decision on the application of the petitioner, dated 12.7.2017, whereby prayer has been made for grant of licence for rifle.

It is submitted by learned counsel for the petitioner that the petitioner and her husband are businessmen and are income tax assessee. In view of the extortion threat given to the



husband of the petitioner on 11.7.2017, Chhatauni P.S. Case No. 172 of 2017 was registered with accusation under Sections 384 and 387 of the IPC against one Kunal Singh. Thereafter on 12.7.2017, the application for grant of arms licence was made before the Respondent No. 4, District Magistrate, East Champaran. In view of the urgency of situation, due to threat to life and property of the petitioner, the Respondent No. 4 made an endorsement on the application of the petitioner. Consequently, the Deputy Superintendent of Police and Sub Divisional Officer recommended for issuance of arms licence in favour of the petitioner and the said report was transmitted to the Respondent No. 5, Superintendent of Police, East Champaran on 15.7.2017 and thereafter, the same was transmitted to the Respondent No. 4, District Magistrate, East Champaran on 17.7.2017. Thereafter, on 24.7.2017, the petitioner requested Respondent No. 4, District Magistrate, East Champaran for providing arms licence in view of threat perception, but thereafter, after giving personal hearing on 24.7.2017 itself, the Respondent No. 6, District Arms Magistrate, East Champaran asked for a report with regard to the pendency of any criminal case against the petitioner from the SHO, Chhatauni vide letter dated 28.7.2017, as contained in



Annexure 6. The SHO, Chhatauni, vide letter dated 29.7.2017, as contained in Annexure 7 immediately communicated to Respondent No. 6, District Arms Magistrate, East Champaran that there is no criminal case pending against the petitioner but the arms licence was not issued to the petitioner since the Respondent No. 6, District Arms Magistrate, East Champaran, for oblique and malafide reasons, did not allow the licence to be issued since the then District Magistrate was transferred. Hence, the present writ application.

A counter affidavit has been filed on behalf of Respondent No. 5, the Superintendent of Police, East Champaran stating therein that recommendation for grant of licence was made in favour of the petitioner and the petitioner is not facing any criminal case and the said reply was not only given pursuant to the query made by the District Magistrate but also by the District Arms Magistrate. The counter affidavit also stipulates that the petitioner's husband was given threat to life for making payment of extortion demand, leading to registration of a criminal case. However, no counter affidavit has been filed on behalf of Respondent No. 4, District Magistrate, East Champaran or the Respondent No. 6, District Arms Magistrate, East Champaran. But, it is submitted by AC to GP 5 that if no



decision has been taken on the application of the petitioner, it will be taken within a reasonable time frame.

Having heard learned counsels for the parties, this Court is really dismayed to find that even though the Arms Act, 1959 provides for issuance of Arms licence to people for personal safety and security, as also the security of property, but the petitioner has been waiting for grant of licence for gun since last several months.

Though Section 13 of the Arms Act, 1959 which stipulates the provision for grant of arms licence but that does not prescribe any time limit for disposal of such application nor it prescribed the time limit for the police to transmit the report. Rule 51 of Arms Rules, 1962, however, this Rule also does not stipulate any time limit for disposal of application made for grant of arms licence. True it is that neither Section 13 of the Act nor Rule 51 of Arms Rules 1962 prescribes any time limit for the Licensing Authority for disposal of such applications. However, this Court on several occasions has prescribed the time limit for disposal of such applications. In one of such cases, in the case of Dwivedy Surendra, Advocate Vs. The State of Bihar and Ors., 2007(3) PLJR 76, this Court directed the Licensing Authorities of the State of Bihar to dispose of all the



pending applications for grant of arms licence with two months where the police report has been received and within a period of four months where the police report is awaited. Consequently, an advisory was also issued by the Government of Bihar, but it appears that such advisory did not bear any impact on the Licensing Authority. Visualizing such condition, it appears that in Arms Rules, 2016 specific provision has been incorporated under Rule 14 of Rules which reads as follows:

“14. Time limit for police report for grant of licences.— (1) On receipt of an application for grant of a licence under sub-section (1) of section 13 or every subsequent renewal thereof under section 15, the licensing authority shall call for a report of the officer-in-charge of the nearest police station on that application, and such officer shall send his report in Form S-4, within a period of thirty days from the date of receipt of application by him.

(2) The Central Government may by issuance of a general or special order, extend the period of thirty days as specified in sub-rule (1) up to ninety days for certain areas or States for any reason deemed appropriate by it.

(3) The licensing authority may in case of non-receipt of police report within the period of thirty days under sub-rule (1) or within the extended period under sub-rule (2), make an order



in writing for grant or refusal of licence, without further waiting for the report.”

The above rule specifically stipulates that the SHO of the nearest police station has to transmit police report within thirty days of receipt of the application. Similarly, Rule 13 of the Arms Rules, 2016 prescribes time limit for grant of licence, which specifically suggests that the Licensing Authority, on considering the application and on being satisfied that the applicant has fulfilled the eligibility conditions, shall grant or refuse to grant a licence for permissible category of arms or ammunition specified in category III of Schedule I, to any person by recording in writing the reasons for such grant or refusal, by passing a speaking order, within a period of sixty days of the receipt of the police report. Rule 13 of Arms Rules, 2016 reads as follows:

“13. The time limit for grant of licence.- The licensing authority, after consideration the application and on being satisfied that the applicant has fulfilled the eligibility conditions, shall grant or refuse to grant a licence for permissible category of arms or ammunition satisfied in category III of Schedule I, to any person by recording in writing the reasons for such grant or refusal



by passing a speaking order, within a period of sixty days of the receipt of the police report.

Provided that the licensing authority shall specify, the type of arms and ammunition to be procured by the applicant after assessing the reason and the need for possession of the type of arms and ammunition applied for by the applicant, considering the lethality or fire-power.”

In the present case, as has been pleaded by learned counsel for the petitioner in the writ application, the police report was submitted as far back as on 17.07.2017. Thereafter the query with regard to pendency of any criminal case against the petitioner was also made, which too was met on 28.07.2017/29.07.2017, but it appears that for the reasons best known to the Licensing Authority, no decision has been taken on the application of the petitioner. The action or inaction of the respondent authorities is absolutely in derogation to the statutory provisions of the Arms Act and Arms Rules.

It is well settled legal principle that when a statute provides for a particular procedure, for doing a thing in a particular manner, then it has to be done in that particular manner and not in any other manner at all. The aforesaid legal



proposition is based on the legal maxim “*Expressio unius est exclusio alterius*”

In this regard, a useful reference may be made to the case of Selvi J. Jayalalithaa Vs. State of Karnataka & Ors., (2014) 1 PLJR (SC) 531. Relevant part of Paragraph no. 29 of the judgment reads as :

“29..... There is yet an uncontroverted legal principle that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. In other words, where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to it at all, are impliedly and necessarily forbidden. The aforesaid settle legal proposition is based on a legal maxim “*Expressio unius est exclusio alterius*”, meaning thereby that if a statute provides for a thing to be done in a particular way, then it has to be done in that manner and in no other manner and following any other course is not permissible.”

The petitioner has alleged malafide against the Respondent No. 6, the District Arms Magistrate, East Champaran at Motihari. It appears that the writ application was registered on 11.08.2017, but the District Arms Magistrate chose



not to file any counter affidavit. However, this Court is not inclined to examine the issue of malafide, but in view of the fact that specific plea has been taken by the petitioner and it has not been controverted by the District Arms Magistrate, it is expected from the Respondent No. 4, the District Magistrate, East Champaran not to route this file of the petitioner through the Respondent No. 6, the District Arms Magistrate, East Champaran, Motihari.

In view of the discussions made above, it is expected from the Respondent No. 4, District Magistrate, East Champaran, Motihari to pass final order on the application of the petitioner for grant of arms licence within a period of six weeks from the date receipt/production of a copy of this order keeping in view the provision under Rule 12 of Arms Rules, 2016, which mandates a preference to be given to such person who has threat to life.

With the aforesaid observation/direction this writ application is disposed of.

(Dinesh Kumar Singh, J)

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