

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13604 of 2017

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Upendra Pandey, Son of Late Baleshwar Pandey, Resident of Village - Rajpur,
P.S. Bhagwanpur, District - Kaimur (Bhabua), At present - Bhabua, Ward No.
11, P.S. - Bhabua, District - Kaimur (Bhabua).

... .. Petitioner/s

Versus

1. The State of Bihar through the Collector cum District Magistrate, Kaimur (Bhabua).
2. The Collector cum District Magistrate, Kaimur (Bhabua).
3. The Superintendent of Police, Kaimur (Bhabua).
4. The Sub-Divisional Police Officer, Bhabua (Kaimur).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Mishra
For the Respondent/s : AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 31-07-2018 Heard learned counsels for the parties.

The present writ application has been filed for quashing the order dated 23.09.2016 passed in Arms Licence Case No. 40/2015-16 by Respondent No. 2, the Collector cum District Magistrate, Kaimur (Bhabua), as contained in Annexure 4, whereby, the petitioner's application for grant of licence for pistol has been rejected on the ground that the petitioner has no threat to his life and property.

It is submitted by learned counsel for the petitioner that the application for the licence was rejected primarily by Licensing Authority only on the ground that the petitioner is not having any threat perception, which is factually wrong



since the petitioner got registered Bhabhua P.S. Case No. 480 of 2013 on 01.10.2013 against two unknown persons at the behest of the petitioner levelling accusation under Sections 341 and 307 of the Indian Penal Code and Section 27 of the Arms Act. Moreover it has been held by a Bench of this Court in the case of Manish Kumar Vs. The State of Bihar and others, reported in AIR 2016 Patna 9, a Bench of this Court while considering several judgments of this Court, held that in absence of threat perception, it does not make an applicant unfit for grant of arms licence under Section 13 of the Act or it cannot be refused to grant under Section 14 of the Arms Act.

Without expressing any opinion on the merits of the case, this Court is of the view that the discretionary jurisdiction under Article 226 of the Constitution of India is usually exercised when there is no efficacious alternative remedy. However there are certain exceptions, as has been enumerated 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. 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 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. 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.”

Since Section 18 of the Arms Act, 1959 stipulates the statutory provision of appeal, the petitioner is permitted to prefer appeal against the impugned order along with an application for condonation of delay within a period of three weeks from the date of receipt/production of a copy of this order. It is expected from the Appellate Authority to consider the application for condonation of delay since the present writ application was pending before this Court. It is further expected from the Appellate Authority to decide the appeal



without being prejudiced by this order, as this Court has not expressed any opinion on the merits of the case, preferably within a period of eight weeks of its filing.

With the aforesaid, this writ application is disposed of.

(Dinesh Kumar Singh, J)

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