

THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13739 of 2017

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Brijesh Kumar Singh, S/o Sri Ganga Prasad Singh, R/o Village- Chand,
P.O. & P.S.- Chand, District- Kaimur at Bhabua.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary Home (Police), Patna.
2. The District Magistrate Kaimur at Bhabua.
3. The District Arms Magistrate, Kaimur at Bhabua.
4. The Superintendent of Police, Kaimur at Bhabua.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satish Kumar Sinha, Advocate
For the Respondent/s : Mr. Md. Nadeem Siraj, GP-5
Mr. Shailesh Kumar, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

02/ 13-09-2018

Heard Mr. Satish Kumar Sinha, learned
counsel for the petitioner and Mr. Shailesh Kumar, learned AC to
GP-5.

The present writ application has been filed
for a direction to Respondent No. 2, the District Magistrate,
Kaimur at Bhabua to take a final decision on the application of the
petitioner for grant of arms licence for N.P. Bore Pistol.

It is submitted by learned counsel for the
petitioner that the petitioner is a businessman and is apprehending
threat to his life and property and therefore, he submitted an
application before the Licensing Authority –cum- District
Magistrate, Kaimur at Bhabua on 15.07.2009 for grant of arms



licence for N.P. Bore Pistol. Subsequently, the Police submitted a report recommending the case of the petitioner for the arms licence. Subsequently, a notice was issued by the licensing authority on 19.09.2013 for hearing on the application of the petitioner on 24.10.2013. The petitioner appeared before the licensing authority with the relevant documents and even after that, yet, no order has been passed and the petitioner's application has been kept pending. Hence, the present writ application.

Mr. Shailesh Kumar, learned AC to GP-5 relying on the counter affidavit filed on behalf of Respondent Nos. 2 and 3, i.e., District Magistrate, Kaimur at Bhabua and District Arms Magistrate, Kaimur at Bhabua submits that the respondents have taken stand that the petitioner has not produced any document to suggest that the petitioner is having threat to his life and property and therefore, he requires a licence for N.P. Bore Pistol. However, it is submitted that if any decision has not been taken till date, it will be taken by the licensing authority within a reasonable time frame.

This Court dismayed to find that in spite of the filing writ application and during its pendency, the District Magistrate, Kaimur at Bhabua did not bother to dispose of the application of the petitioner which is pending since last nine years.



Though, earlier there was no time frame fixed for exercise of jurisdiction by the licensing authority to take a decision on the application for grant of licence either under Sections 13 and 14 of the Arms Act, 1959 (hereinafter called the 'Act') which stipulate the provisions for grant or refusal of arms licence or under Rule 51 of the Arms Rules, 1962, which stipulates various information to be submitted for various kind of licence applied for but when the applications with regard to grant of licence were not being disposed of for months or years together, this Court issued direction for disposal of the applications submitted for grant of arms licence within a time frame and in one of the such cases , a Division Bench of this Court, about a decade ago in the case of Dwivedy Surendra Vs. The State of Bihar and another (CWJC No. 13496 of 2004) reported in 2007(3) PLJR 76, directed all the licensing authorities of the State to dispose of all the pending applications for grant of arms licence, within a period of two months in which the police report has been received and in the case of non-receipt of the police report, within a period of four months and consequently, an advisory was issued in this regard by the State Government. But in spite of that the licensing authority continued to behave in callous manner. In Arms Rules, 2016, a specific time frame has been provided for submission of police



report as well as to take a decision by the licensing authority by a speaking and reasoned order on receipt of the police report. Rule 14 of Arms Rules, 2016 stipulates that on receipt of the application for grant of arms licence the licensing authority shall call for a report from Officer-in-Charge of the nearest police station, who shall submit the report within thirty days of receipt of the application by him, whereas Rule 13 of Arms Rules, 2016 stipulates that the licensing authority after considering the application and on being satisfied that the applicant has fulfilled the eligibility condition shall take a final decision by a speaking and reasoned order in writing either granting or refusing to grant the arms licence within sixty days of the receipt of police report, but in spite of that the applications are being kept pending.

From the factual matrix of the present case it appears that the licensing authority is least concerned about the statutory provisions.

To have an arm licence is not a fundamental right. This right has been granted by a statute and the statute prescribes a time frame for grant of licence as is stipulated under Rules 13 and 14 of the Arms Rules, 2016. The licensing authority has to act in that particular manner, and the law laid down in this regard is apt and clear that a thing which is prescribed under a



statute to be done in a particular manner then it has to be done in that particular manner or not at all. A useful reference in this regard may have to in the case of Selvi J. Jayalalithaa & Ors Vs. State of Karnataka & Ors, reported in 2014 (1) PLJR (SC) 531. The relevant portion of paragraph 29 reads as follows:-

“ We find force in the submissions advanced by the learned Attorney General that this Court generally should not pass any order in exercise of its extraordinary power under Article 142 of such order violates any statutory provisions. We do not intend to say that it would be illegal to extend the term of the Special Judge, but that it is a matter within the jurisdiction of the State in accordance with the relevant law.

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 stature 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. Other methods or mode of performance are impliedly and necessarily



forbidden. The aforesaid settled 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....”

From perusal of the counter affidavit, filed on behalf of the Respondent Nos. 2 and 3, particularly, statements made in paragraph nos. 7 and 8, which read as follows:-

“7. That is stated that the petitioner has no any threat perception and apprehension of his life and property ever did not arise nor did he prove any case of threat perception on his life and properties.

8. That it is stated that the petitioner could not produced any such types of criminal cases filed by him in police station which goes to show that the petitioner has a threat perception and any danger to his life and properties.”



it appears that if any applicant does not produce any document with regard to threat to his life or property, the licensing authority can keep such application pending for indefinite period. The above statements made in paragraph nos. 7 and 8 further reflect the mind set of the licensing authority which ultimately shows that the pre-determined mind of the licensing authority of not granting licence to such applicant who does not have a threat perception. Rule 12 of Arms Rules, 2016 stipulates the obligation of licensing authority in certain cases. Rule 12 reads as follows:-

“12. Obligations of licensing authority in certain cases. - (1) Save as otherwise provided in the Act, every licensing authority granting a licence in Form III to an individual for the restricted or permissible arms or ammunition as specified in category I(b) and I(c) or category III respectively in Schedule I, shall have due regard to the application of norms specified in sub-rules (2) and (3).

(2) For grant of a licence for the restricted arms or ammunition specified in category I(B) and I(C) in Schedule, the licensing



authority, may consider the application
of-

(a) any person who faces grave and anticipated threat to his life by
reason of-

(i) being resident of a geographical
area or areas where militants,
terrorists or extremists are most
active; or

(ii) being the prime target in the eyes
of militants, terrorists or
extremists; or

(iii) facing danger to his life for being
inimical to the aims and objectives
of the militants, terrorists or
extremists; or

(b) any Government official who by virtue of the office occupied
by him or by the nature of duty performed by him and/or in
due discharge of his official duty is exposed to anticipated risk
to his life; or

(c) any Member of Parliament or Member of Legislative
Assembly, who by virtue of having close or active association
with anti-militant, anti-terrorist or anti-extremist programmes



and policies of the Government or by mere reason of holding views, political or otherwise, exposed himself to anticipated risk to his life; or

- (d) any family member or kith and kin of a person who by the very nature of his duty or performance (past or present) or position occupied in the Government (past or present) or even otherwise for known or unknown reasons exposed himself to anticipated risk to his life; or
- (e) any other person, for any legitimate and genuine reason, to the satisfaction of the licensing authority, by passing of a speaking order in this regard:

Provided that before grant of a licence under this sub-rule, the licensing authority based on the recommendations of the district magistrate and of the State Government concerned and on examination of the police report and after conducting a separate verification from its own source, shall satisfy itself that the applicant requires such licence.

- (3) For grant of a licence for the permissible arms or ammunition specified in category III in Schedule I, and without prejudice to the provisions contained in clause (a) of sub-section (3) of section 13, the



licensing authority, based on the police report and on his own assessment may consider the applications of-

- (a) any person who by the very nature of his business, profession, job or otherwise has genuine requirement to protect his life and/or property or
- (b) any dedicated sports person being active member for the last two years, of a shooting club or a rifle association, licensed under these rules and who wants to pursue sport shooting for target practice in a structured learning process; or
- (c) any person in service or having served in the Defence Forces, Central Armed Police Forces or the State Police Force and has genuine requirement to protect his life and/or property.

The above quoted rule suggests that licensing authority while considering the application for grant of licence for restricted arms should give preference to such applicant who has life threat either due to resident of geographical area where



militants, extremists or terrorists are active or the applicant is at their target or the applicant is inimical to such group. However, Sub-rule 3 of Rule 12 further stipulates that the licensing authority for grant of licence for permissible arms or ammunition may consider the application of such persons, who by very nature of his business, profession, job or otherwise or sports person or Defence forces, Central Armed Police Forces or the State Police Force has genuine requirement to protect his life or property.

The provision under Rule 12 stipulates to give preference to different categories of applicants seeking arms licence but it does not mean that other persons who do not fall in one of the categories stipulated in Rule 12 can get arms licence.

This Court hopes and trusts that the above detailed and comprehensive discussion will now open the eyes of the licencing authority and they will exercise its statutory jurisdiction by adhering to the provisions as mandated in the Arms Act, 1959, and the Arms Rules, 2016.

In view of the discussions made above, it is expected from Respondent No. 2, the District Magistrate, Kaimur at Bhabua to take a final decision on the application of the petitioner within a period of four weeks from the date of receipt/production of a copy of this order.



With the above observation and direction, this writ application is disposed of.

(Dinesh Kumar Singh, J)

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