

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17045 of 2017

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Md. Islam, Son of Md. Hasnain, Resident of Narainapur, P.S.- Ramnagar,
District- West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate-cum-District Arms Magistrate, West Champaran at Bettiah.
3. The Superintendent of Police, Bagaha Police District at Bagaha, West Champaran.
4. The Sub-Divisional Magistrate, Bagaha, West Champaran.
5. The Officer-in-Charge, Ramnagar Police Station- West Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ravi Shankar Sahay, Advocate
Mr. Randhir Kumar No-1, Advocate
For the Respondent/s : Mr. P.K.Verma, AAG-3
Mr. Sanjay Kumar Ghosarvey, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

02/ 17-09-2018

Heard Mr. Ravi Shankar Sahay, Advocate and

Mr. Sanjay Kumar Ghosarvey, learned AC to AAG-3.

The present writ application has been filed for a direction to Respondent No. 2, the District Magistrate, West Champaran at Bettiah to pass appropriate order on the application of the petitioner, submitted in 2015 for grant of arms licence for N.P. Bore Pistol.

It is submitted by learned counsel for the petitioner that the petitioner is a social worker and is also attached to a political party and since he is a resident of bordering area of



Nepal, hence, apprehending threat and insecurity to his life and property, from extremists he submitted an application for grant of arms licence for N.P. Bore Pistol in the year 2015. Subsequently, the Superintendent of Police, Bagaha made recommendation in favour of the petitioner, but for reasons best known to the licensing authority no order has been passed simply because the petitioner is a political activist of non-ruling party. Hence, the present writ application.

Learned AC to AAG-3 submits that, at present, he is not having any instruction whether any decision has been taken on the application of the petitioner or not, but he further submits that, if any, decision has not been taken till date, it will be taken by the licensing authority within a reasonable time frame.

Since the present writ application has been registered on 20.10.2017 but till date no counter affidavit, this Court is not inclined to adjourn the matter any further.

This Court is dismayed to observe the callous manner in which the licensing authority has treated the application for grant of licence. Though, 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’) or under Rule 51 of the Arms Rules, 1962, 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 of the 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, reported in 2007(3) PLJR 76, directed all the licensing authority to dispose of all the pending applications for 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. Consequently an advisory was issued to that effect by the State Government but in spite of that the licensing authority continued to function in a callous manner. Ultimately, in Arms Rules, 2016, specific time frame has been provided for submission of police report as well as for taking 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.

In the present case the police report was submitted in favour of the petitioner in 2015 but there is nothing on record to suggest that any order has been passed by the licensing authority on the application of the petitioner which suggests that in spite of coming into force of Arms Rules, 2016 with effect from 15th of July, 2016 the licensing authority is least concerned about the statute and the procedure prescribed therein.

To have an arm licence is not a fundamental right. This right has been granted by a statute and the statute prescribes a mode 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....”

Applying the principle, to the facts of the present case, the licensing authority has to exercise his discretion under the Arms Act, 1959, as per the procedure and manner laid down.

In view of the discussions made above, it is expected from Respondent No. 2, the District Magistrate, West Champaran at Bettiah to take a final decision on the pending application of the petitioner within a period 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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