

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16284 of 2018

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Shyam Bihari Prasad, S/o-Sri Yamuna Prasad @ Yamuna Yadav Resident of
Mohalla-Kumhrarh Talab, P.S.-Agamkuan, Town & District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Home Secretary, Bihar, Patna.
2. District Magistrate, District Patna,
3. Divisional Commissioner, Patna Division, Patna.
4. Additional District Magistrate, (Arms 1/C), Patna.
5. District Arma Magistrate, Patna.
6. Sub-Divisional Officer, Patna City.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. B.N. Pandey
		Mr. Deepak Kumar
For the Respondent/s	:	Mr. Sheo Shankar Prasad -SC 8
		Mr. Harshvardhan Shiv Sundaram

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 17-12-2018

Heard Mr. B. N. Pandey, learned counsel for
the petitioner and Mr. Harshvardhan Shiv Sundaram, learned AC
to SC-8.

The present writ application has been filed
for a direction to Respondent No. 2, District Magistrate, Patna,
the licensing Authority under the Arms Act, to take a final
decision on the application of the petitioner submitted for
addition of arms licence for one N.P. Bore Pistol on the existing
licence of the petitioner being Licence No. 385/1986 granted for
N.P. Bore rifle.

It is submitted by learned counsel for the



petitioner that the petitioner is a businessman having a community hall, namely, Sheela Banquet, and is having arms licence for N.P. Bore Rifle being Licence No. 385/1986. It is further submitted that the petitioner is facing difficulties in carrying rifle to several places and, therefore, he submitted an application before Respondent No. 2, the District Magistrate, Patna on 01.02.2018 along with challan of Rs.500/- for making entry of the additional arms on the existing licence as prescribed under Rule 18 of Arms Rules, 2016 (hereinafter referred to as the Rules, 2016), consequently, Unique Identification Number was also generated in pursuance to the entry made in the system of the licensing authority and the same data was also uploaded on National Data Base of the Arms Licence, but till date, the decision has not been taken on the application of the petitioner by the licensing authority. Hence, the present writ application.

Learned AC to SC-8 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 decision has not yet been taken till date, it will be taken by the licensing authority within a reasonable time frame.

The only issue involved in the present writ application is whether, after coming into force of Rules, 2016, a



licensee has to apply for grant of separate licence for another arms or it will be endorsed/added on the existing licence.

The provisions under the Arms Act, 1959 (hereinafter referred to as the Act) and Arms Rules, 1962 (hereinafter referred to as the Rules, 1962) mandate for getting separate licence for separate arms. The Central Government in exercise of power conferred under the Act, made Arms Rules, 2016 superseding the Arms Rules, 1962. The said Rule was published in the Gazettee of India on 15.7.2016. No doubt, earlier under the provisions of the Act or Rules, 1962, for each arms, subject to maximum limit of three, the licensee or a fresh applicant had to make an application under Rule 51 of Rules, 1962. However, the period for acquiring licence used to be mentioned by the licensing authority on the licence itself as prescribed under Rule 52(2) of Rules, 1962 and the said period was subject to extension by the licensing authority. The proviso of the said Rule prescribes that the licensee may acquire a different arms than the arms for which the licence was granted subject to no objection of the licensing authority and the licence being amended accordingly. Rule 18 of the Rules, 2016 which incorporates permission for possession of arms to be acquired subsequent to grant of licence, mandates that when a licence is



granted in Form II to V for possession of arms to be acquired by the licensee subsequent to the grant of licence, the licensing authority shall at the time of granting the same, direct that the arms covered by the licence shall be acquired within a period of two years. The first proviso to the said Rule stipulates that the said period of two years can be extended for further one year on the basis of written representation of the licensee by the licensing authority after recording reasons for granting such extension. The second proviso to the above Rule further stipulates the acquisition of different arms than the arms for which the licence has been granted if the licensing authority has no objection for such acquisition and the licence is amended accordingly by the licensing authority. The third proviso to the said Rule provides for change of place of residence after grant of licence but before the acquisition of arms by the licensee. In this circumstance, the licence and the arms both have to be produced before the licensing authority having the jurisdiction over the new place of residence of the licensee who, after inspection of arms, shall register and update the information on National Database Arms Licence (in short NDAL) system. The last proviso to Rule 18 of Rules, 2016 provides that if the licensee desires to acquire additional arms subsequent to the



grant of licence on account of sale or transfer or disposal of the arm already in possession or otherwise as a fresh acquisition subject to overall limit of three fire arms, then also the provisions of Rule 18 will apply mutatis mutandis, meaning thereby, that if the licensing authority has no objection, such fresh acquisition of arms will be added/endorsed on the existing licence of the licensee. Rule 18 of Rules, 2016 reads as follows:

“18. Permission for possession of arms to be acquired subsequent to grant of licence.— When a licence is granted in Form II, Form III, Form IV or Form V for the possession of arms to be acquired by the licensee subsequent to the grant of the licence, the authority granting the licence shall at the time of granting the same, direct that the arms covered by the licence shall be acquired within a period of two years and that the licence or the arms or both shall be produced for his inspection and if within the said period of two years, the licensee fails to acquire the arms and to produce the licence, or the arms or both, as the case may be, the licence shall cease to be in force:

Provided that the licensing authority may extend the period of two years by a further period of one year, on the basis of a written representation received from the licensee and after recording the reasons for granting such an extension:

Provided further that if during the period of two



years or the extended period of one year, as the case may be the licensee wishes to acquire and possess any arm or arms of a different description and the licensing authority has no objection to allow the acquisition and possession of such arm or arms, he may amend the licence accordingly:

Provided also that where the licensee changes his place of residence, after the grant of licence but before acquisition of any arm, he may produce the licence or arm or both for inspection before the licensing authority of the place of his new residence to which the licensee may have shifted and the said authority on inspecting the arm, shall register and update the information on NDAL system:

Provided also that the provisions contained in this rule shall apply mutatis mutandis to any acquisition of an additional arm or arms which the licensee may desire to acquire subsequent to grant of licence on account of sale or transfer or disposal of the arm or arms already possessed or otherwise as a fresh acquisition subject to the overall limit of three firearms.”

Rule 15 of Rules, 2016 prescribes maintenance of records in electronic format and consolidation of the licences. Sub Rule (1) of Rule 15 mandates that every licensing authority or the renewing authority as specified in



Schedule II, while granting a licence or renewing a licence, thereof, shall enter the data of the record locally in an electronic format specified by the Central Government. Sub-Rule (2) of Rule 15 further mandates the licensing authority and the renewing authority to enter such data in the NDAL (National Data Base of Arms Licenses) system which shall generate a Unique Identification Number (UIN) and from 1st day of April, 2017, any arms licence without UIN was directed to be treated as invalid. Sub-Rule (3) of Rule 15 stipulates that the UIN so generated will be unique for every licensee. Sub Rule (4) to (6) of Rule 15 stipulate the provisions for consolidation of licences. Rule 15(4) provides for consolidation of licence. The licensee holding multiple licences in Form III has been given privilege, on making an application before the concerned licensing authority, to consolidate the licence by making an application on or before the 1st day of April, 2017 for grant of single licence in respect of all the arms under his UIN.

It is made clear that the cut off date incorporated under Rules 15(2) and 15(4) were substituted as 1st of April, 2018 by GSR (E) dated 28.11.2017 w.e.f. 28.11.2017 and the said cut off date has now been substituted as 1st April, 2019 vide Ministry of Home Affairs, Notification No. G.S.R. 644(E) dated



July 12, 2018 published in Gazettee of India on 13th July, 2018.

Though the application of the petitioner has to be considered by Licensing Authority under the provisions of 2016 Rules but a useful reference may have to be made to Sub Rules (5) and (6) of Rule 54 of 1962 Rules which not only stipulate the entering of data of record in electronic format but also the generation of unique identification number of each licensee.

Rule 54 of Rules, 1962 contains the provision for renewal of arms licence. Sub-rule (5) and (6) were inserted by the notification being GSR 585 E dated 24th July, 2012 w.e.f. 25.9.2012 which makes it mandatory for the licensing authority for grant of licence and the renewing authority at the Centre or at the State level, while granting a licence or renewing a licence, as the case may be, to enter the data of the record in an electronic format duly approved by the Central Government or the State Government, as the case may be. The licensing authority and the renewing authority have further been mandated to enter such data, as are required in an electronic automated system developed by the National Informatic Centre for this purpose and the aforesaid electronic automated system shall generate a unique number without



which, no arms licence shall be considered as valid with effect from 1st October, 2015. Sub Rule (5) and (6) of Rule 54 of Rules, 1962 reads as follows:

“5. The licensing authority and the renewing authority at the Centre or at the State level, while granting a licence or renewing a licence, as the case may be, shall enter the data of the record in an electronic format duly approved by the Central Government or the State Government, as the case may be.

(6) The licensing authority and the renewing authority shall also enter such data as are required in an electronic automated system as developed by the National Informatic Centre for this purpose and the aforesaid electronic automated system shall generate a unique number without which no arms licence shall be considered as valid with effect from 1st October, 2015.”

Sub Rule (4) to (6) of Rule 15 of Arms Rules 2016 stipulate consolidation of licences which read as follows:

“15. Maintenance of records in electronic format and consolidation of licences.—

(1) ...

(2) ...

(3) ...

(4) Any existing licensee holding multiple licences in Form III shall on or before the 1st day of April,



2017, make an application for grant of a single licence in respect of all the firearms held by him under his UIN, to the concerned licensing authority:

Provided that where the applicant applying a licence for restricted category of arms or ammunition specified in Schedule I is also a holder of a licence for permissible category of arms or ammunition specified in the said Schedule; or where the applicant, applying for permissible category of arms or ammunition is also a holder of a licence for restricted category of arms or ammunition specified in the said Schedule, the licensing authority concerned shall issue a new licence for such restricted or permissible category of arms or ammunition, as may be applicable, under the existing UIN of the licensee:

Provided further that separate licence books shall be generated in case of each licence in Form II, Form III and Form IV and in case of a licence in Form III, separately for restricted and permissible categories of arms and ammunition specified in Schedule I, with an overall ceiling of three firearms under a single UIN.

(5) The licensing authority on receipt of an application from a multiple licence holder under sub-rule (4) shall cancel the existing multiple licences of the applicant and issue in lieu thereof, a new licence endorsing therein, all the existing firearms of the said licensee.



(6) The period of validity of the new licence so issued by the licensing authority under sub-rule (5) shall be the farthest period as mentioned in any of the cancelled licences and the area validity endorsed on the new licence shall be the more extensive area in any of the cancelled licences.”

Rule 15(4) prescribes the consolidation of existing licence of the licensee, the proviso thereof stipulates that if the applicant applying for restricted category of arms or ammunition as specified in Schedule I is also a holder of licence for permissible category of arms or ammunition specified in the said Schedule, or where the applicant applying for permissible category of arms and ammunition is also a holder of a licence for restricted category of arms or ammunition specified in the said Schedule, the concerned licensing authority shall issue a new licence for such restricted or permissible category of arms or ammunition as may be applicable, under the existing UIN of the licensee subject to the condition that separate licence book shall be generated in case of each licence in Form II, III and IV . However, in case of licence in Form III, a separate licence has to be issued for restricted and permissible categories of arms and ammunition specified in Schedule I, with an overall limit of three fire arms. Rule 15(5) mandates that the licensing authority,



on receipt of an application from a multiple licence holder under Sub-Rule (4) shall cancel the existing multiple licences of the applicant and issue, in lieu thereof, a new licence endorsing therein, all the existing fire arms of the licensee. Rule 15(6) of Rules, 2016 prescribes the validity of period and area of such composite licence. It suggests that the period of validity will be the farthest period as mentioned in any of the cancelled licences and the area of validity of the new licence will be the most extensive area stipulated in any of the cancelled licences.

Rule 16 of Rules, 2016 casts duty on licensing authority under NDAL. Rule 16(1) mandates that while the licensing authority granting or renewing a licence or at the time of providing any allied service to any licensee, shall ensure that the data of the transaction approved by him is simultaneously updated in the electronic format locally and on the NDAL system. The proviso to Rule 16 stipulates that for failure on the part of the licensing authority to update such data in the electronic format, the licensee shall not be held accountable. Rule 16(2) of Rules, 2016 mandates the licensing authority to ensure compliance of delivery of different services specified in column (2) of Schedule V, within the time specified in column (4) of the said Schedule.



Schedule V of Rules, 2016 has been framed in exercise of power under Rule 2016 which prescribes the time limit for various services to be rendered by the licensing authority under Schedule II of the Rules. Column (1) of Schedule V stipulates 16 types of services while Sl. No. 17 stipulates any other service which is not defined within the 16 services, therefore, altogether 17 services have been prescribed. Column (2) of Schedule V prescribes nature of services, Column (3) prescribes the specific Rule to which the said service relates to and Column (4) prescribes the time frame for rendering those services. Sl. No. 5 of column (2) stipulates the nature of service as endorsement of arms or ammunition on licence under Rule 18 and column(4) stipulates such service to be rendered within 7 days of the receipt of such application. Sl. No. 7 of column (1) of Schedule V stipulates the nature of 'service as addition/deletion of weapon' under Rule 18 where as column (4) thereof stipulates such service to be rendered within seven days of the receipt of application. Though, the services for consolidation of licences under Rule 15, is not defined within the sixteen services mentioned in Column (1), however, Serial No. 17 of Column (1) of Schedule – V, stipulates all other services not defined within the sixteen services and for



rendering of such service, a period of seven days has been prescribed from the date of receipt of application.

Rule 27 of Rules, 2016 mandates that every grant or renewal of arms licence under the Rules, 2016 is subject to charging of fee specified in Schedule IV. In other words, Schedule IV has been framed in exercise of power under Rule 27.

Schedule IV consists of two Tables – Table A and Table B. Table A consists of two parts. Part I and II of Table A prescribes the fees to be levied for grant of licence and renewal of the licence whereas Table B prescribes fees for allied services. Sl. No. 5 of Table B of Schedule IV stipulates Addition/Deletion of fire arm to be issued in Form II, III and IV. Column (4) of the said table suggests the required fee of Rs.500/-.

In the present case, the application was submitted on 01.02.2018 for endorsement of licence for the additional arms for NP Bore pistol on the existing licence of the petitioner for rifle and required fee for the same was deposited, hence, it was expected from the licensing authority, the District Magistrate, Patna to pass an order considering the provision under Rules 18, 15(4) to (6) of Rules,



2016 but there is nothing on record to suggest that any decision has been taken on the application of the petitioner.

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. Paragraph no. 29 of the judgment reads as :

“29. 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 the Constitution to do complete justice if 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 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 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.

In *State of Uttar Pradesh vs. Singhara Singh & Ors.*, AIR 1964 SC 358, this court held as under:-

“8. The rule adopted in *Taylor vs. Taylor*, (1876) 1 Ch D 426 is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.” [See also: *Accountant General, State of Madhya Pradesh vs. S.K. Dubey & Anr.**, (2012)4 SCC 578]”

In view of the discussions made above, it is expected from Respondent No. 2, District Magistrate, Patna, the licensing authority to take a decision on the application of the petitioner, if it has already not been taken, in accordance with Rules 18, 15(4) to (6) and Schedule V of the Rules, 2016 within a period of 7 days of the receipt/production of a copy of



this order.

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

(Dinesh Kumar Singh, J)

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CAV DATE	
Uploading Date	
Transmission Date	

