

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14175 of 2018

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Rajeev Nandan Pandey @ Rajib Nandan Pandey S/o Ashwani Kumar Pandey,
Dahiya, P.S. Bounsi, District-Banka.

... .. Petitioner/s

Versus

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

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. B.N. Pandey
		Mr. Deepak Kumar
For the Respondent/s	:	Mr. Md. Ndeem Seraj – GP 5
		Mr. Shailesh Kumar, AC to GP 5

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 21-12-2018

Learned counsel for the petitioner is permitted to
make necessary correction in the petition.

Heard Mr. B. N. Pandey, 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, District Magistrate, Banka, the
licensing authority under the Arms Act to take a final decision on the
application submitted by the petitioner for addition of licence for
N.P. Bore Pistol on existing licence granted for N.P. Bore Rifle
bearing Licence No. 16-5/2001.

It is submitted by learned counsel for the



petitioner that the petitioner, being an Assistant in Department of Health, Government of Bihar, apprehended threat to his life and property and accordingly, he submitted an application for grant of licence of N.P. Bore Pistol/Revolver before the licensing authority, i.e., Respondent No. 2, the District Magistrate, Banka in the year, 2013. Subsequently, the Officer-in-Charge of the nearest police station made recommendation in favour of the petitioner and sent a report to that effect to Respondent No. 6, Sub-divisional Officer, yet his application for grant of licence of N.P. Bore Pistol/Revolver remained pending. In the meantime, Arms Rules, 2016 came into force, subsequent to which the petitioner submitted a representation on 03.04.2018, in view of the provisions under Rule 18, which permits the possession of arms to be acquired subsequent to the grant of licence. Hence, prayer was made by the petitioner for making endorsement of additional arms, being N.P. Bore pistol on the existing arms licence of rifle being Licence No. 16-5/2001, which is valid up to 2018, having I.D. No. 1420002022014 and Unique Identification No. 051420001752612014. Subsequently, the petitioner submitted a fresh application on 15.05.2018 before the licensing authority along with challan of Rs.1,000/- for incorporating the licence for N.P. Bore pistol on the existing licence of rifle in view of last proviso to Rule



18 of Arms Rules, 2016 but till date, no final order has been passed. Hence, the present writ application.

Learned AC to GP-5 submits that, at present, he is not having any instruction whether any order has been passed or not but if no order has been passed on the application of the petitioner, it will be passed within a reasonable time frame.

The only issue involved in the present writ application is whether the licensing authority can endorse the addition arms on the existing licence in view of the provisions under last proviso of Rule 18 and Rule 15(4) to 15(6) of the Arms Rules, 2016 (hereinafter referred to as the Rules,2016).

The provisions under the Arms Act, 1959 (hereinafter referred to as the Act) and Arms Rules, 1962 (hereinafter referred to as the Rules, 1962) mandates 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. The things which have been done or ommitted to have been done under 1962 Rules have been saved. Since the petitioner opted to be governed by Rules, 2016 his case ought to have been considered under the Rules,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 submit 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 to 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 incorporates permission for possession of arms to be acquired subsequent to grant of licence, which 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 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. Last proviso of Rule 18 of Rules, 2016 reads as follows:

“18. Permission for possession of arms to be acquired subsequent to grant of licence.—

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.”

It is relevant to refer to Rule 54 of Rules, 1962 which stipulates 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 as developed by the National Informatic Centre for this purpose and the aforesaid electronic automated system shall generate a unique identification number (usually referred to as UIN) 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.”

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 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 UIN so generated will be unique for every licensee.



Sub Rule (4) to (6) of Rule 15 of Arms Rules 2016 stipulates the procedure for consolidation of licence, 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.”

Sub Rule (4) to (6) of Rule 15 stipulates the provision for consolidation of licences. Rule 15(4) provides for consolidation of licence. Sub-rule (4) of Rule 15 stipulates that the existing licensee holding multiple licence in Form III shall on or before 1.4.2019 (which was initially 1.4.2017) make an application for grant of single licence in respect of all the fire arms held by him under his UID. Proviso to Sub-rule (4) stipulates that if the applicant applies for restricted category of arms or ammunition specified in Schedule I and he is also holder of a licence for permissible category of arms or ammunition specified in the said Schedule or if the applicant applies for permissible category of arms or ammunition and he is also a holder of licence for restricted category of arms or



ammunition specified in the said Schedule, the licensing authority will 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. The second proviso of Sub-rule(4) provides 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 fire arms under a single 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.

Rule 16 of Rules, 2016 casts duty on licensing authority under NDAL. Rule 16(1) mandates that while the licensing authority at the time of 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 kinds of services. Sl. No. 17 stipulates any other service which are not specified within the 16 kinds of services in Column (1), therefore, altogether 17 services have been prescribed. Column (2) of Schedule V prescribes nature of services, Column (3) prescribes the specific rule which that service relates to and Column (4) prescribes the time frame for rendering those services. The services which are not specified in the Sl Nos. 1 to 16 in Column (1) are covered under Sl. No. 17 which mandates the services to be rendered within seven days of receipt of the application. Sl. No. 5 of Column (1) stipulates the nature of service as 'endorsement of arms or ammunition on licence' under Rule 18 and further, the service has to be rendered within seven days of the receipt of application for the same. Sl. No. 7 of Schedule V describes the nature of service as Addition/Deletion of



weapon under Rule 18 and further as per column (4) thereof the said service has to be rendered within 7 days of the receipt of application.

Rule 27 of Rules, 2016 mandates that every licence granted or renewed under the Rules, 2016 will be chargeable with the 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 prescribe 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, it appears that the petitioner submitted an application for grant of licence as far back as in 2013 but subsequently, on 3.4.2018, the petitioner submitted a fresh application for endorsement of additional arms on the existing licence as stipulated under Rule 18 of Rules, 2016 and the required fee as stipulated under Table B of Schedule IV was deposited. But there is nothing on record to suggest that the licensing authority has discharged the statutory obligation as is cast upon him for disposing of 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 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.

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 the licensing authority, District Magistrate, Banka to take a decision on the application of the petitioner within the parameters of Rules 18 and 15(4) to (6) and Schedule V of Rules, 2016 within 7 days of the receipt/production of a copy of this order.



Accordingly, with the above observation and
direction, this writ application is allowed.

(Dinesh Kumar Singh, J)

anil/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

