

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14800 of 2018

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Shri Kant Singh Son of late Sri Raj Kishor Singh Resident of Village- M.V.
College Ke Samane, Charitarvan, P.S. Buxar, District- Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar .
2. The District Magistrate, Buxar.
3. The Sub- Divisional Officer, Buxar, District- Buxar.
4. The District Arms Magistrate, Buxar.
5. The Superintendent of Police, Buxar District- Buxar.
6. The Officer-in-Charge of Police Station-Buxar, District- Buxar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajani Kant Pandey
For the Respondent/s : Mr. Anand Kumar, AC to AAG 3

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 07-08-2018

Heard learned counsels for the parties.

The present writ application has been filed for quashing the order dated 20.12.2017 passed by the Respondent no. 2, District Magistrate, Buxar in Arms Case No. 80 of 2010, whereby the petitioner's application for grant of licence for rifle has been rejected.

It is submitted by learned counsel for the petitioner that the father of the petitioner was holding a licence for 315 NP bore rifle bearing Rifle No. AB821663. Due to illness of the father, in 2008 an application was submitted before the Licensing Authority Respondent No. 2, the District Magistrate, Buxar for grant of



licence. Subsequently, the petitioner's father died on 18.2.2010. After his death, the rifle was deposited before the arms dealer, namely, M/s Buxar Gun House on 26.3.2010 but since then the application of the petitioner was pending and the Licensing Authority Respondent No. 2, the District Magistrate, Buxar was not issuing licence, leading to filing of C.W.J.C. No. 3402 of 2016 which was disposed of by a Bench of this Court vide order dated 29.2.2016 with a direction to the Licensing Authority to take a decision in the matter of the petitioner within a period of three months. Even after expiry of three months, no decision was taken, whereafter a contempt application being MJC No. 2524 of 2016 was filed and in order to escape the rigors of the contempt proceeding, the impugned order has been passed. Hence, the present writ application.

Learned counsel for the respondents submits that since there is statutory remedy of appeal, hence, the present writ application is not maintainable.

The preliminary issue which arises for consideration in the present writ application is whether this Court in exercise of discretionary jurisdiction under Article 226 of the Constitution of India can entertain the present writ application when the petitioner has an alternative efficacious remedy. This issue has been dealt



with 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 wherein it has been held that the High Court 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 but the alternative remedy does not operate as a bar in certain circumstances, such as, enforcement of any of the Fundamental Rights or where there is violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is under challenge. 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 or some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

In the circumstances, without expressing any opinion on the merits of the case, this Court disposes of the present writ application with a liberty to the petitioner to prefer an appeal against the impugned order before Appellate Authority within a period of three weeks of receipt/production of a copy of this order along with an application for condonation of delay.

It is expected from the Appellate Authority to consider the application for condonation of delay and dispose of the appeal within a period of eight weeks of its filing in view of the fact that this writ application remained pending before this Court.

(Dinesh Kumar Singh, J)

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CAV DATE	
Uploading Date	
Transmission Date	

