

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2830 of 2018

Sanjay Kumar, S/o- Sri Sarvananand Singh, resident of Mohalla- Panchkauri
Saw Lane, West Lohanipur, P.O. & P.S.- Kadam Kuan, Town & District-
Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Home Secretary, Govt. of Bihar.
2. District Magistrate, Patna.
3. District Arms Magistrate, Patna.
4. Additional District Magistrate (Arms), Patna.
5. Divisional Commissioner, Patna.
6. Sr. Superintendent of Police, Patna.
7. Sub- Divisional Magistrate, Patna Sadar.
8. S.H.O. Kadam Kuan P.S., Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. B. N. Pandey Mr. Deepak Kumar
For the Respondent/s	:	Mr. Md.N.H.Khan -SC 1 Mrs. Babita Kumari, AC to SC 1

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 21-12-2018

Heard Mr. B. N. Pandey, learned counsel for
the petitioner and Mrs. Babita Kumari, learned AC to SC-1.

The present writ application has been filed
for a direction to Respondent No. 2, District Magistrate, Patna
to take a final decision on the application submitted by the
petitioner for grant of licence or endorsement of additional arms
licence being N.P. Bore Rifle on the existing licence bearing
licence No. 2089/2016 granted to the petitioner for N.P. Bore
Revolver/Pistol.

It is submitted by learned counsel for the



petitioner that the petitioner was granted licence for N.P. Bore Revolver/Pistol in 2016 bearing licence No. 2089/2016. The petitioner submitted an application on 26.04.2017 in the prescribed format A-1 along with bank challan of Rs.500/- for addition of licence for N.P. Bore Rifle in the original licence granted for N.P. Bore Revolver/Pistol but till date decision has not been taken on the application of the petitioner. Hence, the present writ application.

Learned AC to SC-1 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 no decision has been taken till date, it will be taken by the licensing authority within a time frame for modification of the licence/permission to acquire additional arms.

The only issue involved in the present writ application is whether, after coming into force of Arms Rules, 2016 (hereinafter referred to as Rules, 2016), a licensee has not to apply for grant of separate licence for another arms or the grant 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) mandates for getting separate licence for separate arms. The Central Government in exercise of power conferred under the Act, made Rules, 2016 superseding the 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 separate 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.

The Rules, 2016 envisages various provisions to check arbitrary discretion of the licensing authority as well as to check the misuse of arms and ammunition and the terms of licences by the licensee. In order to enforce such check, under Rule 15 of Rules, 2016, incorporation has been made for maintenance of records in electronic format and consolidation of



arms licence. Rule 15 directs for maintenance of records in electronic format and consolidation of the licences.

Sub Rule (1) to (3) of 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, 2019, 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 stipulates the provision for consolidation of licences. Rule 15(4) provides for consolidation of licence allowing the licensee holding multiple licences in Form III to make an application before the concerned licensing authority, to consolidate the licence by making an application on or before the 1st day of April, 2019 for grant of single licence in respect of all the arms



under his UIN.

It is made clear that the cut off date i.e. 1st day of April, 2017 as 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 present case is governed by Rules, 2016 but it is relevant to refer to Rule 54 of Rules, 1962, as it contains the provision for the 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 without which no arms licence shall be considered as valid with effect from 1st October, 2015. Sub Rules (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 prescribes the provision of consolidation of licence, 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 18 of the Rules, 2016 which incorporates permission for possession of arms to be acquired subsequent to the 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 a written representation of the licensee by the licensing authority after recording reasons for granting of such



an extension. The second proviso to the above Rule further provides for 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 fire 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.”

From perusal of Rule 18 of Rules, 2016, it appears that for acquisition of additional arms subsequent to grant of licence, there is no need of going through the entire gamut of formalities for acquiring a new arms licence, since the police verification is already on record and the licensing authority has applied its mind for the grant of licence to such applicant and as such simple endorsement subject to the overall limit of three arms has been prescribed.

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 services where Sl. No. 17 stipulates any other service not stipulated within Sl. Nos. 1 to 16. For all other services stipulated in Sl. No.17 the time limit prescribed for such services is seven days from the receipt of the application, therefore, altogether 17 services have been prescribed. Column (2) of Schedule V prescribes nature of services, Column (3) prescribes the specific Rule to which that service relates to and Column (4) prescribes the time frame for rendering those services. Sl. No. 5 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 7 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 seven days of the receipt of application. Sl. Nos. 1 to 16 of Column (1) of Schedule V thereof stipulates the nature of service of consolidation of licences under Rule 15, hence the same will be covered under Sl. No. 7 which stipulates seven days time for rendering the services other than stipulated in sixteen types of services stipulated in Column (1).

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/-.

It appears that in the present case, initially the application for grant/addition of licence was submitted on 26.4.2017 along with affidavit and a bank challan of Rupees One Thousand though as per Schedule V requirement is of depositing only Rupees Five Hundred hence, it was expected from the licensing authority, the District Magistrate, Patna to pass an order considering the provision under Rules 18 of Rule, 2016 but there is nothing on record to suggest that any exercise in this regard has been done.

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]”

Keeping in view the discussions made above, it is expected from the licensing authority, Respondent No. 2, District Magistrate, Patna to take a decision on the application of the petitioner within the parameters of Rule 18, 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)

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CAV DATE	
Uploading Date	
Transmission Date	

