

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3552 of 2018

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Aakash Gaurav, S/o Late Uday Kumar, Resident of Mohalla- Goriatoli,
Station Road, P.S.- Kotwali, 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. Kotwali P.S., Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Ms. Sweta Pandey, Advocate
For the Respondent/s : Mr. Shailesh Kumar, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 21-12-2018

Heard Ms. Sweta 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, Patna,
the licensing authority under the Arms Act, 1959 (hereinafter
referred to as 'the Arms Act') to take a final decision on the
application of the petitioner initially submitted for adding licence
for one N.P. Bore Rifle on the existing licence of the petitioner
being Licence No. 128/2017 granted for N.P. Bore
Revolver/Pistol.

It is submitted by learned counsel for the



petitioner that the petitioner runs a hotel business as well as tour and travel agency. The father of the petitioner was a licensee, having licence for N.P. Bore Rifle bearing Arms Licence No. 4243/1997 granted by the licensing authority under the Arms Act, the then District Magistrate, Patna, and consequently he acquired Rifle No. AB970707. The licence was being renewed from time to time and the privilege was never misused. The father of the petitioner passed away on 07.09.2011. Thereafter the petitioner deposited the arms before arms dealer, namely, M/s Patliputra Arms Store, Arms and Ammunition Dealer, Frazer Road, Patna on 12.11.2011. The petitioner initially applied for grant of licence for N.P. Bore Rifle on 30.07.2015 before the licensing authority, District Magistrate, Patna whereupon the petitioner was granted licence being Licence No. 128/2017 for N.P. Bore Revolver/Pistol. Thereafter, the petitioner submitted a fresh application on 3.2.2018 before the licensing authority, annexing therewith, the original copy of the challan and also drew the attention of the licensing authority that as per the provision incorporated in Rule 18 of Arms Rules, 2016 (hereinafter referred to as Rules, 2016) which came into force with effect from 15.7.2016, for additional arms, licence for rifle, only endorsement has to be made on the existing pistol licence of the petitioner.



Hence, prayer was made before the licensing authority for adding the licence for NP bore rifle on his original licence for NP bore revolver bearing licence no. 128/2017. The representation further stipulated that the petitioner has also deposited the required fee of Rs.500/- but till date decision has not been taken on the application of the petitioner, though Serial Nos. 5 and 7 of Schedule V incorporate the period of endorsement of arms or weapon on licence as 7 days from receipt of application for such purpose. Such application was initially submitted for grant of licence for rifle on 30.7.2015 and thereafter on 3.2.2018, for allowing the prayer for addition of licence for additional arms on the original licence of revolver and pistol, under Rule 18 of Rules, 2016, but decision has not been taken till date. Hence, the present writ application.

Mr. Shailesh Kumar, learned AC to GP-5 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.

The only issue in the writ application is whether by operation of proviso to Rule 18 of Rules, 2016, the



additional licence for rifle can be endorsed on the existing licence of the pistol of the petitioner and such endorsement/grant has to be considered on preferential basis in view of Rule 25 of Rules, 2016, which stipulates the mechanism for granting licence to the heirs of licensee.

The Central Government by resorting to various provisions of Arms Act, 1959, framed Rules, 2016 superseding the Arms Rules, 1962. The said Rules, 2016 was published in Gazettee of India on 15.7.2016. By supersession, only such thing which has been done or omitted to have been done under Arms Rules, 1962 or the things which ought to have been done, have been saved before such supersession. So far as giving preference in grant of licence to the heirs of licensee is concerned, there was no provision either in Arms Act, 1959 or in Arms Rules, 1962. Such preference used to be given by virtue of executive instructions issued by Ministry of Home, Government of India and the consequential instructions issued by the Principal Secretary, Home, Government of Bihar. Hence, what is saved is what is provided under Arms Rules, 1962, while the executive instructions are not saved because they cannot be treated as Rule. In the present case, though the petitioner initially submitted application on 13.7.2015 for grant of licence for rifle but



subsequently the petitioner was granted licence for pistol vide Licence No. 128 of 2017, hence he submitted application afresh on 3.2.2018 for endorsement of additional licence under proviso to Rule 18 of Rules, 2016. Thus, his case will be covered by proviso to Rules, 2016 on two counts, firstly, that the executive instructions have not been saved under the saving clause of Rules, 2016 and secondly, that the petitioner submitted fresh application on 3.2.2018 under the new Rule, i.e., Rules, 2016.

Section 3(2) of the Arms Act, 1959 (hereinafter referred to as the Arms Act) mandates that no person, other than a person who is Arms Dealer shall acquire, have in his possession or carry, at any time, more than three fire arms. Meaning thereby, that a citizen can acquire licence for three arms at one point of time. In the present case, the petitioner is having licence for revolver/pistol from before, bearing Licence No. 128/2017. Though the petitioner, after the death of his father, submitted an application for grant of licence for rifle on 30.7.2015 but subsequently, after coming into force of Arms Rules, 2016, w.e.f. 15.7.2016, he submitted another application on 3.2.2017 to the effect that instead of issuing a fresh arms licence, the licence for rifle may be endorsed on the existing licence for pistol of the petitioner.



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 licences for separate arms. The Central Government, in exercise of the powers conferred under the Act, introduced 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 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 being extended 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 Gazettee 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 18 of the Rules, 2016 incorporates permission for possession of arms to be acquired subsequent to grant of licence. 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.”

It appears from bare perusal of Rule 18 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.

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 new arms since police verification is already on record and the licensing authority has applied his mind for grant of licence to such applicant, hence, a simple endorsement, subject to overall limit of three arms has been prescribed.

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.

Before coming into force of Rules, 2016, such persons who intended to get the arms transferred from a licensee, had to make an application under Section 13 of the Arms Act, 1959. However, the Ministry of Home, Government of India in 2009 vide Notification No. V-11016/16/2009- Arms issued a directive stipulating therein, to give preference to the heirs and nominees of such licensee, who has either attained the age of 70 years or has been a licensee for 25 years. Consequently, the Principal Secretary, Home, Government of Bihar, issued a consequential instruction to the licensing authorities but such an executive instruction did not bear any impact on the licensing authorities and realizing the same, the Government of India while drafting Rules, 2016 included specific provision with regard to grant of licence to heirs and nominees of the licensee in Rule 25



of Rules, 2016, which reads as follows:

“25. Grant of licences to legal heirs.— (1) The licensing authority may grant a licence —

- (a) after the death of the licensee, to his legal heir; or
- (b) in any other case, on the licensee attaining the age of seventy years or on holding the firearm for twentyfive years, whichever is earlier, to any legal heir nominated by him:

Provided that notwithstanding the provisions contained in rule 12 of these rules, the licensing authority may grant a licence to such legal heir if the eligibility conditions under the Act and these rules are fulfilled by the said legal heir and there are no adverse remarks in the police report.

(2) Where a licensee leaves behind more than one legal heir and the legal heirs decide amongst themselves to retain the arm or arms of the deceased, one of the legal heirs nominated by all other legal heirs may apply for a licence under sub-rule (1) along with the following documents, namely:-

- (i) a declaration of no-objection from the remaining legal heirs;
- (ii) an indemnity bond executed by the applicant giving full details of the licence and the arm or arms endorsed thereupon; and
- (iii) a copy of the death certificate of the



deceased licensee.

(3) Where the legal heirs decide to dispose of the arm or arms endorsed on the licence of the deceased licensee, they may apply to the licensing authority for grant of a limited period permission to sell the arm or arms, within the time allowed by such authority, to any licensed dealer or to any other person entitled to possess an arm under these rules.

Explanation. — For the purposes of this rule, ‘legal heir’ includes husband, wife, son, daughter, son-in-law, daughter-in-law, brother, sister and grandchildren of the licensee or the deceased licensee.”

The above Rule suggests that the heirs and nominee, who are defined under Rule 25 of the Rules, 2016 itself, can make an application for grant of licence under Section 13(1) of the Arms Act provided the licensee has attained the age of 70 years or has remained a licensee of fire arms for 25 years, as also in the case of death of the licensee. But at the same time there are certain conditions which requires a declaration of No Objection from all the legal heirs of the licensee, filing of an indemnity bond and a copy of death certificate, if required. Rule 25 of Rules, 2016 further puts an obligation on the licensing authority to the effect that it may grant licence to such legal heirs, who fulfill the



eligibility conditions under the Act and Rules and if there is no adverse remark by the police report. By incorporating a separate provision under Rule 25 of Rules, 2016 the whole purpose is to give preference to the heirs and nominees of the licensee.

In the present case, it appears that the father of the petitioner was granted licence in 1997 and he passed away in 2011. This is not in dispute that the petitioner is the son of the licensee and he comes within the purview of heir of the licensee in view of Explanation to Rule 25 of Rules, 2016. Hence, on this score also, under the heirloom policy the licensing authority ought to have held that it is a matter of consolidating the licence on a fast track basis.

From the facts available on record, it appears that the licensing authority has failed to discharge its obligation incorporated under Rules 18, 15 and 25 of the Rules, 2016.

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]”

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 National Database Arms Licence, in short known as 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 Rules, 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. However Sl. No. 17 covers all other services not specified within Sl. Nos. 1 to 16 of Column (1), therefore, altogether 17 services have been prescribed in Schedule V. Column (2) of Schedule V prescribes nature of the services, Column (3) prescribes the specific Rule to which that service relates to and Column (4) stipulates the time for rendering those services. Sl. No. 7 of Column (1) of Schedule V describes the nature of service as addition and deletion of weapon under Rule 18 and prescribes the licensing authority to do the same within seven days of receipt of the application. The case of the petitioner is also for addition of licence. Though Sl. Nos. 1 to 5 of Column (1) of Schedule V do not describe the services with regard to consolidation of licences under Sub-sections (4) to (6) of Rule 15, hence it gets covered under Sl. 17 of Column (1), which covers all the services which are not specified under Sl. Nos. 1 to 16 of Column (1) and that mandates the rendering of services within seven days of receipt of the application. This Court is dismayed to find that the above mandate of law has been callously violated.

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 within a period of seven days of the receipt/production of a copy of this order.

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

(Dinesh Kumar Singh, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

