

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1231 of 2018

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Rajendra Rai, Son of Late Lal Mohan Rai, Resident of Village- Katharai,
P.O.- Manikpur, Police Station- Dhansoi, District -Buxar.

... .. Petitioner

Versus

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

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Dr. Kamal Deo Sharma
For the Respondent/s : Mr. Md.Nadeem Seraj -GP 5

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 25-06-2018

Heard Dr. Kamal Deo Sharma, learned counsel for the petitioner and Mr. Shailendra Kumar, learned AC to GP-5 for the respondent-State.

The present writ application has been filed for quashing the order dated 29.06.2017, passed by Respondent No. 2, the District Magistrate, Buxar in Arms Case No. 18 of 2015, as contained in Annexure-6, whereby the petitioner's application for grant of licence for N.P. Bore rifle has been rejected.

It is submitted by learned counsel for the petitioner that earlier also the licensing authority had rejected the application of the petitioner on the ground that he is not having any threat perception, which was challenged before this Court and a Bench of



this Court, vide Judgment dated 28.11.2016, passed in C.W.J.C. No. 14655 of 2016, quashed the order and remitted back the matter to take a fresh decision since Section 14 of the Arms Act, 1959, does not visualize the ground of threat perception for refusal to grant licence, but again, on remand, Respondent No.2, the District Magistrate, Buxar rejected the application of the petitioner, vide order dated 29.06.2017, as contained in Annexure-6, stating therein to the effect that there is no ground for grant of licence to the petitioner, as also that the petitioner is not having any threat perception.

It is further submitted by the learned counsel for the petitioner that the father of the petitioner was a licensee and under the heirloom policy, the petitioner has to be given preference in grant of arms licence, but such issue has not been considered by the licensing authority.

It is submitted by learned counsel for the State that there is provision of appeal, hence the petitioner should avail the alternative efficacious remedy of appeal.

Though, in the earlier round, the issue of alternative remedy was not raised, but at present, this Court is not inclined to entertain the writ application, in view of the fact that the High Court under Article 226 of the Constitution of India 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, however, the availability of 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, as has been dealt in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors. reported in (1998) 8 Supreme Court Cases 1. paragraph no. 15 reads as follows:-

“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 bare 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, the present writ application is disposed of with liberty to the petitioner to prefer statutory appeal before the appellate authority along with the application for condonation of delay within a period of three weeks from the date of receipt/production of a copy of this order when it is expected from the appellate authority to consider the application for condonation of delay in view of the fact that the writ application has been pending before this Court and to decide the appeal within a period of six weeks from its filing considering all the issue involved.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

