

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13908 of 2018

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Kanti Devi @ Srikanti @ Srikani Devi, Wife of Shiv Shankar Singh, Resident of village - Akarua, Police Station - Piro, District - Bhojpur at Ara.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Bihar, Patna.
2. The District Magistrate, Bhojpur at Ara.
3. The District Arms Magistrate, Bhojpur at Ara.
4. The Superintendent of Police, Bhojpur at Ara.
5. The Officer-in-Charge, Piro P.S., Bhojpur at Ara.
6. The Incharge Officer, Arms Branch, Bhojpur at Ara.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Baxi S.R.P. Sinha, Senior Adv. Mr. Lokesh Kumar Singh, Adv.
For the Respondent/s	:	Mr. Anil Kumar, AC to SC-8

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date : 21-12-2018

Heard learned counsels for the parties.

In view of the nature of order, which this court intends to pass, there is no requirement to adjourn the matter any further.

The present writ application has been filed for a direction to the respondent authorities, particularly, the Respondent No. 2, i.e., the District Magistrate, Bhojpur at Ara-cum-Licensing Authority to issue 'No Objection Certificate' to the petitioner for getting a transport licence for transporting 32 Bore revolver from M/s Small Arms Factory, Kanpur (Uttar Pradesh) to Bihar since he has been granted licence for pistol vide Licence



No. 2/2016 by Respondent No. 2, the District Magistrate, Bhojpur at Ara.

It is submitted by learned Senior Counsel for the petitioner that the petitioner submitted an application for the licence for NP bore pistol/revolver in the year 2009 before the Respondent No. 2, the District Magistrate, Bhojpur at Ara-cum-Licensing Authority since she was apprehending danger and threat to her life and property, being an agriculturist. Since no final decision was taken on the application of the petitioner, she filed a writ application before this Court bearing CWJC No. 8709 of 2015, which was disposed of by a Bench of this Court vide order dated 28.09.2015, as contained in Annexure-1, whereby the District Magistrate-cum-Licensing Authority was directed to take a decision on the application of the petitioner within a period of four months from the date of receipt/production of a copy of the order. Ultimately, the Licensing Authority granted licence to the petitioner for NP bore revolver/pistol vide Arms Licence No. 2/2016, as contained in Annexure-2, with its validity within the territorial jurisdiction of Bihar.

After having received the Arms licence, the petitioner approached M/s Small Arms Factory, Kanpur (Uttar Pradesh), an arms manufacturer for purchase of 32 Bore revolver and



consequently, the petitioner deposited the requisite cost of the revolver. In response to the application of the petitioner, the General Manager of M/s Small Arms Factory, Kanpur (Uttar Pradesh) vide Letter No. 5651/Coll/CT dated 08.05.2017, as contained in Annexure- 3 intimated the petitioner for collecting the said revolver either on 15.6.2017 or 22.6.2017 or 29.6.2017 after production of six documents before the Factory at the time of collection which includes the original arms licence and its photocopy, I.D. and address proof and its photocopy, photographs, No Objection certificate and the transport licence. The requirements at Serial No. 3 and 4 of Annexure 3 reads as follows:

“3.0 No Objection Certificate (NOC) – If validity area of your arms licence is not All over India/Uttar Pradesh/Kanpur, then you must obtain NOC from Licence issuing Authority for (1)- District Magistrate/Kanpur(for transport licence) and (2) General Manager, Small Arms Factory, Kanpur (Original)”

“4.0 Transport Licence (TL)- If validity area of your arms licence is not All over India/Uttar Pradesh/Kanpur, then you should bring Transport Licence issued by D.M./Kanpur Nagar. (Photocopy required).”



Consequently, on 23.6.2017 and 03.05.2018, the petitioner submitted an application, as contained in Annexures 4 and 4/1, before the Licensing Authority for issuance of No Objection Certificate. When the petitioner could not get the 'No Objection Certificate', she transmitted legal notices on 16.02.2018 and 26.03.2018, as contained in Annexures 5 and 5/1, to the Respondent No. 2, the District Magistrate, Bhojpur at Ara, but till date No Objection Certificate has not been issued. It is further submitted that the said licence of the petitioner is going to expire on 31.12.2018. Hence the present writ application.

It is submitted by learned AC to SC 8 that at present he is not having any instructions whether the No Objection Certificate has been issued or not, but he further submits that if No Objection Certificate has not been issued to the petitioner till date, the same will be issued within a reasonable time frame.

Having heard the learned counsels for the parties, a useful reference may be made to Rule 18 of the Arms Rules, 2016 (hereinafter referred to as 'Rules, 2016'). Rule 18 of the Rules, 2016 which incorporates permission for possession of arms to be acquired subsequent to 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 of 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 such extension. The second proviso to the above Rule further stipulates regarding acquisition of different arms than the arms for which the licence has been granted if the licensing authority has no objection for such acquisition. The licence is amended accordingly by the licensing authority.

In the present case, the petitioner was granted licence in 2016 with its validity till 31.12.2018.

The Central Government, in exercise of power conferred under Sections 5,9,10,,11,12,13,16,17,18,21,41 read with Section 44 of the Arms Act, 1959 (54 of 1959) and in supersession of the Arms Rules, 1962 (hereinafter referred to as Rules, 1962) made Rules, 2016. What is saved was the things done or omitted to be done under Rules, 1962 before such supersession. Since the petitioner submitted the application on 23.6.2017 and 3.5.2018, as contained in Annexures 4 and 4/1, respectively, for issuance of 'No Objection Certificate', the case of the petitioner



will be governed by the provisions of Rules, 2016.

Chapter VII Part I of Rules, 2016 deals with transport of arms and ammunitions. Rule 96 of Rules, 2016 stipulates the prohibition of transport of arms and ammunition without the transport licence in Form XII. Rule 96(1) which reads as follows:

“96. Prohibition of transport of arms and ammunition.— (1) Save as herein otherwise provided, no person shall transport over India or any part thereof any arms or ammunition or any arms specified in category V of Schedule I, except under, and in accordance with the conditions of, a licence in Form XII granted under these rules.”

The above provision stipulates that no person shall transport over India or any part thereof any arms or ammunition or any arms specified in category V of Schedule I except under a licence in Form XII granted under Rule 96 of Rules, 2016. Form XII is prescribed for the transport licence. Rule 96(2)(f)(ii) of Rules, 2016 mandates two pre-conditions for transport of an Arm firstly to take a transport licence in Form XII from the licensing authority of the starting place of transport and secondly to take no objection under Rule 98 of the Rules 2016 from the licensing authority at the destination of the Arms to be transported. Rule 96(2)(f)(ii) of Rules, 2016 reads as follows:



“96(1)...

(2)...

(f)...

(ii) transport of arms or ammunition personally for any of the purposes stated in sub-clause (i) of clause (e) without using them through any area outside the area of validity of his possession licence, shall be subject to his obtaining a licence in Form XII from the licensing authority at the starting place of transport; and shall be subject to obtaining a certificate of no objection from the licensing authority at the destination of the articles as provided for in rule 98;”

Rule 98 of Rules, 2016 provides that no transport licence can be granted for transport of arms and ammunition without ascertaining that ‘No Objection Certificate’ has been obtained by the licensee, who wants to transport from the District Magistrate the place where the arms has to be transported without making an enquiry from such District Magistrate. Rule 98 of Rules, 2016 reads as follows:

98. Previous consent in certain cases.— (1) A licence having effect beyond the local limits of the authority of the officer granting it shall not be granted for the transport or export or re-import of any arms or ammunition to a place, without ascertaining that there is no objection to the grant of such licence on the part of the district



magistrate having jurisdiction over the area in which such place is situated.

(2) For the purposes of sub-rule (1), either –

(i) a certificate of “no objection” may be obtained by the applicant for the licence; or

(ii) an enquiry may be made by the authority to whom application for grant of such licence is made.”

Hence in order to comply the provisions of Rule 98 of Rules, 2016 that the Arms Factory intimated the petitioner to produce ‘No Objection Certificate’ issued by the licensing authority and consequently, the petitioner applied for the same before the Licensing Authority, the District Magistrate, Bhojpur at Ara on 23.06.2017 and 03.05.2018.

Rule 16 of Rules, 2016 casts duty on licensing authority under NDAL. 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. Schedule V stipulates 16 kinds of services. However Sl. No. 17 stipulates any other service not specified within the 16 services, therefore,



altogether 17 services have been prescribed in Schedule V. 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. 13 of Schedule V stipulates that transport licence under Rule 96 of Rules, 2016 has to be granted within two working days of the receipt of the application. Sl. No. 14 stipulates that NOC under Rule 98 has to be granted within two working days of the receipt of application.

In the present case, the application was submitted by the petitioner on 23.6.2017 and 3.5.2018, but there is nothing on record to suggest that such certificate has been issued to the petitioner. This Court is dismayed to find that such 'No Objection certificate' is just technical in nature since the licence has already been granted to the petitioner. If the statute provides the grant of 'No Objection certificate' within two working days of its application, the licensing authority was obliged to exercise the statutory jurisdiction within the stipulated period.

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 in 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, Respondent No. 2, the District Magistrate, Bhojpur at Ara-cum-Licensing Authority is expected to take a final decision on the application of the petitioner, as contained in Annexure-1 in accordance with the provisions of the Rules, 2016, as discussed above within a period of two days from the date of receipt/production of a copy of this order. It is made clear that since delay has been on the part of the licensing authority, it is expected from him to extend the period of



acquiring arms as prescribed under Rule 18 of the Rules if such occasion arises.

With the aforesaid observation/direction, this writ application is disposed of.

anil/-

(Dinesh Kumar Singh, J)

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

