

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17883 of 2018

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Shrawan Kumar, S/o Ramswaroop Yadav, Resident of Mohalla-Naya Tola,
P.S.-Agamkuan, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through home Secretary, Govt. of Bihar.
2. District Magistrate, Patna.
3. Additional District Magistrate (Arms), Patna.
4. District Arms Magistrate, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. B.N. Pandey Mr. Deepak Kumar
For the Respondent/s	:	Mr. Harshvardhan Shivsundaram, AC to SC 8

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 27-09-2018

Heard Mr. B.N. Pandey, learned counsel
for the petitioner and Mr. Harshvardhan Shivsundaram, learned
AC to SC-8.

The present writ application has been filed
for a direction to the respondent authorities, particularly,
Respondent No. 2, District Magistrate, Patna to take a final
decision on the application filed by the petitioner for
consolidating the two arms licences i.e. licence no. 173/2003 for
N.P. Bore revolver/pistol and licence no. 240/2003 for N.P. Bore
rifle.

It is submitted by learned counsel for the
petitioner that the licence for N.P. Bore Revolver/Pistol bearing



licence no. 173/2003 was issued by District Magistrate, Vaishali, whereas licence for N.P. Bore Rifle bearing licence no. 240/2003 was issued by District Magistrate, Patna, Subsequently, both the licences were renewed by the District Arms Magistrate, Patna on 22.12.2018 upto the year 2020. Subsequently, the petitioner submitted an application on 12.2.2018, as contained in Annexure 2 before the licensing authority, District Magistrate, Patna for consolidation of both the licences under Section 15(4) of the Arms Rules, 2016 (hereinafter referred to as the Rules, 2016). It is further submitted that the petitioner deposited the required fee in this regard and also submitted particulars of both the arms and they have been entered in the NDAL system and consequently, UIN No. 051880010060482015 has been generated but when no communication was received by the petitioner, then the petitioner submitted another representation dated 1.9.2018, as contained in Annexure 3 before the licencing authority. But till date, no order has been passed by the licensing authority though the Rules, 2016 came into force with effect from 15.7.2016 and hence, the present writ application.

Mr. Harshvardhan Shivsundaram, learned AC to SC-8 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 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 licence for separate arms. The Central Government in exercise of power conferred under the Act, introduced Arms Rules, 2016 (hereinafter referred to as Rules, 2016) superseding the Rules, 1962. The said Rule was published in the Gazettee of India on 15.7.2016 and the application in the present case was submitted on 12.2.2018, hence, the case of the petitioner will be governed by the provisions of Rule, 2016. No doubt, earlier under the provisions of the Act, 1959 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 extension by the licensing authority. Further, 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. 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 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 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. 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.”



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, 2017, 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 stipulate the provision for consolidation of licences. Rule 15(4) provides for consolidation of licence. The licensee holding multiple licences in Form III was given privilege, on making an application before the concerned licensing authority, to consolidate the licence by making an application on or before the 1st day of April, 2017 for grant of single licence in respect of all the arms under his UIN.

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 in any of the cancelled licences. Sub-rules (4) to (6) of Rule 15 stipulates for consolidation of existing licences as well as prospective licence.

Sub Rule (4) to (6) of Rule 15 of Arms Rules 2016 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.”

Schedule V of Rules, 2016 has been framed in exercise of power under Rule 2016 which mandates the duty of licensing authority under NDAL (National Database of Arms Licences) and prescribes the time limit for various services to be rendered by the licensing authority under Schedule II of the Rules. 1st columns of Schedule V stipulates 16 services and Sl.



No. 17 of the 1st column deals with any other service not defined within the 16 services, therefore, altogether 17 services have been prescribed. Column (2) of Schedule V prescribes the nature of services, Column (3) prescribes the specific rule 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 it further stipulates that 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. Though, the services for consolidation of licences under Rule 15 is not defined within the sixteen services mentioned in Column (1), however, Serial No. 17 of Column (1) of Schedule – V, stipulates all other services not defined within the sixteen services and for rendering of such service, a period of seven days has been prescribed from the date of receipt of application.

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/-.

Hence, on or before 1.4.2018, the licensing authority was supposed to cancel the multiple licence of the petitioner and issue a composite licence to him.

In the present case, it appears that the application was made for such consolidation on 12.2.2018 but there is nothing on record to suggest that any decision has been taken by the licensing authority for consolidating the licences of the petitioner, rather, contrary to the statutory mandate, the District Arms Magistrate, Patna, has renewed the multiple licence for its validity up to year 2020, which suggests that either the licensing authority is not aware about the statutory mandate or he is not discharging statutory obligations in accordance with the statutory mandate.

It is, however, made clear that the cut off date i.e. 1st of April, 2017 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 by Ministry of Home Affairs vide Notification No. G.S.R. 644(E) dated July 12, 2018 published in Gazettee of India on 13th July, 2018.

It is settled principle of law that the licensing authority has to act in that particular manner, and the law laid down in this regard is apt and clear that a thing which is prescribed under a statute to be done in a particular manner, then it has to be done in that particular manner or not at all. A useful reference in this regard may have to in the case of Selvi J. Jayalalithaa & Ors Vs. State of Karnataka & Ors, reported in 2014 (1) PLJR (SC) 531. The relevant portion of paragraph 29 reads as follows:-

“ 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 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 stature 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. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled 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 view of the discussions made above, it is expected from respondent no. 2, District Magistrate, Patna to pass appropriate order on the application of the petitioner for consolidating the licences within seven days of the receipt/production of a copy of this order.

With the above observation and direction,



the present writ application is disposed of.

(Dinesh Kumar Singh, J)

anil/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

