

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20084 of 2018

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Dhananjay Kumar Mehta, Son of Dharmdas Mehta, Resident of Mohalla –
Gur Ki Mandi, Pitambara Mandir, P.O. – Gulzarbagh, P.S. – Alamganj,
District – Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Govt. of Bihar.
2. Divisional Commissioner, Patna Division, Patna.
3. District Magistrate, Patna.
4. Senior Superintendent of Police, Patna.
5. Additional District Magistrate (Arms), Patna.
6. District Arms Magistrate, Patna.
7. Sub-Divisional Officer, Patna City, Patna.
8. S.H.O. Alamganj Police Station, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. B.N. Pandey, Advocate
Mr. Hansa Jha, Advocate
For the Respondent/s : Mr. Md. N.H. Khan, SC-1
Mr. Md. Irshad, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

02/ 09-10-2018

Heard Mr. B.N. Pandey, learned counsel for
the petitioner and Md. Irshad, learned AC to SC-1.

The present writ application has been filed for
a direction to Respondent No. 3, the District Magistrate, Patna,
licensing authority under the Arms Act to take a decision on the
application of the petitioner submitted on 18.06.2018 for grant of
licence for N.P. Bore Revolver/Pistol.

It is submitted by learned counsel for the



petitioner that the petitioner is a businessman and contractor and hence, apprehending insecurity to his life and property, he submitted application on 18.06.2018 in new Formant A-I as prescribed under Rule 11 of Arms Rules, 2016 along with affidavit, required fee of Rs.1000/- but it is learnt by the petitioner that till date police report has not been called for by the licensing authority. It is further submitted that the licensing authority is obliged to call for a report from the Officer-in-Charge of the nearest police station since the application for grant of licence is submitted as is mandated under Rule 14 of Arms Rules, 2016. Consequently, under Rule 13 of Rules, 2016 that the licensing authority after considering the application and on being satisfied that the applicant has fulfilled the eligibility condition shall take a final decision by a speaking and reasoned order in writing either granting or refusing to grant the arms licence within sixty days of the receipt of police report, but it appears that the licensing authority, District Magistrate, Patna has no time to adhere to the time frame for taking decision on the application of the petitioner. It is further submitted that in spite of representation being submitted by the petitioner on 04.09.2018, as contained in Annexure-2, no decision has been taken, 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 any decision has not been taken till date, it will be taken by the licensing authority within a reasonable time frame.

The only issue involved in the present writ application is as to whether the licensing authority under the Arms Act, 1959 has to call for a report and take a decision on the application submitted for grant of licence within time frame as stipulated under Rules 13 and 14 of Arms Rules, 2016, or whether the discretionary power vested in his office, expects him to sit tight on the application of the petitioner, as long as his own sweet will. From perusal of Rules 13 and 14 of Arms Rules, 2016, it appears that Rule 14 mandates that on receipt of the application for grant of arms licence the licensing authority shall call for a report from Officer-in-Charge of the nearest police station, who shall submit the report within thirty days of receipt of the application by him, whereas Rule 13 of Rules, 2016 stipulates that the licensing authority after considering the application and on being satisfied that the applicant has fulfilled the eligibility condition shall take a final decision by a speaking and reasoned order in writing either granting or refusing to grant the arms



licence within sixty days of the receipt of police report.

Rule 12 of Arms Rules, 2016 prescribes obligation of the licensing in certain cases. Sub-Rule 3 of Rule 12 of Arms Rules, 2016 mandates for grant of licence for permissible category of arms and ammunition specified in category III in Schedule I, the licensing authority, based on the police report may consider the application of such person who by the very nature of his business, profession, job or otherwise has genuine requirement to protect his life and property. Rule 12(3)(a) reads as follows:-

“(a) any person who by the very virtue of his business, profession, job or otherwise has genuine requirement to protect his life and/or property.”

It is well settled that if the statute prescribes a thing to be done in a particular manner then it has to be done in that particular manner. 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 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. 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. 3, the District Magistrate, Patna to take a decision on the application of the petitioner within a period of four weeks from the date of 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)

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