

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20296 of 2018

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Subodh Kumar, Son of Sri Seeta Ram, Resident of Rai Jai Krishna Road,
Gurhatta, P.O. – Jhauganj, P.S. – Khajekalan, Town & 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. Khajekalan Police Station, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. B.N. Pandey, Advocate

Mr. Deepak Kumar, Advocate

For the Respondent/s : Mr. Sheo Shankar Prasad, SC-8

Mr. Harshvardhan Shivsundaram, AC to SC-8

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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 Mr. Harshvardhan Shivsundaram, learned AC to
SC-8.

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 20.04.2018 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 deals in
contractual work and that the brother of the petitioner namely,



Subhash Kumar was murdered in 2015, leading to registration of Khajekalan P.S. Case No. 35 of 2015 with accusation under Section 302 of the Indian Penal Code and Section 27 of the Arms Act. Subsequently, the petitioner submitted an application on 20.04.2018 in new Format A-I as prescribed under Rule 11 of Arms Rules, 2016 along with affidavit and required fee of Rs.1000/- as envisaged under Arms Rules, 2016, but in spite of all efforts the petitioner did not receive any communication from the licensing authority and then the petitioner represented on 04.10.2018, but decision has not yet been taken by the licensing authority. Hence, the present writ application.

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.

True it is that no time frame was fixed under Sections 13 and 14 of the Arms Act, 1959 for exercise of jurisdiction for grant/refusal to grant arms licence. Similarly no time frame was prescribed in Rule 51 of the Arms Rules, 1962, but it appears that since the licensing authority used to keep the application submitted for grant of arms licence, pending for month



and years together, this Court through various judicial pronouncements, particularly in Dwivedy Surendra Vs. The State of Bihar and another, reported in 2007(3) PLJR 76, wherein this Court directed all the licensing authority to dispose of all the pending applications for licence within a period of two months in which the police report has been received and in the case of non-receipt of the police report within a period of four months, but this Court painfully regrets to say that directions passed by this Court or by the State Government, did not bear any impact on the licensing authority. Regard being had to the unhindered laid back approach of the licensing authority, it appears that the specific provision has been incorporated under Rules 13 and 14 of the Arms Rules, 2016 for fixing time frame for calling of the police report, its submission by the Officer-in-charge of the nearest police station as well as for taking final decision on application being submitted for grant of arms licence. 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. There is nothing on record to suggest that either police report has been called for within the stipulated time or it has been submitted within the stipulated time or any order has been passed by the licensing authority.

Rule 12 of Arms Rules, 2016 prescribed 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 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 high time that the licensing authority must adhere to the time frame prescribed under the statute and accordingly, 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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