

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14916 of 2018

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Munmun Ji Tiwary @ Munmun Tiwari Son of Late Ram Ekbal Tiwary
Resident of Village - Panwara, Police Station - Suryapura in the district of
Rohtas, presently residing at Rohtas Bhawan, Magadh Colony, Kurzi, Police
Station - Digha in the district/town of Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home,
Government of Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Commissioner, Patna Division, Patna.
4. The District Magistrate-cum-Collector, Rohtas at Sasaram.
5. The Superintendent of Police, Rohtas at Sasaram.
6. The Sub-Divisional Magistrate, Dehri, Rohtas.
7. The Deputy Superintendent of Police, Dehri, Rohtas.
8. The District Arms Magistrate, Rohtas.
9. The Inspector-cum-Officer-in-Charge, Town P.S., Dehri, Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar, Adv.
For the Respondent/s : Md. Irshad, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 07-08-2018

Heard learned counsels for the parties.

The present writ application has been filed for quashing
the order dated 04.05.2018 passed by the Respondent No. 4, the
District Magistrate, Rohtas in Arms Case No. 9 of 2018, whereby
the petitioner's application for grant of licence for N.P. bore rifle
and DBBL gun has been rejected.

It is submitted by learned counsel for the petitioner that
petitioner being a farmer, apprehending insecurity to his life and



property, submitted an application for grant of licence for N.P. bore rifle and DBBL gun in the year 2011 before the Respondent No. 4, the District Magistrate, Rohtas, but inspite of several reminders and representations, the licence was not granted, leading to filing of C.W.J.C. No. 16314 of 2016 which was disposed of by a Bench of this Court vide order dated 19.12.2016 with a direction to the Licensing Authority Respondent No.4, the District Magistrate, Rohtas to take a final decision in the matter of the petitioner within a period of four months. Even after expiry of four months, when decision was not taken, an application for initiation of contempt proceeding bearing MJC No. 2976 of 2017 was filed, but in order to escape the rigors of the contempt proceeding, the impugned order has been passed. Hence, the present writ application.

Learned AC to SC 1 submits that the petitioner has not avail the remedy of appeal under Section 18 of the Arms Act, 1959.

In view of this Court the discretionary jurisdiction under Article 226 of the Constitution of India can usually be exercised when there is no alternative efficacious remedy is available. A useful reference may be made to the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors. reported in (1998) 8 Supreme Court Cases 1 wherein it has been



held that the High Court 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 but the 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. Paragraph 15 of the judgment reads as follows:

“15. 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 on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”



In view of the discussions made above, the present writ application is disposed of with a liberty to the petitioner to prefer an appeal against the impugned order before Appellate Authority within a period of three weeks of receipt/production of a copy of this order along with an application for condonation of delay.

It is expected from the Appellate Authority to consider the application for condonation of delay and dispose of the appeal within a period of eight weeks of its filing in view of the fact that this writ application remained pending before this Court.

(Dinesh Kumar Singh, J)

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CAV DATE	
Uploading Date	
Transmission Date	

