

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2182 of 2018

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Jitendra Kumar Singh, S/o-Sri Jwala Prasad Singh, Resident of D/1, Vijay Nagar, Hanuman Nagar, P.S.-Patrakar Nagar, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Home Secretary, Govt. of Bihar.
2. District Magistrate, Patna.
3. District Arms Magistrate, Patna.
4. Additional District Magistrate, (Arms), Patna.
5. Divisional Commissioner, Patna.
6. Sr. Superintendent of Police, Patna.
7. Sub-Divisional Magistrate, Patna Sadar.
8. S.H.O. Patrakar Nagar P.S., Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. B.N. Pandey
Mr. Hansa Jha

For the Respondent/s : Mr. Manoj Kumar, AC to GP 4

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 21-12-2018

Heard Mr. B. N. Pandey, learned counsel for the petitioner and Mr. Manoj Kumar, learned AC to GP-4.

The present writ application has been filed for a direction to Respondent No. 2, District Magistrate, Patna to take a final decision on the application submitted by the petitioner for grant of licence or endorsement of additional arms for N.P. Bore Revolver/Pistol on the existing licence of the petitioner for N.P. Bore Rifle bearing Licence No. 33/2004.

Factual matrix of the case is that the petitioner being a contractor associated with NTPC, was granted the licence



for rifle in the year 2004. Since the petitioner was facing difficulty in carrying rifle to different places in view of the nature of profession he is in, hence the petitioner submitted an application on 27.1.2014 for grant of licence for N.P. Bore Revolver/Pistol in prescribed Form A along with an affidavit before the District Magistrate, Patna, as contained in Annexure 1. Subsequently, the police report was submitted to the licensing authority in favour of the petitioner on 4.8.2014/9.9.2014.

Though initially under Arms Rules, 1962 (hereinafter referred to as the Rules, 1962) the application was submitted for grant of separate licence for revolver/pistol, but after coming into force of Arms Rules, 2016 (hereinafter referred to as Rules, 2016), the petitioner transmitted application to the licensing authority, District Magistrate, Patna through speed post on 28.12.2017, as contained in Annexure 3. Rule 18 of Rules, 2016 permits the licensee to acquire arms. The last proviso to the said Rule permits two years of grant of licence in Form II to V, subject to such endorsement on the licence at the time of grant to acquire additional arms or different arms, subsequent to grant of licence for particular arms, subject to the limitation of acquiring a maximum of three arms.

Subsequently, the petitioner submitted another



application on 24.1.2018 in view of the time prescribed under Schedule V of the Rules, 2016 along with Rupees Five Hundred bank challan as required fee for allied services as prescribed at Serial No. 5 of Table B of Schedule IV for addition of fire arm. The licence for the petitioner's NP bore rifle is valid till December, 2018 and Unique Identification Number (for short 'UIN') has been generated with regard to the licence of the petitioner being UIN No. 051880001632662014 dated 5.5.2017.

It is submitted by learned counsel for the petitioner that initially there was a requirement of getting separate licence for each arms, subject to the upper limit of three arms. Consequently, the petitioner applied for a separate licence for NP Bore rifle and pistol though he had a licence for NP Bore rifle since 2004. Subsequently, after coming into force of the Rules, 2016, the petitioner submitted a fresh application for addition of additional arms in view of last proviso of Rule 18 of the Rules, 2016 and he deposited the required fee as prescribed, but till date any decision has not been taken, though the time limit for such exercise or such service to be rendered by the licensing authority as per Schedule V – Sl. No. 7 of Rules, 2016 is seven days. Hence, the action or inaction of the respondent authorities is in absolute derogation of the provisions of the Act and Rules, 2016.



Learned AC to GP-4 submits that, at present, he is not having any instruction whether any decision has been taken regarding the application of the petitioner or not, but he further submits that if the decision has not been taken till date, it will be taken by the licensing authority within a reasonable time frame with regard to an addition of licence for revolver/pistol on the existing licence of the petitioner of NP Bore rifle.

The only issue involved in the present writ application is whether, after coming into force of Rules, 2016, a licensee has to apply for grant of separate licence for another arms or additional arms will be endorsed/added on the existing licence.

In exercise of the powers conferred by the various provisions of the Arms Act, 1959 (54 of 1959), Arms Rules, 1962 (hereinafter referred to as Rules, 1962) was superseded except with respect to the things done or omitted to be done before such supersession. Rules, 2016 came into force with the publication in the Gazette of India on 15.7.2016. Though the petitioner initially submitted an application for issuance of a separate licence on 27.1.2014, his claim ought to have been considered under Rules, 1962 as the saving clause saved the things which have been done or ought to have been done under the old Rule before its supersession. But in view of the fact that there was no provision for



consolidation of licences and issuance of one composite licence under Rules, 1962, the petitioner chose to submit the application on 28.12.2017 under the new Rule, hence the case of the petitioner will be covered under the provisions of Rules, 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 an extension by the licensing authority. 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.

The Rules, 2016 envisages various provisions to check arbitrary discretion of the licensing authority as well as to check the misuse of arms and ammunition and the terms of licences by the licensee. In order to enforce such check, under Rule 15 of Rules, 2016, incorporation has been made for maintenance of records in electronic format and consolidation of arms licence. Rule 15 directs for maintenance of records in electronic format and consolidation



of the licences.

Sub Rule (1) to (3) of 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, 2019, 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 stipulates the provision for consolidation of licences. Rule 15(4) provides for consolidation of licence allowing the licensee holding multiple licences in Form III to make an application before the concerned licensing authority, to consolidate the licence by making an application on or before the 1st day of April, 2019 for grant of single licence in respect of all the arms under his UIN.

It is made clear that the cut off date i.e. 1st day of April, 2017 as 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 Gazettee has now been substituted as 1st April, 2019 vide Ministry of Home Affairs, Notification No. G.S.R. 644(E) dated July 12, 2018 published in Gazettee of India on 13th July, 2018.

Though the present case is governed by Rules, 2016 but it is relevant to refer to Rule 54 of Rules, 1962 which contained the provision for renewal of arms licence. Sub-rule (5) and (6) were inserted by the notification being GSR 585 E dated 24th July, 2012 w.e.f. 25.9.2012 which makes it mandatory for the licensing authority for grant of licence and the renewing authority at the Centre or at the State level, while granting a licence or renewing a licence, as the case may be, to enter the data of the record in an electronic format duly approved by the Central Government or the State Government, as the case may be. The licensing authority and the renewing authority have further been mandated to enter such data as are required in an electronic automated system as developed by the National Informatic Centre for this purpose and the aforesaid electronic automated system shall generate a unique identification number without which no arms licence shall be considered as valid with effect from 1st October, 2015. Sub Rules (5) and (6) of Rule 54 of Rules, 1962 reads as follows:



“5. The licensing authority and the renewing authority at the Centre or at the State level, while granting a licence or renewing a licence, as the case may be, shall enter the data of the record in an electronic format duly approved by the Central Government or the State Government, as the case may be.

(6) The licensing authority and the renewing authority shall also enter such data as are required in an electronic automated system as developed by the National Informatic Centre for this purpose and the aforesaid electronic automated system shall generate a unique number without which no arms licence shall be considered as valid with effect from 1st October, 2015.”

Sub Rule (4) to (6) of Rule 15 of Arms Rules 2016 prescribes the provision of consolidation of licence, which 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.”



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 stipulated in any of the cancelled licences.

Rule 18 of the Rules, 2016 incorporates permission for possession of arms to be acquired subsequent to the grant of licence. 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.”

It appears that Rule 18 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 written representation of the licensee by the licensing authority after recording reasons for granting such an 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 a 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 arms 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 16 of Rules, 2016 casts duty on licensing authority under NDAL. Rule 16(1) mandates that while the licensing authority granting or renewing a licence or at the time of providing any allied service to any licensee, shall ensure that the data of the transaction approved by him is simultaneously updated in the electronic format locally and on the NDAL system. The proviso to Rule 16 stipulates that for failure on the part of the licensing authority to update such data in the electronic format, the licensee shall not be held accountable. 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 Rules, 2016 which prescribes the time limit for various services to be rendered by the licensing authority under Schedule II of the Rules. Column (1) of Schedule V stipulates 16 kinds of services. However Sl. No. 17 covers all other services not specified within Sl. Nos. 1 to 16 of Column (1), therefore, altogether 17 services have been prescribed in Schedule V. Column (2) of Schedule V prescribes nature of the services, Column (3) prescribes the specific Rule to which that service



relates to and Column (4) stipulates the time for rendering those services. Sl. No. 7 of Column (1) of Schedule V describes the nature of service as addition and deletion of weapon under Rule 18 and prescribes the licensing authority to do the same within seven days of receipt of the application. The case of the petitioner is also for addition of licence. Though Sl. Nos. 1 to 5 of Column (1) of Schedule V do not describe the services with regard to consolidation of licences under Sub-sections (4) to (6) of Rule 15, hence it gets covered under Sl. 17 of Column (1), which covers all the services which are not specified under Sl. Nos. 1 to 16 of Column (1) and that mandates the rendering of services within seven days of receipt of the application. Sl. No. 5 stipulates the nature of service as Endorsement of arms or ammunition on licence under Rule 18 and further, 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 7 days of the receipt of application.

Rule 27 of Rules, 2016 mandates that every licence granted or renewed under the Rules, 2016 will be chargeable with the fee specified in Schedule IV. In other words,



Schedule IV has been framed in exercise of power under Rule 27.

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/-.

It appears that in the present case, initially the application for grant of licence was made in 2014 but in 2017, much after coming into force of Rules, 2016, application was submitted for endorsement of the additional arms for NP Bore revolver and pistol and required fee for that was deposited, hence, it was expected from the licensing authority, the District Magistrate, Patna to pass an order considering the provision under Rule 15(4) to (6) and Rule 18 of Rules, 2016 but there is nothing on record to suggest that any exercise in this regard has been done.

It is a 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 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 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, it is expected from the licensing authority, District Magistrate, Patna, to take a decision on the application of the petitioner within the parameters of Rule 15(4) to (6), Rule 18 and Schedule V of Rules, 2016, within 7 days of the receipt/production of a copy of this order.

Accordingly, with the above observation and direction, this writ application is allowed.

(Dinesh Kumar Singh, J)

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