

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15185 of 2018

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Rajesh Kumar Son of Late Shiv Prashan Thakur, Resident of Village-
Rajpur, Police Station-Bihiyan (Bahoranpur, O.P.), District-Bhojpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Home Government of Bihar,
Patna.
3. The Divisional Commissioner, Patna Division, Patna.
4. The District Magistrate, Bhojpur (Ara).
5. The Superintendent of Police, Bhojpur (Ara).
6. The Sub-Divisional Officer Ara, District-Bhojpur (Ara).
7. The Dy. Superintendent of Police Ara, District-Bhojpur (Ara).
8. The Officer in-Charge, Police Station-Bihiyan (Bahoranpur), District-
Bhojpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhirendra Kumar, Advocate

For the Respondent/s : Mr. Nadim Seraj, GP-5
Mr. Shailesh Kumar, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

02/ 07-08-2018

Heard Mr. Dhirendra Kumar, learned counsel

for the petitioner and Md. Shailesh Kumar, AC to GP-5.

The present writ application has been filed for quashing the order dated 14.07.2018 passed in Arms Licence Case No. 127 of 2016 passed by Respondent No. 4, District Magistrate, Bhojpur at Ara –cum- licensing authority under the Arms Act, whereby the application of the petitioner for grant of licence for



DBBL gun has been rejected.

It is submitted by learned counsel for the petitioner that the father of the petitioner, late Shiv Prashan Thakur was a licensee having Licence No. 5/2009 for DBBL gun issued on 20.02.2009. The father of the petitioner used to reside in Assam but ultimately he came to his native village Rajpur in the district of Bhojpur, but due to illness he died on 10th September, 2011. Consequently, the DBBL Gun was deposited before Arms dealer on 14.10.2011. The petitioner made an application for grant of licence for DBBL gun in 2011 but it was kept pending, upon which the petitioner preferred writ application being CWJC No. 13526 of 2016 for a direction to the licensing authority to grant licence for DBBL gun under the heirloom policy. During pendency of the writ application the petitioner's application was rejected vide order dated 13.10.2016 but considering the whole issue a Bench of this Court quashed the order of the licensing authority and remitted back the matter to take a decision within a maximum period of three months. Thereafter, by the impugned order the application for grant of licence of the petitioner has been rejected vide order dated 14.07.2018. Hence, the present writ application.

It is further submitted by learned counsel for



the petitioner that the present order also does not depict that the licensing authority has considered the preference to be given to the heirs or nominee of the licensee as envisaged under Rule 25 of the Arms Rules, 2016.

Learned AC to GP-5 submits that the petitioner has not availed the statutory remedy of appeal.

This Court is not inclined to interfere on the sole ground that there is a statutory provision of appeal under Section 18 of the Arms Act, 1959 against the order passed by the licensing authority.

It is well settled law that usually the discretionary jurisdiction under Article 226 of the Constitution of India can be exercised when there is no alternative efficacious remedy. However, there are certain exceptions to this established principle of law which has been described by the Supreme Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others reported in (1998) 8 SCC 1. Paragraph 15 reads as follows:-

“Under Article 226 of the Constitution of India, 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



restriction one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar 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

In view of the discussion made above, the writ application is disposed of with liberty to the petitioner to prefer an appeal before the Appellate Authority, i.e., Divisional Commissioner, Patna Division, Patna within a period of three weeks from the date of receipt of a copy of this order along with application for condonation of delay. It is expected from the Appellate Authority to consider the application for condonation of delay in view of the fact that the writ application has been pending before this Court. It is further expected from the Appellate Authority to dispose of the appeal including the application for condonation of delay in filing the appeal within a period of eight



weeks of its filing.

It is made clear that this Court has not expressed any opinion on the claim of the petitioner or the merits of the impugned order.

(Dinesh Kumar Singh, J)

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