

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

WP(C).No. 2783 of 2014 (W)

PETITIONER :

**SEBASTIAN JOSEPH
S/O. LATE C.D. JOSPEH,
CHEMMANNUR HOUSE, CHEMBUKAVU
THRISSUR – 680 020.**

**BY ADVS.SRI.C.S.AJITH PRAKASH
SRI.C.S.YESUDAS
SRI.PAUL C. THOMAS
SRI.SHYNI PELEXY**

RESPONDENT(S) :

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY, HOME DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM – 695001.**
- 2. THE LAND REVENUE COMMISSIONER,
THIRUVANANTHAPURAM – 695001.**
- 3. THE DISTRICT MAGISTRATE AND THE DISTRICT COLLECTOR,
COLLECTORATE, THRISSUR - 680020**
- 4. THE ADDITIONAL DISTRICT MAGISTRATE,
COLLECTORATE, THRISSUR - 680020**
- 5. THE DISTRICT POLICE CHIEF,
OFFICE OF THE DISTRICT POLICE CHIEF,
THRISSUR – 680020.**

R1 TO R5 BY SR. GOVT. PLEADER SRI. JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-01-2015, ALONG WITH WP(C) NO. 29081/2014, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT P1 TRUE COPY OF THE CERTIFICATE ISSUED BY THE MINISTRY OF INDUSTRY, GOVERNMENT OF INDIA.
- EXHIBIT P2 TRUE COPY OF THE CERTIFICATE ISSUED BY THE CENTRAL BOARD OF EXCISE AND CUSTOMS MINISTRY OF REVENUE IS FROM RC.
- EXHIBIT P3 TRUE COPY OF THE CERTIFICATE ISSUED BY THE BUREAU OF INDIAN STANDARDS DATED 09-07-2013 TO THE MANAGING DIRECTOR OF THE COMPANY.
- EXHIBIT P4 TRUE COPY OF THE CERTIFICATE OF REGISTRATION UNDER THE KERALA VALUE ADDED TAX RULES 2005 ISSUED TO THE CHEMMANNOR GOLD REFINERY (P) LTD.
- EXHIBIT P5 TRUE COPY OF THE ABOVE LETTER DATED 30-04-1996 OF THE DISTRICT COLLECTOR, THRISSUR.
- EXHIBIT P6 TRUE COPY OF THE LETTER DATED 24-07-1996 REQUESTING THE DISTRICT COLLECTOR, THRISSUR TO FORWARD THE ORIGINAL ARMS LICENSE NO. 1394/TC BY THE 1ST RESPONDENT.
- EXHIBIT P7 A TRUE COPY OF THE LETTER DATED 21-08-1996 OF THE DISTRICT COLLECTOR.
- EXHIBIT P8 A TRUE COPY OF THE LETTER DATED 23-09-1998 OF THE 1ST RESPONDENT.
- EXHIBIT P9 A TRUE COPY OF THE G.O)RT. NO 4946/99/HOME DATED 23-10-1999.
- EXHIBIT P10 A TRUE COPY OF THE LETTER DATED 18-02-2000 OF THE 3RD RESPONDENT.
- EXHIBIT P11 A TRUE COPY OF THE G.O(R.T) NO. 1929/2000/ HOME DATED 16-05-2000.
- EXHIBIT P12 A TRUE COPY OF THE ORDER DATED 09-09-2004.
- EXHIBIT P13 A TRUE COPY OF THE ORDER DATED 04-03-2005 RENEWING THE LICENSE UP TO 31-12-2007.
- EXHIBIT P14 A TRUE COPY OF THE LICENSE NO. 1578/TSR DATED 14-03-2005 ISSUED IN FAVOUR OF THE WIFE OF THE PETITIONER.

(Contd...)

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- EXHIBIT P15 A TRUE COPY OF THE ORDER DATED 07-09-2009 OF THE 4TH
RESPONDENT.**
- EXHIBIT P16 A TRUE COPY OF THE APPLICATION DATED 30-12-2010 TO THE 3RD
RESPONDENT SEEKING TO RENEW THE ARMS LICENSE NO. 1394/TSR
UP TO 31-12-2013.**
- EXHIBIT P17 A TRUE COPY OF THE ORDER DATED 16-11-2012 OF THE 4TH
RESPONDENT.**
- EXHIBIT P18 TRUE COPY OF THE MEMORANDUM OF APPEAL DATED 05-04-2013
SUBMITTED BEFORE THE 2ND RESPONDENT BY THE PETITIONER.**
- EXHIBIT P19 TRUE COPY OF THE LETTER DATED 25-04-2013 ISSUED BY THE 2ND
RESPONDENT TO THE PETITIONER.**
- EXHIBIT P20 A TRUE COPY OF THE LETTER DATED 09-10-2012.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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P.R. RAMACHANDRA MENON J.

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2014

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Dated, this the 12th day of January, 2015

JUDGMENT

The petitioners herein are husband and wife respectively. The petitioner in W.P.(C) No. 2783 of 2014, i.e. husband, is the promoter and director of M/s Chemmannur Jewellers (Kerala) Pvt. Ltd. having jewellery shops in different parts of the country. The said petitioner is also stated as a member of a Rifle club and was having national licence of two pistols. It is stated that the licence was being renewed from time to time upto the year 2010. Ext. P15 is the last renewal in this regard. Seeking to have the licence renewed further, Ext. P16 application was submitted before the third respondent. The said application came to be rejected as per Ext. P17 order dated 16.11.2012, which in turn is under challenge in this writ petition, pointing out that there is no statutory remedy, since no appeal is provided in respect of 'national licence', more so when the rejection was made as per the 'direction' given by the State Government as referred to in Ext. P17. Ext. P20 is the instruction given by the State Government in this regard.

2. Coming to W.P.(C) No. 29081 of 2014, the petitioner is the wife of the petitioner in other case and the licence was granted in respect of one SBML gun. The said licence came to be issued in the name of the petitioner in the year 2005. Before expiry of the validity period, the petitioner preferred Ext. P16 application for renewal before the 3rd respondent, but the same came to be rejected as per Ext. P17 by the 4th respondent. Though the petitioner sought to prefer appeal against the said order, the same did not turn to be fruitful. The specific case of the petitioner is that, in spite of the clear finding arrived at by the appellate authority that the petitioner's case was genuine, the appeal came to be disposed of simply ordering 'remand' as per Ext. P21. The grievance of the petitioner is that, the matter has been remanded quite unnecessarily, which has only given rise to another round of litigation from the beginning, necessitating calling for a fresh report from the Police. As matter of fact, report from the Police is to the effect that there is no imminent threat to the life of the petitioner and as such, remand cannot advance the case projected by the petitioner in any manner.

3. Heard the learned counsel for the petitioner as well as the

learned Government Pleader at length.

4. Pursuant to the interim order dated 24.11.2014, a report has been filed before this Court along with the memo dated 17.12.2014 in W.P.(C) No. 29081 of 2014. The said report is only to the effect that there is no threat against the life of the applicant. It is also stated that a further enquiry with regard to the need of the weapon is being arranged and that the proceedings will be finalized at the earliest. Similarly, in the case filed by the husband i.e. the petitioner in W.P.(C) No. 2783 of 2014, a memo dated 06.12.2014 has been filed almost in similar lines to the effect that there is no imminent threat to the life of the applicant. The learned counsel for the petitioner points out that threat perspective as proved by the petitioner has not been considered in both the cases and that the factual position has been sought to be reiterated in the reply affidavit filed by the petitioner in response to the stand taken by the concerned respondent in the counter affidavit filed in W.P.(C) No. 2783 of 2014. The only reason pointed in Ext. P20 [in W.P.(C) No. 2783 of 2014] is to the effect that since the District Police Chief has not recommended the proposal for renewal of Arms, licence has to be rejected and it was accordingly that the

District Magistrate was instructed to cancel the licence and report compliance. This led to Ext. P17 order.

5. The learned counsel for the petitioner submits that the 4th respondent was virtually dancing to the tune of the instructions given by the Government. In other words, there is no independent application of mind while passing Ext. P17 order. It is also brought to the notice of this Court that the threat perspective is having different dimensions, which varies from case to case. How such application has to be considered has been explained by this Court at different points of time, including in **Ganesh Prasad Vs. Board of Revenue [2005 (2) KLT 645]** and also by the Delhi High Court, as per the verdict dated 09.09.2013 in W.P.(C) No. 1631 of 2012. The learned counsel for the petitioner also places reliance on the decision rendered by the Allahabad High Court in **Ganesh Chandra Bhatt Vs. District Magistrate, Almora [AIR 1993 Allahabad 291]** as to the various aspects to be considered in this regard.

6. The necessity to have licence, with reference to nature of business being conducted by the petitioners, is sought to be highlighted in W.P.(C) No. 2781 of 2014. The petitioners have

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exclusive business in processing of gold and silver and also hall marketing activities. As many as 12 units are in Kerala and in Tamil Nadu, involving around 50 tonnes of gold every year, worth about Rs. 18,000 Crores, which according to the petitioners account for 6% of Indian gold business. The threat perspective in the case of the petitioners is extremely on the high level in graph. It is also pointed out that the petitioners' firm is the only Government of India - approved gold refinery in South India, who is handling the Government and Devaswom Board works also. Gold and silver articles are brought to the factory with the police escort and armed protection and once the police party leaves the premises, it is the headache of the petitioners' firm to protect the gold and silver in their custody.

7. After hearing both the sides, this Court finds that the manner in which the appeal of the petitioner in W.P.(C) No. 29081 of 2014 was finalized by the second respondent vide Ext. P21 order, by way of a casual exercise cannot, but be deprecated. But since it is only an order of remand, this Court does not find it necessary to cause the matter to be reconsidered by the second respondent. In view of the stand taken by the police, this Court

does not find it necessary to cause any further police enquiry or verification and that the matter has to be considered by the licencing authority and a 'speaking order' has to be passed with reference to the law declared by this Court and the other High Courts as mentioned above, after affording an opportunity of hearing to the petitioner. Similarly, in the case of the petitioner is W.P.(C) No. 2783 of 2014, as contended, in the case of the 'national licence', only 'information of the Government' is necessary before the licence is renewed or suspended. Instead of satisfying the said requirement, the first respondent has simply stepped into the shoes of the licensing authority and has rejected the same as per Ext.P20, simultaneously directing the licensing authority to cancel or remand licence and report compliance. This has been acceded to and the renewal application has been dismissed by the District Magistrate as per Ext. P17 order, in a quite mechanical manner.

8. In the above facts and circumstances, Exts. P17 and P20 are hereby set aside. The licensing authority in both the cases is directed to reconsider the matter with regard to the renewal of the licence sought for by the petitioner, in the light of the above

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observations and also in the light of the binding precedents. The proceedings as above shall be completed, as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment.

sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

kmd