

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

WP(C) .No. 4603 of 2014 (A)

PETITIONER(S) :

JOSE KUTTIYANY,
S/O.LATE JOSEPH, AGED 73 YEARS,
ADVOCATE, RESIDING AT KUTTIYANY HOUSE,
THODUPUZHA, IDUKKI DISTRICT.

BY ADVS.SRI.ABRAHAM MATHEW (VETTOOR) ,
SMT.ELIZABETH OLIVER &
SRI.SRI.ANIL ABEY JOSE.

RESPONDENT(S) :

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1. LAND REVENUE COMMISSION,
(APPELLATE AUTHORITY UNDER ARMS ACT 1959) ,
PUBLIC OFFICE BUILDINGS,
MUSEUM JUNCTION, THIRUVANANTHAPURAM, PIN: 695 001.
 2. THE DISTRICT COLLECTOR (DISTRICT MAGISTRATE) ,
CIVIL STATION, PAINAVU, IDUKKI,
PIN: 685 602.
 3. ADDITIONAL DISTRICT MAGISTRATE,
CIVIL STATION, PINAVU, IDUKKI,
PIN: 685 602.
 4. THE SUPERINTENDENT OF POLICE,
IDUKKI DISTRICT, CIVIL STATION, PINAVU,
IDUKKI, PIN: 685 602.

BY GOVERNMENT PLEADER SRI.NOUSHAD THOTATTHIL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10/04/2015, THE COURT ON 28-05-2015 DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT.P1: TRUE COPY OF THE ORDER NO.E2/794/08/D.DIS PASSED BY THE
3RD RESPONDENT DATED 18/2/2010.
- EXT.P2: TRUE COPY OF THE STATUTORY APPEAL UNDER SECTION 18 OF THE
ARMS ACT, 1959 FILED BEFORE THE 1ST RESPONDENT DATED
22/11/2010.
- EXT.P3: TRUE COPY OF THE ORDER NO.LR(A) 5-48590/2010 PASSED BY
THE 1ST RESPONDENT UNDER 06/06/2012.
- EXT.P4: TRUE COPY OF THE JUDGMENT PASSED BY THIS HON'BLE COURT IN
WPC 10533/2013 DATED 11/4/2013.
- EXT.P5: TRUE COPY OF THE ORDER NO.E2-21081/2011/KDIS PASSED BY
THE 2ND RESPONDENT DATED ../12/2013.
- EXT.P6: TRUE COPY OF THE GOVERNMENT CIRCULAR NO.LR(A5)
13243/2003/L.DIS DATED 19/5/2003.
- EXT.P7: TRUE COPY OF THE SEZURE REPORT IN O.R. NO.9/2009
REGISTERED BY THE FOREST RANGE OFFICER, KOLLAMKODE DATED
09/06/2009.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J

WPC No.4603 of 2014

Dated this the 28th day of May, 2015

JUDGMENT

Aggrieved by Ext.P5 order by which the application of the petitioner for renewal of arms license was rejected, the petitioner has come up before this Court.

2. According to the petitioner, the petitioner has been holding an SPBL Gun on the strength of the license No.BL/646/TDA/ID for the SPBL Gun granted to him in the year 1970 and he has been renewing the license from time to time and it was in force till 31.12.2007. The petitioner made an application dated 3.1.2008 to the third respondent for renewal of his gun license. That authority kept the application pending for 25 months and ultimately rejected the same as per Ext.P1 order. The petitioner appealed against the said order before the 1st respondent and Ext.P3 order dated 6.6.2012 was passed remanding the matter for further consideration by the 2nd respondent on the basis of the observations and findings rendered by

the appellate authority. As the 2nd respondent did not consider the application even after such specific directions issued by the 1st respondent, the petitioner filed WPC No.10533/2013 before this Court which resulted in Ext.P4 judgment dated 11.4.2013. The petitioner had produced copy of the judgment along with the copy of the writ petition before the 2nd respondent for due consideration of the matter. However, ignoring the specific directions of this Court and that of the 1st respondent, the 2nd respondent has now passed Ext.P5 order rejecting the application for renewal of license merely on the ground that he has received some adverse reports from the DFO, Nenmara. Hence, the writ petition.

3. In the counter affidavit filed by the first respondent, it was contended that the Divisional Forest Officer, Nenmara has reported that the petitioner is an accused in O.R.9/1999 registered at Kollengode Range and also suspected in O.R.No.14/2008 in connection with ganja cultivation in the above range. It was contended that the petitioner was heard on 31.7.2013 and

considering the report of the Divisional Forest Officer, Nenmara, the first respondent has rejected the petition for reinstating the suspended license of the petitioner.

4. The third respondent, who has filed a separate counter affidavit, contended that O.R.No.9 of 2009 was registered against the petitioner alleging offences under section 27 of the Kerala Forest Act and the charge against him is that he had unlawfully entered in the land notified by the Government as paddy land and protected as reserve forest and has cleared the undergrowth and even constructed a solar fencing in the land reduced to his unlawful possession. It was further contended that the said respondent has every reason to believe that by allowing the petitioner to possess a gun, further offences affecting the mankind, the environment and the forest wealth are likely. The petitioner was involved in forest offence and is suspected in yet another case; it was contended.

5. Arguments have been heard.

6. A learned Single Judge of this Court in **Chandran**

Nair v Additional District Magistrate (2015(1) KLT 41)

has observed that a combined reading of Sections 14 and 15 of the Arms Act, 1959 would indicate that once a license is granted under the Act, the same shall be renewed from time to time unless there exists a ground for refusal as enumerated under S.14 of the Act. It was further observed that the protection to life and property of a citizen is the responsibility of the State; and it is only when a person apprehends that the machinery of the State may not come to his aid to protect his life and property, he/she applies for a license under the Act. It was further observed that the subjective satisfaction of the authorities under the Act that there is no threat to the life and property of the applicant may or may not be correct; and when the applicant feels that there is threat to his life and property, there is no reason for the State to risk his life and property.

7. The learned counsel for the petitioner would submit a license granted under the Arms Act cannot be cancelled on the ground of mere involvement in a criminal

case or pendency of the criminal trial. It was argued that apprehension of misuse of fire arm by the licensee cannot be readily inferred on account of a mere involvement in a criminal case. A reading of Section 17 of the Arms Act would indicate that the arms license can be cancelled or suspended if the licensing authority deems it necessary for the security of the public peace or public safety to suspend or revoke the license. In the present case, while passing the impugned order, none of the authorities has recorded the finding as to how and under what circumstances the possession of arms license by the petitioner is detrimental to the public peace or public security and safety. Merely because a criminal case is pending, the provisions of Section 17 of the Arms Act will not be attracted. To attract the provisions of Section 17 of the Arms Act with regard to public peace, security and safety, it shall always be incumbent on the authorities to record a finding that how, under what circumstances and in what manner the possession of arms license would be detrimental to public peace, safety and security.

8. In the absence of such finding, without any circumstances endangering public peace, safety and security, the provisions under Section 17 of the Arms Act shall not be pressed into service merely on the ground of pendency of a criminal case. The right to life and liberty are guaranteed under Article 21 of the Constitution of India and the arms licenses are granted for personal safety and security after due enquiry by the authorities in accordance with the provisions contained in Arms Act, 1959. The provisions of the Arms Act with regard to suspension or cancellation of Arms license cannot be invoked lightly in an arbitrary manner. The provision should be construed strictly and not liberally. The conditions provided in the statute should be satisfied by the authorities before proceeding ahead to cancel or suspend an arms license. The authorities have to record the finding based on material evidence with regard to breach of public peace, safety and security while cancelling the arms license.

9. The learned Government Pleader heavily relied on

the Circular No.V-11016/16/2009 Arms dated 31.3.2010 issued by the Central Government and Circular No.76689/F1/09/Home dated 14.9.2010 issued by the State Government imposing restrictions on the renewal of arms license. The argument of the State cannot be countenanced as it is trite that executive orders cannot override the express provisions of a statute. Therefore, I do not see any justifiable reason not to follow the decision in *Chandran Nair's case* (cited supra). The impugned order does not reflect whether any of the grounds made mention of in Section 14 of the Act was there for refusing the license. The license was refused solely for the reason that the petitioner was not facing any imminent threat or danger to his life.

10. The respondents do not have a case that the arms with respect to which license have already been granted have been misused by the petitioner at any point of time either in the commission of offence or otherwise. Therefore, this Court is of the definite view that the matter requires a re-look by the respondents.

In the result, this writ petition is disposed of as under:

Ext.P5 order is quashed. The second respondent is directed to consider whether any ground as enumerated under Section 14 of the Act for refusing license to the petitioner or under Section 17 of the Act for cancelling the arms license to the petitioner. If no such circumstances are existing, the application shall be allowed and license shall be renewed. The entire exercise shall be completed within a period of one month from the date of receipt of a copy of this judgment.

**SD/- A.V.RAMAKRISHNA PILLAI
JUDGE**

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true copy

PS.TO JUDGE