

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WP(C) .No. 19715 of 2006 (V)

PETITIONER(S) :

N.A.MUHAMMED SALIH,
SON OF LATE N.A.ABDULLA HAJI, RAHMATH MANZIL
NAYANMARMOOLA, VIDYANAGAR, KASARAGOD.

BY ADVS.SRI.T.M.SREEDHARAN
SMT.C.K.SHERIN

RESPONDENT(S) :

1. THE ADDITIONAL DISTRICT MAGISTRATE,
KASARAGOD.
2. THE COMMISSIONER OF LAND REVENUE,
PUBLIC OFFICE BUILDING, MUSEUM JUNCTION
THIRUVANANTHAPURAM-33.

RR. BY ADV.SOJAN JAMES, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

W.P(C)NO.19715/2006

APPENDIX

PETITIONERS EXHIBITS

EXT.P1 - TRUE COPY OF ORDER NO.D.Dis .8776/05/02 DATED
20.5.2005 OF THE 1ST RESPONDENT

EXT.P2 - TRUE COPY OF SHOW CAUSE NOTICE NO.D2/23060/05
DATED 5.6.2005 ISSUED BY THE 1ST RESPONDENT TO THE
PETITIONER

EXT.P3 - TRUE COPY OF REPLY DATED 22.6.2005 SUBMITTED BY
THE PETITIONER TO THE 1ST RESPONDENT

EXT.P4 - TRUE COPY OF LETTER DATED 18.8.2005 SUBMITTED BY
PETITIONER TO THE FIRST RESPONDENT

EXT.P5 - TRUE COPY OF ORDER NO.02/23060/05 DATED 21.11.2005
OF THE FIRST RESPONDENT

EXT.P6 - TRUE COPY OF APPEAL MEMORANDUM DATED 26.12.2005
SUBMITTED BEFORE THE SECOND RESPONDENT BY THE PETITIONER

EXT.P7 - TRUE COPY OF ORDER NO.LR.A5-610/2006 DATED
23.06.2006 OF THE SECOND RESPONDENT

RESPONDENTS EXHIBITS

NIL

TRUE COPY

sks/-

P.A. TO JUDGE

ANIL K.NARENDRAAN , J.

W.P.(C)No. 19715 OF 2006

Dated this the 11th day of August, 2015

JUDGMENT

The petitioner has filed this writ petition seeking a writ of certiorari to quash Ext.P5 order passed by the first respondent and Ext.P7 order passed by the second respondent, and seeking a writ of mandamus commanding the first respondent to grant extension of time to procure the gun licence within a reasonable time.

2. Going by the averments in the writ petition, the petitioner applied for grant of gun licence. By Ext.P1 proceedings dated 20.5.2005, the first respondent granted him licence to possess one pistol with validity for Kasaragod district up to the period ending on 31.5.2008. By the aforesaid order the petitioner was permitted to acquire one N.P.Bore Pistol from the defence factory and produce it before the first respondent, within three months from the date of the order, for making necessary entries in the gun licence and arms register.

3. According to the petitioner, after the issuance of Ext.P1, he met with an accident and therefore he could not

produce the gun before the first respondent within the stipulated period of three months in Ext.P1. Immediately after the issuance of Ext.P1, the petitioner was issued with Ext.P2 show cause notice dated 6.6.2005 of the 1st respondent proposing to cancel Gun Licence No.3781/KAS, since he was involved in a forest case, namely, O.R.No.16/05, registered under Sections 27 and 61A of the Kerala Forest Act, 1961.

4. On receipt of Ext.P2 show cause notice, the petitioner submitted Ext.P3 reply dated 22.6.2005 before the first respondent. He has also submitted Ext.P4 request dated 18.8.2005 before the first respondent for grant of 6 months time to produce the gun. But, first respondent by Ext.P5 order dated 21.11.2005 cancelled the gun licence, mainly on the ground that there was a forest offence pending against the petitioner, which is registered as O.R.No.16/05, under Sections 27 and 61A of the Kerala Forest Act. Aggrieved by Ext.P5 order, the petitioner filed Ext.P6 appeal before the second respondent. But, Ext.P6 appeal was dismissed by Ext.P7 order dated 23.6.2006 of the 2nd

respondent on the ground that the petitioner is involved in a forest offence and that, he failed to procure the weapon within the time allowed. Aggrieved by Exts.P5 and P7 orders, the petitioner has approached this Court in this writ petition seeking various reliefs.

5. A counter affidavit has been filed on behalf of the second respondent contending, inter alia, that the licence was cancelled since the petitioner is involved in a forest offence and was arrested on 26.05.2005 by the Forest Range Officer. Since O.R.No.16/05 has already been registered against the petitioner under Sections 27 and 61A of the Kerala Forest Act, the 2nd respondent found that the extension of time sought for acquiring the gun need not be entertained. According to the second respondent, since the petitioner is involved in a criminal offence, the grant of gun licence is not desirable. Hence no interference of this Court under Article 226 of the Constitution of India is warranted.

6. I heard the arguments of the learned counsel for the

petitioner and also the learned Government Pleader appearing for the respondents.

7. The sole issue that arises for consideration in this Writ Petition is as to the legality of Ext.P5 order passed by the first respondent and Ext.P7 order passed by the second respondent.

8. As borne out from the pleadings and documents on record, by Ext.P1 proceedings dated 20.5.2005 of the first respondent, the petitioner was granted licence to possess one pistol and he was permitted to acquire one N.P.Bore Pistol from the defence factory and produce it before the first respondent, within three months from the date of that order. Before the expiry of the aforesaid period of three months, the petitioner was issued with Ext.P2 show cause notice dated 6.6.2005 of the 1st respondent proposing to cancel the gun licence, since he was involved in O.R.No.16/05 registered under Sections 27 and 61A of the Kerala Forest Act. On receipt of Ext.P2 show cause notice, the petitioner submitted Ext.P3 reply, which was followed by Ext.P4 request for grant of 6 months time to produce the gun. But, first

respondent by Ext.P5 order cancelled the gun licence, mainly on the ground that there was a forest offence pending against the petitioner. Ext.P6 appeal filed by the petitioner has also ended in dismissal by Ext.P7 order of the 2nd respondent on the ground that, the petitioner is involved in a forest offence and that, he failed to procure the weapon within the time allowed.

9. The issue raised in this Writ Petition is squarely covered in favour of the petitioner by the Judgment of this Court in **Jose Kuttiyany v. Land Revenue Commissioner and another (2015 (3) KHC 831)** in which a learned Judge of this Court held that, for variation, suspension or revocation of gun licence, it shall always be incumbent on authorities to record a finding that how, under what circumstances and in what manner the possession of arms licence would be detrimental to public peace, safety and security. Merely because a criminal case is pending, is not a reason to reject application for renewal of gun licence. Para.7 of the judgment reads thus;

“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."

10. The reasoning in Ext.P5 order passed by the first respondent and Ext.P7 order passed by the second respondent cannot be sustained in view of the Judgment of this Court in Jose Kuttiyany's case (supra). Therefore, Ext.P5 order passed by the

first respondent and Ext.P7 order passed by the second respondent are set aside and the first respondent is directed to reconsider the matter afresh in order to find out whether there is any ground as enumerated under Section 14 of the Arms Act, 1959 for cancelling or revoking the licence issued to the petitioner under Section 17 of the Act and also whether the petitioner can be granted extension of time to procure the pistol. The exercise in this regard shall be completed within a period of three months from the date of receipt of the certified copy of this judgment.

The writ petition is disposed of accordingly. No order as to costs.

Sd/-
ANIL.K.NARENDRA
JUDGE

sks/