

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 19253 of 2012 (F)

PETITIONER(S):

**MATHEW. K.T., AGED 69 YEARS,
S/O. THOMAS, KINATTUKARA, KALAKETTY,
P.O. THIDANADU, PIN-686 508.**

BY ADV. SRI.B.JAYASANKAR.

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY, HOME DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. ADDITIONAL DISTRICT MAGISTRATE ,
COLLECTORATE BUILDINGS, KOTTAYAM, PIN-686 002.**
- 3. THE SUPERINTENDENT OF POLICE ,
KOTTAYAM DISTRICT, KOTTAYAM-686 002.**

BY GOVT. PLEADER SRI.NOUSHAD THOTTATHIL.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 30/03/2015, THE COURT ON 10/04/2015 DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE NOTICE DATED 28/09/2011 ISSUED BY THE
2ND RESPONDENT'S OFFICE TO THE PETITIONER.
- EXT.P2 COPY OF THE PROCEEDING NO.H2/35277/2010/K.DIS.
DATED 14/11/2011 OF THE 2ND RESPONDENT.
- EXT.P3 COPY OF THE REPRESENTATION DATED 14/10/2011 BY THE
PETITIONER TO THE 2ND RESPONDENT.
- EXT.P4 COPY OF THE CIRCULAR NO.V-11016/16/2009-ARMS MINISTRY
OF HOME AFFAIRS IS-II DIVISION/ARMS SECTION DATED 31/03/2010.
- EXT.P5 COPY OF THE CIRCULAR NO.76689/F1/09/HOME DATED 14/09/2010
ISSUED BY THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 19253 of 2012

Dated this the 10th day of April, 2015

J U D G M E N T

Ext.P2 proceedings, by which the petitioner's application for renewal of arms licence was rejected by the 2nd respondent, is under challenge.

2. The petitioner alleges that he has been granted arms licence to hold gun for protection of his life and property. The licence was issued to him after conducting a thorough investigation and enquiry about his character and antecedents and after a long process. He submitted an application for renewal of licence when it was in force. Subsequently, he was issued with a notice to appear for hearing before the licensing authority. Later, he was served with Ext.P2 proceedings, whereby his licence was cancelled on the basis of Ext.P5 circular, which restricts arm licence/renewal of licence to the persons, who may face or perceive grave and imminent threat to their life

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alone, which, according to the petitioner, is illegal, arbitrary and against the provisions of the Arms Act, 1959 (for short, "the Act") and the Rules framed thereunder. It is with this background, the petitioner has come up before this Court.

3. In the counter affidavit filed by the 2nd respondent, they justified Ext.P2 proceedings on the ground that the petitioner is not facing any serious threat to his life.

4. Arguments have been heard.

5. 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 licence 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;

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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 licence 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.

6. The learned Government Pleader heavily relied on the Circular No.V-11016/16/2009 Arms dated 31.03.2010 issued by the Central Government and Circular No.76689/F1/09/Home dated 14.09.2010 issued by the State Government imposing restrictions on the renewal of arms licence. 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 (cited supra) case. The impugned order does not reflect whether any of the

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grounds made mention of in Section 14 of the Act was there for refusing the licence. The licence was refused solely for the reason that the petitioner was not facing any imminent threat or danger to his life. Therefore, this Court feels that the matter requires a reconsideration by the respondent concerned.

In the result, the writ petition is disposed of as under;

- Ext.P2 is quashed.
- The 2nd respondent is directed to consider whether there is any ground as enumerated under Section 14 of the Act for refusing licence to the petitioner. If no such ground exists, the application shall be allowed and licence 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

bka/-