

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

WP(C).No. 31651 of 2011 (F)

PETITIONER :

**A.GIRISH, AGED 31 YEARS,
S/O.A.C.KUNHIKANNAN NAIR, BELUR, HOSDURG TALUK,
PARAKKALAI P.O., (VIA) ANANDASHRAM,
KASARAGOD DISTRICT-671 531.**

**BY ADVS.SRI.K.SHRIHARI RAO
SMT.N.SHOBHA
SRI.K.S.BALAKRISHNAN**

RESPONDENT(S):

- 1. LAND REVENUE COMMISSIONER,
THIRUVANANTHAPURAM-695 001.**
- 2. THE DISTRICT MAGISTRATE,
KASARAGOD-671 121.**

BY SR GOVERNMENT PLEADER SRI.SOJAN JAMES

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01-04-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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WP(C).NO.31651/2011

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT-P1. TRUE COPY OF THE ORDER DATED 27/12/2010 OF THE 2ND
RESPONDENT.

EXHIBIT-P2. TRUE COPY OF THE MEMORANDUM OF APPEAL DATED 19.2.2011 OF
THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT-P3. TRUE COPY OF THE ORDER DATED 26/9/2011 OF THE 1ST
RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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C.K. ABDUL REHIM, J.

W.P.(C)No.31651 of 2011

Dated this the 1st day of April, 2015

JUDGMENT

The petitioner is approaching this court aggrieved by the rejection of his application for granting a Gun licence, by the 2nd respondent, which is confirmed in appeal by the 1st respondent. Case of the petitioner is that he hails from family traditionally engaged in agriculture, having extensive areas of agricultural land in Belur Village in Hosdurg Taluk of Kasaragod District. It is stated that the petitioner is also managing extensive areas of agricultural land owned by his siblings, apart from the land in ownership in his own name. According to the petitioner, the locality is a remote village and is situated near the forest and there is constant threat from wild animals and birds to the agricultural crops. It is mentioned that the deceased father of the petitioner was holding a Gun licence, since the last 50 years, for the purpose of crop protection, with licence

No:GLNo.949/Hosdurg. It is after the death of petitioner's father on 26/04/2010, he had applied for the Gun licence.

2. In Ext.P1 order of the 2nd respondent it is mentioned that the Tahsildar, Hosdurg Taluk had recommended for grant of the Gun licence stating that the agricultural crops are facing threat from wild animals such as monkeys, pigs etc. It was also reported by the Tahsildar that there is no reserve forest near to the property of the petitioner. It is evident from Ext.P1 order that, during the personal hearing conducted, the petitioner had produced various documents such as decision from the Board of Revenue and Rulings of this court. But the 2nd respondent observed that those are not having any application in the case, because the guidelines issued by Ministry of Home Affairs, Government of India indicates that application for arms licence may be considered from persons facing grave and imminent threat to their lives and property. The 2nd respondent relied on a report submitted by the

Superintendent of Police, Kasaragod District stating that at present there is no attack of wild animals to the agricultural crops of the applicant and also the report of the DFO, Kannur to the effect that grant of licence may affect wild life protection. Hence the application was rejected stating that threat of wild animals has been denied by the Superintendent of Police and the DFO.

3. Appeal filed against Ext.P1 was rejected by the 1st respondent through Ext.P3 order. During personal hearing before the appellate authority the petitioner submitted that there is menace of wild boars and wild monkeys in the agricultural land and the Gun is required to scare away them. It was pointed out that the petitioner's father as well as his grandfather was holding Gun licences and that there was no criminal case charged against the petitioner at any point of time. But the 1st respondent-appellate authority had deviated totally from the contentions as well as the materials based on which the 2nd respondent had rejected the application and observed as follows;

“The appellant has failed to prove that he is at personal danger from wild animals in the reserve forest nearby. The Superintendent of Police has not mentioned of any threat the applicant faces in this regard. Even the Tahsildar who has recommended grant of licence has not indicated that the appellant faces any threat to his life. The District Collector is right in relying upon the guidelines from the MHA that licence should be given only to those applicants who face a grave and imminent threat to their lives.”

4. Both the authorities have failed to consider the fact that the petitioner is owning and managing vast extent of agricultural land and that his father as well as grandfather were holding Gun licences. It is evident that the Tahsildar had recommended for grant of licence stating that the agricultural crops of the applicant is facing threat from wild animals such as monkeys, pigs etc. But the 2nd respondent had rejected the application observing that the Superintendent of Police had reported that there is no attack of wild animals towards agricultural crops at present. The 1st respondent appellate authority had not considered the appeal based

on the relevant contentions and merits of the issue. He had pursued the matter on the premise that Gun licence is not required because there is no threat to the life of the petitioner. But it is evident that the licence was applied for the purpose of protection of the agricultural operations and the requirement for having the Gun was projected only to protect the agricultural crops from the attack of wild animals.

5. In the decision of this court in **Ganesh Prasad v. Board of Revenue (LR) [2005(2) KLT 645]** it is held that the District Collector cannot refuse licence on the sole ground that Superintendent of Police had not recommended for the same. This court observed that, each application for licence has necessarily to be considered on its own individual merits. The District Collector must bear in mind the relevant facts and circumstances and must refuse to be guided by irrelevant facts. He cannot abuse the discretionary power. On the other hand, he should apply his mind to the individual facts presented by the applicant, before he takes a

decision as to whether the application should be granted or refused, is the findings.

6. In the impugned order passed by the 2nd respondent it is evident that, the District Collector had solely relied on the reports of the Superintendent of Police and the DFO, whereas he had totally ignored the report of the Tahsildar. There is no evidence to show that the District Collector had examined the factual aspects like the extent of agricultural land held by the petitioner and whether there was any instances of threat from wild animals during the past period. He has also not taken into consideration the fact that the petitioner's predecessors in interest were holding Gun licences for the protection of agricultural crops. As already observed, the appellate authority went highly erred in considering the relevant contentions raised against Ext.P1 order. On the other hand, he was carried away by irrelevant considerations which are not applicable on the case at hand. The appellate order suffers from non-application of mind and proper advertance or consideration of the relevant

factors.

7. Learned counsel for the petitioner had placed a document for perusal of this court, which is an information received under the Right to Information Act from the 2nd respondent. It would indicate that 22 new Gun licences have been issued from the office of the 2nd respondent within the period from 01/01/2011 and 02/07/2014, and out of this 6 licences were granted for agricultural purposes. The above information would indicate that the 2nd respondent was granting Gun licences for the purpose of agricultural protection. But in the case at hand no proper consideration was made by the authorities based on the need urged by the petitioner.

8. Under the above mentioned circumstances, this court is of the considered opinion that the matter requires reconsideration by the licencing authority.

9. Therefore, this writ petition is allowed and Exts.P1 and P3 are hereby quashed. The 2nd respondent is directed to reconsider the application submitted by the petitioner seeking for Gun licence, afresh and shall take a

decision based on settled legal position after taking note of the observations contained herein above.

A fresh decision shall be taken by disposing the application afresh, after affording an opportunity of personal hearing to the petitioner. A decision in this regard shall be taken at the earliest possible, at any rate within a period of one month from the date of receipt of copy of this judgment.

**Sd/-C.K. ABDUL REHIM
JUDGE**