

THE HON'BLE SRI JUSTICE A.V. SESA SAI

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WRIT PETITION No.31001 OF 2015
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ORDER:

This writ petition is filed under Article 226 of the Constitution of India for the following relief:

“to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the order of the 2nd Respondent dated 18-05-2015 in No.C1/306312014-M as illegal, null, void and arbitrary and consequently direct the 2nd Respondent to consider the application for renewal of arms license of the Petitioner bearing No.NZB/2855/1982 in the light of the report submitted by the Superintendent of Police, Nizamabad dated 01-02-2015 and to pass such other appropriate orders as are deemed fit and proper in the interests of justice.”

2. Heard Sri K.Durga Prasad, learned counsel appearing for the petitioner and learned Government Pleader for Home appearing for the respondents.

3. According to the petitioner, he is permanent resident of Sirikonda Village and has agricultural lands and is doing agriculture and he is President of District Congress Committee. It is further pleaded that the authorities granted arms licence in his favour in 1982 with License No.NZB/2855/82 and the same being valid till 31.12.2014. The petitioner herein made an application for renewal of his arms licence for a further period of two years. The Superintendent of Police, Nizamabad, vide Letter No.G2/05/Arms/2015, dated 01.02.2015, recommended for renewal of armed licence in favour of the petitioner herein. While recommending the case of the petitioner herein for renewal of arms licence, the Superintendent of Police also enclosed the report of the Station House Officer, Nizamabad Town Police Station with specific remarks of the SDPO, Nizamabad. Subsequently,

vide proceedings No.C1/3063/2014-M, dated 18.05.2015, the District Collector, Nizamabad District – 2nd respondent herein, cancelled the licence granted earlier in favour of the petitioner herein.

4. Calling in question the validity and sustainability of the order passed by the 2nd respondent herein, the present writ petition has been filed.

5. During the course of arguments, it is contended by the learned Government Pleader for Home that without availing alternative remedy of appeal as provided under Section 18 of the Arms Act, 1959 read with Rule 5 of the Arms Rules, 1962, the petitioner herein has directly approached this court under Article 226 of the Constitution of India, as such, the present writ petition is not maintainable.

6. Section 18 of the Arms Act, 1959 reads as under:

“18. Appeals.—(1) Any person aggrieved by an order of the licensing authority refusing to grant a licence or varying the conditions of a licence or by an order of the licensing authority or the authority to whom the licensing authority is subordinate, suspending or revoking a licence may prefer an appeal against that order to such authority (hereinafter referred to as the appellate authority) and within such period as may be prescribed:

Provided that no appeal shall lie against any order made by, or under the direction of the Government.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period.

(3) The period prescribed for an appeal shall be computed in accordance with the provisions of the Indian Limitation Act, 1908 (9 of 1908), with respect to the computation of periods of limitation thereunder.

(4) Every appeal under this section shall be made by a petition in writing and shall be accompanied by a brief statement of the reasons for the order appealed against where such statement has been furnished to the appellant and by such fee as may be prescribed.

(5) In disposing of an appeal the appellate authority shall follow such procedure as may be prescribed: Provided that no appeal shall be disposed of unless the appellant has been given a reasonable opportunity of being heard.

(6) The order appealed against shall, unless the appellate authority conditionally or unconditionally directs otherwise, be in force pending the disposal of the appeal against such order.

(7) Every order of the appellate authority confirming, modifying or reversing the order appealed against shall be final.”

7. It is very much evident from a reading of the above provision of law that as against the orders of the licensing authority, the petitioner herein has the statutory remedy of appeal before the Appellate Authority as provided under Section 18 of the Arms Act, 1959 read with Rule 5 of the Arms Rules, 1962. In view of the said alternative remedy of appeal available to the petitioner herein, this court is not inclined to entertain the present writ petition. However, in the facts and circumstances of the case, this court is inclined to permit the petitioner herein to file statutory appeal against the orders impugned.

8. For the aforesaid reasons, writ petition stands disposed of, keeping it open for the petitioner herein to file statutory appeal as provided under Section 18 of the Arms Act, 1959 read with Rule 5 of the Arms Rules, 1962, within a period of one week from the date of receipt of copy of this order. If any such appeal is filed by the petitioner herein within the stipulated time, the same be considered and appropriate orders be passed within a period of two weeks thereafter, after giving notice and opportunity of being heard to the petitioner herein. It is also open for the petitioner herein to place the relevant material before the Appellate Authority in respect of his request and the claim.

9. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

22nd September, 2015
ss

A.V.SESHA SAI, J