

***THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

+W.P.No.39962 of 2012

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%14.6.2016

Kolan narasimha Reddy

...Petitioner

VERSUS

\$ The State of Andhra Pradesh
Represented by its Principal Secretary (Home),
Secretariat Buildings, Hyderabad and others.

...Respondents

< GIST:

> HEAD NOTE:

!Counsel for Petitioner: Sri Ramana Allu

^Counsel for Respondents: Government Pleader for Home

? Cases referred

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

WRIT PETITION No.39962 of 2012

ORDER:

In the present writ petition challenge is to the order of the State Government issued vide G.O.Rt.No.2262, Home (ARMS) Department, dated 03.12.2012.

2. Petitioner herein filed application before the Commissioner of Police, Cyberabad Commissionerate/second respondent herein for grant of Arms License. Second respondent herein called for a report from the Station House Officer, Kookatpally Housing Board Police Station and after receipt of the report, the second respondent issued a Memo bearing No.79/F/M2/Arms/Cybd/2010-11, dated 21.04.2011, rejecting the request of the petitioner. As against the said rejection, the petitioner preferred appeal on 18.08.2011 before the State Government. The State Government vide G.O.Rt.No.2262, Home (ARMS) Department, dated 03.12.2012, rejected the appeal and consequently the request made therein.

3. In the above backdrop, while pleading that the rejection of the request of the petitioner is arbitrary, unwarranted and violative of Articles 14 and 21 of the Constitution of India, the present writ petition came to be filed.

4. Counter affidavit, denying the averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action, deposed by the second respondent, has been filed on behalf of the respondents 1 and 2 and disputing the counter averments a reply affidavit has also been filed by the petitioner.

5. Heard Sri Ramana Allu, learned counsel for the petitioner and the learned Government Pleader for Home for the respondents apart from perusing the material available before this Court.

6. Learned counsel for the petitioner contends that the impugned action is highly illegal, arbitrary, unreasonable, violative of Articles 14 and 21 of the Constitution of India and opposed to the very spirit and object of the provisions of the Arms Act, 1959. It is further contended that the respondents did not consider the material available on record from proper

perspective and the State Government failed to take into account the evidence produced by the petitioner in the appeal and also failed to consider the judgment of this Court, though the petitioner filed the copies of the same along with the appeal.

7. On the contrary, reiterating the counter averments, the learned Government Pleader seeks to justify the impugned action by contending emphatically that there is no illegality nor there exists any infirmity in the impugned action and that in the absence of the same, the present writ petition is not maintainable and the petitioner is not entitled for any relief from this Court under Article 226 of the Constitution of India. The learned Government Pleader further vehemently contends that the impugned rejection order is in accordance with the provisions of the Arms Act, 1959 and only after calling for the necessary reports from the police authorities and only after meticulously and thoroughly considering the same, the respondents rejected the request of the petitioner, as such, the impugned order does not warrant any interference of this Court and the petitioner is not entitled for any indulgence of this Court by way of judicial review under Article 226 of the Constitution of India. It is the further submission of the learned Government Pleader that there is no threat perception to the petitioner and that there is a threat of misusing the license.

8. In the above backdrop, now the issue which this Court is called upon to answer is_ “Whether the respondent authorities are justified in rejecting the request of the petitioner for grant of Arms License and whether the same is in accordance with law?”

9. The legislation which is germane and relevant for the purpose of resolving the issue in the present writ petition is the Arms Act, 1959 (hereinafter called ‘the Act’). It would be significant to note that one of the objects, as per the statement of objections and reasons of the said enactment, is to classify fire arms and other prohibited weapons so as to ensure that weapons for self-defense are available for all citizens under license unless their antecedents or propensities do not entitle them for the

privilege. The provisions relating to licenses are included under Chapter III of the Act which consists of Sections 13 to 18. Section 13 deals with grant of licenses and sub-Section (1) of Section 13 enables filing of application for grant of licenses before the licensing authority and sub-Section (2) obligates the licensing authority to call for the report of the officer in-charge of nearest police station and as per sub-Section (2A), it is mandatory on the part of the licensing authority to hold enquiry and to consider the report called for under sub-Section (2) and the said provisions also obligate the licensing authority to take into consideration the other provisions of the legislation. Proviso to Section 13 (2A) gives complete discretion to the licensing authority to pass orders on its own independently in the event of non-receipt of report under sub-Section (2) of Section 13 within the prescribed period. Therefore, in the considered opinion of this Court, the intention of the legislature is that the licensing authority should apply his mind while considering the request of the applicant for grant of Arms License and to arrive at a decision independently, taking into account facts and circumstances of the case and basing on the material available and the report under sub-Section (2) of Section 13 is one of the aspects for consideration.

10. Section 14 of the Act deals with the refusal of licenses and the said provision of law reads as *infra*:

“14. Refusal of licences.-(1) notwithstanding anything in section 13, the licensing authority shall refuse to grant--

(a) a licence under section 3, section 4 or section 5 where such licence is required in respect of any prohibited arms or prohibited ammunition;

(b) a licence in any other case under Chapter II,--

(i) where such licence is required by a person whom the licensing authority has reason to believe--

(1) to be prohibited by this Act or by any other law for the time being in force from acquiring, having in his possession or carrying any arms or ammunition, or

(2) to be of unsound mind, or

(3) to be for any reason unfit for a licence under this Act;
or

(ii) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

(2) The licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or possess sufficient property.

(3) WHERE the licensing authority refuses to grant a licence to any person it shall record in writing the reasons for such refusal and furnish to that person On demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.”

11. As evident from the above provision of law, it is imperative and obligatory on the part of the licensing authority to record the reasons in writing and to furnish a proof of statement of the same to the applicant. Perusal of the impugned order of rejection passed by the second respondent vide Memo dated 21.04.2011 shows that on the application of the petitioner for grant of arms license, the second respondent, called for a report from the Station House Officer, Kookatpally Housing Board Police Station, who in turn vide Lr.No.186/K2/Cyb/2010, dated 30.09.2010, submitted his report to the second respondent, refusing to recommend on the following grounds:

“1. The applicant is not having any sort of threat on his life from any sources, for which possessing of a weapon is not an essential need to him.

2. In the point of view of the present business of the applicant involved, there is no possibility of being rivals who may cause harm to the life of applicant.

3. The present residence of the applicant is neither his farm house nor a house located in isolated place to keep a weapon for his self protection.

4. The applicant did not specify the exact or possible angle of threat that he is facing.”

12. A reading of the impugned Memo No.79/F/M2/Arms/Cybd/2010-11, dated 21.04.2011 of the Second respondent makes it abundantly clear that the second respondent declined to consider the request of the petitioner completely based on the report of the Station House Officer, Kookatpally Housing Board Police Station. The said memo demonstrates, in clear terms that the second respondent did not consider and appreciate the request of the petitioner independently and did not assign any reasons

much less valid reasons for refusal except the report of the Station House Officer, Kookatpally Housing Board Colony. The said action, in the definite view of this Court, is opposed to and not in conformity with the above mandatory provisions of law, as such, the said action cannot be sustained.

13. In fact, the petitioner herein, aggrieved by the order of refusal passed by the second respondent, preferred a statutory appeal under Section 18 of the Act and the State Government vide G.O.Rt.No.2262, Home (ARMS) Department, dated 03.12.2012, rejected the said appeal, saying that there is no threat perception to the petitioner and there is chance of misuse of weapon by the petitioner. In the appeal filed by the petitioner before the State Government, the petitioner brought to the notice of the respondents various writ petitions filed before this Court and according to the petitioner, he filed the said writ petitions by way of public interest litigation, complaining illegal assignment of lands and to protect the Government lands and the petitioner further stated that due to the said efforts certain officials and land mafia indirectly threatened and directly advised him not to make any complaints in future and otherwise to face dire consequences. It is also evident from the grounds of appeal that the petitioner also brought to the notice of the authorities with regard to the properties owned by him and his family members at various places in Ranga Reddy, Medak and Nalgonda districts and stated that he needs to move to look after the same. Along with the appeal, petitioner also filed not only the documents in support of his request and also enclosed a copy of the judgment of this Court in W.P.No.21780 of 2009.

14. A perusal of the impugned Governmental order makes it manifest that the State Government did neither advert nor consider the documents filed by the petitioner including the above judgment of this Court. It is significant to note that even according to the respondent authorities, there is no involvement of the petitioner in any criminal cases and there is no denial by the respondents of the cases filed by the petitioner before this Court.

15. In this context, it may be appropriate to refer to the Judgment of this Court in W.P.No.21780 of 2009 dated 31.05.2010. In the said judgment, this Court while dealing with an identical situation and while declining to accept the similar objections raised by the respondents therein, held at the concluding paragraphs as follows:

“It is thus, indubitable that the right of a citizen to protect himself, his family and property are integral part of right to life guaranteed by Article 21 of the Constitution, subject to the limitations contained therein. In asserting such a right, every citizen has a right to apply for an arms licence. While considering such application, the licensing authority shall not only keep in view the statutory provisions of the Act, but also the constitutional parameters relating to the applicant’s fundamental right to life.

Undoubtedly, it is imperative for the State to ensure that possession of arms by the people under licences is not misused for unlawful purposes. The licensing authority should therefore be conceded with the power and discretion to prevent such misuse by making a strict scrutiny of the antecedents of the applicant and the potential for misuse of arms. But, in this process it is not permissible for the authority to be subjective in its assessment of existence of reasons for grant of a licence. A law abiding citizen would always like to have a fire arm for a bona fide purpose, for, he is aware of the consequences of its misuse. Therefore, test to be applied by the licensing authority in considering grant of arms licence is whether the applicant has established his credentials as a law abiding person leading a peaceful life without any criminal record and whether any circumstances exist by which it can be reasonably presumed that there is a potential danger of misuse of the weapon leading to breach of peace and safety of the society. Once these two tests are satisfied an application for grant of licence shall not ordinarily be rejected.

In **Ganesh Chandra Bhatt (1 supra)**, Markandey Katju, J., (as he then was), traced the legislative history of the Act and the purposes for which it was made in the light of Article 21 of the Constitution and held that “it must be held that the normal rule should be grant of the arms licence, and refusal on the ground of unfitness should only be for very strong reasons e.g. involvement in a heinous crime”.

Unless the licensing authority is satisfied that any of the grounds mentioned in Section 14(1)(b) exists, an application for grant of an arms licence shall not be refused on a vague ground such as absence of genuine need.

For the aforementioned reasons, the impugned memo cannot be sustained in law and the same is accordingly

quashed. Respondent No.1 is directed to reconsider the petitioner’s application in the light of the findings rendered above, pass a fresh order and communicate the same to the petitioner within a period of two months from the date of receipt of a copy of this judgment.

The Writ Petition is accordingly allowed.”

16. In the instant case, the first respondent State Government did not consider properly the relevant provisions of the legislation and the material available on record and the principles laid down in the above referred judgment of this Court.

17. For the aforesaid reasons, this writ petition is allowed, setting aside the order of the State Government issued vide G.O.Rt.No.2262, Home (ARMS) Department, dated 03.12.2012 and consequently the appeal filed by the petitioner stands restored to file and the State Government is directed to reconsider the appeal of the petitioner in the light of the findings recorded *supra* and pass appropriate orders afresh, within a period of two months from the date of receipt of a copy of this order, after giving notice and opportunity of hearing to the petitioner herein. As a sequel, miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V. SESA SAI, J

Date:14.6.2016

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

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Dated 14th June, 2016

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