

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.34546 of 2003

T.Udayasankar

.. Petitioner

Vs.

1. The Govt. of Tamil Nadu,
Rep. by the Secretary to Govt.,
Home Department,
Fort St.George, Chennai-600 009.

2. Special Commissioner and
Commissioner of Revenue Administration,
(Disaster Management and Investigation),
Chepauk, Chennai-600 005.

3. District Magistrate and Collector, Tuticorin.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records on the file of the second respondent in D.Dis.RA 5 (1)/7327/2003 AA.No.029/2003, dated 13.10.2003 and quash the order of the second respondent in D.Dis.RA 5(1)/7327/2003 AA.No.029/2003, dated 13.10.2003, rejecting the petitioner's appeal against the orders of the third respondent in Na.Ka.C3/91355/2001, dated 31.12.2002, rejecting the petitioner's application for renewal of the arms licence bearing No.58/111/TKD beyond 31.12.2001 for possession and use of a pistol.

For petitioner : Mr.Perumbulavil Radhakrishnan

For respondents: Mr.Akhil Akbar Ali, Govt. Advocate

ORDER

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Certiorari to call for the records on the file of the second respondent in D.Dis.RA 5(1)/7327/2003 AA.No.029/2003, dated 13.10.2003 and quash the same, in and by which the petitioner's appeal was rejected and the appeal was filed against the orders of the third respondent in Na.Ka.C3/91355/2001, dated 31.12.2002, rejecting the petitioner's application for renewal of the arms licence bearing

No.58/11/TKD beyond 31.12.2001 for possession and use of a pistol.

2. The case of the petitioner is that he is a licensee holding the arms licence for possession and use of pistol, which was valid upto 31.12.2001. The petitioner requested his Manager to deposit the gun/pistol by the authorisation letter on account of the Panchayat Elections. After the Elections, the Manager got the licence back from the Police Station where it was deposited. According to the petitioner, the Manager kept the gun/pistol in the side box of the motor cycle and he was entering into the State Bank of India for his personal work, and immediately on his return, the Manager found that the side box of the motor cycle was opened and the pistol was stolen. A complaint has been lodged on 03.11.2011 before the South Crime Police Station. Thereafter, the petitioner applied for renewal of the licence to the authority concerned on 16.11.2001 and requested permission to purchase a new weapon. The third respondent-District Magistrate and District Collector, Tuticorin, after hearing the petitioner, by order dated 31.12.2002, rejected the request of the licensee, namely the petitioner and revoked the licence under Section 17(3)(b) of the Arms Act. On appeal by the petitioner, the original authority's order (District Collector and District Magistrate) was confirmed by the appellate authority, namely the second respondent.

3. According to the petitioner, due care has been taken for depositing and receiving the pistol from the Police after deposit. Unfortunately, it was stolen for no fault of the petitioner. It is the contention of the respondents that there is no reason or much less the genuine reason for the petitioner to hold the pistol or that there is no necessity for him to get the licence. The appellate authority confirmed the order of the original authority, i.e. the third respondent and rejected the appeal by holding that the petitioner has violated Sections 3(1) and 29(b) of the Arms Act by giving the weapon to his Manager and that the weapon has been delivered to a person who does not possess a valid licence. In terms of the condition based on which the licence has been granted, if the weapon is stolen or lost due to the negligence of the borrower, the licence thereafter is liable to be revoked. Though the weapon has not been borrowed by the Manager, since it has been lost on account of his gross negligence, the appellate authority (second respondent) has confirmed the order of rejection passed by the third respondent.

4. The petitioner has also relied upon the proviso to Section 3(1) of the Arms Act and contended that he is empowered to hand over the pistol to his representative to deposit and collect the same and that he has given authorisation letter to the Police for requesting his Manager to deposit the pistol and

collect the same on account of the ensuing Elections at that point of time. The petitioner also referred to Section 21(2) of the Arms Act and submitted that in the absence of the depositor depositing the same, the licence holder's legal representative can deposit and collect the same. It is further submitted by the learned counsel for the petitioner that there is no mistake on the part of the petitioner and that the gun has been stolen which was noticed by his Manager while opening the side box of the motor cycle where the gun was kept under lock and key, and denial of renewal of licence and permitting to buy a new gun, is completely arbitrary and illegal.

5. Per contra, learned Government Advocate appearing for the respondents, by filing counter affidavit, contended that the petitioner has violated Section 3(1) of the Arms Act, and he is punishable under Section 29 of the Arms Act and that since the petitioner has violated the conditions of licence, he is not entitled to the renewal/fresh licence in terms of the conditions prescribed in Sections 3(1) and 29(b) of the Arms Act. According to the learned Government Advocate, as per Section 17 (3)(b) of the Act, as the weapon is lost, the licence can be revoked. It is further submitted that the weapon was lost in 2001 and the petitioner was able to carry out his activities without any problem for two years and the request for renewal of the licence after the period of two years commencing from 2003, is an ample proof that there is no necessity or no emergent situation has arisen for his safety or that the gun is required. Learned Government Advocate further submitted that since the petitioner has acted carelessly and that the licensee (petitioner) has delivered the gun to a person who is not having a valid licence, the request of the petitioner to renew the licence, cannot be acceded to, more particularly, the petitioner has handed over the pistol to the person who is not the borrower and who does not have a power to hold a gun.

6. Heard both sides and perused the materials available on record.

7. For the sake of convenience, the following provisions of the Arms Act are extracted:

Section 3: Licence for acquisition and possession of fire-arms and ammunition--(1) No person shall acquire, have in his possession, or carry any fire-arm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder:

Provided that a person may, without himself holding a licence, carry any fire-arm or ammunition in the presence, or under the written authority, of the holder of the licence for repair or for renewal of the

licence or for use by such holder.

Section 17: Variation, suspension and revocation of licences:--...

.....

(3) The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence--

... ..

(b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence;

Section 21: Deposit of arms, etc., on possession ceasing to be lawful:

(1) Any person having in his possession any arms or ammunition the possession whereof has, in consequence of the expiration of the duration of a licence or of the suspension or revocation of a licence or by the issue of a notification under section 4 or by any reason whatever, ceased to be lawful, shall without unnecessary delay deposit the same either with the officer in charge of the nearest police station or subject to such conditions as may be prescribed, with a licensed dealer or where such person is a member of the armed forces of the Union, in a unit armoury.

Explanation--In this sub-section "unit armoury" includes an armoury in a ship or establishment of the Indian Navy.

(2) Where arms or ammunition have or has been deposited under sub-section (1), the depositor or in the case of his death, his legal representative, shall, at any time before the expiry of such period as may be prescribed, be entitled--

(a) to receive back anything so deposited on his becoming entitled by virtue of this Act or any other law for the time being in force to have the same in his possession, or

(b) to dispose, or authorise the disposal, of anything so deposited by sale or otherwise to any person entitled by virtue of this Act or any other law for the time being in force to have, or not prohibited by this Act or such other law from having, the same in his possession and to receive the proceeds of any such disposal:

Provided that nothing in this sub-section shall be deemed to authorise the return or disposal of anything of which confiscation has been directed under section 32.

Section 29: Punishment for knowingly purchasing arms, etc., from unlicensed person or for delivering arms, etc., to person not entitled to possess the same.-- Whoever--

(a) purchases any fire-arms or any other arms of such class or description as may be prescribed or any ammunition from any other person knowing that such other person is not licensed or authorised under section 5; or

(b) delivers any arms or ammunition into the possession of another person without previously ascertaining that such other person is entitled by virtue of this Act or any other law for the time being in force to have, and is not prohibited by this Act or such other law from having, in his possession the same; shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

8. It is not in dispute that the petitioner was a licence holder and was in possession of a gun/pistol. He has requested his Manager to deposit the gun before the Police Station on account of the ensuing Elections in 2001 and accordingly, the petitioner has written an authorisation letter to the concerned Police requesting permission to deposit his gun through his Manager. After the Elections, the Manager of the petitioner went and collected the gun based on the authorisation given to the Manager, who is said to have collected and kept the gun in the side box of the motor cycle which was kept under lock and key, and on the Manager's return from the State Bank of India, after short break, the said Manager found that the lock was opened and the gun was stolen.

9. The question to be decided is as to whether the Manager of the petitioner is entitled to keep the gun when he is neither the borrower nor the licensee and whether the revocation of the licence is valid.

10. A cursory glance of the above extracted provisions of the Arms Act, makes it clear that the petitioner is empowered to authorise a person to deposit the gun in the Police Station and receive back the same. If the respondents or the Police have any objection, they should have rejected the gun at the threshold itself at the time deposit itself, but the fact remains that the Police had received the gun. Thereafter, after the Elections, based on the letter of authorisation, the gun was returned to the Manager. The learned Government Advocate vehemently contended that in terms of Section 3(1) of the Arms Act, the petitioner alone is empowered to keep the weapon, deposit it and take it back and authorising any third party is not permissible under the provisions of the Arms Act and the

rejection order passed by the original authority, which was confirmed by the appellate authority, are correct.

11. This Court is not inclined to accept the said contention of the learned Government Advocate, as a reading of Section 3(1) of the Act, makes it clear that the deposit cannot be done independently without authority to get it back and Section 3 has got to be read as a whole along with Section 21. A harmonious reading of these Sections had to be given, more particularly in the light of Section 3(4) of the Act and also the proviso to Section 3(1) of the Act. The provisions of the Act clearly states that if a person is not a borrower or licence holder, he can hold the gun for repair, deposit or renewal based on the authorisation letter given by the licence holder. The word "deposit" includes taking back of the gun, as a reading of Section 21(2) of the Act makes it clear that the depositor or his representative is empowered to get back the gun from deposit. A narrow reading of the provisions of the Act is not permissible in this case. If the contention of the respondents is going to be accepted, then the fault is only on the Police who have accepted the deposit and returned the gun/pistol to the Manager of the petitioner. In view of Section 21(2) of the Act that enables the representative of the licence holder to receive back the gun, the Police authorities have handed over the gun, which has been lost. Whether the Manager of the petitioner is empowered to deposit and get back the weapon and whether the gun was stolen or the Manager who was trying to misuse or giving it to someone later on, are not the issues to be decided in this Writ Petition and this Court is not going to render any finding on that score. It is for the authorities and the Police to investigate and come to a conclusion on the same. The rejection of the licence quoting Sections 3(1) and 29(b) ignoring the proviso to Section 3(1) and based on Section 29(b), is not correct, more particularly, in the light of the proviso to Section 3(1), 3(4) and Section 21(2) of the Act.

12. Admittedly, the conditions prescribed in Section 29(b) of the Act will not be attracted to the facts of the present case and hence, the same will not be applicable to the facts and circumstances of the case on hand, as the petitioner has not handed over or lent the gun to another person similarly placed like him, namely the borrower.

13. For the foregoing discussion, I find that the Writ Petition has got to be allowed. Accordingly, the Writ Petition is allowed. The order passed by the third respondent-District Collector and District Magistrate, which was confirmed by the second respondent by the impugned order, are set aside. The matter is remitted back to the original authority, namely the third respondent-District Collector and District Magistrate for

considering the request of the petitioner afresh. Since more than 13 years have lapsed, the petitioner is permitted to make fresh application seeking renewal/fresh licence to possess the pistol/gun and if such application is made, depending upon the circumstances that prevail, the request of the petitioner may be considered in accordance with law, independently and de-hors the disposal of the Writ Petition, and without being influenced by any of the observations made in this Writ Petition. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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Copy to

1. The Secretary to Govt.,
Home Department,
Fort St.George, Chennai-600 009.
2. Special Commissioner and
Commissioner of Revenue Administration,
(Disaster Management and Investigation),
Chepauk, Chennai-600 005.
3. District Magistrate and Collector, Tuticorin.

+2 ccs to M/s.Perumbulavil Radhakrishnan Advocate sr 55086

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