BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2017

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Writ Petition(MD)No.3680 of 2011
and
M.P(MD)No.1 of 2011

P.Palaniyandi ... Petitioner

Vs.

1.The Commissioner of Revenue Administration,
Disaster Management and Mitigation Department,
Ezhilagam,
Chennai.

2.The District Revenue Officer,
Periyakulam,
Theni District. ... Respondents

Petition filed under Article 236 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for records relating to the impugned order passed by the first respondent in his proceedings D.Dis.RA.5(1)/86941/2010 dated 15.03.2011 and quash the same as illegal and consequentially directing the first respondent to take up the appeal dated 29.03.2009 preferred by the petitioner on file and decide the matter on merits and in accordance with law without reference to the period of limitation within the time may be stipulated by this Court.

For Petitioner : Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates

For Respondents : Mr.S.Satheesh Kumar,
Additional Government Pleader.

ORDER

The petitioner has sought for a gun licence on the ground that he owns about 10 acres of agriculture land in Vadakarai Village, Bit-II which abets the reserve forest. Since there is a threat to the crops by wild animals and even threat to his personal security because he has to go to his lands even during night time, he sought for licence to possess a SBBL gun.

2.The Superintendent of Police, Theni District had objected to the grant of licence on the ground that there is movement of terrorists in the area in question and the said area is subjected to constant supervision. Hence, grant of gun licence may not be advisable. The District Revenue Officer has also objected to the grant of gun licence on the ground that there is a possibility of threat to wild life in the area. Accepting the recommendations of the Superintendent of Police, Theni District, the original authority, namely, the District Revenue Officer, the second respondent herein, rejected the request of the petitioner. As against the said order dated 05.12.2008 rejecting the request of the petitioner, the petitioner had preferred an appeal before the first respondent on 29.03.2009. The first respondent had rejected the appeal on the ground that there is a delay of 85 days in filing the appeal.

3.Learned counsel for the petitioner would submit that proviso to Section 18(2) of the Arms Act, 1959, enables the appellate authority to condone the delay and if only, the appellate authority had given him an opportunity, he would have explained the delay. There is nothing on record to show that the appellate authority had either heard the petitioner or his counsel, before concluding that the appeal should be rejected on the ground of delay.

4.Normally, when the appeals are filed with a delay, they are returned seeking sufficient explanation for the delay. If the appellate authority is not satisfied with the explanation offered for the delay, it is open to the appellate authority to refuse to condone the delay. Unfortunately, the appellate authority had rejected the appeal itself without going into the reasons for delay. Hence, the order of the appellate authority is set aside and the matter is remitted to the appellate authority. The petitioner is directed to file an affidavit explaining the reasons for the delay of 85 days, as pointed out by the appellate authority and the appellate authority shall consider the reasons assigned for the delay in the light of the proviso to Section 18 (2) of the Arms Act, 1959 and pass orders afresh.

5.It will be pertinent to point out that Section 18(3) also provides that the prescribed period shall be computed in accordance with the provisions of the Limitation Act, 1908. Though the original authority has passed an order on 05.12.2008, it is not known when it was communicated to the petitioner. So, the delay may not be 85 days, as pointed out by the appellate authority. The petitioner is undoubtedly entitled to exclude the time between the date of the order and the date of communication of the order of the original authority. These facts should be addressed by the appellate authority while considering the reasons for the delay.

6.Accordingly, the writ petition stands disposed of. No costs. Consequently, M.P(MD)No.1 of 2011 is closed.

Sd/-
Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

1.The Commissioner of Revenue Administration,
Disaster Management and Mitigation Department,
Ezhilagam,
Chennai.

2.The District Revenue Officer,
Periyakulam,
Theni District.

+1 cc to Mr.Ajmal Associates , Advocate in SR.No. 17154
+1 cc to Special Government Pleader in SR.No:18188

sms/vsg
AE/SV/SAR4/13.04.2017/3P/5C

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