

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.11.2018

CORAM:
THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.6649 of 2013
and
W.M.P.No.21393 of 2018

P.Ramesh

... Petitioner

Vs.

1.The Secretary,
Government of Tamilnadu,
Home Department,
Secretariat, Fort St.George,
Chennai.

2.The Commissioner of Police,
Madurai City, Madurai.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, direction in the nature of writ calling for the records in pertaining to the order passed by the first respondent in G.O. (D) No.134 Home (Pol-XIII) Department dated 21.02.2013 and quash the same and to direct the respondents herein to renew the Arms Licence granted to the petitioner in Licence No.B1/88/2011 form - III Indian Arms Act -1959.

For Petitioner : Mr.T.Ramesh

For Respondents: Mr.B.Anand for R.1 and R.2
Government Advocate

ORDER

The instant writ petition is for a Writ of Mandamus or any other appropriate writ calling for the records pertaining to the order passed by the respondent No.1 in G.O.(D) No.134 Home (Pol-XIII) Department dated 21.02.2013 and quash the same and direct the respondents herein to renew the Arms License granted to the petitioner in License No.B1/88/2011 form-III Indian Arms Act,1959.

Facts and Briefs:

2. A license for a 0.32 pistol bearing No.RP.100417. The license was issued on 22.02.2011 was issued to the petitioner. The license expired on 28.02.2012.The petitioner filed an

application for the renewal of license on 30.12.2011. The Authority i.e., Commissioner of Police, Madurai City rejected the renewal application on 02.12.2012.

3.The order copy was received by the petitioner on 16.10.2012. The petitioner filed an appeal before the Secretary to the Government. Since the appeal was not being disposed of, the petitioner filed writ petition No.2610 of 2012. This Court by order dated 01.10.2012 directed the Government to dispose of the appeal within 90 days from the receipt of the order passed by this Court. After hearing, the parties, State Government / first respondent herein dismissed the appeal by the order dated 21.02.2013 which is under challenge in this writ petition.

Submissions:

4.The learned counsel for the petitioner would submit that the order dated 02.12.012 is completely devoid of any reasons. He would submit that the order does not satisfy the requirements of Section 13 of the Indian Arms Act,1959. Section 13 of the Indian Arms Act,1959 which deals with grant of license (which also involves renewal of license) reads as under:-

"13. Grant of licences.-(1) An application for the grant of a licence under Chapter II shall be made to the licensing authority and shall be in such form, contain such particulars and be accompanied by such fee, if any, as may be prescribed.

32[(2) On receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.

(2-A) The licensing authority, after such inquiry, if any, as it may consider necessary, and after considering the report received under sub-section (2), shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same:

Provided that where the officer in charge of the nearest police station does not send his report on the application within the prescribed time, the licensing authority may, if it deems fit, make such order, after the expiry of the prescribed time, without further waiting for that report.]

(3) The licensing authority shall grant-

(a) a licence under Section 3 where the licence is required-

(i) by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of a muzzle loading gun to be used for bona

fide crop protection:

Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle loading gun will not be sufficient for crop protection, the licensing authority may grant a licence in respect of any other smooth bore gun as aforesaid for such protection, or

(ii) in respect of a point 22 bore rifle or an air rifle to be used for target practice by a member of a rifle club or rifle association licensed or recognised by the Central Government;

(b) a licence under Section 3 in any other case or a licence under Section 4, Section 5, Section 6, Section 10 or Section 12, if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same."

5.The order dated 02.11.2012 rejecting the application reads under:-

"ORDER OF COMMISSIONER OF POLICE, MADURAI

Present: Sri.P.Kannappan, IPS,

Na.Ka.No.V1/873/66595/11

Dated 02.02.2012

Sub: Pris-Madurai Corporation Arms Act of Rules

Mr.P.Ramesh's Pistol Licence No.B1/88/11-

Order of Registration of the Licence-Reg.

Ref: Mr.P.Ramesh Application dated 13.12.2011

Order:

Mr.P.Ramesh, residing at No.83, Amman Sannathi, Madurai-1 applied for the Renewal of his NO.32, Pistol Licence No. B1/88/2011-20.20.12.2014 up to the year 2014.

2.In the investigation as there is no reason for the renewal of His Pistol Licence, it is informed that the application of Mr. P.Ramesh is hereby rejected.

3.The Applicant is hereby advised surrender the 32 Pistol (RB.100417) along with Licence Book which is in his possession either with B1, Vilakkuthoon Police Station with Licensed Pistol dealer M.S.Meenakshi Sundara Nadar, No.11, Venkalakadai Street, Madurai -1, Acknowledge the receipt of this order.

To
Thiru.P.Ramesh,
P.Kannappan,
S/o.P.Panchatcharm,
No.83, Amman Sannathi,
District,
Madurai - 1.

Sd/-

Commissioner of
Additional

Judge,
Madurai City.

Copy: The Inspector , P1, Villakkuthoon (L&M) Police Station,

Madurai City (Applicant he was having 32 Pistol S.R.P.10047 also REgistration Book handed over the police within 3 days submit the report.

Copy:The Assistant Commissioner of Police (L&O) Madurai Division, Madurai City.

Copy:M.S.Meenakshi Sundara Nadar, Padaikala Dealer, No.11, Vengalakadai Street, Madurai -1.

Sd/-XXXXX

The Police Commissioner,
Personal Assistant
(Administration),
Madurai City."

6.A perusal of Section 13(2) would show that, it is mandatory on the Licensing Authority to call for a report of the Officer Incharge of the nearest Police station and that Officer has to send his report within the prescribed time. The License Authority has to then conduct an enquiry and consider the report sent by the Police Officer. It is only after conducting the enquiry and considering the report, the Licensing Authority takes a decision as to whether to grant or not to grant the license.

7.The reading of the order mentioned dated 02.11.2012, would show that the requirements of Section 13(2) has not been complied with. The learned counsel of the petitioner would therefore submit that the Appellate Authority gravely erred by not considering the lacuna in the order passed by the Licensing Authority. On the other hand, the learned counsel for the respondent would support the order impugned herein by submitting that the petitioner has suppressed the fact that he was involved in offences and that was sufficient ground to reject his application for renewal of license. He would submit that the petition therefore has to be dismissed.

Consideration:

8.Heard the counsel for the parties.

9.As rightly contended by the counsel for the petitioner, order dated 02.11.2012 passed by the Licensing Authority does not give any reasons at all. It also does not say as to whether a report from the Officer In-charge of the nearest Police station was called for. The order does not spell out any reason as to why the licence which had been granted on 22.02.2011 should not be renewed.

10.It is trite law that an order having civil consequences must be accompanied by reasons. The learned counsel for the petitioner is right in contending that the Appellate Authority could not do the exercise which has to be done by the Licensing Authority, i.e., to call for the report from the Officer in charge of the nearest police station. If the first Authority does not follow the procedure, the Appellate Authority must direct the subordinate Authority to follow the mandate of law. The Appellate Authority can only consider as to whether the reason given by the Licensing Authority is in consensus with law or not.

11. For the reason stated above, order of the Authority set aside and the matter, remanded back to the Original Authority to consider the application for renewal once again. The Licensing Authority is directed to complete the exercise within the period of 60 days from the date of receipt of a copy of this order. With the above directions, the writ petition is allowed. No Costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

pkn /gsp

To

1.The Secretary,
Government of Tamilnadu,
Home Department,
Secretariat, Fort St.George,
Chennai.

2. The Commissioner of Police,
Madurai City, Madurai.

+1cc to Mr.T.Ramesh, Advocate, S.R.No.82350

+1cc to the Government Pleader, S.R.No.82904

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and
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PP(CO)

rrs 19/12/2018