

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 23.01.2018

Delivered on 01.02.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.2270 of 2017

1. A.D.Prabhukaant

2. P.Kanimozhi

.. Petitioners

vs.

1. The Principal Secretary/
Commissioner of Revenue Administration,
Chepauk,
Chennai.

2. The District Magistrate/ District Collector,
Erode District, Erode.

..Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 10.11.2016 in Appeal NoRA.5(2)/51025/2015, passed by the 1st respondent and quash the same and consequently direct the respondents to issue the pistol gun licence to the 1st petitioner within a stipulated time frame.

For Petitioners : Mr.D.R.Arun kumar

For Respondents : Mr.R.Govindasamy,
Special Government Pleader.

ORDER

The petitioners are husband and wife. They filed the present writ petition challenging the order of the first respondent dated 10.11.2016, wherein and whereby, the request of the first petitioner for grant of gun licence was rejected. Consequently, the petitioners seek for a direction to the respondents to issue pistol licence to the first petitioner.

2. The case of the petitioners is as follows:

The first petitioner is running a jewellery shop in Sathyamangalam in the name of the second petitioner. They are income tax assesseees. Every day, the petitioners' family is put to sudden shock, agony and grief on seeing the news pertaining to various incidence of robbery, dacoity and thefts in their locality. The business of the first petitioner in dealing with gold transactions is known to people around the petitioners' locality and therefore, they have reasonable apprehension of robbery, dacoity and thefts. Therefore, the first petitioner applied for gun licence before the second respondent for his safety and security as a precautionary measure. The said request was rejected by the second respondent on 17.11.2015. The first petitioner preferred an appeal before the first respondent. However, the first respondent confirmed the order of the second respondent thereby rejecting the request of the first petitioner once again. Hence, the present writ petition is filed challenging the order of the first respondent.

3. The second respondent filed a counter affidavit on behalf of both the respondents, wherein it is stated as follows:

The first petitioner submitted an application on 03.07.2013 requesting to issue pistol licence for his safety. Though the Revenue Divisional Officer of Gobichettipalayam reported that pistol licence may be granted to the first petitioner, the Superintendent of Police, Erode District reported that there was no specific threat to the applicant and thus, the pistol licence need not be granted to him. The second respondent conducted an enquiry with the first petitioner on 16.10.2015 which revealed that the first petitioner did not face any specific threat due to his business. The first petitioner could not substantiate his claim of threat due to his jewellery business. The second respondent, therefore, could not find any valid and specific reason for grant of pistol licence. The averments with regard to various incidents of robbery, dacoity and thefts are not true as no such incidence took place in their locality. It is purely an imaginary one, just with an intention to obtain the weapon licence. The petitioners do not have any threat to their property, life and business.

4. Learned counsel for the petitioners submitted that the respondents are not justified in rejecting the request of the first petitioner without having any reason sustainable in law. He further contended that the first petitioner is entitled to have the gun licence when admittedly the first petitioner is dealing with the jewellery business involving large scale transaction of gold and money. He further pointed out that the first petitioner is running the business in an area which is lying very near to the forest where the notorious criminals once lived. Therefore, he submitted that there is every justification on the part of the petitioners in having such apprehension in

their minds with regard to safety of their life and property. In support of his submissions, learned counsel counsel relied on the decision reported in 2009(3) MLJ 1295 (Commissioner of Police v. V.P.Kalairajan).

5. On the other hand, the learned Special Government Pleader appearing for the respondents, after reiterating the contentions raised in the counter affidavit submitted that the petitioners have not made out a case for grant of licence, as mere apprehension of the petitioners is not sufficient for such grant. He further pointed out that the petitioners have not even stated any particular incident or crime posing danger to the safety of their life and property.

6. Heard both sides.

7. There is no dispute to the fact that the first petitioner is running the jewellery shop in Sathyamangalam. It is stated by the petitioners that while doing such business, money and gold transactions cannot be done in silence and people around them are well aware of such transactions. I do not think that such statement of the petitioners is an exaggerated one, more particularly, while considering the nature of business being run by the petitioners. A reasonable apprehension of robbery or dacoity or theft raised in the minds of the petitioners, cannot be brushed aside as the one without any basis. When such apprehension has arisen in the mind, no one will wait for an incident to take place to take the required precautionary measures. Therefore, I find that the first petitioner has every justification in having such apprehension and consequently to make an application before the authorities concerned for issuance of gun licence.

8. Section 13 of the Arms Act, 1959, deals with grant of licence, while Section 14 deals with refusal of licence. Section 13 contemplates the procedure to be adopted while considering the application for grant of licence. Section 14 refers as to under what circumstances or reasons the licensing authority can refuse to issue licence. For immediate reference, Section 14 is extracted as follows:-

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.

9. Perusal of the above said provision of law does not indicate anywhere that the reason assigned by the respondents in this case for refusing to issue licence to the first petitioner would fall under the purview of any of the eventualities referred to under Section 14. Admittedly, the only reason assigned by the respondents is that the first petitioner is seeking for gun licence based on mere apprehension without there being any event of threat actually had taken place.

10. At this juncture, it is useful to refer to the decision of the Division Bench of this Court reported in 2009(3) MLJ 1295 (Commissioner of Police v. V.P.Kalairajan) wherein at paragraph Nos.18 and 19, it has been observed as follows:

"18. It is nobody's case that the petitioner has made an application for grant of licence for prohibited arms or prohibited ammunition. Prohibited arms and prohibited ammunition are defined under Section 2(h) and 2(i) of the said Act. The petitioner's application is for a licence for a revolver. It is a non-prohibited arms, and the said licence has been asked by the petitioner for his personal safety. Prayer for such a

licence can be refused by the Licensing Authority in accordance with the provisions under Section 14(1)(b) of the said Act. In Section 14(1)(b) there are sub-Clauses (i) and (ii). Sub-Clause (i) is further divided into (1), (2) and (3). Before any application for licence can be refused by the Licensing Authority under these categories the Licensing Authority must have reasons to believe that the applicant falls in any of those categories of Clauses (1), (2) and (3) of Section 14(1)(b)(i). The concept of reasons to believe will govern cases of refusal of licence under Section 14(1)(b)(ii).

19. The expression reasons to believe which is the governing words in the said statute has been interpreted by different courts in the context of different statutes. This expression has already acquired a jurisprudential connotation."

11. In 1982 Allahabad 283 (Ram Khelawan v. State), it has been observed at paragraph No.6 as follows:

6. In the present case, the District Magistrate has in his order stated that the S. D. M. and the Superintendent of Police have written 'No objection' on the application of the petitioner. But that was not a recommendation for the grant of a licence. He has ultimately observed that the need of the applicant was not genuine. It would, therefore, be seen that the order passed by the District Magistrate does not come under any of the clauses of Section 14 of the Act. The expression to be for any reason unfit for a licence under the Act is not synonymous with the applicant not having genuine need. Section 14 of the Act prohibits the grant of a licence where the person is under some disability, or is of unsound mind or where he is such type of person who may endanger the public peace or public safety. The plea that the petitioner does not have a genuine need cannot be equated with any of the clauses under Section 14 of the Act. There is no provision in Section 14 of the Act to refuse a licence if the need of the applicant is not genuine. A Division Bench of

this Court in the case of Ram Shanker v. State of U. P. (1980 (6) All LR 538) has laid down that the absence of genuineness of the need is not a ground for refusing a licence under Section 14 of the Act. Lack of genuineness of the need is therefore not one of the grounds for refusing a licence.

12. Therefore, the licensing authority is not entitled to state any reason or ground for refusing to issue licence, when such reason or ground is not coming within the purview of Section 14 of the Arms Act, 1959. The Division Bench in the case referred above, has pointed out that the authority must have reasons to believe that the applicant falls in any of those categories set out in the said Section 14 of the said Act.

13. The respondents contend that the first petitioner is not entitled to get licence based on mere apprehension. I don't think that this reasoning of the respondents can be sustained. Merely because no incident had take place so far directly affecting the petitioners, warranting for possessing a weapon under licence, the respondents cannot say or assure that there will not be any such threat in future. Such apprehension has to be viewed, assessed and finally judged, by considering the totality of the facts and circumstances, necessitating such apprehension in the mind of the petitioners namely, the nature of business and its transaction, location of the business place and possibility of a crime, as apprehended by the petitioners, to take place. In this case, the first petitioner, admittedly, is running a jewellery shop, that too, in Sathyamangalam, which is notably situated nearer to the dense forest area. Therefore, the above undisputed facts would amply support the apprehension of the petitioners and also establish that he has a good reason for seeking a gun license as contemplated under Section 13 (3) (b) of the said Act which reads as follows:

"13. Grant of licences.--
(1)
(2)
(3) The licensing authority shall grant--

....

(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."

14. At this juncture, a decision of this Court made by the single Judge in W.P.(MD) No.14513 of 2010 dated 12.01.2011 is

relevant to be quoted, wherein at paragraph No.23, it has been observed as follows:

"23. The petitioner was apprehending danger to his life. He has demonstrated that there were sufficient reasons justifying his claim for gun licence. Merely because he was not attacked earlier, it cannot be said that he was not eligible for a gun licence. Section 13(3)(b) provides that if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same, he has to grant licence. Therefore, the word "good reason" assumes significance. The Arms Act does not contain a provision that the applicant has to demonstrate that there was a serious threat to his life and property and the pressing necessity for keeping a weapon for effective protection. The "good reasons" cannot be assessed in a subjective manner. The materials produced by the petitioner should be considered in an objective manner and a finding of fact should be recorded about the bona fides of the claim."

15. Considering the above stated facts and circumstances, this Court is of the view that the respondents are not justified in rejecting the request of the first petitioner for grant of gun licence. Accordingly, the writ petition is allowed and the impugned order is set aside and the matter is remitted back to the second respondent to consider the claim of the first petitioner for grant of gun licence and pass appropriate orders in the light of the findings rendered in this writ petition, provided the first petitioner is carrying on the very same business at the very same place even as on today and that his claim, as on today, does not fall under any of the statutory bar stipulated under section 14 of the said Act. Such order shall be passed by the second respondent within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

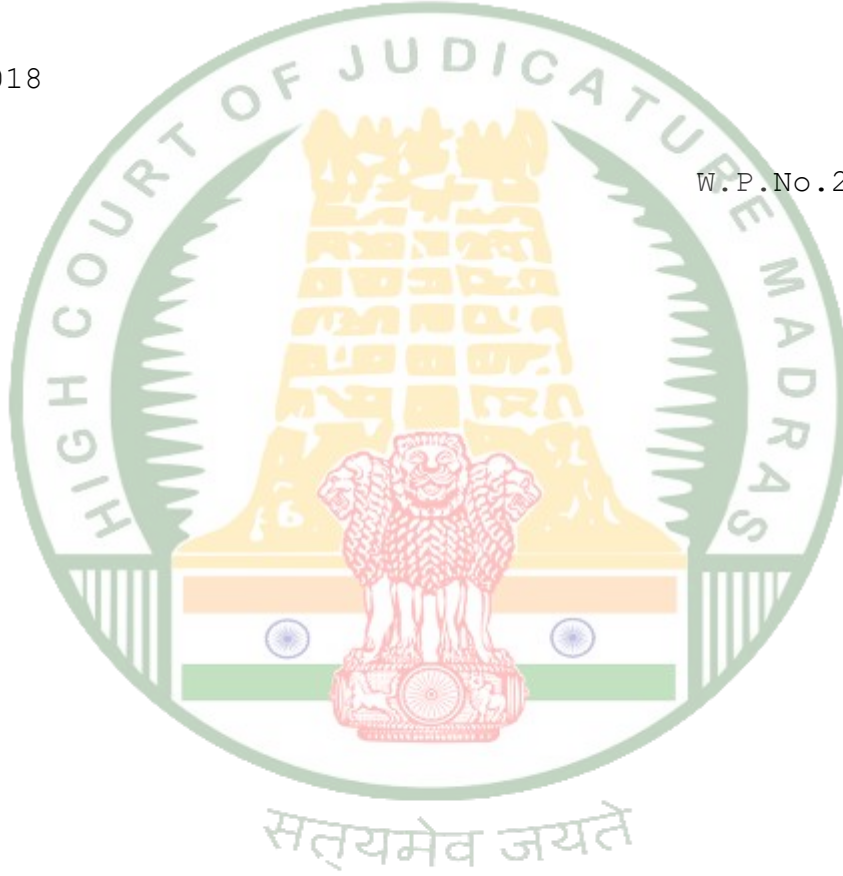
To

1. The Principal Secretary/
Commissioner of Revenue Administration,
Chepauk,
Chennai.
2. The District Magistrate/ District Collector,
Erode District, Erode.

+lcc to MR.Arunkumar, Advocate, Sr.No.7546
+lcc to Government Pleader SR.No.8000

MG (CO)
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