

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 24.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.24852 of 2005
and
W.M.P.No.27212 of 2005

S.R. Kumar

...Petitioner

V.

1.The Special Commissioner and
Commissioner of Revenue Administration,
Ezhilagam,
Chennai-600 005.

2.The Collector & District Magistrate,
Nagercoil,
Kanyakumari District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the first respondent in A.A.No.129 of 2004 dated 28.02.2005 and to quash the same and direct the respondents to issue a revolver licence to the petitioner for self protection.

For Petitioner : Mr.A.Kalam

For Respondents: Mrs.K.Bhuvaneswari, AGP

O R D E R

The petitioner herein had applied for licence to possess a revolver before the second respondent herein for self protection. The Superintendent of Police, Nagercoil had reported that the request of the petitioner for revolver licence need not be considered as he is already in possession of a SBBL Gun. Based on the report of the Superintendent of Police, Nagercoil, the second respondent rejected the request of the petitioner for revolver licence through his order dated 29.02.2004. The appeal before the first respondent was also

rejected on 28.02.2005. As against the said orders, the present Writ Petition has been filed.

2. Heard Mr.A.Kalam, learned counsel for the petitioner and Mrs.K.Bhuvaneswari, learned Additional Government Pleader appearing on behalf of the respondents.

3. The learned counsel for the petitioner would submit that the petitioner has a large extent of estates in Maramalai, Vazhayathuvayai and Palkulam, wherein, he is cultivating coconut, rubber and other spices. Since he was aged about 50 years, he has sought for licence for possessing a revolver for his self protection. The learned counsel would submit that there is no bar under the Arms Act, 1959, for possessing two arms and when there are no adverse remarks by the police officials against the petitioner, the orders rejecting the issuance of licence itself is bad.

4. The learned Additional Government Pleader, on the other hand submitted that, the petitioner is in possession of a SBBL Gun licence and the additional requirement of a revolver was unnecessary. It is further submitted that if the petitioner finds it difficult to carry the SBBL Gun for self protection, the same can be replaced with a revolver, after obtaining necessary order for surrender of the SBBL Gun, seeking for licence for the revolver.

5. I have given careful consideration to the submissions made by the respective counsels.

6. There is no prohibition under the Arms Act, 1959 for a person to possess two arms licence. The petitioner seeks licence for possessing a revolver for self protection, since he is involved in various businesses and also that a revolver would be handy to carry. The main reason cited by the respondents is that the petitioner is in possession of a SBBL Gun and therefore, had rejected the petitioner's request in regard to licence for a revolver.

7. When the petitioner has no adverse remarks, particularly, when he was already in possession of a SBBL Gun earlier and in the absence of any bar under Section 14 of the Arms Act, 1959, this Court is of the view that the petitioner is entitled to a licence for possessing a revolver. In an identical situation, this Court, in a decision in A.D. Prabhukannt and P.Kanimozhi V. The Principal Secretary/Commissioner of Revenue Administration, Chepauk, Chennai and The District Magistrate/District Collector, Erode District, Erode reported in 2018 (1) CTC 808, had an occasion to deal as follows:

"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 petitioners 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).

"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."

8. The aforesaid observations are self explanatory. As such, it can only be held that apart from the grounds available under Section 14 of the Arms Act, 1959, the respondents are not entitled to refuse a licence on any other ground. In the instant case, the reason for refusal is that the petitioner is in possession of SBBL Gun does not form a part of the circumstances stated under Section 14 of the Act and hence, the order itself is illegal.

9. It is not in dispute that the report of the Superintendent of Police, Nagercoil, has no adverse remarks on the petitioner. As such, there is no legal impediment under the provision of the Arms Act to issue a licence. A mere reference to possession of SBBL Gun licence will not disentitle the petitioner to possess a revolver licence also. Consequently, it can also be said that there cannot be any precondition for the petitioner to surrender the SBBL Gun for the sake of possessing a revolver and as such, the submission of the learned Additional Government Pleader in this regard, is unacceptable.

10. Nevertheless, the report of the Superintendent of Police, Nagercoil, seems to have been obtained in the year 2004 and since then, 15 years have elapsed. In view of this, it would be appropriate for the second respondent herein to consider the petitioner's request afresh, after obtaining a fresh report from the concerned Superintendent of Police. It is made clear that the second respondent herein shall call for such a report from the concerned Superintendent of Police, within a period of 15 days from the date of receipt of a copy of this order and on receiving such a requisition from the second respondent, the concerned Superintendent of Police shall submit a report, within a period of 30 days thereafter. Thereafter, the second respondent shall consider the petitioner's request for revolver-licence, in the light of the observations made in this order, within a period of three months from the receipt of the police-report.

11. In the light of the above observations, the order passed by the first respondent in A.A.No.129 of 2004 dated 28.02.2005, as well as the order of the second respondent in Na.Ka.C1/76227/2003 dated 29.06.2004 are hereby set aside. Consequently, the Writ Petition stands allowed. connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Special Commissioner and
Commissioner of Revenue Administration,
Ezhilagam,
Chennai-600 005.

2.The Collector & District Magistrate,
Nagercoil,
Kanyakumari District.

+1cc to Mr.A.Kalam Advocate, S.R.No.39597
+1cc to the Government Pleader, S.R.No.39857

KS(CO)
CB(19/09/2019)

W.P.No.24852 of 2005
and

सत्यमेव जयते W.M.P.No.27212 of 2005

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