

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.04.2019

CORAM
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.27615 of 2015

Joseph Amal Raj

...Petitioner

Vs.

1.The Additional Principal Secretary cum
Commissioner for Revenue Administration
Ezhilagam, Chepauk, Chennai-600 005.

2.The Additional District Magistrate
cum D.R.O., Dindigul
Dindigul District.

....Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records of the respondent pertaining to his proceedings dated 29.06.2015 in R.O.C.No.V.NE 5(1)/64888/2012 Appeal No.95/2012 of the first respondent, quashing the same and directing the first respondent to grant renewal of the Gun Licence No.175/I/Dgl-1 to the petitioner.

For Petitioner : Mr.P.Chandrasekaran

For Respondents: Mr.R.Govindasamy
Special Government Pleader

O R D E R

The petitioner is aggrieved against the order of the first respondent dated 29.06.2015 in rejecting an appeal filed for renewal of Gun licence.

2. The case of the petitioner is as follows:

The petitioner is owning agricultural land measuring an extent of 3 Acre 60 cents at Periyakottai Village. The wild animals used to come to his land and damage his crops. Therefore, the petitioner made an application before the second respondent for grant of gun licence. The second respondent, after careful consideration, granted gun licence in License No.175/I, Dgl. I. The period of licence expired on 31.12.2011. Hence, the petitioner made an application for renewal of gun licence for further period of two years from 01.01.2012 to 31.12.2014. However, the second respondent refused to renew the licence on the reason that the petitioner is having only 75

cents of lands and that there was no complaint before any authorities that the wild animals damaged his crops. The petitioner challenged the order of the second respondent before the first respondent by filing an appeal. The first respondent rejected the appeal by passing the impugned order, by reiterating the very same reasons stated by the second respondent. Hence, the present writ petition.

3. A counter affidavit is filed by the second respondent reiterating the reasons stated in the impugned order.

4. The learned counsel for the petitioner contended that not possessing sufficient property, cannot be a ground to reject the request for renewal of licence, since such rejection goes against Section 14(2) of the Arms Act, 1959. He further contended that the respondents are not justified in rejecting the request for renewal, based on the reason, which is beyond the scope and ambit of Section 14 of the Arms Act, 1959, which deals with refusal of licence. In support of his contention, the learned counsel relied on a decision made by this Court reported in 2018 (1) CTC 808, A.D.Prabhukaat & Others Vs. The Principal Secretary/Commissioner of Revenue Administration, Chepauk, Chennai-7 & Others.

5. On the other hand, the learned Special Government Pleader submitted that the petitioner is possessing only 75 cents of land and there is no threat to his crops, as alleged and consequently, his licence was not renewed. He further submitted that even otherwise, the petitioner's request for renewal period is also over and therefore, if at all the petitioner is interested, he has to apply afresh.

6. Heard both sides.

7. The petitioner was granted with gun licence. He applied for renewal of such licence for the period from 01.01.2012 to 31.12.2014. The second respondent, through the proceedings dated 06.11.2012, rejected the said request only by stating that the petitioner is possessing only 75 cents of land and there was no complaint made before any authorities as if his crops were damaged by the wild animals. Challenging the said order, the petitioner preferred an appeal before the first respondent, who in turn, has rejected the appeal by passing the impugned order by reiterating the very same reasons.

8. Section 14 of the Arms Act, 1959, deals with refusal of licence. Section 15 of the Arms Act, 1959, deals with duration and renewal of licence. Section 15(3) of the Arms Act, 1959, contemplates that every licence shall be renewable for the same period for which the licence was originally granted and shall be so renewable from time to time, and the provisions of Sections

13 and 14 shall apply to the renewal of a licence as they apply, unless the licensing authority, for reasons to be recorded in writing, otherwise, decides in any case. Therefore, it is evident that refusal to grant licence can be made only on the reason referred to under Section 14 of the Arms Act, 1959, since the provision of Section 14 of the Arms Act, 1959, applies even while considering the renewal application. Thus, the rejection of the renewal can be made only if the reasons referred to under Section 14 of the Arms Act, 1959, exist in a give case.

9. Perusal of the reasons stated in the impugned orders would show that they are not the reasons contemplated under Section 14 of the Arms Act, 1959. In fact, Sub Section 2 of Section 14 specifically contemplates that the licensing authority shall not refuse to grant any license to any person merely on the ground that such person does not own or possess sufficient property. Therefore, it is clear that the reason stated for rejecting the renewal application that the petitioner is possessing only 75 cents of land, cannot be sustained in the eye of law, as such reason is specifically barred to be stated by the licensing authority. This Court has considered the very same issue in a case reported in 2018 (1) CTC 808, A.D.Prabhukaat & Others Vs. The Principal Secretary/Commissioner of Revenue Administration, Chepauk, Chennai-7 & Others and observed therein at Paragraph Nos. 7 to 15 as follows:

"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 taken 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."

10. I find that the above decision squarely applies to the facts and circumstances of the present case in favour of the

petitioner. Therefore, the petitioner is entitled to succeed in this writ petition. However, as the very period for which the renewal sought for was already over as early as on 31.12.2014, it is for the petitioner to make a fresh application for renewal of licence for the subsequent period.

11. Accordingly, this Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the second respondent for considering the renewal request of the petitioner in the light of the order passed in this writ petition. Since the period for which the earlier renewal request made was over by this time, the petitioner is at liberty to make a fresh application for renewal of gun licence for the subsequent period within a period of two weeks from the date of receipt of a copy of this order. On receipt of such application, the second respondent shall consider the renewal application filed by the petitioner for the earlier period as well as for fresh period and pass orders on the same in accordance with law, within a period of twelve weeks thereafter. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Principal Secretary cum
Commissioner for Revenue Administration
Ezhilagam, Chempauk
Chennai-600 005.

2.The Additional District Magistrate
cum D.R.O., Dindigul
Dindigul District.

+lcc to Mr.P.Chandrasekaran, Advocate, S.R.No.39248
+lcc to the Government Pleader, S.R.No.39892

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W.P.No.27615 of 2015

SAI (CO)

RRS (28/05/2019)