

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2020

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.9840 of 2014
and M.P.No.1 of 2014

S.R.Parthiban

... Petitioner

Vs

1. State of Tamil Nadu
Rep. By its Principal Secretary to Government,
Home (POL-XIII) Department,
Fort St. George, Chennai-600 009.
2. The Inspector General of Police and
Commissioner of Police and
Additional District Magistrate,
Salem City, Salem.
3. The District Magistrate and District Collector,
Salem.

... Respondents

* * *

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus after calling for the records from the second respondent in his proceedings C.No./G1/Arms Act/46/1305/2009, dated 18.06.2010 and the same is confirmed by the first respondent in his proceedings G.O(D)No.635, dated 14.08.2013 quash the same and issue consequential directions to issue the license to the petitioner by renewing the same.

* * *

For Petitioner : Mr.A.Esakkiappan

For Respondents : Mr.V.Shanmugasundar,
Special Government Pleader for R1

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O R D E R

This writ petition is heard through Videoconferencing, on account of COVID-19 pandemic.

2. Laying challenge to the proceedings of the second respondent dated 18.06.2010 in C.No./G1/Arms Act/46/1305/2009, and also the order of the first respondent confirming the same

in his proceedings G.O(D)No.635, dated 14.08.2013 and seeking to issue consequential directions to the authorities to issue the license to the petitioner by renewing the same, this writ petition is filed.

3. The petitioner, who was the Member of the Legislative Assembly Constituency of Mettur, is a practising Advocate in Salem Bar. He was also the Secretary of a political party, namely, Desiya Murpokku Dravidar Kalagam (DMDK), Salem West. According to the petitioner, being in public life, he has been receiving anonymous calls and he apprehended danger to his life. Hence, he applied for grant of arms licence. The third respondent considered the case of the petitioner and granted arms licence on 16.02.2002 in favour of the petitioner in license No.S.141/2002. Based on the said licence, the petitioner also came in possession of 32 Bore Pistol CESKA bearing No.611325 and has been using the same without any remarks or complaints. The said licence was also periodically renewed till 31.12.2008. The petitioner had applied for renewal of the same on 21.01.2009 for a period of 3 years with effect from 01.01.2009. When the renewal of his licence was pending approval, the Village Administrative Officer had given a complaint to Mathikonpalayam Police Station to the effect that the political party persons belonging to DMDK conducted a public meeting, wherein, they abused another political party cadres resulting in uproar and confusion. In the melee, the cadres of both the political parties started attacking each other and damaged one of the government buses. A case was also registered in Crime No.136 of 2009 for the alleged offences under Sections 147, 148, 341 and 188 IPC read with Section 3 of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992 (in short, "TNPPDL Act"). In view of the said complaint against the petitioner, the application for renewal of the arms licence was rejected and his licence was cancelled by the second respondent on 18.06.2010. Aggrieved by the said order, an appeal was filed before the first respondent on 29.11.2010.

4. As the appeal against the order of the second respondent was not taken into consideration by the first respondent, the petitioner was constrained to file W.P.No.17810 of 2013 before this court and after a direction was issued by this court to the first respondent to consider the appeal and pass orders, the first respondent had conducted an enquiry and passed orders on 14.08.2013. The first respondent held that the petitioner/the appellant therein had not adduced any strong and valid justification for renewal of his arms licence and also had mentioned that there is no threat to his life. On the above grounds, the renewal of his licence was rejected by the first respondent. Aggrieved by the said order, the instant writ petition is filed.

5. A counter-affidavit dated 17.02.2020 was filed by the respondents seeking to sustain the impugned orders and to dismiss the writ petition.

6. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents and perused the materials placed before this Court.

7. The only question that arises for consideration is whether the petitioner is entitled for the renewal of his licence ?

8. As per the provisions of the Arms Act, 1959, no person shall be in possession or carry any firearm or ammunition, unless he holds a licence issued in accordance with the Act. Section 13 of the Arms Act deals with the procedure for application and obtaining licence. Section 14 of the said Act provides for the circumstances under which an application for licence could be refused and the said provision reads 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. The petitioner has been holding the licence, having obtained the same for the first time in the year 2002 and was periodically renewing the same till 31.12.2008. When he applied for renewal for the next three years, the renewal was refused on the pretext that there was a criminal case pending against the petitioner in Crime No.136 of 2009 for the offences under Sections 147, 148, 341 and 188 IPC read with Section 3 of the TNPPDL Act. The rejection order was passed by the second respondent on 18.06.2010 in C.No./G1/Arms Act/46/1305/2009. Aggrieved by the same, the appeal was preferred before the first respondent, however, the first respondent also rejected the appeal thereby the renewal of licence on the ground that he had not adduced any strong and valid justification for renewal of his arms licence and that there was no threat to the life of the petitioner. The said order was passed in G.O.(D)No.635, Home (Pol-XIII) Department, dated 14.08.2013.

10. Section 13(2) of the Arms Act authorises the license authority to call for a report of the officer in charge of the nearest police station, where the applicant resides and such officer shall send his report within a prescribed time and upon such report being filed, the licensing officer may consider the report received and shall either grant the licence or refuse to grant the licence. The proviso to Section 13(2-A) of the Act provides that even if the officer in-charge of the nearest police station has not filed the report, still it will be open to the licensing authority to pass appropriate orders without waiting for the report.

11. In the instant case, the second respondent had refused to renew the licence vide the order dated 18.06.2010, based on the case pending against the petitioner in Crime No.136 of 2009 and the said reason cannot be accepted, as the same does not find place under Section 14 of the Arms Act culminating in such an order of rejection. It is to be stated that the Village Administrative Officer (VAO) seems to have sent the complaint bringing to the knowledge of the authorities about the case that is pending against the petitioner. The said case had ended in acquittal by the order of the learned Chief Judicial Magistrate, Dharmapuri, dated 20.10.2012 in S.C.No.31 of 2012. The first respondent, though has referred in his appellate order, about the said crime number, at least could have taken into account the status of the case before passing the order, by calling for the report from the nearest police station, though the proviso says it is not mandatory. The impugned order was passed only on 14.08.2013.

12. Yet another criminal case alleged to have been

instituted against the petitioner in Crime No.263 of 2012 was also quashed by this court on 03.08.2017 in CrI.O.P.No.1732 of 2017 on the ground that there was no specific allegation against the petitioner.

13. The learned counsel for the petitioner mentioned that the petitioner is now a Member of Parliament (M.P.), though of a different political party and hence, the order of rejection was considered in a subjective manner. While considering the scope and ambit of Sections 14 and 18 of the Arms Act, a Division Bench of this court in Commissioner of Police V. V.P.Kalairajan, 2009 (3) MLJ 1295, had observed that the satisfaction of the Licensing Authority cannot be subjective and the following observation is relevant :

"20. This Court is of the opinion that when exercise of power of a statutory authority has to be based on certain reasons which such authority must believe to exist, such exercise of power cannot be left to the subjective satisfaction of the authority. Therefore, an erroneous stand has been taken by the Licensing Authority in his counter affidavit by saying in paragraph-9 "the subjective satisfaction of this respondent based on sound reasoning cannot be questioned by the petitioner". This stand is totally wrong. First of all, the satisfaction of the Licensing Authority cannot be subjective secondly, the applicant for such licence has always the right to question it, and the right of appeal under Section of the said Act recognizes such a statutory right of an applicant to question the exercise of power by the Licensing Authority. Therefore, it is clear that the Licensing Authority has proceeded on an erroneous basis in the exercise of his power under Section 14 of the said Act."

14. The Appellate Authority also only stated that the petitioner did not adduce any strong and valid justification for renewal of his arms licence, when he has been granted a licence by the authorities from the year 2002. Though it is a matter of record that the petitioner was involved in criminal case, he has been acquitted in the case and as on the date of passing the appellate order, there was no case pending against him and therefore, the appellate authority ought to have considered and gone into the particulars of the case pending against the petitioner before passing the order by calling for a report from the appropriate authority. Having failed to do so, the order passed by the first respondent is not sustainable and the same requires reconsideration. As a natural corollary, the order passed by the second respondent is also liable to be set aside for the simple reason that the alleged criminal case which was

pending against the petitioner leading to passing of the order of rejection of renewal and cancellation of licence ended in acquittal and thus, the petitioner cannot be denied the benefit of licence on the said ground.

15. In the result, the impugned order dated 14.08.2013 is set aside and the matter is remitted back to the second respondent for fresh consideration. It is open to the petitioner to produce materials adducing valid reasons for renewal of his arms licence. The second respondent is also directed to consider objection if any, in accordance with the provisions of the Arms Act and pass appropriate orders as per law as expeditiously as possible, however, within a period of four months from the date of receipt of a copy of this order.

16. Accordingly, this writ petition is allowed. There will be no orders as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary,
Home (POL-XIII) Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
2. The Inspector General of Police/
Commissioner of Police and
Additional District Magistrate,
Salem City, Salem.
3. The District Magistrate and District Collector,
Salem.

+1cc to M/s.A.Esakkiappan, Advocate in Sr.No.27676

W.P.No.9840 of 2014

bs (co)

rr ii (07/09/2020)