

**HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)**

**TUESDAY, THE THIRTEENTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY**

PRESENT

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NO: 7844 OF 2020

Between:

Sri Gaddi Gangi Reddy, S/o. Narsa Reddy, Aged about 48 Years, Occ: Business,
R/o. Villa No. 54, Mithila Saket, A S Rao Nagar, Secunderabad.

...PETITIONER

AND

1. The State of Telangana, Rep by its Principal Secretary Department of Home Affairs Secretariat Buildings, Hyderabad.
2. The Commissioner of Police, Police Commissionerate, Rachakonda.
3. The Station House Officer, Jawahar Nagar Police Station, Rachakonda.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue any appropriate writ, order or direction, one more particularly in the nature of Writ of Mandamus, declaring the action of the Respondent No.2 in refusing to grant Arms Licence to the petitioner vide Ref.No.323/5664/Fresh/M1-Arms/Rckd/2019-20 dt.12/03/2020 as illegal, arbitrary and violative of Article 14 and 21 of the Constitution of India and consequently direct the 2nd Respondent to forthwith grant Arms Licence to the petitioner.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the 2nd Respondent to forthwith grant Arms Licence to the petitioner pending disposal of the above writ petition.

Counsel for the Petitioners: SRI. N. NAVEEN KUMAR

Counsel for the Respondents: AGP FOR HOME

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No.7844 OF 2020****ORDER:**

Heard learned counsel for petitioner and learned Assistant Government Pleader for Home appearing for the respondents.

2. The armed licence application submitted by the petitioner is rejected by the order impugned, dated 12.03.2019. The said order is challenged on the ground that no reasons are assigned in support of the decision rejecting the application and the same is contrary to the provisions of the Arms Act, 1959 (for short, 'the Act'). It is also contended that there exists a threat perception to the petitioner and to protect his life, he needs arms licence and rejection is illegal. It is further contended that material relied upon to reject the claim was not made available to the petitioner.

3. In the counter affidavit, respondents sought to justify the decision to reject the arms licence and asserted that there is no threat perception to the petitioner. In addition to the justification given in the counter affidavit to support the decision in rejecting the application, it is also contended that petitioner has remedy of appeal under Section 18 of the Act and when such remedy is available, this writ petition is not maintainable.

4. Learned counsel for the petitioner contends that the order does not assign reasons in support of the decision and cannot be sustained in law. The Commissioner also placed reliance on a report submitted by the local police without supplying to the

petitioner. He submits that the right of petitioner to secure arms licence cannot be denied in an arbitrary manner.

5. Learned Assistant Government Pleader submits that on due application of mind, the claim of petitioner was rejected and there is no illegality in the order. He submits that against the decision of the Commissioner, remedy of appeal is provided under Section 18 of the Act and therefore the writ petition is not maintainable.

6. There are two aspects to decision of a statutory authority. Firstly, he must apply his mind independently based on material placed on record after giving due opportunity to claimant and secondly to take the decision supported by reasons incorporated in the order/proceedings. Both aspects found wanting in the impugned decision.

7. From the reading of the order, it is apparent that the Commissioner has not assigned reasons as to why the application for grant of arms licence is rejected.

8. It is axiomatic that a decision of quasi-judicial authority must speak for itself and cannot be supplemented in the form of counter affidavit. A non speaking order of the statutory authority cannot stand the test of judicial scrutiny and is *ex facie* illegal.

9. Right to life is sacrosanct and guaranteed by Article 21 of the Constitution of India. It is the fulcrum, around which all other rights flow. The Act seeks to guarantee this right, when a

person apprehends of threat to his life. Thus, it is not an empty formality. Therefore, authority has to examine the claim having due regard to alleged threat perception and take a decision but cannot mechanically reject.

10. It is also noted that the Commissioner placed reliance on a report of the Jawahar Nagar Police to reject the claim of petitioner. The said report was obtained behind the back of petitioner and copy was not furnished to him. Whenever, a statutory authority decides a claim placing reliance on material which may impact the decision making of the authority and when such material is against the person, perforce, the person is entitled to be provided the material so relied upon and opportunity to rebut the contents and then decide by applying his mind.

11. The next issue for consideration is, whether the petitioner be relegated to avail the remedy of appeal.

12. Though, there is no bar to entertain a writ petition even if petitioner has alternative remedy to redress his grievance, ordinarily, the writ Court does not entertain writ petition when the petitioner has an effective and efficacious statutorily engrafted appeal remedy against the decision of an authority. Section 18 of the Act provides appeal remedy. Thus, ordinarily, a person aggrieved by the decision of the original authority has to avail the remedy of appeal. As noted hercinabove, the order of the statutory authority is vitiated on two counts, i.e., it is not a speaking order and material relied on to take an adverse

decision was not supplied, which go to the root of the matter. The appellate authority cannot cure this patent illegality. A non-speaking order also deprives the opportunity to raise grounds in support of appeal, thus, making the appeal remedy nugatory. In the facts of this case, as the order *per se* is not sustainable, the Court is not inclined to relegate the petitioner to avail the remedy of appeal.

13. **K. Raghavendra Rao and others vs. the State of Telangana and others**¹ is also under the same Act. Similar objection was raised before this Court. On due consideration of the relevant provisions of the Act and the decision of the statutory authority, this Court having noticed that the order of statutory authority did not speak for itself rejected the objection on maintainability of writ petition. I am in respectful agreement with the view expressed by this Court in the above decision.

14. For the aforesaid reasons, the order impugned is set aside and the writ petition is accordingly allowed.

15. The Commissioner of Police, Rachakonda Commissionerate, is directed to consider afresh the application submitted by the petitioner on 07.10.2019 to grant arms licence. The Commissioner is directed to furnish a copy of the report of Jawahar Nagar Police to the petitioner to enable the petitioner to submit his response to the report. The petitioner shall file his response within two weeks from the date of furnishing the said report. If any response is filed by the petitioner within the time

¹ MANU/TE/0149/2019

stipulated above or otherwise, the Commissioner of Police shall consider the issue uninfluenced by the earlier decision, and pass appropriate orders by assigning reasons in support of the decision. The entire exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

Miscellaneous petitions, if any pending, stand closed.

SD/-N.CHANDRA SEKHAR RAO
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Secretary Department of Home Affairs, State of Telangana, Secretariat Buildings, Hyderabad.
2. The Commissioner of Police, Police Commissionerate, Rachakonda.
3. The Station House Officer, Jawahar Nagar Police Station, Rachakonda.
4. 5 L.R. Copies.
5. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
6. The Secretary, Telangana Advocates Association Library, High Court for the State of Telangana at Hyderabad.
7. One CC to Sri N. Naveen Kumar, Advocate [OPUC]
8. Two CCs to GP for Home, High Court for the State of Telangana at Hyderabad. [OUT]
9. Two CD Copies

CHR



HIGH COURT

DATED:13/10/2020

ORDER

W.P.No.7844 of 2020



ALLOWING THE WRIT PETITION
WITHOUT COTS

SSV
20 copies
Dt 22/10/2020