



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.03.2022
CORAM

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

W.P. No.5854 of 2016

A. Arasendran

..Petitioner

Vs

1. The State of TamilNadu,
Rep by its Principle Secretary to Government,
Home (POL-XIII) Department,
Fort George, Chennai -9.

2. The Commissioner of Police &
Additional District Magistrate,
Salem City,
Salem

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue orders of Writ of Certiorarified Mandamus to call for the records from the 2nd respondent in his proceedings R.C.No.G1/AL-574/29694/2012 dated 20.12.2013 and in G.O.(D) No.343 dated 18.05.2015(served on .12.2015) passed by the first respondent quash the same and issue consequential directions to the respondents to issue the Gun License to the petitioner.

For petitioner
For respondent

... Mr. A.Esakkiappan
... Mr. M.Shajahan,
Special Government Pleader

ORDER

This writ petition has been filed challenging the order rejecting the petitioner's application to renew the gun licence.

2. According to the petitioner, earlier, in the year 1994, a licence for possessing SBBL gun was granted to the petitioner and the same has been periodically renewed till 31.12.2012. On 05.12.2012, the petitioner made an application to the 2nd respondent for further renewal from 31.12.2012. The 2nd respondent refused to renew the licence on the ground that a criminal case was pending as against the petitioner for the offence under Section 420 IPC. Against which, the petitioner filed an appeal before the first respondent and the first respondent, after considering the materials, rejected the appeal on the ground that, as per the guidelines issued by the Central Government, for granting licence, the police should give a "No



Threat" certificate and the pendency of the Criminal case also should be considered, as the petitioner having a criminal case against him, licence cannot be renewed. Now, challenging the same, the present writ petition has been filed.

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3. The respondents filed a counter affidavit stating that, in respect of the criminal case pending as against the petitioner, he was arrayed as A6 in C.C.No.104 of 2004 on the file of the Judicial Magistrate No.5, Salem, the petitioner has filed a petition to discharge him from the charge and the trial Court, by order dated 11.05.2010, discharged the petitioner from the charge, against which, a Revision Petition in CRP No.48 of 2010, has been filed by the prosecution before the Additional District and Sessions Court-II, Salem and the same was also dismissed on 21.03.2017. Subsequently, another case also came to be registered against the petitioner in Crime No.37 of 2002 for the offences under Sections 120-B, 418 and 420 of IPC on the file of the Erode Town Police Station, and the same was transferred to CBCID, Erode, for further investigation as per the order of the Director General of Police, Tamil Nadu, Chennai. After investigation, final report has been filed and the same has been taken on file as CC No.661 of 2020 on the file of the Judicial Magistrate No.III, Erode. That apart, there is no life threat at all to the petitioner and hence, he is not entitled for renewal of gun licence as per Section 14 of the Arms Act. It is further stated that the petitioner involved in a criminal case of cheating the public by way of collecting money along with the other accused and hence, granting licence to him would be against the public interest.

4. The learned counsel for the petitioner submitted that the renewal application has been rejected only on the ground that a criminal case is pending against the petitioner. In one of the criminal cases, the petitioner was discharged and the Revision filed by the prosecution also came to be dismissed. Even though another criminal case is pending against the petitioner, pendency of the criminal case is not a bar, unless granting licence is against the public interest or public safety. But, the impugned order did not disclose the renewal of gun licence to the petitioner will cause threat to the public peace or against the public interest or public safety. He further submitted that, the appellate authority has given a different reason that, the petitioner did not produce a certificate from the concerned local police, and there is no assessment of threat at the time of passing order. He further submitted that the petitioner is having licence for more than 18 years without any complaint and absolutely there is no reason to reject the renewal of gun licence. Merely because a criminal case is pending, in which, he has been falsely implicated, will not be an impediment to renew the gun licence to the petitioner.



5. The learned Special Government Pleader appearing for the respondents submitted that, the petitioner is involved in two criminal cases for an offence under Section 420 of IPC for cheating public by collecting deposits. Even though he was discharged in one case, another case is pending against him. Considering the fact that granting licence will be against the interest of the general public, the renewal has been rejected rightly and there is no illegality in it.

6. This Court considered the rival submissions made on either side and carefully perused the materials available on records.

7. Original authority has rejected the licence on the ground that a criminal case was pending against the petitioner, in Crime No.32 of 2002. Now, admittedly, the petitioner was discharged from the above criminal case. However, yet another criminal case is pending against the petitioner in C.C.No.104 of 2004 on the file of the Judicial Magistrate No.5, Salem. Now the question is pendency of criminal case is a bar for renewing the licence or not. Section 14 of the Arms Act deals with the renewal of granting licence, which 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.



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(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."

8. A cursory reading of the above provision, it is seen that the pendency of the criminal case itself is not a bar. However, while granting renewal, the authorities should apply their mind and come to a conclusion that granting or renewing licence is necessary for security of the public peace or for public safety. But, perusal of the impugned order passed by the respondents 1 and 2, it could be seen that, there is no assessment regarding the threat to the petitioner, and renewing license would be against public peace or public safety.

9. Considering those circumstances, this Court is of the view that the impugned order has been passed, without giving any valid reason for rejecting the licence, only on the ground of pendency of criminal case. Hence, the impugned order passed by the 2nd respondent is liable to be set aside.

10. Accordingly, the impugned order passed by the 2nd respondent is set aside and the matter is remanded back to the 2nd respondent and the 2nd respondent is directed to conduct a fresh enquiry, by considering the materials, as to whether renewal of gun licence to the petitioner is against the public peace or public safety and pass suitable orders, after giving opportunity of hearing to the petitioner, within a period of twelve weeks from the date of receipt of a copy of this order.

11. With the above directions, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar



mrp

To

1. The Principle Secretary to Government,
State of TamilNadu,
Home (POL-XIII) Department,
Fort George, Chennai -9.

2. The Commissioner of Police &
Additional District Magistrate,
Salem City,
Salem
Chennai 600 035

+2 ccs to Mr.A.Esakkiappan, Advocate Sr.NO. 15195

+1 cc to Government Pleader Sr.NO. 15870

W.P. No.5854 of 2016

MG(CO)

A.SK(12/04/2022)