
(2002) 10 AP CK 0063
In the Andhra Pradesh High Court
Case No : Writ Petition No. 12330 of 2002

B. Balraj Goud

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 28-10-2002

Acts Referred:

Arms Act, 1959 — Section 17(3)
Arms Rules, 1962 — Rule 51

Citation : (2003) 2 ALD 599 : (2003) 1 ALT(Cri) 98

Hon'ble Judges : A. Gopal Reddy, J

Bench : Single Bench

Advocate : E. Ayyapu Reddy, for the Appellant; Government Pleader for Home for Respondent Nos. 1 to 3 and B. Purushotham Reddy, for the Respondent

Final Decision : Dismissed

Judgement

A. Gopal Reddy, J.—This writ petition is filed under Article 226 of the Constitution of India for issuance of a mandamus declaring the proceedings in Memo No. 21684/Arms/ 2002-2 dated 28-6-2002 of the 1st respondent, whereunder he confirmed the orders of the 2nd respondent in L.No. 270/ Chikkadpally who cancelled the Arms licence granted in favour of the petitioner as illegal and violative of Article 14 of the Constitution of India and for a consequential direction to renew the petitioner's Arms licence.

2. The petitioner was granted Arms licence by the Deputy Commissioner of Police East Zone, Hyderabad in Memo No. HE-3/3313/Arms/99 dated 6-12-1999 to possess a N.P bore Revolver/Pistol. The petitioner acquired a.32 bore revolver No. B77203 of Webley and Scot make. The licence granted to the petitioner vide 270/ Chikkadpally was valid upto 5-12-2000. While so, on receipt of the report from the Station House Officer, Chikkadpally a show-cause notice was issued to the petitioner on 10-4-2001 informing that the petitioner was convicted and sentenced to undergo Rigorous Imprisonment for three years by the III Metropolitan Sessions Judge in SC No. 481/97 and also involved in Cr.No. 15/

2000 under Sections 447, 427 read with 34 IPC and Sections 7 and 8 of Land Grabbing Act of Chikkadpally Police Station on 13-1-2000 and to show-cause why the Arms licence should not be cancelled for involvement in criminal cases and weapon seized under Arms Act and Rules in the interest of public security, peace and safety. The petitioner who submitted his explanation on 19-4-2001 admitting his involvement in Cr.No. 155/96 which was ended in acquittal on setting aside conviction order dated 23-10-2000 by the High Court in CrI. A No. 1150 of 2000 dated 7-11-2000 and about registering Cr.No. 15/2000 he stated that he was falsely implicated in the case and the same is likely to be dismissed in a Court of law. Unless he proved as guilty by a Court of law he should not be punished and requested to renew the Arms Licence in his favour. Being not satisfied with the explanation offered by the petitioner the 2nd respondent by order dated 23-10-2001 cancelled the Arms Licence. Questioning the same the petitioner filed WP No. 4579 of 2002 which was disposed of at the stage of admission directing the 1st respondent -Government of Andhra Pradesh to dispose of the appeal filed by the petitioner against the orders of the 2nd respondent, cancelling the Arms Licence within a period of 10 days from the date of the order and with a direction to the petitioner to appear before the 1st respondent with a copy of the order passed in the writ petition.

3. It is relevant to notice here that before the Court passes the order, the Government through Memo dated 15-5-2002 informed the petitioner that the appeal filed by him against the cancellation of his Arms Licence has been rejected. But however, in obedience to the orders of the High Court in the writ petition, referred to above the Government once again took up the appeal and rejected the same stating that the petitioner has not given any information with regard to his conviction and subsequent acquittal of the case in Cr.No. 155/96 under Sections 147, 143, 302 read with 34 and 120B IPC of Begumbazar Police Station. His activities came to know that he was again involved in Cr.No. 15/2000 as per the report submitted by the Deputy Commissioner of Police East Zone, Hyderabad. In view of the same, the petitioner's Arms Licence was cancelled which is impugned in the present writ petition contending that the petitioner was acquitted by the High Court in an appeal arising in Cr.No. 155/96 and in fact, his name was not at all mentioned as accused in the FIR and he was falsely implicated in Cr.No. 15/2000. This Court in CrI.MP No. 389 of 2002 stayed all further proceedings, as it did not disclose any case against the petitioner. Against the alleged land grabbing, WP No. 2042 of 1994 was filed which actually belongs to some of the accused named in the FIR who obtained stay in the said writ petition. When the petitioner applied for Arms Licence in the year 1999 after due verification only respondents 1 and 2 through their proceedings dated 7-8-1999 issued the said Arms Licence. Therefore, taking into consideration of the alleged involvement in Cr.Nos. 155/96 and 15/2000 for cancelling the petitioner's licence is only a ruse and lacks bona fides. Moreover, due to political rivalry the 2nd respondent detained the petitioner on 6-11-2001. But the said detention was set aside by the Government in G.O. Rt. No. 5399 dated 11-12-2001. The petitioner

being Income Tax Assessee and Excise Contractor, cancellation of Arms Licence violates Article 21 of the Constitution.

4. In answering to the Rule Nisi, the 3rd respondent filed a counter stating that during the year 2000 the petitioner was involved in Cr.No. 15 of 2000 under Sections 447, 427 read with 34 of IPC and Sections 7 and 8 of Land Grabbing Act and during the course of investigation in the above case, it was revealed that the petitioner was also involved in Cr.No. 302/96 under Sections 147, 148, 506, 448, 427 read with 149 IPC of Chikkadpally Police Station. The petitioner was arrayed as A1 but the said case was ended in acquittal. Apart from the same the petitioner was also involved in Cr.No. 155/ 96 under Sections 147, 148, 302 read with 34 and 120B IPC of Begumbazar Police Station for which he was convicted in SC No. 481/97. But on appeal, the High Court acquitted him for the charges. Investigation also reveals that number of cases also went unreported to the police because of fear and danger sensed by the victims at the hands of the petitioner. In view of the same, the then Inspector of Police, Chikkadpally sent a report to the Deputy Commissioner of Police, East Zone, Hyderabad requesting him to cancel the Arms Licence granted to the petitioner earlier and accordingly the impugned order was passed cancelling the Arms Licence of the petitioner. The petitioner had suppressed about his involvement of criminal cases at the time of obtaining Arms Licence. Had he disclosed the said fact earlier the police authorities ought not to have granted the Arms Licence. In view of the same, the petitioner is not entitled to possess the Arms Licence in the interest of public security, peace and safety and prayed for dismissal of the writ petition.

5. in view of the fact that the criminal case was pending before the Chikkadpally Police Station in Cr.No. 302/96 vide CC No. 753/96 on the file of XVII Metropolitan Magistrate, Hyderabad this Court called upon the learned Government Pleader for Home to furnish the particulars of Sub-Inspector of Police and also Assistant Commissioner of Police, Chikkadpally who recommended for issuance of licence to the petitioner and also to know the investigation made by them before recommending the case. The learned Government Pleader on instructions submitted that the then Assistant Commissioner of Police is already retired from service and the Sub-Inspector of Police, Chikkadpally is presently working at Afzalgunj Police Station. Accordingly, this Court by order dated 30-9-2002 impleaded him as 4th respondent and directed the office to issue notice to him. In response to the notice, the 4th respondent filed a counter stating that the petitioner made an application for arms licence to the 2nd respondent who forwarded the same to the Chikkadpally Police Station. Thereafter, he verified the crimes registered during the years i.e., 1997, 1998 and 1999 and found that there was no case registered against the petitioner before the Chikkadpally Police Station during the preceding three years, whereas nearly 350 cases relating to the Chikkadpally Police Station are pending trial before the various Courts. In Cr.No. 302/96, which was registered against the petitioner and others, investigation was completed and charge sheet was filed before the competent Court on 6-11-1996 before he taking charge as

Inspector of Police, Chikkadpally. In view of the same, he could not notice the pendency of the said crime due to heavy rush of work at Police Station by oversight while sending his report to the Assistant Commissioner of Police, Chikkadpally recommending the case of the petitioner for grant of Arms Licence. He also narrated about his meritorious awards given to him and prayed to condone the lapses committed by him during the course of investigation.

6. Sri E. Ayyapu Reddy, learned Senior Counsel appearing for the petitioner contends that the impugned order does not satisfy the requirements of Section 17(3)(b) and (5) of the Arms Act, 1959 (for short "the Act"). This Court in Crl. MP No. 389 of 2002 stayed the alleged land grabbing case in Cr.No. 15/2000. The impugned order does not disclose any reasons for cancelling the licence which is liable to be set aside. When the Arms Licence is valid upto 5-12-2000 and when the renewal application is pending, the authorities cannot cancel the same.

7. Refuting the submission made by the learned Counsel for the petitioner, learned Government Pleader for Home submits that Arms Licence is valid upto 5-12-2000. At the time of obtaining licence the petitioner suppressed material facts that he was convicted in SC No. 481/97 by the Metropolitan Sessions Judge, Hyderabad but subsequently acquitted by the High Court in Crl.A No. 1550 of 2000 dated 7-11-2000. When the application for renewal of licence is pending and due to petitioner's involvement in Cr.No. 15/2000 a show-cause notice was issued and accordingly after considering the explanation the licence was cancelled. The appeal filed by the petitioner against the cancellation order was also dismissed by the Government on 15-5-2002. The said fact was not brought to the notice of the Court, but however, pursuant to the orders passed by this Court in WP No. 4579 of 2002, the Government once again taken the appeal for hearing and passed a reasoned order, which do not require any interference.

8. Before I proceed to consider the rival contentions advanced by the learned Counsel on either side, it is useful to notice the relevant statutory provisions, which governs the controversy. Section 17(3)(b)(c) and 17(5) read as under:

17. Variation, suspension and revocation of licences:

(1) xxxxx(2) xxxxx (3) The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence,--

(a) xxxx (b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or

(c) if the licence was obtained by the suppression of material information or on basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it; or

(d) xxxxx(e) xxxx

(4) xxxxxx (5) Where the licensing authority makes an order varying a licence

under Sub-section (1) or an order suspending or revoking a licence under Sub-section (3), it shall record in writing the reasons therefore and furnish to the holder of the licence 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.

Rule 51 of the Arms Rules, 1962 (for short "the Rules") deals with application for licence, which shall be submitted in Form "A" and it shall contain all such information as it necessary for the consideration of the application. Rule 51 mandates making of application in Form "A", which contains 3 parts. Part -A deals with identity of applicant. Part-B deals with other particulars of applicant. Part -C deals with particulars of licenses. Condition No. 9 under Part -B reads as under:

9. Where the application has been-

(a) convicted if so, the offence (s), the sentence and date of sentence;

(b) ordered to execute a bond under chapter VIII of Code of Criminal Procedure, 1973 (2 of 1974} for keeping the peace or for good behaviour - if so, when and for what period;

Warning attached to Form "A" reads as under :

Suppression of any factual information or furnishing of any false or wrong information in the application Form in violation of Rule 51-A will render the applicant liable for punishment u/s 30 of the Arms Act, 1959.

Rule 51(A) reads as under:

The applicant shall not suppress any factual information or furnish any false or wrong information in the application form.

It is relevant to note that it is not pleaded by the petitioner that all necessary particulars which are mandatory in nature as per Rule 51 have been furnished by him in Form "A" for enabling the authorities to make enquiry into the antecedents of the petitioner whether to grant licence in his favour or not. But contrary to the same, the records produce by the Government Pleader for Home disclose that the application submitted by the petitioner in Form "A" dated 7-8-1999 do not disclose any particulars under Part-B whereas by the said date the petitioner was facing the criminal charge in Cr.No. 155/96 under Sections 147, 148, 302 read with 34 and 120B IPC and for which he was subsequently convicted by the III Metropolitan Sessions Judge, Hyderabad in SC No. 481/97 and the same was pending trial. Without disclosing the said fact the petitioner obtained recommendation for grant of Arms Licence in his favour. Due to involvement of the petitioner in Cr.No. 15/ 2000 on the file of Police Station, Chikkadpally and during the course of investigation it came to light that he was involved in Cr.No. 155/96 on the file of Begumbagar Police Station, the 2nd respondent issued a show-cause notice dated 10-4-2001 stating that the

petitioner was involved in Cr.No. 155/96 and Cr.No. 15/2000 and why his Arms Licence should not be cancelled, to which the petitioner submitted his explanation on 19-4-2001 admitting about his involvement in Cr.No. 155/96 and pendency of the same before the III Metropolitan Sessions Judge, Hyderabad in SC No. 481/97 wherein conviction order was passed on 23-10-2001.

9. Section 13 of the Act deals with provisions relating to grant of Licenses. On receipt of an application, the licensing authority shall call for the report of the officer in-charge of the nearest Police Station on that application, and such officer shall send his report within the prescribed time. The licensing authority, after such inquiry, if any, as it may, consider necessary, and after considering the report received under Sub-section (2) of Section 13 shall subject to other provisions of Chapter-III, by order in writing either grant the licence or refuse to grant the same. If the report is not received from the nearest Police Station within the prescribed time the licensing authority may, if it deems fit, make such order, after the expiry of the prescribed time, without waiting further report. Subsection (3) provides about grant of licence type of the weapon etc. Section 14 of the Act authorises the licensing authority to refuse the licence. Sub-section (3) of Section 14 contemplates recording of reasons for such refusal and furnish the same to the person on demand a brief statement of the same or may refuse in the interest of the public to furnish such information. From the Scheme of the Act and the Rules framed thereunder, it needs no reiteration that the issue of licences for possessing deadly arms, should be done with great care and caution and with greater circumspection and fuller realization of the conditions prevalent on the date when the licence is sought to be issued. The licensing authority has to call certain sets of practice and only after satisfying that such grant of licence is not detrimental to the public peace then only licence will be issued and whenever the authority has reason to believe that the applicant is for any reasons unfit for licence under the Act, he can refuse to grant the licence.

10. In the counter filed and the records produced disclose that the licence was granted on mere making of an application by the petitioner without recording any satisfaction for grant of the same. It is needless to observe that the investigation made by the Inspector of Police - 4th respondent is in a perfunctory manner. The very fact that the petitioner was involved in Cr.No. 302/96 for the offences under Sections 147, 148, 506, 448, 427 read with 149 IPC for which necessary charge-sheet was laid before the XVII Metropolitan Magistrate, Hyderabad and the same was pending adjudication on the relevant date was not considered by the licensing authority while granting Arms Licence to the petitioner. Apart from the same, the petitioner was charge sheeted in Cr.No. 155/96 for the offences under Sections 147, 148, 302 read with 34 and 120B IPC on the file of Begumbazar Police Station which ended conviction after grant of licence. The involvement of the petitioner in two criminal cases is not an insignificant factor in the grant or revocation of Arms Licence. Such involvement and acquittal subsequent to the grant of licence does not make the factor altogether irrelevant. On the contrary, it furnishes a background about the propensities and character traits of the

applicant, which could be duly taken note of by the licensing authority, which adopted a light hearted to irresponsible view while considering the application of the gun licence. The licensing authority does not preclude from revising its erroneous stand in the light of the facts, which were surfaced during the investigation of Cr.No. 15/2000.

11. It is relevant to take note of the judgment of the Kerala High Court in V.K. Thomas Vs. The Revenue Board Member (L.R.), wherein it is held:

"Involvement in a murder case is, therefore, not an insignificant factor in the grant or revocation of an arms licence. That such involvement was in the year 1970, does not make the factor altogether irrelevant. On the contrary, it furnishes a background about the propensities and character traits of the applicant, which could be duly taken note of. The petitioner states that it was notwithstanding the above factors that the licence had been granted. The fact that the licensing authority, adopted a lighthearted to irresponsible view while considering the application of the gun licence does not preclude it from revising its erroneous stand in the light of farther facts. This is particularly so in view of the repetitive involvement of the petitioner in criminal cases. The acquittal in the case would not be a bar for the statutory authorities to consider the revocation of the licence, with reference to the emerging circumstances.

An acquittal in a criminal case, may be the result of the very many imponderable factors. A perfunctory investigation, an ineffective and inefficient possession and inefficient possession and the thwarting effect which the might and money the accused may have in the conduct of the case- all may result in an ultimate acquittal. It is notorious that in recent times, the prosecution mechanism of the State apparatus, has been disturbingly ineffective. The Statistics would indicate that the percentage of conviction, as ultimately upheld, is a meager percentage of the prosecutions actually launched. This justifiably has cause anxiety for all who are concerned with the well being of the society. It is entirely for the State and its agencies, to take serious note of this deteriorating situation in relation to its prosecuting agencies. It is sufficient for the purpose of this case to indicate that the failure on the part of the prosecution, mechanism, and the reflection therefore in an ultimate acquittal by a Court of law, would not be good enough for arming an undesirable person with a deadly weapon and a lawful licence."

From the ratio decided in the above decision the acquittal in the criminal case would not be a bar to consider the revocation of the licence with reference to the emerging circumstances.

12. A Division Bench of this Court in T. Anil Kumar Vs. The State of Andhra Pradesh and Others, , upheld the action of the State Government in rejecting the candidature of the writ petitioner therein for appointment of the District and Sessions Judge Grade-II by direct recruitment as the answer given by him to Column No. 12 in the attestation Form is not truthful, that his involvement in the criminal case was wantonly suppressed.

13. In view of the legal position and discussion as above, the contention put forward by the learned Counsel for the petitioner that notwithstanding the other factors, namely the petitioner's involvement in Cr.No. 302/96, the licensing authority granted the licence and subsequently the same was ended in acquittal though appears to be attractive at first glance but it is difficult to comprehend for the reason, the petitioner is guilty of "suppressio veri and suggestio falsi", The petitioner suppressed the material facts of his involvement in criminal cases, namely Cr.No. 155/96 for which he was charge-sheeted in SC No. 481/ 97 on the file of Begumbazar Police Station for a very serious offence and also in Cr.No. 302/96 on the file of Chikkadpally Police Station for which necessary charge-sheet was filed and the same was ended in acquittal on 26-11-1999. Apart from the same, the petitioner is under obligation to disclose the said facts for obtaining Arms Licence under Rule 51 of the Rules, which is mandatory in nature. The petitioner who obtained the Arms Licence and secured dishonest advantage, which cannot be perpetuated through judicial process. It is well settled proposition of law that High Court in proceedings of mandamus will never sit as a Court of appeal so as to examine the facts or to substitute its own wisdom for the discretion vested by law in the person against whom writ is sought. It is always open for the High Court to consider, whether in exercise of its undoubted discretionary jurisdiction it should decline the relief to such petitioner if the grant of relief would defeat the interest of justice.

14. The reliance placed by the learned Counsel for the petitioner in *Kakku Venkataramaiah Vs. The State of Andhra Pradesh and Another*, is a case where the arms licence was cancelled, as recommended by the Superintendent of Police, Medak District, without giving any notice to the petitioner.

15. In the case of *Gianoba v. Collector and D.M., Medak District 1967 (1) ALT 1*, this Court considered Section 18 of the Arms Act, 1878, which empowers the licensing authority to cancel the licence for the security of public peace and the order of cancellation do not assign any reasons for cancellation.

16. Both the cases are misplaced to the facts of the present case. Section 17(3) (c) of the Act authorises the licensing authority for cancellation of licence which was obtained by suppression of material information or on basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of obtaining the licence. The concealment of material fact is nothing but misrepresentation. If a man conceals the fact i.e., material to the transaction knowing that the other party will act on the presumption that no such fact exists it is as much as representation as if the existence of such fact was expressly denied, which is nothing but result in fraud. The petitioner's involvement in two criminal cases for which he was charge sheeted is under obligation to reveal the same as per the Rules which is a relevant factor to be considered by the licensing authority who is expected to discharge his duties reasonably and responsibly, uninfluenced by extraneous factors has to be given due weight for arming a person with deadly weapon under Arms Licence. Non-

disclosure of the same which will influence the decision making authority for grant of licence is fatal. For which a show-cause notice was issued to which the petitioner submitted his explanation admitting his involvement and subsequent acquittal. The licensing authority after considering the same cancelled the licence. The Government on appeal confirmed the rejection order passed by the 2nd respondent after giving due opportunity to the petitioner which met the requirement of principles of natural justice. In the background of facts as noted in this case, sustains well the motion of licensing authority for revocation of licence which was done after due intimation which is neither arbitrary nor suffers from any incurable legal infirmities for issuing writ of mandamus directing the licensing authority for renewal of the licence after setting aside the cancellation order. It is well settled that if a person gets a favour or secured dishonest advantage by concealing the material facts cannot acquire any right to retain the advantage or the licence so obtained nor can perpetuate it by judicial process. In view of the same, I do not see any merit in the contention advanced by the learned Counsel for the petitioner for issuance of writ as prayed for.

17. For the foregoing reasons, writ petition fails and it is accordingly dismissed with exemplary costs of Rs. 5,000/- (Rupees five thousand only) payable to the Court Masters and Personal Secretaries Welfare Fund (A/c.4033) within a period of four weeks from today.