

(1998) 02 MAD CK 0144

In the Madras High Court

Case No : Writ Petition No. 2351 of 1993

C. Sam Joseph Raj

APPELLANT

Vs

District Revenue Officer and Addl. Dist. Magistrate and
Another

RESPONDENT

Date of Decision : 17-02-1998

Acts Referred:

Arms Act, 1959 — Section 13, 14
Arms Rules, 1962 — Rule 5
Constitution of India, 1950 — Article 19(1), 226
Wild Life (Protection) Act, 1972 — Section 9, 9(2)

Citation : (1998) CriLJ 3152

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Advocate : R. Antony Xavier, for the Appellant; R. Gothandaraman, GA(W), for the Respondent

Final Decision : Allowed

Judgement

Y. Venkatachalam, J.—The writ petition is filed by the writ petitioner, invoking Article 226 of the Indian Constitution, for the relief sought for, to scrap the impugned order passed by the Appellate Authority i.e. 2nd respondent dated 16-5-1992 and to direct the respondent to issue S.B.B.L. Gun Licence for hunting purposes to the petitioner herein.

2. In support thereon, the writ petitioner filed an affidavit, wherein he narrated all the facts and circumstances that forced him to file the writ petition.

3. The Aher side filed a counter rebutting all the material allegations levelled against the respondents one after another and requested the Court to dismiss the same for want of merit.

4. Arguments of the learned Advocates on both sides are heard.

5. The point for consideration is, whether there are any valid grounds to allow

the writ petition or not?

6. I have gone through the material documents, particularly with reference to the contents of the affidavit, counter, besides the other material documents available in the typed set of documents. I have also kept in mind the various points raised by the learned Advocates appearing on either side. I have also kept in mind the rule position with regard to the matter involved in the present case on hand. Having seen the entire material available on record, the following are the admitted facts.

7. The petitioner applied for a gun licence to possess a S.B.B.L. Gun on 28-10-1988 under Rule 5 (sic) of the Arms Act, 1959 in Form A, for hunting purposes. The petitioner would state that he had some illness and the Sidda Medical Officer advised him to take Sempooth and Fruit Bat (birds) besides some other diets. On 23-1-1990, the 1st respondent rejected the petitioner's application on the ground that the District Forest Officer opined that the said licence should not be granted as those birds have to be protected. Against the said order, the petitioner preferred an appeal to the 2nd respondent on 22-2-1990 and on 23-1-1991, the 2nd respondent remanded the case to the 1st respondent for fresh disposal and again the 1st respondent rejected the application on 28-2-1991 without assigning any valid reasons, violating Section 14 of the Arms Act, 1959. Aggrieved by the said order the petitioner again preferred an appeal and that was also rejected. Aggrieved by the said order of rejection, the petitioner has preferred this writ petition, invoking Article 226 of the Indian Constitution.

8. On the other hand, the respondent would contend that the application filed by the writ petitioner was enquired into through the Superintendent of Police, Nagercoil, Assistant Collector, Padmanabhapuram and the District Forest Officer, Nagercoil and they did not recommend for the grant of licence and after affording an opportunity to the writ petitioner to be heard in person, his request was negatived. According to the respondent, the petitioner is said to have been examined by the Medical Officer and prescribed certain diet list on 17-9-1988, that is, four years back and such disease is curable in Siddha system of medicine as stated by the writ petitioner and according to the respondents, the petitioner is now alright and the respondents would state that by the use of gun for hunting, the petitioner's health will be affected. The respondents would also state that the petitioner can easily get fruit bats and sampooth by other means and the petitioner had in fact, managed to sustain himself without a gun licence all these years and according to the respondents, the impugned order has been passed assigning valid reasons and in accordance with the acts and rules. The respondents would further state that the Superintendent of Police is the competent authority to give report to the Licensing Authority on the application for the grant of gun licence. The respondents would further state that there is no guarantee that the writ petitioner will use the gun only to hunt those two varieties of birds and that therefore, the respondents would state that the writ

petitioner is not justified in his prayer and the writ petition may have to be dismissed for want of merit.

9. As could be seen from the records, it is clear that the petitioner has been trying before one forum after the other starting from 28-10-88 for the purpose of getting a gun licence that too for medical purpose as he had been advised by doctor to take the meat of bats for treatment of chronic Bronchitis. His first application above dated was rejected on 23-1-1990 as the petitioner's request was not recommended by the District Forest Officer and the Superintendent of Police. Then the petitioner has made an appeal to the appellate authority on 22-2-90 and the same was also disposed of on 23-1-1991 remanding the matter to the Licensing Authority. The said authority by order dated 28-2-1991 after enquired the petitioner herein in person once again rejecting his request. It is significant to note that in the said order it has been observed by the authority that the petitioner appeared to have good physique and also it appeared to him that he possessed the strength which required to carry a gun and to shoot. Aggrieved by the said order the petitioner once again filed an appeal and the appellate authority has passed an order dated 16-5-1991 once again rejecting his request. That order is being challenged by the petitioner in this writ petition. For rejecting the request of the writ petitioner, in the impugned order two reasons have been stated by the appellate authority i.e., the 2nd respondent herein. They are : 1) The District Forest Officer and the Superintendent of Police have not recommended his case on the ground that the petitioner is not capable of handling gun since he is a sickly man; 2) In the modern days the appellant could get better treatment for Bronchitis and he could get the bat's meat through other means from the market or otherwise. Coming to the first reason, it is quite contrary to the observations made by the 1st respondent, who happened to be the Licensing Authority, that the petitioner appeared to him as of having good physique and also that it appeared to him that the petitioner possessed the strength that required to carry a gun and to shoot with that. The significant aspect herein is that the above observations have been made by the 1st respondent Licensing Authority only after a personal enquiry with the writ petitioner herein. So, it is clear that the impugned order has been passed by the 2nd respondent herein mechanically without going into the records, in particular the contents of the order against which the appeal was preferred before him. Next coming to the second reasons assigned by the 2nd respondent, it is not open to the authorities to dictate the petitioner to adopt a certain system of treatment. Adopting a certain system of treatment allopathy or Siddha, it is their own will and pleasure and choice. The authorities have to see only whether the request of the petitioner violates any provisions of law which are in existence at that time or not. Therefore, both the reasons assigned by the 2nd respondent to reject the appeal of the petitioner herein are not at all accepted.

10. Further, as rightly pointed out on behalf of the writ petitioner, one cannot deny the fact that while in Allopathy system of medicine certain diseases are incurable, the same diseases are curable in Siddha system of medicine.

Therefore, it is not open to these authorities to enter into a debate in this regard. They have to see only the legal aspects.

11. Another significant aspect in this matter is that from the very beginning, it is the case of the writ petitioner herein that Section 9(2) of the Wild Life Protection Act, 1972 reads that licence can be issued for hunting "Vermin" as found in Schedule V of the Act. That being so, even though both the respondents have so far passed a number of orders in this regard, they not at all discussed about this provision of the Act or at least that the petitioner is not entitled to invoke the said provisions of the Act. At this stage it is pertinent to note that it has been brought before the authorities on behalf of the writ petitioner that hunting of bats was not prohibited u/s 9 of the Wild Life (Protection) Act, 1972 and the fruit bats, which the petitioner herein needs had been categorised as "Vermin" in Schedule V of the Act. Further it is significant to state herein that Section 13 of the Arms Act recognises a right of a citizen of India to have a licence and a gun, being a movable property, a citizen has the right under Article 19(1)(f) of the Constitution of India, to acquire and hold a licence subject to reasonable restrictions. Further as could be seen from the counter it is stated as follows.

If the writ petitioner is very much particular in eating fruit bat and sempooth, he could get them through other means from the market or otherwise. It is not as though that they are not available in market. There is no guarantee that he will not shoot other birds and hence it is not possible to grant gun licence to catch only a particular bird by hunting." I have already observed that it is not open to the respondents to dictate the petitioner to choose a certain kind of treatment or medicine and that it depends purely on his own will, pleasure and choice. The authorities should confine themselves only with the legal aspects. It is not denied anywhere by any of those respondents that there is no provision in the Act to grant a licence to catch only a particular bird by hunting. It is also not the case of the respondents that the fruit bat heeded by the petitioner herein is not coming under the category of the "Vermin" found in Schedule V of the Act. Further the contention of the petitioner herein that u/s 9(2) of the Wild Life Protection Act, 1972, licence can be issued for hunting "Vermin" has also not at all been disputed by any of these respondents at any point of time.

12. Therefore, for all the foregoing reasons and in view of my above discussions about various aspects of this case, I am of the view that the order impugned in this writ petition is liable to be quashed and the writ petition deserves to be allowed.

13. In the result, the writ petition is allowed, consequently the impugned order is hereby quashed and the respondents are hereby directed to issue S.B.B.L. Gun Licence to the petition for hunting purpose as prayed for by the petitioner in his application dated 28-10-88 within 30 days from the date of receipt of copy of this order. No costs.