

(1959) 12 AP CK 0016
In the Andhra Pradesh High Court
Case No : Writ Petition No. 790 of 1958

G. Raja Reddy

APPELLANT

Vs

Collector, Nizamabad and Another

RESPONDENT

Date of Decision : 04-12-1959

Acts Referred:

Arms Act, 1959 — Section 17
Arms Rules, 1951 — Rule 26, 41, 41(1), 41B
Constitution of India, 1950 — Article 19(1), 19(5), 226

Citation : AIR 1960 AP 384 : (1960) CriLJ 1061

Hon'ble Judges : Seshachalapati, J

Bench : Single Bench

Advocate : K. Amareswari, for the Appellant; O. Audinarayana Reddy, for 3rd Govt. Pleader and K.F. Baba, for the Respondent

Final Decision : Dismissed

Judgement

1. This is a petition under Article 226 of the Constitution of India For the grant of a writ of Certiorari to quash the order of the Collector of Nizamabad District in D. Dis. 3384-58 dated 15-7-1958.

2. The petitioner is a resident of Nizamabad and carries on business in the sale of medicines and other articles and commodities at Nizamabad. On GO-10-1952, he submitted an application to the District Collector, Nizamabad, for the grant of a license for the sale of arms and ammunition at Nizamabad. By a communication D/- 15-7-1958, the petitioner was informed as follows:

"Subject: Arms Act-- Rules -- Opening of arms and ammunition shop at Nizamabad.

With reference to his application dated. 30-10-1952, Sri Raj Reddy, Medical Store, Nizamabad is hereby informed that his application is rejected." It is this proceeding of the Collector that is now impugned in this Writ Petition.

3. It would appear that in 1951 the Indian Arms Act and the rules were applied

to the State of Hyderabad. Section 17 of the Indian Arms Act provides that the Central Government may, from time to time make rules to determine the officers by whom, the form in which, and the terms and conditions on and subject to which, any licence shall be granted. Under Rule 26(J) a licence under form X to sell and keep for sale, any arms, ammunition or military stores may, save as provided by Sub-rule 2, be granted in the Presidency towns by the Commissioner of Police or in any other place by the District Magistrate. Under these rules, the Collector of Nizamabad would be the licencing authority 1960 A P. 25 with respect to the grant of licences to sell and, keep for sale arms and ammunition, in cases that do not fall under Rule 26 Sub-rule 2.

4. Under Rule 41 (1) of the Anns Rules, an authority empowered to grant or renew a licence or (to give his previous sanction to such grant or renewal may, in his discretion :

"(a) refuse to grant or renew such licence or to give such sanction, or

(b) where the authority is subordinate to the Government of a State refer the application for orders to such Government."

In this case the Collector of Nizamabad referred the application for orders to the State Government. In fact, the petitioner in paragraph 3 of his affidavit states that the District Collector in consultation with the District Superintendent of Police, referred his application along with the applications of thd second respondent and four others to the Home Department of the Government of Hyderabad, under Rule 41 (1) (b) of the Indian Anns Rules for orders. In the counter affidavit filed on behalf of the 1st respondent, it is stated that there was a reference to the Government under Rule 41 (1) (b). It is, therefore, beyond dispute that there was a reference by the Collector to the State Government for orderd within the scope of Rule 41(l)(b). In forwarding these applications through the Inspector General of Police, Hyderabad, the Collector of Nizamabad had stated that he had consulted the District Superintendent of Police and that the latter had suggested that one arms shop would suffice for the needs of Nizamabad, and that the application of Supreme Anns Stores, Hyderabad, may be recommended for favourable consideration, inasmuch" as the above Stores had previous experience in running arms and ammunition shop efficiently and with safety. He accordingly recommended the case of the Supreme Arms Stores, Hyderabad, for the issue of a dealer"s license in arms and ammunition at Nizamabad.

The Inspector General of Police would appear to have taken the same view and the Government in their order dated 22-3-1955 accepted the recommendations of the Collector to open a shop at Nizamabad and to grant s licence in this behalf to M/s. Supreme Arms Stores, Hyderabad, and directed the Collector to issue the licence in accordance with Rule 26 of the Indian Arms Rules 1951.

5. After the receipt of this order, the Supreme Anns Stores were directed by the Collector in his letter dated 6-8-1955 to remit the licence fee immediately so that

further action could be taken. Some amounts were remitted. There was some correspondence between the Supreme Arms Stores and the Collector in regard to the compliance with the requirement of paying the licence fee etc., and, therefore, the grant of the licence to Supreme Arms Stores was not implemented.

Subsequently the Government after reviewing all the connected papers came to the conclusion that all the formalities required for the obtaining of the licence had been complied with by the Supreme Arms Stores and, therefore directed the Collector by its Memo No. 121417/Genl. A-57-2. dated: 30-6-1958, to give effect to its order dated 22-3-1955. In conformity with that direction, the Collector of Nizamabad informed the petitioner by a letter dated 15-7-1958 that his application for a licence was rejected.

6. It is alleged by the petitioner that in 1957, the Collector of Nizamabad requested the Superintendent of Police to make an enquiry and submit a report regarding the antecedents of the applicant for the licence in the view that the person to whom the Home Department had granted the licence had failed to comply with the requirements antecedent to the obtaining of the licence. It is further stated that the Deputy Superintendent of Police recommended to the Collector that the second respondent was not a native of Nizamabad and that if licence is given to the second respondent, it will create ill-will in the locality and that the petitioner who was running a medical stores and against whom nothing could be said may be granted the licence.

The Collector submitted his recommendations to the Government. I may "observe that these circumstances cannot avail the petitioner for two reasons firstly, because on the reference made by the Collector for the orders of the Government under Rule 41 (1) (b) the Government had directed him to grant licence to the 2nd respondent and, secondly, the Impression of the Collector, that the 2nd respondent had not complied with the requirements was erroneous. The matter, therefore, to my mind, is concluded by the order given by the Government in their letter dated 22-3-1955 and re-affirmed in the order dated 30-6-1958.

7. It is contended by Smt. Amareswari, the learned counsel for the petitioner that the order of the Collector is vitiated because, firstly, it is laconic and does not give reasons for the refusal and that the terms of Rule 41-B had been violated; secondly that the Collector, having been constituted under Rule 26 as the proper licencing authority had no jurisdiction to refer the matter to the Government as it would amount to a delegation of judicial functions which is not permissible in law; and thirdly, that by the process of such reference under Rule 41 (1) (b) to the State Government by the Collector, the persons aggrieved by a refusal of a licence had lost the valuable right of appeal given under Rule 41-B of the Act, and fourthly, that the Rule 41(1) (b) providing for the reference is ultra vires the Anns Act and the rules made thereunder.

8. It seems to me that the first contention of the learned counsel is without any

force. In this case the order granting the licence to the Supreme Arms Stores was passed by the Government In letter No. POL/B/AL/58/52, dated 22-3-1955. The Government would appear to have decided that for the present there need only be one shop for the Kale of arms and ammunition at Nizamabad. In the above circumstances, the communication dated 15th July 1958 addressed by the Collector to the petitioner informing him that his application for a licence for opening of arms and ammunition shop at Nira-mabad is rejected, is merely consequential upon the direction by the Government to grant the licence to the Supremo Arms Stores.

The communication of the Collector is not, therefore, an order passed under Rule 41 (I)(a) and that being so, the question of his not recording the reasons for the refusal as required under Rule 41-B (a) will not arise.

9. It is contended that under Article 19(1)(g) of the Constitution there is a fundamental right vested In a citizen to carry on any business subject to reasonable restrictions. It cannot be disputed that the State is entitled to impose restrictions on the sale or keeping for sale of fire arms and ammunition by Introducing the system of licencing as provided under the Arms Act and the rules made thereunder. Reliance is placed on the decision of Subbarao J., in P. Narasimha Reddy Vs. District Magistrate, Cuddapah, where the learned Judge has held that the licencing machinery would be a reasonable restriction only if the reasons were recorded.

10. It is true that in this case the order of the Collector dated 15-7-1958, informing the petitioner that his application for licence had been rejected does not give reasons. But, as I said already the communication dated 15-7-1958 is not an order passed by him under Rule 41-A and, therefore, the question of the recording of reasons would not arise. The grant of the licence to the Supreme Arms Stores was made by the Government under Rule 41-1 (b).

There is enough material on record to show that the Government formed the opinion that the petitioner had no prior experience in the sales of arms and ammunition and he might not, therefore, be able to conduct the business properly. Further, the Supreme Arms Stores were already doing this business for a long time and, therefore, it was desirable that they should be given the licence. I cannot say that the reasons that impelled the Government to prefer the Supreme Arms Stores are either capricious, arbitrary or unreasonable.

11. The objection that the reasons have not been communicated to the petitioner in this case is without any force. The petitioner is entitled to apply for the communication of the reasons and such an application could be entertained and dealt with under Rule 41-B (2).

12. The second contention that the Collector being the licencing authority under Rule 26 and, therefore, vested with a quasi-judicial power is not entitled to delegate his power to any other authority is without any force. Section 17 of the Arms Act vests the Government with the power to make rules to determine the

authorities to grant the licences. In exercise of that power, the Government have framed rules prescribing the licencing authority under Rule 26. The very same rules confer upon the licencing authority the power to grant, renew or refuse to grant a licence, or in his discretion refer any application for orders to the Government. The rule, being one made under an Act must be deemed to form an integral part of the statute itself. Where such rules themselves in terms vest the licencing authority with a discretion to refer an application for the orders of the Government, it cannot be said that such a reference is void of legal authority or illegal as constituting a delegation of a power which should not be delegated.

13. The third contention of the learned counsel that by reason of the Government passing the orders in question the person aggrieved is deprived of the right of appeal is also without substance. The right of appeal in cases of this kind is the creature of a statutory provision and where the rules do not provide such an appeal, there is no substance in the contention that the party is deprived of a right of appeal.

14. The last Contention that Rule 41-B in so far as it provides for a reference by the licencing authority of an application to the Government is ultra vires the Arms Act and the rules made thereunder as being repugnant to the said provisions is untenable. The Arms Act does not in terms provide for a licencing authority. Section 17 provides for rules to be made by the Government prescribing the licencing authority. In exercise of that power, the Government have prescribed the licencing authority under Rule 26 vesting the said licensing authority with the power either to grant a licence himself or make a reference to the Government. It cannot therefore, be said that the provision under Rule 41-1 (b) is inconsistent with or repugnant to the provisions of the Act or the Rules.

15. Interference under Article 226 of the Constitution is discretionary. The High Court does not interfere with the orders of the statutory authorities unless it is satisfied that there has been a patent lack of jurisdiction, or an error of law apparent on the face of record, or that some principle of natural justice has been violated. It would not also interfere as pointed out by the Supreme Court in *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, to correct errors of law, which do not occasion injustice in a broad and general sense.

In this case, I cannot say that the reasons that impelled the Government to select the second respondent for the grant of the licence are arbitrary or capricious or that the application for the grant of licence to the petitioner has been rejected without consideration. It is not for this Court to determine the sufficiency or the propriety of the reasons of the decision which has been taken in this case.

16. In the result, the Writ Petition fails and is dismissed with costs of the 1st respondent. Advocate's fee Rs. 100/-