
(2003) 07 AP CK 0115

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3817 of 2003

G. Venkataswamy

APPELLANT

Vs

The Dist. Collector and Others

RESPONDENT

Date of Decision : 23-07-2003

Acts Referred:

Arms Act, 1959 — Section 17

Citation : (2004) 1 ALD 32 : (2003) 6 ALT 612 : (2003) CriLJ 4519 : (2004) 1 RCR(Criminal) 915

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : O. Manohar Reddy, for the Appellant; The Govt. Pleader for Home, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner is an ex-serviceman. He has been granted a licence under the Arms Act, 1959 (hereinafter referred to as "the Act"), to hold a weapon for his safety and protection. The licensing authority, the 1st respondent herein has been renewing it from time to time. At present the licence stands renewed up to 31-12-2005.

2. He was required to deposit his weapon in the year 1974. When it was not being released, he has approached this Court by filing W.P. No. 19649 of 1996. The same was allowed through orders dated 5-11-1996. When the two weapons namely a Revolver and DBBL gun were released to him pursuant to the orders of this Court, they were found to have been rusted. The petitioner claims that he had to sell the same at very low price.

3. The petitioner contends that he was holding a Rifle under the licence. In August 2002, the respondents have directed him to deposit the weapon in the Police Station on the ground that there is a naxalite problem in the area. Petitioner claims to have deposited the weapon with the 3rd respondent on

15-8-2002. He has submitted a representation dated 12-12-2002 stating that he is an Ex-serviceman and not involved in any faction or extremist activity; and that he needs the weapon for the purpose of his safety and for its proper maintenance. When the respondents did not respond to his request, he has filed this writ petition seeking necessary directions.

4. In the counter-affidavit filed by the respondents, the facts such as the petitioner holding licence, the same having been renewed up to 2005 and the petitioner having been required to deposit his weapon, are not disputed. The justification pleaded in the counter-affidavit for refusing to return the weapon to the petitioner is that the area is infested with extremist activity, and that there is every likelihood of the weapon of the petitioner going into the hands of the extremists, particularly having regard to the age of the petitioner. No other reason is mentioned in the counter-affidavit.

5. Sri O. Manohar Reddy, learned counsel for the petitioner submits that the grant of licence and renewal thereof is provided for under the Arms Act and the Rules made there under. According to him, as long as the licence is neither revoked nor suspended, the licensing authority or any other agency has no authority to require the licensee to deposit the weapon. He submits that if the licensee is required to deposit the weapon even during the subsistence of licence, the very purpose of holding the weapon for self protection of the licensee would be defeated.

6. The learned Government Pleader for Home on the other hand submits that though there are no allegations against the petitioner as to misuse of the weapon, it was in the interests of the petitioner and the State that he was required to deposit the weapon. According to him instances have come to the notice of the Government wherein weapons held by the private individuals have been snatched away by extremists and thereby gaining strength.

7. Section 3 of the Act provides for grant of licence for acquisition and possession of firearms and ammunition. Rules were framed by the Central Government, in exercise of the powers under the Act. Under the Rules, the licensing authority is the District Collector for the concerned district. u/s 17 of the Act, the licensing authority is empowered to modify the conditions of licence and to suspend or revoke the same if it is necessary for the security of public peace or public safety. The revocation or suspension can be resorted to as a punitive measure also, if it is found that the licensee has violated the conditions or misused the weapon. Section 4 empowers the Central Government to impose restriction as to acquisition or possession of the Arms of such class or description as may be specified in the notification given on that behalf. However, this provision has no application in cases where an individual is granted licence.

8. Neither in the Act nor in the Rules there is any provision enabling the licensing authority or any other officer to require a licensee to part with the weapon either as a temporary or permanent measure during the subsistence of licence. There

are instances where the Government of Andhra Pradesh has suspended the licences temporarily on certain occasions. G.O. Rt. No. 1941 (Home) dated 27-7-1999 is one of such order. Even this was issued in exercise of power u/s 17 of the Act.

9. In the counter-affidavit, no provision is mentioned which empowers the licensing authority or the Superintendent of Police to require the deposit of the weapon by a licensee. Under these circumstances, this Court finds that there does not exist any basis or justification for the respondents in requiring the petitioner to deposit the weapons. The continued deposit of the weapon by the petitioner, would adversely affect not only the safety of the petitioner but also the safety and maintenance of the weapon itself, which needs periodical maintenance. The very purpose of the petitioner in obtaining the licence and acquiring the weapon is defeated.

10. Hence the writ petition is allowed directing the respondents to return the weapon of the petitioner deposited by him on 15-8-2002 within two weeks from the date of receipt of a copy of this order. This order, however, does not preclude the licensing authority or the Government to issue orders of suspension of the licence in accordance with the provisions of the Act and Rules, if the circumstances so demand.