
(2005) 02 KL CK 0035
In the High Court Of Kerala
Case No : O.P. No. 14303 of 1998

Ganesh Prasad

APPELLANT

Vs

Board of Revenue (LR)

RESPONDENT

Date of Decision : 08-02-2005

Acts Referred:

Arms Act, 1959 — Section 14(1), 14(3), 17

Citation : (2005) CriLJ 3178 : (2005) 2 KLT 645 : (2005) 4 RCR(Criminal) 429

Hon'ble Judges : K.M. Joseph, J

Bench : Single Bench

Advocate : D. Krishna Prasad, Joji Varghese, T.P. Eldhose, D. Narendranath and M. Hari Sharma, for the Appellant; Laxminarayan, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.M. Joseph, J.—The petitioner's deceased father was a licensee under the Arms Act to possess a SBBL gun since 1956, for nearly thirty years. The petitioner claims that there was a partition in his family and he was allotted properties under the registered Partition Deed. It appears, on the death of his father, a brother of the petitioner, Shri Mahabaleshwara Bhat was possessing the said gun. Since the petitioner required the gun, he applied for a licence supported by a consent letter of his brother, but his brother subsequently withdrew his consent. The District Collector, called for a report, from the Revenue and the Police authorities. The Tahsildar recommended grant of licence in favour of the petitioner. However, the Superintendent of Police reported that there are lot of licensed weapons already and hence he did not recommend the application of the petitioner for licence. The District Collector rejected the petitioner's application. The rejection was confirmed in an appeal filed by the petitioner. The writ petitioner challenges the said two orders.

2. The petitioner contends that the impugned orders Exts. P1 and P2, are illegal and arbitrary, and that there is nothing against the petitioner in the Reports

submitted by the Tahsildar or the Superintendent of Police. He would contend that his father was having a licence, and that a licence is necessary to protect the crops. He would contend that there is total non-application of mind about the requirements of law. The fact that his father was having a gun since 1.10.1956 was lost sight of. He points out similar circumstances as Exts.P3 to P5 where a different yardstick was followed. It is contended that even if the reason stated in the order is accepted as true, it is no ground to reject the application of the petitioner. It is contended that his right to hold and possess a gun is a fundamental right.

3. A perusal of Ext.P1 would show that the Tahsildar, Kasaragod has recommended grant of licence in favour of the petitioner. It is also noteworthy that the order notes that the petitioner has applied by transfer from his elder brother as per application dated 12.7.1996. As already stated, his elder brother has withdrawn his consent. Petitioner admittedly has made an application afresh on 11.3.1997. It has to be noted that Ext.P1 order would show that the parties were heard on 12.3.1997. So, the application made on 11.3.1997 was apparently before the authority. But, there is no reference to the said application, it is clear that the only ground for rejecting the application by the District Collector is that there is a Report by the Superintendent of Police, Kasaragod that there are a lot of licensed weapons in the area and the misuse of the arms cannot be ruled out. It is also stated that the elder brother has withdrawn the consent to sell the weapon to the petitioner as per letter dated 12.2.1997. However, ultimately, the order is passed on the ground only stating that "since the Superintendent of Police has not recommended the issue of licence, the application of Shri.B.Ganesh Prasad, is hereby rejected". A perusal of Ext.P2 appellate order shows that the Appellate Authority has referred to certain rulings of this Court and other High Courts. The Appellate Authority has thereafter found that the District Collector has taken a decision after considering of all relevant aspects. A perusal of Exts.P3 to P5 would show that Ext.P3 relates to a case where the superintendent of Police had recommended issue of a licence and still, the Additional District Magistrate, Kasaragod rejected the application on the ground that the applicant was residing in an area where there were frequent clashes on political ground. No doubt, the Board of Revenue has set aside the said order, finding that the father of the applicant therein had a valid licence. Nothing adverse has been brought out against the son and there was no reason to reject the application. Ext.P4 relates to a case of transfer from father to son. The Superintendent of Police had objected. The Board of Revenue interfered stating that the Superintendent of Police has not substantiated his statement and the matter was remanded for fresh disposal. Ext.P5 is again an appellate order in a case where the father of the applicant held a licence and the appellate body found that need existed. The police report was favourable to the applicant, But, the rejection was " only on the ground of preservation of wild life. It was found that there was no material to presume that the applicant will misuse his weapon and the appeal was allowed on that basis.

4. Learned counsel for the petitioner relied upon a number of decisions. In *K.S. Abdulla v. District Collector* 1972 KLT 1023, the Court held that recording of reasons is obligatory and it is also necessary that the licensing authority should apply its mind and satisfy itself on the question as to whether the security of public peace or public safety demanded a refusal of the licence. It is held as follows:

"A person who has obtained a licence may well claim to have a right of property and the refusal of renewal of the same, or cancellation of the licence, may well involve a violation of his fundamental right of property. It is doubtful whether the same can be said in respect of one who had not actually obtained a licence in respect of a gun, but is only an applicant for the same. Again, it is a debatable question as to whether in dealing with application for licence in respect of a dangerous weapon such as a gun, it should be insisted that the ground on which it is thought necessary to withhold the licence in the interest of public peace or public safety should be disclosed to the applicant before the orders refusing the licence are passed. The information available, the conclusions arrived at, and the grounds on which the same are rested, might well be matters which cannot possibly be disclosed, lest sources of information themselves should dry up, and the disclosure should provoke reactions against the informants. It may be too, that in matters such as these, private rights may well have to yield to public interests. Whatever be the correct position, I do not propose to venture a final and concluded opinion on these aspects.

Under S. 14(3), recording of reasons is obligatory; and what is more, having regard to the nature of the power entrusted, it is also necessary that the licensing authority should apply its mind and satisfy itself on the question as to whether the security of public peace or public safety demanded a refusal of the licences. It is seen from the records that certain reports were called for, and after the receipt of these reports and communications exchanged, there is nothing in the files produced to indicate that the licensing authority applied its mind to the contents of the reports and satisfied itself as to whether the security of the public peace or public safety required a refusal of the licence. On the other hand, the files would show a report at certain page, and immediately thereafter, the draft of an order, which eventually materialised in the form of Ext.P2. On this state of the record, it has to be held that there has not been an application of the mind of the licensing authority to the requirement of S. 14(1)(b)(ii) of the Act. Nor was there any proper compliance with the requirement of S. 14(3)".

5. The decision in *Samarendra Nath Roy Vs. R.N. Basu*, , was a case relating to a cancellation of the licence under the Arms Act. The Court held that the order must record the reasons for making the order. It is not enough to make a mere reference to the police report. The question involved in this case is not a question relating to the cancellation of the licence, but the question as to whether a licence should be granted or not. In the decision in *P. Narasimha Reddy Vs. District Magistrate, Cuddapah*, , the Court dealt with a number of questions

including the question relating to whether "property" within the meaning of Art. 19(1)(f) includes a gun. It cannot be disputed that the position is not available as of today after the deletion of Art. 19(1)(f) by the 44th Amendment Act. However, the Court, no doubt, in that case also held that the "discretion is obviously a judicial one as his order is subject to an appeal to the Revenue Board. When his order is subject to an appeal, it is his duty to give reasons for his refusal, for the appellate Tribunal must be in a position to evaluate the correctness or reasonableness of his rejection". It is also held that "But the necessary condition of the reasonableness is that the Magistrate should exercise judicial discretion disclosing his mind for the scrutiny of appellate Tribunal excluding the possibility of arbitrary action". No doubt, that was a case where the order was interfered with on the finding that, that was a laconic order, as the order read as follows: "The gun licence applied for will not be granted". No reason whatsoever were given. I do not think that this decision can advance the case of the petitioner for it cannot be said that no reasons have been given in this case. The decision in *In Re: The State of Madras*, , related to a case of cancellation of the gun licence. The Court also took into consideration when it interfered with the order, that there was a fundamental right at that point of time to hold the gun under Art. 19(1)(f). Clearly this decision can be of no assistance to the petitioner. The next decision cited by the learned counsel for the petitioner is the decision in *C.P. Raman Nair v. Addl. District Magistrate, Kozhikode and Ors.* AIR 1968 Ker. 65. This also was a case of an order passed under S. 17 of the Arms Act by which the licence granted was cancelled. The order of cancellation was unsupported by any reasons. The Court found that there was no application of mind to the relevant questions and consequently interfered with the orders. I am unable to understand as to how the petitioner can be permitted to draw any support from the said decision, in the facts of this case. This Court has considered the question in another case relating to cancellation of the licence. In the decision in *V.K. Thomas Vs. The Revenue Board Member (L.R.)*, , after elaborately tracing out the history of law relating to fire arms, the Court held as follows:

"13. 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 realisation of the changed times. The statutory authorities following their set practice, appear in many cases, to issue licences for the mere asking of it. That approach is now open to reproach. There was pressing necessity for a person to be armed with an effective weapon, when he was perilously near the habitats of wild animals, but pursuing lawful advocations. The dark and deep forest are now relegated to the pages of fiction, "Marthanda Varma", "Bhootha Rayar", and the comparatively modern "Vishakanyaka". The early decisions of the Madras High Court would perhaps furnish helpful clue to the conditions which obtained at that time. Wild elephants, wild bears and the like used to cause devastation of fruits of labour of the hard-working ryots. Wild elephants, it had been judicially noticed, were dangerous animals (See *Makath Unni Moyi v.*

Malabar Kandapunni Nair ILR (1882) Mad.268, Ramakrishna v. Kurikal ILR (1888) Mad.445 and Vedapuratti v. K.Koppan Nair ILR (1912) Mad. 708. In the Queen v. Bommaya ILR (1882) Mad. 26, the Madras High Court observed: "..... bisons are notoriously in the habit of injuring crops....." The question was considered in relation to a gun licence. Those conditions no longer obtain now. Licences cannot be legitimately sought for or obtained under the guise of protecting the food crops in these days and in such areas. The unchecked devastations of the forests have turned what used to be boundless contiguity of greenery into bleeding red patches strewn with tiled buildings and concrete mansions. A deadly weapon to scare the animals or to protect the crops would be totally unnecessary in such areas. Such would be the case in an essentially agricultural area, like Alathur.

14. Quite often, licences are applied for, putting forward a need for the protection of crops. Here again, the authorities have necessarily to bear in mind the overall scheme of the Act. The mere fact that a person has a small patch of cultivated area does not entitle him to have a gun and a licence. The nature of the cultivation, the existence of a direct and serious threat thereto, and the pressing necessity for weapons for effective protection have all to be considered carefully. Changes, sweeping changes, have occurred climatically, sociologically and otherwise. They have necessarily to be reckoned in the consideration of an application for licence. Conditions which were prevalent when the Indian Arms Act of 1878 were brought into force, no longer obtain in most parts of India".

It may be noted that that was a case where the petitioner was involved in two criminal cases.

6. The decision of this Court in K.S. Abdulla v. Dist. Collector 1972 KLT 1023, no doubt, tends to advance the case of the petitioner. It may at once be noted that the order passed in that case showed that the licence was refused on the ground that the Government deemed it necessary for public safety to refuse the grant of licence. The Court proceeded to hold that it was necessary that the licensing authority should apply his mind and satisfy himself on the question as to whether the security of the public peace or public safety demanded a refusal of the licence. It appears that certain reports were called for, and the Court noted; that there was nothing in the files to indicate that the licensing authority had applied its mind to the contents of the report to arrive at a satisfaction.

7. Coming to the facts of this case, this is a case where undoubtedly the Tahsildar has recommended the grant of licence. The authority has proceeded, however, to refuse the licence only on the ground that the Superintendent of Police has not recommended the issue of licence. It is apparently for the reason that the Superintendent of Police has found that there are already a lot of licensed weapons in the area and the misuse of the arms should not be ruled out. The Appellate Authority has confirmed the rejection by stating that all relevant reasons and aspects have been considered. It is not understood as to what is meant by the Appellate Authority when it said that all relevant aspects

have been considered, when a perusal of the order passed by the Dist. Collector would show that the only reason for rejection of the application filed by the petitioner is that the Superintendent of Police has not recommended the issue of licence. Each application for the licence has necessarily to be considered on its own individual merits. He must bear in mind the relevant facts and must refuse to be guided by irrelevant facts. He has to act bona fide. He cannot abuse his discretionary power, no doubt. It is essential that he applies his mind when any application comes up before him to the individual facts presented by the applicant before he takes a decision as to whether the application should be granted or refused. In this context, I draw support from what is stated in Wade on Administrative Law.

"The proper authority may share its power with some one else, or may allow some one else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void".

If one peruses the order of the District Collector, it can be seen that the only reason stated is that the Superintendent of Police had not recommended issue of licence. I would take the view that this is a case where the authority has virtually declined to act without the consent of the Superintendent of Police and it amounts to the exercise of discretion by the wrong authority. The said order has been upheld by Ext.P2 order. As I have already stated it is stated that the decision has been arrived at after due consideration of all relevant aspects which is itself incorrect.

8. Accordingly I set aside Exts. P1 and P2 and direct the second respondent to take up the application filed by the petitioner on 11.3.1997 in view of the fact that the petitioner's brother had withdrawn consent in respect of the earlier application, and consider the same in accordance with law. A decision shall be taken by the second respondent after hearing the petitioner within a period of two months from the date of receipt of a copy of this judgment.

The Original Petition is allowed as above.