

(1971) 12 KL CK 0020
In the High Court Of Kerala
Case No : O.P. No. 4826 of 1969

K.S. Abdulla

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 08-12-1971

Acts Referred:

Arms Act, 1959 — Section 14, 14(1), 18, 2
Arms Rules, 1962 — Rule 5

Citation : AIR 1972 Ker 202

Hon'ble Judges : V.P. Gopalan Nambiyar, J

Bench : Single Bench

Advocate : T.S. Venkiteswara Iyer, R.C. Plappilly and P.K. Balasubramoniam, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

V.P. gopalan Nmbiyar, J.—The larger question that has been debated in this writ petition is whether the refusal of licence to the petitioner for a gun u/s 14(1)(b) (ii) of the Arms Act 1959 was justified or proper. After hearing Counsel, I am satisfied that without going into this larger question, this writ petition can well be disposed of on a shorter and narrower ground.

2. Ex. P-1 is a copy of the petitioner's application for licence for a gun (pistol). It sets out the reasons why the petitioner felt it necessary to be in possession of a pistol. The application was rejected by Ex. P-2 order, passed by the Special Secretary to Government, which reads:--

"I am directed to invite your attention to the application cited and to inform you that your request for the grant of a licence to possess one pistol is hereby rejected on the ground that Government deem it necessary for public safety to refuse the grant of licence to you".

The petitioner complained that as a result of the disposal of the application by the Secretary to Government, the petitioner had been deprived of his right of

appeal provided u/s 18 of the Act, read with Rule 5 of the Rules framed thereunder. But this objection. I am afraid, is untenable. Section 2(f) of the Act defines a "licensing authority" as "including the Government". It is therefore clear that the Government can well be the licensing authority, and if, as such licensing authority, it proceeds to deal with the application for licence, the question whether any appeal would lie or not must essentially depend upon the statutory provisions regulating and governing appeals. Rule 5 of the rules, which delineates the appellate authority against the orders of the licensing authority does not seem to provide for any appeal in cases where an application for licence has been dealt with by the Government; and Section 18 which provides for appeals, only enacts that appeals shall be governed and regulated in the manner prescribed by the rules. As pointed out in G. Raja Reddy Vs. Collector, Nizamabad and Another, the appeal is after all only a creature of the statute; and if the statute itself does not provide for any appeal in any particular case, the petitioner cannot make any grievance of the same. This objection of the petitioner is therefore groundless.

3. That takes me to the larger question agitated in this writ petition namely, that even in refusing an application for a licence on the ground that it was not in the interests of the public, or public safety to grant one, the licensing authority was bound to observe the principles of natural justice and to afford an opportunity to the petitioner to make his representations before he was denied the licence sought for. on grounds which appeared to the licensing authority to render him unfit for the grant. The relevant statutory provisions in so far as they are material read thus:--

"14. (1) Notwithstanding anything in Section 13, the licensing authority shall refuse to grant--

(a) x x x x (b) a licence in any other case under Chapter II,--

(i) x x x x (ii) Where the licensing authority deems it necessary for the security of the public peace or for public safety to re fuse to grant such licence.

(2) x x x x (3) Where the licensing authority refuses to grant a licence to any person it shall record in writing the reasons for such refusal and furnish to that person 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".

The section itself does not expressly enjoin notice of the application or the affording of any opportunity before the refusal of the licence. But these were sought to be implied on the ground that the licensing authority had to function quasi-judicially, which therefore, brought in these requirements as part of the rules of natural justice. My attention was drawn to a series of cases, where in connection with applications for renewal of a licence or for cancellation of a licence, it had been held that the requirement of notice and the affording of reasonable opportunity were necessary. These cases may Perhaps be

distinguishable on the ground that a person who has obtained a licence may well claim to have a right of property and that 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 interests of public peace, or public safety should be disclosed to the applicant before the orders refusing the licence are passed. The information available, the conclusion 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, without fuller arguments. The matter can safely be disposed of on the shorter and narrower ground of non-compliance with the provisions of the Act.

4. The statutory requirement u/s 14(3) is that the licensing authority shall record in writing the reasons for such refusal. The further requirement that the applicant should be furnished on demand with a brief statement of the reasons unless the authority is of opinion that it is not in public interest to furnish such statement, may well be left out as there is neither allegation nor proof of the demand. The re-cording 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 licence. From these points of view, the counter-affidavit is unenlightening as to whether, and if so how, the licensing authority satisfied himself on these aspects, and as to whether the reasons were recorded in writing for the refusal. Counsel who appeared for the respondent made available the files with him. I shall merely place it on record, that it is seen 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 a certain page and immediately thereafter, the draft of an order, which eventually materialised in the form of Ex. P-2. On this state of the record, I am satisfied that there has not been an application of the mind of the licensing authority to the requirement of Section 14(1)(b)(ii) of the Act. Nor was there any proper compliance with the requirement of Section 14(3).

5. On these grounds, I allow this writ petition and quash Ext. P-2 and direct the 2nd Respondent to dispose of Ex. P-1 application in accordance with law. There

will be no order as to costs.