

(2011) 09 AP CK 0069
In the Andhra Pradesh High Court
Case No : Writ Petition No. 15501 of 2002

L., Raghunatha Reddy

APPELLANT

Vs

The District Collector, Anantapur and another

RESPONDENT

Date of Decision : 28-09-2011

Acts Referred:

Arms Act, 1959 — Section 13, 14, 14(1), 17(1), 17(3)
Penal Code, 1860 (IPC) — Section 324, 34

Citation : (2011) 09 AP CK 0069

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : Atchutananda Dhondeti, for the Appellant; G.P. for Revenue and G.P. for Home, for the Respondent

Final Decision : Allowed

Judgement

Nooty Ramamohana Rao, J

1. The petitioner herein has been granted two licenses under the Arms Act, 1959, for a gun and a rifle respectively. These licenses are renewed from 14-10-1993. During the year 1994, he was directed to deposit the two fire arms with the Reserve Inspector of the Armed Reserve, Anantapur. He has surrendered the two licensed firearms accordingly. But however, when he has applied for further renewal of the licenses held by him, the 1st respondent Collector & District Magistrate, Anantapur, issued a show cause notice on 08-08-2002 proposing cancellation of his licenses. Hence, this writ petition is instituted.

2. The case of the petitioner is that he is resident of Chitrachedu Village, Peddavavadaguru Mandal of Anantapur District and that he was a law-abiding citizen and that he was an active member of a recognized political party for more than two decades and all because of political reasons and considerations, the petitioner has been routinely and regularly implicated by the local police in one crime or the other and except in one case relating to Crime No.25 of 2002, which

is booked u/s 324 r/w 34 of the Indian Penal Code, in all other criminal cases he has been acquitted by the competent criminal courts and that he has a grave threat to his life and liberty and hence, he is justified in seeking renewal of the licenses held by him and that the Collector & District Magistrate, without any proper application of his mind to the relevant facts and circumstances, has yielded to the pressure tactics adopted by the police and has issued the impugned show cause notice in gross violation of the provisions of the law on the subject and with bad faith.

3. The Collector & District Magistrate, Anantapur, has filed a detailed counter affidavit in the matter. All the basic facts have been admitted relating to grant of licenses and that they were deposited with the Armed Reserve Police. However, it has been pointed out by the Collector that pursuant to a policy decision taken by the State Government through their G.O.Rt.No.682, Home (General. C) Department, dated 25-04-2000, he initiated action for revocation of the licenses granted to the petitioner herein and in proposing the said action he has considered the detailed report submitted by the Superintendent of Police, Anantapur, disclosing that the petitioner is involved in 8 criminal cases booked between 1988 to 2002 and that he was regarded by the local police as a factionist and that there is every possibility of misusing the weapon by the writ petitioner and hence, the Superintendent of Police has recommended not to renew the arms licenses of the petitioner and also suggested not to release the weapons, which are lying in deposit with the police, hence, he has issued the show cause notice as is required under law and far from trying to answer the show cause notice, he has rushed to this court by instituting this writ petition. A history sheet, which is opened and maintained by the local police against the petitioner has been enclosed to the counter affidavit along with the decision of the State Government contained in G.O.Rt.No.682, Home (General. C) Department, dated 25-04-2000.

4. It would be appropriate to notice that the Government has examined the matter in depth and then framed certain guidelines for the respective District Collectors to be guided while dealing with requests for release of firearms deposited by the licensees through the aforementioned government order. It will be appropriate to notice the decision of the State Government contained in para 4 of the said order, which is to the following effect:

4. The concerned District Collectors are therefore requested to return the fire arms to the licensees after renewing the licences, provided that the following guidelines are followed:

1. such licensees are not involved in any office.
2. they are not factionists, and
3. the weapons were not used in any office.
5. The context in which the above decision of the State Government is issued is

traced to a Judgment rendered by this Court on 21-11-1997 in W.P. Nos. 27373 of 1996 and 12203 of 1997, directing the licensing authorities to return the weapons to the petitioners therein, after renewing the licenses if the petitioners are not involved in any offence; if they are not factionists and if the weapons were not used in any offence by them. Hence, the decision contained in G.O.Rt.No.682, Home (General. C) Department, dated 25-04-2000, dealt with the issue of return of the firearms to the licensees after duly renewing them. It could not be construed, therefore, that the decision of the State Government contained in G.O.Rt.No.682, Home (General. C) Department, dated 25-04-2000, as, laying down any guidelines for the licensing authorities in due exercise of their power of either granting or renewing the licenses.

6. It is stated in the counter affidavit that the Superintendent of Police, has filed an adverse report against the petitioner. It is indicated that he was involved in as many as 8 criminal cases. In not one of these cases, an allegation has been thrown against the petitioner that he has misused the licensed weapon, therefore, the possibility of misuse or abuse of the licensed weapon can, to a certain extent, be relegated to the improbability. The fact that he was involved in a criminal case, per se, cannot come in the way of the licensing authority to renew the license. A license is liable to be granted only upon the conditions for grant of the same being satisfied by the applicant, but not otherwise. Further, the assertion of the petitioner that he has been acquitted in 7 out of those 8 cases listed out by the Superintendent of Police, by the competent criminal courts, is a pointer indicating about his innocence. Only one case relating to Crime No.25 of 2002, was said to be pending trial at the relevant point of time. The offences for which the said crime was registered relate to Sections 324 and 34 of the Indian Penal Code. In all fairness, the licensing authority should have been informed as to the reasons why the criminal courts have acquitted the petitioner in 7 cases. As is too well known, firstly, an accused is liable to be acquitted on merits; secondly, by duly extending the benefit of doubt and thirdly; on the failure of the prosecution to bring home the guilt of the accused with reference to the adequate material. If an accused person has been acquitted on merits, the fact that he was once involved in such a criminal case, cannot be made basis for any action thereafter. Otherwise, it amounts to penalizing an innocent person. Similarly, when the benefit of doubt has been extended to an accused by a competent criminal court, the court is not in a position to firm-up its opinion about the definite role or part played by the accused in commission of the offence alleged against him. In our judicial system, it is fundamental that we should not allow an innocent person to be penalized under any circumstances. If the possibility of involvement of an accused person is not more than the same extent of possibility of his non-involvement in the alleged act, the benefit of doubt must swing in favour of the accused, but not in favour of the State prosecuting him. In such cases, the material gathered by the prosecution against him will have to be assessed very carefully. Insofar as the third variety of cases, where the prosecution fails to bring home the guilt of the accused with relevant

and admissible evidence, it only reflects the lack of adequate material for securing the conviction against the accused person. Such a failure of the State to gather adequate material against the accused person cannot subsequently form a basis for any action, which might result in impacting such a person in any other manner. Therefore, the report submitted by the police before the Collector & District Magistrate suggesting that the licenses for the firearms of the petitioner be not renewed, does not appear to be a well carried out exercise nor was it a sound advice.

7. The Arms Act, 1959 (Act No.54 of 1959) has been enacted by the Parliament to regulate the law relating to the arms and ammunition. Section 3 of the Act prohibits any person from acquiring or possessing or carrying any firearm or ammunition unless he holds a license issued in accordance with the provisions of the said Act. Sub Section (2) of Section 3 of the Act has been amended with effect from 22-06-1983 prohibiting any person from acquiring or having in possession or carrying, at any time, more than three firearms and this prohibition was not applied to any dealer in firearms or to any member of a Rifle Club or Rifle Association licensed or recognized by the Central Government using a point 22 bore rifle or an air rifle for target practice. Section 9 imposed certain prohibitory conditions for acquisition or possession or for sale or transfer of firearms. It is stated therein that no person, who has not completed the age of 21 years or who has been sentenced upon conviction of any offence involving violence or moral turpitude, at any time during a period of five years after the expiration of the sentence and no person, who has been ordered to execute under Chapter VIII of the Code of Criminal Procedure, 1973, a bond for keeping the peace or for good behavior, at anytime during the term of the bond, shall acquire or possess or carry the firearms. Grant of license is regulated by Section 13 of the Act. Before granting the license, the licensing authority is entitled to call for a report from an officer-in-charge of the nearest police station and consider the same. Only upon being satisfied about the genuineness of the claim, a license can be granted. The reasons or conditions subject to which a license can be refused have been set out in Section 14 of the Act. Importantly, it is set out under Clause (ii) of Sub Section (1) (b) of Section 14, where the licensing authority deems it necessary for the security of the public peace or for public safety, he can refuse to grant such a license. Therefore, the grant of license by the licensing authority has to be carried out quite carefully, subject to the limitations provided under Sections 13 and 14 of the Act. The security of the public peace or public safety being of utmost significance and importance for the State, a license can be refused to a person. For the same reason, a license can also be revoked. It, therefore, follows that there should be credible material before the licensing authority, for him, to come to the conclusion that the security of public peace or public safety, is likely to be disturbed by a person to whom a license is granted. And only in such circumstances, a license can be refused to such a person, even if such a person does not attract any of the rest of the prohibitions contained in the Act for being granted the license. Public

peace and public safety are not liable to be allowed to be shattered by anyone, all the more so, because he has been granted a license to carry or possess a firearm or ammunition. The assessment of the potential threat to public peace and public safety at the hands of the applicant, cannot be assumed as a matter of course. There should be a valid and reasonable basis for such an apprehension in the mind of the licensing authority to exist, but a mere involvement in a criminal case or cases is no pointer to the potential threat to public peace or public safety. Viewed from this perspective, the fact that in 7 criminal cases, the petitioner has already been acquitted, must enure to the benefit of the applicant / petitioner.

8. Sub Section (3) of Section 17 of the Act, enables the licensing authority, by order in writing, to suspend or revoke a license. The conditions precedent for exercising this power are (1) the licensing authority is satisfied that the holder of the license is prohibited by the Act or by any other law for the time being in force from acquiring or possessing or carrying any firearm or ammunition or the holder is of unsound mind or, for any other reason, is unfit for a license under the Act, or the license was obtained by suppression of material information or on the basis of wrong information provided by the holder of the license or if any of the conditions of the license have been contravened or if the holder of the license has failed to comply with a notice served on him under Sub Section (1) of Section 17 of the Act, requiring him to deliver up the license or where the licensing authority deems it necessary for the security of public peace or for public safety it is essential to suspend or revoke the license. An analysis of the facts narrated supra, as well as the impugned order, would make the position clear that rest of the circumstances narrated herein above except, perhaps, the last condition, are not attracted to the case of the petitioner. It is not the case of the State that the petitioner is prohibited, in any manner, by the Arms Act or any other law for the time being in force, from acquiring or possessing or carrying arms and ammunition. He is not considered to be of unsound mind. No other conditions have been traced, which render him unfit to hold a license. It is not the case of the State that he has obtained the license by suppression of material information or by furnishing wrong information. Nor was it the case of the State that he has contravened any of the conditions of the license, or he violated the directive issued to surrender his license. Therefore, the proposed action of the licensing authority is liable to be confined only to the perspective of the possible breach of security of public peace or public safety at the hands of the licensee. Such an assessment must be based upon a stronger foundational facts than mere enumeration of the number of criminal cases in which he was involved, without bothering to realize the factors that failed to secure a conviction to the petitioner. Further, there is no order passed against the petitioner in the past requiring him to execute any bond for maintaining public peace or order in any area. Therefore, in my opinion, the licensing authority did not have adequate material before it to entertain a reasonably sustainable apprehension about the potential danger and risk at the hands of the petitioner for public peace and

public safety. Denial either to grant a license or revoking an existing license, amounts to abdication of power conferred by the Statute. Mechanically one cannot repeat such an apprehension for denying the grant. Any such action amounts to acting contrary to the spirit and purpose of the very Statute. The nature of the crime alleged to have been committed by the petitioner in Crime No.25 of 2002 does not render the licensing authority to draw a reasonable satisfaction that the security of the public peace or public safety are likely to be breached by the petitioner. Even otherwise, while Section 9 of the Act talks of sentence suffered upon conviction of an offence involving violence or moral turpitude, the Collector & District Magistrate, in departure of this requirement, is seeking to rely upon mere involvement in criminal case(s).

9. The learned counsel for the petitioner has placed strong reliance upon the Judgment of a Division Bench of the High Court of Sheru Vs. Deputy Commissioner of Police, (Licensing), Delhi, That is a case where the license has been suspended by the licensing authority. The question that engaged the attention of the Division Bench was whether the license can be suspended pending its revocation. In my opinion, that is not the situation on hand here.

10. Since, I have found that there is no reasonable basis for the licensing authority to contemplate revocation of the license granted to the petitioner, it follows, therefore, that the licensing authority should independently consider renewing the license immediately. Based thereon, appropriate decision should be taken for return of the firearms deposited by the petitioner with the police. Let this exercise be completed within a period of three months from the date of receipt of a copy of this order.

11. With this, the writ petition stands allowed, but however, without costs.