
(2003) 09 KAR CK 0021
In the Karnataka High Court
Case No : Writ Petition No. 372 of 2001

Mallappa Shivalingappa

APPELLANT

Vs

The State of Karnataka and Another

RESPONDENT

Date of Decision : 02-09-2003

Acts Referred:

Arms Act, 1959 — Section 13, 14
Constitution of India, 1950 — Article 226, 227

Citation : (2004) 1 KCCR 47

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : G.A. Sriantegowda, for the Appellant; M.N. Ramanjaneya Gowda, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Petitioner, a resident of Palabhavi village of Raibag Taluk, Belgaum District, has approached this Court being aggrieved by the refusal on the part of the second Respondent-District Magistrate to accede to his request for granting him a gun licence for using a smooth bore gun. Petitioner had indicated in his application that his house which is a farm house built on his agricultural land is located about 3 K. Ms. away from the main village; that there is threat of loss of crop by wild animals such as wild boars and jackals and as such to protect his crops and also for the personal safety of the members of his family who are living in a remote and far-off place from the village, had applied for a licence to possess a gun.

2. The second Respondent-District Magistrate who enquired into the matter, found that the report submitted by the District Superintendent of Police indicated that it is not desirable to grant a licence in favour of the Petitioner inasmuch as the Petitioner was a person who was politically active, had indulged in party politics at the village level and it is likely that a law and order problem may be created and the peaceful atmosphere in the village may be disrupted if the

Petitioner is provided a licence to possess a gun. It also appears that the Taluka Magistrate namely the Tahsildar had not submitted any report and the second Respondent being of the view that the Petitioner is not a person to whom possession of a gun as sought for should be allowed, rejected the application for grant of licence. Aggrieved by this action of refusal, the Petitioner has approached this Court.

3. Sri G.A. Srikante Gowda, learned Counsel appearing for the Petitioner contended that Section 13 of the Arms Act ("the Act" for short) enables a person to obtain a licence under the circumstances mentioned therein; that the licensing authority is duty bound to grant such a licence on an application being made and on satisfying the requirements in the Section; that the authority has refused to grant without looking to the requirements of the Petitioner and the material placed before the Licensing Authority; that the mere report of the concerned Police officials alone should not have been put against the Petitioner for refusing a licence in his favour.

4. Learned Counsel submits that a gun of the nature for the possession of which a licence was sought for, being very essential for the Petitioner not only to protect his crops, but also for having safety to the members of his family and particularly in the light of dacoities in the vicinity being on the increase and no proper protection being forthcoming to the Petitioner from the police who are far away, the Petitioner had to take steps to protect himself and had sought for licence.

5. Statement of Objections has been filed on behalf of the Respondents and the impugned order is supported. Learned Government Advocate has also placed before me the records indicating the report of the Tahsildar, though it was not available when the order was passed, and was received subsequently and that it is in consonance and supportive of the objection that has been raised by the police officials which was submitted to the District Magistrate.

6. It is no doubt true that a person can make an application u/s 13 of the Act and the consideration for grant of such a license is mentioned in Section 13. However, Section 14 of the Act provides the situations where a refusal is ordered and the very starting of the Section contains the non-obstante clause which reads as under:

14. Refusal of Licences.-(1) Notwithstanding anything in Section 13, the Licensing Authority shall refuse to grant-

(a) XXX XXX XXX XXX

(b) (i) XXX XXX XXX XXX

(ii) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

7. The provisions of Section 14 have an overriding effect on the provisions of

Section 13 of the Act. Maintenance of public peace and public safety are relevant factors for the District Magistrate to refuse granting a licence. It cannot be said that there was no material at all before the District Magistrate in passing the impugned order. There was material in the form of objection put forth by the District Superintendent of Police, who it appears had indicated that:

KANNADA MATTER

8. The report of the Tahsildar, though received subsequently, only supports this view. The order passed by the District Magistrate being based on relevant consideration, I am of the view, that there is no scope for interference with an order of this nature in the exercise of writ jurisdiction under Articles 226/227 of the Constitution of India.

9. Accordingly this Writ Petition is dismissed.