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(2015) 04 KL CK 0101

In the High Court Of Kerala

Case No : Writ Petition (C). No. 19253 of 2012 (F)

Mathew K.T. APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:
Arms Act, 1959 — Section 14, 15

Citation : (2015) 04 KL CK 0101

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : B. Jayasankar, for the Appellant; Noushad Thottathil, Govt. Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A.V. Ramakrishna Pillai, J—Ext. P2 proceedings, by which the petitioner''s application for renewal of arms licence was rejected by the 2nd respondent, is under challenge.

2. The petitioner alleges that he has been granted arms licence to hold gun for protection of his life and property. The licence was issued to him after conducting a thorough investigation and enquiry about his character and antecedents and after a long process. He submitted an application for renewal of licence when it was in force. Subsequently, he was issued with a notice to appear for hearing before the licensing authority. Later, he was served with Ext. P2 proceedings, whereby his licence was cancelled on the basis of Ext. P5 circular, which restricts arm licence/renewal of licence to the persons, who may face or perceive grave and imminent threat to their life alone, which, according to the petitioner, is illegal, arbitrary and against the provisions of the Arms Act, 1959 (for short, "the Act") and the Rules framed thereunder. It is with this background, the petitioner has come up before this Court.

3. In the counter affidavit filed by the 2nd respondent, they justified Ext. P2

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proceedings on the ground that the petitioner is not facing any serious threat to his life.

4. Arguments have been heard.

5. A learned Single Judge of this Court in Chandran Nair Vs. Additional District Magistrate, (2015) 1 KHC 351 : (2015) 1 KLJ 98 : (2015) 1 KLT 41 has observed that a combined reading of Sections 14 and 15 of the Arms Act, 1959 would indicate that once a licence is granted under the Act, the same shall be renewed from time to time unless there exists a ground for refusal as enumerated under S. 14 of the Act. It was further observed that the protection to life and property of a citizen is the responsibility of the State; and it is only when a person apprehends that the machinery of the State may not come to his aid to protect his life and property, he/she applies for a licence under the Act. It was further observed that the subjective satisfaction of the authorities under the Act that there is no threat to the life and property of the applicant may or may not be correct; and when the applicant feels that there is threat to his life and property, there is no reason for the State to risk his life and property.

6. The learned Government Pleader heavily relied on the Circular No. V-11016/16/2009 Arms dated 31.03.2010 issued by the Central Government and Circular No. 76689/F1/09/Home dated 14.09.2010 issued by the State Government imposing restrictions on the renewal of arms licence. The argument of the State cannot be countenanced as it is trite that executive orders cannot override the express provisions of a statute. Therefore, I do not see any justifiable reason not to follow the decision in Chandran Nair''s (cited supra) case. The impugned order does not reflect whether any of the grounds made mention of in Section 14 of the Act was there for refusing the licence. The licence was refused solely for the reason that the petitioner was not facing any imminent threat or danger to his life. Therefore, this Court feels that the matter requires a reconsideration by the respondent concerned.

In the result, the writ petition is disposed of as under;

"? Ext. P2 is quashed.

? The 2nd respondent is directed to consider whether there is any ground as enumerated under Section 14 of the Act for refusing licence to the petitioner. If no such ground exists, the application shall be allowed and licence shall be renewed.

? The entire exercise shall be completed within a period of one month from the date of receipt of a copy of this judgment."

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