
(2019) 11 TEL CK 0011
In the Telangana High Court
Case No : Writ Petition No. 28093 Of 2018

Mohd. Masihuddin Khan

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 11-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 147, 188, 324, 342, 427, 448, 506
Arms Act, 1959 — Section 17(3)
Arms Rule, 2016 — Rule 24, 34
Constitution Of India, 1950 — Article 226

Citation : (2019) 11 TEL CK 0011

Hon'ble Judges : T. Vinod Kumar, J

Bench : Single Bench

Advocate : S. Ganesh

Final Decision : Disposed Of

Judgement

1. This writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus to declare the action of the first respondent in issuing Memo No.37793/Arms/2012, dated 09.09.2017 whereby the request of the petitioner for renewal of arms licence No.170/Rein Bazar was rejected, by the first respondent.

2. The case of the petitioner is that the first respondent had rejected the application for renewal of Arms Licence based on the report submitted by the second respondent on the ground that the petitioner was involved in two criminal cases i.e., Crime No.205 of 2004 for the offences punishable under Sections 448, 342, 506 read with Section 34 of the Indian Penal Code, 1860 in P.S. Rein Bazar, Hyderabad, and Crime No.226 of 2009 for the offences punishable under Sections 147, 448, 427, 324 and 188 read with Section 34 of IPC. The petitioner claims that the two crimes which were considered by the 1st respondent authority have long over. It is stated that crime No.205 of 2004 has been compromised in Lok Adalat on 30.10.2008, while in Crime No.226 of 2009 the

petitioner was acquitted on 04.01.2014. The said report while making reference to the above two cases further stated that though there are no adverse reports seen against the petitioner herein, it is stated that "he can misuse the weapon against rival persons".

3. Based on the said report of the second respondent, the first respondent herein by the impugned proceedings had rejected the request of the petitioner for revocation of his arms licence and renewing the arms licence for further period only on the sole ground that "he may misuse the weapon against the rival persons."

4. Being aggrieved by the said order passed by the first respondent, the present writ petition is filed inter alia contending that the action of the first respondent in rejecting the request for renewal of arms licence is without any basis and the first respondent had dealt with the matter in a mechanical manner without independent application of mind and based his decision solely on the report of the second respondent. Thus, it is claimed that the action of the first respondent is illegal, arbitrary and ultra vires and effecting the fundamental rights guaranteed by the Constitution of India and sought for setting aside the impugned Memo No.37793/Arms/2012, dated 09.09.2017 issued by the first respondent herein.

5. Heard Sri S. Ganesh, learned counsel appearing for the petitioner and learned Government Pleader for Home appearing for the respondents.

6. The learned counsel for the petitioner while reiterating the averments made in the writ affidavit had submitted that the first respondent passed the impugned order solely on the basis of report furnished by the second respondent, did not apply his mind independently. He also contended that even otherwise, the report furnished by the second respondent cannot also form the basis for revocation of the arms licence granted and reject the application for renewal of Arms Licence, inasmuch as the basis of the revocation of arms licence earlier was the involvement of the petitioner in two crimes referred in the said report wherein Crime No.205 of 2004 resulted in compromise before the Lok Adalat while Crime No.226 of 2009 resulted in acquittal of the petitioner. He also further contended that inasmuch as the said report has categorically stated that there are no adverse reports seen against the petitioner, merely on the assumption / apprehension that the petitioner can misuse the weapon against the rival persons cannot form basis for rejecting the request of the petitioner for renewal of arms licence and the said apprehension on the part of the second respondent authority which formed the basis for the first respondent authority to pass the impugned order has no basis to stand and thus sought for setting aside the impugned proceedings.

7. In support of the contentions, the learned counsel for the petitioner placed reliance on judgments of this Court in the case of Vegi Jagadish Kumar v. State of Andhra Pradesh 2017 (5) ALD 357 and K. Raghavendra Rao v. State of

Telangana and others 2019 (5) ALD 206 (TS).

8. The learned counsel for the petitioner has placed heavily relied on the observations of this Court in para-11 of the Vegi Jagadish Kumar's case (1 supra) wherein this Court was pleased to hold that "mere pendency of criminal case cannot be a ground for cancellation of licence and when there was no adverse report regarding the misuse of arms licence by the petitioner, the licencing authority only on the basis of registration of crime arrived at the conclusion that the licensee may misuse the weapon has means to commit any offence and cause harm to the complainant, when it is not the case of complainant in the above cases and also came to the conclusion that the possession of arms licence will result insecurity to the lives and properties of law abiding citizens and will also disturb the possession and tranquility". Relying on the above said observations of this Court, the learned counsel for the petitioner would contend that in the facts of the present case, as on the date when the petitioner sought for renewal of his arms licence by revocation, the two crimes have already been closed and the report of the second respondent would also indicate that no adverse reports are seen against the petitioner and therefore, the action of the first respondent in rejecting the request of the petitioner for grant of renewal of Arms Licence is without any basis and or material and is thus liable to be set aside.

ix) The learned Government Pleader for Home on the other hand would submit that the petitioner applied and obtained arms licence in the year 2000 on the basis that he is running wholesale cloth business and has to travel and meet many people in connection with such business, there is every possibility of threat, while in reality he has been using the said arm to threaten people as a tool to recovery the monies owed to him in the course of his business activity and thus the licencing authority revoked the licence granted to the petitioner in the year 2007 when petitioner made an application for renewal. He would submit that the conduct of the petitioner in using the licenced arm has weighed with the 2nd respondent to make such observation in his report and the 1st respondent is justified in taking note of the same while rejecting the petitioner's application.

x) Before delving into the merits of the matter, it is necessary to state that in normal circumstances, since the Arms Act provided for remedy of appeal, the petitioner could have been relegated to avail the alternative remedy of appeal. However, having regard to the chequered history of the case with multiple number of writ petitions having been filed before this Court and this writ petition having been pending on the file of this Court since August 2018, the same is being considered and disposed of on merits.

Brief facts of the case:

xi) The petitioner was granted licence to hold one 32 bore revolver No.40138/2029 manufactured by Colts, USA in the year 2000 which was renewed up to 2007. In the year 2007, when the petitioner submitted an

application for renewal of licence for the said arms, a show cause notice dated 26.07.2007 came to be issued seeking for an explanation from the petitioner as to why the arms licence granted should not be cancelled/revoked, in view of the petitioner's involvement in criminal case bearing No.205 of 2004 in Rein Bazar Police station, which was later numbered as C.C.No.298 of 2007 on the file of VIII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad. In response to the said show cause notice, the petitioner filed his explanation on 18.08.2007. Upon due consideration of the said explanation, by order dated 04.01.2018 in proceedings No.170/Rein Bazar/2007 passed by the second respondent, the arms licence of the petitioner was revoked on the ground that a criminal case is pending against him. Subsequently, the said criminal case numbered as CC No.298 of 2007 was settled by the de facto complainant before the Lok Adalat Case No.5138 of 2008 on 30.10.2008 and an award was passed by acquitting the petitioner. After the said criminal case got settled before the Lok Adalat, the petitioner approached this Court by filing Writ Petition No.1327 of 2008 and sought for a declaration that the cancellation of arms licence is arbitrary, illegal with a consequential relief of direction to the respondents therein to renew the same. The said writ petition filed by the petitioner came to be disposed of on 29.10.2010 wherein this Court directed the petitioner to make an application to the appropriate authority along with the award passed by the Lok Adalat for renewal of his arms licence and directed the respondents to consider the same and pass appropriate orders as per law within a period of four weeks thereafter.

xii) It appears that though this Court passed an order on 29.10.2010 permitting the petitioner to make an application to the appropriate authority for renewal of arms licence, the petitioner made a representation dated 14.02.2012 seeking renewal of licence only after lapse of fifteen months for the reasons best known to him. It appears that since the authorities did not pass any orders on the representation of petitioner dated 14.02.2012, the petitioner approached this Court once again by filing another Writ Petition No.17797 of 2012 seeking for the same relief as sought for in Writ Petition No.1327 of 2008. This Court by its order dated 20.06.2012 dismissed the said writ petition by observing as under:

"3. Earlier, the petitioner filed a W.P.No.1327 of 2008 before this Court challenging the cancellation of license and consequently to direct the respondents to renew the license of the petitioner. The same was disposed of by its order dated 29.10.2010 directing the petitioner to make an application to the appropriate authority along with the award passed by the Lok Adalat and on such filing, the respondents shall consider the same and pass appropriate order within four weeks thereafter. In pursuance of the same, no application is filed. For the self same relief, the present writ petition is filed. Principles of resjudicata are equally applicable to the writ petition. Hence, the question of issuing the same direction does not arise in the present writ petition.

4 Accordingly, the writ petition is dismissed. No order as to costs."

13. Aggrieved by the said order dismissing the writ petition, the petitioner

preferred a writ appeal being W.A. No.1476 of 2012 and a Division Bench of this Court by its judgment dated 27.11.2012, held that the question of res judicata does not apply in this case and directed the authorities to consider the representation of the petitioner and pass appropriate orders in accordance with law within six weeks from the date of receipt of the said representation. After disposal of the above said Writ Appeal, the petitioner filed representation on 17.12.2012 to the Licencing Authority and sought for renewal of arms licence.

14. The said representation filed by the petitioner was considered and was rejected by the first respondent, vide G.O.Rt.No.1537, dated 11.07.2013 assigning the reason that Crime No.205 of 2004, which is numbered as C.C.No.298 of 2007, against the petitioner ended in compromise before the Lok Adalat and not by way of an acquittal. In the said GO, it is further stated as follows:

"Further, the applicant involved himself in another case vide Crime No.226/09 of Rein Bazar P.S. which is pending trial, from which it is evident that the applicant indulges in high handed behaviour and unlawful activities and there is distinct possibility of his misuse of weapon, adversely affecting public peace/tranquility by the petitioner."

xv) Aggrieved by the said action of the first respondent in issuing G.O.Rt.No.1537, dated 11.07.2013, the petitioner once again approached this Court by filing Writ Petition No.24260 of 2013. The said writ petition was disposed by this Court by order dated 21.09.2016 directing the first respondent therein to consider the petitioner's application for restoration of his arms licence and for its further renewal and granted six weeks time from the date of receipt of a copy of the order to complete the said exercise. This Court while passing the above order on 21.09.2016 has also taken note of the involvement of the petitioner in Crime No.226 of 2009 (i.e., the second case) which was later numbered as C.C.No.303 of 2014 on the file of XV Additional Judge-cum-XIX Additional Chief Metropolitan Magistrate, Hyderabad, has resulted in acquittal of the petitioner on 04.12.2014.

xvi) In spite of the said order having been passed by this Court on 21.09.2016, the respondents failed to comply with the directions of this Court resulting the petitioner knocking the doors of this Court by filing contempt proceedings bearing C.C.No.1722 of 2017. It is claimed that while the said contempt proceedings are pending before this Court, the respondent in the writ petition No.24260 of 2013, passed impugned orders on 09.09.2017, vide Memo No.37793/Arms/2012 rejecting the application to renew the arms licence on the ground that the petitioner may misuse the weapon against the rival persons. As the ground for passing the order dated 09.09.2017 was same as the ground taken in G.O.Rt.No.1537, the petitioner did not file separate writ petition, but pursued with the contempt proceedings initiated. In August 2017 upon the respondent tendering unconditional apology for the delay in complying with the order in W.P.No.24260 of 2013 and explaining the reasons for the delay, the said

contempt case was closed granting liberty to the petitioner to assail the order dated 09.09.2017 passed by the respondent by way of appropriate proceedings. Thus the present writ petition came to be filed against the proceedings of the first respondent dated 09.09.2017.

17 As can be seen from the impugned proceedings, the first respondent refused the request of the petitioner for revocation of arms licence and for granting renewal of the same solely on the ground that the petitioner may misuse the same against the rival persons. The said reason given by the first respondent is same as the reason while rejecting the request of the petitioner under G.O.Rt.No.1537. The reasoning given in G.O.Rt.No.1537 did not find acceptance with this Court and was rejected in W.P.No.24260 of 2013 whereby the respondents were directed to consider the petitioner's application for restoration of his arms licence. The mere repeating/reiteration of the same, the said ground once again by the respondents in the impugned proceedings dated 09.09.2017 without bringing any material on record would clearly go to show the mechanical approach of the authorities in considering the application of the petitioner. If only any such material is existed on record, the respondent authorities are duly empowered under the Arms Act, 1959 to vary the condition subject to which a licence can be granted or rejected. On the contrary, the report of 2nd respondent indicates that there are no adverse reports seen against the petitioner.

18. This Court in K. Raghavenra Rao's case (2 supra), has taken a note of the powers of licencing/competent authority to revoke the arms licence subject to the conditions envisaged therein. Further, the power conferred on the competent authority in terms of Section 17 and also the Rules framed under the Act being Arms Rules 2016 (amended) would make it clear that the conditions stipulated for grant of licence would equally apply in relation to renewal also. Rule 24 of the Arms Rules specifically states that when an application for renewal is being considered, the conditions as would be applicable in case of grant of license would be applicable. Further, Rule 34 of Arms Rule, 2016 prescribes conditions which the licensee is required to comply with upon grant of such licence.

19. However, on going through the impugned proceedings dated 09.09.2017, it would be clear that the first respondent authority merely acting on the report of the second respondent has rejected the application of the petitioner without even considering the powers conferred on the said authorities even to vary the conditions for grant of licence either by restricting the period of renewal to be granted (which is generally for a period of three years) being reduced so that the use of licence armed by the petitioner could be monitored. Further, the 1st and 2nd respondents except stating that the petitioner may misuse the arms against his rival persons also failed to consider as to whether the threat perception which existed in the year 2000 at the time of grant of licence to the petitioner exists in the current day. This is for the reason that the arm for which licence was granted originally in 2000 was revoked in the year 2007 and the petitioner was deprived of possessing the arm since 2007 onwards till date. Thus, the petitioner not

being in possession of the arm for a period of 12 years would make it more important for the authorities to take note/assess the threat perception to the petitioner under Section 17 (3) of the Arms Act, as observed by this Court in K. Raghavendra Rao's case (2 supra) to revoke the licence if it is found that there is no risk to the life of the petitioner with the passage of time.

20. Having regard to the above settled principle of law, the impugned order which seeks to reject the request of the petitioner to renew the licence only on the basis of apprehension that "he may misuse against rivals" cannot be sustained and is accordingly set aside. However, the respondents are directed to consider the application filed by the petitioner afresh including as to whether threat perception to the petitioner exists or not, which can form basis for them for revocation of the licence or to vary the conditions for renewal of the arms licence including reducing the period of such renewal and pass orders afresh. It is also made clear that before passing of such order, the petitioner shall be afforded with an opportunity to put across the petitioner's stand, which shall be duly considered by appropriate authority. Having regard to the circumstances, the respondent authorities are directed to complete the entire exercise within a period of ten (10) weeks from the date of receipt of a copy of this order.

21 With the above observations and directions, the writ petition is disposed of. However, there shall be no order as to costs.

22 As a sequel thereto, Miscellaneous Applications, if any, pending in this writ petition shall stand closed.