

(1952) 07 MAD CK 0030

In the Madras High Court

Case No : Civil Miscellaneous Petition No's. 7676 and 7677 of 1951

P. Narasimha Reddy

APPELLANT

Vs

District Magistrate, Cuddapah

RESPONDENT

Date of Decision : 29-07-1952

Acts Referred:

Arms Act, 1959 — Section 17

Arms Rules, 1962 — Rule 43

Constitution of India, 1950 — Article 19(1), 19(5)

Citation : AIR 1953 Mad 476 : (1953) 1 MLJ 418

Hon'ble Judges : Subba Rao, J

Bench : Single Bench

Advocate : K.V. Venkatasubramania Iyer, for Rao and Reddy, for the Appellant;
V.P. Sarathy, for Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Subba Rao, J.—C. M. P. No 7676 of 1951 is an application under Article 226 of the Constitution of India to issue a Writ of Mandamus

directing the District Magistrate, Cuddapah, to issue a licence applied for by the petitioner for the possession of a single-barrel cartridge gun No.

12 bore (S. B. B. L.). C. M. P. No. 7677 of 1951 is an application by the same party for issue of a Writ of "Certiorari" to call for the records of

the District Magistrate, Cuddapah, and to quash his order dated 9-3-1951.

The petitioner is a citizen of the Indian Union residing in the village of Anantharjupet, Kodur firka, Cuddapah district. It is stated in the affidavit that

both on the eastern and southern side of the village, where his lands are situated, there are reserve forests & also unreserved forests and that these

forests are infested by wild animals of various types like deer, stag, sambur, wild pigs, cheetahs, bears and tigers. As those animals cause

considerable destruction of food crops and of cattle, the petitioner applied on 2-1-1951 to the respondent for a licence for a single-barrel cartridge

gun No. 12 Bore (S. B. B. L.) for the purpose of hunting and the protection of crops from wild animals. On 19-3-1951, the petitioner received an

order of the respondent refusing the grant of a licence, without any reasons being assigned therefor. It is alleged that in his own village licences

were given for other persons on similar grounds.

The respondent in his counter states that he was satisfied that the petitioner was not a suitable person to be entrusted with a firearm and that in

"bona fide" exercise of his discretion he refused the licence to the petitioner.

2. Learned counsel for the petitioner raised before me the following points:

1. The Magistrate has no power to refuse a licence.

2. The refusal of the licence to acquire and hold a gun is a violation of his fundamental right under Article 19(1)(f) of the Constitution of India.

Mr. Vepa Sarathy for the Government contended that a right to acquire and hold a gun is not a right to hold property within the meaning of the said

Article but is a right created by the Arms Act, and the petitioner cannot, therefore, ask for a licence as of right. Assuming that Article 19(1)(f)

applies, he argued that the provisions of the Arms Act and the Rules made thereunder impose only reasonable restrictions within the meaning of

Article 19(5). The relevant provision of the Arms Act and the Rules framed thereunder read as follows:

Section 5: No person shall manufacture, convert or sell, or keep, offer or expose for sale, any arms, ammunition or military stores except under a

licence and in the manner and to the extent permitted thereby....

Section 17: Power to make rules as to licences. The Central Government may, from time to time by notification in the official Gazette, make rules

to determine the officers by whom, the form in which, and the terms and conditions, on and subject to which, any licence shall be granted; and

may.....

Section 19 : For breach of Sections 5, 6, 10, 13 to 17. Whoever commits any of the following offences (namely):

(a) manufactures, converts or sells, or keeps, offers or exposes for sale, any arms, ammunition or military stores in contravention of the provisions

of Section 5; shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Rule 43: Discretion and control of authorities empowered to grant licences -- (1) Every authority empowered to grant or renew a licence or to give

his previous sanction to such grant or renewal may, in his discretion,

(a) refuse to grant or renew such licence or to give such sanction, or

(b) where the authority is subordinate to a provincial Government, refer the application for orders to such provincial Government;

Provided that in any case in which such authority refuses to grant or renew a licence, the applicant for such grant or renewal may appeal to the

immediate official superior of the authority so refusing.

In the Province of Madras the Board of Revenue shall be considered to be the immediate official superior of the District Magistrates for the

purpose of such appeals.

(2) Every such authority shall exercise all powers and perform all duties conferred or imposed by these rules, subject to the control of the executive

authorities to whom he is subordinate"".

3. The schedule to the rules gives the forms of the application and that of the licence issued under the Act.

4. The first contention of the learned counsel turns upon the provisions of Section 17 of the Act and Rule 43 of the Rules. It is said that the rule-

making power of the Government is limited only to the laying down of the conditions for the issue of a licence, not for the refusal of the same, and,

therefore, the rule empowering the District Magistrate to refuse a licence is invalid, being inconsistent with the provisions of the Act. Emphasis is

laid on the following words in Section 17 of the Act:

rules to determine the officers by whom the form in which, and the terms and conditions, on and subject to which, any licence shall be

granted.....

To accept this contention is to take a very narrow view of the provisions of Section 17. u/s 5, no person shall keep any arms except under a

licence. The Government is authorised to make rules for issuing of such licences. A power to issue a licence necessarily carried with it the power to

refuse the issue of a licence. When u/s 17, the Government authorises a

particular officer to issue a licence if he is satisfied that certain conditions are complied with, it follows that if he is not satisfied he cannot issue a licence. I therefore hold that the provisions of Rule 43 are not illegal and that under that rule the District Magistrate can either issue or refuse to issue a licence in his discretion.

5. The next question is whether the impugned order violates the fundamental right under Article 19(1)(f) of the Constitution and, if so, whether it is saved by Article 19(5) of the Constitution of India. Learned counsel for the Government contended that to hold a gun is not to hold a property within the meaning of the article. The word "property" has not been defined in the Constitution. The expression "property" includes Every interest one may have in any and everything that is subject of ownership by man, together with the right to freely possess, enjoy and dispose of the same".

See -- "Metropolitan Trust Co. v. Jones", 149 A. L. R. 1416(A). Cooley in his Constitutional Law at page 392 defines property as follows:

Whatever a man produces by the labour of his hand or his brain, whatever he obtains in exchange for something of his own, and whatever is given to him, the law will protect him in the use or enjoyment and disposition of it".

There is no reason to assume that the makers of the Constitution did not use this word in its usual sense to take in everything that is subject of

ownership by man. Whatever difficulty there may have been in other cases, I find it difficult to hold that a gun, which is a material object that can,

be acquired and owned, is not property. But the learned counsel relied upon the judgment of the Supreme court in -- Veerappa Pillai Vs. Raman

and Raman Ltd. and Others, in support of his contention that a right to acquire and hold a gun is a right created by the Arms Act and, therefore, no

one is entitled to a permit as of right even if he satisfied all the prescribed conditions. The learned Judges in the aforesaid case were dealing with a

person's right to get a permit as of right to ply a motor bus under the Motor Vehicles Act. After pointing out that the Act established a regular

heirarchy of administrative bodies to deal with the regulation of transport by means of motor vehicles, the learned Judges stated at p. 195.

Thus we have before us a complete and precise scheme for regulating the issue of permits, providing what matters are to be taken into

consideration as relevant, and prescribing appeals and revision from subordinate bodies to higher authorities. The remedies for the redress of

grievances or the correction of errors are found in the statute itself and it is to these remedies that resort must generally be had. As observed

already, the issue or refusal of permits is solely within the discretion of the transport authorities and it is not a matter of right".

But these observations were considered by a Bench of this court consisting of Rajamannar C. J. and Venkatarama Aiyar J. in -- C.S.S. Motor

Service, Tenkasi and Others Vs. The State of Madras and Another, wherein the learned Judges pointed out that the observations of the Supreme

Court should be confined to an order prior to the making of the Constitution of India, and that whenever a question of fundamental right arises, the

validity of the impugned order should be tested with reference to the provisions of the Constitution of India. I cannot therefore accept this

contention.

6. It was then contended that the order is saved by the provisions of Article 19(5) of the Constitution. Under Article 19(5) nothing in Sub-clause

(f) shall affect the operation of an existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions

on the exercise of any of the rights conferred by the said sub-clause either in the interests of the general public or for the protection of the interests

of any scheduled tribe. The fundamental right, therefore, recognised under Article 19(1)(f) to acquire, hold and dispose of property can be

restricted within the limits of the provisions of Article 19(5). The restrictions that can be imposed on the said right are conditioned by the provisions

of that clause:

1. They should be reasonable, and

2. They should be in the interests of the general public, not a denominational part of it.

The Supreme Court of India has defined the phrase "reasonable restriction" in -- Chintaman Rao Vs. The State of Madhya Pradesh, as follows:

The phrase reasonable restriction connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an

excessive nature beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is the

choice of a course which the reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of

reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(D)(G) and the social control permitted by

Clause (b) of Article 19, it must be held to be wanting in that quality"".

There cannot be a hard and fast rule on the question of what restrictions are reasonable. The reasonableness of a restriction depends upon the

nature of the right claimed, the object to be achieved, the means employed and the limitations imposed. They should be fair and commensurate

with the purposes aimed at. Their validity should also be tested by another yardstick, namely, whether they were conceived and enacted in the

interests of the general public. They could be made from purposes such as public security, public order, public health and public morality.

Judged by the aforesaid conditions, can it, be said that the restrictions imposed under the Arms Act and the rules framed thereunder are

unreasonable restrictions not aimed in the interests of the general public? The restrictions on the free acquisition and user of firearms is certainly

necessary in the interests of the general public. Many situations can be visualised when the uncontrolled user of firearms may be detrimental to the

interests of the general public, violent revolutions may be encouraged, wild game may be exterminated, murder and arson might be resorted to, and

peaceful structure of society may be destroyed. At the same time possession of firearms in the hands of desirable persons may be a protection &

safeguard against unruly elements & wild animals. They may also be required by peaceful citizens for entertainment and recreation such as shooting

exercises, mild games etc. The State therefore may well have to intervene and put restrictions on the user to protect the general public, without at

the same time destroying the fundamental right. The machinery evolved to achieve the purpose is the licensing system. The application form gives all

the particulars necessary for the officer to decide on the desirability of issuing or refusing to issue a licence. The officer empowered to issue the

licence is a responsible officer of the Government, the District Magistrate. In his discretion he may give or refuse the licence. The discretion is

obviously a judicial one as his order is subject to an appeal to the Revenue Board. When his order is subject to an appeal, it is his duty to give

reasons for his refusal, for the appellate tribunal must be in a position to evaluate the correctness or reasonableness of his rejection. Having regard to the right claimed and its dangerous potentialities, I cannot say that the restrictions imposed are not reasonable. But the necessary condition of the reasonableness is that the Magistrate should exercise judicial discretion disclosing his mind for the scrutiny of appellate tribunal excluding the possibility of arbitrary action.

Learned counsel for the petitioner relied upon a judgment of a Bench of this Court in W. P. No. 441 of 1951 (E). There the learned Judges,

Rajamannar C. J. and Venkatarama Aiyar J. were dealing with the sections of the Essential Supplies (Temporary Powers) Act, 1946. Under

Clause 11 of the Act the Development Officer shall have discretion to grant or refuse a licence to any applicant. It shall not be necessary for the

Development officer to assign, any reason for any decision taken by him under that clause. The learned Judges held that the arbitrary power

envisaged in the said clause offends the fundamental rights of a citizen. But under Rule 43 of the rules framed, under the Arms Act, as interpreted

by me, the District Magistrate cannot arbitrarily refuse to give the permit, but he must exercise a Judicial discretion supported by reasons, subject

to the scrutiny of an appellate tribunal. The scope of the two Acts and the mischief intended to be averted are not the same. I Clause 11 of the

Essential Supplies (Temporary Powers) Act, 1946, embodies an arbitrary discretion; Rule 43 (1) confers a judicial discretion. I cannot therefore

apply that decision to the facts of this case.

7. The impugned order is a laconic one. It reads: ""The gun licence applied for will not be granted"". No reasons were given for the refusal The order

is of an arbitrary character, though under Rule 43 it should be made in exercise of a judicial discretion. The necessary safeguard against an

arbitrary refusal, i.e., giving reasons for refusal, is ignored. As I hold that the licensing machinery established a reasonable restriction on the

fundamental right only if the District Magistrate gave reasons for his order for the scrutiny of the appellate Tribunal, I must hold that the order

without giving such reasons offends the fundamental right of the petitioner to acquire and hold property. The order of the District Magistrate,

therefore, is set aside and he is directed to dispose of the application of the

petitioner in accordance with law. The petitioner will have his costs.