
(1997) 11 AP CK 0042

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 27373 of 1996 and 12283 of 1997

P. Srinivasa Reddy

APPELLANT

Vs

Govt. of A.P. and Others

RESPONDENT

Date of Decision : 21-11-1997

Acts Referred:

Arms Act, 1959 — Section 17(10), 17(9), 3
Constitution of India, 1950 — Article 19, 21

Citation : (1998) 1 ALD 681 : (1998) 1 ALT 375

Hon'ble Judges : V. Rajagopala Reddy, J

Bench : Single Bench

Advocate : Mr. P. Raghava Reddy and Mr. H. Prahalada Reddy, for the Appellant;
Government Pleader for Home and Mr. K. Ramakanth Reddy, for the Respondent

Judgement

1. The two writ petitions are disposed of by a common order since the same G.O.Rt.No.1952 Home (Gen.C) Department, dated 30-7-1997, is questioned in both the writ petitions.

2. The petitioners are the residents of Rayalaseema region and licensees of fire arms. They acquired the weapons and obtained licences for the protection of their life and their property from the attacks of extremists and robbers and dacoits. The Government"suspended fire arm licences in Rayalaseema region and the districts of Guntur and Prakasam of Andhra area, for a period of 6 months, initially in 1994. Separate G.Os. have been issued extending the period of suspension from time to time. G.O.RtNo.1824 Home (Gen.C) Dept., dated 9-8-1996 was issued suspending grant of new arm licences and existing arm licences from 1 -8-96 to 31 -7-97. Pursuant to the said G.O. the petitioners had deposited their weapons before the nearest police station (R3). The petitioners also applied for renewal of their licences to the licensing authorities, who are impleaded in these writ petitions. In view of the G.O. the licences were not renewed.

3. Challenging the G.O., the petitioners approached this Court in these writ

petitions. However, pending the writ petitions, since the period mentioned in the G.O. expired, G.O.Rt.No. 1952 Home (Gen.C) Dept., dated 30-7-97 was issued extending the period from 1-8-97 to 31-7-98. The petitioners filed petitions for amendment of the prayer in the writ petitions and the petitions were allowed. Thereafter, the prayers were suitably amended. Thus, now the challenge in these writ petitions is against G.O.Rt.No.1952, Home (Gen.C) Dept., dated 30-7-1997.

4. The grievance of the petitioners is that the impugned G.O. is violative of Articles 19(1)(g) and 21 of the Constitution. Further it is their case that the G.O. has no application to the petitioners, in as much as they are not factionists and the acquisition of weapons was only for the purpose of protection from extremists and for protection of their crops and to carry on their business activities and as the G.O. was issued only to curtail the activities of factionists.

5. In the counter-affidavit filed on behalf of the respondents it is slated that the districts in Rayalaseema region and districts of Guntur and Prakasam of Andhra area being known for factions and the spurt of serious crimes in those areas was on the raise and since there was likelihood of using the weapons by the factionists freely and as the maximum number of licenced weapons were in the above districts, the Government thought it fit to suspend the arms licence for maintenance of public order and security. The Government accordingly issued the orders suspending the existing fire arm licences in 1994 for a period of 6 months and the licensees were directed to deposit their arms in the nearest police station. These orders were extended from time to time in the aforesaid areas. It was further stated that it was open to the aggrieved persons if they do not belong to any faction to approach the Government through the District Magistrate and after considering their representations, suitable orders would be passed. The G.Os, are not vitiated by infringement of Articles 19 and 21 of the Constitution, as the fundamental rights did not take away the right of the State from taking reasonable action under the provisions of Arms Act, 1959 (Central Act 54/59) (for short "the Act"). Since the action was taken only to bring public order and safety, the action of the Government is reasonable and just. It is also not vitiated by arbitrariness.

6. The 3rd respondent also filed counter-affidavit in W.P.No, 12283/97 stating that the weapons have been in their custody having been deposited by the petitioners, as per the orders of the Government. Specific admission was made that the petitioner never misused licenced weapon and that there are no adverse remarks against him. The suspension of arm licences yielded fruitful results by virtue of suspension of arm licences. Now the crime rate was fully under control.

7. Learned Counsel for the petitioners contended that the G.O, is violative of Articles 19(1)(g) and 21 of the Constitution. The thrust of their contention is that they are under mortal fear of the extremists and other anti-social elements, and it is absolutely necessary for protection of their life and property and to carry on their trade or profession to use their weapons and if they are prevented from using the said weapons, their constitutional right guaranteed under Articles 19(1)

(g) and 21 of the Constitution is offended. The GOs are thus wholly illegal and unsustainable. These contentions are vehemently refuted by the learned Government Pleader for Home. His submission is that holding a licence of the fire arm is only a privilege and not a fundamental right. Hence if a licence is suspended, the petitioners cannot make any grievance. Further the G.O. was issued strictly in accordance with Section 17 of the Act and for valid purpose.

8. Let us notice some of the provisions of the Act under which the G.O. was purported to have been issued. The petitioners obtained licences u/s 3 of the Act. Section 3 makes it incumbent upon any person to possess licences for acquisition and possession of fire arm, issued in accordance with the provisions of the Act and the Rules made thereunder. Chapter 111 contains the provisions relating to grant, revocation and suspension of licences. The licensing authority, upon an application made, after making such enquiry as he may find it necessary and after considering the report of the officer in charge of the nearest Police Station either grant licence or refuse to grant the same. It is permissible for the licensing authority to refuse grant of licence in the interest of security of public peace or public safety. The licensing authority may revoke or suspend the licence. Under sub-section (9) of Section 17 of the Act, it is competent to the Central Government to suspend or revoke or direct the licensing authority to suspend or revoke all or any licence granted under the Act throughout India or any part thereof. Sub-section (10) further provides that on suspension or revocation of licence under sub-section (9) the licensee shall surrender the licence to the authority by whom it was suspended or revoked or such authority as it may be specified in the order of suspension or revocation. A perusal of the G.O. makes it clear that the G.O. has been issued by the Government under subsection (9) and (10) of Section 17 of the Act. Provocation for issuing the G.O. by the Government is the increase in faction feuds in Rayalseema region and districts of Gunlur and Prakasam and the proportionate rise in the crime rate, whereby there was likelihood of using the fire arms freely by the factionists. Thus, the impugned G.O. was issued by the Government in accordance with the provisions of sub-sections (9) and (10) of Section 17 of the Act.

9. It is manifest from a perusal of the above provisions that a citizen has no right to possess a fire arm without a licence. A licence will not be obtained as a matter of course. A thorough enquiry has to be made and on consideration of the report submitted by the officer in charge of the police station the licence will be granted. Such licence is again subject to the other provisions of the Act.

10. Fundamental rights are basic human rights, such as right to life and liberty, right to equality, right to freedom of speech and expression, to assemble without arms, to form associations, to move freely throughout India, to reside and settle in any part of India and to practise any profession or to carry on occupation, trade or business. They are codified in Part-III of the Constitution. They also include right to equality, right against exploitation, right to freedom of religion and right to establish cultural and educational institutions and also right to

approach the Court for enforcement of the said rights conferred in Part-III. Since they are basic and fundamental to any citizen living in an ordered Society, Constitution makers have recognised that those rights should be protected from their invasion even by the State. Thus in Part III of the Constitution those rights are protected. Rights or privileges conferred by a statute can by no stretch of imagination, be termed as fundamental rights. The right to possess and use licence to a fire arm having been conferred by a statute amounts to only a privilege. It is not even a civil right since no civil consequences entail by virtue of deprivation of licence. Civil rights belong to every citizen of the State or country. They include the rights of property, marriage, freedom of contract etc. They go with the citizenship of a person and they are enforceable in a Civil Court. A citizen cannot, as a matter of right, obtain a licence for his fire arm and he cannot approach the Civil Court for obtaining the fire arm licence. Afortiori it cannot acquire the character of a fundamental right and it does not comprehend within the ambit of Articles 19 and 21 of the Constitution. A Full Bench of Allahabad High Court in Kailash Nath and Others Vs. State of U.P. and Another, , dealing with this aspect, held :

".. In my opinion the obtaining of a licence for acquisition and possession of fire arms and ammunition under the Arms Act is nothing more than a privilege and the grant of such privilege does not involve the adjudication of the right of an individual nor does it entail civil consequences. I may, however, hasten to add that even an order rejecting the application for grant of licence may become legally vulnerable if it is passed arbitrarily or capriciously or without application of mind. No doubt, a citizen may apply for grant of a licence of firearms mostly with the object of protecting his person or property but that is mainly the function of the State. Even remotely this cannot be comprehended within the ambit of Article 21 of the Constitution which postulates the fundamental right of protection of life and personal liberty. It deals with deprivation of life and as held in A.K. Gopalan Vs. The State of Madras, . Article 21 is attracted only in cases of deprivation in the sense of total loss and that accordingly has no application to the case of a mere restriction upon the right to move freely or to the grant of licence for possession and acquisition of firearms which stands on an entirely different footing from the licence to carry on a trade or occupation."

Hence, the petitioners cannot complain that the action of the Government in suspending the licences as offending Articles 19(1)(g) and 21 of the Constitution. As seen supra, the Government exercising the power conferred under sub-sections (9) and (10) of Section 17 of the Act, issued the G.Os., directing not to grant fresh licences and suspending the existing licences for a period of 6 months in the districts mentioned in the G.O. It is not in dispute that the reason given for invoking the above provisions and issuing the G.O. is not in accordance with Section 17 of the Act. The Government taking into consideration the factious nature of the districts concerned and the spurt in the crime in those districts and to curtail the violence and in the interest of public order and peace, issued the G.Os. I am, therefore, of the view that the action taken by the Government is

perfectly justified and cannot be faulted as violative of Articles 19(1)(g) and 21 of the Constitution and Section 17 of the Act. "

11. Even assuming that the licence to possess and use fire arm is a fundamental right guaranteed under Articles 19(1)(g) and 21 of the Constitution, the impugned G.O. is not violative of the fundamental rights. Article 19(2) of the Constitution confers powers upon the State to impose reasonable restrictions on the exercise of the rights under Article 19(1)(g), in the interest of security of the State and public order, etc. Article 21 provides that no person shall be deprived of his person, life or liberty except according to the procedure established by law. The G.Os are issued invoking the power conferred under sub-sections (9) and (10) of Section 17 of the Act. Sub-section (3) of Section 17 gives power to the authority for suspension or revocation of licence if the licensing authority deems it necessary for the security of public peace or public safety to suspend or revoke the licence. Sub-section (9) of Section 17 of the Act gives power for suspension or revocation of the licences throughout India or any part thereof. Such power under Sub-section (9) is only for the purpose of maintaining public peace or public safety as stated in sub-section (3). Since the G.Os are avowedly issued only for the purpose of maintaining public peace in the districts of Rayalaseema and two districts of Andhra area, the exercise of the power by the Government in issuing the G.Os is strictly in accordance with Section 17 of the Act and no grievance can be made in this behalf. In fact none of the petitioners questioned the Government's power to issue the G.O. u/s 17 of the Act- Thus the suspension of licences are in accordance with the procedure established by law.

12. In the above circumstances, the petitioners' contention that their fundamental rights guaranteed under Articles 19(1)(g) and 21 of the Constitution are violated, has no force.

13. The next contention advanced by the learned Counsel for the petitioners is (hat the G.Os have no application to the petitioners in as much as they are neither factionists nor involved in any criminal cases. They are either agriculturists or businessmen carrying on their business without any complaint from any quarters about their conduct. Hence it is wholly unjustified to suspend their licences.

14. The argument appears to be quite justified. The petitioners have made categorical affirmations that they are not factionists. All the successive G.Os. have been issued only to curtail violence in the districts mentioned therein. In fact in the counter-affidavit filed on behalf of the respondents it was stated that if any person was aggrieved by the issuance of the G.O. on the ground that he did not belong to any faction, he can approach the Government through the District Magistrate and their representations would be considered and appropriate orders would be passed. In the 3rd respondent's counter affidavit filed in W.P.No.12283/97, it was also stated that the petitioner therein never misused his weapon and that there was no adverse remarks against him. In view of the above averments in the counter affidavit it is clear (hat the petitioner in

W.P.No.12283/97 and the petitioners in the other writ petition, prima facie, cannot be treated as factionists. The impugned G.O. has also stated clearly that the aggrieved person's representation would be considered. However, it is the case of the petitioners that the Government has not considered the representations made by the petitioners within time. It is necessary to emphasise that unless the Government considered the representations seriously and objectively and pass appropriate orders in releasing the weapons, in the cases where the petitioners were not factionists and have not involved in any criminal cases, grave injustice would be done to them. It is common knowledge that though the G.O. has got application to all the residents in the districts mentioned in the G. O., but number of persons who are possessing weapons with valid licences have nothing to do with the factions and who had acquired licences for the protection of their life and property and for carrying on their business would be seriously prejudiced. Having issued the licence after a thorough investigation, if such a right was suspended along with factionists dubbing them also as factionists, it would be offending Section 17 of the Act and not serving the purpose for which the G.Os. were issued.

15. It has been brought to my notice that in quite a few cases filed by the licensees questioning the suspension of their licences under the earlier G.Os, this Court has directed the Government to release the weapons and renew the licences, if it was found by the licensing authority that they were not factionists. It was also stated and the same was not refuted by the learned Government Pleader, that no appeals have been filed against such orders.

16. Though, prima facie, the petitioners appear to be not factionists, as the writ petitions having been filed quite some time back and circumstances might have changed since then, it is necessary for the licensing authority to enquire into the conduct of the petitioners to ascertain whether they are factionists or not. If they are not factionists, the petitioners are entitled for release of their weapons and also for renewal of their licences by the licensing authority.

17. In view of the above discussion, I direct the licensing authority (R2), to return the weapons to the petitioners, after renewing the licences, if the petitioners are not involved in any offences, if they are not factionists and if the weapons were not used in any offences by them. This exercise shall be completed within 30 days from the date of receipt of a copy of this order.

18. The writ petitions are accordingly disposed of- No costs.