

(2011) 09 MAD CK 0361

In the Madras High Court

Case No : Writ Petition No. 20257 of 2004 and WPMP No. 24381 of 2004

R. Saravana Kumar

APPELLANT

Vs

Special Commissioner and Commissioner for Revenue
Administration, District Judge-cum-District Collector and
Superintendent of Police

RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Arms Act, 1959 — Section 13, 14, 14(2), 17, 3
Constitution of India, 1950 — Article 226

Citation : (2011) 09 MAD CK 0361

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : B. Ramamurthy, for the Appellant; S.V. Duraisolaimalai, Additional Government Pleader for R1 to R3, for the Respondent

Final Decision : Allowed

Judgement

T. Raja, J.—The present writ petition is filed by the Petitioner against the order passed by the Special Commissioner and Commissioner for Revenue Administration, Chennai, in his impugned proceedings D. Dis. No. R.A.5(2)/33785/2003 dated 26.11.2003 rejecting the Petitioner's request for grant of an arms licence to possess a revolver for self-protection on the ground that if the reason adduced by him is accepted, then all persons with equal status will project the same claim to be armed with fire arms and it will lead to proliferation of weapon which is not good for public safety and that he has not produced any evidence of theft or threat perception.

2. (i) The Petitioner is a businessman owning Textile shop in the name and style of "Shanmuga Textiles" since 1994 employing 75 employees in the said textile shop. He claims to be a traveller with huge amount of cash in hand to several places in connection with business transactions. While travelling from one place to another place, he has been carrying cash for making payment towards salary

of his employees. Since the Tiruppur town in the recent days has become a destination for the criminals to take shelter coupled with the increase in the crime rate, the Petitioner apprehended unsafe to carry huge amount. Under these circumstances, the Petitioner applied for a licence before the second Respondent-District Judge-cum-District Collector under the provisions of the Arms Act 1959 on 18.3.2003.

(ii) After submission of the Petitioner's application a report was called for from the Revenue Divisional Officer, Tiruppur, who in his letter dated 31.5.2002 recommended the case of the Petitioner for grant of licence after due enquiry and taking into account the Petitioner's business commitments and other relevant factors. Thereafter, even the Superintendent of Police, Coimbatore, the third Respondent in his letter dated 13.12.2002 informed his report that there were no adverse remarks against the Petitioner and on that basis, the Superintendent of Police also has given his no objection for grant of licence for revolver to the Petitioner.

(iii) At this juncture, the learned Counsel appearing for the Petitioner submitted that when the case of the Petitioner that he is a business man, owning a textile shop of 75 employees and frequently carrying heavy cash from one place to another, came to be accepted by both the Revenue Divisional Officer and also the Superintendent of Police, Coimbatore, the second Respondent-District Collector-cum-District Magistrate Coimbatore wrongly rejected in his order dated 1.4.2003 the Petitioner's application for grant of licence for revolver totally on a wrong reason contrary to the report of the Superintendent of Police that the Superintendent of Police has not recommended for grant of licence. Aggrieved by the said order passed by the second Respondent, when appeal was filed before the first Respondent-the Special Commissioner and Commissioner for Revenue Administration, Chennai, he also without going into the correctness of the order passed by the second Respondent, passed the impugned order giving totally a different reason. Therefore, the learned Counsel for the Petitioner pleaded before this Court that the orders impugned in the present writ petition are liable to be set aside.

(iv) Further, the learned Counsel for the Petitioner attacked the impugned order of the second Respondent as confirmed by the first Respondent by attributing nonapplication of mind by both the second and first Respondents inasmuch as when the Superintendent of Police has accepted the case of the Petitioner and also recommended the case of the Petitioner, the second Respondent without even considering whether the Superintendent of Police, Coimbatore has recommended the case of the Petitioner or not, totally against the report of the Superintendent of Police, Coimbatore, rejected the application of the Petitioner. A reading of the report submitted by the Superintendent of Police, Coimbatore shows the necessity and safety reasons given by the Petitioner in his application for possessing a licence, which has been accepted.

(v) When the matter stood thus, for grant of licence the second Respondent-

District Magistrate-cum-District Collector, Coimbatore gave altogether a different reason that the Superintendent of Police, Coimbatore has rejected the case of the Petitioner, which is not only unjustifiable but also reflects total non-application of mind by the second Respondent. Similarly, when an appeal was filed before the first Respondent, specifically bringing to the notice of the first Respondent that the order passed by the second Respondent was hit by non-application of mind since the reasoning given by the recommending authority-Superintendent of Police, Coimbatore and the licensing authority are not having any nexus and both are going against each other, the first Respondent has again erroneously accepted the wrong reasons assigned by the second Respondent in his order. Therefore, the order passed by the first Respondent is also full of flaws and error. Hence, the order passed by the second Respondent as confirmed by the first Respondent is being totally foreign to the recommendations given by the Revenue Divisional Officer and also the Superintendent of Police, Coimbatore, both these orders are not sustainable in the eye of law. Therefore, the learned Counsel for the Petitioner pleaded for setting aside the abovesaid orders and further prayed for direction to the Respondents to grant licence to the Petitioner to possess a revolver as he is a business man bound to travel from one place to another place carrying huge amount of cash in view of his textile business transactions. If the Petitioner's application is not considered, then he would be put to heavy prejudice and he may not be in a position to do his business effectively by going from one business centre to another business centre and to collect cash.

(vi) The learned Counsel for the Petitioner in support of his submissions relied upon Sections 14 and 17 of the Arms Act 1959 (54/59) for a proposition that licence could be refused (i) where such licence is required by a person, whom the licensing authority has reasons to believe,

(1) to be prohibited by this Act or by any other law for the time being in force from acquiring, having in his possession or carrying any arms or ammunition, or

(2) to be of unsound mind, or

(3) to be for any reason unfit for a licence under this Act;

(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.

3. (i) Opposing the prayer of the Petitioner, the learned Additional Government Pleader argued that the order of the first and second Respondents in rejecting the application of the Petitioner for grant of licence are strictly in accordance with the provisions of the Arms Act and the rules inasmuch as Section 13 of the Arms Act confirms upon the second Respondent a wider discretionary power either to grant or to refuse licence. Therefore, as held in the case of *P. Narasimha Reddy v. District Magistrate, Cuddapah*, power to issue a licence, necessarily carries with it the power to refuse the issue of licence. Further, it follows that if the licensing authority is not satisfied with the reasons assigned by the applicant for

possessing a fire arm, the licensing authority cannot issue licence. Therefore, the discretionary power of the licencing authority u/s 13 of the Arms Act is not coming within scope of judicial interference.

(ii) The learned Additional Government Advocate further added that in similar circumstances, the Punjab High Court also held in the case of Godha Singh Jabra Singh Vs. District Magistrate, Ferozepore and Another, that the possession of arms is a matter which deals with the security of the State and proper persons to judge that a particular person is fit to have a licence for a fire arm like a revolver or not, are persons in whom discretion is vested by the State. In the same line, the first Bench of our High Court also in the case of A. Krishna Reddy v. The State of Tamil Nadu in W.A. No. 797 of 1996 held that "the provisions of the Arms Act and Rules made thereunder no doubt give wide and large area of discretion to the licensing as well as the appellate authority in the matter of grant of a fire arms licence." Such being the position, the reasoning given by the second Respondent as rightly confirmed by the first Respondent in negating the request of the Petitioner to possess a firm arm in exercise of discretionary power is beyond the scope of judicial interference and therefore, the correctness of the order passed by the second Respondent as confirmed by the first Respondent in exercise of their discretionary power cannot be called in question in the present writ petition under Article 226 of the Constitution of India.

4. Heard the learned Counsels appearing for the respective parties.

5. The application submitted by the Petitioner to the District Magistrate and District Collector, Coimbatore seeking grant of licence for revolver for his protection shows that the Petitioner is a businessman owning a textile shop in the name and style of "Shanmuga Textiles" for the past 10 years and in the textile business he has also employed 75 staff. Further, he is a businessman claims to be an extensive traveller from one place to another with huge amount of cash in hand in connection with his business transactions. Though the record shows that the Petitioner can operate through banking facilities, in view of urgent business needs taking money from bank instantly will cause then and there frequent delay and this will affect his business prosperity. Therefore, it is mentioned that he is compelled to carry huge money for effecting payment to his employees on account of daily wages and other daily expenses. Further, in view of growing floating population in Tirupur, the crime rate in the recent period is heavily found on the increased level in and around Tirupur. Therefore, the Petitioner apprehending unsafe to carry huge amount, applied for licence for possessing revolver before the second Respondent-District Magistrate and District Collector under the provisions of Arms Act, 1959.

6. On receipt of the said application by the second Respondent a report has been called for from the Revenue Divisional Officer, Tiruppur who has conducted enquiry on the Petitioner's need for possession of a licence to keep a revolver and submitted his report in his letter dated 31.5.2002 stating that the Petitioner is owning textile shop in the name and style of "Shanmuga Textiles" employing

75 employees in the textile shop. The said report further mentioned that he has been travelling to different places in connection with his business and his income is Rs. 1 crore. That apart, the report also mentioned that the Petitioner is also owning a land worth of Rs. 150 lakhs and is not involved in any political party. Further, on the basis of the undertaking given by the Petitioner, the report also recommended for grant of licence. The Superintendent of Police, Coimbatore in his letter dated 13.12.2002 also supported the case of the Petitioner for a licence to own revolver on account of his increased export business coupled with frequent carrying of heavy cash to different States in connection with his business. When the Superintendent of Police also supported the report of the Revenue Divisional Officer that there was no adverse remark against the Petitioner and on that basis, when the Superintendent also has no objection for grant of licence, the District Magistrate and District Collector, Coimbatore upon hearing the Petitioner on 24.11.2003, in my opinion, cannot reject the Petitioner's application on the ground that he has not adduced any valid reason in support of his claim for grant of licence. The Petitioner admitted doing textile business for several years and the turnover coming out of the textile business has been accepted by both the Revenue Divisional Officer as well as the Superintendent of Police as Rupees one crore per year. Besides the Petitioner being a regular income tax Assessee. His further case is that he is having a residence closer to the reserve forest and from his residence he has been making weekly payments of about 50 workers in his Company has not been properly adverted to by the second Respondent. In fact, when the Petitioner made an application before the second Respondent to have a licence for possessing a revolver on the ground that his house is situated very closer to reserve forest and that he has been bringing huge money from various places, the second Respondent at the time of considering the Petitioner's application for possessing fire arms should have exercised great caution with great circumspection considering the location of the Petitioner's house and his business transactions involved and carrying of huge money from different business locations. Therefore, the request of the Petitioner to have a revolver for the reason that he is doing export business could have been accepted by the second Respondent. Further, the only reason assigned by the second Respondent and also the first Respondent for rejection of the request to have licence to possess fire arm is that he has not produced any evidence for his business transactions does not carry any merit. Life and liberty of a citizen, particularly, a person owning a textile shop with the 75 persons working therein cannot be ignored to have a fire arm licence. In my opinion, when the Petitioner makes out an application with the reason that he has been doing textile business and has to carry heavy money from different places and apprehends any threat, that cannot be simply ignored. In particular, when the report of the Revenue Divisional Officer dated 31.5.2002 completely supported the case of the Petitioner for owning a fire arm licence and the further report of the Superintendent of Police, Coimbatore, again recommending the case of the Petitioner, requires better consideration at the instance of the second Respondent. As the second Respondent failed to consider

the case of the Petitioner, on revision before the first Respondent, the first Respondent also completely overlooking the recommendation of the Revenue Divisional Officer and the Superintendent of Police erroneously rejected the application of the Petitioner, which requires interference from this Court.

7. When there is no denial of the Petitioner's case that he has been running a textile show room, with the turn over of Rs. 1 crore in a year and that his house is also located closer to a reserve forest, the personal safety aspect of the Petitioner to have a revolver licence cannot be ruled out, that too, as against the report of the Revenue Divisional Officer and of the Superintendent of Police, Coimbatore which recommended the case of the Petitioner for possessing a revolver licence for his personal safety.

8. A perusal of Section 14 of the Arms Act, 1959 shows that the licensing authority shall refuse to grant-

(a) a licence u/s 3, Section 4 or Section 5 where such licence is required in respect of any prohibited arms or prohibited ammunition:

(b) a licence in any other case under Chapter II,-

(i) where such licence is required by a person whom the licensing authority has reason to believe-

(1) to be prohibited by this Act or by any other law for the time being in force from acquiring, having in his possession or carrying any arms or ammunition, or

(2) to be of unsound mind, or

(3) to be for any reason unfit for a licence under this Act;

(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.

A reading of Section 14(2) shows that the licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or possess sufficient property. Therefore, the reasons given by the Respondents 1 and 2 are contrary to Section 14(2) of the Arms Act, 1959. Though the second and first Respondents in their rejection orders simply stated that the peace and public safety are not permitting them to grant licence, the personal safety of the Petitioner to own a fire arm licence on account of the existing circumstances, namely, that he has been doing a textile business with the turn over of Rs. 1 crore in a year and his house is also located very closer to a reserve forest, have not been properly taken into account. In such view of the matter, I do not find any merits in accepting the reasons for rejecting the Petitioner's request to own a fire arm licence. Accordingly, the impugned orders are set aside and the Respondents are directed to grant licence to the Petitioner for a revolver.

9. Consequently, the writ petition stands allowed. No costs. Connected pending

miscellaneous petition is closed.