

(2012) 04 MAD CK 0037

In the Madras High Court

Case No : Writ Petition No. 9865 of 2012

S. Suresh

APPELLANT

Vs

The District Magistrate, Puducherry and The Sub Divisional
Magistrate (North), Puducherry.

RESPONDENT

Date of Decision : 17-04-2012

Acts Referred:

Arms Act, 1959 — Section 10, 12, 13, 13(2A), 14
Arms Rules, 1962 — Rule 51

Citation : (2012) 5 CTC 233

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Karthikeyan, for the Appellant;

Final Decision : Dismissed

Judgement

The Hon'ble Mr. Justice K. Chandru

Question raised:

1. Whether a Lawyer who has to hold law books can be allowed to hold a Revolver for his protection and whether the licensing authority's power to refuse a licence in his favour was justified? are the questions to be decided in this writ petition.

Present state of the Bar :

Before proceeding with the issue on hand, it is necessary to recapitulate the role of a member of the Bar in the society as set out by the Supreme

Court in O.P. Sharma and Others Vs. High Court of Punjab and Haryana, . In paragraphs 17 and 20, the Supreme Court had observed as

follows:

17. The role and status of lawyers at the beginning of sovereign and democratic India is accounted as extremely vital in deciding that the nation's

administration was to be governed by the rule of law. They were considered intellectuals amongst the elites of the country and social activists

amongst the downtrodden. These include the names of a galaxy of lawyers like Mahatma Gandhi, Motilal Nehru, Jawaharlal Nehru, Bhulabhai

Desai, C. Rajagopalachari, Dr. Rajendra Prasad and Dr. B.R. Ambedkar, to name a few. The role of lawyers in the framing of the Constitution

needs no special mention. In a profession with such a vivid history it is regretful, to say the least, to witness instances of the nature of the present

kind. Lawyers are the officers of the court in the administration of justice.

20. In R.D. Saxena Vs. Balram Prasad Sharma, this Court held as under: (SCC p. 281, para 42)

42. In our country, admittedly, a social duty is cast upon the legal profession to show the people beckon (sic beacon) light by their conduct and

actions. The poor, uneducated and exploited mass of the people need a helping hand from the legal profession, admittedly, acknowledged as a

most respectable profession.....

(Emphasis added)

Case on hand :

2. The petitioner, who is 32 years old and a resident of Puducherry as well as a member of the Puducherry Bar, has come forward with the

present writ petition seeking to challenge an order passed by the District Magistrate, Puducherry, i.e., the first respondent, dated 24.11.2011 in

rejecting his request for possession of Arms License.

3. By the impugned order, the petitioner was informed that he had claimed that he was dealing in civil cases concerning land grabbing and there is

every likelihood of threat to his life. Therefore, he sought for an Arms license. But the petitioner never disclosed as to from whom he was facing

threat. He had also not given any complaint in this regard to any one. It was also brought to the notice that the second respondent and the

Superintendent of Police (North) had informed that there was no history of any threat being received and also the details of any land grabbing case

conducted by him. It was in that view of the matter, the first respondent had informed that there was no need for issuing any Arms License to the

petitioner for his self protection.

4. He had filed his application under Rule 51 of the Arms Rules on 25.4.2011 along with a letter about the threat to his life. The application was

forwarded to the second respondent. Since the second respondent was making illegal demands, the petitioner made a complaint to the Chief

Secretary, Government of Puducherry and the Special Secretary, Revenue Department about the activities of the second respondent. The second

respondent on being infuriated by the complaint informed the first respondent that the petitioner was not posed with any threat and that he had not

produced any complaint in this regard. It was his case that instead of waiting for the threat to his life become a reality, the respondents should take

into account all surrounding circumstances and must decide the application made by him.

What the Law says :

5. As the claim arose under the Arms Act, it is necessary to refer to certain crucial provisions, i.e., sections 13, 14 and 18 of the Act and they are

extracted below:

13. Grant of licences._(1) An application for the grant of a licence under Chapter II shall be made to the licensing authority and shall be in such

form, contain such particulars and be accompanied by such fee, if any, as may be prescribed.

1[(2) On receipt of an application, the licensing authority shall call for the report of the officer-in-charge of the nearest police station on that

application, and such officer shall send his report within the prescribed time.

(2-A) The licensing authority, after such inquiry, if any, as it may consider necessary, and after considering the report received under sub-section

(2), shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same:

Provided that where the officer-in-charge of the nearest police station does not send his report on the application within the prescribed time, the

licensing authority may, if it deems fit, make such order, after the expiry of the prescribed time, without further waiting for that report.]

(3) The licensing authority shall grant_

(a) a licence u/s 3 where the licence is required_

(i) by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or

in respect of a muzzle loading gun to be used for bona fide crop protection:

Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle loading gun will not be

sufficient for crop protection, the licensing authority may grant a licence in respect of any other smooth bore gun as aforesaid for such protection,

or

(ii) in respect of a point 22 bore rifle or an air rifle to be used for target practice by a member of a rifle club or rifle association licensed or

recognised by the Central Government;

(b) a licence u/s 3 in any other case or a licence u/s 4, Section 5, Section 6, Section 10 or Section 12, if the licensing authority is satisfied that the

person by whom the licence is required has a good reason for obtaining the same.

14. Refusal of licences._ (1) Notwithstanding anything in Section 13, 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; or

(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.

(2) 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.

(3) Where the licensing authority refuses to grant a licence to any person it shall record in writing the reasons for such refusal and furnish to that

person on demand a brief statement of the same unless in any case the licensing

authority is of the opinion that it will not be in the public interest to furnish such statement.

(Emphasis added)

18. Appeals. (1) Any person aggrieved by an order of the licensing authority refusing to grant a licence or varying the conditions of a licence or by an order of the licensing authority or the authority to whom the licensing authority is subordinate, suspending or revoking a licence may prefer an appeal against that order to such authority (hereinafter referred to as the appellate authority) and within such period as may be prescribed:

Provided that no appeal shall lie against any order made by, or under the direction of, the Government.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefore if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period.

(3) The period prescribed for an appeal shall be computed in accordance with the provisions of the Indian Limitation Act, 1908 1 (9 of 1908), with respect to the computation of periods of limitation thereunder.

(4) Every appeal under this section shall be made by a petition in writing and shall be accompanied by a brief statement of the reasons for the order appealed against where such statement has been furnished to the appellant and by such fee as may be prescribed.

(5) In disposing of an appeal the appellate authority shall follow such procedure as may be prescribed:

Provided that no appeal shall be disposed of unless the appellant has been given a reasonable opportunity of being heard.

(6) The order appealed against shall, unless the appellate authority conditionally or unconditionally directs otherwise, be in force pending the disposal of the appeal against such order.

(7) Every order of the appellate authority confirming, modifying or reversing the order appealed against shall be final.

6. The petitioner in his covering letter sent along with the statutory application to the respondent District Magistrate had made the following request

:-

I am a practicing advocate in Puducherry. I dealing with some sensitive Land grabbing cases and I am intending to disclose some illegal activities of

some Land Grabbers .In connection to the same, I am predicting some threats to my life, that may arise.

Hence I am in need of an arm for my self Protection,....

(Emphasis added)

7. The authority after making all enquiries on the statutory application filed by him, had passed the following order :

... the Sub-Divisional Magistrate (North), Puducherry has reported that the applicant is of the apprehension that he deals with land grab civil cases,

there is likely chance of threat to his life and therefore seeks arms licence for his self-protection, but no body has given any likely threat to him and

the applicant has not given any written complaint against anybody on the angle of life threatening. He could not substantiate any evidence for the

threat to him;

AND WHEREAS, it is observed from the reports of the Sub Divisional Magistrate (North) and Superintendent of Police (North) that there is no

history of any threat being received nor any details about the land grabbing cases.

NOW THEREFORE, I am of the opinion that there is no need for issue of an arms licence to the applicant Thiru. S. Suresh, S/o. T.S. Sambath

for his self-protection as there is no prima facie for life threat at this moment.

(Emphasis added)

America and Arms :-

8. The right to possess Arms is qualified in this Country unlike in the United States where under the Second Amendment to the American

Constitution, citizens were given following right :

A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

9. Since in the USA the Federal Constitution gave such a right, even the Federating States cannot curb such a right. But as the years grew even in

the United States, the right to possess bear arms came under scathing criticism especially in view of the increased incidents of gun-running,

gangsterism and mafia activities. The University and School campuses were not spared due to trigger happy maniacs running riot and killing many.

In our Country, the law has been qualified. However, the authority whether grants and refuses permission has to confine himself within four corners of law.

Our Law is otherwise :-

10. Referring to the pre-amended enactment as well as post amendment scenario in the Arms Act, a full bench of the Patna High Court vide its

judgment in Kapildeo Singh Vs. State of Bihar and Others, , in page 125 had observed as follows:

...even the original grant u/s 13(2A) is vested entirely in the licensing authority and it seems that the widest discretion has been given to it. Even

after conforming to the procedural requirements, the licensing authority may, as regards the general category of arms, either grant the licence or

refuse to grant the same. This discretion in this context has perhaps been deliberately kept untrammelled. Further, u/s 14 the law mandates a refusal

to grant licence even where the licensing authority has reason to believe that the applicant is for any reason unfit for licence under the Act. The

larger tilt of the law in this context is thus somewhat too plain to call for further elaboration.

(Emphasis added)

11. Similarly, when a claim for possession of a revolver was made by a businessman who normally travels along with huge cash in sensitive areas in

South Tamilnadu and when his request was denied, the denial of a gun license came to be considered by a learned Judge of this court in A. Xavier

Joyapaul Vs. The Spl. Commissioner and Commissioner of Revenue Administration and another, In that case, after referring to the reports of other

authorities, the licence to possess a gun was denied to him by the licensing authority. His appeal was also rejected. This court confirmed the order

of the authorities. In paragraph 8, it was observed as follows:

8. The impelling or compelling reason for the refusal of the grant of a licence as prayed for emanated from the report of the Revenue Divisional

Officer, Kovilpatti and the Superintendent of Police, Tirunelveli, who had reported that Kovilpatti and its surrounding areas are communally

sensitive ones and therefore, grant of a licence is unsafe to public tranquility and

smooth flow of life and therefore it is risky to grant licence to a person in that area, where communal clashes appeared to have take place then. This sort of a reasoning found favour with the second respondent-Licensing Authority who, in turn, without actually incorporating those reasons in the order, negated the grant of license, simply accepting the reports of those officers. In such circumstances, it cannot be stated that the order of the Licensing Authority is not in tune with the statutory provisions adumbrated under Ss.13 and 14 of the Arms Act. Consequently, the confirmation of the said order by the appellate Authority-first respondent cannot be stated to be suffering from any infirmity calling for interference.

No to Arm :-

12. In view of the same, this court do not think that any illegality was committed by the respondents in refusing to grant a revolver licence to the petitioner. The apprehensions raised by the petitioner that since he was involving in sensitive cases which required possession of a revolver does not stand to any reason. A Lawyer must possess only legal authorities and not weaponry since he has only to address the court and not his clients" opponents. In case of any personal danger, he can always request the police authority to give protection to him. But on the other hand, possessing a revolver will also have his own implications especially due to negative trends that have started to appear in the legal profession. It will not be out of place to refer to an incident that took place few years before right in Chennai city in the campus of main Metropolitan Magistrate Court at Egmore, where a lawyer was murdered and his own fellow members of the bar was implicated.

Epilogue :-

13. Even the Supreme Court had raised its apprehension about the growing commercial trend of the bar in its judgment in Tahil Ram Issardas Sadarangani and others Vs. Ramchand Issardas Sadarangani and another, and in paragraph 2, it was observed as follows:

2... The general impression which the profession gives today is that the element of service is disappearing and the profession is being commercialised. It is for the members of the Bar to act and take positive steps to remove this impression before it is too late.

14. After all a revolver can hardly protect anyone. In this context, it will be worthwhile to quote what Mahatma said on 21.01.1948. A few days

before the assassination of Mahatma Gandhi, on coming to know the threat to his life, he was offered protection by the Delhi police during his

prayer meeting. But Mahatma Gandhi rejected it. On 21.01.1948, he told the police as follows:

My faith does not allow me to put myself under any human protection at prayer time, when I have put myself under the sole protection of God.

In view of the above, there is no case made out. Hence the writ petition will stand dismissed. No costs.