
(2002) 03 KAR CK 0070
In the Karnataka High Court
Case No : Writ Petition No. 39196 of 2001

Shashidhar R. Ullagaddimath

APPELLANT

Vs

The Government of Karnataka

RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Arms Act, 1959 — Section 15 (3)
Constitution of India, 1950 — Article 14, 226

Citation : (2002) ILR (Kar) 3282 : (2002) 6 KarLJ 499 : (2002) 2 KCCR 1433

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : A.K. Subbaiah, for the Appellant; V.Y. Kumar, High Court
Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—The petitioner claims to be a dealer in arms and ammunitions for the past several years and had been provided with licences in Form Nos. 11 to 14 issued under the provisions of the Arms Act, 1959 (hereinafter referred to as "the Act", for short).

2. Petitioner contends that such licences had been granted and renewed to him periodically and the last of such renewal enured in his favour for the period ending 31-12-2000.

3. The petitioner had sought for renewal of all the four licences in his favour by making suitable applications in the forms to the Competent Authorities. It appears, in respect of licences issued in Form Nos. 11 and 12, the State Government is the Competent Authority to consider the question of renewal and in respect of licences issued in Form Nos. 13 and 14, the Commissioner of Police, Hubli, where the petitioner carries on his business, is the Competent Authority.

4. The petition averments indicate that whereas the licences in Form Nos. 13 and 14 have been renewed in favour of the petitioner by the Commissioner, the very

same Commissioner had recommended to the State Government, the Competent Authority, for rejection of the application for renewal in respect of licences in Form Nos. 11 and 12 on various grounds.

5. The Government, acting on such recommendation of the Commissioner, has passed the impugned order dated 11-10-2001 refusing renewal of arms licences in Form Nos. 11 and 12 in favour of the petitioner for the year 2001. It is aggrieved by this order passed by the respondent-State Government refusing arms licences in favour of the petitioner in Form Nos. 11 and 12, the petitioner has approached this Court under Article 226 of the Constitution of India.

6. An affidavit has been filed on behalf of the respondent sworn to by the Under Secretary, Department of Home and Transport, Government of Karnataka. It is averred in the affidavit that certain cases were pending against the petitioner and in view of pendency of such cases, the Commissioner has recommended refusal of renewal of licences in favour of the petitioner and it is also pointed out that the considerations for issue of licences in Form Nos. 11 and 12 are not the same as for licences in Form Nos. 13 and 14 and under the circumstances, the Government considered the overall view of the matter and being of the opinion that it was not in the interest of public safety, has refused to renew the licence in Form Nos. 11 and 12 and the Government having acted in consonance with the recommendation of the Commissioner who is the proper authority to recommend having regard to the local conditions and the public order and the safety involved, the order does not call for interference and prays for dismissal of the petition.

7. Sri Ponnanna, learned Counsel appearing for the petitioner has made a two-fold submission. It is submitted that the impugned order passed under Annexure-F is not a speaking order in the sense it does not give reason for refusal to renew the licences sought for in Form Nos. 11 and 12 and further submits that the renewal of licence is, as a matter of course, in favour of the petitioner and having regard to the language of Section 15(3) of the Act, the renewal of licence even under Form Nos. 11 and 12 is a matter of course unless the Government decides otherwise and for reasons to be recorded in writing. The thrust of the submission is that renewal is the rule and refusal is the exception and more so for reasons to be recorded in writing. In this regard the learned Counsel placed reliance on a reported decision of a Division Bench of this Court in the case of State of Karnataka Vs. G. Lakshman, wherein, on an interpretation of the provisions of Section 15(3) of the Act, this Court was of the view that the Government should have definite reasons based on relevant material facts for refusing renewal and in a situation where the refusal for renewal was on non-existing grounds, the application becomes entitled to renewal as a matter of course. In the context of the facts of that case, this Court issued a mandamus to the Government to grant renewal of the licence which had been declined by the Government.

8. Sri V.Y. Kumar, learned High Court Government Pleader submits that the Government is well-within its right in refusing renewal of the licence in Form Nos.

11 and 12 particularly when the Government has the duty to act in the interest of public safety and has only taken relevant aspects into consideration when acting in accordance with the recommendations made by the Commissioner recommending not to renew the licence, order at Annexure-F cannot be said to be bad in law in the circumstances of the case. Sri Kumar has also drawn the attention of the Court to the affidavit filed on behalf of the respondent and submits that the affidavit makes it clear as to what the reasons are for refusing renewal in favour of the petitioner.

9. It is sought to be contended that the nature of criminal cases that were pending against the petitioner were of such gravity and having regard to the present situation of public safety and public order, it was necessary for the Government to refuse renewal.

10. I have gone through the contents of the affidavit and the affidavit does not make out any reasons or any cause for refusing the renewal of licences. An affidavit of this nature cannot seek to supplement an order passed which is required to provide reasons in the very order and assuming that the affidavit in any way seeks to supplement that reasons, that cannot improve upon the order and if the order passed is not in consonance with the provisions of Section 15(3) of the Act in the sense that order itself does not give the reasons, then the order is bad and cannot be set right by pleading additional facts as the reason for passing such order by means of a subsequent affidavit.

11. These aspects apart, from the order what one can infer is that the Government has declined the request for renewal having regard to the report of the Commissioner and in view of public safety. Considering the report of the Commissioner is definitely a relevant aspect of the matter. Reciting the context of public safety is only stating the obvious. In a matter of this nature, Government is always required to act in the interest of public safety.

12. What is of particular significance in the present case is the fact that the Government had renewed the licence in Form Nos. 11 and 12 on earlier occasions also and in fact for the year 2000, in the light of the very same recommendation by the Commissioner of Police and what is more intriguing is, on such earlier occasion, the Government had gone to the extent of renewing the licence by overruling the recommendations of the Commissioner of Police. In fact, the Government went further and has given the reasons for overruling the recommendations of the Commissioner and not only that, but has also communicated a copy of that order to the petitioner for information. The petitioner has placed a copy of that order as Annexure-B to the writ petition and it is submitted by the learned Counsel for the petitioner that when the Government had, on an earlier occasion, based on the very material, had overruled the recommendation of the Commissioner by giving cogent and convincing reasons, there was absolutely no reason as to why the Government could have declined renewal for the subsequent year on the very same material and on the very similar recommendations of the Commissioner. A copy of the

communication dated 8-9-2000 from the Principal Secretary to the Commissioner of Police in the context of the renewal for the earlier year is produced as Annexure-B to the petition and a copy of this had been communicated to the petitioner and reads as under:

"With reference to your letter referred to above on the subject, I am directed to state that the mere pendency of the criminal cases by itself will not be a ground to refuse the renewal of licence as per the judgment of the High Court of Karnataka in the case of G. Lakshman Vs. State of Karnataka, which has laid down as follows.--

"The learned Advocate-General has strongly maintained that the cases filed against the petitioner and now pending against the petitioner would render him unfit to hold the licences. This is also the reason given by the respondent. In most of the cases, "B" reports had been filed. The pending criminal cases will take its own time to reach ultimate finality. Could it be said that the pendency of criminal case will render a person unfit to hold a licence? Supposing he is acquitted/discharged, he may become eligible to hold the existing licence. So it was open to the respondent to make a conditional order depending on the result of the criminal case. If he is convicted, the Court convicting him has the power to suspend or revoke his licence".

On the appeal preferred against the above order, a Division Bench of the High Court, in its judgment in the case of G. Lakshman, supra, has observed thus:

"If charges are serious and are germane to the grant of licence, the Licensing Authority may be right in denying the licence. But the authority should consider the nature of the charges, the stage of the criminal cases, if any, the quantum and width of the investigations held, the ultimate order in case the trial was over, the proximity in point of time between the involvement in criminal cases and the time when the renewal of the licence is sought as also the relevancy of the charges to the fitness of the licensee to hold the licence to manufacture arms and ammunitions".

According to your letter, 5 cases are listed. In respect of cases at Items 2 and 4, "B" reports have been filed. Hence, these cases are ignored.

The first case was registered in 1993 (Crime No. 197 of 1993) and the charge-sheet was filed in 1994.

The case at Item 3 was registered in 1995 (Crime No. 90 of 1995) and the charge-sheet was filed in 1996.

The last case and the first case are one and the same.

The two cases registered in 1993 and 1995 have been pending since then. Subsequently, licences have been renewed. Since 1995 there does not appear to be any criminal offences attributed to the applicant. In the circumstances, when licence has been renewed from year to year, in spite of the pendency of the two

cases, it will not be advisable to refuse the renewal of licence on the mere ground that two cases are pending.

On this ground, your recommendation not to renew the licences has been rejected and hence the Government has renewed the licences accordingly".

13. It is rather strange that the Government, while acting as a statutory functionary and passing orders u/s 15(3) of the Act, should have found it necessary and justifying to address to the Commissioner of Police, a subordinate officer of the Government, as to why the Government has chosen to act not in consonance with the recommendation of the Commissioner by rejecting the recommendation. It is still stranger as to why an internal communication of this nature should have been made known to the petitioner. Be that as it may, what is relevant for the present purpose is that even when the Government had chosen to pass an order in favour of the applicant for granting renewal, the Government thought it fit to give reasons and communicate a copy of that to the petitioner, whereas on an occasion when the Government is refusing the renewal affecting the interest of the petitioner, does not give any cogent reasons at all, but passed a cryptic order indicating that it is merely acting on the recommendation of the Commissioner and in the interest of public safety renewal is refused. In the light of the law laid down by the Division Bench of this Court in *G. Lakshman's case*, supra, the order at Annexure-F does not pass the test of a reasoned order required to be passed u/s 15(3) of the Act.

14. This aspect apart, the learned Government Pleader was requested to make available the records of the case to peruse if the Government had acted on any such material which was available for the Government to act at variance on the present occasion, notwithstanding passing an order for renewal of the licences on the earlier occasions. The learned Government Pleader has made available the records and the records reveal that the material based on which the Government refused to renew the licences is the same which was available before the Government on the earlier occasion also and based on which material the Commissioner had made his recommendation to reject the renewal. However, Sri Kumar, learned Government Pleader draws the attention of the Court that on the present occasion there was an additional material in the form of certain direction that had been issued from the Office of the Director General of Police making the Commissioner aware and conscious of the prevailing situation in the country and to act in consonance and in the wake of these developments. It is rather strange that such a communication should have been issued to the Commissioner in the present case. In fact, the Commissioner has shown his awareness quite well and recommended refusal of renewal. It is the Government which had, on looking into the recommendation and also after looking into the material, decided to grant renewal. There was absolutely no shortcoming on the part of the Commissioner in exhibiting proper awareness nor in making suitable recommendations. This aspect apart, a direction of this nature issued by the Director General cannot constitute an additional material for the Government to

act at variance with earlier decisions. It is only a material which is germane and throws light on the antecedent, conduct and other aspects of the petitioner that becomes relevant material and if there is any such material subsequent to the passing of the earlier order in favour of the petitioner by the Government, that may give scope for the Government taking a different decision. Unfortunately, there is no material at all before the Government to indicate that there was any additional material which enabled the Government to take any decision contrary to the decision taken earlier. Passing of orders at variance at different points of time based on the very same material, renders the decision bad for betraying the trait of arbitrariness. Public authorities and orders of the public officials should pass the test of fairness and reasonableness. If not they fail on the touchstone of Article 14 of the Constitution.

15. The impugned order is therefore not sustainable for non-compliance with any one of these tests discussed above. The order fails on all the grounds for being an order not giving proper reasons, an order not based on material in the sense that there was no additional material before the Government for passing the order different from the order passed on the earlier occasions and for being an order which is arbitrary.

16. In the result, the writ petition is allowed. A writ of certiorari is issued and the impugned order at Annexure-F is quashed. The matter is remanded to the Government to pass fresh orders in accordance with law and in the light of the law laid down by this Court in the case of G. Lakshman, *supra*, within a period of three months from the date of receipt of a copy of this order. Rule issued and made absolute. No costs.