

(2008) 11 KAR CK 0073
In the Karnataka High Court
Case No : Writ Petition No. 14072 of 2008

Sri Srikanth Shetty

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 20-11-2008

Acts Referred:

Citation : (2009) 4 KarLJ 317 : (2009) 1 KCCR 391

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : K.M. Nataraj, for the Appellant; A.R. Sharadamba, AGA for R1 and 2, for the Respondent

Judgement

N.K. Patil, J.—Petitioner in this petition has sought for quashing the impugned order at Annexure-A dated 23rd July 2008 passed by the first respondent in Appeal No. HD 125 KA/2008 and also the impugned order at Annexure-B dated 18th February 2008 passed by the second respondent.

2. Petitioner is the permanent resident of Sajipa Mooda village in Bantwal Taluk. He is claiming that, he is an agriculturist, social worker and also a member of the National political party and elected panchayath President of Sajipamooda of Bantwal Taluk and he is the recipient of National Award i.e. Nirmal Gram Puraskar from the President of India for his social work and commitment to the welfare of the villagers and public. It is his case that, he has no criminal antecedents, but unfortunately, due to his social work and association with political parties, there are some political rivals and there is a serious threat to his life and property from different corners. Therefore, in view of the same, petitioner was constrained to apply for Arms licence and his request has been considered and the arms licence has been granted to him by the jurisdictional competent authority - the second respondent herein. Be that as it may, the Police of the area is alleged to have submitted a report to the second respondent for suspension of the arms licence granted to petitioner. On the basis of the alleged report a notice has been issued to petitioner and he appeared before the second

respondent argued the matter through the Counsel, to substantiate that, he has not violated any terms and conditions of the grant of Arms licence nor he has misused nor it is stated in the report of the police authority that, he has misused the licence of the weapon held by him. Further, the Deputy Commissioner and District Magistrate, Dakshina Kannada District, in his report has stated that, there are some criminal cases registered against the petitioner and due to that, he may misuse the arms licence held by him, in the days to come. Therefore, in the interest of public and to prevent any untoward incident that might happen in future, the second respondent has suspended the Arms licence granted to the petitioner, for a period of one year and directed to deposit the said weapon before the jurisdictional police authority, by its order dated 18th February 2008 vide Annexure B. Assailing the correctness of the order passed by second respondent, petitioner has filed an Appeal before the Appellate Authority and Additional Chief secretary and Principal Secretary to Government, Home Department - first respondent herein in HD. 125/KAA/2008 and the said matter had come up for consideration before the first respondent - appellate authority on 23rd July 2008 and the first respondent in turn, after affording opportunity to petitioner through his Counsel and after going through the order passed by second respondent, has dismissed the appeal, holding the order passed by second respondent dated 18th February 2008 as just and proper. Assailing the correctness of the orders impugned, petitioner herein felt necessitated to present the instant writ petition, seeking appropriate reliefs, as stated supra.

3. I have heard learned Counsel appearing for petitioner and learned Additional Government Advocate appearing for respondents.

4. After careful perusal of the orders passed by both the authorities, it is manifest on the face of the said orders that, both the authorities have committed a grave error and material irregularity in proceeding to pass the impugned orders, resulting in serious miscarriage of justice to petitioner. Except stating that in pursuance of the police report, it is justifiable to suspend the licence granted to petitioner for a period of one year and directing him to deposit the said weapon before the jurisdictional police authority, the second respondent, has not assigned any valid reasons. He has just narrated the facts of the case and the stand taken by petitioner through his Counsel and exclusively placing reliance on the report of the police authority, has passed the impugned order. The said order passed by second respondent has been confirmed by the appellate authority. It is significant to note that, before the appellate authority, the specific ground urged by learned Counsel for appellant - petitioner was that, it is not just and proper for the competent authority to pass the order suspending the licence issued to appellant only on the basis of the police report and the same is not a valid ground for withdrawing/suspending the arms licence granted to the appellant/petitioner. As a matter of fact the said ground taken by appellant-petitioner has been referred at ink page 19 by the appellate authority, but the said aspect has not been taken into consideration nor assigned any reasons on the same. Further, the said authority has also referred the reliance

placed by learned Counsel for petitioner on the order passed by this Court in a similar case on 9th March 2007 in Writ Petition No. 3994/2007 (Vinay L. Shetty v. Additional District Magistrate), wherein this Court has held that, the authority must decide the matter on merits, independently and pass a speaking order, by assigning valid reasons. But, in the instant case, order impugned passed by second respondent does not contain any reasons or finding as such recorded for suspension of the licence granted to petitioner. Hence, in view of non passing of a speaking order, the impugned order cannot be sustained and hence, it is therefore, liable to be set aside. The same error has been committed by the appellate authority, in upholding the order passed by the second respondent, without considering the relevant grounds taken by the petitioner particularly, the specific ground pointed out and the reliance placed on the order passed by this Court, as referred above. Except referring the judgment of this Court, the appellate authority has not looked into nor considered nor recorded any reasons or finding for upholding the order passed by second respondent and dismissing the appeal filed by petitioner. Hence, in view of non conduct of proper enquiry by both the authorities, in consonance with the relevant provisions and not considering the case made out by petitioner, the impugned orders passed by both the authorities cannot be sustained and hence, they are liable to be set aside.

5. In the light of the facts and circumstances of the case, as stated above, the writ petition filed by petitioner is disposed of as follows:

I] The writ petition filed by petitioner is allowed in part;

II] The impugned order passed by second respondent dated 18th February 2008 in C.DS.ARM.(1)CR.162rt007-08 vide Annexure B and the order passed by the appellate authority dated 23rd July 2008 in Appeal No. HD.125/KAA/2008 vide Annexure A are hereby set aside;

III] The matter stands remitted back to second respondent for reconsideration afresh and to take appropriate decision in accordance with law, after affording reasonable opportunity of hearing to petitioner or through his Counsel and dispose of the same, as expeditiously as possible.

6. Learned Additional Government Advocate is permitted to file memo of appearance on behalf of respondents within two weeks from today.