
(2022) 04 TEL CK 0055
In the Telangana High Court
Case No : Writ Petition No. 12130 Of 2022

Sultan Waseem

APPELLANT

Vs

State Of Telangana And 3 Others

RESPONDENT

Date of Decision : 13-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 15, 19, 21
Arms Rules, 2016 — Rule 24, 25(1)(a)
Arms Act, 1959 — Section 14, 21

Citation : (2022) 04 TEL CK 0055

Hon'ble Judges : T. Vinod Kumar, J

Bench : Single Bench

Advocate : Sharat Chandra

Final Decision : Allowed

Judgement

1. This Writ Petition is filed assailing the action of the 1st respondent in refusing to grant fresh weapon license under 'Family Heirloom Policy', vide Memo No.13266/Arms/2019, dt.25.11.2021, as arbitrary, illegal and against Rule 25(1) (a) of the Arms Rules, 2016, and in violation of Articles 14, 15, 19 and 21 of the Constitution of India, and consequently, to set aside the said Memo and also to direct the 1st respondent to grant the fresh weapon license under 'Family Heirloom Policy'.
2. Heard learned counsel for the petitioner and learned Government Pleader for Home appearing for the respondents, and perused the material available on record of this Court.
3. The brief facts of the case of the petitioner are that his father, by name, Mohd. Ismail, had served the Police Department for more than 30 years and retired in the capacity of Additional Commissioner of Police, in the month of April, 2005; that during his service, he was involved in resolving many important cases, including the cases relating to some of the banned organizations; that while the father of the petitioner was in service, the petitioner's family used to get

threatening calls, which continued even after he retired from the service of the Police Department; that the petitioner's father post retirement obtained and was holding arms licence No.1497/Saifabad for one weapon, i.e. 12 Bore Sbbl Gun, valid throughout the State; that the licence holder, i.e. the petitioner's father, met with an accident in the year 2016 and went missing for a day and returned home with a head injury and was admitted into Apollo Hospital, Hyderguda, Hyderabad, and was subjected to a major operation; and that though he survived, had suffered memory loss and could not recognize anyone in the family and it took lot of time for him to recover, even thereafter recovered only 50% of his memory.

4. Petitioner further contends that again in the month of November, 2017, when his father went out for his morning walk, he met with an accident, which was registered as 'hit and run case by an unidentified person', whereupon a case, vide FIR No.315 of 2017 dt.14.11.2017 on the file of Humayunnagar Police Station, was registered; that the petitioner's father was admitted in Apollo Hospital, Hyderguda, Hyderabad, and provided treatment for two days thereat; that while undergoing treatment, he succumbed to injuries on 17.11.2017; and that on account of the sudden death of his father due to accident registered as 'hit and run case by an unidentified person', the entire family of the petitioner was petrified and were in complete shock and it took sometime for the family to come to the terms of sudden loss of his father.

5. Petitioner also contends that since December, 2016 onwards, i.e., after the disappearance of the petitioner's father from the house for a day and returning with a head injury, which required medical attention, including being subjected to major surgery, and thereafter, having deceased in the month of November, 2017, on account of another accident, he had no knowledge or notice of the fact that validity of the licence obtained by his father for the weapon had expired and required renewal, as his father always kept the licenced weapon in safe custody in a locker at home; and that due to disturbance in the family on account of ill-health of his father from December, 2016 to November, 2017, neither the petitioner's father informed him, nor the respondents issued any notice prior to the notice dt.25.07.2018 requiring him to approach the respondents authority and seek for renewal of licence in time.

6. It is further contended that it is only upon receiving the notice dt.28.09.2018, issued in the name of petitioner's father by the 4th respondent directing to deposit the weapon with any authorized arms dealer on or before 5.10.2018 in connection with ensuing general elections to Lok Sabha and Assembly Constituency, the petitioner realized that his father possessed an arms licence and immediately on receipt of the above said notice, had approached the 4th respondent to find out the procedure relating to deposit of the weapon and took steps to deposit the weapon with one of the arms dealer on 09.10.2018.

7. Petitioner contends that, he was also served with the show cause notice dt.25.07.2018 informing about non-renewal of arms licence bearing No.1497/

Saifabad, which stands in the name of his father since December, 2016; that he submitted a representation/explanation, dt.01.09.2018, to the 3rd respondent enclosing therewith death certificate of his father along with other documents narrating the circumstances in which the arms licence could not be renewed by his father in time on its expiry and sought for consideration of his request for transfer of arms licence in his name under 'Family Heirloom Policy', so that, he can retain the said weapon purchased by his father.

8. It is further contended by the petitioner that the said request was rejected by the respondents without assigning any reason; that aggrieved thereby, the petitioner had approached the 1st respondent by filing an appeal on 09.12.2019; and that the 1st respondent by the impugned proceeding had rejected the appeal preferred by the petitioner, on the ground that the 2nd respondent by his report did not recommend for grant of fresh arms licence to the petitioner under 'Family Heirloom Policy', in view of contravention of Section 21 of the Arms Act, 1959 and also for violating the Rules made thereunder.

9. Petitioner contends that the impugned proceeding issued by the 1st respondent, whereby the 1st respondent had refused to grant arms licence, is solely based on the report furnished by the 2nd respondent and not being independent exercise of mind to the submission made; and that the 1st respondent did not consider the matter in right perspective, and thus, the impugned order is arbitrary, illegal apart from being in violation of fundamental rights and in particular under Article 21 of the Constitution of India.

10. The 1st respondent filed a counter-affidavit on behalf of the respondents, denying the writ averments, and sought to justify the impugned action of the respondents in rejecting the request of the petitioner.

11. By the said counter-affidavit, the 1st respondent contends that the petitioner's father, namely, Mohd. Ismail, was holding arms licence No.1497/Saifabad, renewed upto 31.12.2016; that the licence holder was required to submit an application seeking renewal of the same 60 days prior to the expiry of the said licence with licensing authority with all relevant documents; that the petitioner's father did not submit any application for renewal of his arms licence beyond 31.12.2016 and kept the weapon with him without any licence; ; that the licensee failed to apply for further renewal beyond 31.12.2016, and thus, violated Rule 24 of the Arms Rules, 2016; that but for the issuance of notice dt.28.09.2018, directing the licence holder to deposit the weapon with any authorized arms dealer, the petitioner continued to possess the weapon without any licence; that it is only after a show cause notice dt.25.07.2018 was issued, the petitioner had submitted his representation/explanation dt.01.09.2018 informing about the death of his father in the month of November, 2017 in an accident and sought for issuance of fresh arms licence under 'Family Heirloom Policy'; and since the petitioner had contravened the provisions of the Arms Act, in particular Section 21, and the Rules made thereunder; and that due to possessing of a weapon without licence by the petitioner is clearly a negligent

and careless act and thus, he was considered as not eligible for grant of fresh arms licence under 'Family Heirloom Policy'.

12. I have taken note of the submissions made by the learned counsel for the petitioner and the learned Government Pleader for Home appearing for the respondents.

13. Firstly, it is to be noted that the petitioner is not the original licence holder of weapon No.1497/Saifabad. The licence holder is the father of the petitioner, and admittedly, the licence issued was valid till 31.12.2016. It is also not in dispute that the petitioner's father had worked with the respondents and retired from service after serving 30 years in the Police Department. It is only upon the death of the original licence holder the family member is entitled to make an application for issuance of fresh arms licence under 'Family Heirloom Policy'; and that in the facts of the present case, the petitioner had sought for being granted with licence under 'Family Heirloom Policy' in respect of the weapon, for which licence stood issued in petitioner's father's name. While the petitioner contends that his deceased father met with an accident in 2016, admitted in Apollo Hospital, Hyderguda, and was subjected to a major surgery, which resulted in loss of memory, and thereafter, once again having met with an accident in November, 2017, which resulted in his death, as the reason for the petitioner not being aware of the expiry of the validity of the licence obtained by his father for the weapon, the counter-affidavit filed by the respondents is totally silent on the above factual aspect, except for a general denial of the writ averments.

14. Secondly, in the documents annexed to the counter-affidavit, in particular the explanation/representation, dt.01.09.2018, submitted by the petitioner to the show cause notice dt.25.07.2018, which was duly acknowledged by the respondents on 10.10.2018, it was categorically stated that the licence holder i.e. petitioner's father, was seriously ill and had to undergo major brain surgeries, during the period 2016, resulting in memory loss; and that his father met with another accident while going for a morning walk in November, 2017 and ultimately passed away after two days of treatment. In spite of the said specific stand of the petitioner, the respondents, on the other hand, allege that, but for the issuance of the notice directing the licence holder to deposit the weapon, on account of ensuing general elections to the Parliament/Assembly, the fact of death of the licensee, could not have been known and thus, possessing the weapon without valid licence resulted in contravention of Section 21 of the Arms Act, 1959 and Rule 24 of the Arms Rules 2016, thereby attributing negligence and carelessness to the petitioner, without considering the fact that even the show cause notice was issued in the name of petitioner's father, as noticee, to which petitioner only submitted an explanation as son/legal representative of the deceased holder.

15. In the counter-affidavit, the respondents also seek to contend that but for the issuance of show cause notice dt.25.07.2018, the petitioner did not chose to intimate the death of the licensee, and till the issuance of notice dt.28.09.2018

directing to deposit the weapon with any arms licence dealer located in Hyderabad on or before 05.10.2018, the weapon was kept with the petitioner without any valid licence, though a request was made under representation/explanation dt.01.09.2018 for grant of fresh arms licence under 'Family Heirloom Policy', this act of the petitioner in keeping the weapon without licence, it is contended, disentitles him from seeking issuance of a licence in his favour.

16. To appreciate the above said contention of the respondents, it is necessary to look at the show cause notice dt.25.07.2018, which is stated to have been issued by the 3rd respondent. A bare perusal of the said notice shows that it is issued in the name of Mohd. Ismail - licence holder, who is the father of the petitioner. A note was made in the said notice, that the said show cause notice was directed to be served on the noticee mentioned therein through Inspector of Police, Saifabad Police Station, who upon serving the said notice was directed to obtain a dated acknowledgment and return the same to the 3rd respondent office urgently. The said notice was apparently dispatched in the name of Sri Mohd. Ismail on 26.07.2018 for effecting service, as evident from the stamp put thereon as 'dispatched'. Since the said notice was required to be served through the 4th respondent, the dispatch as noted thereon can only be to the 4th respondent. No material is placed before this Court to show that the 4th respondent, through whom the said notice was directed to be served on the noticee, in fact, had effected service of the same either on the noticee or his family members, like petitioner immediately thereafter. If only the respondents had taken steps to serve the show cause notice, immediately on its issue by the 3rd respondent, it would have come to their notice that the licensee had deceased by then, in which case, there was no necessity to issue notice in the name of the licence holder to deposit the weapon with arms dealer on account of ensuing General Elections and instead, could have proceeded with seizure of weapon.

17. On the contrary, though a representation/explanation dt.01.09.2018 is stated to have been filed, the acknowledgment thereon issued by the 3rd respondent office reflects the date of receipt of the same as 10.10.2018 which admittedly is a day after the petitioner deposited the weapon with the authorized dealer, on 09.10.2018 in response to the notice dt.28.09.2018. The non-mention of the date of receipt of the show cause notice in the reply filed by the petitioner and also non-filing of the proof of service of the show notice on the licensee or on the petitioner by the 4th respondent would show that the said notice though was issued by the 3rd respondent, on 25.07.2018, no steps were taken to serve the same on the petitioner till about 28.09.2018, when a notice directing deposit of the weapon was issued. If the stand of the respondents in the counter-affidavit that the petitioner was negligent and careless even after receipt of the notice dt.25.07.2018, is to be taken as correct, there is no plausible explanation forthcoming as to why the respondents, in particular the 3rd respondent, did not pass any order seizing the weapon upon expiry of the ten days period mentioned in the notice dt.25.07.2018. The above mentioned fact only leads to an inevitable

conclusion that the notice dt.25.07.2018, which is stated to have been issued to the licensee informing about non-renewal of arms licence beyond 31.12.2016, was not served till the petitioner approached the 4th respondent, in pursuance of notice dt.28.09.2018 directing to deposit the weapon with arms dealer. The said fact, as noted above, would also be apparent from the explanation dt.01.09.2018 submitted by the petitioner to the said notice, but actually received on 10.10.2018. Thus, the respondents, in a way, sought to cover up their own omission of not effecting the service of the show cause notice dt.25.07.2018 and appear to have obtained the letter/representation from the petitioner requesting for renewal/issuing of a fresh arms licence under 'Family Heirloom Policy'.

18. Thus, it is not open for the respondents to plead negligence and carelessness on the part of the petitioner, while they themselves seem to be negligent, in not taking steps immediately against the a licence holder, who did not apply for renewal within time in respect of licence, which admittedly had expired on 31.12.2016. If only the respondents acted in a diligent manner by issuing notice to a licence holder, in time, immediately on expiry of licence period, which was during the life time of the petitioner's father, the licence holder might have taken steps to seek renewal of the weapon by making necessary application. For the reasons best known, the respondents did not issue any notice at least till July, 2018, i.e. for more than one and half year, to the licence holder about non-renewal of the licence beyond 31.12.2016. The said act of the respondents in not taking steps to seize the weapon immediately after the expiry of its validity, would only go to show that there is no foolproof mechanism put in place by the respondents to ensure the monitoring of licences issued and it is apparent that only when a general election or other election to be held, the authorities are waking up to such issues. Thus, if there is any act of negligence and carelessness, it is also on the part of the respondents and cannot be attributed solely to the petitioner, more so, when he being not the licence holder. On the other hand, non-issuance of notice immediately after expiry of licence period would amount to dereliction of duties by the respondents.

19. Further, it is to be seen that the impugned order passed by the 1st respondent does not take into consideration, all these factual aspects. On the other hand, it states that a report has been called for from the 2nd respondent, who is stated to have furnished his report on 09.07.2021, wherein it is stated that the petitioner has kept the weapon in contravention of Section 21 of the Arms Act, and only applied for licence on 10.10.2018, after being issued with show cause notice, and therefore, has not recommended for grant of fresh arms licence under 'Family Heirloom Policy'.

20. The 1st respondent, relying on the said report submitted by the 2nd respondent, by merely stating that after careful examination of the matter with reference to the report of the 2nd respondent concluding that the petitioner had violated the provisions of the Act, had summarily rejected the appeal of the petitioner. The said action of the 1st respondent clearly indicates that he himself

did not apply his mind independently to the facts of the case, but is driven/ influenced by the report of the 2nd respondent. The appellate authority is required to form his own and independent opinion, while considering the appeal without being influenced by the view expressed by the original authority. A reading of the impugned order does not show that the 1st respondent having come to the conclusion as recorded therein, on his own, and thus, the impugned order passed, is merely reiteration of the rejection order passed by the 2nd respondent and thus, cannot be held to be validly passed for it to be sustained and thus, calls for interference by this Court.

21. Further, this Court in the case of Syed Afzal Mehdi V/s. The State of Andhra Pradesh 2010 (4) ALT 377, while considering the scope of refusal to grant arms licence under Section 14 of the Arms Act, had laid down the twin tests to be applied by the licensing authority in considering the grant of arms licence to the applicant, viz., (i) whether the applicant has established his credentials as a law abiding person, leading a peaceful life without any criminal record, and (ii) whether any circumstances exist by which it can be reasonably presumed that there is a potential danger of misuse of the weapon leading to breach of peace and safety of the society. The above said twin tests laid down by this Court was further applied and relied upon by the erstwhile combined High Court for the State of Telangana and the State of Andhra Pradesh in the case of Kolan Narasimha Reddy V/s. State of Andhra Pradesh W.P.No.39962 of 2012 Dt.14.02.2016, wherein a reference has been made to the judgment of Hon'ble Allahabad High Court in the case of Ganesh Chandra Bhatt V/s. District Magistrate, Almora 1993 Allahabad 291, in which, it was observed that "it must be held that the normal rule should be grant of the arms licence and refusal on the ground of unfitness, should only be for very strong reasons, e.g. involvement in a heinous crime."

22. Since in the facts of the present case, though the refusal by the respondents to issue a fresh arms licence to the petitioner under 'Family Heirloom Policy' is on the ground of negligence and carelessness act of the petitioner, as noted herein above, the said ground cannot be attributed to the petitioner only, since the licence holder of the weapon was petitioner's father who was under medical treatment when the licence was due for renewal and having deceased thereafter.

23. Since the impugned order does not take various aspects, as noted herein above, into consideration including the tests as laid down in the case of Syed Afzal Mehdi (1 supra) to consider the grant of arms licence, this Court is of the view that the impugned order rejecting the application of the petitioner for grant of fresh arms licence under 'Family Heirloom Policy' on the ground of negligence and careless act of petitioner, cannot be sustained and the 1st respondent is required to take all the above facts into consideration before passing the order.

24. In view of the conclusions arrived at above, the impugned order cannot be sustained and it is liable to be set aside.

25. Accordingly, the Writ Petition is allowed; the impugned order passed by the 1st respondent, vide Memo No.13266/Arms/2019, dt.25.11.2021, is set a side; the matter is remitted back to the 1st respondent to re-consider the appeal of the petitioner, in the light of the observations made hereinabove; and pass appropriate orders thereon, afresh, within a period of two (02) months from the date of receipt of a copy of this order, after affording an opportunity of hearing to the petitioner.

26. Miscellaneous petitions, if any, pending in this writ petition shall stand closed. No order as to costs.