

(1987) 05 KL CK 0008
In the High Court Of Kerala

V.K. Thomas

APPELLANT

Vs

The Revenue Board Member (L.R.)

RESPONDENT

Date of Decision : 27-05-1987

Acts Referred:

Constitution of India, 1950 — Article 48A, 51A

Citation : (1988) CriLJ 336 : (1986) 2 ILR (Ker) 559

Hon'ble Judges : K. Sukumaran, J

Bench : Single Bench

Judgement

K. Sukumaran, J.—The legal profession has more than casual connection with the arms and the governing laws. A great Judge, Lord Atkin, spoke about law speaking in the same voice even amidst the clash of arms. (See *Liversedge v. Anderson* (1942) AC 206.) That was on the academic aspect. Even on its physical features, the legal profession had much to contribute. It was Lord Armstrong, shortly after his sojourn as a solicitor, that gave much of concentration in the perfection of the shooting rifle. The British army used it in more wars than one. The recognition of his contribution is reflected in the patenting of the rifle after his name - Armstrong's rifles. (See *A History of Our Own Times*, from the Diamond Jubilee 1897 to the Association of Edward VII by Justin Me Carthy, pages 216 to 220.) Little did Lord Armstrong realise that in years to come, that the little weapon would be wielded by antisocial elements as well for subverting the Rule of Law, - the illicit distillers, the poppy barons, the plotting poachers, the sneaky smugglers and the dreadful terrorists. The abuses of arms licence, appear to be on the increase. The present is an illustrative case.

2. The petitioner, who describes himself as an agriculturist, and a resident in Kizhakkencherry village in Alathur Taluk of Palghat District was armed with an arms licence, granted in the year 1980. The area of its operation was Palghat District; and the duration, up to the end of the year 1982. There were complaints that he had abused the licence and the weapon - an S.B.B.L. Gun with facility for purchase of 100 catridges at a time and 300 catridges in an year.

3. The petitioner was involved in a murder case, convicted by the Sessions Court, but ultimately acquitted by the High Court. He was also involved in a rioting case. The Superintendent of Police, Palghat, moved the statutory authority, the District Magistrate, for the cancellation of the licence. By order dt. 15-10-1982, the licence was cancelled. The order was appealed against before the Board of Revenue. The matter was argued before that authority by counsel. The Board by its order dt. 16-10-1986 declined to interfere with the order of the Magistrate. The validity of these orders is challenged.

4. According to the petitioner, there is illegality and impropriety in the authorities accepting and acting on the representation of the Superintendent of Police; there has not been any proper application of mind to the relevant circumstances. The acquittal in the criminal cases is emphasised as a factor entitling him to the continued grant of licence.

5. The arguments advanced before this Court also centered round the inadequacy of materials justifying cancellation of the licence.

6. It is desirable to preface the discussion of the contentions by a general reference to the background and salutary provisions of the legislation.

7. The law relating to fire arms had been under diligent vigil of the Legislature in enlightened countries. Even a casual reference to the legislative exercises in England after the Fire Arms Act of 1920 would indicate how Parliament had been alive to plug the loopholes in the working of that Act. The Act had been amended in 1937. A comprehensive enactment was brought into force under the Fire Arms Act, 1968. Even in relation to other offensive weapons, the Parliament there, had been highly agile. The Prevention of Crime Act, 1953, prohibited possession of offensive weapons in a public place without lawful authority or reasonable excuse. The restriction of Offensive Weapons Act, 1969 sought to rope in many kinds of weapons such as flick knife or flick gun. It was noted in England that there had been a whole bevy of cases, in which flick knives had been used often with lethal effect in affrays and brawls, and the public was, not unnaturally, alarmed. Parliament acted in order to allay such alarm. A gap in that Act was noticed and commented upon in *Fisher v. Bell* (1960) 3 All ER 731. The Parliament acted in order to allay the alarm, and to plug the gap in the 1959 Act. The result was the amendment of the Act in 1961. *R. v. Simpson* (1983) 3 All ER 789 decided by the Court of Appeal, Criminal Division, considered at length the case law on the flick knife. The Court held that a flick knife is an offensive weapon, and that a Judge may take judicial notice of the fact that it is an offensive weapon. (Lane C.J. pointed out that the discussion about the law on the point as contained in the Third Supplement to Archbold's Pleading, Evidence and Practice in Criminal Cases (41st Edn., 1982) was misleading and observed that . "the editors might like to consider making the necessary amendments to that.")

8. As for India, the pace of Parliamentary activity on the Arms Law had not been

as brisk as in England. The first legislation on arms attempted in the Indian territory was the Indian Arms Act, 1878. The Act became obsolete by the passage of time as did the weapons of the era shortly after the Indian Mutiny.

9. The new Act of 1959 was enacted after taking note of the developments in diverse fields of Indian life. The Act is called the Arms Act, 1959. It came into force on 13-7-1962. Far-reaching changes have been effected under the new enactment. It is unnecessary for the purpose of the present case to deal at length with the effect and impact of those changes.

10. Section 9 incorporates provision prohibiting acquisition or possession of arms by certain category of persons : persons below 21 years of age, those sentenced on conviction of any offence involving violence or moral turpitude and for imprisonment for duration of the period referred to therein, and those ordered to execute bond for good behaviour. Section 13 deals with grant of licences under Chapter II. A report about the applicant by the police is a mandatory requirement for the consideration of the grant of licence. The licensing authority has to conduct such enquiry as it considers necessary. Licences are granted for use of arms for protection or sport or for bona fide crop protection, subject to the conditions enacted therein. If the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same, grant of licence is permitted u/s 13(3)(b). Section 14 deals with refusal of licence. Clause (b) is particularly relevant in the context of the present case. It reads:

(1) Notwithstanding anything in Section 13, the licensing authority shall refuse to grant....

(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.

The licensing authority has an added right to withhold reasons for the refusal in the situations indicated in the Section.

11. Framing of rules is envisaged for the purpose of carrying out the provisions of the Act. Many of the details in relation to the application and grant of licences are provided therein. The form of application and of the grant of licences are prescribed under the rules.

12. In the early periods of the administration of the Indian Arms Act, 1878,

minute attention had been given by the authorities in the implementation of that Act. Attempts at smuggling into the Indian territory arms from foreign lands, had been effectively guarded against. (See *Re. Mohomed Ismail Rowther* ILR (1912) Mad 596). Even when the owner of a gun had a licence or was an exempted person, the use of the gun by the servant for his own purposes had not been permitted. Those who unauthorisedly handled the arms were effectively prosecuted. Such action of the administrative authorities had been upheld by the High Courts of Allahabad, Calcutta and Madras. (See *Madho Lal v. The Emperor* 13 CWN 124, *Queen-Empress v. Ganga Din* ILR (1900) All 118 and *Vairavan Servai v. King-Emperor* ILR (1924) Mad 438 : (1924) Cri LJ 975. Even fire works using small rockets were taken serious note of, though ultimately adjudged as involving no violation of the Arms Act. (See *The Queen v. Suppi* ILR (1882) Mad 159. This official vigil in relation to the implementation of the Act appears to be on the wane in recent times.

13. It needs no reiteration that the issue of licences for possessing deadly arms, should . be done with great care and caution; and with greater circumspection; and fuller realisation of the changed times. The statutory authorities following their set practice, appear in many cases, to issue licences for the mere asking of it. That approach is now open to reproach. There was pressing necessity for a person to be armed with an effective weapon, when he was perilously near the habitats of wild animals, but pursuing lawful avocations. The dark and deep forest are now relegated to the pages of fiction, "*Marthanda Varma*", "*Bhootha Rayar*", and the comparatively modern "*Vishakanyaka*". The early decisions of the Madras High Court would perhaps furnish helpful clue to the conditions which obtained at that time. Wild elephants, wild boars and the like used to cause devastation of fruits of labour of the hard-working ryots. Wild elephants, it had been judicially noticed, were dangerous animals (See *Makath Unni Moyi v. Malabar Kandapunni Nair* ILR (1882) Mad 268, *Ramakrishna v. Kurikal* ILR (1888) Mad 445 and *Vedapuratti v. K. Kqppan Nair* ILR(1912) Mad 708. In *The Queen v. Bommaya* ILR (1882) Mad 26, the Madras High Court observed : "...bisons are notoriously in the habit of injuring crops,..." The question was considered in relation to a gun licence. Those conditions no longer obtain now. Licences cannot be legitimately sought for or obtained under the guise of protecting the food crops in these days and in such areas. The unchecked devastations of the forests have turned what used to be boundless contiguity of greenery into bleeding red patches strewn with tiled buildings and concrete mansions. A deadly weapon to scare the animals or to protect the crops would be totally unnecessary in such areas. Such would be the case in an essentially agricultural area, like Alathur.

14. Quite often, licences are applied for, putting forward a need for the protection of crops. Here again, the authorities have necessarily to bear in mind the overall scheme of the Act. The mere fact that a person has a small patch of cultivated area does not entitle him to have a gun and a licence. The nature of the cultivation, the existence of a direct and serious; threat thereto, and the pressing

necessity for weapons for effective protection have all to be considered carefully. Changes, sweeping changes, have occurred climatically, sociologically and otherwise. They have necessarily to be reckoned in the consideration of an application for licence. Conditions which were prevalent when the Indian Arms Act of 1878 were brought into force, no longer obtain in most parts of India.

15. It is necessary to ensure that antisocial elements are not allowed to take undue advantage of the Arms Act. The impact of the constitutional "background, and particularly the thrust placed therein on the protection of the forests and the wild life as obligated under Articles 48A and 51A(g) of the Constitution will have to be kept in mind in the context. If there is a distinct threat to the wild life entitled to statutory protection (the schedule to the Wild Life Act is fairly long and exhaustive about the species for whom the protective cover is now "extended) by a possible abuse of the arms licence to be granted, the authorities will be justified in declining the licence. That should be the approach, in the case of organised encroachers or persons who cause damage to the forest cover. These organised encroachers have yet to learn the lesson from the Bible:

The mountains and the hills shall break forth before you into singing, And all the trees of the field shall clap their hands, Instead of the thorn shall cop the fir tree. And instead of the brier shall come up the myrtle tree : And it shall be to the Lord for a name, For an everlasting sign that shall not be cut off.

(English Lyrical Verse. Page 149, Edited by Arthur Burrell)

And they may scorn at the lovely lines : One impulse from a vernal wood May teach you more of man. Of moral evil and of good. Than all the sages can.

(The Tables Turned, William Wordsworth)

The request for licence of an encroacher having an unauthorised cultivation of food crop in an area, which really belongs to the Government, cannot be favourably considered at all. His illegal action supremely disentitles him for a protective legal licence. Take the case of a gang of opium cultivators who manage to reach areas inaccessible even to the officials of different departments of the Government. (It is generally known that there are such organised gangs, equipped with sophisticated weapons, and having expertise in cultivation techniques, who make quick money by such illicit means). The ring leaders of such a group are not to be blessed with arms licence.

16. The arguments of the petitioner may now be examined in the above background. The involvement of the revision petitioner in two criminal cases is admitted. That is an aspect which can be correctly taken note of by an authority which deals with a sensitive issue like the grant and revocation of an arms licence. Involvement in a criminal case, by itself, can have unfavourable consequences. So observed Phillips, J. in *Harris (Ipswich) Ltd. v. Harrison* (1978) ICR 1256. Involvement in a murder case is, therefore, not an insignificant factor in the grant or revocation of an arms licence. That such involvement was in the

year 1970, does not make the factor altogether irrelevant. On the contrary, it furnishes a background about the propensities and character traits of the applicant, which could be duly taken note of. The petitioner states that it was notwithstanding the above factors that the licence had been granted. The fact that the licensing authority, adopted a lighthearted or irresponsible view while considering the application of the gun licence does not preclude it from revising its erroneous stand in the light of further facts. This is particularly so in view of the repetitive involvement of the petitioner in criminal cases. The acquittal in the case would not be a bar for the statutory authorities to consider the revocation of the licence, with reference to the emerging circumstances.

17. An acquittal in a criminal case, may be the result of very many imponderable factors. A perfunctory investigation, an ineffective and inefficient prosecution and the thwarting effect which the might and money the accused may have in the conduct of the case - all may result in an ultimate acquittal. It is notorious that in recent times, the prosecution mechanism of the State apparatus, has been disturbingly ineffective. The Statistics would indicate that the percentage of conviction, as ultimately upheld, is a meagre percentage of the prosecutions actually launched. This justifiably has caused anxiety for all who are concerned with the well being of the society. It is entirely for the State and its agencies, to take serious note of this deteriorating situation in relation to its prosecuting agencies. It is sufficient for the purpose of this case to indicate that the failure on the part of the prosecution mechanism, and the reflection thereof in an ultimate acquittal by a court of law, would not be good enough ground for arming an undesirable person with a deadly weapon and a lawful licence.

18. The petitioner was involved in a second crime, other than the sessions case in which he faced the charge of murder. Crime No. 177/1982 led to C.C. 496 of 1983 before the Judicial Magistrate of the Second Class, Alathur. The petitioner was involved as 1st accused therein. Forming an unlawful assembly, committing criminal trespass and committing mischief were the charges. Six witnesses had been examined in the case. The Magistrate felt that the eye witness account as given by two of the workers - the tappers in the rubber estate - could not be relied on, The entire discussion was compressed in a single sentence about the Court's hesitation to accept their "interested version". (In relation to an incident in a rubber estate, ordinarily, independent and totally uninterested witnesses could not be easily expected. Whether the finding of the Magistrate in such a casual manner is justified, does not arise for decision in the present case. When, however, that judgment is highlighted to present the petitioner in a favourable colour, this unsatisfactory feature of the judgment cannot be altogether ignored). This judgment too cannot be a formidable impediment in the way of the statutory authority considering the question of revocation of the licence.

19. The Superintendent of Police, the highest official of the District, had moved the statutory authority for the revocation of the licence. In the absence of other indications, a report by a highly placed official, who is expected to discharge his

duties reasonably and responsibly, and uninfluenced by extraneous factors, has to be given due weight. The background facts as noted in this case sustains well his motion for the revocation of the licence.

20. There was a contention that the initiation of action for the revocation of the licence in the case was at the instance of a highly placed police official related to the person at whose instance C.C. 496/1983 was registered. There is no material whatever, to support that submission. Even otherwise, when there were tangible materials as indicated above, which eminently justified the revocation of the licence, the mere possibility of the statutory authorities have been spurred to the speedy action by a passive influence of a distant relative, would not, by itself, tarnish the official action. The submission, if at all, only indicates the current general impression about the lack of vigil on the part of the statutory authorities in the effective administration of the Arms Act.

21. A narrow area of interference in such matters has been indicated in a decision concerning the revocation of arms licence in *Riazat Hussain Vs. Commissioner, Allahabad Division and Others*, The action of the authorities in the above circumstances, is unamenable to curial correction by this Court, whether it be the writ jurisdiction or the revisional one. The petition is, therefore, dismissed.

22. Time was when even marginal deviation from the Arms law had been taken note of by the law enforcing authorities. One extreme example is a case where a pyro technical display in the course of a temple festival, with all good intentions on the part of those who performed and those who witnessed the exercise, had been subjected to prosecution proceedings which went up to the Madras High Court. Systematic and scientific search for possession of illegal arms and possible abuses of the licences, cannot be under-scored, particularly in these troubled times. A harassed District administrative head of recent times, who has not only to look into the "police" functions as of old, but also the multitudinous welfare activities, may be unable to bestow adequate time to checkmate abuses of arms and the licences for their possession. Yet that onerous duty has to be discharged responsibly. A Division Bench of this Court had indicated the necessity to streamline the executive agencies in that direction. The Court observed:

21. Before parting with the case, we may point out a disturbing phenomenon emerging from the evidence presented before us. The violation of the provisions of the Arms Act was a distinct charge against the 1st accused. The learned Sessions Judge found that he was in possession of M.O. 3 gun without licence and convicted him of the offence. We have confirmed the conviction. M.O. 3 along with the other gun M.O. 11 had been directed to be confiscated to the Government. The infraction of the provisions of the Arms Act happened to be detected only because of an extensive investigation into a serious crime like murder. The wholesale breach of the provisions of the Arms Act is also, clearly demonstrated by the evidence. Accused No. 4 is not the only person engaged in illicit distillation. Many others have taken to it with impunity. Consumption of liquor at the place of manufacture and carrying it away in bottles are so openly

done that the witnesses refer to such actions as ordinary, normal and legal activities. The evidence of P.W. 1 and P.W. 12 indicate that the forest wealth is being converted into charcoal with the use of kilns, though perhaps on a small scale. That may amount to a violation of the provisions of the Forest Laws. Open violation of the provisions of the Wild Life Protection Act, as is evident from the evidence relating to hunting undertaken by many also goes apparently unnoticed and unchecked. There was a time, here and elsewhere when stray or isolated hunting expeditions were not matters for serious concern. An echo of such a feeling can be felt from the beautiful lines of the 19th century Scottish Ballad, of which a rough translation reads:

A trout from a pool A deer from the hill And a tree from the forest Are thefts of which no Man was ever ashamed.

(See Story and Song from Luchness-side by Alexander MacDonal, 1914). The conditions have drastically changed now. Necessity to preserve the forests and the wild life has been clearly recognised.

(Vide Crl. A. Nos. 268 & 270 of 1981). Much does not appear to have been done in that direction. The large number of unlicensed guns of the "thondi" rooms of the Magistrates' Courts, would be some indication of the executive inaction.

23. The trends and tendencies of modern times where the deadly weapons are directed against constitutional functionaries and law enforcing agencies, cannot also be lost sight of, in this connection. A rigorous examination of even minute details would be the bounden duty of the statutory authority before an applicant is endowed with a licence for the use of a deadly weapon. It is essential that the statutory authorities have a clear realisation of those onerous and rigorous statutory duties on their part. There is no harm, therefore, that those authorities be apprised of the legal position. Let the Office send to the Government, to the statutory authorities, the Board of Revenue, and District Collectors of the State, a copy of this decision.