

(2006) 09 MAD CK 0238

Madras High Court

Case No: Writ Petition No. 560 of 2001

M. Chettiannan

APPELLANT

Vs

The Additional District

Magistrate cum District Revenue

Officer and The Principal

Commissioner and

Commissioner of Revenue

Administration

RESPONDENT

Date of Decision: Sept. 22, 2006

Acts Referred:

- Arms Act, 1959 - Section 13, 14, 14(3), 15, 18(1)
- Constitution of India, 1950 - Article 19(1), 21

Hon'ble Judges: R. Banumathi, J

Bench: Single Bench

Advocate: P.T. Asha, for the Appellant; V. Bhavani Subbaroyan, Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R. Banumathi, J.

The Petitioner has filed this Writ Petition seeking for a Writ of Certiorari and Mandamus to quash the impugned order declining the grant of Arms Licence to the Petitioner and also to direct the Respondents to grant Arms Licence to the Petitioner to possess SBBL Gun.

2. Background facts - The Petitioner had applied to the Additional District Magistrate cum District Revenue Officer, Namakkal for grant of Arms Licence to possess a SBBL Gun for self protection. On the basis of the report of the Superintendent of Police, Namakkal, the first Respondent rejected the application of the Writ Petitioner by the

proceedings K.Dis.10827/98 M3, dated 16.07.1998. The Writ Petitioner preferred an appeal to the second Respondent u/s 18(1) of the Arms Act. In his proceedings in D.Dis.RA.V[2] 66336/98 [A.A. No. 1645/98], dated 01.03.1999, the second Respondent passed the order setting aside the orders of the first Respondent on the ground that the order of the first Respondent dated 16.07.1998 is a non speaking order. The matter was remanded back to the first Respondent for fresh disposal after giving opportunity of being heard.

3. The first Respondent heard the Writ Petitioner on 19.04.1999 and passed the order in the proceedings No. K.Dis. 10038/99/M3 dated 03.05.1999, rejecting the Petitioner's application for grant of Arms Licence on the ground that the Petitioner was 53 years old and he has lost his health capacity to use the Gun. The Writ Petitioner once again approached the second Respondent by way of statutory appeal u/s 18(1) of the Arms Act, 1959. Considering the order of the first Respondent, the second Respondent passed the impugned order in the proceedings No. D.Dis.R.A.V(2)/6596 /2000 [AA.13/2000], dated 15.11.2000, rejected the Petitioner's appeal. Aggrieved over that order, the Petitioner has filed the present Writ Petition.

4. According to the Petitioner, the Respondents have failed to consider the interpretation of Sections 13, 14 and 15 of the Arms Act and that every application for a non prohibited weapon must normally be allowed and the application could be rejected only in very exceptional cases for good reasons to be recorded in writing. It is the further case of the Petitioner that the order rejecting the application on the ground of age of the Petitioner is totally perverse and there is no basis to assume that the Petitioner has lost the health capacity to hold the Smooth Bore Gun and even a child could hold SBBL Gun.

5. The learned Government Advocate has submitted that the first Respondent has rejected the application after personally enquiring the Writ Petitioner and found that he was physically not fit to handle the gun. It is the further contention of the Respondents that after finding a flaw in the orders of the first Respondent, and with a view to provide an opportunity to the Writ Petitioner, the matter was remanded back to the first Respondent for fresh disposal, which itself clearly shows that the Respondents have kept the provisions of the Act in mind before passing the orders. It was further submitted that after personal enquiry, the first Respondent noticed that the Writ Petitioner was not physically fit to handle the gun and has rightly rejected the application.

6. The question falling for consideration is, "whether the ground of refusal that no licence could be granted to the Petitioner on the ground that he is physically unfit, is arbitrary and unreasonable ?

7. On behalf of the Petitioner, it was contended that the Respondents have failed to consider Section 13 of the Arms Act which recognizes the right of Citizen of India to

licence and it is not open to the Licensing Authority to refuse licence arbitrarily. To hold a fire-arm and consequently to obtain licence therefore is not a fundamental right. Till the Forty-fourth amendment in the Constitution in 1978, Clause [f] of Article 19(1) of the Constitution recognized, as a fundamental right, on its basis the right to acquire and hold a fire-arm was held to be a fundamental right by various High Courts 1953 Cri.L.J. 917 {P. Narasimha Reddy v. District Magistrate, Cuddapah}; 1968 All.L.J.1029 {State of U.P. v. Jaswant Singh Sarna)]. This clause was omitted by the Constitution [Forty-fourth Amendment] Act, 1978 with effect from 20th June, 1979. The right to hold a fire-arm and the grant of a licence therefore can now no longer be claimed as a fundamental right. A Full Bench of Allahabad High Court in the decision made in AIR 1956 All 291 [Kailash Nath v. State of U.P.] has held that a licence for acquisition and possession of fire-arm is merely a personal privilege for doing something which without such privilege would be unlawful and the obtaining of a licence for acquisition and possession of fire-arms under the Arms Act is, therefore, nothing more than a privilege and it is not a fundamental right. This right cannot even remotely be comprehended within the ambit of Article 21 of the Constitution which postulates the fundamental right of protection of life and personal liberty. This view was again reiterated by another Full Bench in 1989 A.L.J. 23 [Balram Singh v. State of U.P.].

8. The right to carry arms for self defence could no longer be claimed as a fundamental right. It needs no emphasis that the issue of licences for possessing, holding arms should be done with great care and caution and with greater circumspection keeping in mind the changed times. Referring to the various factors which are to be reckoned by the authorities in the grant of licence for arms, in [V.K. Thomas Vs. The Revenue Board Member \(L.R.\)](#), Kerala High Court has held:

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. The mere fact that a person has a small path 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.

9. Section 14[3] empowers the Licensing Authority to refuse licence on the ground that "such licence is not required by a person whom the Licensing Authority has

reason to believe, to be for any reason, unfit for a licence". Section 14(3) provides that when the Licensing Authority refuses to grant a licence, it shall record in writing the reasons for such refusal and furnish to that person, a brief statement of the reasons, unless it decides to withhold the same in public interest. The Petitioner was present before the first Respondent and he was heard. Reasons for refusal to grant licence was also furnished to the Petitioner.

10. The Petitioner has sought for licence for protection of his agricultural lands, poultry farm and that he was assisting his father in finance business and that he has to carry huge money. The mere fact that the Petitioner owns cultivated area and that he is doing finance business does not entitle him to have a gun and licence. The licensing Authority/Additional District Magistrate has recorded the reasons for refusal as "physically not fit to handle SBBL Gun and he has lost his capacity to use the gun". The first Respondent/Additional District Magistrate, who is the Officer empowered to issue licence, is a responsible Officer of the Government. In his discretion, he may grant or refuse licence. When his order is subject to appeal, it is his duty to give reasons for his refusal. Having regard to the age of the Petitioner and the right claimed, and the dangerous potentialities involved, it cannot be said that declining to grant licence is arbitrary and unreasonable.

11. The necessary condition of reasonableness is that Additional District Magistrate should exercise judicial discretion, disclosing his mind, for the scrutiny by the Appellate Authority, excluding the possibility of arbitrary action. The Petitioner was physically present before the first Respondent. On seeing the Petitioner and taking into consideration his age [at that time aged about 53 years], the first Respondent refused to grant licence, recording his reasons in writing. The reason stated is the physical inability of the Petitioner to handle the gun. The Petitioner has appealed to the second Respondent. In consideration of the reasons, the second Respondent has dismissed the appeal. The impugned order does not suffer from any arbitrariness or malafide.

12. It should be remembered that the possession of arms is a matter which deals with the security of the State and the appropriate person to judge whether a particular person is fit to have a licence or not are the Officers in whom the discretion is vested by the State. When the first Respondent has found that the Petitioner has lost his health capacity to use the gun and the same was confirmed in the appeal, it is not for the Courts to substitute their discretion, as that of the Executive Officers in whom the legislature has vested powers, reposing confidence.

13. For the foregoing reasons, this Writ Petition is dismissed. No costs.