

THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY

WRIT PETITION No.2934 of 2023

ORDER:-

This Writ Petition is filed under Article 226 of the Constitution of India seeking the following relief;

... to issue a Writ, Order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the proceedings of the 2nd Respondent in Ref. No. REV-CSECOAA(MISC)/ 1/2022SA(C3)-KDPCO and unintimated, unheard revocation of the Petitioner's Arms License No. Kadapa-391 under Unik No.021150000302092014 covered by 1) Revolver 2) NPB Rifle dt.07.11.2007 along with 21 Cartridges, 28 full cartridges and 02 empty cartridges without serving copy of the same on the ground that the Petitioner was involved in Crime No.271/2022 dt.18.08.2022 registered under Sections 307, 332, 323 r/w 34 IPC and Sections 3(1)(r), 3(1)(s), 3(2) (v), 3(2) (va) of SC and ST (POA) Act 1989 on the file of II Town Police Station, Kadapa, Y.S.R. District is illegal, arbitrary, unjust, violative of principles of natural justice and contrary to the fundamental rights guaranteed under Articles 19, 20, 21 of Constitution and contrary to the Arms Act and consequently set aside the proceedings of the 2nd Respondent in Ref No. REV-CSECOAA(MISC)/ 1/2022-SA(C3)-KDPCO and unintimated, unheard revocation of the

Petitioners Arms License No. Kadapa-391 under Unik No.021150000302092014 covered by 1) Revolver 2) NPB Rifle dt.07.11.2007 along with 21 Cartridges, 28 full cartridges and 02 empty cartridges and pass...”

2. Case of the petitioner is that; he is engaged in contract works in Andhra Pradesh and nearby States. He has several landed properties. He has several opponents and enemies in his business. As there are civil disputes with regard to his properties, his opponents attempted to kill him and attempt to abduct his family members. Therefore, he made a request to the respondent authorities to issue licence for possessing arm. The respondents 2 and 3 having considered his request and found that there is danger to his life and limb, granted Arm Licence No.Kadapa-391 under Unik No.021150000302092014 with two (2) weapons i.e., 1) Revolver, 2) NPB Rifle dated 07.11.2007 along with 21 cartridges, 28 full cartridges and two (2) empty cartridges. Since 07.11.2007, his Arm Licence is being renewed from time to time. He is a law abiding citizen and he never misused the weapon at any point of time and even he has not displayed it so as to terrify the public at any point of time. Even when the

respondent No.4 and his subordinates intruded into his property on 18.08.2022, he did not reveal or disclose the arms he had to them though they have demolished compound wall and structures of his property. He has house site in D.No.16/309 of Nagarajupalle Polam, Kadapa Municipality, Y.S.R. District. The said property stands in the name of his wife. While so, the respondent No.2 issued proceedings under Ref.No.G1/1098/2022, dated 19.5.2022 published in Sakshi and Andhra Prabha daily newspapers proposing to acquire some extent from that property for the purpose of widening the road. Then, his wife filed W.P.No.23390 of 2022 before this Court seeking declaration that the action of the respondent No.4 herein in attempting to demolish the compound wall of her property as illegal and arbitrary. Pending the said writ petition, she was granted *Status quo* order on 01.8.2022 in I.A.No.1 of 2022. Despite *status quo* order passed by this Court, the respondent authorities by violating the *status quo* order intruded into his property with heavy machinery and demolished compound wall without taking any scientific measures. When he tried to resist the demolition, a case has been registered by the police against him in Crime

No.271 of 2022 for the offences punishable under Sections 3(1)(r), 3(1)(s). 3(2) (v), 3(2) (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Being aggrieved by registration of the crime, the petitioner and others filed CrI.P.No.7315 of 2022 under Section 482 Cr.P.C. to quash the proceedings in Crime No.271 of 2022. This Court granted stay of all further proceedings in the above crime *vide* I.A.No.02 of 2022. Later he filed Contempt Case in C.C.No.5637 of 2022 against all the officials who are directly involved in willful, deliberate violation of the order of this Court. The arms licence of the petitioner is in force up to 07.11.2022. On 14.7.2022, the petitioner applied for renewal of licence. But the respondent/police did not inform the status of his application seeking renewal of licence until 30.8.2022. While the matter stood thus, the respondent No.4 recommended to cancel/revoke his Arms Licence. In furtherance of the said recommendation, the respondent No.2 issued show cause notice dated 30.8.2022, *vide* Ref. No. REV-CSECOAA (MISC)/1/2022-SA(C3)-KDPCO calling for his explanation as to why his Arm Licence bearing No. Kadapa-391 under Unik No.021150000302092014, shall

not be revoked. The said notice is served on the petitioner herein through 'Whats App' and affixed the Notice to the door of his house. Immediately, he submitted his detailed reply to the show cause notice. Thereafter the petitioner was informed that his licence was revoked. Till today, the petitioner is not served with revocation order.

3. A counter affidavit has been filed by the respondent No.2, denying every aspect pleaded by the petitioner in his affidavit. On perusal of the counter affidavit, it goes to show that the petitioner herein applied for renewal of his Arms Licence i.e., Kadapa No.391 for a period from 08.11.2022 to 07.11.2027 in the prescribed Form along with payment of requisite fee through challan in terms of Section 13(2) of the Act, 1959. During the said course, the respondent No.4 herein i.e., the Commissioner, Kadapa Municipal Corporation, Kadapa submitted a report dated 18.8.2022 *vide Roc.No.1268/G1/2022* stating that the petitioner herein abused and assaulted Government officials of Kadapa Municipal Corporation and threatened them with dire consequences. Thereafter the respondent/police issued a show cause notice as per Section 17(3) (b) of the Act, 1959 as to why the arm licence

of the petitioner shall not be suspended/revoked. While the explanation of the petitioner pursuant to the show cause notice is under consideration, the Superintendent of Police, YSR District submitted a report stating that the petitioner has no threat to his life at present and moreover he is involved in a Crime as one of the accused and as such renewal of licence is not recommended. Accordingly, after thorough enquiry and considering the facts, the respondent authorities passed orders duly rejecting the request of the petitioner for renewal of licence *vide* Ref.No.REV-CSECOAA(MISC)/1/2022-SA(C3)-KDPCO, dated 01.2.2023. The copy of the said order was communicated to the Tahsildar, Kadapa with a direction to serve it upon the petitioner herein and the copy of the same was also sent to the petitioner through Registered Post. It is also stated in the counter that in any case if the petitioner is aggrieved by the order passed by the respondent authorities, the petitioner is at liberty to challenge the same before the competent authority in terms of Section 18 of the Act, 1959. It is further stated that since final order was passed in renewal application of Arm licence, this Writ Petition challenging the show cause

notice does not survive. Learned Assistant Government Pleader reiterated the same during the course of arguments and prayed to dismiss the Writ Petition.

4. Heard both sides and perused the record.

5. Learned counsel for the petitioner, in support of his case, relied upon the decision of the Telangana High Court in **Gaddi Gangi Reddy Vs State of Telangana**¹, wherein it is held,

“11. The next issue for consideration is, whether the petitioner be relegated to avail the remedy of appeal.

12. Though, there is no bar to entertain a writ petition even if petitioner has alternative remedy to redress his grievance, ordinarily, the writ Court does not entertain writ petition when the petitioner has an effective and efficacious statutorily engrafted appeal remedy against the decision of an authority. Section 18 of the Act provides appeal remedy. Thus, ordinarily, a person aggrieved by the decision of the original authority has to avail the remedy of appeal. As noted hereinabove, the order of the statutory authority is vitiated on two counts, i.e., it is not a speaking order and material relied on to take an adverse decision was not supplied, which go to the root of the matter. The appellate authority cannot cure this patent illegality. A non-speaking order also deprives the opportunity to raise

¹ **AIR 2021 Telangana 27**

grounds in support of appeal, thus, making the appeal remedy nugatory. In the facts of this case, as the order per se is sustainable, the Court is not inclined to relegate the petitioner to avail the remedy of appeal.”

6. On the other hand, learned Assistant Government Pleader relied upon the decision of the Allahabad High Court in **Misc. Single No.11462 of 2021 (Arjun Yadav Vs. State of U.P.)**, wherein it is held,

“7. In view of the law settled by the Constitution Bench of Hon'ble Supreme Court in the case of N.P.Ponnuswami Vs. Returning Officer, AIR 1952 SC 64, that where rights are created under the Statute and remedy for violation of such rights is also provided in the Statute, a writ petition should not be entertained under Article 226 of the Constitution, this Court is of the considered opinion that the petitioner should file an Appeal if he is aggrieved by the suspension order. With regard to the petitioner's argument that the order on the face of it is bad as there is no application of mind by the District Magistrate while passing the suspension order looking into the pre-requisite conditions mentioned in sub-clause 3 of Section 17 of the Act, this Court does not wish to express any opinion at this stage as it would prejudice the case of the petitioner before the Appellate Authority.

8. *The petitioner's argument regarding alternative remedy being no bar to entertain a writ petition where the order is without jurisdiction or has been passed without following the principles of natural justice does not appeal to this Court because there is a huge difference between "statutory remedy" and "alternative remedy". In case of alternative remedy, no doubt this Court has discretion either to entertain the petition or to relegate the litigant to the appropriate forum. In cases where statutory remedy is available, the only course open would be to direct the litigant to first approach the Forum/ Tribunal created by the Statute. This has also been reiterated in the judgment rendered by Hon'ble Supreme Court in the case of L. Chandra Kumar Vs. Union of India, 1997 (3) SCC 261.."*

7. The learned Assistant Government Pleader further relied upon the decision of the Delhi High Court in ***Shiv Kumar Vs. Union of India and others***², wherein it is held,

"7. In the appeal preferred against the above order, the Appellate Authority i.e., the Hon'ble Lieutenant Governor has observed as under:

"I have considered the submissions made by both the sides and gone through the case file. I

² **(2023) 05 Del CK 0412**

observe that as per record there seems to be no specific threat to the appellant or his family. Therefore, I am of the opinion that merely being apprehensive of his safety while practicing as an advocate is not a good enough reason for grant of an arms licence. The Licensing Authority, after considering all aspects of the matter, has passed a reasoned order keeping in view the facts and circumstances of the case. I, therefore, find no ground to interfere with it. The appeal is accordingly dismissed.”

8. This Court has considered the provisions of the Arms Acts, 1959 as also the decisions cited by the ld. Counsels for the parties. Section 13 of the Act provides that an application for grant of a licensing has to be made to the Licensing Authority as also the conditions under which the same would be issued. Section 14 specifies the situations wherein a Licensing Authority shall refuse to grant a license. In the opinion of this Court, Section 14 while setting out some of the situations in which the license shall not be granted, does not make the same exhaustive. As held in *Yashpal Singh* (supra), no one can claim a right to own an arms license. The relevant portion of the said order reads as under:

8. Reference, may be made to the recent judgment dated 29th September, 2015 in **W.P.(C) No. 8000/2015** titled *Rajkumar Pandey v. Additional Commissioner of Police,*

order dated 18th September, 2015 in **W.P.(C) No. 8893/2015** titled Nirankar Rastogi v. Joint Commissioner of Police and order dated 23rd September, 2015 in **W.P.(C) No. 8928/2014** titled Arvind Kumar Chauhan v. Lt. Governor, where on a conspectus of the case law on the subject, it has been held **that there is no right to have an arms licence which is a privilege and it is a question of fact which is to be ascertained by the authorities concerned whether a person is entitled to the said privilege or not and no interference with such factual findings is possible in writ jurisdiction.**

9. A Division Bench of this Court in People for Animals v. Union of India [CM No. 11288/2002, date of decision 20th May, 2011] has held that carrying and possessing firearms is only a matter of statutory privilege and no citizen has a blanket right to carry firearms. The relevant portion of the said order reads as under:

“20. It is well established that the matter of grant of licence for acquisition and possession of firearms is only a statutory privilege and not a matter of fundamental right under Article 21 of the Constitution of India. A Full Bench of the Allahabad High Court in Kailash Nath v. State of U.P., AIR 1985 All 291 observed as under:

A right is distinct from a mere privilege. The case of a licensee to possess or use firearm is materially different from a case of licence to deal in or sell firearms. Section 3 of the Arms

Act, 1959 deals with acquisition and possession of firearms or ammunition on the strength of a licence whereas Section 5 provides for a licence for manufacture, sale etc. of arms and ammunition. The licence for acquisition and possession of firearms is materially different from a licence for manufacture, sale etc. While the latter confers a right to carry on a trade or business and is a source of earning livelihood, the former is merely a personal privilege for doing something which without such privilege would be unlawful. **In my opinion the obtaining of a licence for acquisition and possession of firearms and ammunition under the Arms Act is nothing more than a privilege and the grant of such privilege does not involve the adjudication of the right of an individual nor does it entail civil consequences.** I may, however, hasten to add that even an order rejecting the application for grant of licence may become legally vulnerable if it is passed arbitrarily or capriciously or without application of mind. **No doubt, a citizen, may apply for grant of a licence of firearms mostly with the object of protecting his person or property but that is mainly the function of the State.** Even remotely this cannot be comprehended within the ambit of Article 21 of the Constitution which postulates the fundamental right of protection of life and personal liberty.”

In the same judgment it was also observed that:

The consistent trend of judicial decisions has been that the official granting of the licence involves the exercise of discretionary licensing powers which are concerned with privileges and not rights.

See Randall v. Northcote Council (1910) 11 CLR 100, Metropolitan Meat Industry Board v. Finlayson (1916) 22 CLR 340; Ex. P. Macarthy, re The Milk Board (1935) SR (NSW) 47; Nakkuda Ali v. Jayaratne [1951] A.C. 66; R. v. Metropolitan Police Commr., ex p. Parker [1953] 1 WLR 1150; Modern Theatres (Provincial) Ltd. v. Peryman (1960) NZLR 191 See also Merchants Bank Ltd. v. Federal Minister of Finance (1961) 1 All NLR 598 (Nigeria) (revocation of licence). The decision in Nakkuda Ali v. Jayaratne [1951] A.C. 66 was to the effect that the Controller of Textiles in Ceylon had cancelled a textile dealer's licence in pursuance of a power to revoke a licence when he had 'reasonable grounds' for believing its holder to be unfit to continue as a dealer. It was held that the Controller was not determining a question affecting the rights of subjects but was merely taking executive action to withdraw a privilege."

It is therefore, apparent that no citizen has a blanket right to carry firearms. *Its grant is subject to his applying for a license, and fulfilling the qualifications and criteria, spelt out in the Act and Rules. The National Rifle Association's position, therefore, that its members have a right to secure a license, is untenable. They have, at best a right to apply*

for, and be considered for the grant of a license, subject to fulfillment of the prescribed qualifications.

15. Arms licence is a creation of the statute and the Licensing Authority is vested with the discretion whether to grant or not grant such a licence, depending upon the fact situation in each case. All lawyers/advocates who are appearing on the criminal side for the accused or the prosecution cannot claim a right to own an arms license, inasmuch as this could result in issuance of arms licenses indiscriminately. The perceived weakness of the State, which is one of the grounds, which the Petitioner has urged for seeking the arms license, if accepted, would result in recognition of a right to own a fire arm. This recognition leading to issuance of a licence and unbridled owning of fire arms, could also pose a threat to the safety and security of the other citizens, which the Licensing Authority would have to keep in mind while allowing or rejecting the arms license. The Licensing Authority has to assess the threat perception and the reasons for the request for a license which has been given by the applicant concerned. It is only after assessing the same that such a license can be issued. An application by an advocate merely based on the ground of appearance on behalf of the accused persons, in the opinion of this Court, would not be sufficient to grant an arms license.”

8. Learned Assistant Government Pleader also relied upon the decision of the Karnataka High Court in W.P.No.202698 of 2019 (GM-RES) (***Sri.Hanamanth VS.Deputy Commissioner***), wherein it is held,

“3. The learned Additional Government Advocate appearing for the respondent pointed out that the order in question is appealable under [Section 18 of Arms Act 1959 3and](#) therefore petitioner is not entitled for the relief under **Article 226 and 227 of the Constitution of India.**

4. In view of the above facts, since appeal remedy is available under the statute, which is more adequate and more comprehensive than the one under **Article 227 of the Constitution**, petitioner is directed to exhaust the remedy under the *Arms Act*. As a result, the petition is dismissed. The time spent in pursuing the petition before this Court, shall be condoned in case any appeal is filed by the petitioner under [Section 18 of the Arms Act](#) within 30 days from today.”

9. On perusal of the aforesaid precedents, this Court is of the opinion that the entire scheme of Sections 17 and 18 of the Act, 1959 contemplates that if the possession of arms by the licensee is likely to pose danger to the public peace and safety, then it can be straight away cancelled

without even holding enquiry, by recording its satisfaction in writing.

10. In the present case, the respondent/police held enquiry by affording an opportunity to the petitioner herein by giving show cause notice to why his licence should not be revoked and it is for the reason that he is involved in a Criminal Case. No doubt, the Superintendent of Police has to come to conclusion as to whether the petitioner has life threat or has to protect his property or not. It is always subjective satisfaction of the concerned Superintendent of Police to come to conclusion and it is also whether the petitioner is fit or unfit for holding licence. In fact as seen from Section 17, it is manifest that before exercising the power of revocation or cancellation of licence, under the said provisions, no notice is required to be given to the licence holder. Sub-Section (5) merely requires that for passing an order suspending or revoking a licence the licensing authority shall record in writing the reasons therefor and furnish the same to the holder of the licence on his demand. Thus, the Act or the Rules made thereunder do not contemplate any express provision of notice or an opportunity of being heard to be given to the

licence holder before cancelling the licence. However, in the case on hand, it is not the case of the petitioner that no notice was served on him, but on the other hand he also submitted his explanation. Therefore, it can be safely inferred that an opportunity was given to the petitioner to give explanation for the show cause notice. Getting the arms licence as provided by Section 3 of the Act, is neither a Fundamental Right for protection of life and personal liberty as embodied under Article 21 of the Constitution of India nor a civil law right.

11. Against any order passed by the respondent authorities, the Act provided an adequate provision, namely Appeal under Section 18 of the Act 1959. According to Section 18 of the Act 1959 the appellate authority has the power to modify or reverse the order of the competent authority if challenged before it, and it shall be final and binding upon the competent authority. The appellate authority can even go into the factual aspects and can judge correctness, legality, propriety and justification of order cancelling/revoking licence. In case of reversal of the order, by the appellate authority, the petitioner would be entitled to get back arms licence. When there is an

alternative remedy as per the statute, this Court is of the opinion, the petitioner can avail same, but not writ jurisdiction.

12. In view of the aforesaid facts and circumstances of the case, the petitioner is at liberty to prefer appeal before the appellate authority within a period of three weeks from the date of receipt of copy of this order and the appellate authority is directed to pass appropriate orders within a period of four (4) weeks thereafter, in accordance with law.

With the above observation, Writ Petition is disposed of. No costs.

Miscellaneous petitions, if any pending, in the Writ Petition, shall stand closed.

JUSTICE K. SREENIVASA REDDY

Dated: 09.10.2023
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THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY

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