

HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

WRIT PETITION No.18183 of 2023

ORDER:

This Writ Petition has been filed questioning the orders of the first respondent in confirming the orders of rejection for grant of Arms License by the second respondent in Memo No.12636/Arms/2021, dated 17.05.2023, as illegal, arbitrary, unconstitutional and contrary to the provisions of the Arms Act, 1958 (for short “the Act”) and the Rules made thereunder and consequently to set aside the same by granting the Arms License to the petitioner and for other reliefs.

2. The case of the petitioner is that he is an Entrepreneur carrying out several businesses at Hyderabad and other cities of Telangana State and he is also carrying out Real estate Business at Siddipet and Hyderabad and for the business purposes, he carries huge cash to be distributed to the persons at various places. It is the further case of the petitioner that in the course of business, he has received various threat calls from anti-social elements and there is every possibility of their attacking on him for the sake of money and as he is having threat perception, he made an application to the respondents

seeking Arms License for self-protection *vide* application, dated 25.03.2021. It is the further case of the petitioner that acting on the application submitted by him, dated 25.03.2021, the second respondent, *vide* memo bearing No.M/09/138/2021, dated 02.04.2021, called for report from the Assistant Commissioner of Police concerned. In compliance of the Memo, dated 02.04.2021 issued by the second respondent, the Inspector of Police, Siddipet has submitted a detailed report *vide* letter No.274/F-1/2021, dated 12.08.2021 stating that on verification of the antecedents of the applicant, he did not find anything adverse against him and he also stated that the petitioner has no criminal background and not involved in any criminal cases and recommended the case of the petitioner for grant of Arms License.

3. It is the further case of the petitioner that the second respondent, not satisfied with the report of the Inspector of Police, dated 12.08.2021 and not considering the same, instructing the third respondent to cause discrete enquiries into the antecedents of the applicant whether he is having any threat or involved in any criminal case and to furnish a report for taking further steps into the matter within a week. The third respondent once again conducted a discrete enquiry and

forwarded a report to the second respondent *vide* letter, dated 30.03.2022 wherein it is stated that his enquiry elicited that the applicant studied upto 10th Class at Siddipet and Mechanical Engineering at Hyderabad and presently, he is doing business at Hyderabad. Further, the applicant has lands at Siddipet Town, Film Nagar and Gandipet of Hyderabad and apart from the above he is also carrying out Real Estate Business at Siddipet and Hyderabad in Telangana State. During the course of his business, he carries huge cash with him to various places at Telangana State. It is further submitted that knowing the fact that the applicant carries huge cash, unsocial elements may venture to attack him at any point of time for the sake of money and sometimes it may lead to his assassination, if he revolts against them. It is further submitted that the third respondent has verified the antecedents of the applicant but did not find anything adverse to him and he has no criminal background and not involved in any criminal cases so far. Submitting the above facts, the third respondent rejected to recommend the case of the petitioner for grant of Arms License without assigning any valid reason.

4. Relying on the said report of the third respondent, dated 30.03.2022, the second respondent has passed the order

bearing No.M/09/138/2021, dated 28.04.2022. Aggrieved by the order of the second respondent, the petitioner has filed an appeal on the file of the first respondent. The first respondent, *vide* the impugned proceedings bearing Memo No.12636/Arms/2021 Government of Telangana, Home (ARMS) Department, dated 17.05.2023, has rejected the case of the petitioner stating that the applicant has no threat perception and also he could not satisfy any one condition as per Rule 12(3) of the Arms Rules, 2016 specified by the Government of India in the Ministry of Home Affairs. Assailing the orders of the second respondent, as confirmed by the first respondent by proceedings, dated 17.05.2023, the present Writ Petition has been filed.

5. Learned counsel for the petitioner has vehemently contended that the petitioner's application was rejected on the sole ground that there is no genuine need to grant Arms License to the petitioner as the petitioner is not facing any threat perception. It is further argued by the learned counsel for the petitioner that the respondents 1 and 2, without considering the case of the petitioner whether the petitioner's case falls within Section 14(1)(b) of the Arms Act, 1959, have passed the impugned order without assigning any valid reasons and the

impugned orders passed by the respondents are bereft of reasons and the same amounts to violation of principles of natural justice and are liable to be set aside.

6. The respondents filed a detailed counter-affidavit, wherein they have admitted that the authorities are empowered under the Act and there is a legal bar for having possession or carrying a fire arm unless a valid license is first secured in accordance with the provisions of the Act and secondly, even the original grant under Section 13 (2A) of the Act confers widest discretion on the licensing authority. It is the case of the respondents that even though at the first instance, there was a recommendation for granting arms license by the third respondent vide Memo No.274/F-1/2021, as the report submitted by the respondent was incomplete and without filling all the columns, respondent No.2 *vide* memo, dated 08.11.2021 redirected the third respondent to re-enquire into the matter and submit his report for taking further action in the matter. On such instructions, the third respondent again sent his report dated 30.03.2022 to the second respondent through proper channel stating that there is no threat perception to the petitioner and sent his recommendation not to grant any fresh license to the petitioner. Basing on the enquiry report submitted by the third respondent

and also as per the remarks furnished by the Assistant Commissioner of Police, Siddipet, the second respondent has passed orders *vide* Lr.No.M/09/138/2021, dated 28.04.2022 rejecting the request for grant of arms license. Questioning the said rejection order, the petitioner has filed an appeal before the first respondent and the first respondent-the appellate authority has confirmed the rejection orders stating that as the petitioner has fulfilled all the conditions as required under Rule 12(3) of the Arms Rules, 2016, has rightly rejected to consider the case of the petitioner. The orders passed by the second respondent, as confirmed by the first respondent do not suffer from legal infirmities warranting interference of this Court under Article 226 of the Constitution of India. It is the specific case of the petitioner that no specific reasons were assigned in the orders passed by either the first or the second respondent to grant license and even in the rejection order of the third respondent.

7. Learned counsel for the petitioner relied on the judgment of this Court in ***Syed Afzal Mehdi v. State of Andhra Pradesh***¹ and submitted that Article 21 of the Constitution of India mandates no person shall be deprived of his life and personal liberty except according to the procedure established

¹ 2010 (2) ALD (CrL.) 316

by law and also placed reliance on the judgments of the Hon'ble Apex Court in **A.K.Gopalan v. State of Madras**² and **M.Nagaraj v. Union of India**³. Learned counsel for the petitioner further submitted that unless the licensing authority is satisfied that any of the grounds mentioned in Section 14 (1) (b) of the Act exists, an application for grant of an Arms Licence shall not be refused on a vague ground such as absence of genuine need. Learned counsel for the petitioner also relied on the judgment of the Andhra Pradesh High Court in **Kolan Narasimha Reddy v. State of A.P.**⁴ wherein the learned Single Judge held in paragraph No.13 as follows:-

“13. In fact, the petitioner herein, aggrieved by the order of refusal passed by the second respondent, preferred a statutory appeal under Section 18 of the Act and the State Government vide G.O.Rt.No.2262, Home (ARMS) Department, dated 03.12.2012, rejected the said appeal, saying that there is no threat perception to the petitioner and there is chance of misuse of weapon by the petitioner. In the appeal filed by the petitioner before the State Government, the petitioner brought to the notice of the respondents various writ petitions filed before this Court and according to the petitioner, he filed the said writ

² AIR 1950 SC 27

³ (2006) 8 SCC 212

⁴ (2016) 2 ALD (Cri) 1004

petitions by way of public interest litigation, complaining illegal assignment of lands and to protect the Government lands and the petitioner further stated that due to the said efforts certain officials and land mafia indirectly threatened and directly advised him not to make any complaints in future and otherwise to face dire consequences. It is also evident from the grounds of appeal that the petitioner also brought to the notice of the authorities with regard to the properties owned by him and his family members at various places in Ranga Reddy, Medak and Nalgonda districts and stated that he needs to move to look after the same. Along with the appeal, petitioner also filed not only the documents in support of his request and also enclosed a copy of the judgment of this Court in W.P.No.21780 of 2009.”

8. On careful examination of the material on record would show that the order passed by the first respondent confirming the orders passed by the second respondent does not contain any valid reasons for refusal to grant the Arms Licence, except stating that there is no genuine threat to the petitioner to grant Arms Licence to the petitioner. The licensing authority should therefore be conceded with the power and discretion to prevent misuse of the weapon by making a strict scrutiny of the antecedents of the applicant and the potential for misuse of arms. But, in this process, it is not permissible for the authority

to be subjective in its assessment of existence of reasons for grant of a licence. This Court held in **Syed Afzal Mehdi case** (1 supra) that *“a test to be applied by the licensing authority in considering grant of arms licence is whether the applicant has established his credentials as a law abiding person leading a peaceful life without any criminal record and 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. Once these two tests are satisfied an application for grant of licence shall not ordinarily be rejected.*

9. Coming to the facts of the present case, both the reports sent by the third respondent would disclose that the petitioner is not involved in any criminal case nor his credentials are doubtful and granting of arms license would lead to breach of peace and safety of the society. In the absence of the specific reasons being assigned by the first respondent in confirming the orders of the second respondent, this Court is of the considered opinion that both the orders are liable to be set aside. Accordingly, both the orders are set aside and the second respondent is directed to call for fresh report from the third respondent and consider the case of the petitioner for granting

of Arms License in accordance with the provisions of the Act and the Rules made thereunder within a period of four (4) weeks from the date of receipt of a copy of this order.

10. With the above observations, this Writ Petition is disposed of. There shall be no order as to costs.

11. Consequently, miscellaneous applications, if any, pending shall stand dismissed.

JUSTICE C.V.BHASKAR REDDY

19.12.2023

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