

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

+ Writ Petition No.21780 of 2009

% Dated: 31-05-2010

Syed Afzal Mehdi

... Petitioner

VERSUS

\$ The State of A.P. rep., by its
Principal Secretary, (Home),
Secretariat Buildings, Saifabad,
Hyderabad & another.

... Respondents

! Counsel for the Petitioner: Sri D. Jagan Mohan Reddy for
Sri Harender Prasad

^ Counsel for the respondents: Assistant Government
Pleader for Home

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> HEAD NOTE:

? Cases referred:

- 1) 1993 Allahabad 291.
- 2) AIR 1950 SC 27
- 3) (2006) 8 SCC 212
- 4) (1978) 1 SCC 248
- 5) (1989) 1 SCC 204
- 6) (2010) 3 SCC 571
- 7) (1993 AIR SCW 863)
- 8) (AIR 1986 SC 180)
- 9) (AIR 1979 SC 1369)
- 10) (AIR 1981 SC 746)
- 11) (1983) 2 SCC 96

12) (1990) 1 SCC 520.

**IN THE HIGH COURT OF JUDICATURE,
ANDHRA PRADESH AT HYDERABAD
(Special Original Jurisdiction)**

**PRESENT:
THE HON'BLE MR. JUSTICE C.V.NAGARJUNA REDDY**

**MONDAY, THE THIRTY FIRST DAY OF MAY,
TWO THOUSAND TEN**

WRIT PETITION No.21780 OF 2009

Between:
Syed Afzal Mehdi.

... Petitioner

And
The State of A.P., repled., by its
Principal Secretary,(Home),
Secretariat Buildings, Saifabad,
Hyderabad and another.

... Respondents

Counsel for the petitioner: Sri D.Jagan Mohan Reddy for
Sri Harender Prasad.

Counsel for the respondents: Assistant Government Pleader for
Home.

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This Court made the following:

JUDGMENT:-

The unsuccessful applicant for grant of arms license filed this Writ Petition assailing Memo No.20017/Arms/2006, dated 13.3.2008 issued by respondent No.1.

The facts in brief are as under:

The petitioner is a resident of House No.16-8-87, Kaladera, Malakpet, Hyderabad. The petitioner pleaded that he was appointed as President of Managing Committee of Darga-Hazrat Hussain Shah Wali, situated at Rajendranagar Mandal, Ranga Reddy District, vide: Proceedings dated 1-2-2007 of the Chief Executive Officer of the A.P. State Wakf Board, published in the Official Gazette dated 8-3-2007. The petitioner further pleaded that the said Wakf has properties worth about Rs.17,000/- crores, which are subject matter of heavy litigation pending before various Courts and Fora, including this Court; and that being the President of the Wakf Committee, he is defending the interest of the Institution in all these cases.

The petitioner also averred that on his complaint given against certain individuals, a criminal case was registered vide Crime No.232 of 2007 by the Narayanaguda Police Station on 28-6-2007 for the offences under Sections 468, 471, 419 and 420 read with Section 34 IPC in connection with the alleged cheating indulged in by the accused with regard to the landed property owned by the petitioner and two others. A charge sheet is stated to have been filed in the said criminal case; and that the said case is pending in the Court of the IX Additional Metropolitan Chief Magistrate, Hyderabad.

In the above mentioned back-ground, the petitioner made an application to the respondents for grant of arms license in order to protect his own life and property, both his personal and of the Wakf. The said application having been rejected by the impugned memo of respondent No.1, the petitioner filed the present Writ Petition.

The petitioner assailed the order, *inter alia*, on the ground that the same does not contain any reasons whatsoever; and that the order of rejection does not conform to the provisions of Sections 13 and 14 of the Arms Act, 1959 (for short “the Act”) as none of the grounds, on which an application for grant of arms license is liable to be rejected, has been attracted to his case. The petitioner also pleaded that he is facing life threat; and that if an arms licence is not granted, his life will be in jeopardy.

The Assistant Secretary to Government of Andhra Pradesh, Home Department, filed a counter-affidavit, wherein it is, *inter alia*, averred that on receipt of the application from the petitioner, respondent No.1 forwarded the same to the Deputy Commissioner of Police, East Zone, Hyderabad, for conducting an enquiry into the matter and sending the verification report; that after holding the enquiry, the Deputy Commissioner has submitted his report to the Commissioner of Police, Hyderabad, through his letter, dated 2-12-2007, who, in turn, forwarded the same to the Government, vide: his letter dated 7-12-2007. It is further averred that the petitioner is staying in his own house at Kaladera, Malakpet, Hyderabad, for a long time and doing business in real estate; that the locality, in which the petitioner is staying, is thickly populated and communally sensitive; that there is no necessity for the petitioner to possess a weapon for his self protection; and that on the said premise the Deputy Commissioner of Police did not recommend for grant of arms license to the petitioner. It is averred that on considering the said report, respondent No.1 issued the impugned memo rejecting the petitioner's application. It is conceded that the impugned memo does not contain detailed reasons but it was sought to be justified on the ground that public interest did not warrant disclosure of the reasons. The respondents placed reliance on Section 14(1)(b)(ii) of the Act to support rejection of arms license.

Sri D.Jagan Mohan Reddy, learned counsel for the petitioner, reiterated the pleadings contained in the affidavit and placed reliance on the judgment of the Allahabad High Court in **GANESH CHANDRA BHATT VS. DISTRICT MAGISTRATE, ALMORA**^{1[1]}.

The learned Assistant Government Pleader for Home tried to sustain the impugned order by stating that rejection of the petitioner's application is based on the Police report; and that the same does not suffer from any illegality or arbitrariness.

The issue that arises for consideration in the Writ Petition is whether the impugned order of rejection is in conformity with and sustainable in law.

The legislative background and relevant provisions of the Act need to be examined in deciding the above issue.

A perusal of the Introduction to and the Statement of Objects and Reasons of the Act would indicate that the Indian Arms Act, 1878, which preceded the present Act, was enacted by the British with a view to disarm the entire nation. The said Act was repealed by the Arms Act, 1959. Under the repealed Act, even the swords, daggers, spears, spear-heads, bow and arrows were declared as 'arms'. Even after independence, the law declaring the said weapons as 'arms' was allowed to

1[1]) 1993 Allahabad 291.

continue unaltered on the Statute Book. Post-independence, the law makers felt that the rigours of the Indian Arms Act, 1878 and the Rules made thereunder continued to make it difficult for law abiding citizens to possess firearms for self-defence; whereas terrorists, dacoit-gangs and other anti-social or anti-national elements were using not only civilian weapons but also bombs, hand-grenades, Bren-guns, Sten-guns, 303 bore service rifles and revolvers of military type for perpetrating heinous crimes against society and the State. The Indian Arms (Amendment) Bill (No.49 of 1953) was introduced in the Lok Sabha on 27-11-1953, which was discussed in the House on 26-3-1954 and circulated for public opinion. After receiving the opinions from all the State Governments, legal luminaries, Bar Associations, Judges, Collectors, Senior Police Officers and Local Bodies of their respective States, the Bill was introduced with the following objects:-

“(a) to exclude knives, spears, bows and arrows and the like from the definition of ‘arms’.

(b) to classify firearms and other prohibited weapons so as to ensure –

(i) (i) that dangerous weapons of military patterns are not available to civilians, particularly anti-social elements;

(ii) (ii) **that weapons for self-defence are available for all citizens under license unless their antecedents or propensities do not entitle them for the privilege;** and

(iii)(iii) that firearms required for training purposes and ordinary civilian use are made more easily available on permits;

(c) to co-ordinate the rights of the citizen with the necessity of maintaining law and order and avoiding fifth-column activities in the country;

(d) to recognize the right of the State to requisition the services of every citizen in national emergencies. The licensees and permit holders for firearms, shikaris, target shooters and rifle-men in general (in appropriate age groups) will be of great service to the country in emergencies, if the Government can properly mobilize and utilize them". (Emphasis added)

The Bill was passed by the Parliament and was made into an Act, which came into force with effect 1-10-1962. In furtherance of the Objects of the Bill, knives, spears, bows and arrows and the like were excluded from the definition of "arms". The Act also introduced a dichotomy, whereby prohibited arms are separated from other fire arms.

Section 3 of the Act prohibits acquisition, possession or carrying of any fire arm or ammunition without holding a licence issued in accordance with the provisions of the Act.

Section 4 provides for grant of licence for acquisition and possession of arms.

Under Section 5, manufacture, sale etc., of arms and ammunition without a licence is prohibited.

Section 7 deals with prohibited arms and ammunition, which prohibits their acquisition, possession and carrying or sale, manufacture etc., without the authority of the Central Government.

Section 13 postulates making an application for grant of a licence for any of the purposes mentioned in Chapter-II. Under this provision, after calling for report from the Officer-in-charge of the nearest Police Station and considering the said report, the licensing authority is empowered either to grant the licence or refuse to grant the same under an order to be made in writing. Such an order shall be made after holding an enquiry by the licensing authority. Sub-Section (3) of

Section 13, which is very relevant in the present context reads as under:

“13 (3): The licensing authority **shall grant:-**

(a) a licence under Section 3 where the licence is required –

(i) by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of muzzle loading gun to be used for bona fide crop protection:

Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle loading gun will not be sufficient for crop protection the licensing authority may grant a licence in respect of any other smooth bore gun as aforesaid for such protection; or

(ii) in respect of a point 22 bore rifle or an air rifle to be used for target practice by a member of a rifle club or rifle association licensed or recognized by the Central Government;

(b) a licence under Section 3 in any other case or a licence under Section 4, Section 5, Section 6, Section 10, or Section 12, **if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same.**” (Emphasis added)

Section 14(1) envisages that the licensing authority shall refuse to grant the licence under Sections 3, 4 or 5, where such licence is required in respect of any prohibited arms or prohibited ammunition. A similar refusal shall be made in

respect of other cases under Chapter-II, as envisaged in Section 14(1)(b), which reads as under:

“14 (1) (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”.

Sub-Section 3 of Section 14 provides that where the licensing authority refuses to grant a licence to any person, it shall record in writing the reasons therefor and furnish to that person on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

The above discussed provisions of the Act, construed in the light of its Objects and Reasons, would unmistakably indicate that the legislation has conferred on the citizen a right to obtain an arms licence for protection of his person or property. This right is placed on a far higher pedestal than the right of a person to deal with the prohibited fire arms. Such right is, of course, subject to the provisions of Section 14, which contains a non-obstante clause and empowers the authority to refuse grant of licences on the grounds mentioned therein. In contrast,

there is a complete prohibition on grant of licences in respect of the prohibited arms or prohibited ammunition, which are normally used by the military, para-military and police forces deployed by the State while exercising its sovereign functions to protect the safety and security of the nation, both from external aggressions and also to control the law and order within the country.

A careful analysis of Sections 13 and 14 would go to show that a citizen is entitled as of right for an arms licence, if his case falls under Section 13(3)(a)(i) subject to his satisfying that his case does not fall in any of the grounds mentioned in Section 14(1)(b). However, in other cases falling under Sections 3, 4, 5, 6, 10 and 12, an applicant should not only show that his case does not fall under any of the grounds mentioned in Section 14(1)(b), but also that a good reason exists for grant of such a licence as envisaged under Section 13(3)(b)). Section 14(1)(b), postulates grounds for refusal. Sub-Clauses (1) and (2) of Clause (b)(i) are not relevant in the present context. Sub-Clause (3) of clause (b)(i) and sub-clause (ii) of clause (b) of Section 14(1) offer two separate grounds for the competent authority to refuse licence. They are – 1) where the licensing authority has reason to believe that the person who required the licence is unfit for a licence or 2) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

A perusal of the impugned memo shows that rejection of the petitioner's application was made on the sole ground that there is no genuine need to grant arms licence to the petitioner. Interestingly, in the counter affidavit, an additional ground is pleaded by stating that the area in which the petitioner is staying is thickly populated and communally sensitive. In my opinion, both these grounds are not sustainable.

Taking the ground mentioned in the impugned order first, it is useful to recall the statement of objects and reasons which indicate that the parliament itself is conscious of the fact that terrorists, dacoit gangs or anti-social elements are using all sorts of weapons and unless the rigours of the Arms Act then in force and the Rules made thereunder are relaxed, it would be difficult for the law abiding citizens to possess fire arms for self-defense. It is an undeniable fact that the present day society is strife torn. Instances of burglary, dacoity, house breaking, robbery etc., are on increase on one hand and anti-social and anti-national elements are on a rampage on the other. A situation may develop in a sudden and unforeseen manner, e.g., a gang of dacoits may suddenly break into the house of a citizen in the dead of the night or a terrorist may try to kill a person or a sudden riot may take place without anyone anticipating even moments before such events taking place. The State is unable to fully protect the lives of its citizens and more often the Police arrive at the scene after the damage is done only to find out the cause for the

occurrence. As a result, the innocent victims are falling prey to the violence unleashed by desperados. It is in this situation that the State should feel the responsibility of protecting the lives and properties of the citizens by rationally interpreting the provisions of the Act to advance the purpose for which it is made. From the admitted facts of the present case, it is quite evident that the petitioner has a clean record and has not been involved in any criminal or land grabbing case as an accused. On the other hand, it is not disputed that on the complaint given by the petitioner, a criminal case has been registered by the Police of Narayanaguda Police Station and charge sheet has been filed before the IX Additional Metropolitan Chief Magistrate, Hyderabad, which is pending. The plea of the petitioner that the Wakf for which he is a President owns properties of high value estimated at Rs.17,000/- crores and are subject to heavy litigation is also not disputed. In the face of these uncontroverted facts, it cannot be said that no good reason exists for the petitioner to claim an arms licence.

It shall be next seen whether the petitioner's case falls under the grounds mentioned under Section 14(1)(b) of the Act for refusal of licence. Under Section 14, if the licensing authority has reason to believe that the person, who applied for an arms licence, is unfit to hold a licence or where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant the licence, an arms licence can be refused. It is not the case of the licensing

authority that the petitioner is not fit to hold a licence. As noted above, in the counter-affidavit it is pleaded that the petitioner is staying in a thickly populated and communally sensitive area. But, in my considered view, it is not permissible for the licensing authority to assume that if a person is a resident of a communally sensitive area, either he is not fit to hold a licence or that granting of a licence will adversely affect the security of the public peace or public safety. Far from there being any material, which justifies the licensing authority to arrive at such a conclusion, the report submitted by the Inspector of Police to the Deputy Commissioner of Police shows that the petitioner is having his own house, doing business in real estate and has got some agricultural lands in Medak District. It is further stated that neither the petitioner nor his close relatives are involved in any criminal cases. It is, however, mentioned in the report that the area in which the petitioner is residing is inhabited by one community and is thickly populated and communally sensitive. A perusal of the record further reveals that the Verification Roll for the Grant of Arms Licence prepared by the office of Commissioner of Police, Hyderabad, describes the petitioner's character and antecedents as 'good' and the petitioner is physically fit, mentally sound and can handle the weapon safely. In Column No.8 it is stated that the weapon is required for his self-protection. Against Column No.15 it is stated that the petitioner is not involved in any criminal case nor he is a land grabber or an associate of a known land grabber

and his close kith and kin were also not involved in any criminal or land grabbing cases and civil disputes. The material before the licensing authority, thus, clearly reveals that the petitioner is fit and eligible for the grant of an arms licence. In weighing the pros and cons, the prime test to be applied is whether the applicant's antecedents and propensities disentitle him to an arms licence. This is apparent from clause (b)(ii) of the statement of objects and reasons reproduced hereinbefore.

Apart from the statutory provisions referred to above, there exists a constitutional dimension to the case. Article 21 of the Constitution of India mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law. Over a period, judicial interpretation of Article 21 expanded its horizons by leaps and bounds. The restricted interpretation placed by the Supreme Court on this Article in **A.K. Gopalan Vs. State of Madras**^{2[2]} gave way to a much liberal interpretation of the Article which was held to encompass many facets of human life. In **M. Nagaraj vs. Union of India**^{3[3]} the Supreme Court traced change of trajectory of interpretation of Article 21 three decades after **A.K. Gopalan (2 supra)** in the following words.

2[2]) AIR 1950 SC 27

3[3] (2006) 8 SCC 212

“An instance of literal and narrow interpretation of a vital fundamental right in the Indian Constitution is the early decision of the Supreme Court in **A.K. Gopalan v. State of Madras** (*AIR 1950 SC 27*). Article 21 of the Constitution provides that no person shall be deprived of his life and personal liberty except according to procedure established by law. The Supreme Court by majority held that ‘procedure established by law’ means any procedure established by law made by Parliament or the legislatures of the State. The Supreme Court refused to infuse the procedure with principles of natural justice. It concentrated solely upon the existence of enacted law. After three decades, the Supreme Court overruled its previous decision in **A.K. Gopalan (supra)** and held in its landmark judgment in **Maneka Gandhi v. Union of India**^[4] that the procedure contemplated by Article 21 must answer the test of reasonableness. The Court further held that the procedure should also be in conformity with the principles of natural justice. This example is given to demonstrate an instance of expansive interpretation of a fundamental right. *The expression ‘life in Article 21 does not connote merely physical or animal existence. The right to life includes right to live with human dignity.* This Court has in numerous cases deduced fundamental features which are not specifically mentioned in Part III on the principle that certain unarticulated rights are implicit in the enumerated guarantees.”

In **Kehar Singh vs. Union of India**^[5] emphasizing on the paramount nature of Article 21, the Supreme Court held:

“To any civilized society, there can be no attributes more important than the life and personal liberty of its members. That is evident from the paramount position given by the Courts to Article 21 of the Constitution. These twin attributes enjoy a fundamental ascendancy over all other attributes of the political and social order, and consequently, the Legislature, the Executive and the Judiciary are more sensitive to them than to the other attributes of daily existence. The deprivation of personal liberty and the threat of the deprivation of life by the action of the State is in most civilized societies regarded seriously and, recourse, either under express constitutional provision or through legislative enactment is provided to the judicial organ.”

4[4] (1978) 1 SCC 248

5[5] (1989) 1 SCC 204

**In State of West Bengal and others vs. Committee for Protection of
Democratic Rights, West Bengal and others^{6[6]}, the Apex Court held:**

“Article 21, one of the fundamental rights enshrined in Part III of the Constitution declares that no person shall be deprived of his “life” or “personal liberty” except according to the procedure established by law. It is trite that the words “life” and “personal liberty” are used in the article as compendious terms to include within themselves all the varieties of life which go to make up the personal liberties of a man and not merely the right to the continuance of a person’s animal existence. (see **Kharak Singh vs. State of U.P.** (*AIR 1963 SC 1295*)).

In a plenitude of judgments, the Supreme Court recognized different shades of rights as comprehended by Article 21 such as: (1) the right to free education up to the age of 14 years - **Unni Krishnan Vs. State of A.P.**^{7[7]}; (2) the right to livelihood - **Olga Tellis Vs. Bombay Municipal Corporation**^{8[8]} (3) the right to speedy trial - **Husainara Khatoon vs. Home Secretary**^{9[9]}; (4) the right to live with dignity - **Francis Coralie Mullen Vs. Administrator**^{10[10]} (5) the right against

6[6] (2010) 3 SCC 571

7[7]) (1993 AIR SCW 863)

8[8]) (AIR 1986 SC 180);

9[9]) (AIR 1979 SC 1369

10[10]) (AIR 1981 SC 746);

custodial violence - **Sheela Barse vs. State of Maharashtra**^{11[11]}; and (6) the right to shelter - **Sontistar Builder vs. Narayan Khimalal Totame**^{12[12]}.

It is thus, indubitable that the right of a citizen to protect himself, his family and property are integral part of right to life guaranteed by Article 21 of the Constitution, subject to the limitations contained therein. In asserting such a right, every citizen has a right to apply for an arms licence. While considering such application, the licensing authority shall not only keep in view the statutory provisions of the Act, but also the constitutional parameters relating to the applicant's fundamental right to life.

Undoubtedly, it is imperative for the State to ensure that possession of arms by the people under licences is not misused for unlawful purposes. The licensing authority should therefore be conceded with the power and discretion to prevent such misuse 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. A law abiding citizen would always like to have a fire arm for a bona fide purpose, for, he is aware of the consequences of its misuse. Therefore, test to be

11[11]) (1983) 2 SCC 96

12[12]) (1990) 1 SCC 520.

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.

In **Ganesh Chandra Bhatt (1 supra)**, Markandey Katju, J., (as he then was), traced the legislative history of the Act and the purposes for which it was made in the light of Article 21 of the Constitution and held 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”.

Unless the licensing authority is satisfied that any of the grounds mentioned in Section 14(1)(b) exists, an application for grant of an arms licence shall not be refused on a vague ground such as absence of genuine need.

For the aforementioned reasons, the impugned memo cannot be sustained in law and the same is accordingly quashed. Respondent No.1 is directed to reconsider the petitioner’s application in the light of the findings rendered above, pass a fresh order and communicate the same to the petitioner within a period of two months from the date of receipt of a copy of this judgment.

The Writ Petition is accordingly allowed.

C.V.NAGARJUNA REDDY, J

Date:31-05-2010

Note:

**LR copies to be marked.
(BO)**

MNR