

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 12TH DAY OF JULY 2017/21ST ASHADHA, 1939

WP(C) .No. 31149 of 2012 (P)  
-----

PETITIONERS:  
-----

K.P.HARILAL, AGED 46 YEARS,  
S/O.LATE PAPUTTY, KOLANTHARA HOUSE,  
PERINJANAM P.O., THRISSUR.

BY ADV. SRI.P.SANJAY

RESPONDENTS:  
-----

1. STATE OF KERALA,  
REPRESENTED BY SECRETARY,  
HOME DEPARTMENT, SECRETARIAT,  
THIRUVANANTHAPURAM, PIN-695 001.
2. LAND REVENUE COMMISSIONER,  
THIRUVANANTHAPURAM, PIN-695 001.
3. DISTRICT COLLECTOR,  
THRISSUR, PIN-680 001.
4. UNION OF INDIA,  
REPRESENTED BY SECRETARY,  
DEPARTMENT OF HOME AFFAIRS,  
NEW DELHI-110 001.

R1 TO R3 BY GOVERNMENT PLEADER SMT.MABLE C.KURIAN  
R4 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 12-07-2017, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:

mbr/

APPENDIX

PETITIONERS' EXHIBITS:

- P1 : COPY OF MEMBERSHIP CERTIFICATE OF THE LIONS CLUB AND  
IDENTITY CARD ISSUED BY GURUDEVA CHARITABLE TRUST.
- P2 : COPY OF THE MEMBERSHIP CERTIFICATE OF THE LIONS CLUB  
AND IDENTITY CARD ISSUED BY GURUDEVA CHARITABLE TRUST.
- P3 : COPY OF MEMBERSHIP CERTIFICATES OF SREE SARASWATHI  
VIDYA NIKETHAN, PRINJANAM, THRISSUR AND OF SREE  
NARAYANA MISSION, KODUNGALLUR.
- P4 : COPY OF MEMBERSHIP CERTIFICATES OF SREE SARASWATHI  
VIDYA NIKETHAN, PRINJANAM, THRISSUR AND OF SREE  
NARAYANA MISSION, KODUNGALLUR.
- P5 : COPY OF REPORT DTD.23.11.2009 BEARING NO.A3 5194/2009  
FROM TAHSILDAR, KODUNGALLOOR TALUK, THRISSUR.
- P6 : COPY OF REPORT DTD.7.10.2009 BEARING  
NO.D2(B) 40256/09/R FROM THE SUPERINTENDENT OF POLICE,  
THRISSUR.
- P7 : COPY OF THE PROCEEDINGS OF DISTRICT COLLECTOR BEARING  
NO.C7/38032/09/K.DIS. DTD.19.6.2010.
- P8 : COPY OF THE ORDER LR(A)5 35060/10 FROM LAND REVENUE  
COMMISSIONER, THIRUVANANTHAPURAM, DTD.26.9.2011.
- P9 : COPY OF THE ORDER DTD.31.3.2010 OF THE JOINT SECRETARY  
MINISTRY OF HOME AFFAIRS.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

**DEVAN RAMACHANDRAN, J.**

=====

W.P.(C) No.31149 of 2012

=====

Dated this the 12<sup>th</sup> day of July, 2017

**JUDGMENT**

The petitioner challenges an order issued by the Commissioner of Land Revenue, who has rejected the application of the petitioner for licence to hold a Non-Prohibited Bore weapon on the ground that the petitioner does not face imminent and grave danger to his life. The petitioner has challenged this order, appended to this writ petition as Ext.P8, on various grounds but primarily alleging that it has been issued without understanding the true import of the pertinent and applicable instructions issued by the Government of India, quad hoc, issuance of gun licences to citizens.

2. I have heard Sri.P.Sanjay, the learned counsel for the petitioner, the learned Assistant Solicitor General appearing for the fourth respondent and the learned Government Pleader.

3. Even an exfacie examination of Ext.P8 order would show that the rejection of petitioner's application has been founded on certain specific instructions issued by the Ministry of Home Affairs, which is produced as Ext.P9. The Commissioner of Land

Revenue appears to have understood the said instructions to mean that only a person who faces “grave and imminent threat” to his life may be given a gun licence. If this was the instruction contained in Ext.P9, I am sure that the order would stand justified. However, the question is whether this is the manner in which Ext.P9 would concede to interpretation.

4. Since the entire edifice of the petitioner's claim is built on the instructions contained in Ext.P9, I think it will be fructiferous to read its relevant contents in full. I, therefore, deem it idoneous to extract the instructions in Ext.P9, as are relevant to this case as under:

**“(i) Grant of Arms Licence for Prohibited Bore (PB) weapons:**

The arms licences for acquisition of PB weapons are considered by the Central Government in the Ministry of Home Affairs (MHA). It has been decided that henceforth applications for grant of PB weapon may be considered from the following category of persons:-

(a) Those persons who face grave and imminent threat to their lives by mere reason of being residents of a geographical area (or areas) where terrorists are most active and/or are held to be prime “targets” in

the eyes of terrorists and/or are known to be inimical to the aims and objects of the terrorists and as such face danger to their lives.

(b) Those Government officials who by virtue of the office occupied by them and/or the nature of duties performed by them and/or in due discharge of their official duty have made themselves targets in the eyes of terrorists and are vulnerable to terrorist attack.

(c) Those MPs and MLAs including non-officials/private persons who by virtue of having been closely and/or actively associated with anti-terrorist programmes and policies of the Government or by mere reason of their holding views, political or otherwise, not to the liking of the terrorists, have rendered themselves open to attack by the terrorists.

(d) The family members/kith and kin of those who by the very nature of their duties or performance (past or present) or positions occupied in the Government (past or present) or even otherwise for known/unknown reasons have been rendered vulnerable and have come to be regarded by the terrorists as fit targets for elimination.

Accordingly, it is requested that applications for grant of PB weapons from the above categories of persons may be forwarded to MHA (Arms Section) along with recommendations of the DM concerned, recommendations of the State Govt. and police verifications.

**(ii) Grant of Arms Licence for Non-Prohibited Bore (NPB) weapons:**

The arms licences for acquisition of NPB weapons are considered by the State Government/DM concerned. At present, there are no norms for grant of NPB weapons and some State Governments may be issuing arms licences liberally. It has been decided that:

(a) Applications for grant of NPB arms licences may be considered from persons who may face or perceive grave and imminent threat to their lives, for which the licensing authority will obtain an assessment of the threat faced by the persons from the police authorities.

(b) No licence may be granted without police verification, which will include report on (i) antecedents of the applicant, (ii) assessment of the threat, (iii) capability of the applicant to handle arms, and (iv) any other information which the police authority might consider relevant for the grant or refusal of licence. Steps are being taken to delete the proviso to Sec.13(2A) of the Arms Act, 1959.

(c) The police authorities may be advised to send the police report within 45 days positively failing which the police officials concerned may be liable for action.

(d) The licensing authority may call for any information/documents such as voter ID card, ration card or any other document which it may consider necessary to verify the bonafides of the applicant and

to ensure that the applicant resides within its jurisdiction.

(e) The licensing authority shall be obliged to take into account the report of police authorities called for under Section 13(2) before granting arms licenses and no arms licence may be issued without police verification."

5. If one examines Ext.P9 closely, it is not intended to operate, as has been concluded by the Commissioner of Land Revenue in Ext.P8. "Prohibited Arms" and "Prohibited Ammunition" are defined under Section 2 of the Arms Act, 1959. The grant of licences for acquisition, possession, manufacturing, sale, import, export and transport of ammunition are governed by Chapter II of the said Act. Chapter III of the Act contains the provisions relating to licence. Section 14 contained in Chapter III reads as under:

**"14. Refusal of licences** – (1) Notwithstanding anything in section 13, licensing authority shall refuse to grant-

(a) a licence under section 3, section 4 or section 5 where such licence is required in respect of any prohibited arms or prohibited ammunition;

(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.

(2) The licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or possess sufficient property.

(3) where the licensing authority refuses to grant a licence to any person it shall record in writing the reasons for such refusal 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."

6. A reading of section 14 extracted above would make it luculent that a licensing Authority shall refuse to grant a licence where such licence is applied in respect of prohibited arms or prohibited ammunition. The power to refuse licence in any other case under Chapter II is invested with the Authority only if the



applicant, in his opinion, is prohibited from acquiring any arms or ammunition or for any reason unfit for being granted licence under the Act. The provisions also, of course, invest the said Authority with the discretion to be exercised validly and reasonably to deny such licence if it is necessary for maintaining security, public peace or public safety.

7. It is, therefore, obvious from the provisions above that except in the case of prohibited arms and ammunition, grant of licences will be as per the provisions contained in Section 13 of Chapter III of the Act. As per its mandate, on receipt of an application, the licensing Authority will have to call for a report of the officer in charge of the nearest police station and after consideration of such report, or such other enquiry as may be found necessary, shall, by order in writing, either grant the licence or refuse to grant the same. Nowhere in the said provision is it mandated that the applicant should state and demonstrate that he is under grave and imminent threat. The provisions of Section 13, which is extracted below for ease of reference, does not conceive any other manner of interpretation.

“13. Grant of licences-(1) An application for the grant of a licence under Chapter II shall be made to

the licensing authority and shall be in such form, contain such particulars and be accompanied by such fee, if any, as may be prescribed.

(2) On receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.

(2A) The licensing authority, after such inquiry, if any, as it may consider necessary, and after considering the report received under sub-section (2), shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same:

Provided that where the officer in charge of the nearest police station does not send his report on the application within the prescribed time, the licensing authority may, if it deems fit, make such order, after the expiry of the prescribed time, without further waiting for that report.

(3) The licensing authority shall grant-

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

8. It is in the scheme of the particular provisions of the Act that one will have to examine Exhibit P9 and see whether these are in conformity with the specific mandate of the Act.

9. In the case of Prohibited Bore Weapons, the instructions are specifically that those persons who face grave and imminent threat to lives on account of terrorists activities will be granted such licences. However, when it comes to Non-prohibited Bore Weapons, the instructions only say that the applications from the persons who may face or perceive grave or imminent threat to

their lives in any manner will be considered. There is a paradigm difference in the manner in which these instructions operate with respect to the two classes of weapons. Licence for prohibited Bore Weapons will be given to only those applicants who face grave and imminent threat to their lives on account of terrorists activities. However, an applicant for Non-prohibited Bore Weapon does not have to establish that he is under such threat. The instructions only say that the applications for grant of such licence may be considered from persons who face or perceive threat to their lives not necessarily from terrorists activities.

10. The instructions, however, do not restrict grant of Non-prohibited Bore Weapons to an applicant who does not face or perceive such threats since, as is apparent from the portions of Ext.P9 extracted above, the said order contains specific instructions under two distinct heads. One for the grant of Arms Licence for Prohibited Bore (PB) weapons and the other for the grant of Arms Licence for Non-Prohibited Bore (NPB) weapons. The grant of licence for Prohibited Bore Weapons is only by way of an exemptions since licences for such weapons are not to be

granted as per the terms of Exhibit P9, except in case where the applicant is found to be under threat from terrorists activities. The applicants in this category form a separate class and such applicants are considered distinctly under the provisions of such circular.

9. However, when it comes to grant of licence for Non-prohibited Bore Weapon, the circular does not say that the applicants are to be under the threat of terrorists activities. It only says that persons who are facing or who perceive to face grave and imminent threat to their lives may apply and that in such circumstances, the licensing Authority will obtain an assessment of threat faced by the said applicant. One cannot find any absolute restriction in Exhibit P9 relating to Non-prohibited Bore Weapon from granting licence to an applicant who does not face grave and imminent threat to his/her life.

10. In any event, even if Exhibit P9 can, for some logic, be interpreted otherwise, it cannot obtain support of law, since the Act does not provide for any such condition to be satisfied before licences are granted for weapons under Chapter III of the said Act. The provisions of Sections 13 and 14 extracted above would

concede to no such restriction and would justify no such condition. While the statute provides that the licensing authority shall refuse to grant licence for prohibited arms or ammunition, Exhibit P9 circular carves out an exception in the case of Prohibited Bore Weapon only if the applicant faces great danger from terrorists activities. Obviously therefore, with respect to the arms which are not in the category of prohibited weapons, the provisions of Chapter III only would apply and all instructions in Exhibit P9 will have to be read and interpreted in conformity and harmony with the statutory prescriptions in the statute that provides for no inhibition for such licence for a fire arm, which obligates the applicant to establish or prove that he faces grave and imminent threat. Exhibit P9, in whatever manner it is read or construed, cannot bring in such an added condition.

11. In the case at hand, the petitioner has concededly applied for licence only for possession of a Non-Prohibited Bore weapon. It is, therefore, ineluctable from Ext.P9 and from the provisions of the Act, afore-noticed, that the inhibition against grant of such licence except in the case of grave and imminent danger does not apply. Viewed from such perspective, the

petitioner shall certainly be justified in seeking grant of licence for a Non-prohibited Bore Weapon without having to establish that he is facing grave and imminent threat to his life but in compliance with all other requirements and criterion as are statutorily pre-requisite and prescribed.

12. The being said, I do not think that this Court can issue any further orders, being constrained by the well recognized jurisdictional circumscription in dealing with factual factors, while acting under Article 226 of the Constitution of India. I am of the view that this should be best left to be considered by the experts who have the competence to decide these issues even by dealing with questions of facts.

13. In such circumstances, I quash Ext.P8 order and direct the second respondent – Commissioner to reconsider the case of the petitioner adverting specifically to the provisions of the Arms Act, 1959 as also the instructions contained in Ext.P9 in its proper perspective and issue such orders, as are appropriate, keeping in mind the observations in this judgment and to allow or reject the application of the petitioner for licence strictly in conformity with the provisions contained in Chapter III of the

Arms Act, 1959. This exercise shall be completed by the Land Revenue Commissioner, after affording an opportunity of being heard to the petitioner, who shall be entitled to place all relevant material before the said Authority, within a period of three months from the date of receipt of a copy of this judgment.

The writ petition is ordered as above. In the nature of the facts and circumstances of the case, I make no order as to costs and the parties are directed to suffer their respective costs.

stu/tkv

Sd/- **DEVAN RAMACHANDRAN**  
**JUDGE**