

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

913 WRIT PETITION NO. 3786 OF 2015

Sardar Gurtejpal Singh s/o Gurnaib Singh Sidhu
Age- 31 years, Occ- Agriculture/Advocate,
R/o Bhagatsingh Road,
House No. 4-2/18, Old Mondha,
Nanded.

... Petitioner.

Versus

1. The State of Maharashtra
Through its Principal Secretary
State Home Department
Mantralaya, Mumbai – 32.
2. The Divisional Commissioner,
Aurangabad Division,
Aurangabad.
3. The District Magistrate,
Nanded District,
Nanded.
4. The Superintendent of Police,
S.P. Office,
Nanded.

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Mr. Mrigesh D. Narwadkar, Advocate for the petitioner
Mr. G. O. Wattamwar, AGP for Respondent Nos. 1 to 4
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CORAM : V. K. JADHAV, J.

DATED : 29th JANUARY, 2016

ORAL JUDGMENT :-

1. Rule. Rule returnable forthwith. By consent of learned counsel for the parties, heard finally.

2. By this petition, petitioner has challenged the order dated 28.08.2014 passed by Divisional Commissioner, Aurangabad, thereby confirming the order dated 10.08.2013 passed by District Magistrate, Nanded, whereby, the petitioner is refused licence under Arms Act, 1959 (hereinafter referred to as "the Act").

3. Learned counsel for the petitioner submits that licence was refused to the petitioner only on the ground that there is no threat or danger found to the life, property or family of the petitioner. Learned counsel submits that so far as this ground is concerned, the same is not contemplated under Section 14 of the Act. Licence can be refused only on the conditions which are detailed under Section 14 of the Act.

4. Learned counsel for the petitioner submits that, if a particular provision of a statute prescribes the grounds on which discretion is to be exercised, then such discretion is to be exercised in accordance with provisions of the said statute and not on any other ground not mentioned in the said provisions. Learned counsel submits that here, in this case, even though no such ground is mentioned under Section

14 of the Act for refusal of licence, the authorities have refused licence to the petitioner on the ground, which is not contemplated under Section 14 of the Act. Learned counsel submits that, thus, the order passed by District Magistrate and the order passed by Divisional Commissioner, thereby confirming the order passed by District Magistrate, are liable to be quashed and set aside. Learned counsel for the petitioner, to substantiate his submissions, places reliance on the judgments in the following cases:

1. Judgment dated 09.09.2013 delivered by Delhi High Court in ***W.P.(C)1631 of 2012 (Vinod Kumar vs. The State and others)***
2. Judgment dated 18.09.2008 delivered by this Court in ***Criminal Writ Petition No. 490 of 2008 (Chandrakant @ Chandrashekhar Veerbhadrappa Rachatte vs. The State of Maharashtra and others)***

5. Learned AGP submits that as per paragraph No. 112 of the *Maharashtra Shashtra Parwana Adhiniyam Pustika*, petitioner has to demonstrate his need for having such a licence. Learned AGP submits that since the petitioner has failed to show any threat or danger to his life, property or the family members, the authorities have rightly refused licence under the Arms Act to the petitioner. Learned AGP submits that there is no substance in the writ petition and the same is liable to be dismissed.

6. It appears from the impugned orders that licence is refused only on the ground that there is no threat or danger found to the life, property or family members of the petitioner. Petitioner has stated in his application before the authorities that he has to visit his agricultural land which is situated about 20 kms. from Nanded city. Furthermore, he has to visit his farms at odd hours quite frequently. He has further pointed out that there are many incidents of dacoity, theft and robbery occurred in and around the Nanded city. Besides agricultural property, the petitioner has also some other properties in the form of shops and occasionally, he requires to carry cash. In the backdrop of these facts, petitioner apprehends that he may have a life threat from the persons or some third person with some ulterior motive, who may cause damage to his immovable or agricultural property.

7. Here, it would be appropriate to refer to Section 14 of the Arms Act, 1959 which reads as under :

“14. Refusal of licences.-

(1) Notwithstanding anything in section 13, the 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."

8. In the case of Vinod Kumar (Supra) relied upon by the learned counsel for the petitioner, in paragraph No. 7 of the judgment, Delhi High Court has made following observations :

“7. The Next question which arises for consideration is as to whether the licence could be refused to the petitioner on the ground that there was no specific threat to his life or property and the law and order situation in the locality in which he was residing was satisfactory. In my opinion, the fire arm licence cannot be denied to a person, in whose case a situation contemplated by sub-section (1) of Section 14 does not exist, solely on the ground that there is no specific threat to him or his family members. A situation requiring safety in the form of a fire arm cannot always be foreseen and may develop all of a sudden. For instance, there may be an attempted burglary, dacoity, house breaking or robbery in the house of a citizen in the dead of the night or he may be subjected to robbery, snatching, etc, while on the move. It is not possible for a police official to be present everywhere and every time to protect the citizens and in fact it happens quite often that the police arrives at the scene only after the crime is already committed. Though it is an undisputed responsibility of the State to protect the lives and property of the citizens, the harsh reality is that the State does not have an impressive record in this regard. In fact, no person can predict when, where and at what time and in which form, he may face a threat to his life or property. Therefore, as a prudent citizen, he would be justified in taking adequate steps to protect himself and his property and such steps would

include acquiring a licensed weapon so as to avoid any crime against his body and property. It is the applicant's own perception of threat to his life and property which needs to be considered by the Licensing Authority in the light of law and order situation, prevailing in the locality and various other factors."

Delhi High Court has observed that a fire arm licence cannot be denied to a person solely on the ground that there is no specific threat to him or his family members. It is observed that a situation requiring safety in the form of fire arm may develop all of a sudden.

9. This Court, in Criminal Writ Petition No. 490 of 2008 (supra) relied upon by learned counsel for the petitioner, in paragraph No. 7 of the judgment, has made the following observations:

"7. When a statute prescribes the grounds on which discretion is to be exercised, then such a discretion is to be exercised in accordance with the provisions of the statute and not on any other ground not mentioned in the said statute. Perusal of the impugned orders would reveal that the authority has not refused to grant licence on the grounds mentioned in Sub-section 1 of Section 14 of the Arms Act. The order of the Additional District Magistrate would further show that the contention of the present petitioner regarding settlement of the dispute and the criminal cases arising out of family dispute has also not been considered. In that view of the matter, I find that the discretion has not been exercised by the authorities in a proper manner."

10. Thus, in the case in hand, the authorities have refused to grant licence to the petitioner on the ground which is not contemplated under Section 14 of the Arms Act, 1959. Consequently, the impugned orders do not stand. The writ petition, thus, deserves to be allowed. Hence the following order;

O R D E R

- I. The writ petition is hereby allowed.
- II. The order dated 10.08.2013 passed by the District Magistrate, Nanded and the order dated 20.08.2014 passed by the Divisional Commissioner, Aurangabad, thereby confirming the order passed by the District Magistrate, are hereby quashed and set aside.
- III. Respondent No.3 – District Magistrate, Nanded District, Nanded is hereby directed to issue arm licence to the petitioner.
- IV. Rule is made absolute in the above terms. The writ petition is accordingly disposed of. No costs.

(V. K. JADHAV, J.)

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