

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.9914 OF 2016

Pawan s/o Ashok Bora,
age: 31 years, Occ: Advocate,
R/o H.No.442, Satbhai Lane,
Chitale Road, Ahmednagar.

Petitioner

Versus

01 The State of Maharashtra,
through Divisional Commissioner,
Nashik Road, Nashik (M.S.)

02 District Magistrate, Ahmednagar/
The District Collector,
Ahmednagar, Collector Office Road,
District Ahmednagar (M.S.)

03 Dy. Superintendent of Police,
D.S.P. Chowk, Ahmednagar,
District Ahmednagar (M.S.)

Respondents

Mr.Pawan Ashok Bora, petitioner present party-in-person.
Mr.A.P.Baraskar, A.G.P. For Respondents.

CORAM : S.B.SHUKRE, J.

DATE : 02nd FEBRUARY, 2017

ORAL JUDGMENT :

1. Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2. Petitioner is an advocate by profession and practising law at Ahmednagar District Court. He owns property and enjoys good reputation in the society. But, he feels insecure, especially, in the present scenario where the crime against person and property has increased and is always on the rise and, therefore, thinks it necessary that for his own protection as well as his family members, he should possess a licenced fire-arm, which is not prohibited by law. Therefore, the petitioner made an attempt to obtain a licence for possessing and carrying an unprohibited fire-arm by applying under sections 3 and 4 of the Arms Act, 1959, to the District Magistrate, Ahmednagar and, submitted an application in that regard. The District Magistrate called for the report of the police. The report was received by the District Magistrate. The report stated that since the petitioner did not receive any threat on his life, the police would not make any recommendation for issuance of the fire-arm licence. Learned District Magistrate, Ahmednagar, accepted the report and rejected the application for grant of licence.

3. Petitioner challenged this order before the Divisional Commissioner, Nasik. The Divisional Commissioner remitted the matter back to the learned District Magistrate for considering it afresh in accordance with law. Hearing was granted to the petitioner by the learned District Magistrate but, once again, by order passed on 8th January, 2016, the learned District Magistrate rejected the application. The order was carried in appeal before the learned Divisional Commissioner and, he too, by order passed on 27th April, 2016, reiterated the finding recorded by the learned District Magistrate. This finding was to the effect that as no threat

on the life of petitioner was received, the petitioner did not require the fire-arm for his protection. Being aggrieved by the same, now, the petitioner is before this Court in the present petition.

4. Petitioner, appearing in person, submits that the impugned orders are arbitrary and perverse as now it is well settled law that the licence for possession of the arms should not be rejected on the sole ground of absence of any threat on life of the applicant. He submits that there are relevant criteria especially, those relating to possibility of mis-use of the fire-arm, breach of public peace, incapacity, physical or mental or otherwise, of the applicant to make use of the fire-arm in a proper manner and so on, which were not at all considered by the authorities below. He also submits that the police report, though recommends against issuance of the fire-arm licence, infact answers all the relevant criteria in favour of petitioner, thereby making his case for grant of licence very strong. He places reliance upon the following cases :

- 1) Ganesh Chandra Bhatt vs. District Magistrate, Almora AIR 1993 ALL 291
- 2) Vinod Kumar Vs. The State and others W.P.(C) 1631/2012 Delhi High Court decided on 09.09.2013
- 3) Khan Abdul Wahab Usman Vs. The State of Maharashtra & others Criminal Writ Petition No. 2688/2008 Bombay High Court decided on 12.09.2009.
- 4) Abdul Hameed vs. District Magistrate / Collector 1994 Cr.L.J. 531.
- 5) Sahil Kohli Vs. Additional Commissioner of Police, W.P.(C) 5959/2013 Delhi High Court decided on 20.09.2013

5. Learned AGP for the State submits that the impugned orders are correct in law as they properly consider the police report which holds an important place in such matters. According to him, when the police report clearly shows that there was no need for issuance of any fire-arm licence to the applicant, the authorities could not have differed with the recommendations of the police, police being the expert to decide on the issue of threat perception vis-a-vis life and property of the applicant. He also submits that although there can be no doubt about the principles of law laid down in the aforesaid cases, ultimately, the discretion is to be exercised by the authorities in a reasonable manner and, if the discretion has not been shown to have been exercised perversely, this Court should not make any interference with the discretion exercised in a particular way by the authorities. On this ground, he urges that the petition deserves to be dismissed.

6. In order to consider the rival arguments, it would be necessary to advert to the relevant provisions of law. The licence for acquisition and possession of fire-arm and ammunition can be obtained under section 3 and the licence for acquisition and possession of arms of specified description can be obtained under section 4 of the Arms Act. Since the petitioner had made an application for grant of licence for acquisition and possession of the fire-arm of specified description, primarily, his application could be said to have been made under section 4 of the Act. Section 13 of the Act deals with grant of licence and section 14 is about refusal of the licence. They broadly underline the factors, by considering which, the licence be granted or refused. Therefore, it

would be useful for the discussion now being made to reproduce them here. They read thus :

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.

(2-A) 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 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 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 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 recognised 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.

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.

7. Reading these sections, it would become clear that the licensing authority has to consider the issue of grant of licence or otherwise by following the procedure laid down under section 13 of the Act. This procedure includes calling for the report of the officer in-charge of the nearest police station and, also making an inquiry, if any, to consider whether the discretion should be exercised in favour of applicant or not. After following this procedure, sub-section 3 of section 13 mandates that the licensing authority must grant licence where the conditions as specified in the sub-sections are fulfilled. In the instant case, the licence was sought to be obtained particularly under section 4 of the Arms Act and, therefore, clause (b) of sub-section 3 of the Arms Act would be relevant. This clause (b) makes it mandatory for the licensing

authority to grant licence if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same. It can be noticed that this section does not say that only when there is a favourable recommendation by the police authority that the licence be granted. This section on the other hand lays down that the licence can be issued for any good reason. Now, what can be the good reason has not been clarified anywhere in the Act. An insight into what constitutes the good reason for grant of licence could be had by considering the provisions of section 14 of the Arms Act..

8. Section 14 is about refusal of licence. It delineates the situations where the licence is to be mandatorily refused. These situations are as under :

- 1 Where licence under section 3, or 4 or 5 is required in respect of any prohibited arm or prohibited ammunition;
- 2 Where the licensing authority is satisfied that the person requiring licence is prohibited by Arms Act or by any other law from acquiring or possessing or carrying any arms or ammunition.
- 3 Where the person requiring licence is of unsound mind;
- 4 Where the person desirous of having a licence is unfit for holding the licence under the Arms Act;
- 5 Where the licensing authority considers it necessary for the security of the public peace or public safety to refuse the licence.

These are the only grounds on the basis of any one or more of which, the licence could be refused. It is also worthwhile to note

that under this section, there is no such ground as absence of any threat to life or property of person, to refuse the grant of licence. It would then mean that presence or absence of threat to life or property of a person from the perspective of police authority, cannot be a good ground for refusal within the meaning of section 14. It would then follow that a police report saying there is no threat to life or property of a person is not relevant for either refusing or even granting licence under section 14 and section 13 respectively. Relevant rather a criterion would be the genuineness of the need of the person, examined from the individuals own perception and his security wants in the light of his mental and physical make up and factors serving as express disqualifications for a person to hold the licence under section 14 of the Arms Act. This is what constitutes the “good reason” for grant of licence under section 13(3)(b), Arms Act. The authority, however, must be wary of those needs which are fanciful or simply pretentious or purely fired by a desire to flaunt or parade in public the fire-arm as a fashion trend. This is not to say that a need felt by a person to possess a fire-arm is false only because police do not think it to be real. As said earlier, an individual's own feeling of insecurity is an important factor. So, it needs to be respected and considered on the touch-stone of his own psyche, physical and mental make up and other factors contained in section 14 of the Arms Act. After all, it is now a settled law that as possession of a non-prohibited fire-arm helps effectuate a person's right to protect himself, the right is considered as a part of fundamental right under Article 21 of the Constitution of India, subject of course to reasonable restrictions. Therefore, generally speaking, granting a licence should be the rule and refusal an exception, for reasons be

recorded in writing.

9. This view is consistent with the legislative intent discernible from section 14(2) of the Act. This provision of law creates an embargo upon the power of the authority to refuse grant of licence by laying down that it shall not refuse licence merely on the ground that such person does not possess sufficient property. The Legislature intends that possession of property would have no bearing on exercise of the power to refuse grant of licence. It would also then mean that absence of threat to the property is no criteria for refusal of the licence. So, if absence of threat to the property is not a criteria for refusal of licence, it can also be found inferentially that absence of threat to the person of the applicant would be no criteria for refusal of the licence. This is what has been held consistently by the learned Judges, as the Honourable Judges then were, in the cases relied upon by the petitioner.

In the case of Ganesh Chandra Bhatt (supra) the learned Judge of Allahabad High Court, as His Lordship then was, observed that right to carry an unprohibited fire-arm is a part of Article 21 of the Constitution, for to hold otherwise, would amount to keeping the unarmed and peace loving citizen distressed while the well armed criminals make merry. Relevant observations appearing in paragraph no. 47 are reproduced thus :

47. In my opinion the right to carry non-prohibited firearms is part of Article 21 of the Constitution, for to hold otherwise, would amount to keeping good and peace loving citizens defenceless while the criminals are well armed. This would be wholly arbitrary and

unreasonable. In these days when law and order has broken down it is only an armed man who can lead a life of dignity and self respect. No criminal or gangster can dare to assault or threaten such a person for fear of retaliation. Since the word 'life' in Article 21 has been held by the Supreme Court to mean a life of dignity (as discussed above), the right to carry non-prohibited firearms must be deemed to be included in Article 21.

The Allahabad High Court also issued a general mandamus to the concerned authority, to the effect that, whenever any application for licence under the Arms Act is made, the same must be processed and decided within three months and the normal rule must be grant of licence in the case of non-prohibited arms and refusal should be an exception and for strong reasons to be recorded in writing, after giving an opportunity of hearing to the applicant and, such reasons for rejection must be communicated to the applicant within three months from the application (see paragraph 83).

In the case of Vinod Kumar (supra) the learned Single Judge of Delhi High Court held that refusal of the licence on the ground that there is no specific threat to the life or property is incorrect as that is not the criteria for refusal of licence under section 14 of the Arms Act. The observations of the learned Single Judge are as under :

“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 the 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.”

I fully agree with the views expressed by the learned Single Judge of Delhi High Court. In the present scenario, where crime is ever on the rise, one can never know as to when and where the evil will strike him or his near and dear ones. This is the reason why in the matter of grant of licence for a non-prohibited fire-arm, the applicant's own perception about threat to his life or property is very relevant and is required to be given due consideration and respect. In a disturbed society, an individual may, without being armed with a weapon, feel very insecure and helpless to protect himself and his family members. Enabling such a person to possess the fire-arm, if not otherwise disqualified to hold it, would be like boosting his confidence to protect himself and his family members on one hand and busting the morale of criminals casting an evil eye on him on the other. Therefore, due consideration is required to be given to the perception of the person interested in acquiring and possessing the fire-arm. Of course, there are other conditions as are referable to the provisions of sections 13 and 14 of the Act, which must also be considered while granting or refusing licence. This view finds support in other cases as well, which are discussed in foregoing paragraphs.

In the case of Khan Abdul Wahab Usman (supra), the Division Bench of this Court has taken a view that absence of threat on the life of applicant is really not an issue because self-

preservation is a basic human right of every human being and every human being can be susceptible to the threats of life even if he is not a targeted person. The Division Bench observed that such a threat, not known to the person or police can suddenly befall upon a person and, if that person is defenceless, in that case, his doom would be certain.

In the case of Abdul Hamid (*supra*) the learned Single Judge of the Allahabad High Court reiterated the same view as taken by the other benches to the effect that every person has a right to protect his own self and cannot depend on others for that purpose and, therefore, if there are no valid grounds for refusal of licence, it must be granted.

Similar view has been taken in the case Sahil Kohli (*supra*). It is also observed that 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.

10. Now applying these principles of law to the instant case, I find that there was absolutely no valid and good ground for refusal of fire-arm licence to the petitioner, which was admittedly in respect of a non-prohibited fire-arm. Bare perusal of the police report would show that all relevant factors have been answered in favour of the petitioner and yet, at the end of the report, the police has stated that since the petitioner has not so far received any direct or indirect threat, his demand for issuance of fire-arm licence is not appropriate and, as such, the licence be not granted

to him. But, this very report says that the grounds given by petitioner for issuance of licence are reasonable and consistent with the purpose for which he intends to procure the non-prohibited fire-arm. It also says that physical and mental condition of the petitioner is suitable for his acquiring and possessing fire-arm. It further says that the petitioner does not reside in or anywhere near the wild life sanctuary or national park. It also says that no offences so far have been registered against the petitioner and that, the petitioner was never involved in any private or public dispute. It goes on further all the while speaking in favour of petitioner. It states that the type of fire-arm in respect of which licence has been sought by the petitioner is consistent with the purpose for which he is desirous of keeping fire-arm. It also says that the petitioner has taken training to handle the fire-arm. Lastly, it emphasises that if fire-arm is issued to the petitioner, there is a guarantee that he would not mis-use it. If such is the nature of the police report in this case, I do not understand as to why the District Magistrate did not exercise discretion in favour of the petitioner by granting the requisite licence for non-prohibited fire-arm.

11. All these factors have not been considered by the authorities below and as such, the orders passed by them are perverse and arbitrary. They violate the fundamental right of the petitioner guaranteed to him under Article 21 of the Constitution of India. There are no factors which make the petitioner unsuitable or unfit for acquiring and possessing fire-arm licence. Unfortunately, no relevant factors have been considered by the authorities below in passing the impugned orders. The impugned orders are therefore

liable to be quashed and set aside.

12. Writ petition is allowed with costs. The impugned orders are quashed and set aside. Application of the petitioner for grant of fire-arm licence is allowed and, consequentially, it is directed that appropriate licence for non-prohibited fire-arm shall be issued by the learned District Magistrate within a period of 30 days from the date of the order, in accordance with law. Rule made absolute in above terms.

S.B.SHUKRE
JUDGE

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