

sbw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6626 OF 2015

Hiraman Sasar

... Petitioner

vs.

The State of Maharashtra & Ors.

...Respondents

Mr. A. A.Siddiqui i/b. A. A. Siddiqui & Asso. for the petitioner.

Ms. Aparna D. Vhatkar, AGP, for the respondent nos.1 to 3.

**CORAM : A.S.OKA, &
A. K. MENON, JJ.**

DATE : 20th APRIL, 2017

ORAL JUDGMENT (PER A.S. OKA, J.)

1. Rule. The learned AGP waives service for the respondents.

We have taken up the petition for a final disposal.

2. The petitioner made an application on 26th May, 2009 to the respondent no.2 for grant of a licence to possess a revolver. The licence was sought under the provisions of the Arms Act, 1959 (for short "the said Act"). In the application filed by the petitioner, he claimed that he requires the weapon for self defence/self protection. On the basis of the said application, the Additional District Magistrate, Pune called for the reports of the various authorities. The Conservator of Forest, Pune, vide his letter dated 13th July, 2009 recorded his no objection for grant of

licence by stating that the place of residence of the petitioner is not within the territory of 10 km. from any sanctuary. He has stated that there is no forest offence registered against the petitioner. The Sub-Divisional Police Officer, Dehu Road, submitted a report recording his no objection for grant of a Revolver licence to the petitioner. The Office Superintendent in the office of the Superintendent of Police, Pune (Rural), on behalf of the Superintendent of Police, issued a communication dated 28th July, 2010 to the District Collector. In the said communication, it is recorded that the Inspector of Police of Paud Police Station has given his no objection. Similarly, the Sub-Divisional Police Officer, Dehu Road, has also given his no objection for grant of a licence to use a revolver. However, it was mentioned in the said letter dated 28th July, 2010 that a licence to use a gun be granted to the petitioner.

3. The District Magistrate which is the licensing authority by his order dated 19th October, 2010 rejected the application of the petitioner. The first ground set out in the order is that though the application made by the petitioner for grant of a licence to use a revolver, the Superintendent of Police, Pune (Rural) has recommended for grant of a licence to use a gun/rifle. As

recommendation of the Superintendent of Police is not in terms of the application for grant of licence, the District Collector observed that the application made by the petitioner cannot be granted.

4. The second ground in the said order is that the petitioner has not pointed out that any serious offence such as theft, robbery had taken place in the vicinity of his residence and that he has not shown that there is any threat to his life. Therefore, the District Magistrate recorded a conclusion that for self-protection, the petitioner does not require Arms licence.
5. An appeal was preferred by the petitioner against the said order to the Divisional Commissioner. By the order dated 9th April, 2015, the Divisional Commissioner dismissed the appeal.
6. With the assistance of the learned counsel for the petitioner and the learned AGP, we have perused both the orders and the other material on record. The application made by the petitioner records that he needs Arms licence for his self-protection. In his statement recorded by the Circle Officer, the petitioner stated that his agricultural land is at the distance of 1 km. from his house

which is in a forest area. He stated that crimes are being committed in the adjoining area and, therefore, he needs Revolver for his self-protection.

7. The Sub-Divisional Police Officer, Dehu Road, agreed with the recommendation of the Inspector of Police of Paud Police Station that Arms licence deserves to be granted to the petitioner. On the basis of the recommendation of the two officers, the office of the Superintendent of Pune (Rural) recommended grant of licence. However, in the recommendation, it was mentioned that a licence should be granted for the use of a gun. The main ground on which the District Magistrate rejected the application is that the recommendation of the Police is not in terms of the application made by the petitioner for grant of licence to use a revolver. Secondly, the District Magistrate had observed that an actual threat perception to the petitioner is not shown.
8. The District Magistrate ignored that all the three police authorities had come to the conclusion that an Arms licence deserves to be granted to the petitioner. Only in the recommendation submitted on behalf of the District Superintendent of Police, it was stated that the licence to use a

gun be granted to the petitioner.

9. We may note here that in cases which came before us, we have noticed that the State Government has granted Arms licences in several cases when the licence was sought only on the ground of self-protection though there was no concrete material placed on record to show actual threat perception.
10. As far as the order in appeal is concerned, we find that the Appellate Authority has not adverted to the recommendations made by the Inspector of Police, the Sub-Divisional of Police and the District Superintendent of Police. He again came to the conclusion that there is no evidence to show that there is a threat to the life of the petitioner.
11. In our view, it was necessary for the Appellate Authority to have considered the reports of the police and thereafter to decide the appeal on merits. Moreover, the Appellate Authority ought to have called for a report for showing in how many cases the State has granted a licence on this ground of self protection though actual threat is not shown.

12. Therefore, this is a fit case where by setting aside the impugned orders, the Licensing Authority will have to be directed to reconsider the application made by the petitioner. The Licensing Authority can always seek a clarification from the District Superintendent of Police Pune (Rural) as to why he has recommended the grant of a gun licence to the petitioner instead of a revolver licence.

13. Accordingly, we pass the following order:-

(i) The impugned orders dated 19th October, 2010 and 9th April, 2015 are hereby set aside and the application made by the petitioner for grant of Arms licence on 27th May, 2009 under the said Act is remanded for fresh consideration to the District Magistrate, Pune;

(ii) It will be open for the District Magistrate to seek a fresh reports from the Police/other Authorities. It will also be open to the District Magistrate to seek a clarification from the District Superintendent of Police as to why a recommendation for issuing a licence to use a gun was made by him;

(iii) After considering the reports, the District Magistrate shall pass a fresh order on an application made by the petitioner in the light of the observations made in this judgment and order;

(iv) An appropriate order shall be passed by the District

Magistrate within a period of three months from the date on which an authenticated copy of this order is produced in his office;

(v) Rule is made absolute partly on the above terms.

(vi) All concerned to act upon an authenticated cop of this order.

(A. K. MENON, J.)

(A. S. OKA, J.)