

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Writ Petition No.12745 of 2010

ORDER:

The petitioner seeks Writ of Mandamus declaring that the action of 1st respondent contained in G.O.Rt No.337 Home (Arms) Department dated 24.02.2010 rejecting Arms licence to the petitioner, is arbitrary and ultra vires the provisions of the Arms Act, 1959 and consequently set aside the same and direct the respondents forthwith to grant Arms licence to the petitioner.

2) Petitioner's case briefly is that he applied for licence to possess one N.P Bore Revolver/Pistol under Section 13 of Arms Act, 1959 vide application dated 03.10.2007 to the 2nd respondent and the 1st respondent vide memo dated 20.08.2008 rejected his application on the ground that the enquiries revealed that there were civil disputes regarding properties between the applicant's brothers and his cousin brothers and they were pending in various courts and one case was pending in Central Crime Station in which the applicant was the complainant and therefore, it was not desirable to grant Arms licence to the petitioner. The petitioner filed appeal in the form of representation dated 09.09.2008 to the 1st respondent seeking reconsideration of the rejection order dated 20.08.2008 wherein he explained the need and necessity for him to possess Arms licence. However, the 1st respondent by the impugned order contained in G.O.Rt.No.337 Home (Arms) Department dated 24.02.2010 rejected his request with the observation that the father of the application was already having two weapons covered under the Arms Licence Act and there were

civil disputes between the father of applicant and his brothers and there was likelihood of breach of peace between both parties and there was a possibility that the weapon may be misused due to property disputes among the family members, if another licence was granted to the applicant.

Hence the writ petition.

3) The 1st respondent filed counter and opposed the petition *inter alia* contending that the petitioner applied for arms licence for self protection with All India Area validity. Basing on the report submitted by the Commissioner of Police, Hyderabad city, his request was rejected by the Government vide Government Memo No.19927/Arms/2008 dated 20.08.2008. Aggrieved, the petitioner filed an appeal before the Government on 09.09.2008 and the Government vide Memo No.28480/Arms/2008 dated 06.10.2008 called the remarks from the Commissioner of Police, Hyderabad, who then conducted enquiry into the matter and submitted his report dated 17.08.2009 to the Government for taking necessary action. The said enquiry revealed that the petitioner's father by name Mohd. Abdul Muneem @ Haji Seth is holding arms licence No.955/Abid Road and possessing two weapons i.e, DBBL gun and 6.35 NPB Pistol. Some unknown persons attacked his father on 14.09.2007 at his residence and in this regard, a case vide Crime No.241/2007 under Section 307 IPC was registered at Abids PS, Hyderabad city and subsequently, same was transferred to Central Crime Station, for investigation. While the investigation was in progress, the case

was detected by the task force officials vide Crime No.270/2008 under Sections 115, 120B r/w 34 IPC and Section 25(1)(b) of Arms Act, in which 11 accused persons were involved including the uncle of the petitioner i.e, his father's brother. Therefore, the applicant made an application for arms licence to avoid further attack on his family members. It is further stated that in the enquiry it was revealed that father of the petitioner is already having two weapons covered under arms licence and there are civil disputes pending between the father of the petitioner and his brothers and hence there is likelihood of breach of peace between both parties and there is a possibility that the weapon may be misused due to the property disputes among the family members, if another licence is granted to the petitioner. Keeping in view all these facts, the 2nd respondent has not recommended for grant of arms licence to the petitioner. The Government have carefully examined the appeal filed by the petitioner and also enquiry report submitted by the Commissioner of Police (2nd respondent) has rejected the request of the petitioner vide G.O.Rt No.337 dated 24.02.2010, which is impugned in the writ petition. The 1st respondent further submitted that as per Sections 14(1)(b)(ii) of Arms Act, 1959, where the licensing authority deems it necessary for the security of the public peace or for public safety, can refuse to grant such licence. Thus keeping in view the report submitted by the 2nd respondent as well as on thorough examination of grounds of appeal, the appeal of the petitioner was rejected by issuing the impugned G.O, which is legally valid one. Thus the 1st respondent prayed to dismiss the petition.

4) Heard arguments of Sri Vedula Venkata Ramana, learned Senior Counsel on behalf of petitioner and learned Government Pleader for Home (Telangana).

5) The point for consideration is:

“Whether the impugned order is sustainable in law?”

6) **POINT**: Sections 13 and 14 of Arms Act, 1959 are germane for consideration. They read thus:

“Section 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 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.

Section 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 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."

Section 13 envisages that an application for grant of licence for any of the purposes mentioned in Chapter-II and after calling for report from the

officer in charge of the nearest Police Station on that application and considering the same, the licensing authority is empowered to grant or refuse the licence under an order to be made in writing. Such an order shall be made after holding an enquiry by the licensing authority. The licensing authority shall grant licence if the conditions mentioned in Section 13(3)(a) and (b) are fulfilled.

a) Then Section 14(1) envisages that the licensing authority shall refuse to grant the licence under Section 3, Section 4 or Section 5, where such licence is required in respect of any arms or prohibited ammunition. Similarly, refusal shall be made in respect of other cases under Chapter-II as envisaged under Section 14(1)(b). So a conjunctive study of Sections 13 and 14 would postulate that the licensing authority shall grant licence if the conditions envisaged in Section 13(b) are fulfilled by the application and such granting of licence shall be refused if the case of an applicant comes under any of the conditions mentioned in Section 14(1)(b). Section 14(3) specifies that whether the licensing authority refuses to grant licence to any person, it shall record in writing, the reason for such refusal and furnish to the applicant 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 statutory provisions were subject to judicial interpretation earlier and crystallized into law in the decision reported in *Ganesh Chandra Bhatt v. The District Magistrate and others*¹. The learned Judge Justice Markandey Katju,

¹ MANU/UP/0898/1993 = AIR 1993 All 291

High Court of Allahabad (as he then was), referring the objects and reasons of the Arms Act, 1959 and its various provisions and also constitutional angle of the right of citizens to hold arms to protect their lives in the context of Article 21 of the Constitution, opined thus:

“Para 54: *In my opinion the aforesaid provisions in the Arms Act, 1958 must be construed in the light of Article 21 of the Constitution of India and also the avowed object of the Act to do away with the British policy of keeping the Indian people disarmed.*

Para 55: *Article 21 is part of the Constitution. I have already held that the right to bear arms (i.e.-non-prohibited firearm) is part of Article 21 of the Constitution. Hence, any provision in the Arms Act, 1959 which unreasonably infringes this right will be unconstitutional.*

Para 56: *It is a settled principle of interpretation that if two views are possible, and if one view makes a statutory provision unconstitutional while the other view makes it constitutional, then the latter should be preferred. Hence, we should construe the provisions of the Arms Act in a manner that they become inconformity with Article 21 of the Constitution.*

Para 57: *The more important provision in the 'Arms Act in the matter of grant of arms licence are Section 14(1)(b)(i)(3) and Section 14(1)(b)(ii) (quoted above).*

Para 58: *As regards Section 14(1)(b)(i)(3), unfitness for a licence is vague expression. However, considering the provisions in the light of Article 21 of the Constitution 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, and the same principle should apply in respect of cancellation or suspension of a licence.”*

Thus as per the above view of learned Judge, in the changed circumstances, the provisions of the Arms Act must be considered in the light of Article 21 of the Constitution so as to give an organic meaning to the right to life envisaged in Article 21. When did so, he opined, the normal rule should be the grant of arms licence and refusal on the ground of unfitness should only be for very strong reasons, for example, involving in a heinous crime and the same principle should apply in respect of cancellation or suspension of a licence.

b) We have another decision of this Court reported in *Syed Afzal Mehdi S/o. Syed Mahmood v. The State of A.P rep. by its Principal Secretary (Home and the Commissioner of Police)*², wherein a learned single Judge of this Court also by referring the statement of objects and reasons and also several provisions of the Arms Act, expressed similar view as that of *Ganesh Chandra Bhatt*'s case (1 supra). Learned Judge also opined that the right of citizens to protect themselves is an integral part of right to life guaranteed under Article 21 of the Constitution subject to the limitations contained therein. In asserting such right, learned Judge made it clear that every citizen has right to apply for arms licence. While considering such application, the licensing authority shall not only keep in view the statutory provisions but also the constitutional parameters relating to applicant's fundamental right to life. Then the learned Judge has explicated as to how the authorities must be objective but not

² MANU/AP/0184/2010 = 2010(2) ALD (CrI) 316

subjective in their assessment of existence of reason for grant of a licence.

He observed thus:

“Para 29: *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 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.”*

The case on hand has to be tested on the anvil of the statutory provisions of Arms Act as well as the above precedential jurisprudence.

7) The material papers filed along with the writ petition would show that the petitioner in Form ‘A’ application dated 03.10.2007 submitted to 2nd respondent mentioned that he, for the purpose of self-protection required one N.P.Bore Revolver/Pistol. He disclosed in Column 10(c) of Part-B of the application that his father was holder of arms licence No.955/Abid Road. The said application was rejected by the 1st respondent vide Memo No.19927/Arms/2008 dated 20.08.2008 on the

ground that the enquiries revealed that there were civil disputes regarding properties between applicant's brothers and his cousin brothers and they were pending in various courts and one case was pending in Central Crime Station, in which, the applicant was the complainant and hence it was not desirable to grant arms licence to him. It appears, aggrieved, the petitioner filed appeal before the Government on 09.09.2008 and the 1st respondent vide G.O.Rt.No.337 dated 24.02.2010 passed an order rejecting the appeal on the ground that as per the report of the Commissioner of Police, the father of the applicant is already having two weapons covered under the arms licence and there are civil disputes pending between father of the applicant and his cousin brothers and there is likelihood of breach of peace between both parties and thereby there is a possibility that the weapons may be misused due to property disputes among the family members if another licence is granted to the applicant. In Para 4 of the counter it is mentioned that the enquiries revealed that the applicant's father by name Mohd. Abdul Muneem @ Haji Seth is holding arms licence No.955/Abid Road and possessing two weapons i.e, DBBL gun and 6.35 NPB pistol. Some unknown persons attacked his father on 14.09.2007 at his residence and in that regard a case vide Crime No.241/2007 was registered with Abids PS, Hyderabad for the offence under Section 307 IPC and later the same was transferred to Central Crime Station, for investigation. While the investigation was in progress, the task force officials registered Crime No.270/2008 under Sections 115, 120B r/w 34 IPC and Section 25(1)(b) of Arms Act, in which 11 accused persons were involved including the uncle of the petitioner i.e, his father's brother. Showing the above

reasons, the appeal was rejected. Hence the crucial question is whether the grounds shown by the 1st respondent for refusal to grant licence is in accordance with the conditions mentioned in Section 14(1)(b) of Arms Act.

8) The 1st respondent rejected the application on the ground mentioned in Section 14(1)(b) of the Arms Act, which reads that where the licensing authority deems it necessary for the security of the public peace or public safety, it can refuse to grant such licence. To justify this ground, it is pleaded that the father of the petitioner is already having two weapons stated supra and there are civil disputes pending between the father of the petitioner and his brothers and further, the father of the petitioner was attacked by some assailants at his residence on 14.09.2007. In that context a case in Crime No.No.241/2007 under Section 307 IPC was registered with Abids PS, Hyderabad and another Crime No.270/2008 was registered by the task force officials under Sections 115, 120B r/w 34 IPC and Section 25(1)(b) of Arms Act, against 11 accused including the uncle of the petitioner i.e, his father's brother. In this backdrop, the 1st respondent expressed his apprehension that there is a likelihood of breach of peace between both parties and there is a possibility that the weapon may be misused due to property dispute among the family members of the petitioner, if another licence is granted to the applicant. It must be said, the reasons furnished for refusal of granting licence are quite unsustainable and they are not within the spirit of Section 14(1)(b) of the Act. The reason for declining licence is that the father of petitioner is already

having two weapons. Logically and legally, this is not a sustainable ground. It should be noted that the petitioner has already mentioned in his application that his father was holding arms licence. There is no gain saying the fact that under law, father and son are two different entities and therefore, father's possessing arms licence cannot be a ground to reject son's request. Most importantly Section 14(1)(b) of the Act has not regarded it as a ground for refusal of licence. The second ground appears to be that there are civil disputes pending between the father of the petitioner and his brothers (petitioner's uncles) and if licence is granted to the petitioner, there is a likelihood of his misusing the same due to the aforesaid disputes. This is also an unsustainable ground, for, the respondents themselves mentioned in their counter that some unknown persons attacked the father of the petitioner on 14.09.2007 at his residence and in that regard Crime No.241/2007 was registered with Abids PS, Hyderabad for the offence under Section 307 IPC and another Crime No.270/2008 was also registered for the offences under Sections 115, 120B r/w 34 IPC and Section 25(1)(b) of Arms Act, in which 11 accused including the uncle of the petitioner i.e, petitioner's father's brother. This fact itself shows that there is a threat to the lives of the petitioner's father and also his family members i.e, petitioner and others. The tone & terrorem of the two cited decisions is that the provisions of Arms Act shall be construed in the light of Article 21 of the Constitution i.e, right to life. In other words, the provisions of Arms Act shall enable the citizens to protect their lives against the unwarranted and unforeseen attacks made on their lives, leaving no room for taking recourse from law enforcing

agencies. As rightly argued by learned Senior Counsel, the apprehension of misuse of the arm in the hands of petitioner is only a presumption. Admittedly, the petitioner had no criminal background and he was not involved in any criminal offences as an accused and no such instances are brought to the notice of this Court. In that view, in spite of petitioner's family members are made as target either due to the civil disputes or for some other reason, refusal to consider the request of the petitioner for granting licence on a presumption which has no factual scaffold is not sustainable under law. Running the risk of pleonasm, it must be said that the licensing authority cannot reject the request of an applicant unless it has specified that any of the grounds mentioned in Section 14(1)(b) of the Act indeed exists but unfortunately that is not the case here. Therefore, the impugned order is liable to be set aside.

9) In the result, this Writ Petition is allowed and the impugned G.O.Rt.No.337 Home (Arms) Department dated 24.02.2010 passed by the 1st respondent is set aside. The 1st respondent is directed to reconsider the petitioner's application in the light of facts involved in the application and also taking into consideration the facts which exist as on today and pass a fresh order and communicate the same to the petitioner within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 22.10.2018

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