

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**WPA 6015 of 2020
IA No: CAN 1 of 2020
(Old No: CAN 4203 of 2020)**

**Joydip Mitra
Vs.
The State of West Bengal and others**

For the petitioner	:	Mr. Pappu Adhikari
For the State	:	Mr. Sirsanya Bandopadhyay, Mr. Arka Kumar Nag
Hearing concluded on	:	08.12.2020
Judgment on	:	17.12.2020

Sabyasachi Bhattacharyya, J:-

1. IA No: CAN 1 of 2020 (Old No: CAN 4203 of 2020) is allowed without costs in view of the urgency involved and the writ petition itself is finally heard.
2. The petitioner is an advocate, empanelled with various insurance companies, banks and financial institutions and also deals with criminal cases at the Judges' Court at Nadia since 2013. The petitioner applied for a gun licence on July 9, 2019 before the District Magistrate at Nadia, upon which a police report was called for. The S.I. of the Police, Kotwali Police Station, Krishnanagar PD at Nadia gave a report on September 1, 2019, observing inter alia that the

petitioner has “professional threat in life” but no case was recorded in the said police station and nothing adverse could be found against him. It was further mentioned in the report that the police had no objection if the petitioner was granted arms licence.

3. Subsequently, the Additional District Magistrate (Gen) at Nadia called the petitioner for hearing and, upon such hearing, rejected the petitioner’s application for arms licence vide order dated February 28, 2020. The primary ground for such refusal, as reflected from the order, was that the petitioner had no specific threat to life and property. Being aggrieved by the said refusal, the petitioner has preferred the instant writ petition.
4. Learned counsel for the petitioner argues that the Additional District Magistrate did not have jurisdiction to decide the petitioner’s application for grant of arms licence. It is argued that the “licensing authority”, as envisaged in the Arms Act, 1959 (hereinafter referred to as “the 1959 Act”) and Arms Rules, 2016 (hereinafter referred to as “the 2016 Rules”), is the District Magistrate. Counsel argues that such power could not have been delegated by the District Magistrate to an Additional District Magistrate, since Schedule II to the Arms Rules, 2016 stipulates that acquisition/possession of arms licence and grant/refusal of such licence falls within the domain of the District Magistrate.
5. Placing reliance on Rule 2(5) of the 2016 Rules, learned counsel submits that “authority” or “officer” means, except where otherwise

specifically provided in the Rules, the District Magistrate or such other Officer as may, from time to time, be notified in the Official Gazette by the Central Government.

6. Rule 4, on the other hand, provides that unless the Central Government or the State Government by notification in the Official Gazette so directs, no licence shall be required for the manufacture, sale, possession for sale or test of arms of Category V in Schedule I except in the areas notified under Section 4 of the 1959 Act.
7. Section 23(2) of the Code of Criminal Procedure, it is argued, specifically provides that the distribution of business to Executive Magistrates and allocation of business to Additional District Magistrates have to be “consistent with” the Code. Thus, it is argued that the said provision applies to the provisions of the Criminal Procedure Code and not to the 1959 Act or other laws. That apart, the 1959 Act, being a special statute, overrides the Criminal Procedure Code, which is a general statute, in case there is a conflict between the provisions of the two. On such premise, learned counsel for the petitioner argues, the delegation of power to grant/refuse arms licence to the Additional District Magistrate was untenable in law.
8. Section 43 of the 1959 Act, it is submitted, confers on the Central Government the power to direct, by notification in the Official Gazette, that any power or function which may be exercised or performed by it under the said Act, other than the power under

Section 41 and Section 44, be exercised or performed also by such officer or authority subordinate to the Central Government or such State Government or such officer or authority subordinate to the State Government as may be specified in the notification. Hence, the Central Government, and not the District Magistrate, has the power to allocate the business of grant/refusal of arms licence to the Additional District Magistrate.

9. Section 2(ff) of the 1959 Act, counsel argues, merely provides that “Magistrate” means an Executive Magistrate under the Code of Criminal Procedure. Such provision does not confer any power on the Executive Magistrate to exercise the specific powers conferred by the 1959 Act on the District Magistrate.
10. Section 4 of the 1959 Act, again, empowers the Central Government, by notification in the Official Gazette, to apply the said section to the area specified in the notification, whereupon no person shall acquire, have in his possession or carry in that area arms of such class or description as may be specified in the notification unless he holds in this behalf a licence issued in accordance with the provisions of the 1959 Act and the Rules made thereunder. This, according to the petitioner, further strengthens the contention that the District Magistrate has no power to delegate authority under the 1959 Act to an Additional District Magistrate, where the Act confers such power specifically on the District Magistrate.

- 11.** On the merits of the petitioner's case for acquiring a gun licence, learned counsel for the petitioner relies on Section 13(3)(a)(i) of the 1959 Act, highlighting that the licensing authority may grant a licence under the conditions stipulated therein. The said clause mentions "protection" as a reason for issuance of licence.
- 12.** The petitioner contends that Section 14(1)(b)(i) of the 1959 Act, stipulates the conditions under which the licensing authority shall refuse to grant a licence. It is submitted that the petitioner does not fall within any of the said clauses.
- 13.** Rule 12(3)(a) of the 2016 Rules, the petitioner argues, mentions that for grant of a licence the licensing authority, based on the police report and on its own assessment, may consider the applications of any person who by the very nature of his business, profession, job or otherwise has genuine requirement to protect his life and/or property. In view of the petitioner having made out a case of such requirement due to the very nature of his profession and the consequent threats on life, the petitioner comes within the fold of eligibility as envisaged in the aforesaid provision.
- 14.** The petitioner relies on a complaint purportedly lodged by the petitioner on January 21, 2020 before the police authorities, asking for a General Diary Entry to be lodged, to bolster his submission of threat to his life.

15. Learned counsel for the petitioner cites an unreported judgment dated June 24, 2020, passed by a co-ordinate bench in *W.P. No.5581(W) of 2020*, with *C.A.N 3313 of 2020*, in the case of *Ismail Mondal vs. State of West Bengal & Ors.*, for the proposition that the only criterion which is required to be taken note of while issuing an arms licence is whether the person has threat perception.
16. Hence, learned counsel for the petitioner submits, there was sufficient threat perception in the petitioner's case to afford him protection by issuing an arms licence.
17. Learned counsel for the respondents, in turn, argues that Section 23(2) of the Criminal Procedure Code provides for the District Magistrate to distribute/allocate business to an Additional District Magistrate. The expression "consistent with" the Code does not confine such allocation of powers within the purview of the Criminal Procedure Code only, but also relates to other laws, including the 1959 Act.
18. By relying on Section 2(ff) of the 1959 Act, learned counsel submits that "Magistrate" means an "Executive Magistrate" under the 1959 Act and does not have any role to play in the dispute at hand.
19. Rule 7, Sub-Rules (1) and (2) of the 2016 Rules clearly provide that a copy of every licence has to be sent to the District Magistrate, thereby indicating that the licensing authority may very well be some other officer than the District Magistrate herself/himself.

- 20.** Regarding the merits of the petitioner's application for arms licence, learned counsel for the respondents submits that grant of such licence is a statutory privilege and not a fundamental right. As such, the conditions stipulated in the statute have to be fulfilled by an applicant. A gun licence cannot be claimed as a matter of right, either statutory or Constitutional.
- 21.** Learned counsel for the respondents next places reliance on an unreported judgment dated April 29, 2015, passed by a Division Bench of the Delhi High Court in *LPA No. 41/2015 [Parveen Kumar Beniwal vs. Govt. of NCT of Delhi & Anr.]*. In the said judgment, it was reiterated that a licence for acquisition and possession of fire arms was only a statutory privilege and not a matter of fundamental right under Article 21 of the Constitution of India and that once the concerned authority has for reasons recorded and for ensuring security of public peace and public safety cancelled the arms licence, the same ought not to be interfered with in writ jurisdiction since it raises disputed questions of fact.
- 22.** Learned counsel also places reliance on *People for Animals vs. Union of India & Others*, reported at (2011) SCC OnLine Del 2359, where another Division Bench of the Delhi High Court laid down the proposition which was, in fact, reiterated in *Parveen Kumar Beniwal (supra)*. Relying on a previous Allahabad High Court judgment, reported at AIR 1985 All 291 [*Kailash Nath and others vs. State of U.P. and another*], the Division Bench held that a right is distinct from a

mere privilege and that the case of a licensee to possess or use firearm is materially different from a case of licence to deal in or sell firearms. Upon consideration of the 1959 Act, it was also reiterated that the consistent trend of judicial decisions has been that officially granting the licence involves the exercise of discretionary licensing powers which are concerned with privileges and not rights. It is, therefore, apparent that no citizen has a blanket right to carry firearms. Its grant was held to be subject to the citizen applying for a licence and fulfilling the qualifications and criteria spelt out in the 1959 Act and connected Rules. The holding of a licence is not a right, but a qualified privilege under the 1959 Act and the applicant has to fulfil the conditions prescribed to be granted the licence and, after its grant, the conditions prescribed in the licence to be able to continue to hold it.

- 23.** Learned counsel for the respondents argues that the police report, annexed at page-21 of the writ petition, only shows that the police gave a 'no objection' but not that they recommended a gun licence to be given to the petitioner. Moreover, the said report speaks of "professional threat in life" but fails to give any specific instance of such threat.
- 24.** Under such circumstances, it is argued that the Additional District Magistrate was justified in refusing the grant of arms licence to the petitioner.

- 25.** Considering the submissions of both sides, the relevant provisions of the 1959 Act as well as the 2016 Rules are to be looked into.
- 26.** Section 2(f) of the 1959 Act defines a ‘licensing authority’ as an officer/authority empowered under the Rules, framed under the 1959 Act, including a Government. Section 2(ff) of the said Act says that a ‘Magistrate’ is an Executive Magistrate under the Code of Criminal Procedure, 1973.
- 27.** Sections 13 and 14 of the 1959 Act deal respectively with the grant and refusal of arms licences and speaks about the ‘licensing authority’.
- 28.** Rule 7 of the 2016 Rules provides that the licensing authority is to furnish information to the District Magistrate, which indicates that the licensing authority may very well be someone other than the District Magistrate for the purpose of the Act and Rules.
- 29.** Section 43 of the Arms Act sets out that the Central Government’s power/function can be delegated by notification in the Official Gazette.
- 30.** Rule 2(5) of the 2016 Rules defines an “authority” as the District Magistrate or other officer as may be notified in the Official Gazette by the Central Government. Although the District Magistrate has been specified as the authority for grant and renewal of licence in Item 3 of Schedule II, framed under Rule 5 of the 2016 Rules, there is nothing in the Act or Rules to indicate that the District Magistrate is a

persona designata. Rather, Rule 2(5) indicates that the licensing authority may be someone other than the District Magistrate. It is further seen that Rule 105 of the 2016 Rules provides that the District Magistrate shall be the appellate authority in case of disputes in that regard.

31. Rule 4 of the 2016 Rules and Section 4 of the 1959 Act lay down provisions for licence in respect of arms “other than firearms”. In fact, Rule 5 of the 2016 Rules pertains to manufacture, sell etc., of arms and ammunitions, although a composite reading of the Rules indicate that the District Magistrate has been designated as the licensing and renewing authority for arms licences even in respect of acquisition and possession.

32. As far as Section 23(1) of the Code of Criminal Procedure is concerned, it has been specified that Executive Magistrates “other than” Additional District Magistrates shall be subordinate to the District Magistrate. By necessary implication, the powers of the Additional District Magistrates are on a similar footing as that of the District Magistrate, although the District Magistrate may be at the top of the administrative hierarchy. Thus, the allocation of business to Additional District Magistrates by the District Magistrate, as envisaged in Section 23(2) of the Code, does not necessarily mean a vertical allocation down the hierarchy but a lateral assignment for convenience of functioning. It is evident that District Magistrates will be overburdened by applications for arms licences, which would be

detrimental to the effective and speedy functioning of the District Magistrate, who is in charge of several other statutory duties as well. Hence, the allocation of business to an Additional District Magistrate is totally in consonance with the idea that such allocation may also pertain allocation of the business of acting as a licensing authority under the 1959 Act. There is nothing in Section 23 of the Criminal Procedure Code to prevent the allocation of business of the District Magistrate, with regard to gun licences, to Additional District Magistrates. The expression “consistent with this Code” in Section 23(2) of the Code merely puts a rider to bring harmony between the exercise of the power under the said-subsection and the rest of the Code and cannot be stretched to mean that the allocation of power has to be confined to the powers conferred under the Code itself. There is nothing to prevent allocation of any such business of the District Magistrate even under other Acts.

- 33.** Although not cited by the parties, Section 20(2) of the Code of Criminal Procedure specifically provides that the State Government may appoint any Executive Magistrate to be an Additional District Magistrate and such Magistrate shall have such of the powers of a District Magistrate under the Code or under any other law for the time being in force, as may be directed by the State Government. Thus, there is no absolute bar to the Additional District Magistrates discharging the functions of the District Magistrate.

34. Thus, the question raised by the petitioner, as to whether the Additional District Magistrates can exercise jurisdiction to grant or refuse arms licences, is decided in the affirmative.
35. As regards the merits of the petitioner's case, it is patently visible from the police report, annexed at page-21 of the writ petition, that the same merely mentioned 'professional threat in life'. However, such expression was qualified by the rider, "but no case is recorded in this PS". Thus, there is no disclosure of any specific threat being made out by the petitioner. Only after the application for arms licence and submission of the police report, the petitioner made a request to the Inspector-in-charge, Kotwali Police Station on January 21, 2020 for a General Diary Entry to be lodged on the basis of a vague allegation of a threat being issued to the petitioner. Such allegation apparently did not culminate in any case being registered, at least so far as disclosed in the writ petition. Rather, it appears that the request was made merely to cover up the petitioner's lacunae in respect of the application for arms licence, since the police report had specifically mentioned that no case was recorded in the police station regarding professional threat to him.
36. In *Parveen Kumar Beniwal (supra)*, a Division Bench of the Delhi High Court reiterated the principles laid down in *People for Animals (supra)*. It was held that arms licence was a privilege and can be cancelled to ensure security of public peace and safety. It is not a matter of right.

- 37.** In the present case, the police report (at page-21 of the writ petition) disclosed merely, in general terms, that there was “professional threat in life” of the petitioner, but, as rightly pointed out by the Additional District Magistrate, no specific instance of threat was disclosed. On the contrary, the police mentioned that there was no case registered in the police station in connection with the petitioner. The police only gave a ‘no-objection’ and did not ‘recommend’ gun licence being granted to the petitioner.
- 38.** If mere legal practice in the criminal side or of insurance law can justify the practitioner being under ‘professional threat’, there are umpteen number of other professions which qualify far better on the said front.
- 39.** It is rather unfortunate that the petitioner subsequently requested the police station to lodge a General Diary Entry of a vague allegation of a particular threat, allegedly issued to him. It is evident that the same was the unilateral version of the petitioner, that too, created apparently to fill up the lacuna in the police report and to initiate the process for a first information report to be registered at the behest of the petitioner. Such an effort cannot be lent credence to for the purpose of considering the alleged threat perception in the mind of the petitioner.
- 40.** It is clear from the body of precedence cited by the petitioner that the ‘threat perception’ justifying issuance of arms licence cannot be ascertained from the viewpoint of the applicant alone, but has to be

threat perception in a broader sense, arising from serious threat(s) to the life and property of the applicant, to be assessed from surrounding circumstances. The non-existence of such a genuine threat perception vis-à-vis the petitioner in the present case denudes the petitioner's alleged necessity for arms licence of credibility. As such, the Additional District Magistrate acted well within her jurisdiction in refusing to grant arms licence to the petitioner.

41. Accordingly, WPA 6015 of 2020 is dismissed by affirming the impugned decision to refuse arms licence to the petitioner.
42. It is, however, made clear that the petitioner shall not be precluded from applying for grant of arms licence in his favour in future, if actual circumstances so demand. In the event of such an application being made, the licensing authority shall consider the same in its own perspective, without being unnecessarily prejudiced in any manner by the observations made herein.
43. There will be no order as to costs.
44. Urgent certified website copies of the order shall be provided to the parties upon due compliance of all the requisite formalities.

(Sabyasachi Bhattacharyya, J.)