

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No. 8142 of 2019

Jitesh Sahu Vs. The Hon'ble Home Minister (Urban) State of Maharashtra and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R.D. Dhande, Advocate for the petitioner
Mr. A. Palshikar, AGP for the respondents

CORAM : MANISH PITALE, J.

DATED : FEBRUARY 21, 2020

By this writ petition, the petitioner has challenged orders passed by the respondents No.1 and 3, whereby an application submitted by the petitioner under the provisions of the Arms Act, 1959, for issuance of licence for non-prohibited fire arm, has been rejected.

2. The petitioner had moved an application under the provisions of the said Act. A police verification report dated 08/10/2016, was also submitted with the application, which gave a positive input in favour of the petitioner. A medical certificate was also placed on record. But, by order dated 24/10/2018, the respondent No.3 informed the petitioner that the respondent No.2 had rejected his application as per Sections 13(3)(b) and 14(1)(b)(ii) of the aforesaid Act and the petitioner was informed

that he could file an appeal challenging the said order.

3. The petitioner filed an appeal before the respondent No.1. By impugned order dated 03/10/2019, the appeal filed by the petitioner was rejected and the order passed by the authority below was confirmed. It is significant that in this order the respondent No.1 held that the appeal was liable to be rejected because the petitioner had not been able to place on record any material to show that he had any threat to his life.

4. The learned counsel appearing for the petitioner submitted that the present case was covered by the judgment of this Court in the case of **Pawan Ashok Bora Vs. State of Maharashtra and Others 2017(4) Mh.L.J. 619**, wherein this Court had categorically held that absence of threat to life could not be a ground for rejection of application for grant of firm arm licence under the aforesaid Act. It was further submitted that the rejection of the application of the petitioner by the respondent No.2 under Sections 13(3)(b) and 14(1)(b)(ii) of the said Act, was also unsustainable because the said provisions did not apply to the facts of the present case.

5. In response to the present writ petition, affidavit in reply has been filed on behalf of respondents No.2 and 3, wherein rejection of the

application filed by the petitioner has been justified on the ground that there is no threat to the life of the petitioner and there is possibility of misuse of the fire arm by the petitioner, which may lead to breach of public peace.

6. Heard learned counsel for the rival parties. Since the learned counsel appearing for the petitioner has relied upon the judgment of this Court, it would be appropriate to peruse the same. In the said case, this Court specifically dealt with the question as to whether absence of material to show threat to the life of the applicant could be a ground for rejection of licence of fire arm under the provisions of the said Act. This Court referred to various provisions of the said Act, including Sections 13 and 14 thereof and it was held as follows :

“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.

There 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 fro 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 firearm as a fashion tend. This is not to say that need felt by a person to possess a firearm 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 touchstone 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 firearm 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 of 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 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.”

7. Applying the said position of law to the facts and circumstances of the present case, it is evident that the impugned order passed by the respondent No.1 dismissing the appeal of the petitioner was not justified, because the ground on which the appeal was dismissed was that there was absence of material to show that there was threat to the life of the petitioner.

8. As regards the order passed by respondent No.2, which was communicated by the respondent

No.3 by communication dated 24/10/2018, it would be necessary to peruse Sections 13(3)(b) and 14(1)(b) (ii) of the aforesaid Act.

9. Section 13(3)(b) of the aforesaid Act pertains to the necessity or satisfaction of the authority to the effect that the person applying for licence has good reason for obtaining the same. Section 14(1)(b) (ii) of the said Act pertains to a situation where the licensing authority could refuse grant of licence if it is found that grant of such a licence would lead to breach of peace or public safety.

10. In the present case, there is no material to support the approach adopted by respondents No.2 and 3, because in the application submitted on behalf of the petitioner it was specifically stated that he required such a licence for non-prohibited fire arm, in view of the fact that the petitioner is in the hospitality business and the petitioner has a Bar and Restaurant on the highway and further that after his work is over he is required to travel with cash amount. It is this apprehension that is made the basis by the petitioner for moving the application. Therefore, it is surprising that the respondents No.2 and 3 came to the conclusion that there is absence of good reasons on the part of the petitioner for grant of licence under the provisions of the said Act. Considering the fact that the police had itself given a positive assessment and report

in favour of the petitioner, there was no material to proceed on the basis that there was likelihood of breach of peace or danger to public safety if licence was granted. As noted above, absence of threat to the life of the petitioner could not be a ground for rejection of licence.

11. In view of above, it becomes evident that rejection of the application filed by the petitioner in the present case is not sustainable and that the respondents did not consider the application of the petitioner in the correct perspective and in terms of law laid down by this Court.

12. Accordingly, the writ petition is allowed.

13. Orders passed against the petitioner refusing grant of fire arm licence are quashed and set aside.

14. Consequently, the respondent No.2 is directed to issue appropriate licence for non-prohibited firm arm to the petitioner within a period of 30 days from the date of this order and in accordance with law.

15. The writ petition is disposed of.

JUDGE