

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1678 OF 2019

Pradipsingh Chandansingh Amdurekar
Age : 40 years, occ : agri.,
R/o Aamdura, Taluka Mudkhed,
District Nanded.

Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary
State Home Department,
Mantralaya, Mumbai – 32.
2. The Divisional Commissioner,
Aurangabad Division,
Aurangabad.
3. The District Magistrate,
Nanded District, Nanded.
4. The Superintendent of Police
S.P. Office, Nanded.

Respondents

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Mr. M.D.Narwadkar, Advocate for the petitioner.
Mr. R.D. Sanap, A.P.P. for respondents / State.

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CORAM : **Surendra P. Tavade, , J.**

Judgment reserved on : 11.08.2021.
Judgment pronounced on : 13.08.2021

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of
learned Counsel for the parties, heard finally.

2. The petitioner is challenging the order dated 18th July 2019 passed by the Divisional Commissioner, Aurangabad on File No.2015/Gen.Admn/PL-1/Arms/CR-35 thereby confirming the order dated 31st May 2014 passed by the District Magistrate, Nanded, whereby the petitioner is refused licence under the Arms Act for 12 bore gun.

3. It is contended that the petitioner is a law abiding citizen of India. He has no criminal antecedent. The petitioner is looking after his agricultural land and for that purpose, he is required to visit the farm on odd hours quite frequently. The distance between agricultural land and his residential house is around 12 to 14 kms. There is forest area in the vicinity of the village and there is always threat of wild animals. There are many incidents of dacoity, theft and robbery occurred in and around the agricultural land owned by the petitioner. It is contended that the petitioner sometimes travels to Nanded for purchasing the necessary agricultural articles during the agricultural season. The petitioner has to travel in the night. In the backdrop of these facts, the petitioner feared and had apprehension that he is having life threats from the wild animals or ant-social elements. Therefore, he applied for arms licence under the provisions of Arms Act, 1959 (hereinafter referred to as "the Act") alongwith supporting documents like 7/12 extract, photo copy of identity card, training certificate issued by Police Inspector, Reserved Police Force, Headquarter, Nanded.

4. It is contended that the District Magistrate (respondent No.3), without assigning proper findings, rejected the application of the petitioner. The petitioner filed appeal before the learned Divisional Commissioner, but he also passed a cryptic order and rejected the appeal on the ground that the petitioner has no threat of life. It is also mentioned in the impugned order that the petitioner is not trained in the handling weapon. However, in fact the petitioner had submitted certificate of training issued by the Competent Authority, but it was not considered. Hence, the impugned order passed by the Divisional Commissioner is challenged in this Writ Petition. It is prayed that the said impugned order be quashed and set aside and the Competent Authority be directed to issue arms licence to the petitioner.

5. Heard learned Counsel for the petitioner and learned A.P.P. on behalf of the State. Perused the order dated 31st May 2014 passed by the District Collector, Nanded and the order dated 18th July 2019 passed by the Divisional Commissioner, Aurangabad.

6. In the impugned order dated 18th July 2019, the Divisional Commissioner has observed that the petitioner has no serious threat to life through anybody. Similarly, the petitioner has no experience of handling the fire arms. It is also observed that the cause given by the petitioner for arms licence is not sufficient.

7. On the basis of the impugned order, the learned Counsel for the petitioner submits that the licence was refused to the petitioner only on the ground that there is no threat or danger found

to the life, property or family of the petitioner. The said grounds are not contemplated under Section 14 of the Act. He also submits that if a particular provision of a statute prescribes the grounds on which discretion is to be exercised, then such discretion is to be exercised in accordance with the provisions of the said statute and not on any other ground not mentioned in the said provisions.

8. For the sake of appreciation of the above contentions, the provisions of Section 14 of the Arms Act are required to be reproduced, as under :

“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."*

9. On perusal of the above provision, it can be said that the licence cannot be refused on the ground that there is no threat or danger found to the life, property or family or person seeking licence. Respondent No. 3 has not considered the application of the petitioner in proper perspective.

10. Learned Counsel for the petitioner relied on the ratio laid down by this Court in **Criminal Writ Petition No. 490 of 2008 (Chandrakant @ Chandrashekhar Veerbhadrapa Rachatte vs. The State of Maharashtra and others)**, wherein this Court has made the following observation :

"7. When a statute prescribes the grounds on which discretion is to be exercised, then such a discretion is to be exercised in accordance with the provisions of the statute and not on any other ground not mentioned in the said statute. Perusal of the impugned orders would reveal that the authority has not refused to grant licence on the grounds mentioned in Sub-section 1 of Section 14 of the Arms Act. The order of the Additional District Magistrate would further show that the contention of the present petitioner regarding settlement of the dispute and the criminal cases arising out of family dispute has also not been considered. In that view of the matter, I find that the discretion has not been exercised by the authorities in a proper manner."

11. In the present case, the Authorities have refused to grant licence to the petitioner on the ground which is not contemplated under Section 14 of the Act. Consequently, the impugned orders do not stand. The Writ Petition, thus, deserves to be allowed. Hence, the following order.

ORDER

- I. The Writ Petition is hereby allowed.
- II. The order dated 31st May 2015 passed by the District Magistrate, Nanded and the order dated 18th July 2019 passed by the Divisional Commissioner, Aurangabad, thereby confirming the order passed by the District Magistrate, are hereby quashed and set aside.
- III. Respondent No. 3 – District Magistrate, Nanded District, Nanded is hereby directed to issue arm licence to the petitioner.
- IV. Rule is made absolute in the above terms. The writ petition is accordingly disposed of. No order as to costs.

(SURENDRA .P. TAVADE, J.)