

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1172 OF 2020

Inzamam Ul Haque Faziu Haque.

...Petitioner.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. Kushal Mor and Mr. Kunal Bilaney for the petitioner.

Mr. J. P. Yagnik, APP for the Respondent – State.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

Date : March 24, 2022.

P. C. :

1. Heard learned counsel for the Petitioner and learned APP for the Respondent-State. With the consent of learned counsel appearing for the respective parties, the petition is taken up for hearing and disposal.

2. The Petitioner by way of present writ petition is raising challenge firstly to the order dated 29th January 2018 passed by the competent authority, i.e., Respondent no.2, whereby the application for grant of firearm is rejected, and secondly to the order passed by appellate authority, dated 31st August 2019 whereby the appeal preferred by Petitioner is dismissed. The appellate authority by concurring with the reasons given by competent authority, has dismissed the appeal. Learned counsel appearing on behalf of the petitioner

vehemently submitted that both the authorities without recording their subjective satisfaction, only by mechanically referring to the provisions of law, have rejected the application and dismissed the appeal.

3. Learned counsel for the Petitioner in support of his submissions placed reliance on an unreported order of this Court in the matter of *Khan Abdul Wahab Usman vs. The State of Maharashtra (Criminal Writ Petition No.2688 of 2008. Order dated 12th February 2009)*. Learned counsel for the Petitioner by inviting our attention to the copy of application submitted by the Petitioner to the competent authority, which is placed on record at Exhibit-H page no.24 of the petition, submitted that the Petitioner had assigned specific reasons for grant of licence. The perusal of said application shows that the application opens up with a statement that the Petitioner is resident of Sainagar area and he is the owner of one power-loom in Bhiwandi town of Thane district. It is further stated that apart from this power-loom business, the Petitioner is also engaged in the business of service provider, particularly security service, it is stated in the application that his place of business falls in a red-alert area and there is a movement of persons indulged in criminal activities. It is stated then in the application that there are as many as 160 persons employed by him in his businesses and as the Petitioner is engaged in security service, he has to rotate his employees after every

fortnight and some of his employees are assigned for the protection of heavy cash. It is also stated in the application that the Petitioner himself is required to attend various spots in relation to his business activities, at the day hours as well or night hours. It is further stated in the application that on 19th January 2018 one of his employee – security guard Gurdev Pande subjected to murder and FIR bearing Crime No.23 of 2018 came to be registered at Nijampura Police Station. It is further stated in the application that as the Petitioner is required to attend various spots in continuity of rounds and there is constant apprehension and danger to the life of Petitioner and therefore the Petitioner is approaching the authority for grant of firearm licence.

4. On receipt of the said application, Respondent no.2 by referring to the provisions of Arms Act, 1959, particularly the provisions of section 13(3) and section 14(1)(b)(ii) of the said Act, rejected the application. It would be useful for our purposes to refer to the relevant provisions of law. Section 13 of the Arms Act, 1959 is a provision wherein the issue of grant of licence is considered and the procedure carved out is referred to in the said section. Whereas section 14 speaks about the grounds for refusal of licence. Section 14 reads thus :

“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”

5. We find that except quoting particular provision of law, there is no reference in the impugned order so as to say that on that particular material, the competent authority has formed an opinion and taken recourse to section 14(1)(b)(ii) of the said Act. It may not be out of place to state here that in view of the judgment of this Court even quasi-judicial authorities are expected to assign reasons in their orders.

Though the reasons may be in brief, the same would show the application of mind by the authority concerned.

6. In paragraph 2 of the order dated 9th February 2018, the competent authority has stated that no sufficient reasons are assigned by the Applicant for grant of licence and then in paragraph 3, the authority has made reference to certain provisions of the Arms Act, 1959. Insofar as paragraph 2 of the impugned order is concerned, we are unable to find any reason supporting the statement in paragraph 2 that the concerned authority has formed an opinion that there are no justifiable reasons submitted before the authority for grant of licence. This is completely contrary to what we have observed above that the the Petitioner in his application has assigned more than one reason for grant of licence.

7. At this juncture, it would be apposite to refer to sub-section (3) of section 14 of the Arms Act, 1959, which prescribes that 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. The order dated 29th January 2018

even fails on the ground of non compliance of this vital provision.

8. Coming to the order passed by the appellate authority, which only reveals that the appellate authority referred to the contents of application and then placing reliance on the report submitted by local police authority, has formed its opinion that the Petitioner is not entitled for grant of licence. We find that even this order passed by the appellate authority fails to show proper application of mind. It only refers to the forming of an opinion on the basis of report submitted by local police. Here, it may not be out of place to refer to certain observations of this Court in the matter of *Khan Abdul Wahab Usman (supra)*, which read thus :

“5. The section having titled as “Refusal of licenses” would mean that as a general rule any person who wants to have licensed weapon should be granted licence. It becomes clear from mere perusal of section 14(1)(a)(b) of the Act, where it is laid down that the licensing authority shall refuse to grant a licence if conditions in Sub-sections (a), (b) of Section 14(1) and sub-section (2) of Section 14 are satisfied. Therefore, if a person does not suffer from a disqualification under Section 14 (1)(a) (b) or 2 or 13(2), the authority has to grant a licence. Subsection 14(1)(ii) of the Act further lays down, where the licensing authority deems it necessary for the security of the public peace or for public safety, may refuse to grant such license. Therefore, the perusal of these sections would show that grant of licence to a citizen is a rule and refusal to grant license is an exception and unless a citizen falls in exceptions mentioned in section 14 of the act, the State has no authority to refuse granting of license. The learned Public Prosecutor relies upon the manual guidelines 102 and 112 of guidelines framed.

6. We appreciate that State can frame guidelines under

Section 14(2) of the Act, because this gives power to the State to refuse a license, where the licensing authority deems it necessary for the security of the public peace or public safety to refuse or grant a license. We understand that even after having a right to get a license to the weapon under the Arms Act, 1951 the State cannot be expected to give an arms licence to anybody who moves an Application before the State. It is the duty of the state to ensure that licence is not granted to a person who becomes a threat to the security of public peace or public safety. But, the norms which have been shown to us are not so elaborate, they merely say that the licence should not be granted to :

1. A person who does not have a good moral character.
2. He should not belong to a political party who promotes the philosophy of violence , and
3. He should also satisfy the need for the weapon.

The Public Prosecutor relies on the 3 requirements i.e. any applicant who applies for grant of licence should show the need for it. The Public Prosecutor has not been able to tell us any ground which could be sufficient for the concerned Police Officer to come to the conclusion that the applicant has no need of the weapon. **In any case, that question is not important because self-preservation is a basic human right of every human being and every human being can be susceptible to the threats of life even if he is not a targeted person. There can be so many examples, when a common man can find himself in need to defend himself. Even on a roadside, a goonda can try to snatch a purse of a person. Even in the safe environment of his house, he can face burglary and we understand that these questions have been taken into consideration by the respondents while granting 348 licences in the last three years because most of the licences have been granted on the ground of self protection and only a few of them have been granted on the ground of threat to the life from anti-social elements.** Some of the licenses have been granted because their father had a licence, then it was granted to the daughter or a son. Some of the licenses have been granted to the police officers who are already in possession of a service weapon. One of the licence has been granted to a Resident Medical Officer and no need has been explained as to what was the need for a Medical Officer to have a gun, if it was only required to be given because of any threat to the life. We have examined a file pertaining to an Advocate who has been granted a licence. Basically he was granted a licence only

because his father was in possession of the licence. The application by Advocate was initially made in Form II and the notes written by the concerned Police Officer was "Applicant is a lawyer by profession and he is intending to transfer arms of his father who is 75 years old." The Senior Police Inspector, Zone 5 has recommended that the applicant has no threat, no substantive or justifiable reason, however on sentimental ground his request may be considered. After this application, he moved another application in Form III in which it was stated that he was an advocate by profession and he was dealing with matters pertaining to builders, therefore, he needed a gun."

Emphasis supplied.

. The Division Bench further in paragraph 8 has made following observations :

"Before concluding, we want to sum up the conclusion, so that there remains no ambiguity in future in granting the licences. We hold that though it is a right of every citizen to apply and get arms licence but it is within the power of the State Government to refuse the licence on any ground, if it falls within section 14(2). The State is free to frame more precise and clear guidelines under section 14(2), so that the chances of granting licence to the person who are threat to public peace or security are minimum."

9. Considering all these aspects, we are of the opinion that orders impugned in this petition are unsustainable. Accordingly, **the petition is partly allowed** by quashing and setting aside the orders impugned in the petition and the matter is remanded back to the competent authority, i.e., Respondent no.2, to consider the application of Petitioner afresh and pass appropriate orders in view of the observations made by us hereinabove and also taking into consideration the observations made by the Division Bench of this Court in the matter of

Khan Abdul Wahab Usman (supra).

10. The exercise as directed by us above be completed by Respondent no.2 as early as possible and the application of petitioner be decided within a reasonable period, which shall not be later than eight weeks from the date of receipt of a copy of this order.

[S. M. Modak, J.]

[Prasanna B. Varale, J.]