

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

WRIT PETITION NO.4550 OF 2021

Jayant Bhimrao Jadhav
 Aged about 46 years,
 Occ: Business,
 R/o 1 AR / 754
 Vidarbha Housing Society
 Buldhana – 443 001
 Tah. And Dist. Buldhana. **PETITIONER**

...V E R S U S...

1. State of Maharashtra through its
 Divisional Commissioner,
 Amravati Division, Amravati.
2. State of Maharashtra through
 its Collector, Buldhana. **RESPONDENTS**

 Mr. Deoul Pathak, Advocate for Petitioner.
 Ms. T. H. Khan, AGP for Respondents 1 & 2/State.

CORAM: **ROHIT B. DEO, J.**
DATE: **25th FEBRUARY, 2022.**

ORAL JUDGMENT:

Heard. **Rule.** With consent, the petition is heard finally.

2. The petitioner preferred an application under Section 13 of the Arms Act (Act) seeking arms licence. The application seeking arms licence is predicated on the assertion that the licence

is needed for self and crop protection. The petitioner contends that in the statement recorded in the inquiry, the petitioner gave the details of several business activities in which he is engaged and the institutions with which he is associated, and further disclosed the agricultural properties owned by him. The petitioner further expressed apprehension of threat to personal liberty.

3. A report was called from the Superintendent of Police who made inquiry through the Sub-Divisional Police Officer, Buldhana. It is irrefutable that the report which the Sub-Divisional Police Officer forwarded to the Superintendent of Police states that the said authority has no objection if the petitioner is granted arms licence. Similar no objection was accorded by the Tahsildar. The said reports were available for the perusal of the Collector, Buldhana who considered the application preferred by the petitioner. However, vide order dated 26.11.2019 the District Collector, Buldhana rejected the application by an extremely cryptic order. All that is observed is considering the business in which the petitioner is engaged, he does not require an arms licence.

4. Aggrieved, the petitioner preferred appeal under Section 18 of the Act, which the Commissioner was pleased to

reject vide order dated 08.08.2020. The only reason recorded, if at all the observation can be construed as a reason, is that the conclusion of the Collector that the petitioner does not require arms licence is just and in accordance with the provisions of law.

5. For reasons spelt out infra, I am satisfied that the orders impugned cannot sustain the scrutiny of law.

6. It is trite law that while right to arms licence is not a fundamental right, every citizen is entitled to apply for arms licence and the authority is obligated to consider the application within the four corners of the provisions of the Act, particularly Section 14 thereof, which 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.

7. Before advertng further to the provisions of Section 14, a decision which Mr. Deoul Pathak has cited, may briefly be referred. In ***Pawan s/o Ashok Bora v. State of Maharashtra and others 2017(4) Mh.L.J. 619***, *inter alia* referring to and heavily relied on the decision of the Allahabad High Court in ***Ganesh Chandra Bhatt v. District Magistrate, Almora AIR 1993 ALL 291***, the learned Single Judge held that right to possess arms is a fundamental right. It was not brought to the notice of the learned Judge that the said view was upset by the Larger Bench judgment authored by His Lordship Justice Markandey Katju (as he was then) which is reported in ***Rana Pratap Singh v. State of Uttar***

Pradesh 1996 CRI. L.J. 665. Even *de hors* the said aspect, I am not persuaded to fall in line with the observation of the learned Single Judge that right to hold arms licence is a fundamental right.

8. However, I broadly agree with the rest of the articulation in *Pawan Bora v. State of Maharashtra*. A licence cannot be rejected on the *ipse dixit* of the authority. Section 14 provides that the licence can be rejected if the licensing authority is satisfied that the person requiring licence is prohibited by the Act or by any other law from acquiring or possessing or carrying any arms or ammunition, or where the person requiring licence is of unsound mind or where the person desirous of having a licence is unfit for holding the licence under the Arms Act or where the licensing authority considers it necessary for the security of the public peace or public safety to refuse the licence. The rejection must be predicated on one of the grounds available. The rejection of an arms licence with a cryptic observation that in view of the business in which the petitioner is engaged, there is no need of licence, is an observation militating against the contours of the statutory scheme within which the discretion must be exercised.

9. I am fortified the view which I have taken, by the learned Single Judge of this Court in ***Ashok s/o Dayaram Patil v.***

The State of Maharashtra and others 2018 SCC OnLine Bom 70.

10. The orders impugned are set aside.

11. The matter is remitted to the District Collector, Buldhana for fresh decision, after hearing the petitioner, in accordance with law. The District Collector is requested to give due consideration to the articulation of law in the decisions referred to *supra*.

12. The District Collector is requested to pass fresh order after hearing the petitioner, within the next ninety days from the date of appearance of the petitioner.

13. The petitioner shall appear before the District Collector, Buldhana on 07.03.2022 and shall apprise the authority of this order.

14. The petition is partly allowed.

JUDGE

NSN