

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.976 OF 2021

Kunal Vinod Deshpande,
Age – 40 years, Occupation – Business,
R/o.2602, A Ward, Deshpande Galli,
Infront Kolhapur High School,
Shivaji Peth, Kolhapur

... Petitioner

V/s.

- 1. Divisional Commissioner,**
Pune Division, Camp,
Pune, Maharashtra
- 2. District Magistrate, Kolhapur,**
The District Collector Office,
Swarajya Bhawan,
Assembly Road, Kolhapur,
Maharashtra
- 3. The State of Maharashtra**

... Respondents

Mr. Shrikrishna R. Ganbavale with Mr. Kush Lahankar
for the petitioner.

Mr. Arfan Sait, APP for the State.

CORAM : AMIT BORKAR, J.

RESERVED ON : 28 APRIL, 2023

PRONOUNCED ON : 25 JULY, 2023

JUDGMENT.:

1. The challenge in this petition is to the order dated 16th June 2020 passed by respondent No.1 dismissing the appeal arising out of the order dated 3rd September 2019 passed by respondent No.2, whereby the petitioner's application for arms licence under section 13 of the Arms Act, 1959 has been rejected.
2. The petitioner, on 29th April 2019, filed an application before respondent No.2 for obtaining a licence under the provisions of the Arms Act, 1959. According to the petitioner, in connection with his scrap trading business, he needs to travel out of Kolhapur district at night. He has a construction business in the city and, therefore, he requires to carry cash in connection with his business. On 19th December 2018, the petitioner suffered an incident of robbery. He had lodged a report with Shahupuri Police Station, Kolhapur.
3. Respondent No.2, by order dated 3rd September 2019, rejected the application based on the following reasons:
 - i. No evidence or sufficient reason is proved to the satisfaction of respondent No.2 that there is a threat to the petitioner's life.
 - ii. The police report recommended not granting the petitioner a revolver/pistol licence for self-protection.
4. Respondent No.2, therefore, refused to grant a licence mainly based on the police report.
5. Learned advocate for the petitioner submitted that considering the nature and context of sections 13 and 14, the opportunity for an oral hearing needs to be given to the petitioner.

According to him, the impugned order is passed without application of mind as the reasons in the order are not germane to the inquiry contemplated under sections 13 and 14 of the Arms Act, 1959. The right to possess a firearm is a fundamental right. The petitioner's business requires to carry cash. Therefore, the petitioner's application ought to have been allowed by respondent No.2. According to him, a pre-decisional oral hearing is an inherent and intrinsic right in an inquiry under section 13 of the Arms Act, 1959. According to him, a clear record of satisfaction that there is no specific threat to the petitioner's life in the past would not constitute a good reason as contemplated under section 13(3)(b) of the Arms Act, 1959. The next submission on behalf of the petitioner is the lack of opportunity for an oral hearing to the petitioner.

6. In support of his submission, he relied on the following judgments:

- a) Automotive Tyre Manufacturers vs. Designated Authority And Others reported in (2011) 2 SCC 258.
- b) Madhyamam Broadcasting Limited vs. Union of India & Others reported in 2023 SCC OnLine SC 366.
- c) Canara Bank And Others vs. Debasis Das And Others reported in (2003) 4 SCC 557.
- d) Union of India vs. Jyoti Prakash Mitter reported in 1971(1) SCC 396.
- e) Union of India And Others vs. Sanjay Jethi And Another

reported in (2013) 16 SCC 116.

f) Vinay Ruthia vs. State of Madhya Pradesh and Others reported in 2020 SCC OnLine NGT 1481.

g) Sadashivrao Mandlik Kagal Taluka Sahakari Sakhar Karkhana Ltd. vs. Regional JT. Director (Sugar) Kolhapur And Others reported in 2011 (5) Mh.L.J. 68.

h) Harbhajan Singh vs. Minister of Employment and Immigration reported in 1985 CanLII 65 (SCC).

i) Sunil Ramrao Chaudhari vs. The State of Maharashtra And Ors. in Writ Petition No.9954 of 2013 decided on 22nd August 2016.

j) Pawan S/o Ashok Bora vs. State of Maharashtra And Others reported in 2017(4) Mh.L.J. 619.

k) V. P. Kalairajan vs. The Commissioner of Police, Egmore, Chennai-8 reported in 2008 (3) CTC 817.

l) Sunil Kumar Jeevtani vs. State of M.P. & Ors. reported in I.L.R. (2020) M.P. 2757 (DB).

m) Chhotelal Pachori vs. State of M.P. and Others reported in 2019 (2) M.P. L.J. 697.

n) Kapildeo Singh vs. State of Bihar and Others reported in 1987 SCC OnLine Pat 22.

7. *Per contra*, learned APP submitted that the right to hold a firearm is not a fundamental right. It is a privilege. The expression "good reason" mentioned in section 13 of the Arms Act, 1959,

needs to be interpreted in the light of the object and purpose of sections 13 and 14 of the Arms Act, 1959 and the absence of a right of a citizen to hold a firearm. Per contra, the learned APP relied on the following judgments:

- a) Rama Pratap Singh vs. State of Uttar Pradesh reported in 1996 All L.J 301 (Full Bench).
- b) Kapildeo Singh vs. State of Bihar And Ors. reported in 1987 Cri. L.J. 960 (Full Bench).
- c) State of Uttar Pradesh And Others vs. Mahipat Singh reported in 2014 (2) ALJ 443.
- d) Sunil Ramrao Chaudhari vs. State of Maharashtra reported in 2016 (6) Mh. L.J. 640.
- e) Rajat Yadav vs. State of Uttar Pradesh And Others reported in 2022 (2) ALJ 321.
- f) Suned Kumar Singh vs. State of Madhya Pradesh reported in 2022 AIR OnLine MP 2211.

8. Learned APP submitted that the petitioner could not claim such right in the absence of specific conferment under a statute of affording oral hearing. The right to seek a licence is a privilege, not a right. Order of refusal to grant a licence to possess a firearm has no civil consequences; therefore, the opportunity of an oral hearing is not contemplated.

9. I have heard learned advocate for the petitioner and considered the material on record. It is necessary to first deal with the submission of lack of opportunity for the oral hearing. It is well

settled that there are no inflexible rules of natural justice of universal application. Rules of natural justice vary with the varying constitutions of statutory bodies and the rules prescribed by the legislature under which they have to act. An authority or body need not observe rules of natural justice where its decision, although final, relates to the grant of licence. An application for a grant of licence to carry an arm is neither a right to such grant nor a reasonable expectation that such a grant would be made in his favour. In refusing to grant a licence, the Collector is not obliged to act judicially. The order refusing a licence under section 13 of the Arms Act, 1959, is administrative. There is no link between the Collector, and the person who refused such privilege.

10. The judgment relied on the petitioner in the case of **Automotive Tyre Manufacturers Association** (supra), in paragraphs 80 and 81, held as under:

“80. It is, thus, well settled that unless a statutory provision, either specifically or by necessary implication, excludes the application of principles of natural justice, because, in that event, the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infringement of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a strait-jacket nor is it a general rule of universal application.

81. Undoubtedly, there can be exceptions to the said

doctrine. As stated above, the question of whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power, the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of these matters that the question of application of the said principle can be properly determined. (See *Union of India Vs. Col. J.N. Sinha & Anr.* (1970) 2 SCC 458).”

11. In the case of **Madhya Pradesh Industries Ltd. vs Union of India** reported in AIR 1966 SC 671, the Apex Court, in paragraph 10, considered the distinction between the right to make representation in writing and personal hearing. It is held that the opportunity to make representation need not necessarily be by personal hearing. It can be by written representation. Whether said opportunity should be by written representation or by personal hearing depends upon the facts of each case, and ordinarily, it is at the discretion of the tribunal. In the facts of the present case, since the refusal to grant a licence to the petitioner has no civil consequences, it is not necessary that opportunity of an oral hearing needs to be provided to the petitioner.

12. The parameters of the grant of an arm's license are laid down by the Single Judge of this Court in **Pawan S/o Ashok Bora** (supra), which takes into consideration the earlier Division Bench judgment of this Court in the case of **Khan Abdul Wahab Usman vs the State of Maharashtra** in Criminal Writ Petition No.2688 of 2008 decided on 12th February 2009. Single Judge of this Court, after considering sections 13 and 14 of the Arms Act, 1959 in

paragraphs 7 and 8, held as under:

“7. Reading these sections, it would become clear that the licensing authority has to consider the issue of grant of licence or otherwise by following the procedure laid down under section 13 of the Act. This procedure includes calling for the report of the officer in charge of the nearest police station and also making an inquiry, if any, to consider whether the discretion should be exercised in favour of the applicant or not. After following this procedure, sub-section 3 of section 13 mandates that the licensing authority must grant a licence where the conditions as specified in the sub-sections are fulfilled. In the instant case, the licence was sought to be obtained particularly under section 4 of the Arms Act and, therefore, clause (b) of sub-section 3 of the Arms Act would be relevant. This clause (b) makes it mandatory for the licensing authority to grant a licence if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same. It can be noticed that this section does not say that only when there is a favourable recommendation by the police authority that the licence be granted. This section, on the other hand, lays down that the licence can be issued for any good reason. Now, what can be the good reason that has not been clarified anywhere in the Act? An insight into what constitutes a good reason for the grant of a licence could be had by considering the provisions of section 14 of the Arms Act.

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 a 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 a 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.

These 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 the absence of any threat to the life or property of a person to refuse the grant of licence. It would then mean that the presence or absence of a threat to the life or property of a person from the perspective of police authority cannot be a good ground for refusal within the meaning of the section

14. It would then follow that a police report saying there is no threat to the life or property of a person is not relevant for either refusing or even granting a 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 individual's own perception and his security wants in the light of his mental and physical make-up and factors serving as express disqualifications for 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 trend. This is not to say that a 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 makeup 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 a fundamental right under Article 21 of the Constitution of India, subject, of course, to reasonable restrictions. Therefore, generally speaking, granting a licence should be the rule and refusal an exception, for reasons be recorded in writing."

13. Reading of judgment of the Single Judge of this Court in the case of **Pawan S/o Ashok Bora** (supra), it appears that one of the relevant factors for exercise of discretion under section 13 is a genuineness of need of person, examined from his own perception and his security wants in the light of mental and physical makeup and factors serving as express disqualification for a person to hold licence under section 14 of the Arms Act, 1959. However, fanciful or pretentious or purely fired by a desire to flaunt or parade the firearm in public is also a relevant factor. The Single Judge thereafter, in paragraph 9, has observed as under:

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 a grant of licence by laying down that it shall not refuse a licence merely on the ground that such person does not possess sufficient property. The Legislature intends that possession of the property would have no bearing on the exercise of the power to refuse a grant of licence. It would also then mean that the absence of a threat to the property is no criterion for refusal of the licence. So, if the absence of a

threat to the property is not a criterion for refusal of a licence, it can also be found inferentially that the absence of a threat to the person of the applicant would be no criterion 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.....

.....I fully agree with the views expressed by the learned Single Judge of Delhi High Court. In the present scenario, where crime is ever on the rise, one can never know as to when and where the evil will strike him or his near and dear ones. This is the reason why in the matter of granting of licence for a non-prohibited firearm, the applicant's own perception of the threat to his life or property is very relevant and is required to be given due consideration and respect. In a disturbed society, an individual may, without being armed with a weapon, feel very insecure and helpless to protect himself and his family members. Enabling such a person to possess the firearm, if not otherwise disqualified to hold it, would be like boosting his confidence to protect himself and his family members on one hand and busting the morale of criminals casting an evil eye on him on the other. Therefore, due consideration is required to be given to the perception of the person interested in acquiring and possessing the firearm. Of course, there are other conditions that are referable to the provisions of sections 13 and 14 of the Act, which must also be considered while granting or refusing a licence. This view finds support in other cases as well, which are discussed in the foregoing paragraphs....."

14. On perusal of the material on record, it appears that the reasons for rejection of the licence are not based on the factors held to be relevant by the Single Judge of this Court. It is necessary to consider whether the grounds given by the petitioner

for issuing a licence are reasonable and consistent with the purpose for which he intends to procure a firearm. It needs to consider whether the petitioner's physical and mental condition is suitable for acquiring and possessing the firearm. It is also required to consider whether the petitioner resides in or anywhere near the wildlife sanctuary or national park. It is also necessary to consider that the type of firearm for which the petitioner has sought a licence is consistent with the purpose for which he is desirous of keeping a firearm. It also needs to be recorded a satisfaction that if a firearm is issued to the petitioner, there is a guarantee that he would not misuse it.

15. Unfortunately, reading of orders passed by authorities below, it appears that no relevant factors have been considered by authorities below in passing the impugned orders. Therefore, it is necessary that respondent No.2 shall reconsider the petitioner's application under section 13 afresh in the light of the parameters referred to in aforesaid paragraphs. Hence, the following order:

- a) Rule is partly made absolute.
- b) The impugned orders passed by the District Magistrate, Kolhapur, on 3rd September 2019 and Divisional Commissioner, Pune Division, Camp, Pune, on 16th June 2020, are set aside.
- c) The matter is remanded back to respondent No.2 for a decision afresh in the light of parameters laid down in aforesaid paragraphs and in the light of sections 13 and 14 of the Arms Act, 1959.

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16. The criminal writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)