



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5998 OF 2021

Nikhil Anil Kande,
Age - major, Occ. Business,
R/o Bavi, Tq. Washi,
Dist. Osmanabad.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra
Through the Divisional Commissioner,
Aurangabad Division, Aurangabad.
- 2 The District Collector @ District Magistrate,
Osmanabad, Dist. Osmanabad.

... Respondents

...

Mr. V.S. Undre, Advocate for petitioner
Mr. P.D. Patil, AGP for respondent Nos.1 and 2

...

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 28th JUNE, 2024

PRONOUNCED ON : 08th JULY, 2024

JUDGMENT :

1 Rule. Rule made returnable forthwith. Heard learned Advocates
for the parties finally, by consent.

2 The petitioner impugns the order dated 08.05.2019 passed by Divisional Commissioner, Aurangabad in Appeal No.2016/Sapra/Pol-1/Shashtra/CR-49, thereby confirming the order dated 19.03.2016 passed by District Magistrate, Osmanabad in Case No.2013/Upchitnis/MAG-3/CR-125, thereby refusing to grant licence of revolver/pistol to the petitioner.

3 Mr. V.S. Undre, learned Advocate appearing for the petitioner submits that the petitioner is engaged in the business of tours, travels and transport and requires to handle huge cash. The petitioner has been trained to handle the weapon and certificate of training is issued by Lethal Force Institute, Pune. The petitioner felt need of the weapon for self protection and applied to District Magistrate, Osmanabad for grant of licence as per Rule 15 read with Section 14 of the Arms Act. In pursuance of petitioner's application, report was called from Sub Divisional Police Officer. There are no adverse remarks against the petitioner in the report submitted by said authority. However, learned District Magistrate vide his order dated 19.02.2016 rejected petitioner's application. The petitioner assailed the order of District Magistrate in Appeal filed under Section 18 of the Arms Act before Divisional Commissioner at Aurangabad. Unfortunately, the Appeal came to be dismissed for selfsame reasons as mentioned in the order of District Magistrate.

4 Mr. V.S. Undre would submit that the authorities rejected the application on erroneous count, mainly observing that the petitioner has not received any threat to his life and the nature of petitioner's business does not warrant holding of weapon. He would submit that the licence may be refused for the reasons specified in sub-section (1) of Section 14 of the Arms Act. However, refusal of petitioner's application is based on altogether different grounds than prescribed under sub-section (1) of Section 14 of the Arms Act. To buttress his submissions he has placed his reliance on Judgment of this Court in case of **Chandrakant @ Chandrashekhar Veerbhadrappa Rachatte vs. The State of Maharashtra and others** in Criminal Writ Petition No.490 of 2008 decided on 18th September, 2008 (Aurangabad Bench) and Judgment in case of **Sardar Gurtejpal Singh s/o Gurnaib Singh Sidhu vs. The State of Maharashtra and others** in Writ Petition No.3786 of 2015 decided on 29th January, 2016 (Aurangabad Bench).

5 Per contra, Mr. P.D. Patil, learned AGP would justify the impugned orders.

6 Section 13 of the Arms Act, 1959 provides that the application for grant of licence can be made to licencing authority in form, contain such particulars and be accompanied by such fee, if any, as may be prescribed. Sub clause II of Section 13 of the Arms Act prescribes for calling of the report

of officer in-charge of nearest Police Station. Sub clause II-A of the Arms Act prescribes for further inquiry by the licencing authority and then passing of the order granting or refusing the licence. Section 14 of the Arms Act provides the reasons for refusals of the licences, which reads 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.”

7 The perusal of the reasons as stated in the impugned order shows that District Magistrate refused the licence referring to the communication dated 29.03.2010 issued by the Home Department, which prescribes certain guidelines for grant of licence. Consequently, the report of Superintendent of Police was called. The report suggests that the petitioner is not in cross or inimical terms with any one. There is no eminent threat to his life. The business of tours and travels or the requirement of undertaking journey in the night hours itself cannot be a reason for grant of licence. The impugned order further states that the licence for acquisition and possession of the fire arm is only a privilege and not the right comprehended by Article 21 of the Constitution of India. The perusal of the order passed by the appellate authority reiterates similar reasons while confirming the order of District Magistrate. In this background, the reference can be given to the observations of Delhi High Court in case of **Vinod Kumar vs. The State and others** [Writ Petition (C) No.1631 of 2012] referred to paragraph No.7 -

“7. The Next question which arises for consideration is as to whether the licence could be refused to the petitioner on the ground that there was no specific threat to his life or property and the law and order situation in the locality in which he was residing was satisfactory. In my opinion, the fire arm licence cannot be denied to a person, in whose case a situation contemplated by sub-section (1) of Section 14 does not exist, solely on the ground that

there is no specific threat to him or his family members. A situation requiring safety in the form of a fire arm cannot always be foreseen and may develop all of a sudden. For instance, there may be an attempted burglary, dacoity, house breaking or robbery in the house of a citizen in the dead of the night or he may be subjected to robbery, snatching, etc, while on the move. It is not possible for a police official to be present everywhere and every time to protect the citizens and in fact it happens quite often that the police arrives at the scene only after the crime is already committed. Though it is an undisputed responsibility of the State to protect the lives and property of the citizens, the harsh reality is that the State does not have an impressive record in this regard. In fact, no person can predict when, where and at what time and in which form, he may face a threat to his life or property. Therefore, as a prudent citizen, he would be justified in taking adequate steps to protect himself and his property and such steps would include acquiring a licensed weapon so as to avoid any crime against his body and property. It is the applicant's own perception of threat to his life and property which needs to be considered by the Licensing Authority in the light of law and order situation, prevailing in the locality and various other factors.”

The aforesaid observations clarifies that a person cannot be denied licence only for the reason that he has no specific threat. The applicant licence holder is best Judge of threats to his life and property and the situation requiring the fire arm which may develop all of a sudden. Similarly, this Court in case of **Chandrakant Rachatte** (supra) observed in paragraph No.7 as under -

“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.”

8 The aforesaid observations of this Court clearly demonstrate that the licencing authority has to exercise the discretion in accordance with the statutory scheme. However, it is apparent that the impugned order is passed on erroneous considerations beyond the scope, conditions for refusal stipulated under Section 14 of the Act.

9 The affidavit-in-reply filed on behalf of the respondents state that the petitioner has not filed documentary evidence regarding business of tours and travels, so also the handing of daily cash and requirement of transportation during night hours. Pertinently, the respondent authorities are attempting to supplement the reasons which are not mentioned in the impugned order. It is trite that the quasi judicial authority cannot supplement the reasons in support of its order by filing affidavit. The

reference can be given to the law laid down by the Hon'ble Supreme Court of India in the case of **Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others** [AIR 1978 SC 851], wherein it has been held that -

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji [AIR 1952 SC 16] (AT P. 18):

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

10 Pertinently, this Court vide order dated 14.10.2022 directed petitioner to place on record his affidavit in respect of travelling and handling of the cash along with particulars of his bank transactions in the respective business. The petitioner has placed on record the additional affidavit along

with bank account statements so as to demonstrate the volume of his business etc. In that view of the matter, the order passed by respondent authorities cannot be sustained. However, it would be appropriate to relegate the matter for re-consideration to District Magistrate, who shall apply his mind afresh in light of aforesaid observations and additional material pertaining to nature of business and transactions of the petitioner. Resultantly, the writ petition partly succeeds. Hence, following order.

ORDER

- 1 The Writ Petition stands partly allowed.
- 2 The impugned orders are quashed and set aside.
- 3 The matter is remitted back to respondent No.2 for deciding application of the petitioner in accordance with observations made above.
- 4 The petitioner shall be at liberty to place on record additional material/evidence depicting his business transactions, requirement of travelling or handling of the cash or any other material to justify need of weapon within the period of four weeks from date of this order.
- 5 The petitioner shall appear before respondent No.2 on 11.07.2024.

6 Respondent No.2 shall take his decision within the period of three months from the date of petitioner's appearance.

7 Rule is made absolute in the above terms.

(S.G. CHAPALGAONKAR)
JUDGE

agd