



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10820 OF 2023

Prabhakar Dashrath Pawar

VERSUS

The State Of Maharashtra Through Divisional Commissioner
And Another

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Advocate for the Petitioner : Mr. Chavan Sudhir K
AGP for Respondents : Advocate R R Tandale

CORAM : S. G. CHAPALGAONKAR, J.

Dated : August 23, 2024

PER COURT :-

1. The Petitioner impugns the order dated 30.6.2023 passed by Respondent no.1 i.e. Divisional Commissioner, Aurangabad in Appeal No.5 of 2023 thereby confirming the order dated 14.3.2022 passed by respondent no.2 i.e. District Magistrate, Jalna refusing to grant arms license to the petitioner.

2. Mr. Chavan, learned advocate appearing for petitioner submits that petitioner's father was holding Arms License since 7.12.1978. The weapon was never misused while it was in possession of petitioner's father. In the year 2013, petitioner received life threats due to civil disputes and continuously he was under threat. Consequently, on 28.5.2021 he made application to District Magistrate for grant of Arms licence. The District Magistrate called report of the officer in charge of nearest police station in terms of section 13 (2A) of the Arms act. Based on such report, District Magistrate

rejected application of the petitioner. Petitioner approached the Appellate Authority. However, his appeal came to be rejected on the ground that the report of police officer is not favourable to him and the view taken by the District Magistrate need not be disturbed.

3. Mr. Chavan would submit that, in fact, petitioner himself is in service of Maharashtra Police as 'Naib Police Constable' and has clean and unblemished record. He is versed with use of the weapon. After death of the petitioner's father in the year 2013 owing to persistent civil dispute, application was made for grant of license. Licence granted to the petitioner's father in the year 1978 was continuously renewed. Report of Police Officer relied by the authorities does not spell out reasons for adverse recommendations. He would therefore urge to remand the matter and direct fresh consideration of his application.

4. Learned AGP, however, justified the impugned order.

5. Having considered the submissions advanced and on perusal of the documents tendered in to service, it can be noted that in pursuance to petitioner's application, report of the police officer was called under section 13 (2A) of the Arms act. Perusal of the said report shows that it simply negatively recommends grant of licence. No specific reason is recorded for negative recommendation. The report forwarded by the office of Police Superintendent, Jalna dated 21.10.2021 simply states that police report was called since there is no

recommendation, his application cannot be considered. Further, in light of the circular dated 31.3.2010 issued by the Central Government and letter dated 29.11.2010 issued by Home Department of Maharashtra State, proposal for grant of licence moved by the petitioner is not recommended.

6. The District Magistrate simply carries forward contents of the said report and observes that there is no specific reason for grant of license to the petitioner. The order of District Magistrate appears to be cryptic and the same is confirmed by Additional Commissioner only by giving reference to the letter of Central Government dated 31.3.2010.

7. The aforesaid documents nowhere suggests that either the concerned police officer has applied his mind while submitting the report under section 13 (2A). Even the District Magistrate or Divisional Commissioner has not requisitioned detailed report or recorded independent reasons for denial of license to the petitioner. Although, impugned orders are administrative in nature, it needs to record reasons so that the person, who applied for grant of licence shall be in a position to know the exact reasons for refusal. This Court has time and again observed that refusal of licence can be for the reasons as stated under section 14 of the Arms Act. It is true that the authorities would be justified to cause independent inquiry and record own reasons for refusal of licence beyond the grounds stipulated under section 14. However, in such case, the order must be a speaking order. Further, report under section 13 (2) shall not be mere formality. The concerned police officer must

report positive and negative opinions based on subjective inquiry caused by him. Mere forwarding recommendations would be against essence of the statutory provisions contemplated under section 13 (2) of the Act. Hence, it is essential to relegate the matter back to the District Magistrate to re-consider petitioner's application from the stage of calling report of police officer under section 13 (2A) of the Arms Act and pass reasoned order either granting or refusing licence to the petitioner. Hence, the following order.

ORDER

- i. Writ Petition is partly allowed.
- ii. The impugned orders dated 30.6.2023 passed by Respondent no.1-Divisional Commissioner, Aurangabad in Appeal No.5 of 2023 and the order dated 14.3.2022 passed by respondent no.2 i.e. District Magistrate, Jalna are hereby quashed and set aside.
- iii. The matter is remanded back to respondent no.2 District Magistrate and District Collector, Jalna for reconsideration of petitioner's application for grant of Arms Licence from the stage of calling the report under section 13 (2A) of the Arms Act. The District Magistrate shall call fresh and elaborate report from the concerned police officer and after considering material on record, pass fresh and reasoned order.

- iv. It is expected that respondent no.2 shall endeavour to consider and decide petitioner's application afresh within a period of six months from the date of this order.
- v. Writ petition stands disposed of accordingly.

(S. G. CHAPALGAONKAR)
JUDGE

aaa/-
