

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13499 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

DEVSHIBHAI RAYDEBHAI GADHER

Versus

STATE OF GUJARAT

Appearance:

MR RUTVIJ S OZA(5594) for the Petitioner(s) No. 1

MR SAHIL TRIVEDI, AGP for the Respondent(s) No. 1,2

CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

Date : 13/06/2022

ORAL ORDER

1. Rule. Learned AGP waives service of notice of rule for and on behalf of the respondents.

2. The present petition has been filed by the petitioner *inter alia* challenging the orders dated 25.07.2019 passed by the District Magistrate rejecting the license under the Arms Act, 1959 ("the Arms Act") for self-protection and order dated 29.01.2021 passed in Appeal No.196 of 2019 by the Additional Secretary

(Appeals), Home Department in State Government confirming the order dated 25.07.2019.

3. The petitioner applied for obtaining arms license for self-protection under the provision of the Arms Act, on 05.12.2018 with all the necessary documents. Thereafter, opinion of the District Superintendent of Police and Mamlatdar, Kalyanpur was sought by the office of the respondent No.2 and in their reports, nothing adverse has been found against the petitioner. By the impugned order dated 25.07.2019, the application of the petitioner has been rejected. An appeal filed against the said order is also rejected by the order dated 29.01.2021 by the appellate authority.

4. Learned advocate Mr.Oza appearing for the petitioner has submitted that both the authorities have not appreciated the true facts of the case and the reports issued in favour of the petitioner, while rejecting the application of the petitioner. He has placed reliance on the provision of Section 14 of the Arms Act and has submitted that the impugned orders are absolutely silent. He has also placed reliance on the judgement of the Coordinate Bench of this Court in the case of Sorab Jehangir Bamji Vs. State of Gujarat Through Deputy Secretary, 2011 (3) GCD 2621 and has submitted that the impugned orders may be set aside. It is also asserted by him that the petitioner needs the arm since he deals with

the mining business and he is also doing contract business, which requires lot of travelling with cash.

5. In response to the aforesaid submissions, learned AGP Mr.Trivedi has submitted that the impugned orders do not require interference since the same are appropriately passed by the authorities. It is submitted that for the reasons assigned in the impugned orders, it cannot be stated that the petitioner is in actual need of arms license or there is any threat to him. Thus, he has submitted that the writ petition may be rejected.

6. Heard the learned advocates for the respective parties and also perused the documents as pointed out by them.

7. It appears that the petitioner had filed the application dated 05.12.2018 seeking license under the provision of the Arms Act. It is not in dispute that pursuant to the aforesaid application, the office of the respondent No.2 had sought for the opinions of the District Superintendent of Police and Mamlatdar, Kalyanpur with regard to any adverse material against the petitioner. Nothing adverse with regard to his involvement in any of the illegal activities or with regard to his character has been opined in the reports. It is the case of the petitioner that he needs license, as he is a contractor and

also works in Agriculture Market Yard, in which the entire transactions are done in cash. Further, it is stated by the petitioner that he is also looking to the mining business of his cousin, who also holds the arms license.

8. The District Magistrate, Devbhumi Dwarka has rejected the application filed by the petitioner by assigning various reasons. It is mentioned therein that the law and order situation in Devbhumi Dwarka is satisfactory and the petitioner can carryout his business activities through any ATM or core banking and all the business transactions can be done through cheque, if such transaction involves an amount of more than Rs.5,000/-. It is further opined that nothing is produced to show that there is any personal enmity to the petitioner and no past incident with regard to theft of his goods is pointed out. The District Magistrate has not opined anything with regard to the Report, which is found favourable to the petitioner. Similarly, appellate authority has also rejected the appeal of the petitioner by the order dated 29.01.2021 reiterating the aforesaid terms.

9. At this stage, it would be apposite to refer to the provision of Section 14 of the Arms Act. The same reads as under:

14. Refusal of licences.—

(1) Notwithstanding anything in section 13, 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.

10. The District Magistrate, while rejecting the application of the petitioner as well the appellate authority, while dealing with the appeal of the petitioner has passed the orders being oblivious to the provisions of Section 14 of the Arms Act, which pertains to the refusal of the license. It is not the case of the State authorities that the petitioner has been found not worthy of the license on the grounds mentioned under Section 14 of the Arms Act. The grounds, as mentioned in the impugned orders, do

not in any manner indicate that the petitioner is not entitled for the arms license and he is treated to be unfit for the license under the Arms Act.

11. In light of the aforesaid facts and circumstances and looking to the provision of the Arms Act, the present writ petition is allowed. The impugned orders dated 25.07.2019 passed by the District Magistrate and dated 29.01.2021 passed in Appeal No.196 of 2019 by the Additional Secretary (Appeals), Home Department in State Government are hereby quashed and set aside. The respondent No.2 is directed to issue license to the petitioner pursuant to the application dated 05.12.2018. However, it is clarified that while issuing the license, if any adverse incident comes to the notice to the District Magistrate, after the impugned order dated 25.07.2019, which directly implicates the petitioner in any offence, he may refuse to grant the license. Liberty is reserved in favour of the petitioner to challenge the same in appropriate proceedings in case such adverse order is passed. Rule made absolute. Direct service is permitted.

Sd/-
(A. S. SUPEHIA, J)

NVMEWADA