

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/LETTERS PATENT APPEAL NO. 119 of 2023****In R/SPECIAL CIVIL APPLICATION NO. 19840 of 2019**

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MAHAVIRSHINH VANRAJSINH GOHIL
Versus
STATE OF GUJARAT

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Appearance:

MS. KRUTI M SHAH(2428) for the Appellant(s) No. 1
MR. SAHIL TRIVEDI, ASSISTANT GOVERNMENT PLEADER/PP for the
Respondent(s) No. 1
NOTICE NOT RECD BACK for the Respondent(s) No. 2

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**CORAM:HONOURABLE THE ACTING CHIEF JUSTICE MR.
JUSTICE A.J.DESAI
and
HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 07/03/2023

**ORAL ORDER
(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)**

1 This appeal under Clause 15 of the Letters Patent challenges the oral order dated 22.09.2022 passed by the learned Single Judge. By the aforesaid order, the learned Single Judge dismissed the petition.

2 The appellant - original petitioner filed Special Civil Application No. 19840 of 2019 challenging the orders dated 03.10.2017 passed by the Collector & District

Magistrate, Bhavnagar and the order dated 25.06.2019 passed in the Appeal by which the State of Gujarat through the Home Department rejected the appeal.

3 Facts:

3.1 Since the appellant - petitioner, was engaged in the business of transportation and construction, he applied for an arms license on 29.09.2016. The Collector & the District Magistrate, Bhavnagar, while considering his application, relied on the opinion of the Police Authorities at Bhavnagar and the Sub-Divisional Magistrate at Shihor. The police authority was of the opinion that though the appellant had to deal in cash transactions, since internet banking facilities were available and as there was no threat perception, the appellant was not entitled to an arms license. The Sub-Divisional Magistrate however opined positively in favour of the appellant. The Collector, rejected the application on the ground that rather than undertaking cash transactions, it was open for the appellant to undertake operations through

banking and also through courier services and as there were modes of digital transactions available, the appellant was not entitled to an arms license.

3.2 On the appellant filing an appeal before the competent authority, by the order of 25.06.2019, the appeal was rejected.

3.3 On a challenge to these orders before the learned Single Judge, the learned Single Judge after recording the submissions of the learned counsel for the appellant and the Assistant Government Pleader, affirmed the order of the authorities below on the ground that considering the overall totality of facts and circumstances and the matter being of the subjective satisfaction of the authorities, there was no reason to interfere with the orders and the petition was accordingly dismissed.

4 Ms.Kruti Shah, learned counsel for the appellant, would submit that in several decisions, this Court has

quashed the decisions of the authorities rejecting the application for an arms license on the ground of filing low income tax returns as well as on the ground of digitalized mode of payments so as to avoid dealing in cash transactions. She would rely on a decision in the case of ***Vallabhbhai Ramjibhai Khagad vs. The Home Department*** in ***Letters Patent Appeal No. 425 of 2022*** in Special Civil Application No. 2959 of 2021.

5 Mr.Sahil Trivedi, learned Assistant Government Pleader would support the order of the learned Single Judge and rely on a judgment of the Single Judge on the Allahabad High Court in the case of ***Indrajeet Singh vs. State of U.P & Anr.***, in a Writ - C No. 4947 of 2019, dated 22.10.2021. He would submit that considering the provisions of the Arms Act, 1959, especially sections 13 and 14 thereof, the Court has held that it is the subjective satisfaction of the licensing authority who is in the field and who can assess the situation on the basis of material which is before him. Such an assessment cannot be

substituted by this Court and the Court cannot undertake any exercise to determine the facts leading to such subjective satisfaction.

6 Having heard learned counsels for the respective parties, perusal of the impugned orders before the learned Single Judge indicate that the only ground that weighed with the authorities in rejecting the request of the appellant for an arms license is that there were options open for the appellant to deal through digitized payment and avoid cash transactions and that there was no threat perception.

7 Reading the provisions of the Arms Act, particularly sec. 14 thereof indicates that such ground as the ones advanced by the authorities are beyond the scope of section 14 of the Act. This Court in the case of **Vallabhbhai Khagad (supra)**, when considering the issue of refusal of license on the ground of low income tax returns, held as under:

“ [6] In that view of the matter, the impugned order cannot be sustained. Yet another factor is, the fact that District Magistrate has arrived at a conclusion that income tax returns of the petitioner for the last three years would not disclose that petitioner having carried on substantial business in sand, the basis on which the petitioner had also pressed for grant of arms license. The moot question would be whether the financial aspect can be the yardstick for granting or refusal of an arms license? Answer will have to be necessarily in the negative, inasmuch as the financial grading of a person in the society cannot be the basis on which the arms license can be granted or refused as such license is sought by an applicant apprehending danger to his life. It all depends on facts and circumstances obtained in each case. It is the subjective satisfaction, based on objective assessment the licensing authority will arrive at a conclusion to grant or refuse the grant of arms license and paramount consideration would be, whether there is danger to the life of the applicant which warrants grant of Arms License. Even according to the District Magistrate, the income tax returns do disclose that the petitioner was carrying on the business of sand. Be that as it may. The fact that the license having been refused on these two grounds apart from that petitioner can seek protection from jurisdictional police by itself is not a ground inasmuch as there may be myriad circumstances in which the petitioner may be placed and has to defend himself which may warrant such applicant to possess the license. In that view of the matter, we are of the considered view that impugned order cannot be sustained.”

8 In light of the aforesaid, the oral order dated 22.09.2022 passed by the learned Single Judge by which

the petition was dismissed, is set aside. Appeal is allowed, accordingly.

(A.J.DESAI, ACJ)

(BIREN VAISHNAV, J)

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