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HIGH COURT OF MADHYA PRADESH,
BENCH AT GWALIOR

W.P. No.6983/2015

(Gurdeep Singh Dhinjal Vs. State of M.P. and others)
(1)

Gwalior, dated : 17/6/2021

Ms. Uma Kushwaha, Advocate for the petitioner.

Shri Abhishek Mishra, Panel Lawyer for the respondents/State.

Heard finally through Video Conferencing, with the consent of parties.

2. By invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, petitioner has assailed the legality, validity and propriety of the order dated 1/9/2015 (Annexure P/1) passed by the Under Secretary, Home Department, Vallabh Bhawan, Bhopal, whereby application for grant of arms licence (pistol/revolver) of the petitioner has been rejected.

3. Brief facts leading to filing of this case are that petitioner is a permanent resident of Dabra, District Gwalior and is a businessman. He is required to carry on the business in the entire territory of district Gwalior and nearby areas including remote areas. The Gwalior areas is also notified as dacoit affected area and, therefore, it was necessary for the petitioner to possess the revolver/pistol. Therefore, he had applied for arms licence for his self defence for possessing and carrying an un-prohibited firearm under sections 3 and 4 of the Arms Act, 1959 (for short “the Act”) before District Magistrate, Gwalior. The report was called from the Police. Even the Superintendent of Police recommended the case of the petitioner for

~~WWW.LIVELAW.IN~~
HIGH COURT OF MADHYA PRADESH,
BENCH AT GWALIOR

W.P. No.6983/2015

(Gurdeep Singh Dhinjal Vs. State of M.P. and others)

(2)

issuance of licence. Thereafter, the matter was referred to the State Government since the licencing Authority for revolver is State Government. The State Government vide the impugned order dated 1/9/2015 (Annexure P/1) rejected the application on the sole ground of absence of any threat to the life of the petitioner. Being aggrieved the petitioner has challenged the order of rejection in the present petition.

4. Learned counsel for the petitioner contends that impugned order is arbitrary and perverse since now it is well settled that licence for possession of the arms should not be rejected on the sole ground of absence of any threat to life. He submits that the relevant criteria especially, those relating to possibility of misuse of the firearm, breach of public peace, incapacity-physical, mental or otherwise, of the petitioner to make use of the firearm in a proper manner and so on, have not at all been considered by the Authorities concerned. He further submits that the Superintendent of Police having recommended issuance of the firearm licence for revolver, case of the petitioner becomes more stronger.

5. *Per contra*, return has been filed by counsel for the respondents/State. It is submitted that impugned order rejecting grant of revolver licence has been passed by the competent authority i.e. State Government absolutely according to law. Merely because case of the petitioner has been recommended by the Superintendent of

WWW.LIVELAW.IN
HIGH COURT OF MADHYA PRADESH,
BENCH AT GWALIOR

W.P. No.6983/2015

(Gurdeep Singh Dhinjal Vs. State of M.P. and others)

(3)

Police for grant of licence, the same does not confer any legal right to obtain the arm licence. The petitioner has not been able to point out any single incident by which it can be inferred that there is a real danger to his life warranting grant of licence. The petitioner can not ask for arms licence for protecting his business. Since, the State Government has exercised its discretion in a reasonable manner, no interference is required. On this ground, he urges that the petition deserves to be dismissed.

6. Heard learned counsel for the parties and perused the record.

7. In order to consider the rival arguments, it would be necessary to advert to the relevant provisions of law. The licence for acquisition and possession of fire-arm and ammunition can be obtained under section 3 and the licence for acquisition and possession of arms of specified description can be obtained under section 4 of the Act. Since the petitioner had made an application for grant of licence for acquisition and possession of the firearm of specified description, primarily, his application could be said to have been made under section 4 of the Act. Section 13 of the Act deals with grant of licence and section 14 is about refusal of the licence. They broadly underline the factors, by considering which, the licence be granted or refused. The provisions are reproduced as under :

13 Grant of licences-- (1) An application for the grant of a licence under Chapter II shall be made to the licensing authority and shall be in such form, contain

HIGH COURT OF MADHYA PRADESH,
BENCH AT GWALIOR

W.P. No.6983/2015

(Gurdeep Singh Dhinjal Vs. State of M.P. and others)
(4)

such particulars and be accompanied by such fee, if any, as may be prescribed.

(2) On receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.

(2-A) The licensing authority, after such inquiry, if any, as it may, consider necessary, and after considering the report received under sub-section (2), shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same: Provided that where the officer in charge of the nearest police station does not send his report on the application within the prescribed time, the licensing authority may, if it deems fit, make such order, after the expiry of the prescribed time, without further waiting for that report.

(3) The licensing authority shall grant-

(a) a licence under section 3 where the licence is required-

(i) by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of a muzzle loading gun to be used for bona fide crop protection:

Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle loading gun will not be sufficient for crop protection, the licensing authority may grant a licence in respect of any other smooth bore gun as aforesaid for such protection, or

(ii) in respect of a point 22 bore rifle or an air rifle to be used for target practice by a member of a rifle club or rifle association licensed or recognised by the Central Government;

(b) a licence under Section 3 in any other case or a licence under section 4, section 5, section 6, section 10 or section 12, if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same.

14 Refusal of licences-

(1) Notwithstanding anything in section 13, the licensing authority shall refuse to grant-

HIGH COURT OF MADHYA PRADESH,
BENCH AT GWALIOR

W.P. No.6983/2015

(Gurdeep Singh Dhinjal Vs. State of M.P. and others)
(5)

(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.

8. From bare perusal of the aforesaid Section 13 of the Act, it would be clear that licencing authority has to consider the issue of grant of licence or otherwise by following the procedure under Section 13 of the Act. The licence can be refused as per the provision of Section 14 of the Act. It delineates the situations where 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 licence is prohibited by Arms Act or by any other law from acquiring or possessing or carrying any arms or ammunition.

WWW.LIVELAW.IN
HIGH COURT OF MADHYA PRADESH,
BENCH AT GWALIOR

W.P. No.6983/2015

(Gurdeep Singh Dhinjal Vs. State of M.P. and others)
(6)

3. Where the person requiring 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.

The licence can be refused only on the grounds mentioned herein above. It is pertinent to note that ground on which the application has been rejected i.e. absence of any threat on life or property of a person, is not available to the authorities to reject/refuse the application mandatorily.

9. From the aforesaid, it is clear that this ground can not be a good ground for refusal within the meaning of Section 14 of the Act. The Authorities ought to have considered the relevant criterion i.e. genuineness of the need of a person, examined from the individual's own perception and his security wants in the light of his mental and physical make up and factors for a person to hold the licence under Section 14 of the Arms Act.

10. 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 fire-arm as a fashion trend. This is not to say that a need felt by a person to possess a fire-arm 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 touch-stone of his own

WWW.LIVELAW.IN
HIGH COURT OF MADHYA PRADESH,
BENCH AT GWALIOR

W.P. No.6983/2015

(Gurdeep Singh Dhinjal Vs. State of M.P. and others)
(7)

psyche, physical and mental make up 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 fire-arm helps effectuate a person's right to protect himself, the right is considered as a part of 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 to be recorded in writing.

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

In the case of **Ganesh Chandra Bhatt (AIR 1993 Allahabad High Court 291)** the learned Judge of Allahabad High Court, as His Lordship then was, observed that right to carry an unprohibited fire-

HIGH COURT OF MADHYA PRADESH,
BENCH AT GWALIOR

W.P. No.6983/2015

(Gurdeep Singh Dhinjal Vs. State of M.P. and others)
(8)

arm is a part of Article 21 of the Constitution, for to hold otherwise, would amount to keeping the unarmed and peace loving citizen distressed while the well armed criminals make merry. Relevant observations appearing in paragraph no. 47 are reproduced thus :

47. In my opinion the right to carry non- prohibited firearms is part of Article 21 of the Constitution, for to hold otherwise, would amount to keeping good and peace loving citizens defenceless while the criminals are well armed. This would be wholly arbitrary and unreasonable. In these days when law and order has broken down it is only an armed man who can lead a life of dignity and self respect. No criminal or gangster can dare to assault or threaten such a person for fear of retaliation. Since the word 'life' in Article 21 has been held by the Supreme Court to mean a life of dignity (as discussed above), the right to carry non- prohibited firearms must be deemed to be included in Article 21.

In the case of WP (c) 1631/2012 (**Vinod Kumar Vs The State and others**) Delhi High Court decided on 09/09/2013, the learned Single Judge held that refusal of the licence on the ground that there is no specific threat to the life or property is incorrect as that is not the criteria for refusal of licence under section 14 of the Arms Act.

The observations of the learned Single Judge are as under :

"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 the 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."

12. Now, applying these principles of law to the fact situation in

WWW.LIVELAW.IN
HIGH COURT OF MADHYA PRADESH,
BENCH AT GWALIOR

W.P. No.6983/2015

(Gurdeep Singh Dhinjal Vs. State of M.P. and others)
(9)

hand, I find that the impugned order does not contain any valid reason for refusal of firearm licence to the petitioner. There are no factors which make the petitioner unsuitable or incompetent for acquiring and possessing a fire arm licence. Unfortunately, no relevant factors have been considered by the State Authorities before passing the impugned order. The impugned order is absolutely a non speaking order and dehors the situation contemplated in section 14(1) of the Act.

13. Accordingly, the impugned order dated 1/9/2015 (Annexure P/1) is set aside. Respondents/State Authorities are directed to reconsider the claim of the petitioner for grant of arms licence strictly in accordance with the provisions of section 14 of the Act and pass a reasoned and speaking order within a period of three months from the date of receipt of certified copy of this order.

14. The petition, accordingly, stands disposed of.

(S.A.Dharmadhikari)
Judge

(and)