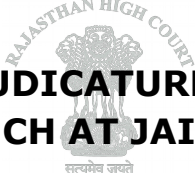


**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 7617/2019

Brijesh Kumar Singh S/o Ram Pravesh Singh, aged 51 years, S/o Ram Pravesh Singh, Resident of F-1, Police Line Jaipur, Amer Road, Opposite Jal Mahal, Jaipur.

----Petitioner

Versus

1. State of Rajasthan through Principal Secretary, Department of Home, Government of Rajasthan, Govt. Secretariat, Jaipur
2. Additional Commissioner of Police, Licensing and Legal Commissionerate Jaipur.

----Respondents

For Petitioner(s) : Mr. Mahendra Sharma
For Respondent(s) : Ms. Suman Shekhawat-Dy.G.C.

JUSTICE ANOOP KUMAR DHAND

Order

Reserved on 05/11/2024
Pronounced on 13/11/2024
Reportable

1. The instant writ petition impugns the validity of the orders dated 06.12.2016 and 27.02.2017 whereby request of the petitioner for grant of pistol licence has been declined, against which an appeal was preferred by him before the Appellate Authority, however, the same was also rejected vide impugned order dated 03.03.2019.
2. Being aggrieved and dissatisfied by these orders, the petitioner has approached this Court by way filing of this writ petition seeking direction against the respondents for grant of additional firearms licence.

3. Learned counsel for the petitioner submits that the petitioner is serving in the police department and he is having a 12 bore gun which he received in succession. Counsel submits that for the safety purpose, a pistol is also required and he has already got training from the Police department to use the said firearm. Counsel submits that a person can possess two different weapons, at the same time and there is no bar provided under the Arms Act, 1959 to possess two weapons simultaneously. In support of his contentions, counsel has placed reliance upon the order passed by the Co-ordinate Bench of this Court in the case of **Bheema Ram Vs. State of Rajasthan and Ors.** (S.B. Civil Writ Petition No. 4652/2016) dated 21.08.2018. Counsel submits that under these circumstances, appropriate directions be issued to the respondents for grant of additional licence to possess second weapon.
4. Learned counsel for the respondents opposed the arguments, raised by counsel for the petitioner and submitted that the petitioner is already in possession of licensed 12 bore gun and he has not satisfied the authorities about the need of second weapon. Counsel submits that the judgment relied upon by counsel for the petitioner is not applicable in the facts and circumstances of the present case, as no fact has been narrated with respect to the threat to petitioner's life. Counsel submits that the impugned orders passed by the authorities are just and proper, which require no interference by this Court and the present petition is liable to be rejected.
5. Heard and considered the submissions made at Bar and perused the material available on record.

6. The facts in brief of the case are that the petitioner applied for second licence of Revolver/ Gun before the authorities by way of submitting an application that he is having 12 bore gun licence bearing No. JNBHP/New/2014/ BL/320 which he received in gift from his father. Since this gun is big in size, the petitioner is facing difficulties in carrying the 12 bore gun. The aforesaid application submitted by the petitioner was rejected by the Additional Police Commissioner, Licensing and Legal, Jaipur on the count that the petitioner is already in possession of a gun licence, hence, there is no justification available with the petitioner for getting second licence to carry another firearm. Giving the aforesaid reason, the application to get second weapon licence was rejected vide orders dated 06.12.2016 and 27.02.2017.

7. Aggrieved by the order dated 06.12.2016, the petitioner submitted an appeal under Section 18 of the Arms Act, 1959 (for short, 'the Act of 1959') and the same was rejected by the Appellate Authority and Additional Chief Secretary, Department of Home, vide order dated 03.03.2019 on the same ground that if the petitioner is already in possession of 12 bore gun licence, then there is no justification for getting one more licence to carry another firearm.

8. Feeling aggrieved and dissatisfied by all the impugned orders, the petitioner has approached this Court by way of filing of this writ petition.

9. The law relating to Arms and Ammunition is governed by the Act of 1959. From perusal of the statement of Objects and Reasons of the Act of 1959, it can be seen that the Bill was

introduced before the Parliament to achieve various objects such as;

“The objects of this Bill are-

- (a) to exclude knives, spears, bows and arrows and the like from the definition of “arms”;
- (b) to classify firearms and other prohibited weapons so as to ensure-
 - (i) that dangerous weapons of military patterns are not available to civilians, particularly the anti-social elements;
 - (ii) that weapons for self-defence are available for all citizens under license unless their antecedents or propensities do not entitle them for the privilege; and
 - (iii) that firearms required for training purpose and ordinary civilian use are made easily available on permits;
- (c) to co-ordinate the right of the citizen with the necessity of maintaining law and order and avoiding fifth-column activities in the country;
- (d) to recognize the right of the State to requisition the services of every citizen in national emergencies. The licensees and permit holders for firearms, shikaris, target shooters and rifle-men in general (in appropriate age groups) will be of great service to the country in emergencies, if the Government can properly mobilize and utilize them.

10. The object No.(b)(ii) indicates that the legislature intended to ensure that the weapons for self-defence are available for all citizens having license unless their antecedents or propensities do not entitle them for the privilege.

11. Section 2(c) of the Act of 1959 defines the word “Arms”. The same reads as under:-

“(c) “arms” means articles of any description designed or adapted as weapons for offence or defence, and includes firearms, sharp edged and other deadly weapons, and parts of, and machinery for manufacturing, arms, but does not include articles

designed solely for domestic or agricultural uses such as a lathi or an ordinary walking stick and weapons incapable of being used otherwise than as toys or of being converted into serviceable weapons;

Section 2(e) defines the word "Firearms". The same reads as under :-

(e) "firearms" means arms of any description designed or adapted to discharge a projectile or projectiles of any kind by the action of any explosive or other forms of energy, and includes—

(i) artillery, hand-grenades, riot-pistols or weapons of any kind designed or adapted for the discharge of any noxious liquid, gas or other such thing,

(ii) accessories for any such firearm designed or adapted to diminish the noise or flash caused by the firing thereof,

(iii) parts of, and machinery for manufacturing, firearms, and

(iv) carriages, platforms and appliances for mounting, transporting and serving artillery;

Section 2(h) defines the word "Prohibited ammunition". The reads as under :-

(h) "prohibited ammunition" means any ammunition containing, or designed or adapted to contain, any noxious liquid, gas or other such thing, and includes rockets, bombs, grenades, shells, [missiles,] articles designed for torpedo service and submarine mining and such other articles as the Central Government may, by notification in the Official Gazette, specify to be prohibited ammunition;

Section 2(i) defines the word "Prohibited arms". The same reads as under :-

(i) "prohibited arms" means—

(i) firearms so designed or adapted that, if pressure is applied to the trigger, missiles continue to be discharged until pressure is removed from the trigger or the magazine containing the missiles is empty, or

(ii) weapons of any description designed or adapted for the discharge of any noxious liquid, gas or other such thing, and includes artillery, anti-aircraft and anti-tank firearms and such other arms as the Central Government may, by notification in the Official Gazette, specify to be prohibited arms;

12. Chapter-II of the Act of 1959 deals with Acquisition, Possession, Manufacture, Sale, Import, Export and Transport of Arms and Ammunition. Section 3 of the Act of 1959 prescribes that "No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of the Act of 1959 and the Rules made therein". A licence is also required for acquisition, possession, manufacture and sale etc. for Arms of a specified description. The Scheme of Chapter-II suggests that the entire regime relating to acquisition and possession of fire arms is sought to be regulated by the Act of Parliament. The Scheme further suggests that the Parliament intended to have complete control over the movement of any firearm so as to ensure that no anti-social or anti-national element may use such weapons and, at the same time the law abiding citizens may, under licence, use such weapons for their self defence subject to certain restrictions.

13. Chapter-III of the Act of 1959 deals with the provisions relating to licences. Section 13 requires an application for grant of licence under Chapter-II to be made to the licensing authority. Sub Section 2A of Section 13 requires that after considering the report received from the Officer-in-charge of the nearest Police Station, the licensing authority, subject to other provisions of

Chapter III, by an order in writing either grant the licence or refuse to grant the same.

14. Section 14 deals with refusal of licences. The same 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.

A perusal of Section 14(1)(b)(ii) would show that a licence in any case other than the cases of prohibited arms or prohibited ammunition under Chapter-II, where the licensing authority, if it deems necessary for security of the public peace or for public safety, can refuse to grant such licence. A careful reading of

Section 13 and 14 would show that the licensing authority has a discretion under Section 13 to grant licence or to refuse on the basis of an inquiry as it may deem necessary and on the report received under Sub Section 2 of Section 13. However, in Section 14, the licensing authority is not left with any option except to refuse such an application if it falls within the categories as mentioned therein. The aforesaid interpretation is being made taking into consideration the fact that Sub Section 2A of Section 13 only requires the licensing authority to pass an order in writing either to grant or to refuse the same. However, Section 14 starts with "notwithstanding clause" giving override effect to the mandate of Section 13 by using the word "shall". It is thus seen that if the applicant falls in any of the categories mentioned in Section 14, the licensing authority is not left with any option to exercise the discretion for grant of licence under Section 13.

15. The petitioner is already in possession of a gun licence but he has not disclosed any justified reason as to why second licence is required by him to carry another weapon like Revolver/Pistol. This cannot be a ground to claim licence for second weapon that the first weapon i.e. 12 bore gun is big in size and Revolver/Pistol is small in size.

16. The right to bear arms is completely different in India when this right is compared to the United States of America (USA) and other countries' like United Kingdom (UK). In USA, the right to bear arms refers to people's right to self defence and it has a constitutional recognition under the Second Amendment of the US Constitution. This amendment empowers the citizens of USA

to retaliate against any tyrannical threat thereby employing self defence as a primary justification for keeping the weapon/gun. However, this law is also not absolute in the United States. It is also subject to scrutiny and reasonable restrictions by the United States. But carrying and possessing firearms in a country is only a matter of statutory privilege and no citizen has a blanket right to carry a firearm, as it is not a fundamental right under Article 21 of the Constitution of India.

17. Right to own a firearm is not a fundamental right in India. Even the Hon'ble Apex Court in the case of **Rajendra Singh Vs. The State of Uttar Pradesh** (SLP (Crl.) No. 12831/2022) decided on 13.02.2023 has held as under:-

"It is again one of those cases where we find that according to the prosecution case, an unlicensed fire arm was used in commission of the offence involving Section 302 IPC also. We have come across cases where there is this phenomenon of use of unlicensed fire arms in the commission of serious offences and this is very disturbing.

Unlike the Constitution of the United States where the right to bear fire arms is a fundamental freedom, in the wisdom of our founding fathers, no such right has been conferred on anyone under the Constitution of India. The matter relating to regulation of fire arms is governed by Statute, viz., Arms Act, 1959, inter alia.

It is of the greatest significance to preserve the life of all, that resort must not be made to unlicensed fire arms. In particular, if unlicensed fire arms are freely used, this will sound the death knell of rule of law".

18. Arms licence is a creation of statute and the Licensing Authority is vested with the discretion as to granting or not



granting of such licence, which would depend upon the facts and situation in each case.

19. One does not have a fundamental right to keep weapon and its possession nowadays is more for "showing off" as a "status symbol", rather than for self defence, demonstrating that he is an influential person. The object of the Arms Act was to ensure that weapon is available to a citizen for self-defence but it does not mean that every individual should be given a licence to possess weapon. We are not living in a lawless society where individuals have to acquire or hold arms to protect themselves. Licence to hold an arm is to be granted where there is a necessity and not merely at the asking of an individual at his whims and fancies.

20. Here in the instant case the petitioner has failed to satisfy the Licensing authority and the appellate Authority as to why the second weapon licence is required by him to carry Revolver/Pistol, more particularly when he is already in possession of a gun licence. The petitioner has failed to make out a special case that his life is under serious threat and for that he needs two different licences, to carry two different firearms.

21. The order relied by the petitioner in the case of **Bheema Ram** (Supra) is not applicable in the present case because looking to the nature of the business carried out by the said **Bheema Ram** (Supra), the second weapon and its licence was required by him. But herein this case, no justified reasons have been assigned by the petitioner as to why he needs second licence to carry Pistol/Revolver, specially when he is already in possession of a weapon licence to carry 12 bore gun.



22. In the facts of the case, after having perused the impugned orders, this Court is of the opinion that no interference is called for in this petition, as the refusal to grant second licence for Revolver/Pistol is well reasoned by the respondents.

23. In view of the discussions made hereinabove, the present writ petition stands dismissed.

24. Stay application and all pending application(s), if any, also stand dismissed.

(ANOOP KUMAR DHAND),J