

A.F.R.**Neutral Citation No. - 2023:AHC:232506****Court No. - 4****Case :-** WRIT - C No. - 10887 of 2015**Petitioner :-** Gyanendra Singh**Respondent :-** State Of U.P. And 3 Others**Counsel for Petitioner :-** S.M. Ali,Om Prakash Tripathi**Counsel for Respondent :-** C.S.C.**Hon'ble Prakash Padia,J.**

1. Heard Mr. Neelabh Srivastava, Advocate, holding brief of Mr. Om Prakash Tripathi, learned counsel for the petitioner and learned Standing Counsel for the respondent-State.

2. The present petition has been filed inter-alia with the prayer to quash the impugned order dated 11.12.2014 and order dated 31.01.2014 passed by Commissioner Jhansi Division Jhansi and District Magistrate Jhansi respectively. Further prayer is made to direct the respondents for grant of fire arm licence of pistol in favour of the petitioner within time bound period. By the aforesaid orders the application for grant of fire-arm license of pistol in favour of the petitioner was rejected.

3. The facts in brief as contained in the writ petition are that petitioner has filed an application on 10.07.2012 for granting the fire-arm license in his favour for self defence and safety. The District Government Hospital issued a medical fitness certificate dated 15.10.2012 after medical examination of the petitioner. He has also submitted medical fitness and domicile certificate. The Sub Divisional Magistrate, Jhansi and Superintendent of Police, Jhansi have also submitted report on 22.12.2012 and 05.04.2013 in favour of the petitioner. Since time limit prescribed in the Act for grant of fire arm licence was expired and no order was passed on the said application, the petitioner preferred a petition before this Court being Writ C No.61262 of 2013, which was

disposed of by this Court vide judgement and order dated 08.11.2013 directing the respondent no.2 in that petition to consider and decide the petitioner's application by a reasoned and speaking order within three months. Pursuant to the same, a decision was taken by the District Magistrate, Jhansi on 31.01.2014 by which application for grant of fire-arm license was rejected. Aggrieved against the aforesaid appeal was filed by the petitioner before the appellate authority as provided under Section 18 of the Arms Act, 1959. The said appeal was also rejected by the Commissioner, Jhansi Region, Jhansi vide its order dated December 11, 2014. Aggrieved against the aforesaid petitioner has preferred present writ petition.

4. It is argued by counsel for the petitioner that both the orders passed by the authorities are absolutely illegal and liable to be set aside. It is further argued that petitioner have no criminal history. The petitioner is a Practicing Advocate in District Court Jhansi since 2008 and since he is doing social work of public interest hence an urgent need of fire-arm license for the safety of his life and property. Counsel for the petitioner placed reliance upon the law laid down by a Coordinate Bench of this Court in the case of ***Manoj Kumar Yadav Vs. State of U.P. through Addl. Chief Secy. Home Lucknow & Ors*** passed in ***Writ C No.16298 of 2021 decided on 13.02.2023*** reported in ***2023 (0) Supreme (All) 487***.

5. In the counter affidavit filed by the learned Standing Counsel it is stated in paragraph-5 that after the application for grant of fire-arm license was submitted by the petitioner, a report was submitted by the S.S.P., Jhansi on 05.04.2013 making objections to grant fire-arm license to the petitioner. During the pendency of the aforesaid report, writ petition in question as stated above has been filed by the petitioner in which direction was given by this Court on 08.11.2013 to the competent authority to disposed of the application for grant of fire-arm license of the petitioner within three months. After the aforesaid order was served the District Magistrate, Jhansi came to the conclusion that there is no

threat to the life of petitioner, hence his application was rejected. It is further stated that the appeal filed against the aforesaid order was rightly rejected by the Commissioner, Jhansi after hearing both the parties. It is further stated in the counter affidavit that petitioner is Practicing Advocate and he has no criminal history and as such he does not required any fire-arm license.

6. In the rejoinder affidavit filed by the petitioner it is stated that the petitioner is seeking fire-arm license for self defence and safety. Certain reports were submitted in his favour by the authorities concerned but wholly illegally the District Magistrate rejected the application for grant of fire-arm license hence order passed by the authorities are liable to be quashed and the petition is liable to be allowed.

7. Heard learned counsel for the parties and with the consent of learned counsel for the parties, the present petition is disposed of finally at the admission stage.

8. A perusal of the order impugned passed by the District Magistrate, Jhansi and also the Appellate order passed by the Commissioner Jhansi Division Jhansi would show that the proper and due consideration has been afforded to the various facts which has been placed by the petitioner. The Licensing Authority has observed that the primary reason on which the Petitioner seeks an arms license is on the ground of self defense and for safety of his property which clear from the affidavit filed by the petitioner for grant of the arm license. The relevant portion of the affidavit is reproduced hereinbelow:-

"समक्ष श्रीमान् जिला मजिस्ट्रेट महोदय झाँसी सन्दर्भ - शस्त्र लाइसेन्स स्वीकृत किये जाने हेतु आवेदन के सम्बन्ध में शपथ पत्र शपथ पत्र
धारा 12. शपथ कर्ता को शस्त्र लाइसेंस की आवश्यकता का कारण जान माल की सुरक्षा हेतु "

9. The Licensing Authority namely District Magistrate Jhansi has observed in its order that there is no sufficient reason or condition

mentioned in the application to grant arms license and rejected the application. The relevant portion of the order is reproduced hereinbelow:-

मैंने पत्रावली पर उपलब्ध समस्त अभिलेखों का भली भांति अध्ययन किया। वरिष्ठ पुलिस अधीक्षक, झांसी एवं उप जिला मजिस्ट्रेट, झांसी द्वारा भी अपनी जांच आख्याओं में ऐसा कोई तथ्य संज्ञान में नहीं लाया गया जिससे आवेदक को जीवन भय के लिये कोई खतरा हो और आवेदक द्वारा अपने प्रार्थना पत्र में जान माल की सुरक्षा हेतु कोई ठोस कारण अंकित नहीं किया गया है और न ही कोई साक्ष्य प्रस्तुत किया है। आवेदक की सुरक्षा सम्बन्धी किसी विशिष्ट समस्या या परिस्थिति सम्बन्धी औचित्य का आख्याओं में कोई उल्लेख नहीं है। याची अपराध पीड़ित नहीं है। अतः ऐसी स्थिति में आवेदक को एन 0 पी0 बोर रिवाल्वर / पिस्टल का शस्त्र लाइसेन्स दिये जाने की आवश्यकता प्रतीत नहीं होती है। आवेदक का प्रार्थना पत्र दिनांक 13.08.2012 निरस्त किये जाने योग्य है। अतः उपर्युक्त सभी बिन्दुओं पर विचार करते हुये आवेदक का शस्त्र प्रार्थना पत्र दिनांक 13.08.2012 आयुध अधिनियम 1959 की धारा 14 भारत सरकार के शासनादेश संख्या V-11016/16/2009-Arms Ministry of Home Affairs IS-II Division / Arms Section dated 31st March, 2010 एवं मा० उच्च न्यायालय लखनऊ खण्डपीठ लखनऊ द्वारा याचिका संख्या 3268 (एम०बी०) जितेन्द्र सिंह बनाम उत्तर प्रदेश राज्य व अन्य में पारित आदेश दिनांक 07.10.2013 में दिये गये प्राविधानों के अन्तर्गत एतद् द्वारा निरस्त किया जाता है। आवेदक को यह छूट रहेगी कि यदि उसके जीवन का कोई खतरा / भय उत्पन्न है तो वह तथ्यों को स्पष्ट करते हुये पुनः आवेदक दे सकता है।

(तनवीर जफर अली)
जिला मजिस्ट्रेट, झांसी।

10. In the appeal preferred against the aforesaid order, the appellate authority, i.e., Commissioner Jhansi Division Jhansi has observed that the appellate court does not find any error in the order, therefore, the appeal has been rejected. The relevant portion of the order is reproduced hereinbelow:-

4. मैंने पत्रावली का अवलोकन किया। जिला मजिस्ट्रेट, झांसी ने प्रश्नगत आदेश में उल्लेख किया है कि आवेदक की सुरक्षा सम्बन्धी किसी विशिष्ट समस्या या परिस्थिति सम्बन्धी औचित्य का आख्याओं में कोई उल्लेख नहीं है। याची अपराध पीड़ित नहीं है। आयुध अधिनियम 1959 की धारा-14 एवं भारत सरकार के शासनादेश सं०-V-11016/16/2009-Arms Ministry of Home Affairs IS-II Division/Arms Section New Delhi Dated 31st March, 2010 एवं मा० उच्च न्यायालय, लखनऊ खण्डपीठ द्वारा याचिका सं०-3268 (एम० बी०) जितेन्द्र सिंह बनाम सरकार में पारित आदेश दिनांक 07-10-2013 तथा गृह पुलिस अनुभाग-5 के शासनादेश संख्या- रिट - 395 / छः-पु-5-

2013, दिनांक 08-11-2013 में दिये गये प्राविधानों के अन्तर्गत शस्त्र आवेदन पत्र को निरस्त किया गया है। इस प्रकार मेरे विचार से विद्वान अवर न्यायालय ने अपीलकर्ता का शस्त्र लाइसेंस हेतु प्रस्तुत प्रार्थना पत्र निरस्त कर प्रथमदृष्टया कोई विधिक त्रुटि नहीं की है, फिर भी अपीलकर्ता शस्त्र लाइसेंस प्राप्त करने हेतु आवेदन पत्र अपनी आवश्यकता के दृष्टिगत पुनः प्रस्तुत कर सकता है। परिणामतः अपील बलहीन होने के कारण निरस्त की जाती है।
दिसम्बर 11, 2014

(के० राममोहन राव)
आयुक्त, झांसी मण्डल, झांसी

11. I have considered the provisions for grant of Arms License as contained under Sections 13 and 14 of the Arms Act. Section 13 of the Act provides that an application for grant of a licensing has to be made to the Licensing Authority as also the conditions under which the same would be issued. Section 14 specifies the situations wherein a Licensing Authority shall refuse to grant a license. Section 14 of the Arms Act is reproduced hereinbelow:-

“Section 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.”

12. From perusal of the fact as narrated in the writ petition as well as from perusal of the affidavit submitted for grant of fire-arm licence, it is clear that the petitioner applied for arms license for his own protection and property.

13. There is no right to have an arms licence which is a privilege and it is a question of fact which is to be ascertained by the authorities concerned whether a person is entitled to the said privilege or not and no interference with such factual findings is possible in writ jurisdiction. Full Bench of this Court in the case of Kailash Nath and others Vs. State of U.P. and another reported in A.I.R. 1985 All 291 observed as under:-

“A right is distinct from a mere privilege. The case of a licensee to possess or use firearm is materially different from a case of licence to deal in or sell firearms. Section 3 of the Arms Act, 1959 deals with acquisition and possession of firearms or ammunition on the strength of a licence whereas Section 5 provides for a licence for manufacture, sale etc. of arms and ammunition. The licence for acquisition and possession of firearms is materially different from a licence for manufacture, sale etc. While the latter confers a right to carry on a trade or business and is a source of earning livelihood, the former is merely a personal privilege for doing something which without such privilege would be unlawful. In my opinion the obtaining of a licence for acquisition and possession of firearms and ammunition under the Arms Act is nothing more than a privilege and the grant of such privilege does not involve the adjudication of the right of an individual nor does it entail civil consequences. I may, however, hasten to add that even an order rejecting the application for grant of licence may become legally vulnerable if it is passed arbitrarily or capriciously or without application of mind. No doubt, a citizen, may apply for grant of a licence of firearms mostly with the object of protecting his person or property but that is mainly the function of the State. Even remotely this cannot be comprehended within the ambit of Article 21 of the Constitution which postulates the fundamental right of protection of life and personal liberty.

In the same judgment it was also observed that:

“The consistent trend of judicial decisions has been that the official granting of the licence involves the exercise of discretionary licensing powers which are concerned with privileges and not rights. See Randall v. Northcote Council (1910) 11 CLR 100, 117-119, Metropolitan Meat Industry Board v. Finlayson (1916) 22 CLR 340; Ex. P. Macarthy, re The Milk Board (1935) SR (NSW) 47; Nakkuda Ali v. Jayaratne 1951 AC 66; R. v.

Metropolitan Police Commr., ex p. Parker (1953) 1 WLR 1150; Modern Theatres (Provincial) Ltd. v. Peryman (1960) NZLR 191 See also Merchants Bank Ltd. v. Federal Minister of Finance (1961) 1 All NLR 598 (Nigeria) (revocation of licence). The decision in Nakkuda Ali v. Jayaratne 1951 AC 66 was to the effect that the Controller of Textiles in Ceylon had cancelled a textile dealer's licence in pursuance of a power to revoke a licence when he had 'reasonable grounds' for believing its holder to be unfit to continue as a dealer. It was held that the Controller was not determining a question affecting the rights of subjects but was merely taking executive action to withdraw a privilege. It is therefore, apparent that no citizen has a blanket right to carry firearms. Its grant is subject to his applying for a license, and fulfilling the qualifications and criteria, spelt out in the Act and Rules. The National Rifle Associations position, therefore, that its members have a right to secure a license, is untenable. They have, at best a right to apply for, and be considered for the grant of a license, subject to fulfillment of the prescribed qualifications."

14. The similar view has also been taken by this Court in the case of **Ram Milan Vs. State of U.P. and others (Writ C No.24708 of 2021)**.

Paragraph 9 of the aforesaid judgement is reproduced hereinbelow:-

9. In this case the petitioner has claimed himself to be an active Advocate, who desires to have arm licence for his personal and professional safety. If an Advocate requires a firearm licence for his personal and professional safety, it would be a very dangerous practice. The profession of Advocate is a noble profession. An Advocate always appears fearlessly before the Court to protect the rights of his clients. In case there is a threat in the mind of Advocate, the entire basis of nobleness of the profession would fall. If such applications are allowed without any concrete basis, a day will come that every Advocate will carry an arm inside the Court premises. Every Advocate has a weapon of his legal arguments with bullets of judgments passed by High Courts and Supreme Court in support of his submission, which are enough to provide safety to his profession and client and are sufficient to demand justice from the Courts. Normally they do not need firearm for their professional safety. It is made clear that there is no bar for the Advocate to apply for firearm licence and their application can be considered in accordance with law under the provisions of Arms Act, 1959 read with Arms Rules, 2016. However, a general trend to have a firearm licence by an Advocate without any good reason is not appreciable and it is not in the interest of noble profession of Advocate.

15. The only reason that is forthcoming is that the Petitioner wishes to own an arms licence for the purpose of his self-defence/protection.

16. Right to own a fire arm is not a Fundamental Right in India. This

legal position is settled in several decisions including the recent decision of the Hon'ble Supreme Court in ***Rajendra Singh v. The State of Uttar Pradesh [SLP(Crl.) No. 12831/2022, decision dated 13th February, 2023]*** where it has been observed 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.”

17. Insofar as the judgment cited by the petitioner in the case of ***Manoj Kumar Yadav (supra)*** is concerned, in the said case the impugned order which is under challenge does not narrate any reason on which ground refusal has been made, therefore, the aforesaid order has been set aside by this Court but in the present case, the ground has been specifically mentioned, therefore, the aforesaid judgement does not apply in this case.

18. Arms licence is a creation of the statute and the Licensing Authority is vested with the discretion whether to grant or not grant such a licence, depending upon the fact situation in each case. This view has also been taken by the learned Single Judge of the Delhi High Court in the case of ***Adv. Shiv Kumar Vs. Union of India and others (W.P. (C) 7034/2023 & CM APPL. 27372/2023)*** decided on 22.05.2023. Paragraph 13 of the aforesaid judgement is reproduced hereinbelow:-

“13. Arms licence is a creation of the statute and the Licensing Authority is vested with the discretion whether to grant or not grant such a licence, depending upon the fact situation in each case. All lawyers/advocates who are appearing on the criminal side for the accused or the prosecution cannot claim a right to own an arms license, inasmuch as this could result in issuance of arms licenses indiscriminately. The perceived weakness of the State,

which is one of the grounds, which the Petitioner has urged for seeking the arms license, if accepted, would result in recognition of a right to own a fire arm. This recognition leading to issuance of a licence and unbridled owning of fire arms, could also pose a threat to the safety and security of the other citizens, which the Licensing Authority would have to keep in mind while allowing or rejecting the arms license. The Licensing Authority has to assess the threat perception and the reasons for the request for a license which has been given by the applicant concerned. It is only after assessing the same that such a license can be issued. An application by an advocate merely based on the ground of appearance on behalf of the accused persons, in the opinion of this Court, would not be sufficient to grant an arms license.”

19. In the facts of this case, after having perused the impugned order, this Court is of the opinion that no interference is called for in writ jurisdiction as the refusal of grant of arms license is well reasoned.

20. The petition is dismissed.

Order Date :- 03.11.2023

Promod Tripathi/saqlain