

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 352 of 2022

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KHANJI MOHAMMAD SAIYED GULAMRASOOL
Versus
ADDITIONAL DISTRICT MAGISTRATE

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Appearance:

MR MA KHARADI(1032) for the Petitioner(s) No. 1

MR HARDIK MEHTA, AGP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

Date : 27/06/2022
ORAL ORDER

1. **Rule.** Learned AGP waives service of notice of rule for the respondent-State.
2. In this writ petition, the petitioner has prayed for quashing and setting aside the order dated 29.09.2021 passed by the respondent pursuant to which the license of fire arm is revoked.
3. The brief facts of the case are as under:-
 - 3.1. The petitioner was granted license to hold the fire arm as per the provisions of Arms Act on 30.09.1997. Since the validity of the said license had expired on 31.12.2020, the petitioner filed an online application for the renewal along with an amount of Rs.2500/- towards the renewal fees. In view of the petitioner's application the respondent the communication dated October 29, 2020, called upon the petitioner to remain present for personal hearing on November 23, 2020. The petitioner remained present on 23.11.2020, on the next day i.e. November 24, 2020 he correspond with the respondent. Thereafter, the respondent after the period of ten months passed the impugned order to revoke the license with an order to deposit the fire arm with the concerned police

station, to get it disposed of within a period of one year.

4. Learned advocate for the petitioner has submitted that the respondent no.1 while passing the impugned order has failed to exercise the jurisdiction vested in him and thereby has committed an illegality and/or irregularity and if the impugned order is allowed to stand the same will cause gross miscarriage of justice.

5. Learned advocate for the petitioner has submitted that the respondent has fallen in error in ignoring the statutory provisions, more particularly, Section 17 of the Arms Act, 1959 (for short "the Act") which provides for the ground to revoke the license. It is submitted that while passing the impugned order, the respondent has tried to have a *de novo* inquiry as contemplated under Sections 13 and 14 of the Act. It is submitted that even the above provisions of the Act also nowhere prescribe such grounds/ reasons to refuse/revoke license. He has placed reliance on the judgment of this Court in the case of Ahmed Mustafa Sunsara vs. District Magistrate and Collector, Banaskantha, 2021 (3) GLH 1. Thus, he has submitted that the impugned order may be quashed and set aside since the same is passed in complete ignorance of the aforesaid provision of law.

6. Per contra, learned AGP Mr. Hardik Mehta has submitted that the petitioner is having an alternative remedy to challenge the impugned order by filing an appeal before the Secretary, Home Department and since he has not availed the same, the writ petition may not be entertained.

7. I have heard the learned advocates appearing for the respective parties.

8. The aforementioned facts are not in dispute. The petitioner was holding a valid license of the fire arms in the year 1997 and he had applied for

renewal application and while deciding the said application, the respondent authority has revoked the license and asked him to deposit the fire arm before the concerned police station.

9. At this stage, it would be apposite to incorporate the provisions of Section 17(3) of the Act:-

“Section 17

(3) The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence—

(a) if the licensing authority is satisfied that the holder of the licence is 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 is of unsound mind, or is for any reason unfit for a licence under this Act; or

(b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or

(c) if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it; or

(d) if any of the conditions of the licence has been contravened; or

(e) if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver-up the licence.”

10. A bare perusal of the impugned order reveals that while passing the same and revoking the license of the petitioner, the authority has not even remotely thought fit to examine the entire issue and to give a finding as to whether any of the conditions mentioned in sub-section (3) of Section 17 of the Act.

11. At this stage, it would be apposite to refer to the observations made by the Coordinate Bench in the order dated 30.11.2021 passed in Special Civil Application No.12097 of 2021 while dealing the similar set of facts and after considering the provisions of Section 17(3) of the Act including

the contentions with regard to alternative remedy, has observed thus:-

11. Therefore, what essentially weighed with the respondent authority is the age of the petitioner in wake of the communication dated 13.12.2017 of the Home Department, Gandhinagar. So far as the said aspect is concerned, reliance placed on the judgment in the case of Ahmed Mustafa Sunsara (supra) is worth referring to wherein reference has been made by the co-ordinate bench upon the judgment in the case of Ashokkumar Bhikhaji Thakor (supra). Paragraphs 15 and 16 whereof read thus:-

“15. From the aforesaid provision, it is clear that the licensing authority is empowered to suspend or revoke the licence under the circumstances which are enumerated in aforesaid subsection (3) of Section 17. As observed hereinabove the respondent No.3 has placed reliance upon the negative opinion given by the Superintendent of Police and pendency of the criminal proceedings against the petitioner. However, the respondent No.3 has not considered whether the registration of FIR against the petitioner and pendency of criminal proceedings for the offence of criminal breach of trust, forgery and under the provisions of the Prevention of Corruption Act in any way affect the public safety, security or public peace. Further, the respondent No.3 has also committed an error by observing that the petitioner has failed to produce any documentary evidence in favour of his claim that risk is involved in his business and therefore arms licence is required. It is required to be noted that the respondent No.3 was not for the first time issuing the licence in favour of the petitioner but he was exercising the powers under Section 17 of the Act for revocation of the licence and therefore also the order passed by the respondent No.3 is required to be set aside. From the order passed by the respondent No.3 it is not reflected that he has exercised the powers under Section 17(3) (a) of the Act on the ground that petitioner is unfit to have licence. Thus, the submission canvassed by learned AGP is misconceived.

16. Further, the respondent No.3 has revoked the licence of the petitioner on the basis of pendency of criminal proceedings as discussed hereinabove. However, arms licence of the coaccused of the same FIR against whom the criminal proceeding is still pending has been restored by the Appellate Authority.”

Similarly, the case of Sorab Jehangir Bamji (supra) is also worth referring to. Paragraphs 17, 18 and 19 read thus:-

“17. In light of the statutory provisions and decisions referred to above, it would be necessary to revert to the impugned orders. A perusal of the impugned orders indicates that the sole reason for rejection of the application of the petitioner, is based upon the opinion of the Police authorities that the licence may not be granted as the petitioner is aged 63 years. Apart from that, the District Magistrate and the State Government have concluded in their respective orders, that no reasonable ground exists for granting a licence to the petitioner. As has been noticed hereinabove, Section 13(2A) vests the licencing authority with power to either grant a licence or refuse the same, as thought necessary, after considering the report of the officer in charge of the nearest Police Station, as provided under Section 13(1)(2). As per Section 14(1)(b) (ii), the licencing authority shall refuse to grant a licence, among other reasons mentioned in Section 14(1), if it is found necessary to refuse it for the security of the public peace or public safety. As already discussed above, the report of the Police authorities in the case of the petitioner, does not indicate that he has any criminal antecedents, or that granting the licence to him will endanger the security and safety of the public or hinder public peace. In fact, the Police authorities have not given any adverse opinion in the case of the petitioner. The only ground mentioned is that the petitioner is 63 years of age which, in the view of this Court, cannot be considered as being a prohibition, as it is nowhere so stated in the Act.

18. Though Section 9 prohibits a person, who has not completed the age of 21 years, from acquiring, possessing or carrying a firearm or ammunition, there is no prohibition regarding a person of any age above the age of 21 years from doing so. The grounds for refusal of a licence under Section 14 do not apply to the petitioner in any manner. The discretion for exercise of power vested in the licencing authority by virtue of Section 13(2A) is to be exercised in relation to, and in the context of, the provisions of the Act, in a reasonable and rational manner. The reasons for refusal of a licence would have to have a nexus to, and be in context with, the provisions of the Act. Merely refusing to issue a licence for a reason not prohibited by the Act, such as being aged 63 years, is unjustified and not in consonance with the provisions of the Act. It is stated in the impugned orders passed by the District Magistrate and the State Government, that there are no reasonable grounds for grant of licence to the petitioner. On the contrary, in view of the relevant provisions of the Act, it is evident that the respondents have

failed to show any valid grounds for refusal of the licence.

19. The petitioner is, and has been, a member of Billimora Rifle Club since the year 1988, and has participated in a number of Rifle Shooting tournaments and won several certificates and awards. grant of the licence is for participation in sports activities, namely, Rifle Shooting. As per Section 13(3)(I), the licencing authority can grant a licence in respect of a smooth bore gun having a barrel of not less than twenty inches in length, for protection of crops or for sports. Apart from sports, the petitioner has cited the reason of self protection in his application for grant of the licence. As the petitioner was 63 years old at the relevant point of time, and is now aged about 67 years, it cannot be said that the reason of self protection is unjustified as older people would require to be more secure and to have a licenced firearm would provide such security. Both the grounds for which the petitioner has requested for the issuance of a firearm licence, cannot be said to be unreasonable or inadequate. It is not understandable on what premises the respondents have come to such a conclusion.”

It has been held that reasons for refusal of a license would have to have a nexus to, and be in context with, the provisions of the Act. Merely refusing to issue a license for a reason not prohibited by the Act, such as being aged 63 years, is unjustified and not in consonance with the provisions of the Act. It has also been held that merely because the petitioner at the time of the making the application was 63 years, and at the time of renewal about 67 years, it cannot be said that the reason of self-protection is unjustified as older people would require to be more secure and to have a licensed firearm would provide such security.

12. In the present case, the license has been revoked on an irrelevant two grounds (1) the applicant has not received any threat and there is no incident of any assault on him, and (2) there is availability of telephone and he can call for police protection as and when necessary.

13. Thus, the revocation of the license on the two grounds as mentioned hereinabove, is absolutely illegal and *de hors* the provisions of Section 17(3) of the Act. The reasons for refusal of a licence should have a nexus and should be in context with the provisions of the Act and the license cannot be revoked on irrelevant consideration.

14. Hence, the impugned order dated 29.09.2021 passed by the respondent authority deserves to be quashed and set aside as it is passed on absolute irrelevant grounds *de hors* the provisions of the Act and this Court under these circumstances, can interfere with such an order though an alternative remedy is available to the writ petitioner.

15. The impugned order dated 29.09.2021 passed by the respondent authority is hereby quashed and set aside. The matter is remitted to the sole respondent for reconsideration of the case of the petitioner in terms of the orders passed by this Court.

16. Appropriate decision shall be taken within a period of two weeks from the date of receipt of the writ of this order. Rule is made absolute. Direct service is permitted.

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(A. S. SUPEHIA, J)