

(2023) 02 GUJ CK 0017

In the Gujarat High Court

Case No : R/Special Civil Application No. 14566 Of 2019

Harshadbhai Jamnadas Gadhiya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 03-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 328, 384, 452, 504(2)
Arms Act, 1959 — Section 14

Citation : (2023) 02 GUJ CK 0017

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Neel P Lakhani, PM Lakhani, R P Lakhan, Rohan Shah

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. Rule returnable forthwith. Mr. Rohan Shah, learned Assistant Government Pleader waives service of notice of rule on behalf of respondents. With consent of the learned advocates appearing for the respective parties, the matter is taken up for final hearing today.

2. By way of this petition, under Article 226 of the Constitution of India, the petitioner has prayed for a direction to quash and set aside the impugned orders dated 28.5.2018 passed by the District Magistrate, Amreli and order dated 4.6.2019 passed by the Joint Secretary (Appeal), Home Department, Government of Gujarat, Gandhinagar.

3. The facts in brief would indicate that the petitioner who states that he is an agriculturist was in possession of 0.32 bore revolver licence which was renewed upto 31.12.2016. As the licence was expiring on 31.12.2016, the petitioner applied for renewal for a further period of 3 years vide application 13.12.2016. After granting an opportunity of hearing to the petitioner, by an order dated

28.5.2018, the District Collector and District Magistrate rejected the application for renewal of the licence on the ground that the two FIRs, one registered with Savarkundla Town Police Station being FIR No. I-83 of 2001 for offences punishable under Sections 452, 384, 323 and 504(2) of the Indian Penal Code and another one FIR No.58/2001 under the Gambling Act were pending.

4. On an appeal being filed before the State by an order dated 4.6.2019, the appellate authority confirmed the order on the ground that though the case under FIR I-83/2001 was decided, the case under the Gambling Act is still pending.

5. Mr. P. M. Lakhani, learned counsel for the petitioner would submit that the order of rejection for renewal of licence is bad, inasmuch as, the licence was renewed on the earlier occasion despite the same FIRs pending against the petitioner. He would invite the Court's attention to averments made in paragraph No.4.10 of the petition which indicates that on every occasion of renewal, such cases were already pending and which were pointed out to the police authority and, therefore, on the same ground of the FIRs of the years 2001 and 2004 respectively, the present rejection is bad.

6. Mr. Rohan Shah, learned Assistant Government Pleader for the respondent – State inviting the Court's attention to the affidavit-in-reply would indicate that the orders of the authorities are just and proper. On the renewal application of 13.12.2016, the opinion of the competent authority was sought and the Superintendent of Police had opined that considering the two offences registered against the petitioner, the arms licence need not be renewed. These things weighed with the authorities in passing the impugned order.

7. Mr. Lakhani, learned counsel for the petitioner would rely on an order passed by the Coordinate Bench of this Court in SCA No.13499 of 2021 dated 13.6.2022.

8. Considering the submissions made by the learned advocates for the respective parties, it is undisputed that in renewals prior to the present renewal, which is a subject matter of this petition, the authorities rejected the application on the ground of pendency of the FIRs, two in number. However, as is pointed out by the learned advocate for the petitioner and also observed by the competent authority, in one of the FIRs i.e. FIR No.83 of 2001, the petitioner was acquitted. However, FIR do not relate to any offences which would have nexus with the non-renewal of arms licence, inasmuch as, it was an offence under the Gambling Act. It is not the case of the authorities that the petitioner does not deserve renewal on the ground of public safety. Considering paragraph No.10 of the order passed by this Court in Special Civil Application No. 13499 of 2021 which is reproduced hereunder, the petition deserves to be allowed.

"10. The District Magistrate, while rejecting the application of the petitioner as well the appellate authority, while dealing with the appeal of the petitioner has passed the orders being oblivious to the provisions of Section 14 of the Arms Act, which pertains to the refusal of the license. It is not the case of the State

authorities that the petitioner has been found not worthy of the license on the grounds mentioned under Section 14 of the Arms Act. The grounds, as mentioned in the impugned orders, do not in any manner indicate that the petitioner is not entitled for the arms license and he is treated to be unfit for the license under the Arms Act.”

9. In view of above, the petition is allowed. Thereby, the orders dated 28.5.2018 passed by the District Magistrate, Amreli and order dated 4.6.2019 passed by the Joint Secretary (Appeal), Home Department, Government of Gujarat, Gandhinagar are quashed and set aside. Respondents are directed to consider the application for renewal in light of these orders being quashed.

10. Rule is made absolute to the aforesaid extent. Direct Service is permitted. No costs.