
(2014) 02 BOM CK 0056

In the Bombay High Court

Case No : Criminal Writ Petition Nos. 89 and 91 of 2014

Kunal

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 27-02-2014

Acts Referred:

Arms Act, 1959 — Section 13, 14, 15, 18

Citation : (2014) ALLMR(Cri) 3141

Hon'ble Judges : A.M. Thipsay, J

Bench : Single Bench

Advocate : Swapnil Joshi, Advocate, holding for Sanjeev B. Deshpande, Advocate for the Appellant; P.N. Muley, Additional Public Prosecutor, Advocate for the Respondent

Judgement

A.M. Thipsay, J.—Heard Mr. Swapnil Joshi, the learned Counsel for the petitioners. Heard Mr. P.N. Muley, the learned Additional Public Prosecutor for the respondents. Both these petitions can be conveniently heard together and disposed of by a common order.

2. Rule in both the petitions. By consent, Rule made returnable forthwith. The learned Additional Public Prosecutor waives service of notice. By consent, heard finally forthwith.

3. The petitioner in Criminal Writ Petition No. 91 of 2014 is the father of the petitioner in Criminal Writ Petition No. 89 of 2014. Both the petitioners were granted licenses under Section 13 of the Arms Act, 1959, to possess and hold a firearm. Haribhau s/c Vitthalrao Lahane (petitioner in Criminal Writ Petition No. 91 of 2014) was granted the licenses in the year 1993; while his son Kunal @ Sandeep Haribhau Lahane (petitioner in Criminal Writ Petition No. 89 of 2014) was granted the license in the year 2008. When the petitioner applied for renewal of their respective license: the licensing authority - District Magistrate Parbhani, by a common order dated 7-10-2011, refused to renew the licenses and directed the Inspector of Police of the concerned Police Station to seize the

firearms of the petitioner:

Being aggrieved by the said order of the licensing authority, the petitioners filed an appeal, as contemplated under Section 18 of the Arms Act, before the Division; Commissioner, Aurangabad. The Division; Commissioner, after hearing the petitioners, (sic) an order dated 26-8-2013, dismissed the appeal filed by the petitioners.

Being aggrieved by the orders passed by the licensing authority and the appellant authority, the petitioners have approached this Court by filing the present petitions. The petitioners pray that the orders passed by the licensing authority and the appellate authority both, be set aside, and that, by an appropriate writ, the licenses in question be ordered to be renewed.

4. I have heard Mr. Swapnil Joshi, the learned Counsel for the petitioners. I have heard Mr. P.N. Muley, the learned Additional Public Prosecutor for the State. With their assistance, I have gone through the petitions and the annexures thereto. The learned Additional Public Prosecutor has shown to me, the record in respect of the proceedings before the appellate authority.

5. The contention advanced by the learned Counsel for the petitioner is that, the order of the licensing authority, refusing to renew the license is not in accordance with law. He submitted that the licenses were refused to be renewed only on the ground of pendency of criminal cases against the petitioners. It is submitted that the pendency of the criminal cases can, by itself, be no ground to refuse to renew the license, inasmuch as, the relevant provisions in the Arms Act i.e. Sections 13 and 14 thereof, do not contemplate any such ground. It is also submitted that the order in question is opposed to the principles of natural justice as the petitioners were not heard before the decision not to renew their licenses was taken by the licensing authority.

6. A perusal of the provisions of Sections 13, and 15 of the Arms Act indicates that renewal of a license has been brought on par with the grant of license; and that, the considerations for renewal would be the same as would apply for grant of a license. Thus, refusal to renew the license is permissible only on the grounds which would be valid for refusing to grant license. Section 14 lays down the grounds on which the licensing authority would be entitled to refuse to grant a license. These grounds are:

"(i) where such license 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 license 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 license."

7. If the order passed by the licensing authority is read, it becomes clear that no satisfaction about the existence of any of the grounds on which refusal to renew the licenses would be justified, has been recorded therein. The only reason given in the said order is that, "the Superintendent of Police, Parbhani, had recommended not to renew the licenses issued in favour of the petitioners as there were criminal cases pending against them". The order even does not mention that the licensing authority was satisfied about the validity of this ground and/or was satisfied that the opinion of the District Superintendent of Police, in that regard, is proper and ought to be accepted. On the contrary, the order makes it clear that it is only because, the Superintendent of Police, Parbhani has recommended not to renew the licenses the licensing authority was taking a decision to that effect and was directing cancellation of the licenses and the consequent seizure of the arms of the petitioners.

8. This defect in the order of the licensing authority was sought to be overcome by the appellate authority by misreading and misquoting the order of the licensing authority. The appellate authority observed.

Thus, the appellate authority has proceeded on the basis that the licensing authority has refused to renew the licenses on the ground that "there were no reasonable grounds available to the petitioners for obtaining a license under Section 13". However, the order passed by the licensing authority nowhere says that. It merely says, since the Superintendent of Police, Parbhani, had recommended not to renew the licenses, they were not being renewed. This was realized by the appellate authority also because, in the earlier part of the appellate order, it has been mentioned that the licensing authority has cancelled the licenses because of the recommendation to that effect by the Superintendent of Police, Parbhani. However, still the appellate authority tried to justify the order passed by the licensing authority by reading into that order something which had not been stated at all by the licensing authority.

9. The order passed by the licensing authority is clearly bad. The licensing authority has clearly failed to exercise the discretion vested in it by law. The licensing authority has treated the fact that the Superintendent of Police, Parbhani, had recommended not to renew the licenses as a ground in itself and sufficient by itself to refuse renewal of the licenses. The order suffers from a total non-application of mind. Since the order is liable to be set aside on this count itself, I do not wish to discuss the various contentions raised by the learned Counsel for the petitioners, with respect to the unreasonableness of the said order, as also, the appellate order, except making a brief mention of the contentions. Thus, it has been submitted on behalf of the petitioners that, the cases referred to by the licensing authority and the appellate authority are old and had already been pending, but despite that, earlier, the licenses were renewed; and that pendency of cases could not have been suddenly taken as a ground for refusal to renew the licenses, when, earlier, it was not felt to be a

valid ground. It is also submitted that the cases arose out of the agitations undertaken by the petitioners in connection with social issues. It is also submitted that the cases are not of a serious nature and in none of the cases, there is an allegation of any improper use of the licensed firearm having been made. As regards the petitioner Kunal @ Sandeep (petitioner in Criminal Writ Petition No. 89 of 2014), it is submitted that there is only one criminal case against him, which is relating to minor offences. There is substance in these contentions, at least to the extent that application of mind in that regard was necessary on the part of the licensing authority as also the appellate authority.

10. In my opinion, there is also one more infirmity in the action of cancellation of licenses, and that is, that the cases of both the petitioners were not considered separately by the licensing authority and/or appellate authority, which was necessary. Just because the petitioners are related to each other as father and son, it would not mean that the suitability or unsuitability of one of them should be taken as the suitability or unsuitability of the other also.

11. The impugned order being bad in law, needs to be interfered with by exercising the constitutional jurisdiction of this Court. However, I am not inclined to direct the renewal of the licenses in question and I intend to direct the concerned authorities to do the needful in accordance with law,

12. In the result, the petitions are partly allowed.

The impugned orders are set aside.

The licensing authority shall consider the question of renewal of the Arms Licenses issued to the petitioners, afresh, after giving to each of the petitioners an opportunity of being heard and also to file say in the matter; and then take a decision in that regard, within a period of one month from the date of receipt of this order. The petitions are disposed of in the aforesaid terms. Rule is made absolute accordingly.