

(2000) 02 GUJ CK 0076

In the Gujarat High Court

Case No : Special Civil Application No. 868 of 2000

Murtujakhan Akbarkhan Pathan

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 16-02-2000

Acts Referred:

Citation : (2000) CriLJ 4101

Hon'ble Judges : R.K. Abichandani, J

Bench : Single Bench

Advocate : Nikhil S. Kariel, for the Appellant;

Final Decision : Dismissed

Judgement

R.K. Abichandani, J.—The petitioner challenges the order dated 15.1.2000 passed by the State Government rejecting the appeal of the petitioner and confirming the order dated 13.7.1998 of the District Magistrate, Ahmedabad, rejecting the application of the petitioner for grant of licence u/s 13 of the Arms Act, 1959.

2. It has been contended on behalf of the petitioner that the District Magistrate had rejected the petitioner's application under the provisions of Section 14 of the Arms Act, 1959. It was contended that the petitioner's application was not for any prohibited arms and therefore the application could not have been rejected under that provision. It was also contended that the petitioner was not a person prohibited from acquiring the arms or a person of unsound mind. It was also submitted that the petitioner was entitled to grant of licence because the arms in question earlier belonged to his father on whose demise he has inherited them. It was submitted that even the appellate authority had rejected the petitioner's appeal for no valid reason.

3. The petitioner had made an application for grant of licence u/s 13 of the Arms Act. Under that provision an application for grant of licence under Chapter II of the Act is required to be made to the Licensing Authority in the prescribed form.

As provided in sub-section (2) of Section 13 on receipt of an application the licensing authority is required to call for the report of the officer in charge of the nearest police station on that application and such officer is required to send the report within the prescribed time. Sub-section (2A) of Section 13 of the Act provides that the licensing authority, after such enquiry, if any, as it may, consider necessary, and after considering the report received under sub-Section (2), shall subject to other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same, provided that where the officer in charge of the nearest police station does not send his report on the application within the prescribed time, the licensing authority may, if it deems fit, make such order, after the expiry of the prescribed time, without further waiting for that report. u/s 14 of the Act it is provided that notwithstanding anything in Section 13, the licensing authority shall refuse to grant a licence if the matter falls in any of the provisions made therein. Section 14 of the Act clearly deals with the cases where the licensing authority must refuse to grant the licence notwithstanding its power to grant it u/s 13. Section 13(2A) of the Act gives a discretion to the licensing authority either to grant licence or refuse the same. Therefore, even if there may be cases where the licensing authority could have granted licence under sub-Section (2A) of Section 13, if the case falls in Section 14, the licensing authority shall refuse to grant such a licence. While considering the application for grant of licence u/s 13 of the Act, the licensing authority is required to consider relevant facts and circumstances of the case and take a decision as to whether it should grant licence or it should refuse the same. It follows that even where a case does not fall u/s 14 of the Act, a licence can be refused u/s 13(2A) by an order made in writing by the licensing authority. The mere fact that the District Magistrate has referred to the provisions of Section 14 while rejecting the application of the petitioner u/s 13(2A) of the Act will not provide any ground of attack against the impugned orders. The power of the District Magistrate u/s 13(2A) of the Act as a licensing authority to grant or refuse the licence will not be affected merely by a wrong mention of the provision in the order.

4. The appellate authority has taken into consideration the relevant facts and circumstances of the case and come to a finding that the grounds put forth by the petitioner for getting a licence were not substantiated by him. If the petitioner wanted a licence for protecting his agricultural land and the produce thereof in village Hingoli then the appropriate course for the petitioner was to make an application to the concerned Sub-Divisional Magistrate. The appellate authority has made the order after hearing the petitioner and in lawful exercise of its powers and there is no warrant for interfering with the same. The petition is therefore rejected.