

HIGH COURT OF GUJARAT**Decided on: 08-12-2023****Before: Vaibhavi D. Nanavati, J.**

R/Special Civil Application No. 10360 of 2022

PUNITBHAI BECHARBHAI PALSANA ...PETITIONER**VERSUS****STATE OF GUJARAT ...RESPONDENT****Legislation and Rules:**

- Article 226 of the Constitution of India
- Sections 13, 14, and 17 of the Arms Act, 1959

Subject:

Challenge against the refusal to renew a firearm license, considering the petitioner's age and absence of a fitness certificate.

Headnotes:

Firearm License Renewal Refusal – Writ applicant, an agriculturist and social worker aged 79, challenged the refusal to renew his firearm license held since 1980. The license renewal, applied for on 7.12.2019, was rejected citing the applicant's age (77 years) and lack of a fitness certificate. The petitioner argued the decision was contrary to the Arms Act provisions. [Para 2.1, 2.2, 6]

Legal Provisions of the Arms Act – Discussion on Sections 13, 14, and 17 of the Arms Act, 1959. Emphasis on the conditions for granting and refusing firearm licenses, particularly focusing on the requirement of 'fitness' and age considerations in licensing. [Para 5]

Court's Analysis – Reference to the case of Sorab Jehangir Bamji vs. State of Gujarat, highlighting that age alone (above the minimum legal age) is not a valid ground for refusing a firearm license under the Act. The court found

the authorities' decision to refuse license renewal based on age and income lacked legal basis under the Arms Act. [Para 7, 9]

Decision – The High Court quashed the impugned orders (dated 2.12.2020 and 13.4.2022) refusing the license renewal, directing the authorities to reconsider the application afresh within four weeks. The petitioner's application for renewal was to be re-evaluated without the age and income considerations initially imposed. [Para 10]

Referred Cases:

Sorab Jehangir Bamji vs. State of Gujarat, reported in 2011(3) GCD 2621.

Representing Advocates:

- Mr. Harsh V. Gajjar for the petitioner.

- Mr. Rohan Shah, AGP, for the respondent - State.

Vaibhavi D. Nanavati, J.- By way of present writ-application filed under Article 226 of the Constitution of India, the writ-applicant herein has prayed for the following reliefs :-

'(A) By issuing a writ of certiorari or any other appropriate writ, order and/or direction, Your Lordship may be pleased to quash and set aside the impugned order passed by the respondent No. 2 dated 02.12.2020 passed in Application No. 9520/2020 as well as impugned order passed by the respondent No. 1 dated 13.04.2022 passed in Appeal No. 482/2020 (At Annexure-A Colly).

(B) By issuing an appropriate writ, order and/or direction, Your Lordship may be pleased to direct the respondent No. 2 to grant the renewal of License No. 04/B/AMR/DM to the petitioner on appropriate terms and conditions.

OR IN THE ALTERNATIVE

(C) By issuing an appropriate writ, order and/or direction, Your Lordship may be pleased to direct the respondent No. 2 to consider afresh the renewal application preferred by the petitioner in respect of License No. 04/B/AMR/DM.

(D) Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to stay the operation and implementation of the impugned order passed by the respondent No. 2 dated 02.12.2020 passed in Application No. 9520/2020 as well as impugned order passed by the respondent No. 1 dated 13.04.2022 passed in Appeal No. 482/2020 (At Annexure-A Colly).

(E) Your Lordships may be pleased to grant ex-parte ad-interim relief in terms of para [D] above.

(F) Your Lordships may be pleased to pass such other and further order/s as may be deemed just and proper in the facts and circumstances of the case and in the interest of justice.'

2. Brief facts leading to the filing of the present writ application read thus :-

2.1 The writ-applicant herein is an agriculturist and active social worker. The writ-applicant herein is aged 79 years, residing with his wife at Village Jam Barvala, Taluka Babra, District Amreli. The writ-applicant herein is cultivating almost 180 viga of land which is owned by the writ-applicant and his four brothers.

2.2 The writ-applicant herein was holding Firearms License No. 4/B (old No. 169/79B) since the year 1980 for weapon B.L. gun (double barrel) 16 bore and since then the license has been renewed regularly from time-to-time upto 31.12.2019. The writ-applicant herein is accordingly holding the firearms license for more than 40 years. The writ-applicant herein has no antecedents and is a law-abiding citizen. The writ-applicant herein applied for renewal of the said license on 7.12.2019.

2.3 The respondent No.2 passed order dated 2.12.2020 which came to be confirmed by the respondent No.1 by order dated 13.4.2020, confirming the order passed by the respondent No.2 in the Application No.9520 of 2020.

3. Mr. Harsh V. Gajjar, the learned advocate appearing for the writ-applicant submitted that the impugned orders are violative of the provisions of Sections 13 and 14 of the Arms Act. Reliance was placed on Section 14 of the Act and placing reliance on the same it was submitted that the reasons assigned by the competent authority for refusing to consider the application seeking renewal of the arm license held by the writ-applicant herein for more than 40 years is against the said provisions of the Act and settled principles of law.

3.1 Mr. Gajjar, the learned advocate submitted that the respondent authority has arrived at a subjective satisfaction that considering the age of the writ-applicant 77 years and in absence of any fitness certificate the case of the writ-applicant herein was not considered. It was submitted that the orders are passed beyond the jurisdiction of the respondent authority. It was submitted that there is no such requirement under the Act. The writ-applicant is also in receipt of the fitness certificate. Had the authority called upon the writ-applicant herein to provide a fitness certificate, the writ-applicant would have supplied the same. In absence thereof the writ-applicant could not have complied with the same, however while passing the impugned orders the respondent authority has proceeded to reject the said application on the ground that the writ-applicant herein does not have the requisite fitness certificate.

3.2 It was submitted that reliance placed on the income-tax return of the writ-applicant herein is also against the provision of Section 14 of the Act wherein it clearly income cannot be a criteria to evaluate a person's application seeking fire arm license. It was submitted that the age cannot be said to be a bar for considering the said application.

3.3 Placing reliance on the aforesaid submissions, it was submitted that the orders impugned be quashed and set aside by exercising extraordinary jurisdiction under Article 226 of the Constitution of India.

4. Mr. Rohan Shah, the learned AGP appearing for the respondent - State submitted that if the writ-applicant herein were to produce a fresh fitness

certificate, the competent authority would consider the same in accordance with law.

5. Considering the submissions advanced by the learned advocates appearing for the respective parties, it is apposite to refer to Sections 13, 14 and 17 of the Arms Act, 1959 which read thus :-

'SECTION 13 : Grant of licences:-

(1) An application for the grant of a licence under Chapter II shall be made to the licensing authority and shall be in such form, contain such particulars and be accompanied by such fee, if any, as may be prescribed.

(2) On receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.

(2A) The licensing authority, after such inquiry, if any, as it may, consider necessary, and after considering the reports received under sub-section (2), shall subject to the other provisions of his 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.]

(3) The licensing authority shall grant-

(a) a licence under Section 3 where the licence is required-

(i) by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of a muzzle loading gun to be used for bona fide crop protection:

Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle loading gun will not be sufficient for crop protection the licensing authority may grant a licence in respect of any other smooth bore gun as aforesaid for such protection, or

(ii) in respect of a 22 "firearm" to be used for target practice by a member of a rifle club or rifle association licensed or recognised by the Central Government;

(b) a licence under section 3 in any other case or a licence under Section 4, Section 5, Section 6, Section 10 or Section 12, if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same.

'14. Refusal of licences.- (1) Notwithstanding anything in section 13, 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.'

SECTION 17 : Variation, suspension and revocation of licences:

(1) The licensing authority may vary the conditions subject to which a licence has been granted except such of them as have been prescribed and may for that purpose require the licenceholder by notice in writing to deliver-up the licence to it within such time as may be specified in the notice.

(2) The licensing authority may, on the application of the holder of a licence, also vary the conditions of the licence except such of them as have been prescribed.

(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 license has failed to comply with a notice under sub-section (1) requiring him to deliver-up the licence.

(4) The licensing authority may also revoke a licence on the application of the holder thereof.

(5) Where the licensing authority makes-an order varying a licence under sub-section (1) or an order suspending or revoking a licence under sub-section (3), it shall record in writing the reasons therefor and furnish to the holder of the licence 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.

(6) The authority to whom the licensing authority is subordinate may by order in writing suspend or revoke a licence on any ground on which it may be suspended or revoked by the licensing authority; and the foregoing provisions of this section shall, as far as may be, apply in relation to the suspension or revocation of a licence by such authority.

(7) A court convicting the holder of a licence of any offence under this Act or the rules made thereunder may also suspend or revoke the licence:

Provided that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void.

(8) An order of suspension or revocation under sub-section (7) may also be made by an appellate Court or by the High Court when exercising its powers of revision.

(9) The Central Government may, by order in the Official Gazette, suspend or revoke or direct any licensing authority to suspend or revoke all or any licences granted under this Act throughout India or any part thereof.

(10) On the suspension or revocation of a licence under this section the holder thereof shall without delay surrender the licence to the authority by whom it has been suspended or revoked or to such other authority as may be specified in this behalf in the order of suspension or revocation.'

6. In the facts of the present case, the writ-applicant herein was in receipt of fire arm license bearing being No.4/B/ARM/ DM since past more than 40 years. The writ-applicant herein applied for renewal of the said license on 7.12.2019. The application came to be rejected mainly on the ground that;

(a) The writ-applicant's age is 77 years,

(b) The writ-applicant does not possess a fitness certificate,

(c) The income of the writ-applicant was considered

and placing reliance on the same the competent authority concurrently arrived at a subjective satisfaction that the writapplicant herein does not require fire arm license. The competency certificate having not been asked to produce the writ-applicant did not have produced before the competent authority. The writ-applicant has produced the fitness certificate at page-33 of the present writ-application.

7. At this stage, it is apposite to refer to the decision in the case of **Sorab Jehangir Bamji vs. State of Gujarat through Deputy Secretary & Anr., reported in 2011(3) GCD 2621**, paragraphs 17 and 18 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.'

8. Considering the aforesaid facts and position of law as referred above, the parameters under Section 14 of the Act for refusal of a fire arm license, the impugned orders passed by the competent authorities are contrary to the settled principles of law and the provisions of the Act.

9. Section 14 of the Act provides for refusal of an arm license. In the facts of the present, the refusal of an arm license to the writ-applicant herein do not fall within the ambit of Section 14 of the Act whereby the writ-applicant herein is not prohibited by any provisions of the Act or law to hold an arm license or that the writ-applicant herein has asked for an arm license in respect of prohibited fire arm or is of unsound mind and unfit for grant of license under the Act for any other reasons. The application of the writ-applicant herein seeking renewal of fire arm license has been refused on the ground of age and income which do not fall within the ambit of Section 14 of the Act for rejection of an application seeking grant of fire arm license. In absence of any bar under the Act with respect to upper age limit for grant of fire arm license the application seeking renewal of fire arm license could not have been rejected by the authorities upon their subjective satisfaction. Though Section 9 of the Act prohibits the person who has not completed the age of 21 years for an arm license, there is no prohibition with respect to the upper age limit to refuse an arm license on the ground of age.

10. In light of the aforesaid, the impugned orders dated 2.12.2020 passed in Application No.9520 of 2020 by the respondent No.2 and the impugned order dated 13.4.2022 passed in the Appeal No.482 of 2020 by the respondent No.1 are hereby quashed and set aside. The respondent authority is directed to hear the application seeking renewal of fire arm license dated 7.12.2019 afresh within a period of four weeks from the receipt of this order.

11. The present writ-application stands allowed accordingly.

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