

HIGH COURT OF MADHYA PRADESH JABALPUR
BENCH AT GWALIOR
DB:-Sheel Nagu & S.A.Dharmadhikari, JJ

Writ Appeal No.1249/2018

Chhotelal Pachori

vs.

State of M.P. and others

Counsel for Appellant : Shri Prashant Sharma, Advocate.
Counsel for respondents : Shri Yogesh Chaturvedi,
Govt. Advocate.

WHETHER REPORTABLE : Yes No

Law Laid Down:

1. Sec.14 of Arms Act has over riding effect upon the provision of Sec.13 and therefore, as per Sec.14 (3), any order of rejection of application for grant of arms licence should assign reason for dismissal.
2. The reasons so assigned for dismissal of an application for grant of licence u/s 14 should be real and cogent reasons disclosing the mind of the Licencing Authority.
3. Mere assigning of reason of absence of threat to life or security of the applicant and the grant not being in line with new arms policy of the State, would not suffice the mandatory requirement of Sec.14(3).
4. If the application for arms licence is supported by favorable recommendation of the police station concerned and yet the Licencing Authority chooses to decline grant of licence then the order of rejection should contain reasons for differing with the favorable recommendation of the concern police station.

Significant Paragraph Numbers:- 8 and 9.

JUDGMENT
(10/01/2019)

CONTEXT

1. This intra Court appeal filed u/s 2(i) Madhya Pradesh Uchcha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhinyam, 2005 questions the legality and validity of the order passed by writ Court dismissing Writ Petition No.23123/2017 seeking quashment of the order of State dated 24.06.2017 by which an application for grant of firearm licence (pistol/revolver) was rejected by taking recourse to Sec.14 (1) (b) (i) of the Arms Act, the new Firearm Policy of the State of M.P., and by assigning reason of absence of any threat to life and security of petitioner from any person or group of persons.

SUBMISSIONS

2. Learned counsel for the appellant/petitioner primarily submits by relying upon the decision of this Court in **Dharampal Ramnarayan Agrawal Vs. State of M.P. 1998 (1) MPLJ 537** that while rejecting an application for firearm licence the least that is required is to assign reasons disclosing mind of the Licencing Authority (LA for brevity) for taking the adverse view for which reliance is placed on the provision of Sec. 14 (3) of Arms Act 1959 (Arms Act for brevity) which mandates/obliges the LA (State Government) to record reasons in writing and communicate the same while declining grant of licence unless public interest outweighs communication. It is further submitted that a bare perusal of impugned order Annexure P-1 reveals mere paper

compliance of statutory provision by assigning reason of absence of perceivable threat to life and security of petitioner. The reasons assigned it is submitted do not qualify the impugned order to be a speaking one as per mandatory requirements u/s 14 (3) of Arms Act. It is submitted that even otherwise the reason of absence of threat to the life or/and security of petitioner is perverse for being in-variance to the favorable recommendation by the police station and District Magistrate, Morena who according to the petitioner are the best persons to assess the existance and extent of danger to life and security.

2.1 Learned counsel for State on the other hand contends that reasons assigned in the impugned order for refusal to grant licence may not be very elaborate but are good enough to render the impugned order a speaking one and, therefore, saving it from being sacrificed at the alter of Sec.14 (3) of the Arms Act and Article 14 of the Constitution of India. It is further submitted by the State that the new Arms Policy of the State of M.P. empowers the licensing authority to decline grant of licence of pistol/revolver in the absence of any perceivable threat to life and security of an applicant.

CONSIDERATION

3. Bare perusal of the order impugned passed the learned Single Judge reveals that the rejection of W.P.No.23132/2017 was primarily based on the following grounds:-

1. Sec.13 (2-A) of Arms Act do not oblige the licensing authority to assign reasons while refusing grant of license.
 2. The textual and contextual contents of Sec.13 of Arms Act do not oblige the licensing authority (The State Government in the present case) to toe the line of the report submitted by the nearest police station u/s 13 (2) and instead is free to take its independent decision which may or may not be in conformity with the recommendations of the police station.
 3. Sec.14 1 (b) (i) of the Arms Act confers wide discretion upon the licensing authority to decline grant of firearms licence without assigning reasons and for any reason.
 4. Looking to the prohibitory and restrictive character of the Arms Act no one has a right to arms licence since the same is a privilege given by the State which can be denied for any reason provided the same is in public interest and in accordance with the Arms Act.
- 4.** To evaluate the rival contentions on the anvil of the Arms Act, it is necessary to closely scrutinize the relevant provisions of Sec.13 and 14 of the Act which form part of chapter III of the Arms Act.
- 4.1Sec.13 deals with grant of licence and provides that an application seeking grant of licence under chapter II of Arms Act shall be made to the licensing authority in prescribed form accompanied by prescribed fee.

4.2 On receipt of an application u/s 13(1) the LA is obliged to call for report from the concerned police station u/s 13(2). On receipt of the report or in the absence thereof (if the police fails to send report within the prescribed period) the LA shall subject to other provisions of this chapter, grant or refuse the licence by passing an order in writing.

4.3 Thereafter, in Sub-Sec.(3) of Sec. 13 of Arms Act, mandates the licensing Authority to grant firearm licence under Sec.3 of the Act. when the following contingencies are fulfilled:-

(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 point 22-bore rifle or an air rifle to be used for target practice by a member of a rifle club or rifle association

licensed or recognized 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 any licence is required has a good reason for obtaining the same.

That Sub-Section (3) of Sec.13 further provides that the licensing authority shall be obliged to grant licence applied for u/Ss. 3, 4, 5, 6, 10 or 12 of the Act or in any other case provided the LA is satisfied that the same is required for good reasons.

4.4 The tenor of language employed in Sec.13 reveals that if the conditions prescribed u/s 13 (1), (2) and (2-A) are satisfied and there are good grounds for obtaining licence then the Arms Act leaves no discretion with the licensing Authority to decline grant of license, save for reasons detailed in Sec.14.

4.5 Coming to the contents of Sec.14 which deals with refusal of licence, a perusal thereof reveals that the very initial expression employed is "notwithstanding anything in Sec.13---", meaning thereby, that Sec.14 would prevail upon Sec.13 in all situations. For ready reference and convenience Sec.14 is reproduced below:-

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 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.

5. Close scrutiny of the Sec.14 reveals that it prevails upon the Sec.13 and empowers the LA to refuse grant of

licence for reasons mentioned in clause (a) and (b) meaning thereby that even if an application for grant of licence is liable to be allowed and u/s 13 of Arms Act, the same can suffer dismissal if it fails to satisfy the provisions of clause (a) and (b) of Sec.14(1) of Arms Act.

5.1 Sec.14(1) of Arms Act makes it incumbent upon the LA to decline grant of licence if the application does not pass the test laid down in clause (a) and (b).

5.2- Clause-(a) provides that if the application u/Ss. 3, 4 and 5 of Arms Act is in respect of prohibited arms/ammunition then it invariably suffers dismissal whereas Clause-(b) of Sec.14(1) obliges the LA to dismiss an application made under Chapter-II of Arms Act in all cases other than the case of prohibited arms/ammunition, when the applicant who seeks grant of licence is believed by LA:-

- a) To be prohibited by any act or any other law from acquiring or possessing or carrying any arms/ammunition or,
- b) to be of unsound mind or,
- c) to be for any reason unfit for a licence under this Act; or

5.3- Clause-(b) to Sec.14(1) further obliges the LA to dismiss an application if it is deemed necessary for security or public peace or public safety.

6. The aforesaid analysis of Sec.14 further elicits that recording of reasons in writing for refusal of the grants is

mandatory under Sub-section(3). However, the supply of the said reasons to the applicant may be denied in public interest.

6.1 However, the common thread which runs through the entire Sec.14 is the obligation cast upon the LA to record reasons in writing for the refusal on any of the grounds enumerated in Clause (a) and/or (b) of Sec.14(1), and furnish a brief statement of the reasons for denial unless LA is of the opinion that it will not be in the public interest to furnish such statement.

6.2 What is further interesting to observe in the textual content of Sec.14 is that no matter which of the reasons in Sec.14(1) is found by the LA to be appropriate to assign to reject an application, the reasons so assigned cannot be different than the reasons prescribed under Clause (a) and (b) of Sec.14(1).

6.3 A corollary to the above is that if an application is liable to be allowed u/s 13(2) (a), then it can be dismissed on the anvil of Sec.14 for no other reasons except the reasons enumerated in Clause (a) and (b) of Sec.14 (1).

7. Testing the factual matrix attending the case at hand on the anvil of the above discussion of the statutory provision of Sec.13 and 14 of the Act, it is seen that the impugned order rejected the application of the petitioner assigning the following reasons:-

1. That in the absence of any perceivable threat, apprehension to life and security of the

petitioner, the petitioner is rendered ineligible under the new Arms Policy of the State for grant of firearms licence as sought.

2. The application of the petitioner for grant of licence falls foul of Sec.14(1)(b)(i) and Sec.14(1)(b)(ii).

8. That so far as the reasons of petitioner being ineligible under the new Arms Policy of the State is concerned, the same cannot detain this Court since any policy framed by the State is subservient to the statutory provision under the Arms Act and cannot provide an additional disqualification which is not provided in the Arms Act. Thus, for the sake of brevity, this Court need not to go into the new firearm policy of the State and thus confines the process of adjudication on the anvil of statutory provision under the Arms Act.

8.1 Though the reasons of absence of perceivable threat to person and security of an applicant is not expressly provided in either Clause-(a) or (b) of Sec.14(1) as one of the statutorily recognized reasons for denial but the said reasons assigned in the impugned order may be covered u/s 14(1)(b)(i) and Sec.(3) which provide thus:-

14. Refusal of licences - (1)

Notwithstanding anything in Section 13, licensing authority, shall refuse to grant-

(a) XXX

(b) A licence in any other case under chapter-II - (i) where such licence is

required by a person whom the LA has reason to believe--

1. XXX
2. XXX
3. To be for any reason unfit for a licence under this Act.

8.2 Thus, the reason of absence of perceivable threat to person and security of the petitioner can be read into the aforesaid statutory grounds available u/s 14(1).

8.3 However, the other reasons assigned in the impugned order for rejection is by citing Sec.14(1) and 14 (ख) (ii) of the Arms Act. which seems to have been wrongly mentioned in the impugned order and in the considered opinion of this Court should have been Sec.14(1)(b)(i) and Sec.14(1)(b)(ii).

8.4 Surprisingly, while citing the reasons prescribed in Sec.14(1)(b)(ii) the impugned order does not spell out that refusal to grant licence is necessary for security of public peace or for public safety and therefore, in the considered opinion of this Court the citing of reason in the impugned order is of no avail since the rejection is not based on any apprehension that grant of licence would prejudicial the security or public peace or public safety.

8.5 Therefore, the only reasons assigned in the impugned order which requires to be tested on the anvil of judicial review is as to whether

the rejection on the ground enumerated in Sec.14(1)(b)(i)(3) is lawful or not.

8.6 At the cost of reiteration Sec.14(1)(b)(i)(3) empowers the LA to refuse grant of licence if it is found that the applicant for any reason is unfit for a licence. The said power is very wide and extensive and to some extent appears to be uncanalised. However, considering the restrictive and prohibitive nature of the Arms Act, the vesting of such wide power is to enable the LA to ensure that none of the Arms/Firearms which can be misused are permitted to be in possession of such person who in public interest is unfit to do use it.

9. Thus, the reasons assigned in the impugned order dated 24.06.2017 of petitioner not having any perceivable threat to his life and security though can with stand the judicial scrutiny but at the same time it was incumbent upon the State Government to have assigned proper and real reasons for taking that said view. Moreso the reason of absence of threat to life and security was in total variance to the favorable recommendation/proposal of the police station and District Magistrate who in categorical terms had found existencxe of threat to life and security of petitioner arising from past incidents of kidnapping and murder having taken place where victim and deceased were the family members of the petitioner.

A bare reading of the said report received by the LA herein reveals the following undisputed facts:-

1. The SHO Police Station, City Kotwali Morena by

report (undated) (cumulatively marked as Annexure P-2) submitted a favorable report revealing present and live danger to the life and security of the petitioner by citing the incident of nephew of the petitioner having been kidnapped and murdered in 2011.

2. The report of S.P. Morena dated 29-08-2011 disclosed that the petitioner's father and grandfather were kidnapped for ransom by the dacoits and could be released on payment of ransom and that the petitioner belongs to a wealthy family who has to frequently visit his agricultural land situated in village Raseelpur and further that nephew of the appellant had been kidnapped and later murdered and thus his life and security is in jeopardy.

3. The report of District Magistrate, Morena dated 31.01.2017 was also favorable inasmuch as citing same reasons as assigned by the Superintendent of Police, Morena and SHO, Police Station City Kotwali, Morena.

9.1 The aforesaid favorable reports were made by the authorities who were in the know of the circumstances giving rise to the causes of danger to the life and security of the petitioner. This is for obvious reason that these authorities were situated in close proximity to the place of day to day activities of the petitioner. Consequently, in the considered opinion of this Court, the suggestion/recommendation/proposal made by the

police station concerned, the Superintendent of Police, Morena and District Magistrate, Morena ordinarily carried considerable weight unless found to be procured. The licensing authority in the present case is the State Government and therefore, u/s 13 (2-A), the licensing authority was though at liberty to take a view different than the one proposed/recommendation by the Police/District Magistrate but while doing so the least and was required of the LA was to record reasons in writing in terms of Sec.14 (3) for differing with the favorable recommendation of the police station/DM.

9.2 The expression in Sec.14 (3) "shall record in writing the reasons for such refusal" connotes that the reasons should be such which can reveal the mind of the LA disclosing the exact cause of refusal. Merely by saying that there is no perceivable threat to the life and security of the petitioner would not suffice especially in the face of favorable recommendations by the police/District Magistrate who are presumed to be in better knowledge of the ground realities qua perceptible threat to petitioner and his family members.

9.3 While saying so, this Court should not be understood to mean that the LA has no power to refuse grant of licence. It is necessary to emphasise here that the State Government at Bhopal who is licensing Authority while declining grant of licence in the face of favorable report of the police and District Magistrate who are in better know of ground

realities, should while taking a different view assign reasons in writing to disclose its mind as to why the favorable recommendation of police/District Magistrate are unacceptable.

9.4 Assigning of the real reasons behind the refusal and not in the cryptic manner disclosed in the impugned order would have brought transparency and a sense of validity to the impugned order. Merely referring to the new firearm policy of the State and assigning the omnibus reasons of absence of perceivable threat to life and security without disclosing why, cannot suffice the mandatory requirements of Sec.14 (3).

9.5 It would have been much better if the impugned order had contained reasons as to why (if not on what material) the favorable recommendation of the Police and District Magistrate, is being ignored or negated. It is only then that the mind of the LA would get reflected from the impugned order enabling it to qualify as a speaking order in real sense.

9.6 The requirement and importance of assigning reasons have been lucidly explained and elaborated by the Apex Court in the case of ***Kranti Associates Private Ltd. & Another Vs. Masood Ahmed Khan & Others*** reported in **(2010) 9 SCC 496** is worthy of reference, relevant extracts of which are reproduced below:

51. Summarizing the above discussion, this Court holds:-

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the

person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to [Article 6](#) of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

9.7 Now coming to the reasons assigned by the learned Single Judge, the reading of the impugned order reveals that the absence of any statutory obligation for LA in Sec.13 (2-A) Arms Act persuaded the learned Single Judge to hold that no reasons are required to be assigned while refusing an application for grant of arms license. This view taken cannot be countenance on the anvil of the mandatory provisions of Sec.14 (3) which prevail upon Sec.13 due to non-obstant clause employed at the very commencement of Sec.14(1)

At the cost of reiteration and for convenience the very first sentence in Sec.14 1 is reproduced below:-

(1) Notwithstanding anything in Section 13, licensing authority, shall refuse to grant-

(2) xxx

(3) xxx

10. In view of discussion supra it seems that the over riding character of Sec.14 over and above Sec.13 and the mandatory provision of Sec.14 (3) missed the attention of the learned Single Judge who thus fell in error in sustaining the impugned order of the State.

Reliance placed by the writ Court upon the full bench decision of the Patna High Court in **Kapil Deo Singh Vs. State of Bihar AIR 1987 Patna 122** is misplaced as the question before the full Bench was as follows:-

Would the registration and pendency of criminal case for a major or capital offence justify the suspension or revocation of a licence under Clause (a) of Sub-sec.(3) of Sec.17 of the Arms Act is the significant question necessitating this reference to the full Bench.

11. The full Bench of Patna High Court primarily analysed Sec.17 of the Arms Act with only passing reference to Sec.13 and 14 while answering the question posed before it in the affirmative that registration and pendency of a criminal case for a major or capital offence may for adequate reason justify the suspension or revocation of an arms licence under clause (1) of Sub-Sec.(3) Sec.17 of the Arms Act. The aforesaid comparative analysis of Sec.13 and 14 of Arms Act, in particular the over riding effect of Sec.14(3) over Sec.13 was neither the subject matter before the full Bench and, therefore, was not discussed. Thus, the decision of the full Bench of the Patna High Court in the case

of Kapil Deo (supra) is of no avail qua to the controversy involved herein.

12. Consequently, this Court has no manner of doubt that the reasons assigned by the Licencing Authority/State Government in the impugned order while refusing to grant licence to the petitioner do not satisfy the mandatory requirement of Sec.14 (3) of the Arms Act.

13. Consequently this writ appeal stands allowed in the following terms:-

a. The impugned order dated 06.07.2018 passed in W.P.No.23123/2017 and of the State Govt. dated 24.06.2017 vide Annexure P-1 stand quashed.

b. Accordingly, the W.A.No.23123/2017 stands allowed and the respondent/State is directed to reconsider the application of petitioner for grant of arms licence in accordance with the statutory provision under the Arms Act as explained above and pass a speaking order within outer limit of three months from the date of receipt of certified copy of the order.

No cost.

(Sheel Nagu)
Judge

(S.A.Dharmadhikari)
(Judge)