

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAVI MALIMATH,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE PURUSHAINDRA KUMAR KAURAV

ON THE 11th OF MAY, 2022

WRIT APPEAL No.480 of 2021

Between:-

**SUNEEL KUMAR SINGH S/O BALENDRA
SINGH AGED ABOUT 40 YEARS,
OCCUPATION BUSINESS, R/O CHHITRANGI
P.S.7 TAHSIL CHITRANGI DISTRICT
SINGRAULI (M.P.).**

.....APPELLANT

(BY SHRI VIVEK BADERIYA - ADVOCATE)

AND

- 1. STATE OF M.P. THROUGH THE
SECRETARY, HOME DEPARTMENT
MANTRALAYA, VALLABH BHAVAN,
BHOPAL, M.P.**
- 2. COMMISSIONER REWA DIVISION REWA
(M.P.).**
- 3. COLLECTOR REA DISTRICT REWA (M.P.).**

.... RESPONDENTS

(BY SHRI AMIT SETH – DEPUTY ADVOCATE GENERAL)

*This appeal coming on for admission this day, Hon'ble Shri
Justice Purushaindra Kumar Kaurav, passed the following:*

ORDER

This *intra* Court appeal takes exception to order dated 04.02.2021, passed by the learned Single Judge in Writ Petition No. 3760 of 2019, whereby, petition preferred by appellant-petitioner, has been dismissed.

2. The facts of the case are that appellant applied for the licence of Pistol/ Revolver under the provisions of **The Arms Act, 1959 (for short the “Act of 1959”)** read with **The Arms Rules, 2016 (for short the “Rules of 2016”)**. His case was positively recommended by the Collector and Superintendent of Police of the concerned district. Thereafter, the recommendations were forwarded by the Commissioner Rewa, Division Rewa to the State Government vide letter dated 22.02.2018. The State Government vide order dated 22.09.2018 rejected the application of the appellant in exercise of powers under Section 14(1) (b) (i) of the Act of 1959. The appellant, therefore, approached this court. The learned Single Judge did not find any substance in the writ petition and, therefore, dismissed the same. Hence, the appellant is in the instant *intra* court appeal.

3. Learned counsel for the appellant submits that rejection of his application on the ground that there was no threat to the appellant from any person or group of persons, is erroneous. He placed reliance on the decision of Division Bench of this Court in the matter of ***Chhotelal Pachori Vs. State of M.P. and Others***¹ and submits that there is no necessity to explain a threat to his life or security.

4. Learned Government Advocate, on the other hand, opposed the prayer of the appellant. He submits that even assuming that it is not

¹ WA 1249-2018 decided on 10.01.2019.

necessary for the appellant to specifically explain a threat to his life from any person or a group, still the State Government on its subjective satisfaction can always refuse for a licence of a particular Arm to the appellant.

5. We have heard learned counsel for the parties and perused the record.

6. The law relating to Arms and Ammunition is governed by the Act of 1959. From a perusal of the statement of Objects and Reasons of the Act of 1959, it is seen that the Bill was introduced before the Parliament to achieve various objects such as;

“The objects of this Bill are-

(a) to exclude knives, spears, bows and arrows and the like from the definition of “arms”;

(b) to classify firearms and other prohibited weapons so as to ensure-

(i) that dangerous weapons of military patterns are not available to civilians, particularly the anti-social elements;

(ii) that weapons for self-defence are available for all citizens under license unless their antecedents or propensities do not entitle them for the privilege; and

(iii) that firearms required for training purpose and ordinary civilian use are made easily available on permits;

(c) to co-ordinate the right of the citizen with the necessity of maintaining law and order and avoiding fifth-column activities in the country;

(d) to recognize the right of the State to requisition the services of every citizen in national emergencies. The licensees and permit holders for firearms, shikaris, target shooters and rifle-men in general (in appropriate age groups) will be of great service to the country in emergencies, if the Government can properly mobilize and utilize them.

7. The object No.(b)(ii) would show that the legislature intended to ensure that the weapons for self-defence are available for all citizens under license unless their antecedents or propensities do not entitle them for the privilege etc.

8. Section 2(c) of the Act of 1959 defines the word “Arms”. The same reads as under :-

(c) “arms” means articles of any description designed or adapted as weapons for offence or defence, and includes firearms, sharp edged and other deadly weapons, and parts of, and machinery for manufacturing, arms, but does not include articles designed solely for domestic or agricultural uses such as a lathi or an ordinary walking stick and weapons incapable of being used otherwise than as toys or of being converted into serviceable weapons;

Section 2(e) defines the word “Firearms”. The same reads as under :-

(e) “firearms” means arms of any description designed or adapted to discharge a projectile or projectiles of any kind by the action of any explosive or other forms of energy, and includes—

(i) artillery, hand-grenades, riot-pistols or weapons of any kind designed or adapted for the discharge of any noxious liquid, gas or other such thing,

(ii) accessories for any such firearm designed or adapted to diminish the noise or flash caused by the firing thereof,

(iii) parts of, and machinery for manufacturing, firearms, and

(iv) carriages, platforms and appliances for mounting, transporting and serving artillery;

Section 2(h) defines the word “Prohibited ammunition”. The same reads as under :-

(h) “prohibited ammunition” means any ammunition containing, or designed or adapted to contain, any noxious liquid, gas or other such thing, and includes rockets, bombs, grenades, shells, [missiles,] articles designed for torpedo service and submarine mining and such other articles as the Central Government may, by notification in the Official Gazette, specify to be prohibited ammunition;

Section 2(i) defines the word “Prohibited arms”. The same reads as under :-

(i) “prohibited arms” means—

(i) firearms so designed or adapted that, if pressure is applied to the trigger, missiles continue to be discharged until pressure is removed from the trigger or the magazine containing the missiles is empty, or

(ii) weapons of any description designed or adapted for the discharge of any noxious liquid, gas or other such thing,

and includes artillery, anti-aircraft and anti-tank firearms and such other arms as the Central Government may, by notification in the Official Gazette, specify to be prohibited arms;

9. Chapter-II of the Act of 1959 deals with Acquisition, Possession, Manufacture, Sale, Import, Export and Transport of Arms and Ammunition. Section 3 of the Act of 1959 prescribes that “No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in

accordance with the provisions of the Act of 1959 and the Rules made therein". A licence is also required for acquisition, possession, manufacture and sale etc. for Arms of a specified description. The Scheme of Chapter-II suggests that the entire regime relating to acquisition and possession of fire arms is sought to be regulated by the Act of Parliament. The Scheme further suggests that the Parliament intended to have complete control over the movement of any fire arm so as to ensure that no anti social or anti national element may use such weapons and, at the same time the law abiding citizens may, under licence, use such weapons for their self defence subject to certain restrictions.

10. Chapter-III of the Act of 1959 deals with the provisions relating to licences. Section 13 requires an application for grant of licence under Chapter-II to be made to the licensing authority. Sub Section 2A of Section 13 requires that after considering the report received from the Officer in-charge of the nearest Police Station, the licensing authority, subject to other provisions of Chapter III, by an order in writing either grant the licence or refuse to grant the same.

11. Section 14 deals with refusal of licences. The same reads as under :-

14. Refusal of licences.—(1) Notwithstanding anything in section 13, the 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.

A perusal of Section 14(1)(b)(ii) would show that a licence in any other case than the cases of prohibited arms or prohibited ammunition under Chapter-II where the licensing authority deems it necessary for security of the public peace or for public safety can refuse to grant such licence. A careful reading of Section 13 and 14 would show that the licensing authority has a discretion under Section 13 to grant licence or to refuse on the basis of an inquiry as it may deems necessary and the report received under Sub Section 2 of Section 13. However, in Section 14, the licensing authority is not left with any option except to refuse such an application if it falls within the categories as mentioned therein. The aforesaid interpretation is

being made taking into consideration the fact that Sub Section 2A of Section 13 only requires the licensing authority to pass an order in writing either to grant or to refuse the same. However, Section 14 starts with notwithstanding clause giving override effect to the mandate of Section 13 using the word “shall”. It is thus seen that if the applicant falls in any of the categories mentioned in Section 14, the licensing authority is not left with any option to exercise the discretion for grant of licence under Section 13.

12. In the case of *Amit Agarwal v. State of M.P. & Ors.*² –, the application for grant of arms license was declined by the State Government on the ground that there was no threat perception from any person or group of persons. The State Government further observed that the applicant was not eligible person in terms of the executive instructions issued by the State Government dated 26.3.2011. A co-ordinate bench of this Hon’ble Court, took cognizance of a Full Bench decision of this Court in *Pratibha Chouhan & Ors. v. State of M.P. & Ors.*³ wherein it was held that the State Government was competent to issue executive instructions for issuing or renewing arms license which are not contrary to the Arms Act, 1962 and the Rules made thereunder. This court in *Amit Agarwal*² referred to executive instructions dated 26.3.2011 whereby it was decided to specify the categories of persons to whom the arms license could be granted. Clause 2.2 of these executive instructions provided that in respect of all categories of persons, the license shall be granted on the basis of threat perception. This Court held, while placing reliance on the aforesaid Full Bench decision held that the executive instructions

² WA 570 of 2017

³ 2013(3) MPLJ 219

dated 26.3.2011 are valid and permissible. It was held that the threat perception perceived by the applicant alone is not relevant. The licensing authority has to take into consideration public peace and safety. A writ could does not sit in appeal over the discretion exercised by the licensing authority. Unless the applicant is able to demonstrate that he has threat from a person or group of persons, he has no vested right to seek grant of arms license. The decision of the State Government declining the grant of arms license on the ground of absence of threat perception was, therefore, affirmed.

13. Learned counsel appearing for the Petitioner has placed reliance on a subsequent decision of this court in *Chhotelal Pachori v. State of M.P. & Ors.*⁴ – Writ Appeal No.1249 of 2018. We have perused the said judgment. In paragraph 8 of the said judgment, the co-ordinate bench has declined to consider and apply the executive instructions dated 26.3.2011 issued by the State Government, which is contrary to the decision of the Full Bench in *Pratibha Chouhan*³) and co-ordinate bench decision in *Amit Agarwal*²). The decision of the co-ordinate bench in *Chhotelal Pachori*⁴ is, therefore, *per incurium* and does not lay down the correct law.

14. We have perused the decision of the competent authority dated 3.5.2018 wherein it is recorded that the District Collector and Superintendent of Police of the concerned District in their recommendation had reported that the applicant had no threat from any persons or group of persons. The applicant does not qualify for the grant of license under the executive instructions dated 26.3.2011, which have been affirmed by the Full Bench of this Court. We are of

⁴ W.A.No.1249 of 2018

the view that this court cannot sit in appeal over the discretion exercised by the competent authority.

15. We, therefore, do not find any substance in the arguments made by learned counsel for the appellant. In view thereof, we do not find any substance in the instant *intra* court appeal. The same is hereby dismissed.

(RAVI MALIMATH)
CHIEF JUSTICE

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

MKL