

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 6616 OF 2014

Dipak s/o Jagannath Jadhav,
Age 42 years, occup. Agriculture
and social work, r/o Chatra Borgaon,
Tq. Majalgaon, District Beed .. Petitioner

versus

1. The State of Maharashtra, through
the Secretary, Department of Home,
Maharashtra State, Mantralaya,
Mumbai – 32
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad
3. The District Collector / District
Magistrate, Beed, Dist. Beed
4. The Superintendent of Police,
Beed, Dist. Beed
5. The Police Station, Majalgaon,
Tq. Majalgaon, Dist. Beed .. Respondents

Mr. Bhagwan R. Sable, Advocate for petitioner
Mr. S. K. Tambe, Asstt. Govt. Pleader for respondents

CORAM : SUNIL P. DESHMUKH, J.
14TH OCTOBER, 2015

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard learned
counsel for parties finally, by consent.

2. Petitioner, who is an agriculturist and a political worker, had been granted licence on 10-03-2005 under the Arms Act for acquisition and possession of arm for self defence and protection from wild animals and decoity.

3. It appears that a criminal case had been registered against the petitioner in pursuance of crime No. 65 of 2005 dated 12-03-2005 for offences punishable under sections 143, 341 read with section 31 of Indian Penal Code and section 135 of the Bombay Police Act. It further appears that pursuant to grant of licence, petitioner had not, by then, in possession of any arms. It is not the case that while in respect of alleged incident crime was registered against him, he had either been in possession or had used said arm, for, there was no occasion for him to use the same.

4. It further appears that the petitioner has been acquitted of the offences alleged against him, under a judgment and order passed by the 2nd Joint Judicial Magistrate, First Class, Majalgaon delivered on 28-12-2011 in regular criminal case no. 900 of 2005 originating from aforesaid crime No. 65 of 2005.

5. It is the case of the petitioner that pursuant to acquittal, respondent no. 5 did not update record, on the contrary, on

21-01-2013, disregarding said acquittal, wrongly recommended to respondent no. 3-District Magistrate to cancel Arms licence granted in favour of the petitioner.

6. It appears to be case of the petitioner that based on incorrect report of respondent no.5, respondent no. 3 on 04-02-2013 revoked Arms licence of the petitioner and that despite his representation dated 11-02-2013 requesting to reconsider revocation of licence, the same was not taken into consideration

7. Petitioner, as such, appears to have filed appeal before respondent no.2-Divisional Commissioner, challenging order dated 04-02-2013. Said appeal was allowed partly under order dated 15-06-2013 and the matter was remanded to respondent no. 3 for consideration afresh.

8. However, upon remand, respondent no. 3 - District Magistrate under order dated 18-10-2013 rejected the request of the petitioner for setting aside order dated 04-02-2013, of revocation of licence. It appears that while deciding the matter, the District Magistrate has considered that although the petitioner has been acquitted of the offences with which he was charged, the same is for want of availability of witnesses. Against this order of District Magistrate, petitioner appears to

have filed appeal before the Divisional Commissioner, however, he too by order 17-04-2014 appears to have gone by the reasons recorded by the District Magistrate and thus rejected the appeal. As such, petitioner is before this court.

9. Learned counsel for the petitioner refers to an order dated 24-08-2015 in writ petition no.671 of 2013 wherein the court had allowed the writ petition setting aside impugned order cancelling licence.

10. Learned Assistant Government Pleader Mr. Tambe supports the impugned orders dated 18-10-2013 and 17-04-2014, stating that the decisions have been rendered by the District Magistrate and the Divisional Commissioner after application of mind and appreciation of evidence on record.

11. It appears from the material placed on record, save and except the reason that a criminal case was pending, there was no other reason for revocation of licence granted in favour of the petitioner while decision had been taken initially. The factual position indisputably appears to be that while revocation of licence had taken place 04-02-2013, no such criminal case had been pending against petitioner and, in fact, in 2011 he had been acquitted of the charges levelled against him.

12. While, licence was being revoked, the very reason given for recall or revocation of licence was not subsisting. Further, at the juncture when incident had taken place and in respect of which allegations had been made against petitioner and of which he has been acquitted, he had not been in possession of any Arm. The impugned orders do not advert to at all to the fact that while criminal case against petitioner was pending, the petitioner had not been in possession of arm and acquisition of the same by him had been subsequent to the alleged incident. There is no allegation of misuse of arm by him.

13. After remand of the matter, the District Magistrate was to consider legality and propriety of the order of revocation of licence passed in February, 2013. In stead, he went on to consider that criminal case had been filed against petitioner and got swayed away with the reason for which there has been acquittal of the petitioner, namely, acquittal was for want of availability of witnesses. Divisional Commissioner also has not recorded different reasons while upholding decision of the District Magistrate.

14. On perusal of orders of both the authorities, it appears from observations by the authorities that they have considered that acquittal of the petitioner of the charges levelled against

him for want of witnesses is not acquittal good enough to recall or cancel revocation of licence. However, such an acquittal ought not to have been re-assessed by the authorities. In the present case, facts show that petitioner was not in possession of the arm on the date of alleged incident. The petitioner had been granted licence after considering all the facets. It is not a case that the considerations on which licence had been granted to petitioner had not been subsisting on the date of its revocation. Under the circumstances, petitioner's request appears to be reasonable. Orders of both the authorities suffer lot of infirmities and are as such unsustainable.

15. Further, learned single judge of this court has observed in paragraph no. 6 of the judgment and order dated 24-08-2015 in writ petition no. 671 of 2015 as under:

“ 6. After acquittal, arms licence was cancelled by citing reason of criminal back ground. Once the petitioner was acquitted of the criminal charge, which perhaps was a ground for cancellation of his licence, should not have been taken into account for the purpose of cancellation and refusal of renewal of arms licence. The petitioner's request for grant of licence was already assessed and allowed by the authority. In my opinion, the acquittal coupled with the fact that he was holding licence is required to be weighed in favour of present petitioner. It is noticed that the authority

while passing order, which is questioned herein, has tried to reassess the grant of licence, which in my opinion is not permissible. In view of above referred observations, in my opinion, present petitioner is entitled for relief. "

16. In the circumstances, writ petition stands allowed in terms of prayer clause (C) and disposed of. Rule made absolute accordingly.

SUNIL P. DESHMUKH, J.

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