

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 671 OF 2015

Sayyed Gaffar s/o Sayyed Akbar,
Age: 50 years, Occ: Agri., & Businss,
R/o. Vidya Nagar (East) Beed,
Tq. & Dist. Beed.

...Petitioner

versus

1. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
2. The District Collector/
District Magistrate, Beed,
Dist. Beed.
3. The Superintendent of Police, Beed
Dist. Beed.
4. The Police Inspector,
City Police Station, Beed,
Tq. & Dist. Beed.

...Respondents

.....
Mr. Bhagwan R. Sable, Advocate for petitioner
Mr. R.P. Phatke, A.P.P. for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 24th AUGUST, 2015

ORAL ORDER :

The application of the present petitioner for renewal of 0.32 bore revolver licence vide No. BR/B/40/97 came to be cancelled by the District Magistrate/Collector, Beed by an order dated 19/11/2013 on the ground that the petitioner was involved in the offence punishable under Sections 324, 504, 506 read with Section

34 of the Indian Penal Code vide Crime No. 142/2007. The petitioner was acquitted of the said crime by learned Judicial Magistrate, First Class, Beed by judgment dated 30/08/2011 in Criminal Case No. 248 of 2009. Pursuant thereto, the petitioner herein has sought restoration of licence by moving appeal under Section 18 of the Arms Act, 1959. The appeal came to be dismissed by learned Divisional Commissioner, Aurangabad by order dated 23/12/2014 on the ground that even if the petitioner was acquitted of the charge, he has not made out case for restoration of grant of licence. As such, present writ petition.

2. Learned Counsel for the petitioner, in the above referred facts and background, made two-fold submissions; (a) that in view of acquittal of the petitioner in Criminal Case No. 248 of 2009 on 30/08/2011, the cancellation of licence on the said ground was required to be reviewed and as such, the petitioner shall be entitled for restoration of the arms licence and (b) once there was acquittal by an order on 30/08/2011, there was no occasion for learned District Magistrate or for that purpose, the Divisional Commissioner, while exercising the power under Section 18 of the Arms Act, to refuse the renewal/restoration of the licence.

3. Mr. Phatke, learned A.P.P., while resisting the

submissions of learned Counsel for the petitioner, would urge that while seeking renewal/restoration of arms licence, criminal antecedents of the parties are required to be established particularly in the light of requirement of Arms Act. He submits that in view of criminal antecedents of the petitioner, though he was acquitted, those will be required to be taken into account for the purpose of deciding entitlement of present petitioner for arms licence. In addition to above, he would urge that, once competent authority has assessed factual matrix and requirements of the present petitioner for grant of licence, this Court will be slow in exercising its extraordinary jurisdiction under Article 226 and 227 of the Constitution of India so as to substitute its view with that of authority.

4. Having considered the rival contentions of the parties, it is not in dispute that the petitioner was acquitted of the offence punishable under Sections 324, 323, 504, 506 read with Section 34 of the Indian Penal Code in Criminal Case No. 248 of 2009 on 30/08/2011. Subsequent thereto, the petitioner herein, pursuant to show cause notice issued by the District Magistrate, has appeared and pointed out about his acquittal. The District Magistrate, Beed, upon considering the submissions of the present petitioner, has reached to the conclusion that since present petitioner is having criminal background, he will not be entitled for renewal as prayed by

him and cancelled his licence. The Divisional Commissioner, Aurangabad, while dealing with his appeal under Section 18 of the Arms Act, has added that there are no threats to the life of present petitioner, hence inferred that the petitioner is not genuinely in need of arms licence and rejected the appeal.

5. It is worth to mention here that the petitioner is an agriculturist and he is also doing work of contractorship, wherein he has come out with a case that he is required to travel alongwith cash for labour payment from one place to another. Keeping in mind the said requirement, on earlier occasion, the authority had granted arms licence.

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 the order, which is questioned herein, has tried to reassess the grant of

licence, which is in my opinion is not permissible. In view of above referred observations, in my opinion, present petitioner is entitled for relief.

7. In view thereof, the impugned order of refusal to renew and cancellation of the licence bearing No. BR/B/40/97 for 0.32 bore revolver passed by learned District Magistrate, Beed on 19/11/2013, which was further confirmed in appeal by learned Divisional Commissioner, Aurangabad by order dated 23/12/2014, is hereby quashed and set aside.

8. Learned District Magistrate, Beed is directed to renew the licence of present petitioner within period of three months upon the petitioner completing requisite formalities which be informed to the petitioner within one month from today. It is made clear that if the petitioner has incurred disqualification for holding licence apart from above cause, the same shall be informed to the petitioner within one month with reasons. With above observations, writ petition stands allowed.

[N.W. SAMBRE, J.]