

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

CRIMINAL WRIT PETITION NO. 1295 OF 2014

Revansiddha Mahadevayya Hiremath

Age : 37 Yrs., Occ.: Service,

R/o : M.P.Bardapur,, Tq. Ambajogai,

Dist. : Beed.

..... PETITIONER

V E R S U S

1. The State of Maharashtra
Through Divisional Commissioner,
Aurangabad Division, Aurangabad.
2. The Collector,
Collector Office, Beed.

..... RESPONDENTS

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Mr. S.R.Bharad, Advocate for the Petitioner.

Mr. V.D.Godbharle, A.P.P. for R – 1 & 2 State.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 15th JANUARY, 2015

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ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. By consent of the learned counsel for the petitioner and the

learned A.P.P. for the respondents - State, the Writ Petition is taken up for final hearing.

2. The petitioner has challenged the Order dated 20/08/2014 passed by the Divisional Commissioner, Aurangabad dismissing the Appeal which was carried by him against the order dated 08/01/2014 passed by the District Magistrate, Beed, whereby the application for issuance of Fire Arm license was rejected by the learned District Magistrate.

3. According to the learned counsel for the petitioner, at no point of time, the Appeal filed on behalf of the present petitioner was fixed for final hearing on merit. It was fixed for hearing of application for condonation of delay and, therefore, the impugned order passed by the Divisional Commissioner can not stand to the scrutiny of law.

4. After having heard the learned counsel for the petitioner and the learned A.P.P. for the respondents – State and after perusal of the record, it is clear that on 08/01/2014, the prayer made by the present petitioner for license was rejected by the District Magistrate, Beed.

The petitioner preferred Appeal u/s 18 of the Arms Act, 1959 before the appellate authority i.e. the Divisional Commissioner, Aurangabad. The said Appeal was barred by limitation. There was delay of 145 days in preferring the Appeal. Therefore, the petitioner moved an application for condonation of delay along with the Appeal memo. The learned appellate authority heard the appellant and his counsel on 05/08/2014. There is no order prior to the impugned order dated 20/08/2014, by which it could be said that the application for condonation of delay filed on behalf of the petitioner was considered and the delay was condoned.

5. Perusal of the impugned order shows that even on 05/08/2014, the learned appellate authority heard the counsel for the petitioner only in respect of the condonation of delay. Therefore, on that day, there was no occasion for the learned counsel representing the petitioner to submit the case of the petitioner on its own merit. In that view of the matter, it was not open for the appellate authority to decide the matter on its own merit. It is clear that without giving an opportunity of hearing to submit the merit of his matter,

the Appeal is decided by the appellate authority vide order dated 20/08/2014. Thus, the said order is clearly in breach of the principles of natural justice.

6. In that view of the matter, the Court passes the following order :

- (1) The present Criminal Writ Petition is allowed.
- (2) The order dated 20/08/2014 passed by the Divisional Commissioner, Aurangabad dismissing the Appeal of the petitioner is set aside to the extent it has decided the Appeal on merit.
- (3) The Divisional Commissioner, Aurangabad is directed to decide the Appeal filed by the petitioner, challenging the order passed by the District Magistrate, Beed refusing the issuance of license for Fire Arm on its own merit and in accordance with law by adhering to the principles of natural justice.
- (4) The petitioner is directed to appear before the Divisional Commissioner, Aurangabad on 12/02/2015.

7. With the above observations, Rule is made absolute.

[V.M.DESHPANDE, J.]

KNP/Crim. W.P. 1295.2014 - [J]

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