

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

**CRIMINAL WRIT PETITION NO. 1117 OF 2013**

Rajkumar s/o Tanajirao Shriramwar,  
age 49 years, occ. Service & agril.,  
R/o Umari, Tq. Umari, Dist. Nanded

...Petitioner

VERSUS

1] The State of Maharashtra,  
through the Secretary,  
Home Affairs Department,  
Mantralaya, Mumbai – 32,

2] The Divisional Commission,  
Aurangabad Division,  
Aurangabad,

3] The Collector and District Magistrate,  
Nanded,

4] The Superintendent of Police,  
District Nanded

...Respondents

.....  
Shri H.V.Patil, advocate for petitioner  
Shri V.H.Dighe, A.P.P. for respondents  
.....

**CORAM : V.M.DESHPANDE, J.**

**DATED : 4<sup>th</sup> March, 2015**

**ORAL JUDGMENT :-**

1] Rule. Rule is made returnable forthwith. With the consent of the learned counsel for the parties heard finally.

2] I have heard H.V.Patil, learned counsel for the petitioner and Shri V.H.Dighe, learned Additional Public Prosecutor for respondents in extenso.

3] The challenge in the present Writ Petition is to the order passed by the learned District Magistrate, Nanded, dated 10.10.2011 in proceeding No. 2011/MSK-1/DESK-2/T-5/CR-21, by which the learned District Magistrate, Nanded cancelled the fire arm license granted in favour of the petitioner vide License No. ND/24/2004, together with the order passed by the learned Divisional Commissioner, Aurangabad, dated 30.5.2013 in Appeal No. 2012/SAPRA-1/Desk-1/POL-1/CR-17, by which the statutory appeal filed by the petitioner under Section 18 of the Arms Act is dismissed by the learned Divisional Commissioner, Aurangabad.

4] The submission of the learned counsel to test the correctness of the impugned order is that, the learned District Magistrate has considered such material which was not part of the show cause notice, and therefore, according to him, the material which was not supplied or made known to him at the time of issuing show cause notice is being considered by the licensing authority.

5] Undisputedly, the petitioner was holding a revolver license duly issued in his favour. The said license was suspended by the District Magistrate, Nanded vide order, dated 6.5.2011. It is to be noted that, this order, dated 6.5.2011 suspending the fire arm license is not at all challenged by the present petitioner.

6] After suspension of the license, the petitioner received an intimation on 18.5.2011, whereby the petitioner was directed to deposit his revolver with police station Bhagyanagar, Nanded. It is pointed out to this court that the revolver is already in custody of the police station Bhagyanagar, Nanded.

7] On 19.5.2011, the petitioner received a show cause notice from District Magistrate, Nanded. By the said show cause notice, the petitioner was called upon to explain within a period of three days from receipt of the said show cause notice as to why the license should not be cancelled. No specific instance is mentioned in the show cause notice, however, suffice it to say, it has been mentioned in the said show cause notice that the petitioner has committed breach of the condition of license.

8] The petitioner, in pursuance to the show cause notice, dated 19.5.2011 has submitted his reply on 23.5.2011.

The learned counsel for petitioner further pointed out following facts during the course of arguments before this court which are not disputed by the learned Additional Public Prosecutor.

- (i) On 19.5.2011 itself the District Magistrate, Nanded gave a communication to the Superintendent of Police, Nanded calling upon the report from the Superintendent of Police as to whether the license should be kept in suspended animation or it should be cancelled.
- (ii) The Superintendent of Police sent communication, dated 30.7.2011/2.8.2011 pointing out the registration of offence bearing Crime No. 87 of 2011 for the offences punishable under Sections 384, 385, 504, 506 of the Indian Penal Code registered with Police Station, Bhagyanagar, and therefore, the license granted in favour of the petitioner should be cancelled.
- (iii) These two documents were not supplied to the petitioner.
- (iv) The report from the Superintendent of Police to the District Magistrate was filed on record after the reply of the present petitioner.

9] The learned District Magistrate passed an order on 10.10.2011 and cancelled the license. The order shows

that the learned District Magistrate has considered the report from the Superintendent of Police while cancelling the license.

10] The afore said order of cancelling the revolver license was challenged by the petitioner by filing the statutory appeal. In the appeal, the petitioner has raised specific ground in memo of appeal as Ground No.11 to the effect that, the licensing authority while cancelling the license has considered the documents which were not supplied to him, and therefore, the opportunity was not given to the petitioner to submit his case properly by filing the suitable reply.

11] The learned Divisional Commissioner has dismissed the appeal. The show cause notice, dated 19.5.2011 is conspicuous in not mentioning the crime number. It was not made known to the petitioner that for registration of a particular crime the license is proposed to be cancelled. A general reference is made in the show cause notice that the petitioner has committed breach of the license conditions. It was obligatory on the part of the District Magistrate to supply the copy of the report from the Superintendent of Police to the District Magistrate that in view of the registration of Crime No. 87 of 2011 the license should be cancelled. At the time of passing of the order, such report was considered by the District Magistrate. The said material did not find place in the show

cause notice.

12] Thus, the learned District Magistrate has considered the material outside the show cause notice. It was open for the learned District Magistrate to supply the copy of the said report and seek further reply from the present petitioner, since the reply filed on behalf of the petitioner was already taken on record. If that opportunity would have been granted to the petitioner, the petitioner could have submitted his case and which could have been considered by the District Magistrate. Thus, it is clear that the order passed by the learned District Magistrate cannot stand to the scrutiny of law. Consequently, the said order needs to be set aside and opportunity is required to be granted to the petitioner to submit his case afresh by filing the additional reply before the District Magistrate in view of the report given by the Superintendent of Police, Nanded, dated 30.7.2011/2.8.2011.

13] In that view of the matter, I propose to pass the following order.

### **O R D E R**

- (i) The Writ Petition is allowed.
- (ii) The order passed by the District Magistrate,

Nanded, dated 10.10.2011 in proceeding No. 2011/MSK-1/DESK-2/T-5/CR-21 cancelling the revolver license of the petitioner bearing License No. ND/24/2004, together with the order of dismissal of appeal passed by the learned Divisional Commissioner, Aurangabad, dated 30.5.2013 in Appeal No. 2012/SAPRA-1/Desk-1/POL-1/CR-17 are hereby quashed and set aside.

(iii) The matter is remanded back to the District Magistrate, Nanded. The District Magistrate is directed to grant opportunity to the petitioner to file the additional reply as indicated in the body of the present judgment and also grant an opportunity of hearing to the petitioner.

(iv) The District Magistrate is directed to decide the matter afresh, in accordance with law, within a period of six months from the receipt of the order. However, it is made clear that the license of the petitioner bearing License No. ND/24/2004 shall remain in suspended condition and the petitioner shall not be entitled to use his licence and the revolver.

(v) Rule is made absolute accordingly.

(vi) It is not at all necessary to issue fresh show cause notice in view of the availability of the report of the Superintendent of Police during the pendency of present Writ Petition.

**[V.M.DESHPANDE, J.]**

dbm/crwp1117.13