

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 475 OF 2005

Rajendra S/o Kantilal Chopda,
Age – 50 years, Occu.- Business &
Agriculturist,
R/o – 41, Sattha Colony, Station Road,
Ahmednagar .. Petitioner

Vs.

The State of Maharashtra
Through District Magistrate,
Ahmednagar & Divisional Commissioner,
Nasik .. Respondent

Mr. A.M. Gholap, Advocate for the petitioner
Ms. R.P. Gour, APP for the respondent/State

CORAM : V.K. JADHAV, J.

DATE : 24/08/2016

ORAL JUDGMENT :

Heard.

2. The petitioner has challenged the legality, propriety and correctness of condition no.3 imposed vide judgment and order dated 20/1/2005 in Arms Appeal No.29 of 2004 passed by the learned Divisional Commissioner, Nasik.

3. Brief facts giving rise to the present writ petition are as follows :-

. The petitioner is an agriculturist and also an insurance agent. He has also entered into construction business. Thus, due to the nature of the work, the petitioner is required to travel throughout India and many times he is also required to carry cash with him. In such circumstances, the petitioner is holding the license i.e. the license no.493 for Ahmednagar city (area of operation-All India), which is renewed till 31.12.2005 and in that connection possessing 0.32 N.P. bore revolver No. ADE-2242. Furthermore, the petitioner was also constrained to apply for license of 0.12 bore gun, as the said the gun is useful for protection in agricultural field from wild animals and same is also having long range compared to the revolver.

. On 19/7/2000, the concerned authorities, after holding an enquiry, granted license for 0.12 bore gun under form no.III for acquisition, possession and protection and accordingly in that connection, the petitioner has purchased 0.12 bore B.L. gun.

. On 21/9/2004, the District Magistrate, Ahmednagar, vide his order directed the petitioner to surrender the arms license, arms and ammunition with Kotwali Police Station from 25/9/2004 to 1/10/2004 in view of the ensuing Assembly Elections, scheduled to be held in the month of October, 2004 and further directed that the said arms and ammunition will be returned within one week after the declaration of the election results. However, the petitioner was out of station in connection with his work and thus he could not comply with the order as aforesaid.

. On 12/10/2004, the petitioner was served with the order dated 9/10/2004 passed by the District Magistrate, Ahmednagar, whereby his arms license bearing no.493 in respect of his revolver was revoked. Consequently, on 12/10/2004, the petitioner had immediately approached the District Magistrate, Ahmednagar and tendered his apology by admitting his mistake. The petitioner repeatedly approached the District Magistrate and requested for review of the order and to re-grant the arms license and has pointed

out the exigency, however, the learned District Magistrate has not paid any heed to his request.

. The petitioner was therefore constrained to approach the appellate authority i.e. the Divisional Commissioner, Nasik by filing appeal under the Arms Act bearing Appeal No.29 of 2004. The Divisional Commissioner, Nasik by order dated 20/1/2005 passed in appeal set aside the order dated 9/10/2004 passed by the District Magistrate, Ahmednagar, by imposing condition no.3 therein, directing the petitioner to surrender his gun license no.915 for restoration of the revolver license.

. Being aggrieved by the same, the petitioner has approached this Court by filing the present writ petition.

4. Learned counsel for the petitioner submits that there is no any bar for issuing two licenses under the provisions of Arms Act to one person and the list of 16 such persons in Ahmednagar district, who are possessing two licenses of different nature is placed on record

marked as Exhibit "M". Learned counsel for the petitioner submits that the concerned authority, after holding a due enquiry, granted license for 0.12 bore gun under form no.III and in that connection, petitioner has purchased 0.12 bore BL gun. Learned counsel submits that, in-fact, there is no bar to issue two licenses as per the provisions of Rule 123 of the Maharashtra Arms Manual. Considering the provisions of Rule 123 of the Maharashtra Arms Manual, after holding a due enquiry, the said license of 0.12 bore gun came to be granted in favour of the petitioner. Learned counsel for the petitioner submits that for setting aside the order passed by the learned District Magistrate revoking thereby the revolver license, the appellate authority i.e. the learned Divisional Commissioner has illegally negotiated with the petitioner and the petitioner was constrained to accept the negotiated terms and accordingly given his statement to the authority, that he is ready to surrender his gun license for restoration of his revolver license. As per the provision of section 17 of the Arms Act, 1959, the licensing authority may, by order, revoke a license in terms of

the provisions of sub-section (3) clause (a) to (e). In the case in hand, the provisions of sub-section (3) clause (a) to (e) of section 17 of the Arms Act, 1959 are not attracted at all. Even when there is no bar to possess more than one license, the appellate authority i.e. the learned Divisional Commissioner has observed that it would not be just and proper that one person should possess two arms licenses and accordingly, imposed condition no.3 while setting aside the order passed by the learned District Magistrate. Learned counsel submits that so far as imposition of condition no.3 in the impugned order is considered, the same is not legal, correct and proper.

5. Learned A.P.P. submits that the petitioner himself was willing to surrender his gun license no.915 as condition precedent for restoration of the revolver license. As per the provisions of rule 123 of the Maharashtra Arms Manual, generally no permission is given to a person who possess more than one arms license. Learned A.P.P. submits that the petitioner himself has given consent for revocation of his gun license and thus provision of sub-section 4 of section

17 of the Arms Act, 1959 stands attracted.

6. It appears from the order dated 9/10/2004 passed by the learned District Magistrate, Ahmednagar that the arms license bearing no.493 in respect of revolver granted in favour of the petitioner was revoked and there is no such order passed in respect of the gun license possessed by the petitioner. Even though the petitioner approached the learned District Magistrate, Ahmednagar and tendered his apology by admitting his mistake, the learned District Magistrate has not bothered to review his order. The petitioner even had pointed out to the learned District Magistrate that the petitioner never committed such mistake in the last 25 years i.e. since the grant of arms license no.493 and the said mistake has occurred due to the workload. The petitioner was therefore constrained to approach the appellate authority. The petitioner has succeeded in convincing the appellate authority that there is no willful dis-obedience of the order passed by the learned District Magistrate and the order dated 9/10/2004 was issued without holding any enquiry in this regard. Furthermore, the petitioner has also pointed out the

need of the arms license, however, it appears from the impugned order passed by the appellate authority that the appellate authority was of the view that no any person shall possess two arms licenses in view of the provisions of rule 123 of the Maharashtra Arms Manual.

7. Even though, no ground, exist as provided by clause (a) to (e) of sub-section 3 of section 17 of the Arms Act, 1959, the appellate authority has imposed condition no.3 for restoring the revolver license and without there being any procedure prescribed in this regard, recorded the statement of the petitioner to the effect that the petitioner is ready to surrender his gun license in lieu of restoration of his revolver license. I do not think that the petitioner has filed an application for revocation of his gun license as provided under sub-section 4 of section 17 of the Arms Act, 1959. Considering the provision of rule 123 of the Maharashtra Arms Manual, and after due enquiry in the year 2000, the gun license was granted in favour of the petitioner. In terms of the provisions of sub-section 3 of section 17 of the Arms Act, 1959, the Licensing Authority is empowered to revoke the license, however,

the appellate authority has imposed unjust condition no.3 while restoring the revolver license of the petitioner. In view of this, the aforesaid condition no.3 in the impugned order dated 20/01/2005 is thus liable to be quashed and set aside. Hence, the following order:-

8. Writ Petition is hereby allowed in terms of prayer clause (B). Rule is accordingly made absolute.

[V.K. JADHAV]
JUDGE

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