

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 594 of 2013

Ajay Jayawant Bhosale
R/o. 381, Nanapeth, Pune.

... Petitioner

V/s.

1. The Commissioner of Police,
Pune City, Pune.

2. The State of Maharashtra,
Through the Minister of State
(Home), Mantralaya, Mumbai.

3. The State of Maharashtra

... Respondents

Mr. S.B. Shetye a/w. Mr. Manish Bohra a/w Mr. Imran Shaikh for the applicant.
Mr. K.V. Saste, APP for the State.

**CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.**

**RESERVED ON: 30th June, 2016.
PRONOUNCED ON: 15th July, 2016**

JUDGMENT (PER NARESH H. PATIL, J)

Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. The petitioner challenges order of revocation of his arms licence passed by the Commissioner of Police, Pune on 8th February, 2011 under

Section 17(3) of the Arms Act, 1959 (hereinafter referred to as "Arms Act" for short).

3. The petitioner contends that during the relevant period he was elected as Municipal Councilor and was working as Upshahar Pramukh of Shiv Sena party in Pune district of the State. He had applied for licence under Section 13 of Chapter III of the Arms Act for possessing a Fire Arm (Revolver) for self protection. The Commissioner of Police, Pune being a licensing authority had granted licence to the petitioner in the year 2003 bearing licence No. 47/2003. The petitioner purchased one 0.32 crystal pistol bearing no. 194 on 5th August, 2003. It is contended that the Licensing Authority renewed the licence in the year 2005, 2007 and 2009. On 31st December, 2010 petitioner was served with a show-cause notice by the Police Commissioner, Pune intimating him as to why licence issued in favour of the petitioner should not be cancelled/revoked on the grounds mentioned in the said show-cause notice. On 10th January, 2011 and 13th January, 2011 the petitioner filed reply to the said show-cause notice. On 24th January, 2011 the petitioner appeared in person before the Licensing Authority. He was heard by the Licensing Authority. The Licensing Authority by an order dated 8th February, 2011 revoked the licence.

4. Being aggrieved by the said order the petitioner filed an appeal to the State Government on 5th March, 2011. By an order dated 21st March, 2012 Hon'ble Minister of the State, Home Department, State of Maharashtra being appellate authority dismissed the appeal filed by the petitioner.

5. The petitioner preferred this petition on 8th January, 2013 against the said orders. Learned Counsel appearing for the petitioner Mr. S.B. Shetye submitted that the appellate order passed by the State was erroneous and unreasonable one. The matter is required to be remanded back to the appellate authority. On the order passed by the learned Commissioner revoking the licence of the petitioner, it is submitted that subjective satisfaction of the licensing authority is not reflected in the said order. During period of last ten years no criminal case was registered against the petitioner. It is submitted that from the date of issuance of licence onwards no incidence was reported to the police alleging that the petitioner misused his licenced weapon. Learned Counsel submitted that in the year 2008 the petitioner's licence was renewed on the same material which was subject matter of the show-cause notice. The show-cause notice itself was issued on extraneous material. It was submitted

that in fact petitioner and his driver were attacked which was reported to the police but the said fact was not considered by the authority. Learned Counsel submitted that show-cause notice refers to various criminal cases filed against the petitioner from the year 1991 onwards and the preventive steps taken in the year 2006 and 2007 but while passing final order the licensing authority had referred to two criminal cases being C.R. No. 13/2005 registered for offences under Section 143, 148, 149, 506, 452 and C.R. No.150/2006 registered for the offences punishable under Sections 143, 147, 149, 363, 365, 368, 447, 120B, 427 read with 34 IPC. Learned Counsel submitted that revocation of licence under Section 17B of the Arms Act, was not supported by any convincing material. According to Counsel petitioner requires the licenced weapon as he is engaged in business, political and social activities. For his personal safety the licence was applied for and was granted. In the past the petitioner had applied to the State for getting All India licence and at that stage the State had called for comments from the Commissioner at Pune. It seems that the Police Commissioner thereafter issued show-cause notice to the petitioner and revoked the licence itself.

6. The State filed affidavit through Shri Shivaji Dnyanoba Shelar, Assistant Commissioner of Police (Establishment). In reply the deponent

in paragraph 9 submits as under:

With respect to the ground (b) of the petition, I deny the averments made in the said paragraph and say that the office of the Police Commissioner Pune City, Pune, used to follow practice, while processing renewal of Arm Licence, that only to verify the address of the Arm Licence holder and to verify whether the Arms Licence holder is possessing same Arm/Weapon endorsed in his Licence. As such criminal record of the petitioner was not verified, hence not known, aware to the Police Commissioner Pune City, Pune. In the above facts and circumstances of the petitioner's case the Petitioner's Licence was renewed twice by the Police Commissioner Pune City, Pune. I say that at the time of said renewal of Licence, fact situation that the serious criminal Cognizable cases registered against Petitioner, was not aware to the License Renewing Authority, hence the said renewal orders were passed. I therefore, say that on that ground the Petitioner is not entitled to continue with the licence issued in his favour.

I say that the Petitioner had filed an application to the Home Department, State of Maharashtra, Mumbai, for extension of area validity of Licence throughout India. I say that the Home Department, issued a letter to the Police Commissioner Pune City, Pune, thereby calling upon the authority to submit its report with opinion regarding the said application. I say that the office of the Commissioner of Police, to verify antecedents of the petitioner, called details of criminal record from the Samarth Police Station, in response to the said enquiry, the Samarth Police Station submitted its report,

disclosing with details of number of cases registered against Petitioner and preventive actions and externment proceeding initiated against Petitioner, thereafter the Police Commissioner Pune City, Pune, submitted its report to the Home Department, State of Maharashtra, Mumbai, stating that there is no recommendation to grant the said application filed by the Petitioner for extension of area validity of licence. I say that during the course of said enquiry the Police Commissioner, Pune City, noticed and came to knowledge that there are number of cases registered against Petitioner, hence, immediately thereafter show-cause notice was issued against the Petitioner and finally passed an order dated 8.2.2011.

7. Learned APP placed reliance on the said affidavit filed by the State. It was submitted that in the facts of the case, Police Commissioner Pune rightly exercised powers under Section 17B of the Arms Act. The earlier renewal of arms licence was done in regular course which would not disentitle the authorities to look into the record of the petitioner, his antecedents and adverse report if any. The petitioner faced number of criminal cases and at the relevant time one or two cases were pending against the petitioner. Considering his antecedents, criminal record the Police Commissioner revoked the licence which order was confirmed by the State. Therefore, no interference is warranted in the said order according to learned APP.

8. The relevant provisions in respect of grant of licence are enumerated under Chapter III of the Arms Act. Section 13 refers to grant of licence. Section 14 refers to refusal of licence. Section 15 refers to duration and renewal of licence and Section 17 refers to variation, suspension and revocation of licences. Section 13(2) reads as under:

“13. Grant of licences. (1)

(2) On receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.

(2-A) The licensing authority, after such enquiry, if any, as it may, consider necessary and after considering the report received under sub-section (2), shall subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same.

Provided that where the officer in charge of the nearest police station does not send his report on the application within the prescribed time, the licensing authority may, if it deems fit, make such order, after the expiry of the prescribed time, without further waiting for that report.”

Section 14 speaks that notwithstanding anything contained in Section 13, the licensing authority could refuse to grant licence on grounds stipulated

under Section 14. Under Section 17(2) the licensing authority gets power to vary, suspend or revoke the licence which was already granted. In the present case, the licensing authority exercised powers under Section 17(3)(b) which reads as under:

“17. Variation, suspension and revocation of licences.-

(1)

(2)

(3) The licensing authority may be order in writing suspend a licence for such period as it thinks fit or revoke a licence-

(a)

(b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or”

9. It is significant to note that Section 17(3)(b) authorises the licensing authority to cancel or revoke the licence for the security of public peace or for public safety. The provisions indicate that in case the licensing authority is subjectively satisfied that in a given case if continuation of licence endangers public peace or public safety then the Licensing authority is empowered to cancel or revoke the licence. In the present case the licensing authority had exercised the said power. The show-cause notice refers to cases right from 1991 to 2006 and 3 cases of preventive action taken against the petitioner. The licensing authority had

also observed in the show-cause notice that the registration of criminal case indicated that the petitioner was of criminal mind set. It was further observed that law and order problem was likely to arise. The licensing authority was of the opinion that due to law and order situation and danger to public peace, the licence granted in favour of the petitioner was required to be cancelled.

10. While passing final order reliance was placed by the licensing authority on only two cases i.e. one C.R. No. 13/2005 and C.R. No. 150/2006. These two cases were also pending when the licence of the petitioner was renewed in the year 2009. On the same material licence was renewed from time to time. Since after grant of licence/renewals there was no new material placed before the licensing authority to revoke the said licence. Learned Counsel appearing for the petitioner submitted that as on today one case i.e. C.R. No. 13/2005 is pending. The Counsel submitted that since last ten years not a single criminal case was registered against the petitioner. It was submitted that there was no incidence reported of any misuse of licenced Fire Arm by the petitioner. Learned Counsel appearing for the petitioner submitted that in cases listed at serial no. 1 to 8 in show-cause notice petitioner was already acquitted. Order of externment was stayed by the State Government on

4th January, 1999 (Exhibit 1). The only case pending is at serial no.9 as mentioned in the show-cause notice.

11. The question, therefore, arises as to whether there was sufficient material placed before the Commissioner of Police for arriving at subjective satisfaction that continuation of licence or renewal would be endangering public peace or public safety. It seems that the show-cause notice was issued by the Commissioner, Pune consequent to filing of application by the petitioner to the Home Department of the State Government for getting all India arms licence. Nevertheless at any stage the licensing authority after getting subjectively satisfied and on the basis of material placed before it could revoke licence under Section 17 of the Act but whether there was sufficient material with the licensing authority to pass order of revocation.

12. The right to life and liberty are guaranteed under Article 21 of the Constitution of India. Arms licence is granted for personal safety and security after due enquiry by the authorities in accordance with provisions contained in the Arms Act, 1959. The provisions of Arms Act with regard to suspension or cancellation of Arms licence cannot be invoked lightly in an arbitrary manner. The provisions of the Arms Act particularly Section

13 to 17 indicate that once a licence is granted under the Act, the same shall be renewed from time to time unless there exist a ground of refusal as enumerated under Section 14 of the Act. Protection to life, property of citizen is responsibility of the State. It is only when person apprehends that machinery of State would not come to his help for protection, he/she applies for licence under the Act. The provisions of Section 17 A of the Arms Act indicate that arms licence can be cancelled or suspended if the licensing authority finds it necessary for the security of public peace or public safety. Merely because a criminal case is pending, the provisions of Section 17 of the Arms Act would not be attracted. Such provisions would be attracted in case the licensing authority finds that continuance of licence is detrimental to public peace or public security and safety. But the authority concerned will have to record a finding that how and under what circumstances and in what manner possession of arms licence could be contrary to the provisions of Section 17 B of the Arms Act. Each case is required to be considered on its own merits.

13. Nothing was placed before us by the respondents to indicate that the petitioner had misused the licenced weapon at any point of time in past. The order of revocation of license refers to two criminal cases registered against the petitioner. In the facts we find that mere registration

of criminal case/cases could not be a ground to revoke the license. The order shall indicate clearly that continuance of licence would be against public peace, safety and security.

14. Learned Counsel appearing for petitioner submits that in fact petitioner and his driver were attacked in the year 2009 regarding which he had filed a complaint. Considering the business activities, political and social work of the petitioner, it was submitted that to protect petitioner's life and property, arms licence was applied for and it was granted. The petitioner still requires the same. The licensing authority has not given any opinion as to whether the petitioner requires licence to protect his life and property. The subjective satisfaction of the authority, therefore, plays a vital role while assessing merits of a case before passing orders under the provisions of Section 13, 14 or 17(b). Each case needs to be assessed, tested on its own merits. Therefore, it is imperative that before arriving at a conclusion of invoking powers under the provisions of Section 17(b), the licensing authority ought to have considered the entire material, threat perception of the licensee and pass appropriate orders.

15. Counsel placed reliance on the order dated 12th February, 2009 passed by Division Bench of this Court (Bilal Nazki and A.R. Joshi, JJ) in

the case of ***Khan Abdul Wahab Usman v/s. The State of Maharashtra & Ors. in Criminal Writ Petition No. 2688 of 2008.***

16. We have noticed that the order passed in the appeal filed by the State Government is short of appropriate reasoning. As the petition is pending since last three years, in the facts, we are not inclined to remand the matter back to the appellate authority.

ORDER

(I) The impugned order dated 8th February, 2011 passed by Commissioner of Police, Pune and impugned order dated 21st March, 2012 passed by the Hon'ble Minister (Home), Government of Maharashtra are hereby quashed and set aside.

(II) The respondent no.1, the Commissioner of Police, Pune City, Pune is directed to consider whether any ground enumerated under Section 17(b) of the Arms Act, 1959 for cancelling the Arms licence granted to the petitioner still exists. If no such circumstances exist, we direct that the petitioner's Arms licence shall be renewed. The entire exercise shall be completed within a period of Two months from the date of receipt/production of copy of this judgment.

15. Rule is made absolute in the above terms. No order as to costs.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)

L.S. Panjwani, P.S.