

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

**Criminal Writ Petition No. 0117 of 2018**

District : Jalgaon

Shri Paresh s/o. Diliprao Kolhe,  
Age : 39 years,  
Occupation : Business,  
R/o. "Parvati Pandit Niwas",  
44, 45, Kolhe Nagar,  
At and Post Jalgaon,  
Taluka and District Jalgaon. .. Petitioner.

**versus**

1. The State of Maharashtra,  
Through District Magistrate,  
Jalgaon.
2. District Superintendent of  
Police, Jalgaon,  
Taluka and District Jalgaon. .. Respondents.

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*Mrs. Rashmi S. Kulkarni, Advocate, for the  
petitioner.*

*Mrs. P.V. Diggikar, Addl. Public Prosecutor,  
for respondent nos.01 and 02.*

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**CORAM : PRASANNA B. VARALE &  
SMT. VIBHA KANKANWADI, JJ.**

**DATE : 05TH FEBRUARY 2018**

**ORAL JUDGMENT [Per Prasanna B. Varale, J.] :**

Heard.

02. The petitioner is before this Court, challenging the order passed by the Divisional Commissioner, Nashik Division, Nashik, dated 27.09.2017, in Arms Appeal No. 021 of 2017, and order dated 17.07.2017, passed by respondent no.01 i.e. District Magistrate, Jalgaon, revoking the arms license of the petitioner.

03. The ground raised by the learned Counsel for the petitioner, in challenge to the order passed by the appellate authority, is of breach of principles of natural justice and non-application of mind by the appellate authority. On going through the material placed on record, we find considerable merit in the submission of the learned Counsel for the petitioner. As such, we deem it fit to dispose of the writ petition at the threshold as learned Counsel for the petitioner made out a case.

04. The facts can be summarized, in brief, giving rise to the present petition. It is not in dispute, that the petitioner is possessing a firearm, namely 0.32 bore revolver. The petitioner was possessing license against the said firearm. The document placed on record at Exhibit "A" show that the license was issued in the year 2016. It is renewed time to time and last renewal is from 01st January 2017 to 31st December 2019. Respondent no.01 - District Magistrate, Jalgaon, by order dated 17.07.2017 revoked the license issued in favour of the petitioner. Perusal of the order placed on

record at Exhibit "D" show that the Superintendent of Police, Jalgaon, submitted a confidential report to the authority, namely the District Magistrate. The District Magistrate referred to the said report, which states that the petitioner being a sand contractor, may indulge in an act of giving threats to the revenue authorities in future. As such, the license be revoked. The District Magistrate then in view of the report of the Superintendent of Police, by exercising his powers, passed the order revoking the grant of license.

05. Being aggrieved by the said order, the petitioner approached the appellate authority, namely Divisional Commissioner, Nashik Division, Nashik. The appeal was preferred under Section 18 of the Arms Act, 1959. The appellate authority recorded grounds of appeal, reflected in para 5 of the order of the appellate authority, namely, the petitioner is now not in the sand exploration business as a sand contractor, the contract awarded to the petitioner itself expired in the year 2016. After expiry of the contract, the petitioner approached the competent authority for renewal of license and contract granted in favour of the petitioner itself was cancelled. The petitioner had no reason to undertake activity of excavation of sand. Learned appellate forum though refers to the grounds raised, only on the ground that there are certain offences registered against the petitioner and cases are pending against the petitioner and by recording that the enquiry report

of the Superintendent of Police show that the petitioner is indulging in the act of giving threats to the revenue authorities by using the weapon, dismissed the appeal.

06. In view of the submissions of the learned Counsel appearing for the petitioner and on the ground referred to above by us, we have gone through the material placed on record. Copy of the report of the Superintendent of Police, Jalgaon, is placed on record at Exhibit "C". Perusal of the report show that a general reference is made to the instances wherein the revenue authorities while discharging their duty, are threatened by the sand *Mafiyas*. The instances in general are referred that the revenue authorities are subjected to threats of life by the firearms, such as, revolver. Now, in so far as petitioner is concerned, reference is to certain offences registered against him. These are three offences; firstly, of the year 2003 and in the report itself, it is stated that the petitioner is acquitted. Then there is reference to two crimes registered against the petitioner i.e. of the years 2016 and 2015 and these cases are pending. Then the report states that the petitioner in future may give threats to the revenue authorities by using the firearm. As such, it may not be feasible to grant license in favour of the petitioner and it is recommended that the license be revoked and subsequently on 17.07.2017 the District Magistrate passes the order of revocation.

07. The petitioner has placed on record, the order dated 19.08.2016. Perusal of the order show that the petitioner was granted sant *Ghat* no.20 and the petitioner was permitted to excavate the sand. Then, as the petitioner committed breach of conditions of the contract, the contract granted in favour of the petitioner was cancelled and the cancellation was of permanent nature. Now, the appellate authority though refers to the report of Superintendent of Police, the appellate authority assumes that the report is against the petitioner and the report states that the petitioner is indulging in the act of giving threats to the revenue authorities. At the cost of repetition, we state that the report of Superintendent of Police is an apprehension expressed by the Superintendent of Police, that the petitioner may indulge in the act in future. The appellate authority though also refers to the ground raised by the petitioner, that there is breach of principles of natural justice and no opportunity is granted to the petitioner before revocation of license, the appellate authority failed to give any finding on this ground raised by the petitioner.

08. In so far as the ground of pending cases against the petitioner is concerned, learned Counsel appearing for the petitioner placed heavy reliance on the judgment of Division Bench of this Court in the case of *Ajay Jayawant Bhosale Vs. The Commissioner of Police, Pune &*

*others [2016 ALL MR (Cri.) 4073]*. The Division Bench has dealt with the relevant provisions, namely, Section 13 of the Arms Act i.e. grant of licenses. While dealing with the issue of pending cases, qua subjective satisfaction of the authority for revocation of license, the Division Bench was pleased to observe thus :-

"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 17A 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 17B 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. "

Learned Counsel for the petitioner was justified in placing reliance on judgment of the Division Bench.

09. In so far as the other ground, namely, opportunity of hearing is concerned, it will not be out of place to refer to judgment of Full Bench of Allahabad High Court, in the case of *Kailash Nath and others Vs. State of U.P. and another* [AIR 1985 Allahabad 291]. While drawing support from the judgment of the Apex Court, in the case of *State of Orissa Vs. Dr. (Miss) Binapani Dei*, AIR 1967 SC 1269, the Full Bench of Allahabad High Court was pleased to observe, thus :-

" The dictum was still more clearly enunciated in the same case in these words :

"It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. "

Thus, before cancelling a licence for firearms the license holder must be given an opportunity of being heard. "

10. Considering all these facts, we are of the opinion that the appellate authority clearly failed in dismissing the appeal and the appellate authority on assumption proceeded with the appeal and passed the order. Considering the facts above referred, we deem it fit to quash and set aside the impugned

orders and remand the matter for fresh decision by the respondent no.01 - District Magistrate.

11. In the result, the criminal writ petition is partly allowed.

The order dated 27.09.2017, passed by the Divisional Commissioner, Nashik Division, Nashik, in Arms Appeal No. 21 of 2017 [Exhibit "G"], so also, order dated 17.07.2017 [Exhibit "D"], passed by the District Magistrate, Jalgaon, are quashed and set aside. The matter is remanded back to respondent no.01 i.e. District Magistrate for passing order afresh, after giving reasonable opportunity of hearing to the petitioner. The District Magistrate shall undertake the exercise of passing the order afresh as expeditiously as possible and preferably within a period of six weeks from today.

( Smt. Vibha Kankanwadi )  
JUDGE

( Prasanna B. Varale )  
JUDGE

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