

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

CRIMINAL WRIT PETITION NO. 984 OF 2016

Ashok s/o Dayaram Patil, Age
38 years, Occ. Stringer, of
Sudarshan News Channel & ... **Petitioner.**
Head Master, r/o. Plot No.
44, Vidya Nagar, Tq. Parola,
Dist. Nanded.

VERSUS.

- 1 The State of Maharashtra,
Through : its Principal
Secretary, Home Department,
Mumbai.
- 2 The Divisional Commissioner,
Nasik, District Nasik.
- 3 The Collector, ... **Respondents.**
Jalgaon, District Jalgaon.

...

Advocate for Petitioner : Mr. Rajendra S. Deshmukh.
APP for Respondent No. 1 to 3 : Mr. B.A. Shinde.

CORAM : K. L. WADANE, J.

DATE : 12th January, 2018

JUDGMENT:

1. Rule. Rule made returnable forthwith.
2. By consent of the learned counsel for both parties, this petition heard finally.
3. Being aggrieved and dissatisfied with the judgment and order dated 27.04.2016 passed by

respondent No. 2 in Arms Licence Appeal under section 18 of the Arms Act, 1959, whereby the Arms Licence Appeal No. 3/2015 filed by the petitioner is dismissed and confirmed the order passed by the respondent No. 3 dated 11.02.2015.

4. The petitioner is a stringer of the Sudarshan News Channel and has specially appointed as a string operation in the Taluka Parola, District Jalgaon, due to this he has been actively involved in the social and political activity in Parola city. The petitioner is a builder and developer having land business from which he is getting huge success. The petitioner is also actively involved in educational field.

5. The petitioner is also having an irrigated land at Mauje Kunzar in Jalgaon District and another landed property at village Vadali in Nandurbar district. The aforementioned immovable properties are situated in the forest area. The petitioner become a successful agriculturist and businessman within a short span of time, therefore, so many people from the area have grudge in their mind against the petitioner and his family, and there was threat of life from the anti-social element.

6. The petitioner also filed a criminal complaint against accused persons for the offences punishable under section 384, 385, 452 read with section 34 of the Indian Penal Code. On this background the petitioner filed an application to issue arms licence for the reasons stated therein.

7. The respondent No. 3 called the report from the police as well as revenue officers and after hearing the petitioner, the respondent No. 3 has rejected the application mainly on three grounds; (i) there was no threats to the life of the petitioner or his family members (ii) the yearly income of the petitioner for the year 2012-2013 was only Rs. 4,11,942/- and (iii) there are so many businessmen in the district and if the arms licences were to be issued to each and every businessmen then the number of arms licence holder will be increased. The order of the respondent No. 3 was assailed before the respondent No. 2. The respondent No. 2 also rejected the appeal of the petitioner almost on similar grounds as has been cited by the respondent No. 3.

8. I have heard Mr. Deshmukh, learned counsel for the petitioner who submitted that the licence was

refused to the petitioner on the grounds as referred above. Mr. Deshmukh, learned counsel further submitted that, so far as above grounds are concerned same are not contemplated under section 14 of the Arms Act, 1959. Mr. Deshmukh further submitted that if a particular provision of statute prescribes the grounds on which the discretion is to be exercised, then such a discretion is to be exercised in accordance with the provisions of said statute and not on any other ground, not mentioned in the said provisions.

9. Mr. Deshmukh learned counsel further submitted that herein this case even though no such ground mentioned under section 14 of the Arms Act for refusal of the licence. The authorities have refused licence to the petitioner on the ground which is not contemplated under section 14 of the Arms Act. Therefore, the learned counsel for petitioner submitted that the orders passed by the respondent 3 and confirmed by the respondent No. 2 are liable to be quashed and set aside. Mr. Deshmukh, learned counsel therefore relied upon the observations of this Court in Criminal Writ Petition No. 490/2008 and the Writ Petition no. 3786 of 2015.

10. Learned APP submitted that the report of the

police was called by the respondent No. 3. Particularly, the Superintendent of Police, Jalgaon, has not recommended for issuance of the licence in favour of the petitioner because the offences registered at the instance of petitioner seem to be personal in nature.

11. From the record it is seen that the Circle Officer of Parola Division has made enquiry and submitted its report to the Tahsildar. Tahsildar forwarded the same to respondent No. 3. Likewise, the police inspector of Parola police station has made enquiry and submitted his report dated 25.02.2015 to the Superintendent of Police. On perusal of the report of both the officers i.e. Circle Officer and the Police Inspector of Parola police station, it appears that they have made enquiry in reference to the various points and both of them have consistently recommended for issuance of arms licence in favour of the petitioner. In spite of the favourable report in favour of the petitioner, the concerned Superintendent of Police has not recommended for arms licence. No doubt, the Superintendent of Police can differ the finding or the opinion of the reporting officer, provided, the Superintendent of Police has made separate enquiry by

appointing officer to that effect and arrived at a different conclusion.

12. To consider the relief claimed by the petitioner, it is necessary to reproduce the provisions of section 14 of the Arms Act.

"1. Notwithstanding anything in section 13, licensing authority shall refuse to grant-

(a) a license under section 3, section 4, or section 5 where such license is required in respect of any prohibited arms or prohibited ammunition:

(b) a license in any other case under Chapter II,-

(i) where such license is required by a person whom then licensing authority has reason to believe-

(1) to be prohibited by this Act or by any other law for the time being in force from acquiring, having in his possession or carrying any arms or ammunition, or

(2) to be of unsound mind, or

(3) to be for any reason unfit for a license under this Act, or

(ii) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such license.

2. The licensing authority shall not refuse to grant any license to any person merely on the ground that such person does not own or possess sufficient property.

3 Where the licensing authority refuses to grant a license to any person it shall record in writing the reasons for such refusal and furnish to that person on demand a brief statement of the same unless in any

case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

13. Looking to the above provisions it is very much clear that specific grounds have been mentioned in the said section on which the application for licence would be refused. It could thus be seen that the discretion has to be exercised by the authority in accordance with the provisions of the Act. The licence can be refused by the authority if the authority has reason to believe that the person applying is prohibited by the said Act or by any other law for the time being in force from acquiring, having in his possession or carrying any arms or ammunition, or if he is found to be of unsound mind, or for any reason unfit for a licence under the said Act, or where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

14. Looking to the aforesaid provisions of the Act it is crystal clear that the authority shall not refuse the licence other than the ground mentioned in Section 14 of the Act. No doubt, the licensing authority can refuse the licence to a person on the ground of security of public peace or public safety.

15. On perusal of the reasons recorded by the respondent No. 3 as well as respondent No. 2, nowhere it is explained or mentioned in the order that the licence is refused to the petitioner on the ground of security of public peace or for public safety. On perusal of provisions of sub-section 2 of Section 14, the licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or possess sufficient property. Herein the present case, arms licence is refused on one of the ground that the yearly income of the petitioner was only to the extent of Rs. 4,11,942/-. This finding/reason is also contrary to the provisions of Section 14(2) of the Arms Act. Consequently, the impugned orders do not stand. The writ petition thus deserves to be allowed. Hence following order is passed.

O R D E R

- i) Writ Petition is allowed.
- ii) Order passed by respondent No.3 dated 11.02.2015 and the order passed by the respondent No. 2 dated 27.04.2016 are hereby quashed and set aside.

iii) Respondent No. 3 is hereby directed to
issue arms licence to the petitioner
within a period of 30 days from the
receipt of this order.

16. Rule is made absolute in the above terms. Writ
Petition is accordingly disposed of. No costs.

(K. L. WADANE, J.)

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