

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

CRIMINAL WRIT PETITION NO.1247 OF 2016

Om Prakash Shitala Prasad Dubey ... Petitioner

V/s.

The State of Maharashtra and ors. ... Respondents

Mr.M.P.Mishra for the Petitioner.

Mr.S.R.Shinde, APP for the Respondent/State.

CORAM : PRAKASH D. NAIK, J.

DATE : JULY 27, 2018.

P.C.:

1. The Petitioner has challenged the order dated 28th October 2015, passed by the State Home Minister, State of Maharashtra in Appeal No.ALS/0615/A-103/POL-9.

2. It is the case of the Petitioner that while residing at Lucknow, he had applied to the District Magistrate, Lucknow, for obtaining Arms license and accordingly, the Petitioner has been given Arms license by District Magistrate, Lucknow on 6th June 2005, bearing license No.8025/Lucknow/U.P. In pursuance to that Petitioner purchased the NP 032 bore revolver/pistol No.H-4548/I.O.F. from Small Factory Kanpur on 5th December 2005. The said license was valid till 31st December 2007.

3. Petitioner contends that he shifted to Mumbai as his father and brothers were residing at Mumbai. Somewhere in the last week of August 2006, he started residing with them at Mumbai. He entered his name in the ration card of his father on 18th September 2006, Petitioner applied to Deputy Commissioner of Police, Mumbai, for registration of Arms license as per Rule 62(4) of the Arms Act, 1959 alongwith necessary documents and on 28th August 2007, the Petitioner deposited his arm and arm license for renewal before Deputy Commissioner of Police, Mumbai. Deputy Commissioner of Police forwarded a letter to the District Magistrate, Lucknow for “No Objection Certificate” for registration of the arms license of the Petitioner and accordingly on 20th September 2007, the District Magistrate, Lucknow had submitted their “No objection Certificate” and confirmed that the license is valid for all over India and renewed till 31st December 2007, and they have no objection for renewal/registration of the arms license of the Petitioner. However, instead of renewing the arms license of the petitioner, the Deputy Commissioner of Police issued show cause notice dated 7th February 2008, to the Petitioner under Section 17 of the

Arms Act, 1959, to show cause why the arms license should not be cancelled on the grounds mentioned in the said show cause notice. In the show cause notice it was alleged that, on receipt of police report it is revealed that the Petitioner is residing in Mumbai since 2001 and although he was residing at Mumbai for more than 30 days he did not register arm license with authority in Mumbai. It was further alleged that he had obtained license by suppressing facts from Licensing Authority at Lucknow. The Petitioner replied the notice and clarified that the Petitioner was residing in Mumbai since August 2006 and thereby, the application for renewal was made before the said authority. The reply/clarification was forwarded on 15th February 2008. In pursuance to that, on 8th April 2008, the Deputy Commissioner of Police, Mumbai cancelled the license of the Petitioner under Section 17(3)(C) of the Arms Act, 1959. The Petitioner, therefore, challenged the said order dated 8th April 2008, under Section 17(3)(C) of the Arms Act, 1959 by preferring an appeal before the Chief Secretary (Home), State of Maharashtra under Section 18 of the Arms Act, 1959 on 6th May 2008. On 13th January 2011, the Chief Secretary was pleased

to pass the order remanding the matter back to the Deputy Commissioner of Police for reconsidering the application of the Petitioner in the light of the observations made in the said order. The said authority once again rejected the application on 28th January 2015, on ground that report was received from Zonal Department of Police stating that the reason assigned for registration is not convincing and hence permission may not be granted to petitioner and the office of Deputy Commissioner of Police is in agreement with the report and hence application is rejected. The Petitioner being aggrieved by the said order filed appeal before the Appellate authority on 21st February 2015. The appeal preferred by the Petitioner was rejected by order dated 28th October 2015, on the ground that the Petitioner failed to establish danger to his life.

4. Learned counsel for the Petitioner submitted that the license was issued by the authority at Lucknow, which was valid till 31st December 2007. While the Petitioner applied for renewal of the said license at Mumbai, show cause notice was issued to him on the ground that although the Petitioner was residing in Mumbai since 2001, he ought to have registered the arm license earlier.

The show cause notice was replied and thereafter, the authorities proceeded to pass the order referred hereinabove. It is submitted that initially the objection which was raised by the authorities is that the Petitioner was resident of Mumbai since 2001 and he could not have preferred such an application before the concerned authority at Lucknow. However, subsequently after the matter was remanded back to the Deputy Commissioner of police, the application was rejected on different grounds. The said order is erroneously confirmed by the Home Ministry. The counsel relied upon the decisions of this Court in case of **Ajay Jayawant Bhosale Vs. The Commissioner of Police, Pune City and ors.**¹ and in case of **Khan Abdul Wahab Usman Vs. The State of Maharashtra and ors.**² and the decision delivered by the Delhi High Court in the case of **Vinod Kumar Vs. The State and ors.**³. On perusal of the documents it is apparent that the Petitioner had obtained the license from District Magistrate, Lucknow which was issued to him on 6th June 2005, and in pursuant to that he had purchased the arm. It is the case of the

1 Criminal Writ Petition No.594 of 2013

2 Criminal Writ Petition No.2688 of 2008

3 W.P.(C)1631/2012

Petitioner that in pursuant to grant of license he shifted to Mumbai in 2006, he relied upon the ration card which was issued in the name of his father, where the name of the Petitioner was added. However, when the application for renewal was preferred before the concerned authority at Mumbai, the show cause notice was issued to him. It is pertinent to note that after considering all the documents which was put forth by the Petitioner before the concerned authority at Lucknow, the license was issued to him which was valid till 31st December 2007. It is also important to note that the Deputy Commissioner of Police had forwarded letter to the concerned authorities at Lucknow and in pursuant to that no objection was given for granting renewal to the license. It was also confirmed that the license was issued by the said authority. However, inspite of no objection issued by the said authority, the application for renewal/registration was rejected. Appellate authority had remanded the matter back to the first authority to consider the matter afresh on the basis of documents, however, instead of dealing with the directions issued by appellate authority, the first authority rejected the application, on the ground that reasons for

registration are not valid. Thus on a different ground the application was rejected. The appellate authority also mechanically confirmed the decision. It was observed that the Petitioner could satisfy that there is danger or apprehension to his life. It is also pertinent to note that the petitioner had produce requisite documents to show that since 2006 he is residing in Mumbai. The authorities kept on changing their stand and mechanically passed the order. In the circumstances, it is clear that the authorities have rejected the application on the ground which was not existing when the application for renewal/registration was preferred. Taking into consideration all the circumstances and the ratio laid by the decision cited, the impugned order is required to be set aside. Hence, I pass the following order:

ORDER

- (i) Criminal Writ Petition is allowed.
- (ii) The impugned order dated 8th April 2008, passed by Deputy Commissioner of Police the order dated 13th January 2011, passed by the Chief Secretary, (Home), State of Maharashtra in Appeal No.ALS /0608/A-104/POL-9, order dated 28th January 2015,

passed by Deputy Commissioner of Police as well as the order dated 28th October 2015, passed by the State Home Minister, State of Maharashtra in Appeal No.ALS/0615/A-103/POL-9 are quashed and set aside.

(iii) The request for renewal/registration of license be granted to the Petitioner.

(PRAKASH D. NAIK,J.)

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Priya
Rajesh
Soparkar

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