

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

Sanjay S/o. Shridhar Mithari. ...Petitioners
Versus
The State of Maharashtra and Ors. ...Respondents

Mr.C.D.Mali, A.G.P for the Respondent Nos.1 to 3.

CORAM : REVATI MOHITE DERE, J.

DATE : 19th OCTOBER, 2018

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioner has impugned the order dated 25th August, 2017 (Exhibit – 'G'), passed by the Respondent No.2 – Divisional Commissioner, Pune Division, Pune, in Appeal No.Arms/Appeal/SR/142/2011.
3. Learned Counsel for the Petitioner submits that the Petitioner

had filed an application under Section 17 of the Arms Act, 1959 for seeking variation of his license, which was restricted to Sangli District. He submitted that the Petitioner is a Sub-Inspector, working in the Excise Department, Government of Maharashtra, since, 1998. He submitted that in 2009, the District Magistrate, Sangli, had issued a license (for a revolver/pistol) in favour of the Petitioner, which was valid for Sangli District. He submitted that as a Sub-Inspector working in the Excise Department, Government of Maharashtra, the Petitioner by the very nature of his job, is required to be transferred to different districts within the State of Maharashtra. He submitted that the Petitioner's duty includes surveillance and vigilance regarding sale and manufacture of spurious liquor, sale of liquor without license and as such the Petitioner is also required to deal with the Liquor Mafia. He submitted that due to the nature of the Petitioner's job and safety to his life and persistent threats to him and his family members, the Petitioner had applied for a Arms License for protecting him whilst performing his duty as well as for his personal protection and to safe guard himself from anti-social elements in the Society. He submitted that the Petitioner was assaulted and threatened in 2005, pursuant to which, a complaint was registered as against the accused.

He submitted that in the said case of assault and threat, the accused therein were convicted. He relied on the Judgment of Conviction, which is on page 20 of the Petition. He submitted that the Petitioner was transferred to Nagpur in 2013 and as such is unable to use the said licensed weapon, as it is valid only for Sangli. Learned Counsel for the Petitioner states that having regard to the aforesaid, the Petitioner filed an Application under Section 17 of the Arms Act, seeking variation of the license i.e. from Sangli District to the entire State of Maharashtra. He further submits that the authorities had failed to consider that even in Nagpur, the Petitioner had unearthed illegal liquor. He relied on the newspaper cuttings, which are from page nos.62 to 65 of the petition. He submitted that the authorities had failed to consider all the relevant factors, and as such rejected the Petitioner's Application. He submitted that the authorities had also failed to consider sub-rule 3 of Rule 19 of the Arms Rules, 2016.

4. Learned A.G.P. opposed the Petition. He submitted that no interference was warranted in the impugned order. Learned A.G.P. is, unable to point out, that the Appellate Authority had considered the threats to the Petitioner's life or the action of the Petitioner of seizing or dealing

with the Liquor Mafia or the conviction of certain accused, who had assaulted/threatened the Petitioner.

5. Perused the papers. As noted earlier, the Petitioner as an Excise Sub-Inspector had obtained a license (revolver/pistol) in 2009. The said license was valid only for Sangli District. It appears that the Petitioner, whilst working as a Sub-Inspector with the State Excise Department, was In-charge of Mouja Shirala, where an incident took place in 2005. It appears that in the raid, which was conducted by the Petitioner, the accused were selling spurious liquor, and that one of the accused held the Petitioner and assaulted him and even threatened him with dire consequences. Pursuant thereto, the Petitioner lodged an FIR as against the accused and after trial the accused were convicted in the said case, for the offences punishable under Sections 353, 332, 506 r/w 34 of the Indian Penal Code. The Petitioner is presently posted as a Sub-Inspector with the Excise Department, at Nagpur. A perusal of the newspaper cuttings which are annexed to the Petition, show that the Petitioner had conducted several raids there and had to deal with the Liquor Mafia. The Petitioner having regard to the nature of the duties performed by him, applied for a license

under Section 17 of the Arms Act and sought variation of the license i.e. from Sangli District to the whole of the State of Maharashtra. It appears that since there are allegations that the Petitioner was not heard by the Appellate Authority, the matter was remitted back to the Respondent No.2 for fresh hearing, pursuant to which, the impugned order has been passed.

6. *Prima facie*, it appears that the Authority had failed to consider certain documents i.e. the Judgment of Conviction, certain newspapers cuttings and the Judgment of the Allahabad High Court in the case of ***Ganesh Chandra Bhatt v/s District Magistrate, Almora and Others.***¹ relied upon by the learned counsel for the Petitioner. The impugned order also shows that sub-rule 3 of Rule 19 of the Arms Rules, 2016, has not been considered, inasmuch as, there is no finding recorded on the same, in the impugned order.

7. Learned A.G.P. is also unable to show that the Respondent No.2 had considered the aforesaid documents, inasmuch as, there is no reflection of the same in the impugned order.

¹ AIR 1993 All 291

8. Having regard to the same, it would be appropriate to quash and set aside the impugned order dated 25th August, 2017 (Exhibit – 'G'), passed by the Respondent No.2 – Divisional Commissioner, Pune Division, Pune, in Appeal No.Arms/Appeal/SR/142/2011, and remand the same back to the Divisional Commissioner, Pune Division, Pune, for fresh consideration.

9. Accordingly, the following order is passed:-

ORDER

- i) The impugned order dated 25th August, 2017 (Exhibit – 'G'), passed by the Respondent No.2 – Divisional Commissioner, Pune Division, Pune, in Appeal No.Arms/Appeal/SR/142/2011, is quashed and set aside and the said Appeal is restored back to its original file;
- ii) The matter is remitted back to the learned Divisional Commissioner, Pune Division, Pune, for fresh consideration, on its own merits, in accordance with law;

- iii) The parties to appear before the Divisional Commissioner, Pune Division, Pune, on **12th November, 2018, at 3.00 p.m.**, after which the Divisional Commissioner, Pune Division, Pune, will give dates convenient to him;
- iv) Since the Appeal is of 2011, the Divisional Commissioner, Pune Division, Pune, shall decide the said Appeal afresh, on its own merits, in accordance with law, as expeditiously as possible and in any event on or before 31st January, 2019;
- v) Liberty is granted to the Petitioner to file written submissions along with the Judgments.

10. The Petition is allowed in the aforesaid terms and is accordingly disposed of.

11. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)