

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

CRIMINAL WRIT PETITION NO.1367 OF 2017

1. Ashvini S/o Arvind Rikhye,
Age:41 Years, Occu.- Business,
R/o.: 18, Shanti Nagar, Chopda,
Tq.- Chopda, Dist.- Jalgaon. ... **Petitioner**

Versus

1. The State of Maharashtra
2. The Divisional Commissioner,
Nashik Division, Nashik.
3. The District Magistrate/Collector,
Jalgaon. ... **Respondents**

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Mr. Swapnil S. Patil, Advocate for the Petitioner.

Mr. S. B. Joshi, A.P.P. for respondents-State.

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**CORAM : T.V. NALAWADE &
MANGESH S. PATIL, JJ.**

DATE : 19.03.2019

JUDGMENT :- (Per: Mangesh S. Patil, J.)

Heard. Rule. Rule is made returnable forthwith. Learned A.P.P. waives service for the respondents. At the request of both the sides the matter is heard finally at the stage of admission.

2. The petitioner is impugning the rejection of his application for grant of a new arms licence by the respondent no.3 Licensing Authority under

Section 13 of the Arms Act,1959 by the order dated 31.05.2017 and its confirmation by the respondent no.2-Appellate Authority in the form of dismissal of the appeal preferred by him under Section 18 of that Act by the order dated 09.08.2017.

3. The learned advocate for the petitioner submits that he had applied for grant of arms licence under the provisions of the Arms Act for the purpose of security and self defence. He has been running couple of Bars and has to commute through the areas which are prone to serious offences like dacoity and robbery. He has been running several other businesses like railway ticket agency, Yes Bank Money Transfer and also deals in estate. He has to carry hard cash and had bona fide applied for possessing arms licence. Without there being any objection from the law enforcing agencies i.e. local police, the respondent no.3 rejected the application and the respondent no.2 confirmed the order in appeal. They have not applied mind. No opportunity of being heard was extended and the order suffers from gross illegality. No sufficient and cogent reasons have been assigned and by quashing both the orders a direction may be issued for grant it.

4. The learned A.P.P. strongly opposes the writ petition. He submits that the impugned orders have been passed after scrutinizing the entire material and facts argued. They have assigned cogent and plausible reasons.

There are consistent findings which need not to be interfered under the writ jurisdiction. He submits that opportunity of being heard was duly extended and there being no gross illegality, the writ petition may be dismissed.

5. We have carefully considered the orders passed by the respondent nos.3 and 2 as well as the record. We have also perused the affidavit-in-reply on behalf of the respondent no.3. Obviously, Arms Act has come into being to regulate and control *inter alia* manufacture, sale and possession of the arms and ammunition. Section 3 of the Act requires a licence for acquisition and possession of fire arms and ammunition. Section 4 regulates acquisition and possession of arms of specified description. Section 5 requires licence for manufacture, sale etc. of arms and ammunition. Any violation of these provisions have also been made punishable. Chapter III then lays down the provisions relating to licences. Section 13 deals with grant of licences, Section 14 lays down the circumstances under which a Licensing Authority can refuse to grant licence, Section 15 speaks of duration and renewal of licence, Section 17 enables variation, suspension and revocation of licence and Section 18 then provides for appeal enabling a person aggrieved by any order passed by the Licensing Authority of refusing to grant licence or varying the conditions of licence.

6. Bearing in mind the aim and object of the Act and the entire

scheme, in our considered view, a person cannot as of right claim grant of licence. It has been left to the subjective satisfaction of the Licensing Authority to consider any such request. A provision of appeal has been made under Section 18 which enables further scrutiny of the order passed by the Licensing Authority under Section 13. If that be so, we fail to subscribe to the submission of the learned advocate for the petitioner that the impugned orders have been passed without application of mind. A careful perusal of the order passed by the respondent no.3 shows that due to advent of several avenues to transact money through electronic banking, there was no substance in the ground being put-forth by the petitioner that he has to carry cash of lakhs of rupees daily. Even no fault can be found with the reasoning of the respondent no.3 that if such a criteria is to be applied for grant of licence then every businessmen would demand a licence and the number of licence holders would escalate enormously.

7. True it is that the power of the respondent no.3 has been regulated by Section 14 which lays down that a Licensing Authority shall refuse to grant a licence under specified circumstances. It *inter alia* enables a Licensing Authority to refuse license for the security of the public peace or for public safety. The respondent no.3 has not specifically referred to this clause contained in Sub-clause (ii) of Clause (b) of Sub-section 1 of Section 14. However, in our considered view, he has observed that if the criteria is to be

equally made applicable to all the businessmen carrying cash daily, each businessmen would demand a fire arm and number of such persons holding a licence of fire arms would increase. Such observation clearly insinuates that the respondent no.3 was perceiving that such increase in number of licence holders would ultimately affect public peace and public safety.

8. The respondent no.2 in appeal under Section 18 has also considered the over all circumstances while dismissing the appeal. As can be seen from his order an opportunity of being heard was duly extended to the petitioner and it is not that the appeal was decided *ex parte*. The respondent no.3 has at several places referred to the arguments advanced by him. It is only in the concluding part, the respondent no.2 has observed that there was no necessity to extend personal hearing to the petitioner. Taking into account the fact that it was an appeal under Section 18, when the opportunity of advancing arguments was duly extended by the respondent no.2 there was sufficient compliance made by the respondent no.2 in respect of the mandate laid down in the proviso to Sub-section 5 of Section 18.

9. A careful perusal of the order would further reveal that the respondent no.2 has also referred to a query put by him to the petitioner to ascertain if at any time there was a physical assault on him and to which the petitioner had replied in the negative. Apart from the fact that this response

by the petitioner clearly refutes his apprehension of danger to his safety, also shows that he was personally present before the respondent no.2 when the appeal was being heard. Therefore, the submission of the learned advocate for the petitioner that principles of natural justice were not followed by the respondent nos. 2 and 3 is factually incorrect.

10. Taking into account all these facts and circumstances, the decisions arrived at by the respondent no.3 who is a Licensing Authority and the respondent no.2 who is the Appellate Authority are quite reasonable and plausible. Those do not suffer from any illegality which would enable this Court to intervene under the writ jurisdiction.

11. The writ petition is dismissed. The Rule is discharged.

[MANGESH S. PATIL, J.]

[T.V. NALAWADE, J.]