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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 CRIMINAL WRIT PETITION NO.1064 OF 2021

**SYED MAHEBOOB ALI PASHA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. Ashok P. Gaikwad, Advocate for the petitioner
Mr. S. P. Sonpawale, APP for the respondent/State

CORAM : N. R. BORKAR, J.

DATE : 16-11-2021

P. C.

The petitioner was granted fire arm license bearing No. PB-45/2013 by the respondent No.2 for his self protection. The said license was thereafter renewed from time to time up to the year 2016. As the license was due for renewal the application was made on 31.12.2016 for renewal. The respondent No.2 by order dated 31.12.2019 refused to renew the license on the ground of registration of crime against the petitioner for the offences punishable under Sections 420, 409, 468 and 471 read with Section 34 of the IPC and Sections 3 and 7 of the Essential Commodities Act.

2. The appeal was filed against the order of the respondent No.2. The respondent No.3 before whom the appeal was filed after hearing the parties dismissed the appeal by order dated 26-03-2021. The order of respondent No.2 dated 31-12-2019 and the order of respondent No.3 dated 26-03-2021 are impugned in the present petition.

3. I have heard learned counsel for the petitioner and learned APP for the respondents.

4. The learned counsel for the petitioner submits that no opportunity of hearing was given to the petitioner before passing order dated 31.12.2019 by the respondent No.2. It is submitted that as per Sections 15 of the Arms Act once a license is granted renewal cannot be refused unless there exists a ground of refusal as enumerated under Section 17 of the Act. It is submitted that the licensing authority can refuse to renew license under Section 17 of the Act, if the same is

found necessary for the security of public peace or public safety. It is submitted that renewal cannot be refused on the ground of registration of crime. It is thus submitted that the impugned orders need to be quashed and set aside. In support of the submission the learned counsel for the petitioner has relied upon the judgment reported in 2016 ALL MR (Criminal) 4073 in the case of Ajay Jayawant Bhosale Vs The Commissioner of Police, and ors and unreported judgment of this court in Criminal Writ Petition No. 0117 of 2018 dated 05-02-2018 in the case of Paresh Diliprao Kolhe Vs State of Maharashtra and ors.

5. On the other hand learned APP for the respondents submits that pursuance to application filed by the petitioner for renewal of the fire arm license the report of Superintendent of Police, Parbhani was called. It is submitted that the Superintendent of the Police accordingly submitted the report and in the said report registration of crime against the petitioner at Kotwali Police Station, Parbhani vide Crime No.

305 of 2016 for the offences punishable under Sections 420, 409, 468, 471 read with Section 34 of the IPC and Sections 3 and 7 of the Essential Commodities Act, was mentioned. It is submitted that after receipt of said report, notice was issued to the petitioner and his say was called. Pursuant to the said notice the petitioner submitted his written say and even the petitioner was heard. It is submitted that the respondent No.2 after considering the overall facts and circumstances came to the conclusion that the request of renewal of arm license of the petitioner cannot be allowed, in view of the registration of crime against him. It is submitted that no interference is thus called for in the impugned orders.

6. Section 15 which deals with renewal of license reads thus:

Section 15- Duration and renewal of licence- (1) A license under Section 3 shall, unless revoked earlier, continue in force for a period of five years from the date on which it is granted.

Provided that such a licence may be granted for a shorter period if the person by whom the licence is required so desires or if the licensing authority for reasons to be recorded in writing considers in any case that the licence should be granted for a shorter period.

Provided further that the licence granted under Section 3 shall be subject to the conditions specified in sub-clause (ii) and (iii) of clause (a) of sub-Section (1) of Section 9 and the licensee shall produce the licence alongwith the fire-arm or ammunition and connected document before the licensing authority after every five years from the date on which it is granted or renewed.

(2) A licence under any other provision of Chapter II shall, unless revoked earlier, continue in force for such period from the date on which it is granted as the licensing authority may in each case determine.

(3) Every licence shall, unless the licensing authority for reasons to be recorded in writing otherwise decides in any case, be renewable for the same period for which the licence was originally

granted and shall be so renewable from time to time, and the provisions of sections 13 and 14 shall apply to the renewal of a licence as they apply to the grant thereof.

7. The respondent No.2 refused to renew the license only on the ground of registration of crime and no other reason is recorded. The respondent No.1 while passing the order impugned had invoked the powers under Section 17 of the Act.

8. This court while dealing with similar controversy in the case of Ajay Bhosale (supra) has observed :

“merely because criminal case is pending the provision of Section 17 of the Act would not be attracted. It was further observed nothing was placed before us by the respondents to indicate that the petitioner had misused the licensed 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 license would be against public peace, safety and security. ”

9. In the present matter also the refusal to renew the license is not on the ground that petitioner had misused the license weapon and it is merely on the ground of registration of crime. The impugned orders are thus quashed and set aside. The respondent No.2 shall renew the license within a period of two months from the date of receipt of copy of this order.

10. The petition is disposed of.

[N. R. BORKAR, J.]

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