

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

43 CRIMINAL WRIT PETITION NO.1112 OF 2021

**AMBADAS BABANRAO GARUDKAR
VERSUS
THE DIVISIONAL COMMISSIONER, NASHIK DIVISION, NASHIK
AND ANOTHER**

Mr. Yuvraj Kakade, Advocate h/f Mr. N. V. Gaware, Advocate for
the petitioner

Mr. Y. G. Gujrathi, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 23rd MARCH, 2023

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1. This petition is against the order dated 09-06-2021 passed by the learned Divisional Commissioner, Nashik Division, Nashik thereby rejecting the application for condonation of delay that was caused in challenging the order passed by the District Collector, Ahmednagar bearing outward No. DC/Karya-9D/266/2019 by which the license bearing No.964/Nagarshahar granted in favour of the petitioner under Arms Act came to be cancelled. The petitioner thereafter approached by filing the appeal alongwith application for condonation of delay by which

by that time there was a delay of 1 year 10 months and 14 days. It is specifically averred in the application that the applicant came to know about the impugned order for the first time on 15-01-2021 when he came to know that enquiry is started. It is a case of the petitioner that it is only because of want of knowledge the appeal could not be presented in time and for that there is no intention to cause delay and as the petitioner would not gain anything by filing the appeal after limitation, the petitioner submits that it was necessary for the Divisional Commissioner to hear the the appeal on merits since the valuable right to possess the license is involved. He submits that he had no reason to know about cancellation of the license as for that year the authorities had collected the license renewal fee till 19-02-2021. He further submits that on merits the petitioner has a very good case and he should not be deprived. The learned advocate therefore vehemently submits that the petition deserves to be allowed.

2. Learned APP produced on record the copy of the

order dated 15-03-2019. From the office file, he specifically points out that in fact copy of order was very much served upon the petitioner and there also appears an endorsement of receipt by way of signature of wife of the petitioner. In this view he submits that when the petitioner has not come with the clean hand this petition needs to be dismissed. He further submits that assuming that the petitioner had not received the knowledge of actual order, however it is unlikely that person having arms license would not make any enquiry.

3. Learned APP submits that it is already a case of the petitioner himself that for the general election to the Parliament their arms were surrendered with the authorities and as such it is unlikely he has not made any attempt to repossess the arms. Thus, he further submits that in view of the endorsement of the receipt the statement of the petitioner on oath is totally falsified and under such circumstances the petitioner does not deserve any discretionary relief.

4. Having heard the parties and looking to the record this court finds that though there is averment that the petitioner had no knowledge of order dated 15-03-2019, however going through the record this court is satisfied that the order was duly served upon the petitioner through his wife. This fact is not disputed. It is tried to be canvassed that wife of the petitioner is only 7th std pass lady and therefore service on her would not be considered as proper service. This court finds that there was no knowledge of the order and when that ground itself was found against the record, this court finds that in such case the petition need not be entertained.

5. Taking into the consideration the above discussion, this court finds that no case is made out to call for interference in the extra-ordinary jurisdiction under Article 227 of the Constitution of India in the impugned order. Therefore, the petition is rejected.

6. It is made clear that the petitioner is at liberty to

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apply afresh for license. The authorities shall not refuse such application only on the ground that this petition is dismissed.

[KISHORE C. SANT, J.]

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