



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 689 OF 2024

ARUN VENKATRAO DAWLE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for the Petitioner : Mr. Balaji Laxmanrao Sagar
APP for Respondents: Mr. G.O. Wattamwar
...

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

DATE : 15.04.2024

PER COURT:

The petitioner who possesses an arms licence is aggrieved by the fact that without conducting the process as is contemplated by division benches which decided the matters **Ganesh Mahadeosingh Thakur Vs. Sr. Inspector, Boisar Police Station, Thane and Ors.**; 2000 ALL MR (Cri) 928 and **Govind @ Bhai Ganesh Tilave Vs. Vikram Kumar, District Magistrate, Sindhudurg and Ors.**; 2009 ALL MR (Cri)2389, by issuing a notice he is being called upon to surrender the firearm.

2. We have already addressed the issue while deciding the Writ Petition No.656/2024 in the matter of **Noah Haidarbhai Noorani Vs.The State of Maharashtra and Others** by the order dated 08.04.2024 which reads as under :

“ Heard both the sides.

2. Learned APP tenders across the bar affidavit-in-reply on behalf of respondent no. 2.

3. The petitioner who holds an arms licence is aggrieved by the fact that respondent no. 3 issued a public notice on 16.03.2024 directing to surrender the arms in the wake of Model Code of Conduct pursuant to the elections declared on 16 March 2024, as well as the subsequent notices received by him from respondent no. 4 - concerned Police Inspector of the Police Station dated 24 March 2024 and 26 March 2024.

4. It is being pointed out that pursuant to the directions of a Divisional Bench of this Court in the matter of Govind @ Bhai Ganesh Tilve Versus Vikram Kumar, District Magistrate and others, 2009 ALL M.R. (Cri.) 2389, in order to address a similar issue, this Court had issued guidelines having found that no sooner the elections are declared all the arms holders having the licence are directed to surrender the arms, indiscriminately.

5. Since apparently no such decision was taken as per the guidelines by a Committee constituted thereunder, these notices have been challenged.

6. As can be seen from the affidavit-in-reply, a Committee headed by the District Magistrate and the Superintendent of Police seem to have undertaken an exercise as is contemplated in the guidelines, on 26 March 2024, inter alia taking a specific decision in respect of the petitioner that because of a crime registered against him in the year 2024 and in order to have peaceful and fair elections in a transparent manner, in order to address the law and order situation and to prevent any undue influence on the voter that to the extent of the petitioner the decision was taken by the Committee to suspend his licence till the elections are over.

7. True it is that this decision is not under challenge. However, what is flabbergasting is the manner in which the decision has been taken. The entire process, ex-facie, has been under taken exactly in the reverse order. The guidelines expect a Committee to be constituted, a decision to be arrived at for the reasons, like criminal history, persons who are on bail and the persons who have previously involved in rioting especially during the election period. Once such a decision is taken, it is thereafter that the licence holder is supposed to be called upon to surrender his arm, keeping open an avenue to him to make a specific request to allow retention of the firearm.

8. What transpires in the matter in hand is that indiscriminately no sooner the notification for general elections was published on 26 March 2024, all the licence holders were

called upon to surrender the arms. Even the petitioner was served with individual notice by the concerned Police Officer respondent no. 4 twice, apart from the general public notice issued by the District Magistrate. It is thereafter that the Committee held its meeting on 26.03.2024 and has undertaken the exercise in the light of the guidelines laid down in Govind @ Bhai Ganesh Tilve (supra) including in respect of the present petitioner.

9. *Surprisingly even this order, in all probability has been passed unmindfully. It makes an observation that none of the persons mentioned in the order have made any special request for retention of the firearms, when the guidelines expect that it is post such decision by the Screening Committee that an individual is supposed to make a request.*

10. *In short, without undertaking any objective scrutiny as laid down by this Court, the petitioner was asked to surrender the arm and now a decision has been taken justifying such notice, post facto.*

11. *Again, the order qua the petitioner is also apparently not in accordance with the guidelines. A criminal offence registered against him in the year 2007 has been wrongly referred to as crime no. 14 of 2014 which was a crime under the Essential Commodities Act and stated to have been resulted in his acquittal. The guidelines do not contemplate any such situation where the accused has been acquitted. Though the categories or the grounds are expressly stated to be not exhausted and merely illustrative, the affidavit-in-reply is absolutely silent as to how the Screening Committee could reach the decision objectively that petitioner's possession of arm pursuant to the licence would be prejudicial to the public order or law and order. It is also not clear as to what was the basis for the Screening Committee to reach a conclusion that even he had the potential to influence the voters.*

12. *Though it may not be wholly relevant, still we cannot avoid the temptation of making an observation that at least to the extent of the petitioner before us some grounds are mentioned in respect of his case where as the list contains as many as 114 other individuals in respect of whom, even those cursory reasons have not been mentioned except saying that the Screening Committee was of the view that in order to maintain the law and order they all should to surrender the arms.*

13. *Aforementioned facts and circumstances clearly indicate that Screening Committee has unmindfully and contrary to the guidelines has exercised the powers. This is nothing short of arbitrariness in the exercise of the powers.*

14. Be that as it may, we dispose of the criminal writ petition by permitting the petitioner to apply to the Screening Committee making out the grounds and special case as is contemplated in the guidelines laid down in the matter of Govind @ Bhai Ganesh Tilve (supra), if he intends to retain the arm irrespective of the order of the Screening Committee. If he makes any such application, it shall be decided on its own merits and in accordance with law, as expeditiously as possible.”

3. In our considered view, the aforementioned observations and the reasoning is squarely applicable to the matter in hand. The process being followed by the respondent - District Magistrate is exactly in the reverse order. Even before the Screening Committee decides anything the petitioner has been asked to surrender the firearm when it should have been exactly the other way round.

4. We allow the writ petition. The impugned communication dated 01.04.2024 is quashed and set aside. It is made clear that the respondent - District Magistrate may take steps in the light of the observations in the matter of **Noah Haidarbhai Noorani** (supra) before the petitioner is called upon to surrender the firearm.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

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