



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

CRIMINAL WRIT PETITION NO. 1262 OF 2022

Vaijnath s/o Sitaram Phad,
Age 65 years,
Occu: Agri/Business/Social Work
R/o Khadgaon Tq. Gangakhed,
District Parbhani

... **Petitioner**

VERSUS

1. The State of Maharashtra
The Collector/District Magistrate,
Parbhani
2. The Divisional Commissioner,
Division Aurangabad.

Mr. Mahadeo V. Nagargoje, Advocate for the Petitioner,
Mr. N. D. Batule, APP for the Respondents State

CORAM : Y. G. KHOBRADE, J.

RESERVED ON : 13.11.2024

PRONOUNCED ON : 25.11.2024

JUDGMENT:-

1. Rule. Rule made returnable forthwith and with the consent of both the parties heard finally.
2. By the present petition under Article 227 of the Constitution of India, the Petitioner takes exception to the order dated 12-08-2022 passed by Respondent No. 2 - Divisional Commissioner and Appellate Authority

under the Arms Act confirming the order dated 01-02-2022 passed by the Respondent No. 1 District Magistrate.

3. In nutshell, it is the grievance of the petitioner that, he was employed in Co-operative Department of the Government for the years 1983 to 2012 and worked at several places in Maharashtra. He is having landed property at village Khadgaon Tq. Gangakhed Dist. Parbhani. In addition to that, he is doing the business of plotting. He is involved in social work and in the year 2019, he contested parliamentary election. He frequently visits his village from Mumbai.

4. Since, there was danger to his life, he had applied for Fire Arms licence in the year 1997. After scrutiny and verification, on 10-03-1997, the Respondent No. 1 - District Magistrate, Parbhani had granted Arms licence to him for 32 Bore Revolver No. A 85116 for the period of one year, which was renewed till 31-12-2019 and said fact was informed to the concerned authorities and request was made for registration (nomination) of Arms licenses with the Licensing Authority at Mumbai. However, during pendency of said application, on 25-11-2021, the Dy. Commissioner of Police (Head Quarter-I) was informed regarding the conviction of the petitioner in connection with Crime bearing No. 11 of 1999 for the offences punishable u/s 7(2), 13(1)(2) of the Prevention of Corruption

Act, 1988. Being aggrieved by the said order, the petitioner filed Cri. Appeal No. 267 of 2011 and his sentence came to be suspended during pendency of Appeal.

5. It is the contention of the petitioner that, some delay was caused while moving an application for registration of Arms Licence. However, on 25-11-2021, the Commissioner of Police, Grater Mumbai rejected said application on ground of conviction of the petitioner for the offences u/s 7(2), 13(1)(2) of the Prevention of Corruption Act, 1988 in connection with Crime No. 11 of 1999 and an inordinate delay was caused while submitting an application for registration of Arms licence. Being aggrieved by the order dated 25-11-2021, the petitioner preferred an appeal u/s 28 of the Arms Act, 1959 before the Appellate Authority - Respondent No. 2. On 12-08-2022, the learned Appellate Authority passed the impugned order and confirmed the order dated 01-02-2022 passed by the Respondent No. 1, being aggrieved by the same the petitioner has filed this petition.

6. Mr. M. V. Nagargoje, the learned counsel appearing for the petitioner canvassed that, the petitioner had not apply for new licence, but applied for renewal of Arm licence which was already granted to him in the year 1997 and since then he has renewed the same time to time till 31.12.2019

therefore, notification dated 31.03.2010 issued by the Central Government for issuance of new licence is not applicable. Further, on oral instructions from the employee of the Respondent No. 1, the petitioner had applied for registration (nomination) of Arm Licence with the Licensing Authority at Mumbai because, it is required to intimate the licensing authority regarding the fire arm where the licence holder resides. However, on 23.11.2021, the Licensing Authority, Mumbai turned down the request of the petitioner merely on ground that, the petitioner was convicted for the offence u/s 7(2), 13(1)(2) of the Prevention of Corruption Act, 1988, which is nothing but abuse process of law.

7. The learned counsel for the petitioner further canvassed that, on 30.12.2013, the petitioner had submitted an application before the Dy. Commissioner of Police (Headquarter-I), Greater Mumbai, however, said application was decided on 23-11-2021, after lapse of 8 years and refused registration of license at Mumbai. Thereafter, the petitioner applied for renewal of Arms Licence before the Respondent No. 1 - District Magistrate, Parbhani on 1-12-2021. On 20-12-2021, the Respondent No. 1 issued show causes notice dated 20-12-2021 and called upon the petitioner to submit cause, as to why his Arm Licence should not be cancelled. Accordingly, the petitioner submitted his cause on 28.02.2021. However, on 01.02.2022, the Respondent No. 1 cancelled his arms licence.

Therefore, the petitioner preferred an Appeal before the Respondent No. 2, however, on 12.08.2022, the Respondent No. 2 passed the impugned order and dismissed his appeal without considering the provisions of law.

8. The learned counsel appearing for the petitioner further submits that, the fire Arm licence was granted in favour of the petitioner in the year 1997 for his personal safety due to danger to his life because of his involvement in social, political as well as plotting business. Therefore, both the authorities below could have considered right to life and liberty guaranteed under Article 21 of the Constitution of India and merely because the criminal case is pending, the provisions of Sec. 17 of the Arms Act would not attract. Therefore, prayed to quash and set aside the impugned order dated 12-08-2022 passed by the Respondent No. 2 Divisional Commissioner and order dated 01-02-2022 passed by the Respondent No. 1 District Magistrate.

9. To buttress these submissions, the learned counsel appearing for the petitioner relied on Judgment in ***Cri. WP. No. 594 of 2013 dated 15th July, 2016, Ajay Jayawant Bhosale Vs. The Commissioner of Police, Pune City and others*** passed by Division Bench of this Court (Coram: Naresh H. Patil And Prakash D. Naik JJ.), wherein it is observed in Para Nos. 11 & 12 as under:

"11. The question, therefore, arises as to whether there was sufficient material placed before the Commissioner of Police for arriving at subjective satisfaction that continuation of licence or renewal would be endangering public peace or public safety. It seems that the show-cause notice was issued by the Commissioner, Pune consequent to filing of application by the petitioner to the Home Department of the State Government for getting all India arms licence. Nevertheless at any stage the licensing authority after getting subjectively satisfied and on the basis of material placed before it could revoke licence under Section 17 of the Act but whether there was sufficient material with the licensing authority to pass order of revocation.

12. The right to life and liberty are guaranteed under Article 21 of the Constitution of India. Arms licence is granted for personal safety and security after due enquiry by the authorities in accordance with provisions contained in the Arms Act, 1959. The provisions of Arms Act with regard to suspension or cancellation of Arms licence cannot be invoked lightly in an arbitrary manner. The provisions of the Arms Act particularly Section 13 to 17 indicate that once a licence is granted under the Act, the same shall be renewed from time to time unless there exist a ground of refusal as enumerated under Section 14 of the Act. Protection to life, property of citizen is responsibility of the State. It is only when person apprehends that machinery of State would not come to his help for protection, he/she applies for licence under the Act. The provisions of Section 17 A of the Arms Act indicate that arms licence can be cancelled or suspended if the licensing authority finds it necessary for the security of public peace or public safety. Merely because a criminal case is pending, the provisions of Section 17 of the Arms Act would not be attracted. Such provisions would be attracted in case the licensing authority finds that continuance of licence is detrimental to public peace or public security and safety. But the authority concerned will have to record a finding that how and under what circumstances and in what

manner possession of arms licence could be contrary to the provisions of Section 17 B of the Arms Act. Each case is required to be considered on its own merits."

10. Per contra, Mr. N.D. Batule, the Assistant Public Prosecutor supported the findings recorded by both the authorities and canvassed that, since 1985, the petitioner has been staying at Mumbai, therefore, it was necessary for the petitioner to obtain the Arm Licence from the Police Commissioner, Greater Mumbai, however, on 10-03-1997, the petitioner obtained the Arm Licence from the Respondent No. 1 - District Magistrate, Parbhani. Thereafter, the Police Commissioner, Greater Mumbai received a proposal from the Respondent No. 1 District Magistrate, Parbhani for taking entry vide its proposal dated 27-11-2017. Accordingly, the Police Commissioner, Greater Mumbai conducted an enquiry through the local Police Station. During said enquiry it was revealed that, though the petitioner is residing at Flat No. 703, B-Wing, Skypan Co-op. Hsg., Socy., Sub T.V. Lane, Andheri (W) Mumbai, but the petitioner has obtained an Arm Licence from the Respondent No. 1. So also, there is a delay in submitting a proposal for taking entry and the petitioner was convicted in Crime No. 11 of 1999 registered against him for the offences punishable u/s 7 (2), 13(1) (3) of the Prevention of Corruption Act. The petitioner challenged his conviction by preferring an Appeal bearing No. 444 of 2011. Therefore, on 12-08-2022, the Respondent No. 2 Appellate

Authority passed the impugned order affirming order dated 01-02-2022 passed by the Respondent No. 1 on grounds that, (i) the Respondent No. 1 refused to renew the Fire Arm licence due to adverse enquiry report submitted by the Police Commissioner, Greater Mumbai (ii) the Arm licence was renewed till 31.12.2019, but after lapse of 2 years therefrom, application for renewal of licence was submitted and the petitioner has no seriousness about the Arm licence (iii) as per Sec. 14 (B) (2) of the Arms Act, it is detrimental to public peace or public security and safety, refusal to renewal of licence by the Respondent No. 1 authority is proper and legal (iv) on 31st March, 2010, the Central Government issued a Circular and framed guidelines for issuance of Fire Arms Licence wherein it is mandatory on the part of Police authorities to disclose about danger to life of person who seeks for Arm Licence. Therefore, the learned APP canvassed that, the petitioner has not fulfilled any criteria for renewal of Arm licence, hence, the petitioner is not entitled for renewal of Arm Licence and prayed for dismissal of the petition.

11. It is not in dispute that, the petitioner was employed in Co-operative sector of the Government for the year 1983 to 2012. After attending the age of superannuation, he retired and he is residing at Flat No. 703, B-Wing, Skypan Co-op. Hsg., Socy., Sub T.V. Lane, Andheri (W) Mumbai. The petitioner is native of the village Khadgaon Tq. Gangakhed Dist. Parbhani

and he is having a landed property at his native place. The petitioner frequently visits at his village from Mumbai. Though, the petitioner has claimed about danger to his life, but no any such incident was brought on record.

12. It is a matter of record that, in the year 1997, the petitioner had applied for Fire Arms licence. On 10-03-1997, the Respondent No. 1 - District Magistrate, Parbhani granted Arms licence in his favour for 32 Bore Revolver No. A 85116 for the period of one year, which was renewed till 31-12-2019. However, the Respondent No. 1 failed to submit proposal to the Commissioner of Police, Greater Mumbai about registration Arm Licence from the year 2013, but during pendency of said proposal, on 25.11.2021, the Dy. Commissioner of Police (Head Quarter-I) was informed regarding conviction of the petitioner in connection with Crime No. 11 of 1999 for the offences punishable u/s 7(2), 13(1)(2) of the Prevention of Corruption Act, 1988. The petitioner challenged his conviction in by preferring Cri. Appeal No. 267 of 2011, wherein sentence of the petitioner came to be suspended during the pendency of the Appeal.

13. On 01-02-2022, the Respondent No. 1 - District Magistrate passed an order holding that, on 10.03.1997, the Petitioner obtained fire Arm Licence, but he has belatedly submitted an application for registration

with the Commissioner, Greater Mumbai. The Petitioner was convicted for the offence punishable under Section 7(2)(2), 13(1) and 73 of the Prevention of Corruption Act in Crime No. 11 of 1999 and Cri. Appeal bearing No. 267 of 2011 is pending against the order of conviction and sentence against the present petitioner is suspended. So also, fire arm licence was renewed till 31.12.2019 and there is no further renewal. The Petitioner had submitted an application for registration of fire arm with Commissioner of Police Greater Mumbai, within whose jurisdiction the Petitioner is residing. After lapse of two years from the the date of expiry of the Arms license, the petitioner submitted the application for its renewal. So also, considering his age, the Petitioner is not competent to handle the fire arm. Therefore, Respondent No. 1 refused to renew the licence by invoking powers under Section 17(3) of the Arms Act and Rule 17 of the Arms Rules, 2016.

14. On 12.08.2022, Respondent No. 2 - Appellate authority passed the impugned order and confirmed the order dated 01.02.2022 passed by Respondent No. 1 considering various provisions of section 17(3) of the Arms Act and Rule 17 of the Arms Rules, 2016. Respondent No. 2, Appellate authority also considered the conviction of the Petitioner under the provisions of Prevention of Corruption Act as well as guidelines given under the notification dated 31.03.2010, issued by the Central

Government, wherein it has been provided that while granting licence for fire arm, the Police enquiry report should disclose danger to the life of the applicant who is seeking the fire arm licence and Respondent No. 1, competent authority refused to renew the licence after considering the adverse report submitted by the Deputy Commissioner of Police (Headquarter-1), Greater Mumbai. So also, the petitioner is residing in Mumbai City since 1985, therefore, it was necessary to obtain licence from the competent authority at Mumbai. The Petitioner obtained the licence from Respondent No. 1 on 10.03.1997 and submitted an application for registration after lapse of considerable period. Further, the fire arm licence of the Petitioner was renewed lastly till 31.12.2019, but subsequently after more than two years, the petitioner seeks to renew the licence.

15. As per provisions of Section 15 (3) of the Arms Act, 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. Therefore, it is clear that renewal of licence can be denied only when the licencing authority has reason to believe that for any reason the Petitioner is unfit for the licence.

The nature of right available to licensee for its renewal is quite different from the right seeking licence. In a judicial Review Administration Action (IV Ed., at page 223) it is made clear that "Non-renewal of an existing licence is usually a more serious matter than refusal to grant a licence in the first place. Unless the licensee has already given understanding when he was granted the licence that renewal is not to be expected, non-renewal may seriously upset his plans, cause him economic loss and perhaps cast a slur on his reputation. It may, therefore, be right to imply a duty to hear before a decision not to renew when there is a legitimate expectation of renewal, even though no such duty is implied in the making of the original decision to grant or refuse the licence." Therefore, it is clear that the possession of a fire arm after expiry of licence, when the application for its renewal has not been made before such expiry, would be breach of Section 15 of the Arms Act and provision for renewing license for further period on payment of fees does not save the situation. This view is supported by the judgments in the cases of *Emperor Vs. Baxi Rram AIR 1942 Lahor 300* and *Malcolm Vs. Emperor, AIR 1933 Calcutta 718*.

16. Rule 24 of the Arms Rules, 2016 provides that every licence, may, at its expiration and subject to the same conditions (if any), as to the grant thereof, be renewed by the authority mentioned in Schedule II as renewing authority within a period of thirty days of receipt of the police

report. In the case in hand, the Petitioner sought renewal of licence after the lapse of two years period from the date of expiry of licence.

17. No doubt, in the case of **Ajay Jayawant Bhosale**, cited supra, the Division Bench of this Court has held that the provisions of Arms Act with regard to suspension or cancellation of Arms licence cannot be invoked lightly in an arbitrary manner and as per Section 17 of the Arms Act, Arms licence can be cancelled or suspended if the licensing authority finds it necessary for the security of public peace or public safety. Merely because a criminal case is pending, the provision of Section 17 of the Arms Act would not attract. However, in the case in hand, it appears that the Petitioner obtained the fire arms licence from respondent No. 1 on 10.03.1997, but after lapse of 10 years, the Petitioner submitted an application to the Commissioner of Police, Greater Mumbai for registration, as he was residing within its jurisdiction. Not only this, on 13.11.2017, the Police Commissioner, Greater Mumbai sought a report from District Magistrate, Parbhani in respect of registration of arm licence at Mumbai. Though, the Fire Arms licence was expired on 13.12.2019, but the Petitioner submitted an application for renewal of licence after lapse of two years. The petitioner has not given sufficient explanation as to why he has submitted an application for renewal of licence after expiry of two years.

18. Since both the authorities below declined to renew the fire arm licence in favour of the Petitioner on various grounds including maintaining security of public peace or public safety, therefore, I do not find that the impugned orders are perverse, illegal or bad in law and no grounds are set out to interfere with the said orders/findings. Resultantly, the Writ Petition fails and accordingly, it is dismissed.

19. Rule is discharged.

(Y. G. KHOBRADE, J.)

JPChavan