

(2015) 02 GUJ CK 0075
In the Gujarat High Court

Case No : Special Criminal Application (Quashing) No. 3737 of 2014

Aaiyub Abdulshakur Pathan

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:

Arms Act, 1959 — Section 17(3), 18
Constitution of India, 1950 — Article 226, 227

Citation : (2015) CriLJ 2993

Hon'ble Judges : V.M. Pancholi, J

Bench : Single Bench

Advocate : M.M. Saiyed, for the Appellant; H.B. Punani, Add., Public Prosecutor, Advocates for the Respondent

Final Decision : Allowed

Judgement

V.M. Pancholi, J—This petition is filed under Articles 226 and 227 of the Constitution of India wherein the petitioner has prayed that the order dated 26.5.2011 passed by District Magistrate, Bharuch and the order dated 2.7.2014 passed by Deputy Secretary (Home) passed in Arm Appeal No. 341 of 2011 be quashed and set aside. Rule. Rule is made returnable forthwith. Learned A.P.P. Ms. H.B. Punani waives service of notice of Rule for the respondents. With the consent of the learned advocates for the parties, the petition is taken up for final hearing.

2. Learned advocate Shri M.M. Saiyed appearing for the petitioner has submitted that the petitioner applied for licence under the Arms Act, 1878 to hold fire arm in the year 2001. The Sub-divisional Magistrate, Ankleshwar after following due procedure of law granted licence to hold fire arm to the petitioner. The said licence was issued for crop protection. He has further submitted that in the year 2010, election of Gram Panchayat was declared, and therefore as per the order of the concerned authority under the Arms Act the petitioner deposited his fire arm with Valiya Police Station. Thereafter election was over. In spite of that, the

fire arm of the petitioner was not returned to him. The petitioner therefore wrote a letter dated 11-1-2011 to respondent No. 2 that the licence of the petitioner was required to be renewed from 30-6-2011. Learned advocate further submitted that on 31.5.2011 the petitioner received a letter dated 26-5-2011 from respondent No. 2 Collector - District Magistrate whereby it was informed to the petitioner that the Superintendent of Police of Bharuch by his report dated 18-3-2011 made a request to the District Magistrate -Collector, and therefore respondent No. 2-District Magistrate cancelled the licence of the petitioner.

3. Learned advocate further submitted that the petitioner preferred appeal under Section 18 of the Arms Act read with Rule 55 of the Arms Rules before respondent No. 3 Deputy Secretary, Home Department. However, the said appeal being Arms Appeal No. 341 of 2011 came to be rejected by the respondent No. 3 by an order dated 2.7.2014. Learned advocate for the petitioner therefore submitted that both the impugned orders are bad, illegal and perverse, and therefore this Court may quash and set aside the same. He has further submitted that the order passed by respondent No. 2 is violative of principles of natural justice, and therefore also the same may be quashed and set aside. He further submitted that respondent No. 2 District Magistrate exercised the jurisdiction not vested in him by law. From the record he has pointed out that the District Superintendent of Police informed the District Magistrate that against the petitioner First Information Reports were registered in the years 1991, 1994, 2000 and 2001. The District Magistrate therefore relying upon the said information given by the District Superintendent of Police cancelled the licence of the petitioner. However, since licence was issued by the Sub-Divisional Magistrate, said licence of the petitioner can be cancelled by the Sub-Divisional Magistrate. He has further submitted that the District Magistrate has passed the impugned order even without issuing notice to the petitioner and thereby he has violated the principles of natural justice. On merits, he has further submitted that the licence was issued to the petitioner in the year 2001 and the First Information Reports which were registered against the petitioner were prior to the year 2001, i.e. prior to the date of issuance of the licence. No offence has been registered against the petitioner after the issuance of the licence. Thus, the respondent No. 2 District Magistrate has not considered the said aspects. The arms in relation to which the licence was issued was never used in any offence, and then at the time of election the said fire arm was with the police authorities.

4. Learned advocate further submitted that the petitioner has been acquitted in pursuance to the aforesaid First Information Reports. The copies of the judgments of acquittal were produced before respondent No. 3-Deputy Secretary. However, copy of one judgment for the First Information Report which was registered in the year 1991 was not available at the relevant time with the petitioner, and therefore the said copy was not produced before the respondent No. 3, and the appeal filed by the petitioner was rejected. However, learned advocate for the petitioner referred to page No. 30 of the compilation whereat the petitioner has produced the order of acquittal dated 20.3.1997 passed by the

Additional Sessions and Special Judge, Bharuch, in Special Atrocity Case No. 13 of 1994. The said case was registered in pursuance to the First Information Report of 1991. Thus by referring to the said judgment of acquittal learned advocate submitted that the petitioner has been acquitted in all the cases, and the said cases were registered prior to the date of issuance of the licence, and therefore respondent Nos. 2 and 3 have not applied their mind with regard to the aforesaid important aspect of the matter, and therefore the impugned orders be quashed and set aside.

5. Learned advocate for the petitioner relying upon the decision of this Court reported in the case of Harisingh Harnamsingh Khalsa Vs. E.F. Deboo and Another, AIR 1969 Guj 349 : (1969) GLR 769 submitted that an opportunity of hearing must be given in accordance with elementary principles of natural justice. In paragraph No. 12, it is held as under:

"12. Unless, therefore, the concerned licensee is informed of the proposed grounds on which the licensing authority wants to exercise its power, he would not be in a position to render any explanation. If he is not given this notice or opportunity, the two salutary safeguards of a speaking order and of an appeal provided by the legislature would be completely illusory. Unless the licensee gets an opportunity to bring materials in his favour to satisfy the officer or to convince him of the non-existence of the grounds, these provisions would be meaningless as he would be hardly able to convince the appellate authority, when there is nothing on the record in his favour, even if such record would be called for by the appellate authority for its perusal under the relevant rules. Besides, the very fact that all the five grounds in Clauses (a) to (e) are lumped together in section 17(3), some of which are clearly capable of demonstration, would show in the light of this statutory scheme that the legislature intended that this discretion should be exercised only on all objective existence of all these grounds and therefore, even though the opinion formed as to the suitability of the person may not be reviewable the existence of the grounds and the procedure of prior notice and opportunity of hearing given being complied with in accordance with elementary principles of natural justice would always be open to review."

6. On the other hand learned A.P.P. Ms. Maithili Mehta submitted that no error is committed by the respondent No. 2 while cancelling the licence issued in favour of the petitioner. Even respondent No. 3 has not committed any error while rejecting the appeal preferred by the petitioner. She has submitted that the scope of judicial review is limited, and therefore this Court may not exercise the powers under Article 227 of the Constitution of India. Learned A.P.P. further submitted that different First Information Reports were filed against the petitioner, and therefore, respondent No. 2 has cancelled the licence on the basis of the information given by the District Superintendent of Police, and therefore he has not committed any error. She has therefore submitted that this petition may be dismissed.

7. I have considered the arguments canvassed on behalf of the learned

advocates for the parties. I have also considered the documents produced on record. From the submissions canvassed on behalf of the learned advocates and from the record, the following facts would emerge:

"(a) The fire arm licence was issued in favour of the petitioner by the Sub-Divisional Magistrate, Ankleshwar in the year 2001.

(b) In October 2010, due to Gram Panchayat elections, petitioner deposited his fire arm with Valiya Police Station.

(c) The fire arm was not returned to the petitioner after the completion of election, and therefore the petitioner wrote a letter on 11.1.2011 to respondent No. 2.

(d) On 30-6-2011 the aforesaid licence was required to be renewed, and therefore the petitioner gave an application before the Sub-divisional Magistrate on 24.5.2011.

(e) Respondent No. 2 informed the petitioner by letter dated 26.5.2011 that the Superintendent of Police Bharuch informed him by his report dated 18.3.2011 that various First Information Reports were registered against the petitioner, and therefore the licence of the petitioner has been cancelled by the respondent No. 2.

(f) The petitioner preferred Arms Appeal No. 341 of 2011 before respondent No. 3.

(g) On 2.7.2014 the aforesaid appeal was dismissed by respondent No. 3.

(h) First Information Reports referred to in the impugned order passed by respondent No. 2 were for the period 1991, 1994, 2000 and 2001. Thus, all the aforesaid First Information Reports were registered against the petitioner before the date of issuance of the licence in the year 2001, and in all the cases the petitioner has been acquitted by the competent criminal court.

(i) Respondent No. 2 District Magistrate has cancelled the licence without issuance of notice to the petitioner."

8. In view of the aforesaid factual background of the case, I am of the opinion that the respondent No. 2 District Magistrate has committed an error by cancelling the licence of the petitioner without issuance of notice to the petitioner. He has therefore violated the principles of natural justice. Further, the licence was issued by the Sub-divisional Magistrate, and therefore respondent No. 2 ought not to have cancelled the licence of the petitioner without affording an opportunity of hearing to the petitioner. Had the petitioner been issued notice by respondent No. 2, then the petitioner would have pointed out the aforesaid fact that all the First Information Reports were filed prior to the date of issuance of the licence, and in all the cases, he has been acquitted by the competent criminal court.

9. Thus, I am of the opinion that respondent No. 2 misdirected himself by simply relying upon the report given by the Superintendent of Police, Bharuch. Even respondent No. 3 has not properly considered the fact that petitioner has been acquitted in all the cases which were registered against him. It is true that the petitioner had not produced a copy of the order of acquittal for the case registered against him in the year 1991. However, from the averments made in the petition and the documents produced with the petition, it is clear that the said order of acquittal was not available with the petitioner at the relevant time. However, the fact remains that the petitioner has produced the order of acquittal in the said case. Thus, from the record it is clear that the petitioner has been acquitted in all the cases. It is also clear that no offence is registered against the petitioner after the date of issuance of the licence. Thus, in view of the aforesaid facts and circumstances of the present case, the impugned orders are required to be quashed and set aside, and therefore the same are quashed and set aside. Thus, the order dated 26.5.2011 passed by District Magistrate, Bharuch and the order dated 2.7.2014 passed by Deputy Secretary (Home) passed in Arm Appeal No. 341 of 2011 are hereby quashed and set aside. Respondent No. 1 is hereby directed to renew the licence of fire arm of the petitioner in accordance with law.

With these observations and directions, the petition is allowed. Rule is made absolute.