
(2009) 04 BOM CK 0081

In the Bombay High Court

Case No : Criminal Writ Petition No. 850 of 2008

Devendra Tukaram Katke

APPELLANT

Vs

The State of Maharashtra (Copy to be served on Public
Prosecutor, High Court Bench at Aurnagabad), The District
Magistrate and The Divisional Commissioner

RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Arms Act, 1959 — Section 17, 17(3), 18, 3
Constitution of India, 1950 — Article 21

Citation : (2009) 111 BOMLR 2205

Hon'ble Judges : R.K. Deshpande, J;P.V. Hardas, J

Bench : Division Bench

**Advocate : Joydeep Chatterji, for the Appellant; N.N. Jadhav, Learned Assistant
Public Prosecutor, for the Respondent**

Judgement

R.K. Deshpande, J.—By the instant Writ Petition, the petitioner challenges the order dated 22/4/2008, passed by the respondent No. 3 Divisional Commissioner, Aurangabad Division, Aurangabad dismissing Appeal No. 2007/GB/Desk-I/pol-1/CR-11 filed by petitioner u/s 18 of the Arms Act, 1959 and confirming the order dated 5th April 2007 passed by the respondent No. 2 Collector/District Magistrate, Parbhani cancelling/revoking the revolver licence No. 07/05 possessed by the petitioner in respect of revolver No. A-1429/04. The facts leading to the case are as under:

2. The petitioner is a Tahsildar posted at Degloor, District Nanded. It seems that on 5/3/2007, there were certain altercations between the petitioner and one Shri Rajesh Pandit the Sub-Divisional Officer, Degloor on the issue of petitioner talking on his cell phone in a loud voice by using unparliamentary language in respect of said Shri Rajesh Pandit. The said Sub-Divisional Officer, Degloor, vide his confidential letter dated 6/3/2007 at Exh.C to the petition, communicated the said incident to the Collector/District Magistrate, Nanded, who accordingly forwarded the said confidential communication under his covering letter dated

20/3/2007 at Exh.B, to the Collector/District Magistrate, Parbhani for taking action of cancellation of arms licence of the petitioner on the ground that the petitioner is likely to misuse the same. The Collector/District Magistrate, Parbhani, the competent authority to issue and revoke or cancel the licence under the Arms Act, 1959 by his order dated 5/4/2007 at Exh.A to the petition, cancelled the revolver licence of the petitioner and directed the police authorities at Parbhani to seize the revolver and deposit it in the arms store and to submit the compliance report.

3. Being aggrieved by this order dated 5/4/07, the petitioner preferred an appeal u/s 18 of the Arms Act, 1959 before the respondent No. 3 Divisional Commissioner, Aurangabad Division, Aurangabad. After hearing the petitioner, the learned Divisional Commissioner, Aurangabad, dismissed the said appeal by recording finding that the impugned order has been passed after appreciating the evidence on record and sufficient opportunity was given to the petitioner to defend the case. It was observed that the petitioner is a government servant and was working as Tahsildar, Degloor and it was expected that he will behave in a more responsible manner and not in the manner in which the Collector, Nanded mentioned in his report dated 20/3/2007. With these observations, the appeal was dismissed.

4. The petitioner thus, in the instant writ petition, has impugned both the orders viz. an order dated 5/4/2007 passed by the Collector/District Magistrate, Parbhani cancelling/revoking revolver licence No. 07/05 and the order dated 22/4/2008 passed by learned Divisional Commissioner, Aurangabad, dismissing his appeal.

5. This Court by an order dated 5/12/2008, issued notice to all the respondents, making it clear that the petition would be decided finally at the stage of admission. Accordingly, the matter is taken up for final hearing with the consent of parties.

We have heard learned Counsel for the petitioner Mr. Joydeep Chatterji and Mr. N.N.Jadhav, learned Assistant Public Prosecutor for respondents. Respondents have opposed the claim by filing their affidavit in reply to the petition. We have also perused the record.

6. It is the contention raised by the learned Counsel for the petitioner that the petitioner has been held to be unfit for holding licence on the ground that the petitioner alleged to have misbehaved with the Sub Divisional Officer, Degloor in such a fashion so as to create an impression in his mind about the misuse of revolver. This action, according to petitioner, is covered by Clause (a) of Sub-section (3) of Section 17 of the Arms Act, 1959. It is further contended by the learned Counsel for the petitioner that at any rate the competent authority i.e. the District Magistrate, Parbhani the respondent No. 2 herein, ought to have followed the rule of audi alteram partem, which is implicit in the provisions of Section 17 of the said Act, to find out the truth in the allegations contained in the

confidential letter dated 6/3/07. According to the petitioner, the impugned action visits the petitioner with civil consequences and hence breach of the rule of audi alteram partem, vitiates the action. The petitioner relied upon the decision of the full bench of 5 Judges of Allahabad High Court reported in Kailash Nath and Others Vs. State of U.P. and Another, . The petitioner also relied upon para 16 of the judgment of the Apex Court reported in Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, , in support of his further contention that the post-decisional hearing by the appellate authority is no substitute for the pre-decisional hearing by the competent authority.

7. The respondents on the other hand, submitted that the impugned action falls in Clause (c) and not in Clause (a) of Sub-section 3 of Section 17 of the Arms Act 1959, as the action has been taken for security of public peace and for public safety, based upon subjective satisfaction of the competent authority. It is the submission of the respondents that the principles of natural justice cannot be put in straight jacket formula and its applicability depends upon the facts and circumstances of each case.

In the instant case, in the opinion of the respondents, the circumstances required immediate action to be taken and hence the question of following the principles of natural justice did not arise, more particularly in the absence of any such requirement in the statute. At any rate, according to the respondents, the petitioner was given post-decisional hearing by the appellate authority, which satisfies the principles of natural justice.

8. It is not in dispute that the petitioner was neither given show cause notice as to why the impugned action should not be taken nor was given an opportunity of being heard in the matter by the competent authority viz. the respondent No. 2 before taking the impugned action. It is also not in dispute that the order impugned in this petition dated 5/4/07 at Exh.A records the reasons and the same are communicated to the petitioner. In view of the rival submissions, the questions which fall for our consideration are:

I. Whether the action of cancellation/revocation of the arms licence fall in Clause (a) or in Clause (b) of Sub-section (3) of Section 17 of the Arms Act, 1959.

II. If it falls in Clause (b) of Sub-section (3) of Section 17, then whether breach of the rule of audi alteram partem vitiates the impugned action and

III. Whether the post-decisional hearing by the appellate authority u/s 18 of the Arms Act, satisfies the requirements of natural justice.

9. In order to appreciate the controversy involved in this petition, it is necessary to reproduce the provisions of Section 17 of the Arms Act, 1959 as under:

17. Variation, suspension and revocation of licences - (1) The licensing authority may vary the conditions subject to which a licence has been granted except such of them as have been prescribed and may for that purpose require the licence holder by notice in writing to deliver-up the licence to it within such time as may

be specified in this notice.

(2) The licensing authority may, on the application of the holder of a licence, also vary the conditions of the licence except such of them as have been prescribed.

(3) The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence -

(a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force, from acquiring, having in his possession or carrying any arms or ammunition, or is of unsound mind, or is for any reason unfit for a licence under this Act; or

(b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or

(c) if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it; or

(d) if any of the conditions of the licence has been contravened; or

(e) if the holder of the licence has failed to comply with a notice under Sub-section (1) requiring him to deliver-up the licence.

(4) The licensing authority may also revoke a licence on the application of the holder thereof.

(5) Where the licensing authority makes an order varying a licence under Sub-section(1) of an order suspending or revoking a licence under Sub-section (3), it shall record in writing the reasons therefore and furnish to the holder of the licence on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

(6) The authority to whom the licensing authority is subordinate may by order in writing suspend or revoke a licence on any ground on which it may be suspended or revoked by the licensing authority; and the foregoing provisions of this section shall, as far as may be, apply in relation to the suspension or revocation of a licence by such authority.

(7) A Court convicting the holder of a licence of any offence under this Act or the rules made thereunder may also suspend or revoke the licence:

Provided that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void.

(8) An order of suspension or revocation under Sub-section(7) may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

(9) The Central Government may, by order in the Official Gazette suspend or

revoke or direct any licensing authority to suspend or revoke all or any licences granted under this Act throughout India or any part thereof.

(10) On the suspension or revocation of a licence under this section the holder thereof shall without delay surrender the licence to the authority by whom it has been suspended or revoked or to such other authority as may be specified in this behalf in the order of suspension or revocation.

10. So far as question No. (I) is concerned, we have to see the reasons recorded in the impugned order. The impugned order dated 5/4/2007 at Exh.A shows that the respondent No. 2 competent authority was satisfied that the petitioner is short tempered in nature and possibility of his going to any extent in his anger to misuse the revolver cannot be ruled out. This satisfaction recorded appears to be based upon the confidential letter dated 6/3/2007 at Exh.C of the Sub-divisional Magistrate, Degloor as well on the forwarding letter dated 20/3/2007 at Exh.B, issued by the District Magistrate, Nanded, which contain certain serious allegations against the petitioner. The petitioner although has not specifically disputed the same, the implicit denial is spelt out in his memo of appeal before the respondent No. 3. Hence without going into factual disputed position, if allegations are taken to be true, then in our opinion, the impugned action is not only taken to prevent danger, but is also directed to ensure the security of public peace and public safety, more particularly, during the period of ensuing Lok-Sabha elections and hence it clearly falls in Clause (b) of Sub-section (3) and not in Clause (a) of Sub-section (3) of Section 17 of the said Act, as alleged by the learned Counsel for the petitioner.

11. We now turn to consider the question No. (II) as to whether petitioner was required to be given an opportunity of being heard before taking the impugned action. A perusal of Section 17 reproduced above, makes it manifest that before exercising the power of revocation or cancellation of licence, under the said provisions no notice is required to be given to the licence holder. Sub-section (5) merely requires that for passing an order suspending or revoking a licence, the licensing authority shall record in writing the reasons thereof and furnish the same to the holder of the licence on his demand. Even this requirement can be dispensed with in a case where the licensing authority is of the opinion that it will not be in public interest to furnish such reasons. Thus, the Act or the Rules made thereunder do not contemplate any express provision of notice or an opportunity of being heard to be given to the licence holder before cancelling the licence of a licence holder. So far as the present case is concerned, as stated earlier, there is no dispute that the reasons are recorded in the impugned order which has been communicated to the petitioner and thus there is no violation of any part of Section 17 of the said Act.

12. The question is whether such requirement of rule of audi alteram partem can be read into the provisions of Section 17 of the said Act. To get the arms licence as provided by Section 3 of the said Act, is neither a fundamental right for protection of life and personal liberty as embodied under Article 21 of the

Constitution of India nor a civil law right. It is a privilege conferred upon the person to protect his person. We are concerned in this case not about grant of licence but withdrawal of privilege by cancelling the licence on the ground under Clause (b) of Sub-section (3) of Section 17 of the said Act i.e. for the purpose of security of public peace and safety. The petitioner has relied upon the decision of the full bench of Allahabad High Court cited supra to urge that the withdrawal or/and cessation of such privilege may adversely affect the licence holders security or protection and may even be a slur on his reputation and therefore, it attracts the rules of natural justice. The petitioner has also relied upon the decision of the Apex Court reported in Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, , more particularly upon para 16 of the said judgment which lays down that unless the operation of the principles of natural justice is specifically excluded, the same must be read into the statute, entitling the affected person to be heard by the competent authority.

13. The majority view of the Allahabad High Court in a decision cited (supra) as is reflected in para 8 is that before cancelling a licence for fire arms, the licence holder must be given an opportunity of being heard. However, in our opinion, these are the general observations and while dealing with the question of interest of public safety, public health, it has been observed in para 9 that the urgency may warrant disregard of the audi alteram partem rule. It has further been observed that in such a situation, the person affected can be adequately compensated for by hearing ex-post facto. The petitions were allowed by permitting the petitioners to make representations for affording them with the ex-post facto opportunity of being heard in the matter by the competent authority. Shri H.N.Seth,J. who has recorded his dissenting opinion, in the said judgment has taken a view that the cancelling of arms licence of the petitioners without affording any hearing to them do not stand vitiated and hence no case was made for interfering with the same. In our view, looking to the entire scheme of Section 17 of the said Act, the requirement of rule audi alteram partem, cannot be read in it and the judgment of Allahabad High Court, cited supra does not support the petitioner, so far as cancellation of licence under Clause (b) of Sub-section (3) of Section 17 is concerned. Resultantly, the cancellation of licence is not vitiated on account of breach of principles of natural justice.

14. We now turn to decide the III question as to whether the post-decisional hearing by appellate authority u/s 18 satisfies the requirement of natural justice. It may be seen that there is no finality attached to the order passed u/s 17 of the Act, cancelling licence. Section 18 of the Arms Act, provides statutory right of appeal to the person aggrieved against the order passed u/s 17 cancelling or revoking the licence. Sub-section (5) of Section 18 contemplates that no appeal shall be disposed of unless the appellant has been given reasonable opportunity of being heard. Sub-section (7) of Section 18 attaches finality to the order of the appellate authority confirming, modifying or reversing the order appealed against. Thus, the legislature in its wisdom has thought that an opportunity of being heard should be afforded to the licensee at a stage following the

revocation/cancellation of the licence and not prior to it. The law has thus, in its own way specified the stage at which the principles of natural justice should become applicable. The entire scheme of Sections 17 and 18 clearly reflects that if the possession of arms by the licensee is likely to pose danger to the public peace and safety, then it can straight way cancel without holding any enquiry, after recording its satisfaction in writing. In such a situation, the person aggrieved shall have a right to ventilate his grievance only before the appellate authority and not before the authority cancelling licence.

15. The decision of the Apex Court cited *supra*, relied upon by the learned Counsel for the petitioner, deals with the case of misconduct committed by the member of institute of Chartered Accountants. The situation in the instant case is different. The action in the instant case has been taken under Clause (b) of Sub-section (3) of Section 17 of the Arms Act to ensure security of public piece and public safety. The ground in question in the present case operates as an exception to the principles of natural justice, as it deals with the situation where the competent authority cannot wait to issue show cause notice and hear the person concerned before taking the action of cancellation of the licence. The appellate authority u/s 18 is well armed with the power to modify or reverse the order of the competent authority in challenge before it which shall be final and binding upon the competent authority. The appellate authority can even go into the factual dispute and can judge correctness, legality, propriety and justification of order cancelling/revoking licence. In case of reversal of the order the appellant before the appellate authority shall be entitled to get back or restore his licence with revolver. Hence in our opinion, there is no prejudice caused to the petitioner and his interest is well protected before the appellate authority. In view of this, we are of the opinion that the requirement of principles of natural justice is satisfied before the appellate authority and the apprehension of the petitioner that though order cancelling his licence visits him with civil consequences, he is not provided an opportunity of being heard, loses its significance.

16. The petitioner has produced on record his letter dated 22/3/2007 surrendering his personal revolver No. 1420/04 to the police inspector, police station, Degloor which also appears to have been acknowledged by the said office. It is taken on record. The grievance of the petitioner is that the appellate authority has not touched the matter on merits. The petitioner submits that he has disputed the factual allegations made against him in the confidential communication dated 6/3/2007 (Exh.C to the petition) and the another communication dated 20/3/2007 (Exh.B to the petition). There is no finding recorded by the appellate authority in its order dated 22/4/08 dismissing the appeal in respect of correctness or otherwise of the allegations made against petitioner. We have gone through the order passed by appellate authority on 22/4/08. In our view, it suffers from non application of mind to the contentions raised by the petitioner. We therefore, set aside the order dated 22/4/2008 passed by respondent No. 3 Divisional Commissioner, Aurangabad Division, Aurangabad, dismissing Appeal No. 2007/GB/Desk-I/pol-1/CR-11 filed by the

petitioner u/s 18 of the Arms Act, 1959 and restore the appeal for fresh decision in accordance with law by the respondent No. 3.

17. We have already stated in earlier paras that without going into factual aspect in respect of correctness or otherwise of the allegations made against the petitioner in confidential letter dated 6/3/2007 at Exh.C and dated 20/3/2007 at Exh.B and the impugned order dated 5/4/2007 at Exh.A, we have proceeded on the hypothesis of the same being correct. It will however, be open for petitioner to establish before appellate authority that the allegations contained in aforesaid documents and order are factually incorrect or non-existent. The appellate authority shall decide the appeal without being influenced by the observations made in this judgment. The petitioner craves leave to raise certain additional grounds in his memo of appeal. The petitioner is at liberty to file such application which shall be considered by the respondent No. 3 alongwith appeal in accordance with law after giving reasonable opportunity of being heard to the petitioner. We therefore, pass an order as under:

ORDER

1] Writ Petition is partly allowed.

2] The order dated 22/4/08 at Exh.D to the petition, passed by the respondent No. 3 the Divisional Commissioner, Aurangabad Division, Aurangabad, dismissing Appeal No. 2007/GB/Desk-I/pol-1/CR-11 filed by the petitioner u/s 18 of the Arms Act, 1959 is hereby quashed and set aside and the appeal is restored to the file.

3] The petitioner is at liberty to file an application raising additional grounds of challenges which shall be considered by respondent No. 2 in accordance with law and the appeal filed by the petitioner shall be decided afresh on its own merits without being influenced by any observations in this judgment, after giving reasonable opportunity of being heard to the petitioner.

4] The personal revolver No. 1420/04 surrendered by the petitioner on 22/3/07 to the police inspector, police station, Degloor shall be kept in a safe custody and it shall be subject to the result of the appeal to be decided by the respondent No. 3 the Divisional Commissioner, Aurangabad Division, Aurangabad.

5] The parties shall bear their own costs.