

(2023) 03 BOM CK 0030

In the Bombay High Court

Case No : Criminal Writ Petition No. 3244 Of 2012

Ravindra Shivram Salvi

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 08-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Arms Act, 1959 — Section 17, 17 (3)(b), 17 (3)(d), 18
Indian Penal Code, 1860 — Section 34, 452, 506(2)

Citation : (2023) 03 BOM CK 0030

Hon'ble Judges : A. S. Gadkari, J Prakash D. Naik, J

Bench : Division Bench

Advocate : Amit Ghag, Aman Parab, Kalpesh Joshi, S. D. Shinde

Final Decision : Dismissed

Judgement

A.S. Gadkari , J

1. Petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India impugning the Order dated 20th July, 2011 passed by the Minister for State (Home), Government of Maharashtra i.e. the Appellate Authority, in Appeal No. ALS-0610/A-125/Pol-9 dismissing the said Appeal and confirming the Order dated 1st January, 2010 passed by the Deputy Commissioner of Police, Head Quarter-1, Mumbai cancelling his arms licence issued by the said authority.

2. Heard Mr. Amit Ghag, learned counsel for Petitioner and Mrs. S. D. Shinde, learned APP for Respondent-State. Perused entire record produced before us.

3. Petitioner was issued an arms licence bearing No. BO/17/D-Dec/92 by the Deputy Commissioner of Police, Head Quarter-1 i.e. the Competent Authority from the Mumbai Police Commissionerate and in pursuance thereto Petitioner purchased one .32 Bore Pistol and one .12 Bore DBBL Gun.

During the period from the year 1997 till 2009, eight criminal cases came to be

registered against the Petitioner. The Competent Authority therefore issued a notice dated 6th October, 2009 under Section 17 of the Arms Act, 1959. Petitioner filed his reply dated 26th October, 2009 to the said notice. The Competent Authority after hearing the Petitioner and considering his reply, by its Order dated 1st January, 2010 cancelled the arms licence granted to Petitioner with immediate effect and directed him to deposit it in its office.

4. Feeling aggrieved by the said Order dated 1st January, 2010, petitioner preferred Appeal No. ALS-0610/A-125/Pol-9 under Section 18 of the Arms Act before the Appellate Authority. As noted earlier, the Appellate Authority by its impugned Order dated 20th February, 2011 dismissed the said Appeal.

In the present Petition Rule has been issued on 27th September, 2012.

5. Mr. Ghag, learned counsel for Petitioner submitted that, there is no allegation against Petitioner to have misused the fire arms in any manner against any person. That, out of the said eight cases two cases have been filed by the brother of the Petitioner and six cases are filed by only one person i.e. namely Shri. Damji Solanki and the same are instituted on the basis of Orders passed by the learned Magistrate on private complaints filed by him. That, out of eight cases registered against the Petitioner, in three cases the Police have submitted Summary Reports before the concerned Courts. That, the Authorities of Respondent-State have failed to consider the nature of criminal cases instituted against the Petitioner while arriving at its subjective satisfaction for revoking the licence granted to the Petitioner. He submitted that, the Competent Authority issued show cause notice dated 6th October, 2009 under Section 17 (3)(d) however passed Order under Section 17 (3)(b) of the Arms Act and therefore impugned Order dated 1st January, 2010 is bad in law and not in consonance with the show cause notice issued by the Competent Authority. Mr. Ghag, however fairly did not dispute the fact that, on the date of issuance of show cause notice dated 6th October, 2009 eight criminal cases were registered/ pending against the Petitioner.

Mr. Ghag submitted that, merely because FIR's were/are registered against the Petitioner, arms licence cannot be suspended or revoked. In order to suspend or revoke the arms licence under Section 17(3) (b) of the Arms Act, it must be shown that the licencing authority felt it necessary for the security of public peace or public safety, to suspend or revoke it. He submitted that, Order passed by the Competent Authority dated 1st January, 2010 cancelling his arms licence is not a speaking Order. There is no material on record to show that either the Petitioner had misused the arms or it had resulted into breach of public peace. In support of his submissions, he relied on following decisions :

(i) Crasent Luas D'Mello Vs. Hon'ble Home Minister, Home Ministry, State of Maharashtra, Mantralaya, Mumbai And Ors. reported in (2017) SCC OnLine Bom 6815 ; (ii) Ajay Jayawant Bhosale Vs. Commissioner of Police, Pune City and Ors. reported in (2016) SCC OnLine Bom 5019 : (2016) 3 AIR Bom R (Cri) 90 ; (iii)

Jignesh D. Patel Vs. The Licensing Authority and Ors., passed in Writ Petition No. 375 of 2020 decided on 22nd November, 2021 ; (iv) Manoj D. Kalani Vs. State of Maharashtra, reported in ALL MR-1995-1- 315 : LAWS (BOM) 1995-8-30 ; (v) Baban Kanu Mhatre Vs. O.P.BALI, reported in TLMHH-1996-0-145, LAWS(BOM)-1996-7-108.

He therefore submitted that, the impugned Order may be set aside by allowing present Petition.

6. Per contra, learned APP supported the impugned Orders and submitted that, the notice dated 6th October, 2009 issued under Section 17 of the Arms Act is a detailed notice and the Order dated 1st January, 2010 passed by the Competent Authority is an elaborate Order giving reasons for cancellation of arms licence to the Petitioner. That, impugned Order passed by the Appellate Authority is also a speaking Order. That, there were eight cases filed/pending against the Petitioner at the time of issuance of notice dated 6th October, 2009 and the said fact has been taking into consideration by the Competent Authority. She submitted that, there are no merits in the Petition and it be dismissed.

7. It is an admitted fact on record that, after issuance of arms licence to the Petitioner in the year 1992, from the year 1997 till 2009, eight different offences were registered against the Petitioner. Though in three offences, according to the Petitioner police had subsequently submitted "C-Summary Report", five offences were still pending against the Petitioner. C.R. No. 273 of 2009 was registered under Section 452, 506(2) read with Section 34 of the IPC. It is not necessary to use licenced weapon in every crime registered subsequently against Petitioner, however its use to threaten informant/prosecution witnesses can not be ruled out.

8. Sub-sections (b) and (d) of sub-section (3) of Section 17 of the Arms Act are in conjuncture and complementary to each other. It is the settled position of law that, a statute or a provision therein has to be interpreted in a manner, which will give ultimate effect to the intention of legislature and not otherwise, to frustrate it.

It is the settled position of law that, licensee can not claim licence as a matter of right however it is legal right of the licensor to grant it, subject to fulfillment of necessary legal conditions and subjective satisfaction arrived at by the licensing Authority after taking into consideration various attending circumstances while issuing it.

9. Merely because the Competent Authority in its notice dated 6th October, 2009 issued under Section 17 has stated that, it was issued under Section 17(3)(d) and while passing Order thereto has stated that, the said Order was under Section 17(3)(b) of the Arms Act, it does not either vitiate the notice nor the final Order dated 1st January, 2010. Therefore according to us there is no substance in the contention of the learned counsel for the Petitioner in that behalf.

10. Perusal of record clearly indicates that, the show cause notice issued under Section 17 by the Competent Authority mentions all the necessary and relevant factors in prompting the said Authority to issue it. The Petitioner was thereafter given an opportunity of being heard and after complying with the principles of natural justice impugned Order dated 1st January, 2010 cancelling the licence of the Petitioner was passed by the Competent Authority. The said Order dated 1st January, 2010 is a speaking Order. The impugned Order dated 20th July, 2011 passed by the Appellate Authority is also a speaking Order. The citations relied upon by the learned counsel for Petitioner, are of no avail to him as the facts therein differ from the facts of the case in hand.

11. There is concurrent finding recorded by both the Authorities below. According to us, there is no perversity or illegality in both the impugned Orders and do not require interference by this Court in its jurisdiction under Article 226 of the Constitution of India.

In view of the above, we find there are no merits in the Petition and the Petition is accordingly dismissed.

12. Rule issued by Order dated 27th September, 2012 is discharged.