

(2014) 08 BOM CK 0228
In the Bombay High Court
Case No : W.P. Nos. 1333 and 2412 of 2014

Ziya Osman Qureshi

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 25-08-2014

Acts Referred:

Arms Act, 1959 — Section 13(3)(b) 17 17(3) 30
Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226 227
Penal Code, 1860 (IPC) — Section 147 148 149 324 504

Citation : (2016) 1 ALLMR 273 : (2015) 4 MhLj 693

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : Pathan Hamzakhan I., Advocate for the Appellant; Kaldade S.D., AGP, Advocate for the Respondent;

Final Decision : Dismissed

Judgement

R.V. Ghuge, J.

1. Heard Shri Pathan, learned Advocate for the petitioner for a considerable time. Grievance of the petitioner is that by order dated 19-7-2013, the competent authority - Additional District Magistrate, Hingoli has refused to renew the Arms License, obtained by the petitioner in 2007, bearing No. HNL/5/2007. The petitioner preferred an appeal to the Divisional Commissioner, Aurangabad bearing No. 2013/Sapra-1/Kaksha-1/Pol-1/CR-27. The same came to be rejected by the impugned judgment dated 7-12-2013.

2. Contention of the petitioner is that he has been operating/running a business of sale of country liquor and he also owns an agricultural field. He is an active member of Congress-I political party and in the past, he has been Vice-Chairman of the Panchayat Samiti, Hingoli. The petitioner was attacked by unknown dacoits in 2005, who robbed him of his money. It was, in those circumstances that he has obtained the Arms License and he held the license till the issue of renewal

arose.

3. It is further submitted that his license has not been renewed from 2012 onwards pursuant to his first application dated 7-12-2011. It is submitted that without a valid reason or cause and without passing a speaking order, the license of the petitioner has been suspended. The impugned order is rendered unsustainable since the respondents did not make out a cause for suspension of license.

4. The petitioner relied upon section 17 of the Arms Act, 1959 to buttress his contention that there are specific conditions and circumstances, subject to which the licensing authority can either vary or suspend or revoke an arms. license. Shri Pathan, learned Advocate has also relied upon the judgments of the Allahabad High Court in the cases of Ram Naresh Trivedi Vs. State of Uttar Pradesh and Others, and Ram Murari Madhukar Vs. District Magistrate, Sitapur, . It is, therefore, prayed that the impugned order deserves to be quashed and set aside and the license of the petitioner needs to be revived.

5. Learned AGP appearing on behalf of the respondents has filed an affidavit-in-reply. It is specifically mentioned that the license of the petitioner has neither been varied nor suspended nor revoked. The application for renewal of license has been rejected and the license has not been renewed on account of a justifiable cause.

6. Pursuant to the application dated 7-12-2011 filed by the petitioner, the Additional District Magistrate called for a report from the Superintendent of Police, Hingoli dealing with the renewal of Arms license. Pursuant to the said request dated 17-12-2011, the Superintendent of Police, Hingoli, after conducting an enquiry, submitted his report dated 10-1-2012 and informed respondent No. 2 that the petitioner has been involved in the offences under sections 324, 147, 148, 149 and 504 of the Indian Penal Code. Crime No. 37 of 2011 was pending before the learned Judicial Magistrate (First Class), Kalamnuri. It is in these circumstances, that the license has not been renewed.

7. The impugned order dated 19-7-2013 clearly makes a mention of the report received from the Superintendent of Police, Hingoli. It is gathered from the report that the crime registered against the petitioner is pending adjudication. It is also noted that there are certain cases pending against the petitioner. It appears from the said order that the concerned authorities are conscious of the fact that on account of pending cases and offences against the petitioner, misuse of the Arms license cannot be ruled out.

8. By the second impugned order dated 7-12-2013, delivered by respondent No. 3, similar circumstances emerging from the reports are considered and based on the same, the authority concluded that it would not be fit and proper to renew the Arms license of the petitioner until the criminal case pending before the learned Judicial Magistrate (F.C.) Kalamnuri is decided.

9. It, therefore, emerges from the record that the respondents authorities have, on the one hand, declined to renew the Arms license of the petitioner for the reasons mentioned in the impugned orders and on another hand, the said refusal to renew the license is subject to the decision of the criminal case pending before the learned Judicial Magistrate (F.C.) Kalamnuri. Needless to state, in the event, the petitioner gets an acquittal and comes out clean from the pending criminal case, the respondents/authorities would have no objection to consider his application for renewal of license.

10. In the case of Ram Naresh Trivedi (supra), the issue was of suspension of the Arms license. A case against the concerned applicant was pending under section 30 of the Arms Act. Section 30 is in relation to the license holder's contravening any condition of the license or the provisions of the Arms Act, 1959 or Rules made thereunder. In the instant case, a criminal case under the various provisions of the Indian Penal Code, stated hereinabove, is pending. Therefore, in my view, the judgment of Allahabad High Court in the case of Ram Naresh (supra) is distinguishable on facts.

11. The judgment of the Allahabad High Court (Lucknow Bench) in the case of Ram Murti (supra) again deals with the violation of section 17(3) of the Arms Act, 1959 and the pendency of the proceedings pertaining to the violation of certain conditions under section 17 of the said Act. In paragraph No. 9 of the said judgment, the Allahabad High Court has held that it is well settled law that before passing of an order of suspension or revocation under section 13(3)(b) of the said Act, the licensing authority must apply its mind to the question as to whether there was an imminent danger to the public peace and safety. A license cannot be suspended or revoked on the ground of public interest (Janhit). It was in those circumstances that the order of suspension of the arm's license was set aside. Even this case is distinguishable on facts with the petition at hand.

12. Insofar as the supervisory jurisdiction of this Court is concerned, the Apex Court (Five Judges' Bench) has laid down the law in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, and also in the case of Surya Dev Rai Vs. Ram Chander Rai and Others, .

In the case of Sayyad Yakub (supra), the Apex Court has laid down the law under paragraph Nos. 7 and 8 of the said judgment, which read thus:--

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals; these are cases where orders are passed by inferior Courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party

affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath vs. Syed Ahmed Ishaque*). *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, .

"8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be

open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of a legal provision which is alleged to have been misconstrued or contravened."

In the case of *Surya Dev Rai* (supra), the Apex Court has once again defend the scope and jurisdiction of the supervisory powers of this Court in paragraph Nos. 39 (1 to 9) and 39, which read thus:--

38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:--

(1) Amendment by Act No. 46 of 1999 with effect from 1-7-2002 in section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the Courts subordinate to the High Court, against which remedy of revision has been excluded by the Civil Procedure Code Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived

or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate Court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate Court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English Courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the Act, order or proceedings of the subordinate Courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate Court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in super session or substitution of the order of the subordinate Court as the Court should have made in the facts and circumstances of the case.

39. Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Article 226 or 227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. Not less than often the High Court would be faced with dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of

being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where "a stitch in time would save nine ". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge.

13. Having heard the submissions of the learned Advocates, having gone through the record and the provisions of the Act and the judgments cited above, I am of the view that the concerned authorities have applied their mind to the case and have passed a speaking order. In the assessment of the respondent/competent authority, crime registered against the petitioner and the sections of the Indian Penal Code invoked in relation thereto have resulted in the conclusion that the license of the petitioner ought not to be renewed until the criminal case pending before the learned Judicial Magistrate (First Class) Kalamnuri is decided. I do not find any perversity or error in the impugned orders so as to exercise the supervisory jurisdiction of this Court.

14. Learned counsel for the petitioner submits that the case of the petitioner in Writ Petition No. 2412 of 2014 is based on identical facts and that both the petitioners are brothers inter se. He submits that said Writ Petition can also be disposed of accordingly. In the result, since there is no merit in both the petitions, they stand dismissed.