

(1961) 07 MP CK 0029

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 29 of 1960

Ahmadnoor Roshan

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 24-07-1961

Acts Referred:

Arms Act, 1959 — Section 17, 18
Arms Rules, 1924 — Rule 41, 41A
Constitution of India, 1950 — Article 226

Citation : AIR 1962 MP 133 : (1962) JLJ 475

Hon'ble Judges : V.R. Nevaskar, J; H.R. Krishnan, J

Bench : Division Bench

Advocate : Mathur, for the Appellant; S.L. Dubey, Dy. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Krishnan, J.—The petitioner who used to hold licenses for two firearms has come up under Article 226 from two orders of the licensing authority dated respectively, 2-1-1959 and 27-11-1959, the former cancelling the licenses during their currency for license year 1958-59 and directing the deposit of the firearms at the proper police station, and the latter refusing to renew the licenses after their expiry in due course on the 31st March, 1959, the licensee having applied for renewal in ignorance or in intentional suppression of the earlier order of cancellation. The two orders are interconnected in the sense that a renewal was practically impossible after the cancellation, unless it was established by the ex-licensee either that the cancellation was unjustified or that the cause of the cancellation had been removed.

The grievance is that the licensing authority acted without jurisdiction, as it did not give reasons in writing for the cancellation, and further, the refusal to renew was mainly based on this cancellation. The prayer, therefore, is that the authority should be ordered to set aside the said orders, and directed to return the

firearms on the renewed licenses.

2. The questions for decision are, firstly, whether the petitioner's failure to avail of the right of appeal given under the rules, and the very considerable delay in coming to this Court (on 13-3-1960), have been satisfactorily explained; or a special case made out for this Court's interference in spite of the laches on the part of the petitioner; Secondly, whether besides recording the reasons, the licensing authority should communicate them to the licensee, and thirdly, whether the High Court in an application under Article 226 of the Constitution, can consider the merits of the reasons, if any, recorded by the licensing authority in the manner indicated in the rulings of certain High Courts, (such as in *Sardar Chand Singh Vs. Commissioner, Burdwan Division* and *Another, and Godha Singh Jabra Singh v. Dist. Magistrate, Ferozepore* AIR 1956 Punj 33. Finally, there is a factual issue in regard to the communication to the licensee of the cancellation order; but that can be disposed of very briefly.

3. The facts of the case are simple. The petitioner who is a cultivator claiming a status, on which it is unnecessary to express any opinion, was holding licenses for one muzzle-loading gun and one double-barrel gun, which were current till the 31st March, 1959. Even during this period, the licensing authority (Additional District Magistrate) cancelled the licenses u/s 18 of the Arms Act and directed that the firearms should be deposited with the police. The order is dated 2-1-1959. A copy was sent through the police officers to the petitioner, the receipt for which has been signed by him; though he has denied this in the petition, he has in a later affidavit, tried to explain it away by asserting that he gave receipt for what he did not know- Therefore, we have to hold as a fact that the order was communicated to him as the letters show, in the beginning of February 1959.

At the end of the license year the petitioner applied for renewal without referring to the cancellation. The renewal is in accordance with Section 17(a) of the Arms Act, but is not likely to be granted as long as the cancellation is in force; actually, the latter is the more immediate remedy during the currency itself of a license. The petitioner did not appeal, though he was entitled to do so under Rule 41-A of the Indian Arms Rules 1951 within 80 days of his getting information of the cancellation. He waited hopefully till November 1959 when after some correspondence, the renewal was refused. This is also appealable under Rule 41; but again, he did not appeal. After issuing a peremptory notice to Government "seeking justice", he has come to this Court.

4. On both the occasions, the authority did not follow any judicial procedure by informing the licensee of the grounds, asking for explanation or cause, and affording him a hearing. The grounds for the cancellation and refusal were not communicated to him. The petitioner has assumed that the licensing authority is a quasi judicial authority, bound to follow such a procedure, and further that the reasons should themselves be such as to satisfy the conscience of the High Court in case it is invoked under Article 226.

As for the delay, the petitioner has urged that this is a case of gross want of jurisdiction and the delay should be condoned. His original allegation, however, was that the cancellation had not been at all communicated to him and he knew of it only in November, when the fact of the cancellation was given as the main reason for the refusal to renew. As for the period from November to March, it is only four months and the delay, if any, is not considerable.

Point No. 1-

5. The refusal being, to a considerable measure, a consequence of the cancellation, we have in regard to both the grievances to take note of the considerable delay of about 13 months. It is absurd to suggest that the petitioner gave a written receipt for the copy of the order without knowing what it was. Whether or not the police officers at the thana were dissatisfied with the petitioner, and whether or not he had given cause for justifying that dissatisfaction, he certainly knew of the order in February. Actually, the prayer for renewal of the license was only an attempt to secure it in case the cancellation had been overlooked. He was too optimistic; if special circumstances had arisen for renewal within three months of the cancellation, it was for the licensee to show them. He has not done so either in the application for renewal or in the present petition.

6. No doubt, there are decisions to the effect that the powers of the High Court under Article 226 are wide and there are many cases in which they have been exercised in spite of unexplained delay. The plenary nature of the powers is itself a reason why they have to be exercised with caution. The effect of delay has been fully discussed in the Divisional Bench ruling of this Court in *Gajraj Singh Bheru Singh Rajput Vs. State of M.B. and Others*, in which have been examined the citations now placed by the petitioner. The cases in which High Courts have taken action under Article 220 in spite of delay are those where a fundamental right has been, shockingly violated, on the authority concerned had been acting altogether without basic jurisdiction. That is not the position here. So, the delay is itself sufficient to justify the rejection of the petition.

Point No. 2-

7. The failure of the petitioner to avail of the right of appeal is another important reason why it will not be proper to interfere, even if it was otherwise called for. For the appeal under Rule 41-A within 30 days, the time taken in the communication of the order would be condoned. At all events, the petitioner was bound in his own interest to file the appeal and ask for the condonation. Both for this and the appeal from the order of refusal to renew, the appellate authority is the immediate official superior of the licensing authority, that is, the Commissioner in this case.

In principle, a petitioner who refuses to avail of a practicable and easy remedy provided by law or statutory rule, should be refused relief under Article 226, unless he shows exceptional circumstances, or the extreme impracticability in

that particular instance, of availing of the apparently straight remedy. An appeal under Rule 41 or 41-A was particularly appropriate, because the executive authority immediately superior to the licensing authority will be able to examine the factual correctness and the sufficiency of the reasons better than the High Court which is unconnected with such executive functions. So, failure to appeal is particularly serious in a case like this, and would justify the dismissal of the petition.

Point No. 3-

8. The assertion that the licensing authority should act "judicially" is negated by the decision of this Court reported in *Moti Miyan Vs. Commissioner, Indore Division and Others*, . It is unnecessary to repeat the reasoning. In that judgment, the tests distinguishing an administrative order from a quasi judicial order have been set out and it is categorically held that an order refusing to renew a licence is an administrative one, and as such could not be assailed on the ground that the licensee had not been heard by that authority. No doubt, there it was an order coming u/s 17, but broadly speaking, the principles are the same, the orders of cancellation and of refusal to renew being, as it were, two different but closely allied species of the same genus; whatever has been said in that judgment in regard to one applies with equal force in regard to the other. The same judgment discusses the rulings of the type of the *Calcutta* and the *Punjab* decisions noted earlier. There, the scope of the High Court's interference has been set out far too widely.

While there may be cases in which we can appropriately look into the reasoning given by the authority, the purpose is not to satisfy ourselves as to their sufficiency on the facts, but only to see if the reasons are in accordance with the purpose mentioned in the statute. This really was the position in the case *Sunderlal v. State* 1961 Jab LJ (SN) 80 No. 144. Otherwise, the High Court cannot go into the study of whether the reasons are factually correct and justify the action taken. As for the procedure to be followed by the authority, it is purely administrative, and there is nothing illegal as long as there is nothing patently ulterior and the purpose is the only one given in the law. To expect the licensing authority to go into any elaborate, publicised and time-killing inquiry, is to kill the very purpose for which the system of licensing firearms has been instituted.

Point No. 4-

9. Certainly, the Licensing authority cannot exercise powers in a haphazard way. There are three checks provided by law for assuring the licensee that the administrative power is exercised in public interest, for the purpose given in the law, and under control. Firstly, the reasons should be recorded; secondly, they should be relatable to the security of public peace; and thirdly, they are subject to further examination in appeal by the administrative authority immediately superior. In this case, the order does not record the reasons in a manner which could at once have enabled the appellate authority to see whether they were

correct and sufficient. There was a police report and the licensing authority after examining it, ordered the cancellation, the reason being "as recommended by the Superintendent of Police". Frankly it is not very illuminative; nor would anybody be in a position without examining the connected police report to say what precisely in factual terms the reasons were. On the other hand, the reason need not be communicated to the party concerned.

Actually, in most cases, there would be no harm in communicating the reasons for cancellation or as for that matter, for refusal to renew to the licensee. But this is a matter concerning the security of the public peace, and there may be quite a number of occasions when it would be most unwise to communicate them to the licensee. To take an extreme example, if the authority is going to cancel the license and get the firearm deposited because of the licensee's connection with a gang of dacoits, it would obviously be against the security of the public peace to tell him that he was connected with such and such gang and had a hand in such and such crimes. All that the law requires is that there should be a record in writing of the reasons so that the appellate authority may be able to examine them and correct the decision wherever proper, and the High Court itself, after the appellate authority had done its work, see if the reasons are relatable to the purpose mentioned in the law. At the first instance, whether or not the reasons are recorded, would be the concern of the authority to whom the appeal would be presented. If, while considering the appeal, the appellate authority finds" that no reasons have been given, it will ask for them. The High Court does not come in at all at that stage, except when the licensee who finds genuine difficulty in prosecuting his appeal for this reason, prays to the High Court that the authority might be directed to record the reasons on the file so that his appeal may be more effective. That also is not the position here.

10. Thus, all things considered, we find no ground justifying our interference in this petition. It is accordingly dismissed. Hearing cost Rs. 50/-(fifty) payable by the petitioner to the opposite party.

Newaskar, J.

11. I agree.