
(1961) 03 GAU CK 0008
In the Gauhati High Court

Badshah Khan

APPELLANT

Vs

Dist. Magistrate of Lakhimpur and Others

RESPONDENT

Date of Decision : 29-03-1961

Acts Referred:

Constitution of India, 1950 — Article 223, 226

Citation : (1961) CriLJ 195

Hon'ble Judges : S.K. Dutta, J;G. Mehrotra, J

Bench : Division Bench

Judgement

G. Mehrotra, J.—The petitioner was granted a gun license on 21st of November 1951 covering gun No. 16203 BSA. During the period of continuance of his license, the District Magistrate by his order dated the 11th of March 1959, cancelled the aforesaid gun license. By means of this present petition, under Article. 223 of the Constitution of India the petitioner has asked for a writ of mandamus directing the opposite parties to cancel and not to give effect to the order dated the 11th of March, 1959.

2. After the order was passed by the District Magistrate on the 11th of March, 1959, it appears that the petitioner filed an appeal to the proper authority. The appellate authority by its order dated the 1st of April, 1960 disposed of the appeal and held that as the petitioner had already applied for review to the District Magistrate of his previous order, the appeal could not be entertained. The appellate authority, however, expressed a hope that the District Magistrate will consider the review petition. After the matter went back to the District Magistrate, he by his order dated the 16th of June, 1960 rejected the petition for review. After this, the present petition was filed in this Court.

3. The main ground taken by the petitioner is that the order passed by the District Magistrate does not comply with, the mandatory requirements of Section 18(a) of the Indian Arms Act, 1878, hereinafter called the Act. Before we deal with the merits of the petition, it will be necessary to dispose of two preliminary objections raised by the learned Counsel for the State. It is firstly urged that the

remedy of the petitioner was in the circumstances of the case to approach the appellate authority for reconsideration of the appeal.

The review petition was disposed of by the District Magistrate after a direction was issued by the appellate authority and when the review petition had been finally disposed of, the remedy of the petitioner was to approach the appellate authority. It is further contended that if the petitioner wanted to challenge the validity of the order of the 11th of March, 1959, he should have come to this Court at an earlier stage. The petition is a belated one and this Court should not exercise powers under Article 226 of the Constitution.

4. No limitation is prescribed for the exercise of powers under Article 226 of the Constitution, but if there has been a delay, this Court will be reluctant to exercise its discretion under Article 226 of the Constitution. Each case will have to be looked on its own facts. In the present case, an appeal was filed. The right of appeal has been given to the petitioner under the provisions of the rules.

That appeal itself was rejected on the ground that there was a review petition pending. The final orders on the review petition were passed on the 16th of June 1960 and it cannot, therefore, be said that the petitioner was not taking legal steps to vindicate his rights, and, therefore, it cannot also be said that there has been a delay so as to disentitle him to get a relief from this Court under Article 226 of the Constitution.

5. The second preliminary point raised is that as the period of the license had expired, no useful purpose will be served by granting any relief to the petitioner. This Court, no doubt, under Article 226 of the Constitution cannot grant a license to the petitioner but if the order of cancellation of the license is upheld, the result may be that in future when the petitioner applies for a gun license his case may be prejudiced. At the time when the license was cancelled the petitioner had a subsisting right which he could enforce by means of a petition under Article 226 of the Constitution. It cannot, therefore, be said that as the term of the license had expired the petitioner has got no right to approach this Court under Article 226 of the Constitution.

6. Coming to the merits of the case, the impugned order reads as follows:

Scen confidential reports regarding Sri Badsha Khan and Moran Babu. Perused also relevant records. The materials disclosed in the reports make it clear that Sri Badsha Khan is not a suitable and desirable person to hold a license for a fire-arm. Possession of a gun by Sri Badsiah Khan is prejudicial to the security of the public peace...

Section 18(a) of the Indian Arms Act runs as follows:

18. Any licence may be cancelled or suspended:

(a) by the officer by whom the same was granted, or by any authority to which he may be subordinate, or by any Magistrate of a District or Commissioner of

Police in a presidency town, within the local limits of whose jurisdiction the holder of such license may be, when, for reasons to be recorded in writing, such officer, authority, Magistrate or Commissioner deems it necessary, for the security of the public peace to cancel or suspend such licence;...

It is a mandatory requirement of the provision of Section 18 that the authority which has got power to cancel the license must record its reasons on which it has deemed it necessary for the security of the public peace to cancel or suspend such license. We have read the order, and, in our opinion, it does not comply with the mandatory requirement of Section 18(a) of the Arms Act.

No reasons have been given by the District Magistrate as to why he deemed it necessary for the security of public peace to cancel or suspend the license. It is true that the District Magistrate when passing an order u/s 18 of the Act; acts in his administrative capacity, but even administrative orders can be quashed by this Court under Article 226 of the Constitution provided the authority has not complied with the mandatory provisions of the law.

Mr. Goswami's contention is that the reasons have been recorded by the District Magistrate and it is not open to this Court to examine the reasons and see for itself whether the reasons were sufficient for passing an order u/s 18 of the Act. As we have already pointed out, we do not find any reasons recorded in the order itself, and, therefore, the order, in our opinion, does not comply with the provisions of Section 18 of the Act. At this stage it: may be necessary to consider certain authorities cited at the Bar. The first case cited by the learned Counsel for the petitioner is the case of Beni Chand v. District Magistrate, Banda, reported in AIR 1953 All 478.

It was held in this case that one of the requirements of Section 18(a) of the Indian Arms Act is that the authority suspending or cancelling a license must himself record the reasons why the order has been passed; and further it should appear from the order that it was passed because it was necessary for the security of the public peace to do so. Where none of these two essential ingredients mentioned in the section is to be found in the order, it is without jurisdiction and must be quashed. The order in that case read as follows:

I agree with the S. O. Kotwali. There seems to be no justification in leaving the firearms with the accused when they are being Prosecuted in such a callous and heinous offence.

In, this case, no reasons are recorded by the District Magistrate himself even for coming to the conclusion that Badshah Khan was not a desirable person much less why he deemed it necessary for security of public peace to cancel the, license. He has relied entirely upon: the confidential report. That cannot be said to be recording reasons by himself. Even if some sort of reasons are given and if the reasons are said to have no connection with the security of public peace, it will be deemed in the eye of law as if no reasons have been recorded at and from that aspect also it cannot be said that reasons were recorded in the order.

The next case which followed this Allahabad case is the case of Haji Md. Vakil Vs. Commr. of Police and Another, . It is not necessary to give in detail the facts of the Calcutta case as it follows the earlier Allahabad case, which I have already referred to. The next is the case of Samarendra Nath Roy Vs. R.N. Basu, This case also reiterates the same principle as laid down in the earlier case.

7. The learned Counsel for the State has referred to the case of Godha Singh Jabra Singh Vs. District Magistrate, Ferozepore and Another, There are certain observations in this decision which apparently lend support to the contention of the opposite party, but when the case is examined, it will appear that the facts of that case were entirely different. There the report was submitted to the District Magistrate and on that report itself he ordered cancellation of the license.

That report itself formed part of the order. In that view of the matter, the order in effect incorporated the reasons given in the report and the report thus became part of the order, and, it cannot be said that the order suffered from the defect of not giving the reasons as required u/s IS of the Act. At page 33 of the report of this case, it will appear that the order of the District Magistrate was contained on the sheet containing the report of the Station House Officer and others.

The report thus formed part of the order itself. Moreover, in that case the initial grant of the license itself was illegal, as will appear from the affidavit filed by the State, and, therefore, in the eye of law there was no license which existed. It is for this reason that in the concluding portion of the judgment their Lordships of the Punjab High Court have stated that in their opinion no case had been made out for interference by that Court in regard to the granting of license.

The next case, referred to is the case of Kishore Singh Vs. State of Rajasthan and Another, There the law has been exhaustively dealt with and it has been laid down clearly under what circumstances the High Court can interfere with the exercise of administrative power by the officers concerned. The main point raised in that case, however, was that as the order affected the fundamental right of a citizen, he was entitled to a hearing and failure to give him an opportunity to produce evidence or to be heard amounted to violation of the principles of natural justice.

That contention was repelled. The order itself is not quoted in that judgment and it is not possible to find out whether there were reasons given or not. It cannot be said that the order in that case did not comply with the provisions of Section 18 of the Arms, Act, It was then contended by Mr. Goswami that even if there are no reasons in the order itself, it is open to the State to supplement the reasons by filing an affidavit before this Court. We do not think that there is any substance in this contention.

The requirement of the reasons being given in the order itself is a mandatory requirement and that requirement cannot be fulfilled by supplying the reasons before us by means of an affidavit. Existence of certain preliminary condition may give jurisdiction to an administrative authority to act and there may be a

dispute before this Court whether these preliminary conditions exist or do not exist. In such a case that may be proved by filing an affidavit before this Court but where the statute requires that the order itself should contain, reasons, that lacuna cannot be filled by filing an affidavit before this Court.

Mr. Goswami lastly relied upon the case of Kishori Lal Kanoo v. Deputy Commissioner, Kamrup, reported in (S) AIR 1955 Gau 183, in support of the contention that even though this Court may hold that the order was illegal, still having regard to the circumstances of the present case no relief should be granted to the petitioner. Even that decision does not support the contention of Mr. Goswami,

There the license was granted for the sale of firearms. That license was cancelled and the question raised was that as the petitioner could claim compensation for wrongful cancellation of the license, his remedy was to file a regular suit. So far as his right to get a fresh license is concerned, it was not affected inasmuch as this Court had held that the order was illegal. Under these circumstances the petition was rejected.

8. In the result, therefore, we allow this petition, quash the order of the District Magistrate cancelling the license of the petitioner with costs which we assess at Rs. 100/-.

S.K. Dutta, J.

9. I agree.