

(1987) 06 KAR CK 0035
In the Karnataka High Court
Case No : Writ Petition No. 16532 of 1986

G. Lakshman

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 25-06-1987

Acts Referred:

Arms Act, 1959 — Section 13, 14, 14 (1) (b) (i) (3), 15, 17

Citation : (1987) ILR (Kar) 2177

Hon'ble Judges : Bopanna, J

Bench : Single Bench

Advocate : V.P. Raman, for P. Vishwanatha Shetty, for the Appellant; N. Santosh Hegde, General, for the Respondent

Final Decision : Allowed

Judgement

Bopanna, J.—The petitioner has questioned the correctness of the order passed by the Government of Karnataka (Home Department) refusing to renew the four licenses held by him which were valid up to 31-12-1984. It is not in dispute that these licenses were granted to him to enable him to carry on business in the manufacture and sale of Fire Arms under the name and style of "Dwaraka Arms Stores" situate at Sathyanarayanapet, Bellary. The State Government being the Renewal Authority under the Arms Act, 1959 (in short the Act), the petitioner made an application for the renewal of these licenses in accordance with the provisions of Section 15 of the Act. The State Government made an order on 13-12-1985 rejecting his application for renewal. This order was challenged by the petitioner in W. P. No. 19681 of 1985 and this Court by its Order dated 16-7-1986 set aside the said order on the short ground that the petitioner was not afforded an opportunity of being heard before the said order was made depriving him of his licenses. Accordingly, the State Government heard the petitioner on 20-8-1986 and the impugned order was made by the Home Secretary to the State Government on 27-8-1986.

2. A few facts which are not in serious controversy should be noted for a proper

consideration of the contentions urged by the Learned Counsel for the petitioner as also by the Learned Advocate General. The petitioner was an employee of the State Government till about 1965. He is a Diploma Holder in Mechanical Engineering and was employed as an Instructor in the Government Polytechnic College, Bellary, in the year 1956. It is common ground that even during his employment in Government service he was acting as a Technical Adviser to his brother-in-law one Jaya Vittal who had obtained from the Government of Andhra Pradesh a licence in the year 1964 in Form No. XI bearing Licence No. 25 of 1964 u/s 5(1) of the Act read with Rule 21 of the Rules framed thereunder for the purpose of conversion, repair and sale of arms and ammunition. It transpires that in view of the petitioner's technical qualifications he was taken as "a sleeping partner by his brother-in-law. There is some dispute whether the petitioner had obtained permission from the Director of Technical Education for the purpose of tendering technical advice to his brother-in-law. But, in my view, it is not very material to go into the dispute relating to the petitioner's entry into Fire Arms business since the authorities, viz., the Central Government and the State Government, had granted valid licenses to the petitioner in Form No. 9 ever since 1969 in which year the petitioner took over the business as the sole proprietor and the licenses granted to the firm of Dwaraka Arm Stores continued right up to 1984 without any interruption.

3. The relevant facts relating to the licenses in question which are not in dispute should be noted. After petitioner took over the business as the sole proprietor, he obtained another licence from the Government of Karnataka in Form No. XI for the purpose of conversion, repair, test and sale of arms and ammunitions at Bellary in the year 1968. The said licence was in Form No. XI and numbered as Licence No. 3 of 1968. The business under the said licence continued till 1977. Subsequently, this licence was converted into licence in Form No. IX pursuant to the policy of the Central Government which treated the conversion licence in Form No. XI as licence for manufacturing arms and ammunitions by granting Form No. IX licence. The petitioner made the necessary application for grant of manufacturing licence on the basis of Force No. XI licence held by him and the Government of India, after making the necessary inquiries in this regard, granted him licence bearing No. 1/77 in Form No. IX. Under this licence the petitioner was granted permission to manufacture 250 breach load and muzzle load guns per annum.

Subsequent to the grant of the licence bearing No. 1/77 in Form No. IX, the Government of India, after making the necessary inquiries and in consultation with the Government of Karnataka and Andhra Pradesh amalgamated Licence No. 25 of 1964 held by the petitioner earlier with Licence No. 1 of 1977 and granted a comprehensive licence bearing No. 67/ 78 in Form No. IX fixing the quota of manufacture to 700 guns per annum. This licence bearing No. 67/78 in Form No. IX is produced as Annexure "C" in the petition- Annexure "C" discloses that the original licence bearing No, 1/77 for manufacture of 250 guns stood cancelled and the State Government was requested to cancel the copies of this

licence on the records of the District Magistrate, Bellary.

4. The petitioner also obtained another licence from the Government of India bearing No, 12 of 1979 in Form No. IX for manufacture of 3,00,000 blank fire cartridges per annum and 1,200 boxes of percussion caps per annum. In that application filed by the petitioner he had stated that he proposed to manufacture blank fire cartridges and percussion caps in the premises where he was manufacturing guns. He was granted licence No, 1/80 in Form No. IX for manufacture of 1,00,000 kilograms of lead shot projectiles per annum. Again in the year 1981 he was granted another licence bearing No. 1/1981 for manufacture of 3,75,000 short gun cartridges having single projectile or multiple projectiles of less than 5 mm dimension. According to the petitioner, all these licenses, viz., licenses bearing Nos. 12/79, 1/80 and, 1/81, were granted to him after the Central Government conducted the necessary inquiries and after being fully satisfied that he was entitled to the grant of the same. In the applications for these licenses he had mentioned that he would be manufacturing arms and ammunitions at premises bearing No 46/18 Gandhinagar, Bellary, now shifted to T.S. No. 607, 473 474, Sathyanarayanapet, Bellary. The Revenue Authorities, the Fire Brigade, P. W.D., Inspector of Factories, Electricity Board and the Municipality had no objection for the grant of licenses referred to above to the petitioner. The endorsement bearing No. MAG/ARMS, 242/82-83 issued by the District Magistrate, Bellary, which is produced at Annexure "E" in the Writ Petition shows that the District Magistrate had noticed the change of place of business from premises No. 46/18, Gandhinagar, Bellary, to T.S.No. 473, 474 and 607. That letter is also proof of the fact that the petitioner's 2 sons, viz., Jagannath and Raghunath, were also permitted to be inducted in the business of the petitioner as joint proprietors and that the petitioner was "possessed of 4 licenses as on 8-9-1982, viz., Licence No. 67/78 for the manufacture of Breach Load and Muzzle Load guns, Licence No. 12/79 for manufacture of blank fire cartridges, Licence No. 1/80 for manufacture of lead shots and Licence No. 1/81 for manufacture of Gun cartridges. The Government of India was also informed by the Under Secretary to the State Government under Annexure "F" dated 30-9-1982 that the admission of the petitioner's sons as joint proprietors as also the change of the premises in the manufacturing licence held by the petitioner had been effected in the records of the Home Department Office on the basis of the photostat copies of the licenses furnished by the petitioner.

5. From these facts it could be gathered that the petitioner was carrying on business in the manufacture of guns (B.L. and M.L.) till September 1984 on the basis of the licence bearing No. 67/78. However, it transpires that since the manufacture of 700 guns was found to be uneconomical the petitioner made a representation to the Government of India to enhance the quota to 9,300. The Government of India, in the light of the decisions of the Supreme Court in similar cases arising out of the applications made by the manufacturers of guns in Jammu and Kashmir, enhanced the quota to 3,000 guns per annum and he was accordingly permitted to manufacture 3,000 guns per annum. It could thus be

seen that the petitioner till 1984 was continuously engaged in the manufacture, repair and conversion of arms and ammunitions under Form No. IX licenses held by him and these licenses were granted by the Government of India (which is the Licensing Authority under the Act) after making the necessary inquiries. It is not in dispute that the petitioner is one of the 3 licence holders in South India for the manufacture of guns and the remaining 130 licenses are granted to the manufacturers in North India mostly concentrated in Jammu and Kashmir, Uttar Pradesh and Bihar.

6. Since these licenses granted to the petitioner were about to expire on 31-12-1984, he made an application for the renewal of the same on 13-11-1984. In law, his application for renewal had to be considered by the State Government before the expiry of the renewal period, i.e., 31-12-1984 But, it is not in dispute that the same was not considered by the State Government till 6-12-1985. Finally the Home Secretary by an endorsement dated 6-12-1985 rejected the petitioner's application for renewal of the 4 licenses. The petitioner did not know the reasons for such rejection and, therefore, he made an application requesting the respondent to furnish him with the reasons for refusing to renew the licenses. The respondent gave the reasons by its order dated 13-12-1985 which was, as noticed earlier, quashed by this Court in W.P. No. 19681 of 1985.

7. The reasons given for refusal to renew should be noticed since they have some bearing on the arguments advanced by the Learned Counsel for the petitioner. The six reasons given by the respondent briefly stated are as follows :

(i) That the petitioner was holding a licence during 1982 for manufacturing five chambered, chamber-loading gun while he was licenced to manufacture Breach Loading/ Muzzle Loading guns. This amounts to violation of Condition No. 5 of Licence No. 67/78 ;

(ii) That the petitioner's licence did not cover the "machineries" for the manufacture of fire arms and he was in illegal possession of machinery to manufacture fire arms and on that ground his licence cannot be renewed ;

(iii) That he had suppressed material facts in obtaining the original licence from the Government of India in that the State Government has now knowledge of the fact that he was a Government, employee in the year 1966-67 and he was converting fire arms since 1964 and onwards which is an offence under the Indian Penal Code ;

(iv) That the petitioner was involved in a series of criminal cases over the years and he was therefore a person unfit to hold even a licence for possession of fire arms as provided u/s 14(1)(b)(i)(3) of the Act ;

(v) That the petitioner is prima facie guilty of an offence u/s 3 of the Official Secrets Act as could be seen from the Judgment of this Court in Crl. P. No. 126 of 1986 ;

(vi) That the petitioner was possessed of some parts of revolver manufactured in

his premises without a licence when his premises was searched on 12-10-1984. u/s 2(1)(e)(iii) of the Act, even parts of fire arms are also considered as fire arms and, therefore, manufacture of parts of fire arm other than the type for which the licence in Form No. IX had been granted is violation of Condition No. 5 of the aforesaid licence.

As regards licence Nos. 12/79, 1/80 and 1/81 the renewal was refused on the following grounds ;

i. Suppression of facts in that the first licence, viz., Licence No. 12/79, was obtained by the petitioner by suppressing the fact that his firm had also manufacturing facilities for fire arms, live cartridges and lead shot projectiles in the same premises. If this information had been furnished, the licensing authorities would have invoked the provisions of Section 17(3)(c) of the Act warranting revocation of the licence.

ii. The petitioner had obtained the original licence by suppressing the material fact that he was in Government Service at Bellary and now that Government has knowledge about his being a Government employee in 1966-67, his licenses could not be renewed ;

iii. The petitioner was involved in a series of criminal cases rendering him unfit to hold a licence even for possession of fire arms ;

iv. There was a prima facie case against him u/s 3 of the Official Secrets Act.

The very same reasons more or less were given for rejecting his application for renewal of his licence No. 67/78.

8. In the subsequent hearing before the Respondent, the petitioner raised the following contentions:

i. That respondent had first made up its mind to refuse renewal of the 4 licenses and, thereafter, recorded the reasons for the said refusal which is an after thought ;

ii. In terms of Section 15(3) of the Act, there were no compelling reasons for the Government to decide against the renewal of the licenses. Moreover, renewal of these licenses should have been treated as automatic in the year 1985 since the specific acts of commission or omission on the part of the petitioner which were brought to light in the year 1984 did not warrant such refusal,

iii. The petitioner's fundamental right to carry on business under Article 19(1)(g) of the Constitution should not be affected on minor inconsequential grounds.

iv. The report of ballistic expert on certain disputed facts fully supported the case of the petitioner.

v. The petitioner was not required to take a separate licence for machinery for manufacture of arms and ammunitions. In no case separate licenses are given for the machinery to manufacture arms and ammunitions under the Act.

vi. The petitioner could not be considered as a person unfit to hold a licence under the Act. The criminal cases referred to by the authorities are not relevant since he had not been convicted in any of those cases.

vii. The petitioner's employment as Government Servant in the year 1965 could not be said to be suppression of material facts for renewal of the licenses validly held by him.

9. The respondent on consideration of these contentions made the impugned order holding that there was no good ground "for revising or amending the earlier substantive decision of the Government in having refused to renew the said four licenses".

According to the respondent, a) the grounds for refusal in the earlier order which was quashed by this Court were recorded in consultation with the Law Department and approved by the Government on 5-12-1985 and those grounds were also recorded fully on that day. Therefore, the provisions of Section 15 of the Act had been fully complied with by giving reasons as required u/s 14(3) of the Act. Consequently the reasons given by the Government in the earlier impugned order were not an after thought.

b) The reasons given by the Government in the earlier order are in 2 parts. The first part relates to refusal to renew the licence bearing No. 67/78 and the 2nd part relates to refusal to renew the other three licenses referred to above. The respondent reiterated its earlier view for refusal to renew those 4 licenses on the following grounds :

(i) Licence No. 67/78 : Even though the report of the Ballistic expert supported the case of the petitioner that 5 chambered loading gun which was admittedly manufactured by the petitioner in his factory could also be described as Breach Loading arm, it would be difficult for the Government to accept that description by the Ballistic Expert as correct in view of Rule 20(1) of the Rules which reads as under :

"The licensing authority while granting a licence in Form IX shall show clearly in the licence Form :

i) the categories and description of the arms or ammunition covered by the licence ;

ii) the transactions permitted in respect of the different categories of arms or ammunition, and

omit any transactions, or categories of arms or ammunition, not covered by the licence."

Since five chambered revolving gun is not specifically covered by the licence in Form No. IX, it is perfectly valid to infer that the petitioner was not permitted to manufacture such an arm.

(ii) The petitioner was in possession of unlicensed machinery for manufacturing fire arms in the light of provisions of Section 2(1)(c) of the Act read with Rule 3 of the Rules and Schedule I to the Rules and Rule 4 of the Rules read with Schedule II of the Rules A separate licence for machinery including parts thereof for manufacturing arms and ammunitions was required. Inasmuch as such machineries are specifically covered by a separate licence, it would be open to the licensee holding a licence in Form No. IX to install excess capacity for the manufacture of arms and ammunition. That would nullify the entire purpose of the Act since such a situation would lend itself to misuse in the manufacture and supply of arms and ammunitions in a manner unaccounted for and in the process endanger public safety and security and public peace.

(iii) The petitioner had suppressed the material facts in that he was in Government service when he took over the fire arm business. When he applied for the original licence he did not bring to the notice of the Central Government that he was a Government servant ;

(iv) The petitioner is involved in a number of criminal cases and, they are pending against him. Though in most of the cases "B" reports were filed, non-conviction in the criminal cases per se does not altogether remove the stigma attached to such proceedings and the Renewing Authority could take the cumulative effect of the involvement of the petitioner in a fairly large number of criminal cases over a period of time ;

(v) He was in possession of parts of a revolver in his premises which were not covered by the licence. On this point respondent differed from the Ballistic Expert who had opined that those parts were parts of Dummy Revolver and could not be converted into a lethal fire arm, with small modifications. The Ballistic expert had opined that for making a dummy revolver an effective fire arm, its barrel and cylinder would have to be bored for housing ammunition and a firing pin had to be provided in order to fire the ammunition. But the respondent took the view that these modifications were simple modifications and the petitioner equipped with machinery for manufacturing arms and ammunitions could have easily converted the dummy revolver into a live revolver. On this premise, it came to the conclusion that "Without alleging any malafide on the part of the applicant", it is abundantly clear that he was in the process of manufacturing a revolver. Therefore, possession of half finished weapon unauthorisedly was in violation of the Act and the Rules.

The reasons given in paras iii, iv and v above are common to Licence No. 67/78 and to the other 3 licenses. The respondent also reiterated its earlier reasoning relating to the other 3 licenses, viz., that the petitioner had failed to mention the fact that he would be manufacturing cartridges and lead shots in the same premises where he was manufacturing fire arms and live gun cartridges;

According to the respondent "the entire structure of the Act" and the Rules framed thereunder provided for stringent measure against a situation that may

be created by permitting manufacture of blank fire cartridges at the same place where the manufacture of lead shot projectiles and shot gun cartridges was carried on. It was of the view that there would be risk of indiscriminate misuse of the licensing capacity for blank fire cartridges for the purpose of manufacturing shot gun cartridges and other lethal ammunitions "in the manner unaccounted for and endangering public safety in the process."

10. Learned Counsel for the petitioner contended that (i) the impugned order is wholly illegal and suffers from errors apparent on the face of the records. According to him, no reasonable person or quasi judicial authority would have refused to renew the licenses sought for on the basis of the available material on record; (ii) that the impugned, order was passed solely with a view to justify the earlier order made against the petitioner and was not in accordance with the spirit of the order made by this Court quashing the earlier order of the authorities. This is evident from the fact that the respondent had relied on the earlier view of the Law Department and of the Government; (iii) that none of the grounds mentioned by the respondent were relevant to refuse the renewal of the licenses sought for. They were all extraneous and irrelevant to the issue relating to the renewal of the licence in question regard being had to the relevant provisions of the Act; (iv) that the cases filed against the petitioner were only on account of extraneous considerations and personal prejudices and, therefore, they would not in any way be relevant for the purpose of exercising the discretion under Sections 14 and 15 of the Act; (v) that the respondent had misdirected itself in the application of Article 19(1)(g) of the Constitution. The right of carrying on business in firearms is a fundamental right and respondent should have kept in view the basic requirement of law, viz., renewal of the licenses could not be refused on flimsy and extraneous considerations. Respondent had also failed to consider the powers conferred on it u/s 17 of the Act for variation, suspension and revocation of licenses. All the reasons given by respondent were based on "prejudice built up" against the petitioner ; (vi) that the respondent having failed to place reliance on the report of the Ballistics Expert, what it should have done was to refer to another authority or expert for a second opinion instead of reaching its own conclusion contrary to the" opinion of the Ballistics Expert. There was no material at all to come to the conclusion that a dummy weapon could be improved upon to make an effective lethal weapon. Learned Counsel for the petitioner strongly relied on Annexure "L" filed in the Writ Petition in support of his contention that the Deputy Inspector General of Police had been informed by the Deputy Secretary to the Government of India that all licence holders in Form Nos. I and IX were permitted to make replicas of weapons which were classified as antique weapons. A Weapon is classified to be an antique weapon if it is more than 100 years old and as such the D.LG. was informed that the weapon seized, viz. the dummy weapon, should be examined for determining whether it was an antique weapon and "action taken accordingly"; (vii) that respondent was actually inclined to support the Departmental view and the construction placed by it on the relevant provisions of

the Act for coming to the conclusion that the petitioner should have possessed a separate licence for possessing machinery for manufacturing arms and ammunitions but this is not supported by the plain language of the relevant provisions of the Act and the Rules. He also submitted that it was a fit case for this Court to direct the respondent to grant renewal of the licenses sought for instead of making an order of remand for fresh enquiry. In support of these contentions, he relied on several rulings of the Supreme Court and the High Courts including the decision of this Court. He also submitted that the facts in this case would bring it within the purview of "legal malafides" as propounded by the Supreme Court in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, and on that ground alone the impugned order was liable to be quashed.

11. Learned Advocate General appearing for the respondent supported the impugned order mainly on 3 grounds, viz., that the petitioner had no licence to manufacture 5 chambered revolving short gun since that gun was not covered by Licence bearing No. 67/78; that he had no licence in Form No. 1 for possessing machinery for manufacturing fire arms and ammunitions and the licence that he had in Form No. IX did not permit him to possess machinery for manufacturing arms and ammunitions ; that the Criminal cases now pending against the petitioner and the earlier cases filed and disposed of earlier were relevant consideration for refusing to renew the licenses and any one of these grounds was sufficient to disqualify the petitioner from claiming the renewal of the licenses. He also submitted that provisions of Sections 13, 14 and 17 of the Act which are applicable to the facts of this case make it clear that any one of the grounds mentioned in these provisions would be sufficient for not renewing the licenses in question. He also relied on a number of decisions in support of these contentions which would be considered presently. Additionally, he submitted that in any event this is a fit case for remand to the appropriate authority in case this Court comes to the conclusion that the impugned order is bad in law and this is not a case for making a positive direction to the respondent to renew the licenses sought for.

12. The relevant provisions of the Act and the Rules should be noticed before I consider the competing contentions of the learned Counsel.

This Act came into force on 1-10-1962. It repealed the Indian Arms Act, 1878 with effect from that date. It is a post Constitution Act and its interpretation as also the Rules made thereunder must stand the scrutiny of the Constitutional guarantees conferred on the petitioner under Part III of the Constitution. Though it was contended by the learned Advocate General in the return filed by him that there was no fundamental right to carry on business in fire arms on the analogy of non-existing fundamental right to carry on business in the manufacture of intoxicants, he did not seriously press this contention. In the manufacture of fire arm, there is a fundamental right to carry on business which is protected under Article 19(1)(g) of the Constitution subject to reasonable restrictions that could

be imposed by the authorities in public interest. Possession of fire arms was a right to property under the 1878 Act, *P. Narasimha Reddy Vs. District Magistrate, Cuddapah*, and became a fundamental right under the Act, *If any authority is necessary on this point, the judgment of the Allahabad High Court in State of U.P. and Others Vs. Jaswant Singh Sarna*, may be noticed. Likewise possession of machinery to manufacture arms would also be a fundamental right in terms of Article 19(1)(g) of the Constitution.

13. The Act consists of 6 Chapters. Chapter 1 deals with definitions; Chapter II regulates acquisition, possession, manufacture, sale, import, export and transport of arms and ammunitions; Chapter III makes provisions for granting of licenses, for refusal of licenses, for renewal of licenses, fees, etc. for licenses, variation, suspension and revocation of licenses and appeals against the orders of the Licensing Authority, refusing to grant licence or varying the conditions of licence, suspending and revoking licenses; Chapter IV is not very material for the purpose of this case and also Chapter V since these 2 Chapters deal with powers and procedures to check the validity of the licenses held by the licensees and offences and penalties for violation of the provisions of the Act. Chapter VI is also not relevant for the purpose of this case, since it deals with the miscellaneous provisions in relation to this Act. In this petition we are dealing specifically with the case of a licensee who was empowered to manufacture and sell fire arms and ammunitions. So the line of enquiry for a proper interpretation of the relevant provisions of the Act is what are the relevant considerations to be kept in view when this Court is confronted with a case of refusal to renew a licence already granted by the Competent authority for the manufacture and sale of fire arms? Is there any provision in the Act which specifically deals with the manufacture and sale of fire arms? A close scrutiny of the Act, in my considered view, will bring out the scheme of the Act in so far as it relates to manufacture and sale of fire arms in contra distinction to acquisition, possession and transport of fire arms and ammunitions. The relevant provisions which require to be noticed in this regard are :

Sections 2(c), (e), (e)(iii), (i)(i) in Chapter I of the Act; Sections 3, 4, 5(i), 6, 7; 9(1)(a) and (b) in Chapter II of the Act; Sections 13(2-A), 13(3)(b), 14(1)(b)(i) (1) & 14(1)(b)(i)(2); 14(1)(b)(i)(3), 15(3), 17(3), 17(5) and 17(9) of the Act in Chapter III; Rules 3, 20 and 24, Items 2 and 3 in Schedule I and Items 1 and 9 in Schedule II.

Section 2(c) defines "arms" and it means and includes "fire arms" and "machinery for manufacturing arms". Section 2(e) defines "firearms" and it means and includes parts of arms and machinery for manufacturing fire arms. Section 2(i) defines "prohibited arms" and it means :

"firearms so designed or adapted that, if pressure is applied to the trigger, missiles continue to be discharged until pressure is removed from the trigger or the magazine containing the missiles is empty, or...."

Provisions of Section 3 relate to acquisition of, possession of or carrying any fire arms and ammunitions. Section 4 provides for licenses for acquisition, possession or carrying of arms other than fire arms. In our case we are concerned with only Section 5 of the Act which deals with manufacture, sale, etc. of fire arms. According to this Section, a person who wants to manufacture, sell, transport, convert, etc. must hold a licence in Form No. IX. Section 6 deals with "dummy weapon". It reads as under ;

"No person shall shorten the barrel or convert an imitation firearm into a firearm unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder."

Section 7 prohibits the manufacture of prohibited arms or ammunition unless the person is specially authorised by the Central Government in this behalf.

14. It is common ground that Section 5 applies to the case of petitioner. Under that Section he must have a licence to manufacture or sell, etc. "any firearm or any other arms of such class or description". That licence is granted u/s 13(2A) of the Act. The Licensing Authority on the application of the applicant calls for the report of the Officer-in-charge of the nearest police station and on the basis of his report and after making the necessary inquiry grants the licence or refuses to grant the licence. In this case as on 31-12-1984 petitioner's licenses satisfied the requirement of Section 13(2-A) of the Act. u/s 13(3)(b) of the Act, a mandate is cast upon the Licensing Authority to grant a licence if the applicant "has a good reason" for obtaining the same. In this case as on 31-12-1984 the Licensing Authority was satisfied that the petitioner had a good reason for obtaining the 4 licenses in question. The power to refuse to grant a licence is found in Section 14 of the Act. Renewal of petitioner's licence is controlled by Sections 13 and 14(1)(b) of the Act as is evident from Section 15(3) of the Act. Since he was granted four licenses, this Court has to proceed on the basis that as on 31-12-1984 the police report, if any, was in his favour ; that he had a good reason for obtaining the licenses and that he was not unfit to hold the same for any reason or the Licensing Authority had not deemed it necessary for the security of the public peace or for public safety to refuse to grant such licenses. It is pertinent to note that Section 14(1)(b)(i)(1) is not applicable to the petitioner since he restriction therein applies to persons who want to acquire possess or carry any arms or ammunition. It reads as :

"Notwithstanding anything in Section 13, the licensing authority shall refuse to grant :

(a) xx xx (b) a licence in any other ease under Chapter II :

(i) where such licence is required by a person whom the licensing authority has reason to believe :

"(1) to be 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...."

On a combined reading of Sections 2(a), 5, 13, 14 and 15 of the Act, in so far as they apply to the case of the petitioner, the Licensing Authority is empowered not to renew the licence if it is satisfied that the applicant is for any reason unfit for a licence under this Act" and "where the Licensing Authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence".

15. One more provision which throws some more light on the powers on the Licensing Authority u/s 15(3) of the Act is Section 17. Both the Learned Advocate General and the respondent have relied on it. Section 17(3) empowers the Licensing Authority to suspend or revoke a licence. He could do so on all the grounds mentioned in Section 14(1)(b) as is evident from Section 17(3)(A) and (b) of the Act, or on the additional grounds mentioned in Section 17(3)(c), (d) and (e) which read as under :

"The licensing authority may, by order in writing, suspend a licence for such period as it thinks fit or revoke a licence :

(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 ; 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."

So the power of the Licensing Authority to suspend or revoke the licence once granted is less circumscribed or rigid than the power of the Licensing Authority to refuse the renewal of licence. The distinction is obvious. u/s 15(3) of the Act, the petitioner has a right of renewal from time to time for the period originally granted subject to Sections 13 and 14(1)(b)(2)(3) and (ii) of the Act, but u/s 17 the Licensing Authority has the right to revoke or suspend the existing licenses on grounds mentioned in Section 17(3) (a), (b), (c), (d) and (e) which also include the grounds mentioned in Section 14(1)(b)(i) and (ii). Whether this distinction was kept in view by the Government requires to be examined presently. In the statement of reasons furnished to the petitioner which was quashed by this Court in W.P. No. 19681 of 1985, respondent has adverted to Section 17(3) of the Act and found that the petitioner having suppressed certain material facts, his licenses should not be renewed. The very same reasoning has crept into the impugned order. So that part of the order based on suppression of material facts is wholly without jurisdiction. So the 2 relevant grounds on which respondent could have refused to renew the licenses are that (i) petitioner was unfit to hold the licenses or (ii) where the Licensing Authority had deemed it necessary for the security of the public peace or for public safety to refuse to renew such licenses. Keeping these two considerations in the back ground, the

reasons in the impugned order of the respondent may be examined.

16. a) Unlicensed manufacture of five chambered Chamber loading gun under licence No. 67/78 :-

The licence in question permitted the manufacture of Breach Loading and Muzzle Loading guns. Petitioner's case is that a five chambered gun comes under the category of Breach Loading gun. This view was supported by the opinion of the Ballistic Expert. Respondent differed from this opinion placing reliance on Rule 20 of the Rules. Rule 20 reads as under :

"(1) The licensing authority while granting a licence in Form IX shall show clearly in the licence Form :

(i) the categories and description of the arms or ammunition covered by the licence ;

(ii) the transactions permitted in respect of the different categories of arms or ammunition, and

omit any transactions, or categories of arms or ammunition, not covered by the licence.

(2) A copy of every licence granted in Form IX by an authority other than the District Magistrate of the place of business, factory or shop of the licensee shall forthwith be sent to that District Magistrate.

This Rule casts an obligation on the Licensing Authority to categorise and describe the arms that could be manufactured under the licence granted. It is common ground that the petitioner had manufactured one gun of this type in 1982 and sent the same for proof testing. This gun was not proof tested because the petitioner was asked to get the clearance from the home Ministry as the proof testing authorities found that this gun was not "in conformity with the shot guns normally being manufactured" by "the trade firms in India". Petitioner had written to the Home Secretary, Government of India on 3-11-1982 for such permission pleading that this gun was covered by the licence in question. The Government of India do not appear to have taken a contrary view. The Ballistic Expert had also opined that this gun is "a Breach Loading revolving shot gun". If there was any ambiguity in the licence granted to the petitioner, that ambiguity could not be used against the petitioner. The persons who were better qualified to give their opinion was the Government of India which granted the licence and the Ballistic expert who had given a favourable opinion. In the absence of adverse opinion from both these quarters, could it be said that the manufacture of this solitary gun rendered the petitioner unfit to hold the licence or public peace or public safety was threatened by him by such manufacture. Viewed from this angle, respondent's conclusion based on Rule 20 of the Rules was on extraneous considerations which were not relevant to the inquiry before it.

16. (b) Unlicensed Machinery :

Respondent has placed reliance on Rules 3 and 4 read with Schedules I and II and Form No. 1 under Schedule III. Petitioner's case is that normally no separate licenses are taken out by the manufacturers of arms and ammunition for the machinery for such manufacture. The definition of "arms" includes "machinery for manufacture of arms". After the filing of the Petition, petitioner had obtained a clarification from the Government of India that Form IX licence covers machinery for manufacture also and Form I licence is granted by the Government of India for the manufacture of weapons of exempted category. Respondent found that the explanation of the petitioner was not adequate and "in the absence of concrete evidence to the contrary", the statutory provisions aforesaid will give an indication as to the correct position. Prima facie, licence No. 67/78 was for manufacturing Breach Loading and Muzzle Loading shot guns. In the very nature of things, they cannot be manufactured without machinery for such manufacture. This licence was renewed upto 31-12-1984 by respondent, i.e., for a period of 5 years consecutively. It did not occur to the respondent to check and satisfy itself whether the petitioner had a licence to possess machinery for the manufacture of arms when it renewed the licence in Form IX, from the years 1978 to 1984. Of course, it was not precluded from making the necessary inquiry for the year 1984-85 but that inquiry was made by putting its own construction on the relevant Rules and Schedules and not by verifying whether the petitioner's contention based on practice was tenable. It could have verified this aspect from the Government of India which was the competent authority to grant licence for the machinery for manufacture of arms. Assuming it was not obliged to do so, do those Rules and Schedules give any indication as to the correct position? Rule 2 does not deal with licenses under the Act. It categorizes "arms" and "ammunition" as specified in Col. 2 and 3 of Schedule I. "Machinery for manufacture" comes under Category II. Breach Loading and Muzzle Loading guns come under Category III. Rule 4 reads as :

"licenses under Chapter II of the Act may be granted or renewed for such purposes, by such authorities, in such Forms and to be valid for such period and in such areas as are specified in Schedule II, subject to such conditions as are specified in that Schedule and in the licence."

That takes us to Schedule II. In Schedule II the Central Government is the Licensing Authority for acquisition/possession/import and transport of machinery for manufacture of arms or ammunition and the form of licence is Form No. I. The Renewing Authority is also the Central Government. Indisputably petitioner has not obtained a licence in Form No. I to acquire machinery for manufacture since 1967 but the number of machines acquired by him for such manufacture was within the knowledge of the Central Government since 1977. Form No. I provides for :

"(a) acquisition, possession/import and transport of fire-arms or ammunition of categories I(a) and II, and

(d) import of fire arm and ammunition of categories I (b), I (e), I(d).

Fire arms or ammunition of categories I(a) relate to prohibited arms as defined in Section 2(1)(i) of the Act and such others as may be notified. A reading of Clause (a) in Form I indicates that machinery for manufacture also is treated as "firearms" for the purpose of licence in Form No. I and that machinery could be only for the purpose of manufacturing prohibited arms in category I(a). Significantly category II does not figure in any other licenses mentioned in Schedule II obviously because no separate licence is required to possess machinery for the manufacture of arms which are not prohibited. That is the reason the Government of India had clarified that Form IX licence was good enough to cover machinery for manufacture of arms and ammunition and Form 1 was granted for possession of machinery for manufacture of weapons of "exempted category" namely Category I(a) weapons.

16 (c) Unauthorised manufacture of a Revolver by the applicant :

The third ground on which respondent rested its decision was that the petitioner had manufactured parts of a revolver in his factory premises. Parts of revolver would also be "firearm" under the Act. The opinion of the Ballistic Expert was that it was a dummy revolver and could not have been converted into a lethal firearm with "small modifications". According to him a dummy revolver required boring of its cylinder and barrel for housing ammunition and a firing pin to be attached in order to fire the ammunition and make the dummy an "effective firearm". Respondent took the view that these modifications are "simple modifications" which any manufacturer of arms and ammunition could make with the machinery and the other facilities he would be having. It also found that no established manufacturer would manufacture a "dummy" without meaning to develop it "eventually as a firearm". Even otherwise, such manufacture was not covered by any of the licenses. Respondent does agree with the opinion of the Ballistic Expert that the petitioner had manufactured a dummy weapon. Does this "dummy" become a firearm which is prohibited under the Act and or requires a licence under the Act is the pertinent question. Section 6 of the Act gives a clue to this question. It reads :

"No person shall shorten the barrel or convert an imitation firearm into a firearm unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder."

A similar provision is not found in the 1878 Act. A similar provision is not found in the English Act (Fire Arms Act, 1968). However a provision is found in the Fire Arms Act, 1982 in the United Kingdom as follows :

(1) This Act applies to an imitation firearm if :

(a) it has the appearance of being a firearm to which Section 1 of the 1968 Act (firearms requiring a firearm certificate) applies ; and

"(b) it is so constructed or adapted as to be readily convertible into a firearm to which that section applies."

Under our Act, conversion of an imitation firearm into a firearm can be done only under a licence. Manufacture of an imitation firearm does not require a licence. That is the reason Section 5 with which we are concerned does not cover "imitation firearm" but "firearm" as defined u/s 2 of the Act. It is not the case of the respondent that imitation firearm is of such class or description as prescribed by any notification. This Section was not referred to by respondent in the impugned order. All the same it came to the conclusion :

"Government therefore, are constrained to observe that even in this case the manufacture of this half-finished weapon amounted to unauthorised manufacture contravening the specific provisions of the Arms Act and the Rules framed thereunder."

What those provisions and the Rules are, this Court cannot discern from the impugned order. The only provision in the Act on "dummy" arms is Section 6 and without a consideration of the same, respondent could not have come to the conclusion that the manufacture of "dummy" revolver was unauthorised manufacture as the same was not covered by any of the licenses petitioner had.

16 d) Involvement in Criminal cases :-

The learned Advocate General has strongly maintained that the cases filed against the petitioner and now pending against the petitioner would render him unfit to hold the licenses. This is also the reason given by the respondent. In most of the cases, "B" reports had been filed. The pending criminal cases will take its own time to reach ultimate finality. Could it be said that the pendency of criminal case will render a person unfit to hold a license? Supposing he is acquitted/discharged, he may become eligible to hold the existing licenses. So it was open to respondent to make a conditional order depending on the result of the criminal case. If he is convicted, the Court convicting him has the power to suspend or revoke his licence. In the words of Justice Frankfurter :

"The safeguards of liberty have frequently been forged in controversies involving not very nice people."

The other grounds on which the renewal was refused were not seriously pressed by the learned Advocate General and in my view rightly too.

17. Respondent's concern for the well being of the society at large is laudable. But it takes all sorts of persons to make this society and the fundamental right to carry on business or a trade subject to reasonable restrictions in public interest enures to the benefit of persons who are not so nice unless the statute specifically excludes them. The fact that there was no conviction so far against the petitioner was a plus point in his favour.

18. A number of decisions have been cited by the Learned Counsel for both sides. The decisions relate to the licence for possession and use of fire arms and not for the manufacture of fire arms. But the principles laid down in some of the decisions on the relevant considerations which come into play for renewal of

licenses under the Act may be noticed.

19. A Division Bench of the Allahabad High Court in *State of U.P. and Others Vs. Jaswant Singh Sarna*, dealt with the provisions of Sections 13 and 14 of the Act and ruled that Section 13 recognises a right of citizen to a licence. As soon as the condition specified in the Section is satisfied, the grant is obligatory and it is not open to a Licensing Authority to refuse a licence arbitrarily. It has further held that a duty to act judicially arises under Section 14 of the Act when the Licensing Authority acts in a quasi-judicial capacity and, therefore, giving a hearing is essential before refusing the licence. According to the Allahabad High Court, though Section 14 of the Act does not in terms provide for hearing to the applicant, affording an opportunity is a necessary concomitant of the power to refuse since the power is quasi-judicial in nature and must be imported in the exercise of the power. Likewise, renewal of the licence is governed by the same consideration as the grant of licence. In para 13 of the Judgment, the Division Bench observed :

"The Act is plainly a regulatory measure intended to regulate the rights of a citizen to hold acquire and dispose of fire arms and ammunition and to carry on the occupation trade or business of dealing in them. The provisions of Sub-clauses (f) and (g) of Clause (1) of Article 19 of the Constitution are immediately attracted and an enquiry into the question whether the provisions of the Act constitute a reasonable restriction upon the exercise of those fundamental rights becomes relevant. In that enquiry, it is pertinent to consider whether a right of hearing is afforded, expressly or by necessary intendment, before the fundamental right is prejudicially affected. The statutory powers conferred upon the licensing authority must pass the test of a reasonable restriction. It is now settled that a procedure which affects the fundamental rights of a citizen but does not comply with the principles of natural justice must be held to be unreasonable unless there are present abnormal circumstances justifying the departure.

XXX XXX There is nothing so inherently dangerous in the possession of fire arms as to justify the relegation of the licensing power to administrative discretion. In the matter of the grant of a licence or its renewal, Section 14(1)(b)(i) contains sufficient safeguard for ensuring that a licence is not entrusted to irresponsible hands. The grounds upon which a licence may be refused under that provision extend over a sufficiently wide area. A licence may be refused to a person prohibited by the Act or by any other law from acquiring, possessing or carrying on arms and ammunition. It may be refused to a person of unsound mind. It may also be refused to a person who for any reason is considered unfit for a licence. It is worthy of note that this last class is wide enough to cover a multitude of cases where a licence can be reasonably refused. It is difficult to conceive of a wider envelope of power within which a licence may be refused. When that is so, it is not easy to comprehend why the exercise of the fundamental rights involved should in their regulation u/s 14(1)(b)(i) be denied

the protection of the principles of natural justice."

Though the Allahabad High Court was not concerned with the renewal of a licence to manufacture fire arms, the ruling of the Division Bench postulates that the right to carry on business in fire arms is a fundamental right and there is nothing so inherently dangerous in the possession of fire arms as to justify the relegation of the licensing power to administrative discretion. The Allahabad High Court also considered the 2 decisions of the Rajasthan and Calcutta High Court rendered under the Arms Act 1878. In *Kishore Singh Vs. State of Rajasthan and Another*, and in *Kshirode Chandra Pal Vs. District Magistrate, Howrah and Another*, the High Courts were called upon to consider the provisions of Section 18 of the Arms Act, 1878. In para 6 of its Judgment, the Allahabad High Court observed :

"The impugned orders have been made under the Arms Act, 1959 but before that Act was brought on the statute book the law governing such matters was set out in the Indian Arms Act, 1878 To appreciate the scope and limitations of the powers conferred by the Arms Act, 1959, it will be pertinent to briefly refer to some provisions of the enactment which preceded it. Section 5 of the Indian Arms Act, 1878 required that a person intending to manufacture, convert or sell arms and ammunition must take out a licence. Section 14 similarly required a licence if a person intended to keep fire arms or ammunition in his possession or under his control. The Act did not specify the grounds upon which a licence could be granted or refused under Sections 5 and 14 or the conditions subject to which such licence could be granted. The power conferred upon the licensing authority was not circumscribed by any express limitations. Section 18 provided for the cancellation or suspension of a licence. Here again apart from the case where the licence holder is convicted of an offence under the Act or the rules made thereunder, the section did not expressly specify the grounds upon which the licence could be cancelled or suspended. The only requirement mentioned was the recording of reasons in writing for such order. It must be remembered that the Indian Arms Act, 1878 was enacted in an age when the British Government had, only some years before quelled a massive uprising which had threatened to remove British power from the country altogether and when considerations of military ascendancy and law and order were paramount in the consolidation of British rule in India. This legislation held sway over the country during the entire period of foreign rule. The order of things was completely changed when India attained independence and began to be governed under a Constitution which guaranteed to a free people a body of rights described as "fundamental." The Arms Act, 1959, reflects the constitutional change, and a schematic analysis of the enactment will at once demonstrate the contrasting liberalism so noticeably absent from the Act of 1878."

20. So the two principles which could be culled out from the decision of the Allahabad High Court is that the right to manufacture fire arms is a fundamental right subject to reasonable restrictions, and a person has a right to be heard

before his licence is cancelled or suspended or not renewed. The State Government by affording a hearing to the petitioner has impliedly conceded that his right to the licenses in question is a fundamental right. Even otherwise, the Act is only a regulatory Act and, there is nothing either express or implied in the Act so as to render the business of manufacture of fire arms a hazardous or dangerous business warranting this Court to stay its hands when the petitioner has implored the protection of Article 19(1)(g) of the Constitution.

21. In *Sardar Chand Singh Vs. Commissioner, Burdwan Division and Another*, an order of refusing to grant licence made u/s 17 of 1878 Act was challenged in the Calcutta High Court. The Court observed that even if a person is not convicted or even if he is acquitted, it may very well be a ground to refuse him a gun licence he being not a safe person to have such firearms. The reasons given by the Divisional Commissioner in the appeal preferred by the petitioner in that case were that the petitioner was involved in several litigations of serious nature and a person who was so involved in that way could not be considered as a suitable person for possessing a revolver. The question whether such reasons are right or wrong was not for the Court to examine under Article 226 of the Constitution unless they were perverse or malafide. Since the decision was rendered on the provisions of 1878 Act, the Calcutta High Court did not go into the liberal changes made in the Act which is a post-Constitution Act. But the Learned Advocate General relied on this decision to support his contention that the pendency of criminal cases was sufficient to declare that a person was unfit to hold a licence for manufacturing fire arms. But, it again depends on the nature of the offences with which the person had been charged. If it is a case of a person being involved in shooting another, or smuggling fire arms to another Country, or trading in fire arms with or without a licence with persons dangerous to society those offences may be relevant for the purpose of deciding whether a person is unfit to hold a licence. In this case, apart from stating that criminal cases are pending, respondent has not brought to the notice of this Court the seriousness of those cases. As noticed earlier, the two grounds on which a licence could not have been renewed are that the petitioner was not a fit person to hold a licence or it was necessary for the security of the public peace or public safety to refuse to renew the licence. In my view, on the material on record, it cannot be said that the petitioner was an unfit person to hold a licence or it was necessary to refuse renewal of the licenses for the security of public peace or public safety all because he was involved in some criminal cases the seriousness of which is not made known to this Court.

22. The decision in *Moti Miyan Vs. Commissioner, Indore Division and Others*, was rendered under the provisions of Section 17 of the 1878 Act. Therefore, the view taken by the Division Bench of the Madhya Pradesh High Court that the order of the District Magistrate refusing to renew the licence is an administrative order does not appear to be correct in the light of the provisions of the present Act under which the impugned order was made. The Madhya Pradesh High Court relied on the other decisions, viz., *Sardar Chand Singh Vs. Commissioner*,

Burdwan Division and Another, Godha Singh Jabra Singh Vs. District Magistrate, Ferozepore and Another, and Kishore Singh Vs. State of Rajasthan and Another, which are all decisions rendered on the Pre-Constitution Act, viz., 1878 Act. In Shesh Nath Singh Vs. State of Bihar and Others, the Patna High Court was dealing with the cancellation of a licence u/s 17 of the Act. In that case the petitioner had attempted to kill one Rama Nand Singh. On the complaint of Rama Nand Singh, an enquiry was initiated and a report was called for from the Superintendent of Police. The report supported the allegations of the complainant that the petitioner was involved in a case punishable u/s 307 of I.P.C. It was also reported that the Complainant's family was associated with criminals who were also licensees. Therefore, the licenses of both the parties were cancelled. On these facts, the Court came to the conclusion that revocation of licence was necessary for securing public peace and public safety. But the High Court also took the view that until the judgment convicting the accused was pronounced by the Criminal Court, the Licensing Authority should not and could not in law cancel the licence. On these facts, there could be no doubt that cancellation of licence was necessary in the interest of public peace and public tranquillity, since there was a chance for the persons involved in the criminal cases to use the guns for further criminal activities.

23. What emerges from these decisions is that the Quasi Judicial authority will have to exercise its power keeping in view the requirements of Sections 13 and 14 of the Act. That would depend on the facts and circumstances of each case, since the order to be made u/s 15 of the Act is a discretionary order.

In S. Pratap Singh Vs. The State of Punjab, the order of the Punjab Government suspending a Government servant who was on leave preparatory to retirement by revoking the leave granted to him and instituting departmental enquiry against him was quashed by the Supreme Court on the ground of mala fides. The Supreme Court in its majority judgment observed :

"The Constitution enshrines and guarantees the rule of law and Article 226 is designed to ensure that each and every authority in the State, including the Government acts bona fide and within the limits of its power and we consider that when a Court is satisfied that there is an "abuse or misuse of power and its jurisdiction is invoked, it is incumbent on the Court to afford justice to the individual."

Though the plea of malafides was not strongly pressed before this Court or before the Government, the duty of the Government to act objectively on the facts of this case cannot be gainsaid in view of the cases and counter cases pending between the petitioner and Deputy Commissioner of the District wherein his factory is situate. Even in the case registered under the Official Secrets Act, the petitioner has obtained bail and no prosecution has been launched against him so far. In D. Nataraja Mudaliar Vs. The State Transport Authority, Madras, the Supreme Court in reversal of the decision of the Madras High Court observed :

"Should the Court interfere under Article 136 ? Ordinarily, no, But if a small man, whose heavy investment in a tourist coach is to be sterilised altogether, it is a social trauma ; and if fundamental rights are disposed of as if by executive fiats, this Court must intervene to uphold the credibility in the rule of law and prevent its derailment. The touch-stone is not the little man and his little Us but the large issue and the deep portent.

Section 50 specifies the guidelines. The Transport Tribunals function quasi-judicially and this imports some imperatives. You must tell the man whose fundamental right you propose to negative the materials you may use in your decision. You must act on relevant considerations, properly before you, not on rumour or hearsay, ex cathedra assertions or inscrutable hunch.

The Authority must remember that a permit holder has an ordinary right of renewal unless it is shown that outweighing reasons of public interest lead to a contrary result. Permits are not bounty but right, restricted reasonably by the Motor Vehicles Act."

Though in this case the right of a permit holder under the Motor Vehicles Act came up for consideration, the same consideration would prevail in the case of a license-holder under the Act once it is recognised that his right to carry on business in the manufacture of fire arms is a fundamental right. Whether that fundamental right is carried on under a permit or a licence is not material.

24. In *B. Chandragupta -v- The Chairman, P & T. Board New Delhi and anr.* 1970 (1) Mys. L.J. 77 a Division Bench of this Court has ruled that it was unreasonable to continue to keep in abeyance the consideration of the petitioner's case for promotion and that the case should be considered without prejudice to the result of the disciplinary enquiry which was to commence against him. This Court made a conditional order that the Respondent/P & T Board would have the liberty to revert the petitioner from the promotional post, if he was found guilty and awarded punishment in the disciplinary enquiry.

25. In *Brij Bhusan Pandey Vs. State Transport Authority, Lucknow and Another*, the Allahabad High Court has taken the view that it is only when a person is convicted that he could be held to be guilty and during the pendency of a trial it cannot be said that he was guilty and, therefore, howsoever, grave the suspicions may be they would not amount to proof and, unless it was fully established that there had been a conviction, it was not open to the Regional Transport Authority to refuse to renew a permit on that score. Perhaps, the facts in this case may not be fully applicable to the case of a Fire Arm licence. But as noticed earlier, it cannot be said axiomatically that pendency of criminal cases under the Arms Act would be a disqualification to hold a licence. It depends on the nature of the offences with which the person is charged.

26. In *Harisingh Harnamsingh Khalsa Vs. E.F. Deboo and Another*, the discretion of the Licensing Authority to refuse or to suspend or to revoke a licence u/s 14(1) and Section 17 of the Act came up for consideration. The Gujarat High

Court ruled that the Licensing Authority has to exercise his discretion judicially in accordance with the principles of natural justice. Underscoring the point that the Act is a post-Constitution legislation, the Gujarat High Court has ruled that it is a fundamental right to own or possess a fire-arm subject to restrictions placed in the Act. Therefore the grounds on which such a right is negated are subject to judicial review. However a Full Bench of Assam High Court in Haji Mohammad Hassan Ali -v.- Commissioner of Plains Division, Assam, Gauhati and Ors. AIR 1969 Gau 50 has ruled that :

"Under Clause (a) of Section 17 of the new Act the licensing authority may cancel a licence if it is satisfied that the person holding the licence is for "any reason unfit for a licence". Again under Clause (b) of the said section the licensing authority may cancel a licence if it "deems it necessary for the security of the public peace or for public safety". The satisfaction or opinion of the licensing authority to be formed will be naturally his subjective opinion. The provision does not lay down an objective condition precedent. The distinction between subjective opinion and objective opinion is illustrated by Lord Atkin in *Liversidge's* case (1942) AC 206, as follows :

"If it is a condition to the exercise of powers by A that X has a right of way or Y has a broken ankle, the authority is charged with determining these facts and it must ascertain judicially whether the conditions are fulfilled or not. If on the other hand, the condition is that the authority thinks or is of opinion that X has a right of way or Y has a broken ankle, the condition is a purely, subjective condition and the Act cannot be a judicial act, as the existence of the condition is incapable of being determined by a third party by application of any rule of law or procedure."

But we are concerned with Sections 13 and 14 of the Act and therefore that decision is of little assistance to the respondent. Further, the Assam High Court with great respect, completely lost sight of the Constitutional provisions, namely, Articles 14 and 19 of the Constitution.

27. I have noticed earlier that the power to refuse to grant a licence or to refuse to renew is more circumscribed than the power to suspend or revoke an existing licence u/s 17 of the Act. This is also obvious from the plain terms of Sections 14 and Section 17 and if this is noticed, it will be easy to come to a correct conclusion on the validity or otherwise of the impugned order. Section 14(1)(b) of the Act provides that the Licensing Authority shall refuse to grant a licence in any other case under Chapter II (we are not concerned with the prohibited arms) if he has reason to believe (1) that the applicant 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 (2) he is of unsound mind; or (3) he is for any reason unfit for a licence under this Act or where the Licensing Authority deems it necessary for the security of the public peace or for public safety to refuse to grant such license; whereas in Section 17, the power of the Licensing Authority to suspend or revoke a licence is dependent on its satisfaction that (a)

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 public peace or for public safety to suspend or revoke the license; 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; 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. The legislature has advisedly used different words under Sections 14 and 17, viz., "reason to believe" u/s 14 and "licensing authority is satisfied" u/s 17. We find these words in many regulatory statutes and they are interpreted by the Courts in the context of the provisions of the various regulatory enactments. When the legislature uses different words in 2 different sections, a proper meaning has to be given to these words in the context in which they appear. The Supreme Court in *S. Ganga Saran and Sons (Pvt.) Ltd., Calcutta Vs. Income Tax Officer and Others*, on the interpretation of the words "reason to believe" in Section 147(a) of the Income Tax Act observed thus :

"First, he must have reason to believe that the income of the assessee has escaped assessment and secondly, he must have reason to believe that such escapement is by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. If either of these conditions is not fulfilled, the notice issued by the Income Tax Officer would be without jurisdiction. The important words u/s 147(a) are "has reason to believe" and these words are stronger than the words "is satisfied". The belief entertained by the Income Tax Officer must not be arbitrary or irrational. It must be reasonable or in other words it must be based on reasons which are relevant and material. The Court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the Income Tax Officer in coming to the belief, but the Court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice u/s 147(a). If there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the Income Tax Officer could not have reason to believe that any part of the income of the assessee had escaped assessment and such escapement was by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts and the notice issued by him would be liable to be struck down as invalid."

28. In my view, in the Act in question though the words "reason to believe" appear in the context of conferring a power on the Licensing Authority to deal with an application for grant of licence or for renewal of licence, the very same

meaning as given by the Supreme Court on those words as they appear in Section 147(a) of the Income Tax Act, should be given to these words in this Act, since the power of the Licensing Authority to refuse to grant a licence or to refuse to renew the existing licence would adversely affect the fundamental right of the persons to carry on their business of manufacturing arms. If the language of Section 14 of the Act is compared to the language of the relevant provisions of 1878 Act, the meaning of the words "reason to believe" becomes still more clear. In the 1878 Act there is a complete ban on the manufacture and sale of fire arms except under licence and in the manner and to the extent provided under the licence (see Section 5). u/s 15(1)(b)(ii) the Licensing Authority should deem it necessary for the security of the public peace or public safety to refuse to grant such licence. The words "deem it necessary" do not imply any legal fiction. The word "deems" in ordinary parlance means "opinion" or "judgment". It also mean "surmises", but, in the context in which it is used it takes in the meaning of "opinion" or "judgment". As observed by Lord Radcliffe in *St. Aubyn (L.M.) and ors. -v.- Attorney-General* 1951(2) AER 473 at 499 :

"The word "deemed" is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible."

In my view, the word "deemed" in Section 14(b)(ii) is used in the second category of cases mentioned by Lord Radcliffe i.e., to say that the Licensing Authority must form a definite "judgment" or "opinion" that refusal to renew the licence is necessary for securing "public peace" or "public safety." The impugned order does not disclose that the Licensing Authority had reasons to believe that the petitioner was a person unfit to hold a licence and or it deemed it necessary to refuse to renew his licenses for the security of the public peace and public safety. Here again the words used in the statute are not "in the interest of public peace and public safety", but for "securing public peace and public safety".

29. In *Ramji Lal Modi Vs. The State of U.P.*, it was pointed out that the language employed in the Constitution "in the interest of" was wider than the expression "for the maintenance of" and the former expression made the ambit of the protection very wide. It was observed that "'a law may not have been designed to directly maintain public order and yet it may have been enacted in the interest of public order". Likewise, in Section 14(b)(ii), the words used are not "in the interest of public peace or public safety" but for the security of public peace or public safety- Therefore the respondent should have formed a definite judgment that, for the security of public peace or public safety the licenses should not be renewed. The impugned order does not take note of the meaning of the words used by the legislature restricting the right of the licensing authority to refuse to renew the licenses On the material on record, there was no threat to public

peace or public safety. Therefore, there were no valid grounds to refuse the renewal of the licenses.

30. Alternatively, it was contended by the learned Counsel for the petitioner that the respondent had taken irrelevant grounds to bring the case within the scope of Section 14 of the Act. He relied on a passage in Administrative Law by H.W.R. Wade (V Edition) on page 369 :

"There are many cases in which a public authority has been held to have acted from improper motives or upon irrelevant considerations, or have failed to take account of relevant considerations, so that its action is ultra vires and void. It is impossible to separate these cleanly from other cases of unreasonableness, since the Court may use a variety of interchangeable explanations, as was pointed out by Lord Greene [see (1976) G.L.J. 272 G.D.S. Taylor.] Regarded collectively, these cases show the great importance of strictly correct motives and purposes. They show also how fallacious it is to suppose that powers conferred in unrestricted language confer unrestricted power."

xxx xxx xxx "Lord Esher M. R. stated the "irrelevant considerations" doctrine in a case where a vestry had mistakenly fixed the pension of a retiring officer on the erroneous assumption that they had no discretion as to the amount: (Rv St. Pancras Vestry (1890) 24 Q B.D. 371 at 375.

But they must fairly consider the application and not take into account any reason for their decision which is not a legal one. If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the exercise of their discretion, then in the eye of the law they have not exercised their discretion.

The doctrine applies equally to failure to take account of some consideration which is necessarily relevant."

These observations apply with full force to the facts of this case.

31. The learned Counsel also relied on the decision of the Supreme Court in State of Punjab -v.- Gurdial Singh AIR 1980 SC 321. It is unnecessary to go into the question of legal malafides in this case, since the petitioner is entitled to succeed on the other grounds pressed before me.

The next question for consideration is the relief to be granted to the petitioner. Can this Court make a direction to the Government to renew the licenses in question? The petitioner has pressed into service the decision of Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, The majority Judgment in that case has put an end to the controversy over the ambit of the power of the High Courts under Article 226 of the Constitution. The Supreme Court in para 79 of its Judgment observed:

"We are what we are because our Constitution framers have felt the need for a pervasive reserve power in the higher judiciary to right wrongs under our

conditions. Heritage cannot hamstring nor custom constrict where the language used is wisely wide. The British paradigms are not necessarily models in the Indian Republic. So broad are the expressive expressions designedly used in Article 226 that any order which should have been made by the lower authority could be made by the High Court. The very width of the power and the disinclination to meddle, except where gross injustice or fatal illegality and the like are present, inhibit the exercise but do not abolish the power."

32. This Court has consistently followed this, decision while interfering with the awards of Labour Courts and Tribunals constituted under the Industrial Disputes Act. On principle, I find no distinction between the orders or awards of adjudicating authorities constituted under the Industrial Disputes Act or other Acts and those of executive authorities obliged to Act under other laws in a quasi judicial manner. It may be said that in this case, respondent is the best judge to determine once again whether the petitioner's licenses should be renewed or not and that judgment should not be substituted by the judgment of this Court. This is a well settled position in the exercise of the extraordinary jurisdiction under Article 226. But there are exceptions to the general rule when this Court has to "right wrongs under our condition". A simple case of renewal of licenses which the petitioner had since 1978 upto 31-12-1984 is pending consideration since 1985, Petitioner employs about 80 workmen in his factory. Their livelihood as also that of the petitioner and his sons depend on the business of manufacturing arms and ammunitions. There is no material to show that they have misused the licenses to endanger the security of the State or indulged in criminal activities which have resulted in disturbance to public peace or public safety. Therefore a third round of hearing before the respondent for traversing the same grounds given the fact situation, in this case needs to be avoided. The only ground on which his licenses could not have been renewed was that there were criminal cases against him. Those cases must be viewed in the context of the counter cases against the District Magistrate and the allegations made against him in the earlier Writ Petition. Those cases will take their own course and till they are concluded neither the petitioner nor the District Magistrate may be said to be innocent persons. But that fact does not render the petitioner unfit to hold the licenses or the Deputy Commissioner, unfit to hold his office. The word "unfit" has a limited connotation in Section 14 as also in Section 17. If the word "unfit" is so comprehensive as to include any misdirected under the sun, the legislature would not have included the additional grounds in Section 17, namely Sub sections 17(3)(c), (d) and (e) in addition to the grounds mentioned Section 17(d) and (b) for the cancellation and revocation of existing licenses. Our law reports abound with cases of cause celebrate which were brought before the Courts in India by persons who had a brush with law, viz., A.K. Gopalan Vs. The State of Madras, Romesh Thappar Vs. The State of Madras, ; Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others, ; Dr. Ram Manohar Lohia Vs. State of Bihar and Others, Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, etc. etc. By no means they could be said to be persons unfit to hold

public offices or function in other capacities in public life during the pendency of cases against them. Lest I may be misunderstood, I am not elevating the petitioner to the status of a political leader. But he in his humble way was carrying on business since 1967 or so and in the absence of any material to show he was unfit to hold the licenses or it is absolutely necessary for the security of public peace or public safety to refuse to renew the licenses held by him, he must be permitted to carry on his business. Consequently a direction should issue to the respondent to renew the licenses in question instead of driving the petitioner to another round of hearing before the very same authority. That is the only way substantial justice could be rendered in this case.

33. For keeping the record straight, some of the reasons given by me in this order are not based on the contentions urged by the Learned Counsel. But since the petitioner's fundamental right is the subject-matter of consideration in this Petition, it is open to this Court to examine the entire case without confining itself to the points and counter points made by the parties.

34. For these reasons, this Petition is allowed, the impugned order is quashed and a Writ in the nature of Mandamus shall issue to the respondent to renew the four licenses of the petitioner for a period of one year from the date of issue within four weeks from this date. It is ordered accordingly.