

(1968) 09 GAU CK 0006
In the Gauhati High Court
Case No : Civil Rule No. 379 of 1966

Haji Mohammad Hassan Ali	Vs	APPELLANT
Commissioner of Plains Division and Others		RESPONDENT

Date of Decision : 20-09-1968

Acts Referred:

Arms Act, 1959 — Section 13, 14(1)(3), 14(3), 17, 17(1)
Arms Rules, 1962 — Rule 51, 55

Citation : (1968) 09 GAU CK 0006

Hon'ble Judges : S.K. Dutta, C.J;P.K. Goswami, J;K.C. Sen, J

Bench : Full Bench

Advocate : J. Chowdhury, P.C. Kataki and J.M. Choudhuri, for the Appellant;
G.K. Talukdar, Sr. Govt. Advocate and T.N. Singh, for the Respondent

Judgement

S.K. Dutta, C.J.—This petition is directed against the order of the Deputy Commissioner, Nowgong dated 5-8-65 by which the licence of the Petitioner for holding a gun was cancelled and also against the order of the Commissioner of the Plains Division, Assam dated the 13th August, 1966 confining the same.

The Petitioner's case is that he is a citizen of India and a well-to-do person. He owned and possessed one S.D.B.L. gun being gun No. 58093 under Arms Licence No. 168 of Rupahihat Police Station granted to him for the last 12 or 13 years. On 9-1-65 the Petitioner deposited his gun with M/s. Meghamall and Sons, Arms Repairer, Nowgong for colouring and polishing the same. He was granted a receipt by the said firm. The Petitioner was served with a notice dated 12-8-65 by the Assistant Commissioner, in charge of Arms (Respondent No. 3), Nowgong whereby he was informed that his aforesaid gun licence had been cancelled and his gun confiscated to the State forthwith as per Deputy Commissioner's order dated 5-8-65.

Thereafter the Petitioner went to the office of the Deputy Commissioner, Nowgong and obtained a copy of the order dated 5-8-65 passed by the Deputy Commissioner (Respondent No. 2). It appeared from the said order that the

Deputy Commissioner received a police report and concluded on it that the Petitioner was a man of desperate character and considered him unfit to hold the gun licence. The Petitioner was not informed about the contents of the police report: or the grounds on which the licence was cancelled. The Petitioner preferred an appeal u/s 18(1) of the Arms Act 1959 (hereinafter called the new Act) against the order of the Deputy Commissioner before the Commissioner of Plains Division, Assam, Gauhati (Respondent No. 1). The Commissioner called for a report from the Deputy Commissioner from which it appeared that the Deputy Commissioner, considered the fact that the Petitioner was involved in a murder case at the time of cancellation of the gun licence and concluded from this fact that the Petitioner was a man of desperate character.

Regarding the murder case, the Petitioner submits that on 12-1-65 the Officer-in-charge of the Rupahihat Police Station registered a case on an information lodged by one Omar Ali. It appeared from the said information that on 11-1-65 at 2-30 A. M. one Fazal Ali being armed with one single barrel gun and another Nazer and few others armed with duos and daggers broke into the house of Kumed Ali and Fazal fired a gun shot at Kumed Ali causing his death. The police during investigation arrested the Petitioner. But on completion of investigation, the Investigating Officer made a prayer for the discharge of the Petitioner and a few others, whereupon the Additional District Magistrate, Nowgong discharged them. The charge-sheet was submitted against Fazal AU and Nazer AH only. The Commissioner of Plains Division, Assam, Respondent No. 1, rejected the appeal preferred by the Petitioner after hearing the arguments of his lawyer.

2. The only question that is raised in this case before us is whether the licensing authority while cancelling a licence u/s 17(3) of the new Act must act judicially. The grievance of the Petitioner is that he was not given a hearing by the Deputy Commissioner before cancelling the licence. The relevant portions of Section 17(3) of the new Act read as follows:

17 (1) ****

(2) ****

(3) The licensing authority may, by order in writing, suspend a licence for such period as it thinks fit or revoke a licence-

(a) if the licensing authority is satisfied that 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;

(b) or if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; 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 it; 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.

(4) The licensing authority may also revoke a licence on the application of the holder thereof.

(5) Where the licensing authority makes an order varying a licence under Sub-section (1) or an order suspending or revoking a licence under Sub-section (3), it shall record in writing the reasons therefore and furnish to the holder of the licence on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

3. The above section is based on Section 18 of Act XI of 1878 (hereinafter called the old Act) which was replaced by the new Act. That Section 18 is reproduced below:

18. Cancelling and suspension of licence -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 licence 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; or (b) by any Judge or Magistrate, before whom the holder of such licence is convicted of an offence against this Act, or against the rules made under this Act; and the "Central Government" may, by a notification in the official Gazette, cancel or suspend all or any licences throughout India or any part thereof.

4. It will appear that Section 17 of the new Act is more exhaustive than Section 18 of the old Act. The order of cancellation of the licence must be passed by the licensing authority in writing. It is also required of the said authority to record the reasons and to give a copy of the order to the licence-holder on demand unless it is against public interest. It appears that in the present case the Deputy Commissioner read the police report and came to the conclusion that the Petitioner was a man of desperate character. Hence the police report was a part of the order of the Deputy Commissioner. Had the Petitioner demanded, he would have been also entitled to get a copy of the police report on which the Deputy Commissioner's order was based. As no such demand was made, the grievance of the Petitioner that he did not get a copy of the police report has no substance.

5. Now coming to the main question whether the licensing authority has to act judicially in the matter of cancellation of a licence, I find that there has been some difference of opinion between different High Courts. In *Moti Miyan Vs. Commissioner, Indore Division and Others*, it was held that the decision of the competent authority u/s 17 of the Act was purely administrative. It was further

held that the requirement for recording of reasons is in no way indicative of the order being quasi judicial. In *Kishore Singh Vs. State of Rajasthan and Another*, Section 13 of the old Act was considered and it was held that when an authority exercising administrative powers under a statute acted within the four corners of the statute and did not exceed or abuse its powers, no question of the principle of natural justice arose. It was held that where the District Magistrate acted within the powers conferred on him by Section 18 of the old Act and complied with the provisions of the statute, the fact that he did not give any notice to the applicant before cancelling the licence would not invalidate the order.

6. In *Haji Md. Vakil Vs. Commr. of Police and Another*, the Calcutta High Court laid down only the following things as essential for making an order u/s 18 of the old Act. (1) The licensing authority must have reasons for which it deemed it necessary for the security of the public peace to cancel or suspend such licence. (2) The person cancelling the licence must himself record the reasons in writing. (3) The order on the face of it should show that it was necessary for the security of the public peace to cancel the licence.

7. In *Kshirode Chandra Pal Vs. District Magistrate, Howrah and Another*, it was held that an order of cancellation u/s 18 of the old Act need not be on notice to the holder of the licence.

8. In *Ahmadnoor Roshan Vs. State of M.P. and Others*, it was held an order cancelling a licence u/s 18 of the old Act was an administrative order and such an order could not be assailed on the ground that the licensee had not been heard by the licensing authority.

9. On the other hand, in *Nanappa v. District Commissioner, Bangalore Division*, AIR 1967 Mys 238, it was held that notwithstanding there being nothing in Section 17 of the new Act which enjoins the Licensing Authority to afford the holder of a licence an opportunity to show cause why the licence should not be revoked, it is the duty of that authority to make the opportunity available to him. It may be noted that the Court did not give any reasons for holding this view.

10. In *Jai Narain Rai Vs. District Magistrate and Others*, Section 18 of the old Act was considered. It was held that the finding that it was necessary for the security of the public peace to cancel the licence involved loss of the right to hold or possess the fire-arms and might, therefore, be treated as a quasi-judicial finding.

11. The doctrine of judicial or quasi-judicial approach has been explained by the Supreme Court in various cases. In *Province of Bombay Vs. Kusaldas S. Advani and Others*, the majority held the view that the duty to act judicially must be laid down in the law itself. But Das, J. (as he then was) took a wider view and distinguished between two classes of cases, viz.

(i) if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the

contesting parties who are opposed to each other there is a *prima facie*, and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and

(ii) if a statutory authority has power to do any act which will prejudicially affect the subject, then although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

In other words, while the presence of two parties besides the deciding authority will *prima facie* and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is never-the less required by the statute to act judicially.

12. This view was reiterated by Das, C. J. (as he then became) speaking for the majority in *Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others*, Delivering the minority judgment in the said case K. Subba Rao, (as he then was) held a still wider view that the duty to act judicially might not be expressly conferred but might be inferred from the provisions of the Statute. In *Board of Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others*, the Supreme Court adopted this view and observed as follows:

Now it may be mentioned that the Statute is not likely to provide in so many words that the authority passing the order is required to act judicially; that can only be inferred from the express provisions of the statute in the first instance in each case and no one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to act judicially or not. The inference whether the authority acting under a statute where it is silent has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the rights affected, the manner of the disposal provided, the objective criterion if any to be "adopted, the effect of the decision on the person affected and other indicia afforded by the statute. A duty to act judicially may arise in widely different circumstances which it will be impossible and indeed inadvisable to attempt to define exhaustively.

13. From the above decisions the doctrine of judicial or quasi-judicial approach may be said to have been settled by the Supreme Court as follows:

1. When there are two contending parties, the deciding authority *prima facie* and, in the absence of anything in the statute to the contrary, has a duty to act judicially.

2. When there are no two parties except the authority proposing to do the act and the subject opposing it, the obligation to decide, judicially is still there if

from the statute as a whole and other circumstances, which will naturally vary from case to case, the duty to make a judicial approach may be inferred. When the licensing authority pels, a licence u/s 17(3) of the new Act, there are no two parties. are is only the licensing authority and person whose licence is cancelled.

14. I may now examine the scheme of the new Act Restrictions on the possession of arms have been there since the advent of British Rule in India. The Indian. Arms Act of 1878 which I have called the old Act, was a consolidation of the laws which had been previously in force and which governed the possession, sale and import etc. of arms. The object of the Arms Act was to secure the public security and maintenance of public security and public order. After, independence the Government decided to follow a more liberal policy in the administration of the Anns Act and hence the Act of 1959 (called the new Act) replaced: the old Act enacted over eighty years ago. In the new Act the licensing provisions were liberalized but the overall necessity of public security and maintenance of public order was kept in view. Section 14(1)(b)(3) of the Act empowers the licensing authority to refuse to grant a licence to a person it the licensing authority has reason to believe such person "to be for any reason unfit for a licence under the Act". This discretion is controlled in two ways viz. (a) the licensing authority has to record in writing the reasons for refusal (vide Section 14(3)); (b) an appeal lies against the order of refusal (vide Rule 55 of the Arms Rules 1962). under Proviso (ii) to Rule 51 the licensing authority may require the personal attendance of the applicant.

15. From the above provisions it is clear that the licensing authority need not give a hearing before refusing the grant of a licence. It may require the personal presence of the applicant if it so desires.

16. u/s 17 (3) of the new Act the licensing authority can cancel a licence. under Sub-section (5) of the said section, it must record in writing the reasons there for. u/s 18 an appeal lies against the order of cancellation. It is significant that there was no provision for appeal against an order of cancellation of licence under the old Act. This new provision is a safe guard against any arbitrary exercise of discretion in the matter of cancellation of a licence by the licensing authority. It may be noted that in the case of Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, (supra) the Court observed that the decision of the Examination Committee which cancelled the examination results of certain students, might have far-reaching consequence in an extreme case and blast the career of a young student. It may, however, be pointed out that the Regulations under which the Committee acted, did not provide for any appeal and consequently the decisions of the Committee even in matters of serious consequence would have been final. Hence, in such circumstances, it was only fair that the Committee gave an opportunity to the students concerned to defend themselves.

17. 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 *Riverside'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 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.

18. According to the provisions in Section 17, mentioned above, the licensing authority may cancel a licence if it is "satisfied" about the unfitness of a person or "deems" cancellation necessary for securing public peace or public safety. Here the unfitness of the licence-holder or the necessity of cancelling the licence for the security of the public peace or public safety need not actually exist. The satisfaction or opinion of the licensing authority that the licence-holder is unfit or the necessity does exist, is sufficient to enable him to cancel the licence. The licensing authority in the case before us is of the opinion that the Petitioner is unfit to hold the licence. This is his sub-It is not shown that this opinion is mala fide or capricious. In forming it the licensing authority does not act judicially. But as the consequence of such an opinion may be serious, an appeal is provided against the order of cancellation of a hence.

19. In the above view of the matter, the contention that the licensing authority must give a hearing before cancelling the licence has no substance. The petition is dismissed, but we make no order as to cost.

20. Regarding the order confiscating the gun, there is no provision in the Arms Act for such confiscation on the cancellation of a licence. Confiscation can be ordered only by a convicting Court u/s 32 of the Arms Act.

21. The Government Advocate, however, has given us an assurance that the gun will be sold at a reasonable price to a person holding a licence and the sale proceeds will be paid to the Petitioner.

P.K. Goswami, J.

22. I agree.

K.C. Sen, J.

23. I agree.