
(2012) 07 AHC CK 0033

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1019 of 2001

Hukum Chand

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-07-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(f), 21
Penal Code, 1860 (IPC) — Section 13, 323, 342, 504, 506

Citation : (2012) 8 ADJ 127

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Raghvendra Singh, for the Appellant;

Final Decision : Allowed

Judgement

Hon"ble Sudhir Agarwal, J.—This writ petition is directed against the order dated 15.12.2000 passed by District Magistrate suspending fire-arm licence of petitioner till criminal case pending against him is finalised and the appellate order dated 10.1.2001 passed by Commissioner rejecting petitioner's appeal. The District Magistrate in the present case issued show-cause notice dated 19.7.1999 requiring petitioner to show-cause why his fire-arm licence may not be cancelled or suspended. He referred to report dated 10.6.1999 of Sub Divisional Magistrate Bihata, Gokul stating that on, 9.6.1999, petitioner abused and assaulted one Satya Prakash son of Makrand Pasi, his father and brother, locked them in a room in his house and after assaulting with his licensed gun also threatened them to kill. In this regard a criminal case No. 108 of 1999 under Sections 342/ 323/ 504/ 506 IPC read with Section 3(1)(x) of SC/ST Act was registered and a charge-sheet was also submitted which shows that petitioner used to threaten general public, misusing his gun and is likely to commit any serious offence at any point of time causing threat to public safety. The petitioner submitted his reply/objection dated 12.8.1999, controverting allegations leveled against him and said that he was falsely implicated in the aforesaid case. He also

stated that on the alleged date and time of incident, he was ill and hence question of committing such an offence on the said date, time and place could not have arisen. He denied of having used his weapon for any disturbance of public peace and safety at any point of time.

2. Thereafter the District Magistrate passed impugned order dated 15.12.2000 suspending fire-arm licence of petitioner till disposal of the aforesaid criminal case. The District Magistrate referred to pendency of criminal case against petitioner before the Court and also that the petitioner since has admitted enmity with one Rakesh son of Indra Pal of his village, possibility of misuse of fire-arm cannot be ruled out. He also referred to some report dated 23.9.2000 received from Station Officer of concerned Police Station, stating that another criminal case has been registered against petitioner during pendency of the same, therefore, it would justify an inference that petitioner can dare misuse of his weapon at any point of time. Hence, considering the aspect of public peace and safety, it would be justified that he should be directed to surrender his weapon after suspending his licence u/s 17(3) of Act 1959. He passed order accordingly. This order has been challenged in appeal before the Commissioner who rejected appeal by appellate order dated 10.1.2001.

3. Learned counsel for the petitioner submitted that firstly, the impugned orders have been passed without showing existence of any of the grounds enumerated u/s 17(3) (a) to (e) and secondly, that the authorities below have referred to Station Officer's report/comments dated 23.9.2000 though show-cause notice issued to the petitioner on 19.7.1999 had been replied by the petitioner on 12.8.1999. The alleged report 23.9.2000 and its contents were never disclosed to petitioner. The authorities below have taken into account certain material never disclosed to him, hence, impugned order is in violation of principles of natural justice. It is submitted that in respect of comments/report dated 23.9.2000, the petitioner had no opportunity to place his stand and, therefore, the impugned orders passed by respondents are in utter violation of principles of natural justice.

4. Learned Standing Counsel could not dispute that the subsequent material which has been taken into account by District Magistrate in passing the impugned order dated 15.12.2000 obviously was never disclosed to petitioner and has been considered at his back.

5. An attempt has been made by the learned Standing Counsel to contend that grant of fire-arm licence being a privilege of the State and not a right of individual, the Court unless finds patent violation of some statutory provision, ought not interfere. He further contended that subjective satisfaction of District Magistrate, i.e., licensing authority, in forming opinion as to whether fire-arm licence granted to an individual should be suspended or revoked, cannot be interfered with by this Court unless it is found that the procedure prescribed in the statute has been violated and not for any other reason.

6. I have considered rival submissions advanced by the parties in the light of statutory provisions as also various authorities on the subject dealing with the matter. This Court will also have to consider as to what extent licensing authority can claim or exercise its uncontrolled discretion with immunity from judicial review, considering the scope of argument of learned Standing Counsel with widest amplitude to protect the impugned order from judicial review.

7. It is no doubt true that a fire-arm licence cannot be claimed by a person/citizen as a matter of right. In absolute terms, it cannot be treated to be a "fundamental right" of a person or citizen to obtain a fire-arm licence or to possess or carry a fire-arm. However, if a person seeks grant of a fire-arm licence for his personal safety and security, it cannot be doubted that possession and carrying a weapon embolden the prospect of preserving one's person in case of any assault etc. by an unsocial and bad element or attack by a miscreant like a robber, a Dacoit etc. It thus helps a person to keep himself safe.

8. At this point of time, it also cannot be disputed that Article 21 of the Constitution of India enshrines and recognises a fundamental right of a person to life and liberty and it has been given a very wide and enlarged scope.

9. In the last more than two decades the Apex Court in various ways has expanded the meaning of right to life and liberty guaranteed under Article 21 of the Constitution so as to achieve the real and cherished objective of said provision.

10. The proposition of entertaining cases in public interest litigation is one of such expanded facet. The Court while exercising jurisdiction of judicial review realized that a large section of society due to extreme poverty, ignorance, discrimination and illiteracy had been subjected to denial of justice from time immemorial. In fact, they have no access to justice. In other words, they lacked means to invoke the system of justice. Predominantly, to provide access to justice to the poor, deprived, vulnerable, discriminated and marginalized sections of the society, the Apex Court encouraged, initiated, and propelled the public interest litigation. This is what has been observed as an expansion of Article 21 to the field of public interest litigation by Apex Court in *State of Uttaranchal Vs. Balwant Singh Chaufal and Others*, . Speedy trial has also been held as an integral and essential part of fundamental right to life and liberty under Article 21 in *Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna*, ; *Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc.*, ; and, recently in *Vakil Prasad Singh Vs. State of Bihar*, .

11. In *R. Rajagopal alias R. Rajagopal alias R.R. Gopal and Another Vs. State of Tamil Nadu and Others*, , right to privacy was held implicit in right to life and liberty under Article 21. The Court said that it is a right to be let alone. This has been followed in *People's Union of Civil Liberties (PUCL) Vs. Union of India (UOI) and Another*, ; *Sharda Vs. Dharmpal*, ; *Distt. Registrar and Collector, Hyderabad and Another Vs. Canara Bank Etc.*, ; and, *Mr "X" Vs. Hospital "Z"*, .

12. A restricted interpretation was given earlier in *A.K. Gopalan Vs. The State of Madras*, as also in *Additional District Magistrate, Jabalpur Vs. Shivakant Shukla*, but in *I.R. Coelho (Dead) By LRs. Vs. State of Tamil Nadu and Others*, , the Apex Court said that the judgment giving restricted interpretation is impliedly overruled by various subsequent judgments. The relevant observations are as under:

During emergency, the fundamental rights were read even more restrictively as interpreted by majority in *Additional District Magistrate, Jabalpur Vs. Shivakant Shukla*, . The decision in *Additional District Magistrate, Jabalpur* about the restrictive reading of right to life and liberty stood impliedly overruled by various subsequent decisions.

13. In para 17 the Court held that a strict textual meaning was given in *A.K. Gopalan* (supra) but it received an enlarged interpretation in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, . The Court further said:

A.K. Gopalan was no longer good law. In *Maneka Gandhi* a Bench of Seven Judges held that the procedure established by law in Article 21 had to be reasonable and not violative of Article 14 and also that fundamental rights guaranteed by Part III were distinct and mutually exclusive rights.

14. Similarly, right to wages of an employee has been held integral to Article 21 of the Constitution in *O. Konavalov Vs. Commander, Coast Guard Region and Others*, .

15. In *Vishaka and others Vs. State of Rajasthan and Others*, , sexual harassment of a woman at workplace is held a violation of fundamental right of gender equality and is treated to be a violation of right to life and liberty under Article 21. This has been reiterated in *Union of India (UOI) Vs. Association for Democratic Reforms and Another*, .

16. In *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, , the Court refers to certain earlier decisions expanding right to life and liberty under Article 21 to various facets of life namely, the right to go abroad (*Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Others*,); right to privacy, (*Gobind v. State of M.P.*, 1975 Cr.L.J. 1111); right against solitary confinement [*Sunil Batra v. Delhi Administration*, 1978 Cr.L.J. 1741]; right against bar fetters, [*Charles Sobraj Vs. Supdt. Central Jail, Tihar, New Delhi*,); right to legal aid (*Madhav Hayawadanrao Hoskot Vs. State of Maharashtra*,); right against handcuffing [*Prem Shankar Shukla Vs. Delhi Administration*,); right against delayed execution (*T.V. Vatheeswaran Vs. State of Tamil Nadu*,); right against custodial violence (*Sheela Barse Vs. State of Maharashtra*,); right against public hanging (*AG. of India v. Lanchama Devi*, AIR 1986 SC 467); Doctor's assistance (*Pt. Parmanand Katara Vs. Union of India (UOI) and Others*,); Shelter (*M/s. Shantistar Builders Vs. Narayan Khimalal Totame and others*,); and, right to primary education for children up to 14 years of age in *Unni Krishnan* (supra).

17. In *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, , right to life and liberty was interpreted so as to include right to livelihood and also right to sue for violation of rights. The right to life guaranteed by Article 21 was held to mean that all that makes life livable life in all its fullness. It was also held in *S.M.D. Kiran Pasha Vs. Government of Andhra Pradesh and Others*, , that right to life and liberty imposes a corresponding duty on the rest of the society, including the State, to observe that right, that is to say, not to act or do anything which would amount to infringement of that right, except in accordance with the procedure prescribed by law.

18. In *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others*, , the importance of above right has been recognised by observing "Life and personal liberty are the most prized possessions of an individual. The inner urge for freedom is a natural phenomenon of every human being. Respect for life, liberty and property is not merely a norm or a policy of the State but an essential requirement of any civilized society." (para 54)

19. Then again the Court *Siddharam Satlingappa Mhetre* (supra) said in para 58 of the judgment that phrase "personal liberty" is very wide and includes all possible rights which come to constitute "personal liberty" including those which are mentioned in Article 21. It further said in para 64 that "object of Article 21 is to prevent encroachment upon personal liberty in any manner". Article 21 is repository of all human rights essential for a person or a citizen. A fruitful and meaningful life presupposes full of dignity, honour, health and welfare. In the modern "Welfare Philosophy", it is for the State to ensure these essentials of life to all its citizens, and if possible, to non-citizens. The Court also reiterated observations in earlier decisions and in para 83 of the judgment said that in every civilised democratic country, liberty is considered to be a most precious human right of every person.

20. Time and again it has been reiterated by Apex Court as also various High Courts including this Court also, while considering the phrase "right to life and liberty" and Article 21 of the Constitution that all human beings are born with some unalienable rights like life, liberty and pursuit of happiness. The importance of these natural rights can be found in the fact that these are fundamental for their proper existence and no other right can be enjoyed without the presence of right to life and liberty. Life bereft of liberty would be without honour and dignity and it would lose all significance and meaning and the life itself would not be worth living. That is why "liberty" is called the very quintessence of a civilized existence. Liberty has many facets and meanings. It may be defined as, "the affirmation by an individual or group of his or its own essence". It needs the presence of three factors, namely, harmonious balance of personality, the absence of restraint upon the exercise of that affirmation and organization of opportunities for exercise of a continuous initiative. It may be defined as a power of acting according to the determination of will. Liberty generally means prevention of restraint and providing such opportunities, denial of which would

result in frustration and ultimately disorder. Restraints on man's liberty are laid down by power used through absolute discretion, which when used in this manner brings an end to "liberty" and freedom is lost. At the same time, "liberty" without restraints would mean liberty won by one and lost by another. So "liberty" means doing of anything one desires but subject to the desire of others.

21. In *Delhi Jal Board Vs. National Campaign for Dignity and Rights of Sewerage and Allied Workers and Others*, , the Court said that Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of removing executives illegal orders/ action only and nothing more than that. The Court further said that one of the telling ways in which violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the Petitioner's rights. It may have recourse against those officers.

22. These decisions leave no doubt in the mind of the Court that right to life and liberty under Article 21, as it stands today, in the light of plethora of authorities, some of which referred hereinabove, includes each and everything which makes the life dignified and livable. Obviously, this right would also include to keep one's life safe and secure, otherwise, if life itself goes, the question of availing any fundamental right to enjoy life cannot arise.

23. The individual's security is the responsibility of such individual, the society as also the State. The prime responsibility of maintaining law and order and also keeping its subject safe and secure lie upon the State. There cannot be any denial of this fact but one can have and take all permissible steps for preserving his life safe and secure. It takes us to the proposition that right to life and liberty though has been widened in its scope so as to be included within Article 21 but it is further restricted with words that there can be a check or denial or restraint or obstruction/restriction in accordance with the procedure prescribed in law. If something is done in accordance with procedure prescribed in law, which is otherwise valid and just, the right under Article 21 cannot be claimed beyond that. It is in this context, the Courts have held that right to carry a fire-arm to ensure safety and security of a person is not included in Article 21 as such, for the reason that there is a valid statute which prohibits an open wide availability of fire-arm with individuals since it involves safety and security of others, the society in particular and the State in general. The individuals may protect their

life and liberty taking all such measures as are permissible in law but so far as availability of fire-arm for the said purpose is concerned, it depends on the decision of Government or State, permitting a person to keep firearm or not, by granting a licence. Such a person who has been granted licence to carry on or possess a fire-arm shifts in a different category comparing the others who have no such permission. It makes him a privileged person to this extent. When we consider such a privileged person as a class, they constitute a privileged class having facility of protecting their life and liberty by possessing and carrying a fire-arm with them. The State's authority in this matter has been held to be so pervasive and authoritative that the matter of possessing and carrying fire-arm for personal safety and security, instead of coming within the realm of a right of a person, has become a privilege of such person granted by the State. This is how it has been read and held by the Courts, time and again and I am in respectful agreement thereto besides the fact that those authorities being of Larger Bench, are binding on me. I shall discuss those authorities on other aspects in detail a bit later.

24. The matter of grant of privilege as aforesaid is governed by a statute presently called "Arms Act, 1959". Before coming to the Arms Act, 1959 as in force now, it would also be appropriate to have a little idea of its historical background which would reflect the foundational basis for such enactment.

25. There were two enactments, namely, Act No. 18 of 1841 and Act No. 30 of 1854 for regulating export of arms, ammunitions and military stores without licence. Just before the first War of Independence, Act 28 of 1857 was enacted to supplement the Act of 1841 and covered additional aspect like import, manufacture, possession and use. It is a matter of common knowledge that first battle of independence was fought by the natives of erstwhile territory of present India in 1857 with the army of a foreign corporate ruler, namely, East India Company. The British called it a "mutiny of 1857". Immediately thereafter, the rule of erstwhile British Indian Territory stood transferred to British Government and East India Company lost its reign. To disarm the natives of Indian continent the British Legislature enacted Act XXXI of 1857, i.e., Arms Act, 1857. The need for this statute obviously arose due to army revolt of 1857 followed by people's declaration of war. A huge experiment in mass disarmament was tried after 1857 battle of independence. To consolidate the gains of that experiment and ensure no further uprising of masses, the need felt for having a consolidated Act which gave rise to Act of 1860. Initially, Act, 1860 was enacted for a period of five years but it was extended by one year more under Act, 6 of 1865 and then it was extended till further orders vide Act, 6 of 1866. There existed several defects in this statute. Moreover in carrying the provisions of Act, 1860 lots of difficulties arose before British Indian Government compelling for a new enactment which came in 1878 vide Arms Act, 1878 (Act XI of 1878). It provided for exemption to European, Anglo-Indians, Local Chiefs, Jagirdars and other natives whom the Government wanted to exempt. It also provided for possession of fire-arm under licence in both disarmed and undisarmed districts to prevent arms passing from

undisarmed districts to disarmed ones. The definition of "arms" in Act, 1878 included knives, spears, bows and arrows.

26. After independence, the elected Government under the new Constitution given by people of India to themselves in 1950, followed a liberal policy in administration of Arms Act and rules framed there under. To give effect to the said liberation policy, Arms Act, 1959 (hereinafter referred to as the "Act, 1959") was enacted (Act No. 54 of 1959) which received the assent of President on 23.12.1959 and published in Gazette of India on 24.12.1959. It modified the definition of "arms" and classified "fire-arm" in the category of "prohibited", "non-prohibited" etc. It is thus evident that legislation relating to arms is a colonial legacy. The then Government considered it safe to disarm the native people for obvious political and administrative reasons. However, with the independence also, this country faced unfortunate pain of partition. There was a sudden upsurge in law and order situation. Probably, for this reason the new Government retained this legacy though very shortly made a new enactment liberalising its provision to some extent.

27. There have been four major amendments in Act, 1959 by Arms (Amendment) Act 55 of 1971, Arms (Amendment) Act 25 of 1983, Arms (Amendment) Act 39 of 1985, Arms (Amendment) Act 42 of 1988. In the Statement of Objects and Reasons (hereinafter referred to as the "SOR") of all these statutes the basic intention and objective of legislature is that fire-arms may not be available to unsocial and criminal elements so that the very existence of society may not be endangered and there should be an adequate vigilance on possession, sale and transfer etc. of fire-arms.

28. In SOR of Act, 42 of 1988 the legislature also recognised the fact that anti-national elements and terrorists, despite the statute, possess and have acquired automatic fire-arms, machine-guns of various types, rockets and rocket launchers etc.; and in order to make such possession, a more serious offence attracting stringent punishment, the amendment of statute required by providing stringent punishment for possessing such illegal arms and ammunitions.

29. The validity of Arms Act 11 of 1878 on the anvil of Article 19(1)(f) came to be considered in P. Narasimha Reddy Vs. District Magistrate, Cuddapah, . Hon"ble Subba Rao, J. (as His Lordship then was) held that restrictions imposed under Arms Act and Rules are in the interest of general public and accordingly challenge to validity of aforesaid statute failed. Even vires of Section 3 sub-section (1), (2) and (3) of Act, 1959 was assailed before Patna High Court in Tata Iron and Steel Company Limited v. The State of Bihar, 1993(1) PLJR 718 and the same was held constitutionally valid.

30. The position emerging from the above discussion is that possession or carrying of fire-arm or ammunition is completely prohibited u/s 3(1) of Act, 1959 unless one holds a licence issued in accordance with provisions of Act, 1959 and Rules framed there under. In other words, one can possess and/or carry firearm

or ammunition only when he also holds a licence granted under Act, 1959, in accordance with the provisions thereof and Rules framed there under. That is how the right to possess fire-arm and/or to carry it by the persons who are granted licence under Act, 1959 is treated to be a privilege else the people in common have been denied such a right by the statute.

31. Now the question comes, whether grant of licence by competent authority is like a grant of privilege at par with distribution of State's largess. Whether its grant by an authority depends on the sheer whims and caprice, totally unguided and unbridled discretion of such authority or he is bound to act reasonably, fairly, impartially and in accordance with certain norms applicable to all equally, treating all the persons applying for grant of such licence without any discrimination, favour etc. Court's observations that nobody has a right to possess a fire-arm but it is a privilege which can be granted in the discretion of licensing authority has been construed and interpreted by licensing authority as if it is their's totally unbridled, uncontrolled and absolute discretion to which they are not answerable to anyone. In this context the orders are being passed frequently day-after-day resulting in a spate of litigation in the Courts throughout the country. This necessitates to find out whether the right of equality and fairness under Article 14 would be attracted to judge the correctness of an order of licensing authority, when he considers application for licence or matter of suspension or cancellation of a fire-arm licence, already granted.

32. To put the things straight, it would be useful to refer some of such decisions wherein these words "no right", "privilege", "discretion of licensing authority" etc. have been used and the context wherein the Courts have mentioned those words. However, before referring to those authorities, I may remind that a judgment is not to be read as a statute. When a judgment is written by a Judge, he normally concentrates on the facts involved in that particular case, up for consideration before him, and the relevant provisions applicable to those facts. Sometimes while making discussion some observations are made, even going beyond those facts and the relevant provisions and many a times certain words are mentioned which the Judge concerned may not have intended to convey such meaning as is subsequently gathered by readers having no inkling of the thoughts and deliberations with which the judgment is written. Though due care is normally taken but many a times selection of word(s) is also not in that context in which the subsequent readers take. What I have said here would be reflected from various judgments also if we consider those judgments in the light of real issue which was up for consideration before the Court and the exact provisions, interpretation whereof was involved.

33. Again I also find it necessary to give a reference to relevant provisions before proceeding to the authorities as indicated above.

34. Chapter II of Act, 1959 contains provisions imposing various kinds of restrictions on acquisition and possession of fire-arms, manufacture and sale thereof, shortening or conversion of firearms, sale or transfer of fire-arms,

import, export and transport of fire-arms etc. Chapter III deals with provisions relating to licence, i.e., the procedure for licence including the provisions relating to refusal of licence, duration and renewal as also the fee and then the provisions relating to suspension and revocation of such licence. It has six provisions, i.e., Sections 13 to 18 and the last one, in fact, is a kind of review of order passed by licensing authority by higher authority in hierarchy hearing appeal.

35. For my purpose, there are three sections significant and relevant to be considered, i.e., Sections 13, 14 and 17. The earlier two provisions relate to initial grant of privilege of possession etc. of firearm. In other words, it relates to grant or refusal of licence. The third one relates to power of suspension/revocation of licence.

36. Section 13 as enacted in 1959 has undergone an amendment in 1983 w.e.f. 22.6.1983 whereby sub-section (2) was substituted and sub-section (2-A) was inserted. Section 13 reads as under:

13. Grant of licences.--(1) An application for the grant of a licence under Chapter II shall be made to the licensing authority and shall be in such form, contain such particulars and be accompanied by such fee, if any, as may be prescribed.

(2) On receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.

(2-A) The licensing authority, after such inquiry, if any, as it may, consider necessary, and after considering the report received under sub-section (2), shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same:

Provided that where the officer in charge of the nearest police station does not send his report on the application within the prescribed time, the licensing authority may, if it deems fit, make such order, after the expiry of the prescribed time, without further waiting for that report.

(3) The licensing authority shall grant--

(a) a licence u/s 3 where the licence is required--

(i) by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of a muzzle loading gun to be used for bona fide crop protection:

Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle loading gun will not be sufficient for crop protection, the licensing authority may grant a licence in respect of any other smooth bore gun as aforesaid for such protection, or

(ii) in respect of a point 22 bore rifle or an air rifle to be used for target practice by a member of a rifle club or rifle association licensed or recognised by the

Central Government;

(b) a licence u/s 3 in any other case or a licence u/s 4, Section 5, Section 6, Section 10 or Section 12, if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same.

37. Sub-section (1) talks of application by the person seeking grant of a licence of fire-arm. Sub-section (2) of Section 13 makes it obligatory upon licensing authority to call for a report of officer in charge of nearest police station on the application submitted by a person for grant of licence under Chapter-II. A corresponding obligation is laid on the officer in charge of nearest police station to submit his report within the prescribed time. Though Rules have been framed, i.e., Arms Rules, 1962 but as contemplated in sub-section (2). of Section 13, no time limit has been prescribed within which officer in charge of nearest police station must submit his report. It goes without saying that when no time is prescribed in the statute, it would mean that the authority concerned shall be obliged to perform its duty within a reasonable time. What that reasonable time would be, has to be considered in each and every case, in the facts and circumstances of that case and no thumb rule can be applied in this regard.

38. This inference I have drawn is fortified from proviso to sub-section (2-A) of Section 13 which says, if the officer in charge of nearest police station fails to submit his report on the application within prescribed time, the licensing authority may, if deems fit, pass such order without waiting for that report, after expiry of prescribed time. This shows that submission of report within time, namely, either the prescribed time or within a reasonable time is obligatory on the part of officer in charge of nearest police station.

39. Sub-section (2-A) of Section 13 then provides that the licensing authority shall pass an order in writing either by granting licence or refusing to grant the same. Before doing so, he may make such inquiry, if any, as he may consider necessary. Here besides report contemplated under sub-section (2), the licensing authority is enabled and empowered to make any other inquiry himself or otherwise, so as to satisfy himself of the existence of justification for either grant of licence or refusal thereof. Such inquiry is not mandatory and depends on the necessity felt by the licensing authority, if any, in a particular case. Unlike the report contemplated in sub-section (2), the inquiry contemplated under sub-section (2-A) depends on the discretion of licensing authority and not obligatory. The purpose and objective is quite obvious. The licensing authority is entitled to find out entire information wherefrom he may form opinion objectively about genuity and justification of grant of licence or its refusal and may act thereupon. But before passing the order, either for grant or refusal of licence, he is under an obligation to consider "the report" if received under sub-section (2).

40. The grant or refusal of licence by licensing authority is not his absolute discretion but is further subjected to other provisions of Chapter III. It takes the Court to sub-section (3) of Section 13 and Section 14. Sub-section (3) of Section

13 obliges the licensing authority to grant a licence if the conditions contemplated therein exist and are satisfied. One of such contingencies is where the person applying for grant of licence u/s 3 wants to possess or carry a smooth bore gun having a barrel of not less than twenty inches in length. Here it refers to the kind of weapon which the applicant seeking licence intends to possess or carry. The second part of this clause, i.e., sub-section (3)(a)(i) is the user of such weapon. It must be either for protection or sport of in respect of muzzle loading gun to be used for bona fide crop protection. There are three kinds of purposes and objectives provided; and one of it is protection. If an applicant seeks a licence in respect to a weapon, i.e., smooth bore gun having a barrel of not less than twenty inches of gun for protection, the licensing authority is obliged to grant such licence u/s 3 of Act, 1959. Similarly, if the aforesaid kind of weapon is required for sport the licensing authority is to grant it and it is mandatory. The third is a different kind of firearm, namely, a muzzle loading gun and if it is required for bona fide crop protection, the licence u/s 3 shall be granted. Proviso to sub-section (3)(a)(i) of Section 13 gives a discretion to licensing authority where the licence is required for bona fide crop protection, that instead of muzzle loading gun if he finds that it is not sufficient for crop protection, he may, in that case, grant licence in respect of any other smooth bore gun having a barrel of not less than twenty inches in length for such protection.

41. The next clause, i.e., sub-section (3)(a)(ii) of Section 13 obliges licensing authority to grant licence u/s 3 in respect to a point twenty two bore rifle or an air rifle if sought to be used for target practice by member of a rifle club or rifle association, licensed or recognised by Central Government.

42. Sub-section (3)(b) of Section 13 talks of residuary cases and provides that in a licence u/s 3 in any other case which necessarily would mean that the cases not covered by sub-section (3)(a) and in respect to licences under other provisions of Chapter-II, namely, 4, 5, 6, 10 or 12, he shall grant the same if he is satisfied that the person by whom licence is required had a "good reason" for obtaining the same. The word "good reason" obviously has not been defined under the Act 1959. It is this provision which leaves a very wide area of discretion or scope of consideration upon the licensing authority which has been used in various ways and construed to the level of an absolute and unbridled discretion and sheer subjective satisfaction of licensing authority to decide whether the licence should be granted or not.

43. Now I come to Section 14 which provides certain conditions, existence whereof makes it obligatory upon licensing authority to refuse grant of a licence. This is a negative provision restricting power of licensing authority and making obligatory for him to deny licence, if conditions therein are satisfied.

44. The rigour of this provision is writ large from the fact that it has been given overriding effect over Section 13, meaning thereby, if the situation contemplated in Section 14 exists and even if something u/s 13 comes in favour of person seeking licence, the licensing authority would have no option but to refuse to

grant a licence. However, a complete reading of Section 14 reveals that heading of provision is "refusal of licences" but it contains two types of situations, one, where refusal is mandatory, and, secondly, the conditions on the basis whereof refusal shall not be founded. It also controls the procedure i.e. what the licensing authority shall mention in his order if he refuses to grant a licence.

45. Section 14 reads as under:

14. Refusal of licences.--(1) Notwithstanding anything in Section 13, the licensing authority shall refuse to grant--

(a) a licence u/s 3, Section 4 or Section 5 where such licence is required in respect of any prohibited arms or prohibited ammunition;

(b) a licence in any other case 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

(2) to be of unsound mind, or

(3) to be for any reason unfit for a licence under this Act; or

(ii) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

(2) The licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or possess sufficient property.

(3) Where the licensing authority refuses to grant a licence to any person it shall record in writing the reasons for such refusal and furnish to that person 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.

(Emphasis added)

46. A perusal of above shows that no licence under Sections 3, 4 or 5 shall be granted if asked for any prohibited arms or prohibited ammunition. In other cases, which obviously would include non-prohibited arms and non-prohibited ammunitions, if the licensing authority has reason to believe that grant of licence is "prohibited by the Act or by any other law for the time being in force" he shall refuse licence. In other words, if Act, 1959 or any other law operating at the relevant time prohibits acquisition, possession or carrying on arms or ammunitions, in such case, the licence shall be refused. Next condition is, if the applicant is of "unsound mind". Further if the licensing authority has reason to believe that a person seeking licence under Sections 3, 4 and 5 in respect to a non prohibited arms or non-prohibited ammunitions is "unfit" for a licence under

Act, 1959 for any reason, then also the licence shall be refused. Here the word "unfit" is of importance and licensing authority shall be obliged to decline licence if he has reason to believe for any reason that the person seeking licence is unfit.

47. Then comes residuary kind of provision, namely, sub-section (1)(b)(ii) of Section 14 which provides, if licensing authority deems necessary for "security of public peace or for public safety" in that case also, he shall refuse grant of licence under Sections 3, 4 or 5 in respect to non-prohibited arms or non-prohibited ammunitions.

48. However, the mere financial status of a person seeking licence shall not be a ground to refuse licence by itself. The poor and downtrodden people shall not be denied grant of licence only on the consideration of their poverty. Though the word has been used "sufficient property" but it takes within its ambit every kind of such discretion based on financial condition and licensing authority is clearly mandated not to deny grant of licence only on such consideration.

49. Lastly, sub-section (3) of Section 14 protects from a sheer arbitrary and whimsical exercise on the part of licensing authority in denying licence, by making it obligatory upon him to record, in writing, "reasons" for such refusal. This provision is in two parts. Recording of reasons for refusal of grant of licence is mandatory and this is one condition which cannot be ignored, omitted or dispensed with. The second aspect is, the communication of such reasons to the concerned person. Statute says, if the person who has been refused grant of licence, so demands, a brief of statement of recorded reasons shall be supplied to him. This is the general requirement of statute but an exception is where the licensing authority forms opinion that communication of those reasons shall not be in public interest, it may not convey those reasons to the person concerned. Sub-section (3) of Section 14 incorporates within itself the observance of one of the principle of natural justice, making application of mind and consideration of application on the part of licensing authority objective, so that no decision may be taken in a sheer arbitrary manner. The principle of speaking order is incorporated herein.

50. I have no hesitation thus in observing that a cumulative and harmonious reading of Sections 13 and 14 leave no manner of doubt that an objective consideration is mandated on the part of licensing authority and he cannot deny grant of license to a person on his sheer whims, caprices, imagination etc. Here it answers the requirement of reasonableness also and the procedure is consistent with the requirement of principle of natural justice. To some extent, it brings into consideration Article 14 of the Constitution. One cannot say that under the garb of the words, "any reason", "unfit for grant of licence", or the absence of a "good reason" for obtaining license, it would empower a licensing authority to deny licence on sheer flimsy grounds, namely, he will grant it only to those who have white hair or blue eyes or having a particular height and like. Similarly, the licensing authority cannot discover within "good reasons" for obtaining licence certain ex facie absurd reasons, namely, if a person belongs to

a particular political party, it is a good reason for obtaining licence and should be granted, or, that a person if belongs to a particular class or caste, is a good reason for granting licence and so on. These considerations are impermissible and cannot be construed a "good reason". In the garb of "good reason" for obtaining licence, one also cannot stretch to a situation which would be virtually impossible to be performed or placed on record.

51. The second part i.e. Section 17 deals a case where a licence has already been granted and then the licensing authority finds existence of certain facts or situations arising or otherwise, which justify either some variance in conditions subject to which licence was granted or suspension and/or revocation thereof. The variance in the conditions of licence is permissible even on the application of licence holder. The restriction put by Section 17(1) and (2) of Act 1959 in respect of variance of conditions subject to which the licence is granted, is that such variance is not contrary to any condition(s) etc. already prescribed, that is, contained in the Rules.

52. Now, I proceed to more important part of Section 17 that runs from sub-sections (3) to (10) thereof. Sub-section (3) confers power upon licensing authority to "suspend a licence for such period as he thinks fit" or "revoke a licence". Such power can be exercised if licensing authority is satisfied of existence of certain conditions. Sub-clause (a) of sub-section (3) of Section (17) contemplates existence of conditions similar to what are prescribed in Section 14(b)(i)(1) to (3) i.e. if the holder of licence is prohibited by Act 1959 or any other law for the time being in force for acquiring, possessing or carrying any arms or ammunitions or is of unsound mind or for any reason, is unfit for the licence.

53. Next is sub-clause (b) of Section 17 (3). It provides that the licensing authority if deems necessary for "security of public peace" or "public safety" to suspend or revoke a licence, he can do so. Subclause (c) confers power where the licensing authority finds that licence was obtained by suppression of material information or on the basis of wrong information conveyed by holder of licence or any other person on his behalf at the time of applying for licence. Sub-clause (d) of Section 17(3) empowers licensing authority to suspend or revoke licence if any of the conditions thereof have been contravened. Subclause (e) is a follow up action of sub-section (1) of Section 17, inasmuch as, if a notice under sub-section (1) has been given to licence holder by licensing authority for making variance in the conditions subject to which the licence was granted and if he was required to deliver licence but has not been so delivered, the licensing authority may suspend or revoke the licence.

54. Section 17(4) enables licence holder to seek revocation of his licence by making an application. It is a voluntary act of licence holder if he wants to give up his licence.

55. Sub-sections (5) and (6) provide procedure for action which may be taken by

the licensing authority under sub-sections (1) to (3).

56. This Court finds that the cases considered by Larger Benches of this Court were basically those where the question of suspension or revocation of licence was involved. The scope and ambit of the cases falling within Sections 13 and 14 is obviously different to what has to be considered and dealt with in the cases involving suspension and revocation of licence and governed by Section 17 of Act 1959.

57. So far as this Court is concerned, Sections 13 and 14 came to be considered by a Division Bench in *State of U.P. and Others Vs. Jaswant Singh Sarna*, . Having referred to Section 13 the Court said;

It is clear that Section 13 recognises a right to a licence. Apart from cases where the fire-arm is required for protection or sport or crop protection or for target practice in a Rifle Club or Rifle Association, any one is entitled to it if he has good reason for obtaining it. There must be good reason for obtaining the licence, and that condition regulates the grant of a licence. The requirement has been imposed to prevent an abuse of the right by members of the public. Nonetheless, as soon as the condition is satisfied the grant is obligatory and it is not open to a licensing authority to refuse a licence arbitrarily. (para 8)

58. Then the Court also referred to Section 14 and says:

The licensing authority is forbidden to grant a licence where it is required in respect of any prohibited arms and prohibited ammunition. That is Section 14(1)(a). Section 14 provides:.....Section 14(2) enjoins upon the licensing authority not to refuse a licence merely on the ground that the applicant does not own or possess sufficient property. Limited as the power to refuse a licence is by virtue of Section 14(1)(b) and Section 14(2), the licensing authority refusing to grant a licence is, by Section 14(3), required to record in writing the reasons for such refusal and to furnish to the applicant on demand a brief statement of the same unless public interest renders it inexpedient to furnish such statement. (para 8)

59. Further in para 13 of the judgment the Court said:

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.

60. This decision sought to be relied on in support of certain issues raised in respect to Section 17 of Act, 1959 and the matter was considered by a Larger

Bench of three Judges in Chhanga Prasad Sahu Vs. State of Uttar Pradesh and Others, . The questions referred for opinion of Full Bench were as under:

(1) Whether there is power to suspend an arms licence pending enquiry into its cancellation or suspension?

(2) Whether in view of the statutory provisions is it incumbent upon the authorities to afford an opportunity of hearing prior to suspension pending enquiry?

61. In support of submission that while proceeding to revoke or suspend a fire-arm licence, the licensing authority is bound to observe the principles of natural justice of giving notice etc. i.e. application of audi alterem partem, reliance was sought to be placed on Division Bench decision in Jaswant Singh Soma (supra) but the Full Bench distinguished by referring to the observations made in para 9 and 14 of the Division Bench judgment in Jaswant Singh Sama (supra) and held that different considerations may prevail while interpreting Sections 14 and 17 of Act, 1959.

62. It would be useful to refer here at paras 11 and 12 of the Full Bench judgment in Chhanga Prasad Sahu (supra):

11. It is no doubt true that there is considerable similarity in the procedure prescribed for consideration of an application for grant/renewal of an arms licence, as laid down in Section 14, and that for its revocation/suspension laid down in Section 17 of the Act. But then the Division Bench itself has in the case of State of U. P. v. Jaswant Singh Sama (supra) made following observations in paragraph "9" of the judgment :

We may now consider the merits of the question raised before us. While doing so, we may point out that we are concerned essentially with Section 14(1)(b)(i) by reference to which the respondent has been denied, renewal of his licences.

and thereafter it went on to observe in paragraph 14 of the judgment:

It is said that a threat to the security of the public peace and public safety may arise rendering it necessary to exclude a hearing to the applicant before a licence is refused. That argument can be appreciated when it is raised in respect of the suspension or revocation of a Licence.. But when it is sought to be employed in respect of the grant or refusal of a licence it is not intelligible. Until a licence is granted there is no right to the possession of fire-arms and ammunition or to a business in them. We find it difficult to comprehend how the public peace or public security can be endangered merely because there is an application for the grant of a licence.

12. It thus appears that notwithstanding the apparent similarity in the provisions contained in Sections 14 and 17 of the Act the Bench clearly brought it out that different considerations may prevail while interpreting the two provisions. Accordingly, we are unable to project the ratio of the decision in State of U.P.v.

Jaswant Singh Sama's case (supra) while considering the scope and ambit of the provisions contained in Section 17 of the Act.

(Emphasis added)

63. The Full Bench held, if the circumstances as contemplated u/s 17(3) exist and licensing authority is satisfied thereto, he is empowered to suspend an arms licence or to revoke it but where the licensing authority does not come to the conclusion that the facts stated in clauses (a) to (e) of Section 17(3) exist and intends to make inquiry about existence or not of those facts, during course of such inquiry, he has no power to suspend the licence. This is evident from para 14 of the judgment, which reads as under:

14. The object of the enquiry that a licensing authority may, while proceeding to consider the question as to whether or not an arms licence should be revoked or suspended, like to make, clearly is to enable the licensing authority to come to a conclusion as to whether or not the facts stated in Clauses (a) to (e) of Section 17(3) exist and as already explained it is not obliged to before considering that a case for revocation/suspension of licence has been made out, associate the licensee in such enquiry. In this view of the matter it can safely be taken that where a licensing authority embarks upon such an enquiry it is, till then, not convinced about existence of the conditions mentioned in Clauses (a) to (e) of Section 17(3) of the Act. So long as it is not so convinced no case to make an order either revoking or suspending an arms licence as contemplated by the section will be made out.

(Emphasis added)

64. Hence, Full Bench judgment in Chhanga Prasad Sahu (supra) refers to Division Bench judgment in Jaswant Singh Sama (supra) and distinguished it since Division Bench judgment was in respect of Section 14 of Act, 1959 while the issue before Full Bench was with regard to Section 17.

65. Then came a Larger Bench decision of five Judges in Kailash Nath and Others Vs. State of U.P. and Another, . Here also the matters which were referred for opinion of Larger Bench had arisen out of orders passed by licensing authority cancelling gun licence and directing licence holders to deposit weapons. These cases, therefore, related to Section 17 of Act, 1959. The District Magistrate passed orders without any show-cause notice to licence holders relying on the observations of Full Bench in Chhanga Prasad Sahu (supra) that the licensing authority if satisfied of the existence of facts enumerated in clauses (a) to (e) of Section 17(3), he can pass order of suspension or revocation of licence without issuing any notice and without holding any inquiry. These observations of Full Bench are quoted in Kailash Nath (supra) in para 1 of the judgment. The Court further held that before refusing to grant licence, the principle of natural justice, i.e., principles relating to opportunity or notice, would not apply since the process of grant of licence is not such so as to have the effect of infringing any civil right of an individual and, therefore, it would have no application. In other words, the

Court observed that so long as a licence has not been granted there is no question of infringement of any existing right and, therefore, principle of natural justice relating to show-cause notice i.e. audi alteram partem would not apply at the stage when licensing authority refused to grant licence but it would be a different case when a licence, already granted, is sought to be cancelled. This is evident from the following observations:

A right is distinct from a mere privilege. The case of a licensee to possess or use fire-arm is materially different from a case of licence to deal in or sell fire-arms.

In my opinion the above analysis cannot be legitimately extended to the exercise of such discretionary power or grant of privileges such as the initial issuing of a fire-arm licence. The shift in the cases is reflected only where the question determined is one "affecting the rights of subjects. (para 3)

But the orders refusing to renew a licence or withdrawal or cancellation of an existing licence share an entirely different legal complexion.

To equate a decision summarily to revoke a licence with a decision not to, grant a licence in the first instance may be still more unrealistic. Here the "privilege" concept may be peculiarly inapposite, and its aptness has not been enhanced by the manner in which it has been employed. (para 4)

66. While comparing status of an applicant seeking licence and a licence holder whose licence has been cancelled, the Court observed that in the former, principle of audi alteram partem is not applicable since the essence of rule is that a right of a party, if sought to be adversely affected involving civil consequences, only then such principle would apply and not otherwise. The Court said that a right is distinct from a mere privilege. The case of a licensee to possess or use fire-arm is materially different from a case of licence to deal in or sell fire-arms. It further says in para 3 as under:

The licence for acquisition and possession of fire-arms is materially different from a licence for manufacture, sale etc. While the latter confers a right to carry on a trade or business and is a source of earning livelihood, the former is merely a personal privilege for doing something which without such privilege would be unlawful. In my opinion the obtaining of a licence for acquisition and possession of fire-arms and ammunition under the Arms Act is nothing more than a privilege and the grant of such privilege does not involve the adjudication of the right of an individual nor does it entail civil consequences. I may, however, hasten to add that even an order rejecting the application for grant of licence may become legally vulnerable if it is passed arbitrarily or capriciously or without application of mind.

(Emphasis added)

67. The judgment delivered by Hon''ble M.N. Shukla, J. for himself and three other Hon''ble Judges further gave Section 17 an interpretation so as to make it consistent with the principles of natural justice and said that the licensing

authority may pass an order of suspension or revocation of licence but that shall be treated "a provisional order" requiring immediate action. The authority then shall issue a notice to the licence holder giving him an opportunity to file objections against such preliminary order and after hearing him, may pass final order which may either affirm or revoke the provisional order. The Court says that, in other words, it is incumbent upon the licensing authority to refrain from attaching finality to the order of suspension/cancellation until the aggrieved licence holder has been heard by such authority and his objections have been adjudicated. The Court permitted the licensing authority that it can also, in furtherance of his immediate remedial action, exercise incidental power of directing licence holder to surrender his licence until objections are decided.

68. Hon''ble Justice H.N. Seth in the separate judgment also held that licensing authority while revoking/suspending an arm licence under the Act should act in accordance with principle of natural justice but it does not mean that such an opportunity must be afforded before revoking or suspending arms licence. His Lordship also observed that licensee has, at his option, two remedies and in para 22 said as under:

the licensee has at his option, two remedies, namely, one to apply for post-decisional remedial hearing to the licensing authority itself, and the other by going up in appeal against the order revoking/suspending his licence. It is open to the licensee to follow either of the two remedies or even to claim a post-decisional remedial hearing before the licensing authority followed by an appeal in accordance with the provisions of Section 18 of the Arms Act.

69. Again the Full Bench and Larger Bench decisions in Chhanga Prasad Sahu (supra) and Kailash Nath (supra) were referred for consideration by another Bench of three Judges, noticing some conflicting observations. It came to be considered by a Full Bench of three Judges in Balram Singh v. State U.P. and others, 1990 Cr LJ 409. The Court observed that the Full Bench in Chhanga Prasad Sahu (supra), in so far as it says about suspension or revocation pending inquiry so as to satisfy licensing authority about existence of facts enumerated in sub-clause (a) to (e) of Section 17(3). is concerned, it has been demolished in Kailash Nath (supra) for the reason that by treating suspension/revocation order as a provisional order, it has recognised a kind of suspension pending inquiry and to that -extent Full Bench in Chhanga Prasad Sahu (supra) stands reversed by Five Judges Bench in Kailash Nath (supra) and licensing authority is vested with the power to suspend licence during proceeding for suspension or revocation u/s 17 of the Act, 1959.

70. The correctness of this decision came to be considered by another Five judges Bench in Rana Pratap Singh and others v. State of U.P. and others, 1995 All CJ 200. Here the reference was also made to the order of Hon''ble Bahuguna, J. disagreeing with Hon''ble Katju, J. (as His Lordship then was) in taking the view of deemed grant of licence, if no order is passed within three month, in Ganesh Chandra Bhatt v. The District Magistrate, Almora, 1993 All CJ 394 and

the Division Bench judgment in Devendra Pratap Singh v. District Magistrate, (Writ Petition No. 29963 of 1993), decided on 27.10.1993 and also the observations made by His Lordship, Hon"ble Katju, J. that the Full Bench judgment is not correct. The five Judges Bench in Rana Pratap Singh (Supra) found it seriously objectionable that learned Single Judge is brushing aside binding precedent of Full Bench by terming it incorrect. The judgments in Ganesh Chandra Bhatt (Supra) and Devendra Pratap Singh (Supra) have been held not a good law.

71. The Bench further reversed the decision in Balram Singh (supra) that the licensing authority may suspend a firearm licence while making inquiry about the existence of circumstances mentioned in Section 17(3)(a) to (e) and held that Full Bench in Chhanga Prasad Sdhu (supra) taking this view has not been reversed in Kailash Nath (supra). Be that as it may, what discerns from the above discussion in the context of Sections 13, 14 and 17 of Act 1959 and right to possess and carry a fire-arm may be summarized as under:

(i) No person has a right, fundamental or otherwise, to carry or possess a fire-arm unless he is permitted to do so under a licence granted by a competent authority under the Act 1959.

(ii) Considerations on which licence of fire-arm would be granted or refused is governed strictly by Sections 13 and 14 of Act 1959.

(iii) The factors relevant for grant or refusal of fire-arm licence travel in a distinct field. Hence the principle of audi alteram partem is inapplicable. But once licence is granted, any power to take away such a right would depend on distinct considerations and would attract the said principle.

(iv) An order refusing to grant firearm licence can be reviewed by Courts if passed arbitrarily, capriciously, by non-application of mind, on irrelevant considerations or due to mala fide etc.

(v) Considerations relevant for cancellation or revocation of fire-arm licence are governed by Section 17 of Act 1959.

(vi) If the licensing authority is satisfied prima facie, that grounds enumerated in sub-section (3) (a) to (e) of Section 17 exist, he can suspend or revoke fire-arm licence immediately. Such an order however would be "a provisional order".

(vii) Having passed the provisional order the licensing authority is obliged to give an opportunity of show-cause to the licence holder i.e. a post decisional hearing and he (licensee) will have a right to submit his objection(s) against such provisional order.

(viii) The licence holder also has option of filing appeal against provisional order as above u/s 18 instead of filing objection before licensing authority.

(ix) Where the licence holder submits his objection, licensing authority shall consider the same and pass a reasoned order. Such an order may be either for

revocation of licence or suspension. In case final order passed is that of suspension, it shall be for a specified period.

(x) If against provisional order, licence holder straightaway avails remedy of appeal, question of final order to be passed by licensing authority may not arise since thereafter it is the appellate order which shall hold the field.

(xi) Where the licensing authority has any doubt about the existence of grounds referred in Section 17(3)(a) to (e) of Act 1959 and proceed to make inquiry into existence of such grounds, during this interregnum period of inquiry, he can neither exercise power of suspension of fire-arm licence nor that of revocation. This view has been reiterated by Larger Bench in Rana Pratap Singh (Supra) after overruling otherwise observations in Balram Singh (Supra).

72. It is in this context and in the light of discussion above, the correctness of the order impugned in this writ petition need be considered.

73. Here the licence had been suspended during pendency of a criminal case. When pendency of a criminal case may justify suspension or revocation of fire-arm licence u/s 17(3) has been considered by a Full Bench of Patna High Court in Kapildeo Singh Vs. State of Bihar and Others, . In para 6 of the judgment the Court declined to accept a very broad proposition advanced on behalf of the State that grounds which may justify refusal of licence may hold good for suspension and revocation and said:

...It has to be kept in mind that the requirements of the original grant or refusal and those of the subsequent suspension or revocation of a licence are not wholly identical. The conditions for suspension and revocation are spelt out u/s 17 and have, indeed to be satisfied. However, there is no gainsaying the fact that as a matter of larger approach the issue of suspension and revocation would take some hue from the provisions of the original grant or refusal of a licence as well." (para 6)

74. Having said so, the Court proceeded to hold that sub-section (3) of Section 17 does not in terms provide that pendency of a criminal charge can be a ground for suspension/revocation of licence. However, Section 17(3)(a) to (e) if read conjointly shows that residuary discretion is left in the licensing authority by the Legislature. This is evident from clause (a) Section 17(3) stating, that licensing authority if satisfied that the holder of licence "is for any reason unfit for the licence under the Act" he can pass an order of revocation/suspension. In 10 and 11 of the judgment the Court said:

...The issue, thus, is whether the pendency of a major or capital crime case may not, in the opinion of the District Magistrate, satisfy him that such a person is unfit for holding the licence further. Plainly enough such discretion given by the statute cannot be put in a strait-jacket. It cannot possibly be said that in a particular case the implication of the holder in serious or horrendous capital crime may not furnish an adequate ground for the licensing authority for being

satisfied that the former holder of the weapon is now unfit for the privilege of the licence granted under the Act. This is more so in the light of the fact that Sub-section (1) requires the licensing authority to give notice in writing to deliver up the licence to it within such time as may be specified in the notice in the event of variation, suspension and the revocation of licences. That would invariably give an opportunity to the licensee, as in the present case to show some cause against such action. It is after consideration of this explanation that the licensing authority may, on the overall circumstances, be satisfied from the nature of the case that the person is now unfit for continuing as a licensee for arms. A further safeguard is provided by sub-section (5) of Section 17. The licensing authority must record in writing reasons therefore and also furnish to the holder of the licence on demand a brief statement of the same unless in exceptional cases he is of the opinion that it will not be in the public interest to furnish such statement. Nevertheless the requirement of recording reasons in writing is inflexibly mandatory. Therefore, it cannot be easily said that the subjective satisfaction of the licensing authority hedged in by the statutory requirement cannot be exercised on the basis of the pendency of the serious or capital criminal charge. If such subjective satisfaction has been broadly and reasonably exercised, to my mind, it would come within the parameters of the statute under Clause (a) of sub-section (3) of Section 17. (Para 10)

A strong note of caution, however, must be sounded in this context. It is not the pendency of any and every criminal case which would inflexibly warrant the suspension or revocation of a licence validly granted. A criminal case may range from a paltry traffic offence to the most horrendous capital crime. Whilst the pendency of the former may hardly provide an adequate basis u/s 17(3), in the case of the latter after notice and hearing of the explanation such action may well become necessary. Equally, the use or employment of the licensed weapon in the alleged crime might well be a relevant and added factor for consideration in the exercise of the discretion by the licensing authority. There is no gainsaying that licensed weapons are not to be allowed to degenerate into crime weapons. It bears repetition that sub-section (3) puts the matter in the subjective satisfaction of the licensing authority and inevitably the issue cannot be put in the procrustean bed of a precise definition or an exhaustive enumeration of situations in which such discretion may be exercised. (Para 11)

(emphasis added)

75. The Full Bench in *Kapildeo Singh* (Supra), therefore unanimously answered reference holding that registration and pendency of a criminal case for major and capital offence may, for adequate reasons, justify suspension or revocation of licence under clause (a) of sub-section (3) of Section 17 of the Act 1959.

76. In the present case, the licensing authority has not exercised its power by holding petitioner unfit to hold licence as provided in Section 17(3)(a). The power in fact has been exercised on the ground of "public peace" and "safety" i.e., Section 17(3)(b) which says if the licensing authority deems it necessary for

security and public peace, to suspend or revoke licence, it may do so.

77. A careful reading of impugned order passed by District Magistrate shows that having referred to reports of Sub-Divisional Magistrate submitted on 10.6.1999 and the report of Station Officer dated 23.9.2000, he has simply mentioned the words "public safety" and "public peace" but there is no averment or finding that he is satisfied that in the interest of public peace and safety it is necessary that petitioner's licence must be suspended till the criminal case is pending. Report of officers other than licensing authority would not substitute satisfaction of licensing authority himself. Such reports and comments may constitute material available to licensing authority to form a particular opinion but ultimately, it is his satisfaction and opinion which would justify order of suspension or revocation and not that of any other authority like Sub-Divisional Magistrate or Station Officer etc. The impugned order, I am constrained to observe, is short of requirement of Section 17(3) of Act 1959 justifying suspension of fire-arm licence of the petitioner finally.

78. In other words, it can be said that to some extent, it is a cryptic order, though running in more than 2 pages, but mostly it refers to the contents of reports of S.D.M and Station Officer as also the earlier steps taken by licensing authority himself in issuing show-cause notice and reply received from the petitioner but when the occasion came to record his own reasons, this Court finds, he has failed to do so. The order passed by him is virtually a non-speaking order, showing nothing that may reflect upon the satisfaction of licensing authority containing reason(s) for such satisfaction.

79. Moreover, if a subsequent material has been considered by the District Magistrate, it was incumbent upon him to disclose the same to petitioner before passing a final order. The procedure followed otherwise, has also violated principles of natural justice.

80. In the above facts and circumstances, in my view, the impugned orders cannot sustain and deserve to be set aside. The writ petition is allowed with costs. The impugned orders dated 15.12.2000 and 10.1.2001 are hereby quashed. The costs is quantified to Rupees Five Thousand only.