
(1955) 12 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Miscellaneous No. 30 of 1955

Jagmel Singh and S. Jagir Singh

APPELLANT

Vs

State of Pepsu and Another

RESPONDENT

Date of Decision : 13-12-1955

Acts Referred:

Arms Act, 1959 — Section 18
Constitution of India, 1950 — Article 226

Citation : AIR 1956 P&H 37

Hon'ble Judges : Mehar Singh, J

Bench : Single Bench

Advocate : Anant Ram, for the Appellant; Lachhman Das, A.G., for the Respondent

Judgement

Mehar Singh, J.—This is a petition under Article 226 of the Constitution of India by Jagmel Singh against the State of Pepsu and the District Magistrate of Bhatinda, Respondents, challenging the legality of the order, dated 8-2-1955, of the District Magistrate of Bhatinda cancelling his arms licences for a revolver and a shot gun.

2. The Petitioner held arms licences for the two arms referred to above till the end of the year 1955. On 8-2-1955, the District Magistrate of Bhatinda passed the following order:

Whereas, I am satisfied from the reports received from reliable quarters that the activities of. ex-Patwari Jagmel Singh son of Jagir Singh of village Bhadurpur P.S. Bareta, holding licences in respect of one 32 revolver No. 383714 and one D. B.B.L. 12 bore gun No. 97859, are prejudicial to public peace and it is deemed necessary, to cancel his arms licences in respect of above mentioned weapons for the security of the public peace.

Now therefore, in exercise of the powers conferred, upon me u/s 18(a), Arms Act, I, Munshi Ram, District Magistrate Bhatinda, Hereby; cancel the said licences

and order S.H.O., Bareilly to get these arms deposited immediately along with licence booklets.

In pursuance of this order the arms were withdrawn from the Petitioner on 19-2-1955. He made the present petition on 10-3-1955, and the case on his behalf is that the cancellation of his licenses by the District Magistrate is illegal and contrary to law. He avers that the District Magistrate has given no reasons for cancellation of the same and that he had done so under the orders, of the Chief Secretary to Pepsu Government

He, therefore, says that the order of the District Magistrate is not only illegal and contrary to law but is also mala fide and without justification. He prays for an appropriate writ, order, or "direction" quashing the order of the District Magistrate cancelling his licences.

3. There is a written reply on behalf of the Respondents and the date of it is 22-4-1955. There is an affidavit filed by the District Magistrate and that is dated 21-4-1955. In his affidavit the District Magistrate affirms that he was satisfied from confidential reports of the C. I. D. Police and other materials that it was necessary for the security of public peace to cancel the Petitioner's licences. This affidavit appears to have been prepared a day earlier than the written reply to the petition put in on behalf of the Respondents. In reply to para 6 of the petition it is stated in the written reply that

the District Magistrate had cancelled the arms licences in pursuance of orders issued by the Chief Secretary of Pepsu Government, Respondent 1, after satisfying himself about the existence of such order.

Then it is stated in reply that the order of the District Magistrate has given reasons for cancellation of the licences and is a valid and a legal order.

4. The provision about cancellation and suspension of licences is to be found in Section 18, Arms Act, 1878, and Clause (a) of that section reads as follows:

Any license may be cancelled or suspended, (a) by the officer by whom the same was granted, or by any authority to which he may be subordinate or by any Magistrate of a district, or Commissioner of Police in a presidency town, within the local limits of whose jurisdiction the holder of such license may be, when, for reasons to be recorded in writing, such officer, authority, Magistrate or Commissioner deems it necessary for the security of the public peace to cancel or suspend such license;

The learned Counsel for the Petitioner points out that though the license for the gun had been granted by the District Magistrate, the license for the revolver was granted by the Chief Secretary to the Government, but a District Magistrate has an independent power of cancellation or suspension of an arms license under clause (a) of Section 18 even though the license is not granted by him. So the District Magistrate, Respondent 2, had the power to cancel the license of the Petitioner.

The question is whether the cancellation is in accordance with said provisions. All that the order of the District Magistrate says is that he deemed the cancellation of the licenses of the Petitioner necessary for the security of the public, but, apart from repeating the very words written in the clause, he has done nothing to show what were the reasons on the basis of which he deemed the cancellation to be necessary for the security of the public peace.

It is not enough when cancelling an arms license that appropriate authority should merely repeat the words in the clause that it deems it necessary for the security of the public peace to cancel the license, but the imperative requirement of the; clause for reaching that conclusion is that the authority must give "reasons to be recorded in writing". The District Magistrate in this case has given absolutely no reason for reaching the conclusion that he did. Upon this ground the order of the District Magistrate "is obviously contrary to the provisions of Section 18(a) of the Act and cannot be maintained.

Although the affidavit of the District Magistrate affirms that he was satisfied upon materials from different sources that the cancellation of the licenses of the Petitioner was necessary for the security of the public peace, yet from, para No. 6 of the reply it appears that he had not so satisfied himself in any way and from any material, but that he was merely influenced by an order made by his superior, the Chief Secretary, in passing an order cancelling the licenses of the Petitioner.

This indicates that he himself had no reasons for cancellation of the licenses and in all probability would not have done so but for the order emanating from his superior. That is probably the reason why he had given no reason in writing for his order cancelling the licenses of the Petitioner.

5. The learned Advocate-General urges that there was a right of appeal in the Petitioners against the order of the District Magistrate to the Commissioner and if he had appealed he might have obtained the redress that he seeks through this petition. He urges that since the Petitioner had not availed himself of the remedy provided by the statute and the rules thereunder in the shape of an appeal, the petition should be dismissed upon this ground alone.

It appears now from para No. 6 of the reply that the District Magistrate was in fact influenced in passing the order by an order of the Chief Secretary. In these circumstances I am not convinced that an appeal was a proper remedy for the Petitioner for the Chief Secretary is in a way in a superior position even to that of the Commissioner. I see no force in this contention.

6. The view that I have taken in regard to the invalidity of the order in this case because of the absence of reasons in writing by the District Magistrate finds support from *Samarendra Nath Roy Vs. R.N. Basu*, in which *Sinha J.* had held that an order of cancellation u/s 18, Arms Act, must record the reasons for making the order. A mere reference to Police Report is not recording reasons. There

should also be the statement that the Magistrate deemed it necessary for the security of public peace to cancel or suspend the license. Non-compliance in this respect renders the order illegal.

In the present case there is the statement by the District Magistrate that he deemed it necessary for the security of public peace to cancel the licenses of the Petitioner but, as stated, he records no reasons for making that order. Same view has been taken by Passey J. (now C. J.) in "Bagga Singh v. District Magistrate, Barnaia AIR 1954 Pepsu 150 (B).

7. The order of the District Magistrate cancelling the licenses of the Petitioner in this case is manifestly illegal and so the order is quashed and a writ of mandamus will issue directing the District Magistrate to forbear from giving effect to that order against the Petitioner. The arms be restored to the Petitioner. The Petitioner's costs shall be borne by Respondent 1 the State of Pepsu, counsel's fee being Rs 32/-.