
(1955) 01 GAU CK 0003
In the Gauhati High Court

Kishori Lal Kanoo

APPELLANT

Vs

Dy. Commr. and Others

RESPONDENT

Date of Decision : 11-01-1955

Acts Referred:

Arms Act, 1959 — Section 18
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 123, 124
General Clauses Act, 1897 — Section 13

Citation : AIR 1955 Guw 183

Hon'ble Judges : Ram Labhaya, J;Deka, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Ram Labhaya, J.—Kishori Lal Kanoo, proprietor, Messrs. East End Arms Company, Gauhati has invoked the jurisdiction of this Court under Article 226 of the Constitution of India and has prayed for writs in the nature of mandamus, prohibition, certiorari or any of them against the Deputy Commissioner, Kamrup the State of Assam, the Chief Minister, Assam and three other respondents.

2. The facts giving rise to the petition as stated by the petitioner are as follows:

The petitioner migrated from East Pakistan in 1947. He was a dealer in arms and ammunitions. He applied for licenses under the Arms Act in 1947. He was granted licenses in forms Nos. IX, X and XII and in forms Nos. K and L in spite of oppositions from respondents 4, 5, and 6. Besides these he was given a gun licence No. 985 on 29-1-1952. Petitioner opened two branches in Jorhat and Silchar. Before November, 1952, sale of arms and ammunition was regulated by the Government of India under an ad hoc system of distribution.

The Chief Secretary to the Government of Assam informed the petitioner on 8-11-1952, when fixing the prices of imported arms that the system of control and distribution of imported arms had been discontinued and that the petitioner was free to sell weapons to any dealer or individual licensee at prices fixed by

the Government. The then Deputy Commissioner Mr. A. Ahmed communicated this order to the petitioner and also ordered him by his letter No. 8809 G dated 12-11-1952, to sell six imported guns out of 17 to respondent 4 at wholesale prices. The petitioner informed the Deputy Commissioner about his difficulties in complying with the order.

But the Deputy Commissioner was merely persuaded to reduce the number of arms to be sold to respondent 4 from six to five.

On 19-11-1952, a copy of letter No. HMI. 65/52/22 dated 15-11-52 was sent to the petitioner by the Deputy Commissioner intimating that he should sell nine imported guns out of 17 to respondent 4. Three days later on 22-11-1952 all the licenses held by, his firm were cancelled by an order of the Deputy Commissioner. The petitioner was also directed to put in written report as to his stock position as it was on 22-11-1952, at 11 a.m. He was prohibited from selling arms and ammunition with effect from that date. The O. C., Gauhati was ordered to check his stock.

No reasons for the cancellation of licenses were stated in the order. On 24th November licenses were seized. The petitioner explained the stock position to the Deputy Commissioner as required by his order. The Officer-in-charge Gauhati police station seized the entire stock of the petitioner on 25-11-1952, under the orders of the Deputy Commissioner. On 26th November, the Deputy Commissioner directed that arms received after that date shall be deposited in the Police Reserve pending orders. It is alleged that this brought about a complete suspension of the petitioner's business. A consignment of arms was also opened by the police at Amingaon before its arrival at Gauhati in violation of the provisions contained in the Arms Act.

3. The petitioner preferred an appeal to the Chief Secretary to the Government of Assam on 23-11-1952 against the order of the Deputy Commissioner cancelling all his licenses. He got no hearing in his appeal. The Government, however, issued a notification No. HMI. 87/52/7A dated 23-12-1952 by which licenses in forms Nos. IX, X and XII were alone cancelled. The petitioner was informed of this notification. It virtually disposed of his appeal petition of 23rd November. The notification was issued u/s 18, Arms Act.

It is not stated under which part of Section 18 the Government acted. The Deputy Commissioner, Kamrup was directed to dispose of arms and ammunition seized to local arms dealers. He was authorised to divide the margin of profits between the petitioner company and the other dealers. The Confidential Department was informed of the notification with reference to their letter No. C. 329/ 52/5 dated 17-11-1952. On 30-12-1952 Government issued another notification again cancelling licenses in forms IX, X and XII, but this time with retrospective effect from 22-11-1952, the date of the order of the Deputy Commissioner.

4. On 13-2-1953 the State Government directed the Deputy Commissioner to

dispose of the seized stock to respondent 4 at prices to be fixed by him. The stock which could not be disposed of was to be released for diversion to other branches of the petitioner. Respondent 4 declined to purchase any arms. The Deputy Commissioner was then instructed to release the entire stock to the petitioner with instructions to divert it to other branches. On obtaining delivery the petitioner found that arms had been badly damaged. The petitioner sought leave for doing repairs at Gauhati. Permission was accorded to him by the Government by their letter No. HMI. 87/52/58 dated 5-6-1953, though sales at Gauhati were prohibited, in spite of the previous direction to sell these arms to respondent 4.

The stock was released on 9-6-1953. The petitioner was ordered to finish his repairs by 5-7-1953. But on the petitioner's representation time for repairs was extended upto 31-8-1953. The Deputy Commissioner was also directed to afford necessary facilities for diversion of arms and ammunition to other branches of the petitioner. The petitioner drew the attention of the Deputy Commissioner for necessity of transport license. By his letter of 31-8-1953, the petitioner informed the Deputy Commissioner that he was transporting arms and ammunition to his branches after necessary repairs and that transport licenses were necessary. By letter No. 8452 G, dated 1-9-53 he was directed to furnish fees for obtaining transport licenses.

5. On 23-10-1952, before the cancellation of his licenses, the petitioner had obtained a certificate from the Additional Deputy Commissioner, Kamrup on the basis of which he had applied to the Joint Chief Controller of Imports, Ministry of Commerce and Industry, Government of India for import licenses for the period July to December, 1952. It was certified that the petitioner was holder of dealer's licenses in forms X and XII and was authorised to import and deal in arms and ammunition.

Before the import license could be issued to him the Deputy Commissioner, Kamrup cancelled the trade license on 22-11-1952. The Import Trade Controller at Calcutta was informed about it by someone interested. He enquired from the Deputy Commissioner, Kamrup on 15th January about the validity of the certificate which had been issued to the petitioner on 23-10-1952. The Deputy Commissioner referred the matter to the Government of Assam.

The Government informed the Import Trade Controller on 17-2-1953 that the certificate issued to the petitioner was to be treated as valid and and that there was no objection to the firm carrying on import business from Gauhati. In their letter the Government said that storage and sale at Gauhati was not permitted to him. The petitioner got the import license, placed orders with a Hamburg firm (in Germany). The agents of the manufacturers demanded trade licenses in forms X and XII.

The petitioner wrote to the Government for returning to him the licenses on 3-7-1953. The Government declined to send back the licenses on the ground that

they had been cancelled and advised the petitioner to send his branch licenses. The petitioner was informed that he was allowed to keep his head office at Gauhati for purposes of correspondence only and selling and storage of arms were not permitted to him.

6. The petitioner again applied for import license for the period January to June 1953. The Deputy Commissioner, Kamrup issued to him a certificate on 25-2-1953 as the proprietor of East End Arms Company, Gauhati stating that he was a holder of dealers licenses in forms X and XII under the Arms Act and was authorised to import and deal in arms and ammunition. On the strength of this certificate the petitioner got another import license and placed orders for arms on a firm in Belgium.

Original licenses were again demanded. The two consignments of imported arms are still lying at the Calcutta Port., The petitioner has. alleged that he could not take delivery without original licenses. After obtaining the certificate in February, 1953, the petitioner deposited fees for the renewal of licenses in forms Nos. IX, X and XII for 1953, by treasury challan No. 107 dated 2-3-1953. These fees were received at. the treasury.

But the licenses were not returned to the petitioner in spite of repeated requests. Licenses other than those in forms Nos. IX, X and XII were restored to the petitioner under Government orders, vide letter No. HMI. 87/52/102 dated 21-9-1953. License in form K was ordered to be renewed.

7. On 28-8-1953, the petitioner applied to respondent 3 for removing the ban on safe and storage of arms at Gauhati. The petitioner requested for a hearing also. After about four months, he received a notice intimating that the hearing had been fixed for 1942-1953. The notice indicated that respondents 4 and, 6 were also treated as parties to the proceedings.

These respondents had also petitioned to respondent 3 on 9-9-1953 and were opposing the petitioner. Their opposition, it is alleged, was based on grounds which had not prevailed when licenses were first granted to the petitioner. At the hearing the respondents appeared with two advocates and after the hearing respondent 3 allowed them time to substantiate their allegations within a month.

The petitioner has averred that he was coerced to shift his office from Gauhati and not to press for the removal of the ban on storage and sale. The cancellation of other licenses was also threatened if he did not comply.

8. The petitioner had requested the Government by his letter No. 398/53 dated 30-11-1953 for release of his licenses in forms IX, X and XII in order to enable him to secure delivery of goods from the Calcutta Port. The Government directed the Deputy Commissioner on 18-12-1953 to grant licenses to the petitioner in forms X and XII only with the qualification that he shall not dispose of goods at Gauhati.

The direction from the Government was that the licenses were to be issued to

enable him to take delivery of the goods. It was also ordered that the firm may be advised to divert consignments to its branches at Jorhat or Silchar after taking delivery. The order was subsequently superseded by letter No. HMI. 87/52/122 dated 21-12-1953 but somehow the licenses in forms X and XII were issued to the petitioner by the Deputy Commissioner in pursuance of direction of the Government issued on 18th December. The licenses could not serve the purpose for which they were issued. The petitioner then applied for renewal of his licenses for the year 1954. On 15-3-1954 the petitioner was informed that his licenses could not be renewed.

9. On 20-1-1954 petitioner was informed that his case before respondent 3 had been fixed for hearing on 4th February. On this date also respondents 4 to 6 produced no evidence against the petitioner. But the petitioner was again pressed to close his business at Gauhati and the case was adjourned "sine die" for collecting information from Mymensingh about petitioner's business there. The petitioner complied with the instructions by his letter dated 6-3-1954, and he requested for orders which were not issued till the institution of the present proceeding.

10. The Assistant Controller of Customs, Calcutta informed the petitioner by his letter dated 9-4-54 that unless he cleared his consignments within one month from the Customs House the goods would be disposed of u/s 88, Sea Customs Act. Petitioner's demand for justice, it has alleged, has met with no response.

11. On petitioner's behalf it has been argued that the order of the Deputy Commissioner dated 22nd November, the Notification of the Government dated 23rd December and the Notification of the Government dated 30th December were illegal and in excess of jurisdiction. Allegations of "mala fides" have been made and it is urged that the petitioner was victimised. The order and the notifications are said to have been prompted by ulterior motives.

It is further urged that in cancelling the licenses, the authorities have disregarded the principles of natural justice. It is further claimed that petitioner's licenses stood renewed for the year 1953 and this was sought to be inferred from the certificates which were granted to the petitioner to the effect that he was holder of dealers licenses in forms X and XII and was authorised to import and deal in arms and ammunition.

The contention is that the petitioner was permitted to carry on his import business from Gauhati as its head office. He was granted certificates which enabled him to import arms. This could not have happened unless he was a dealer with licenses. The ban on sale and storage was illegal. He was thus entitled to ask for renewal of his licenses for 1954. Refusal to renew these licenses for 1954 by the Deputy Commissioner was on Government's instructions.

He did not exercise his discretion in the matter and had no reasonable basis for refusing to renew the licenses. It is on these grounds that the petitioner prayed that the State of Assam be ordered to forbear from giving effect to their illegal

orders cancelling the licenses and to restore the licenses to the petitioner. An interim order for protection of the petitioner's interests in respect of his consignments lying at the Calcutta Port which were threatened to be disposed of was also prayed for. Compensation for loss of property, business etc. is also claimed.

12. The Chief Secretary to the Government of Assam has put in an affidavit in opposition. He has repudiated the statement of facts bearing on the allegation of "mala fides". Similarly he has denied on information received directly from respondent 3 allegations of threats and coercion and also statements relating to the conduct of the proceeding pending before him.

He has also affirmed on the strength of authoritative reports that the petitioner was actively supporting the C. P. I. candidate of Gauhati in the last general election and contributing handsomely towards reception expenses of a certain C. P. I. leader. It has been averred that the Deputy Commissioner cancelled the licenses of the petitioner in pursuance of orders of the State Government which it issued when it found that the orders were necessary for the "security of public peace", and took possession of the stock at Gauhati and also that which was in transit.

That Government was then advised to issue a notification cancelling the petitioner's licenses and this was issued on 23rd December. This notification was also found defective and a final notification dated 30th December was issued to cancel the three licenses effectively. It is maintained that the orders of the Government were issued to avoid danger to the security of public peace. The Government was induced to take this action by reason of petitioner's association with subversive groups.

13. It is conceded, that petitioner was a licensee at Jorhat and Silchar when his Gauhati licenses were cancelled. For his benefit and convenience some stock was permitted to be sold to some of the other local dealers of Gauhati and the unsold part if any was to be diverted to other branches of his firm. In regard to imported arms he was granted facilities for taking delivery at Gauhati and then to divert them to other branches. Necessary certificates were issued by the Deputy Commissioner, Kamrup for the purpose.

14. The learned Advocate-General contended that the notification issued by the Government on 30th December was valid. It was issued under the last sub-clause of Clause (b) of Section 18 in the exercise of authority delegated to the Assam Government by the Central Government. Power delegated to the State Government was unrestricted and very wide. The Government was not bound to state any reasons; nor does Clause (b) of Section 18 require any particular kind of reasons.

Action under the last clause is left to the subjective and uncontrolled discretion of the Central Government and also of the State Government if and when the power of the Central Government is delegated to any State Government. He has relied

on the last notification of 30th December for supporting the legality of the cancellation of the licenses in question. He did not defend the order of the Deputy Commissioner dated 22nd November or the notification of 23rd December, though he observed that the order of the Deputy Commissioner was irregular inasmuch as it did not state the reasons on which he ordered the cancellation. The irregularity, he argued, was procedural in character and did not vitiate the order, though it stood superseded by the subsequent notification.

His second contention has been that even if the notification was not valid, the licenses expired with the end of the year 1953. Those licenses were never renewed. They remained in the possession of the Government and were not delivered to the petitioner, nor was any endorsement of renewal made on them. The petitioner did not apply for renewal at the proper time. No question of renewal of these licenses for 1954 therefore did arise.

The petitioner's remedy, he claimed, was to ask for a grant of fresh licenses if he is so advised, for, in the absence of renewal of licenses for 1953, renewal of licenses for 1954 would not be, possible. He has argued that the allegations of "mala fides" are absolutely baseless. The action of the Government was prompted by considerations of public interest and the security of the State and he has relied on the affirmations made in the affidavit of the Chief Secretary in support of his contentions.

15. The third notification by which licenses No. IX, X and XII were cancelled was issued on 30th December, 1952. It does not purport to have been issued in the exercise of delegated power under Clause (b). The learned Advocate-General however has argued that the notification was issued in the exercise of delegated authority which the State Government had under Clause (b) which provides that

The Central Government may by a notification in the Official Gazette cancel or suspend all or any licenses throughout India or any part thereof.

The petitioner anticipated this plea and pleaded in para. No. 26 of his petition that provisions of Section 18(b) had been misused. It is conceded that powers of the Government under Clause (b) were delegated to the State Government under the provisions of Article 258(1) of the Constitution of India, though with the qualification that the State Government could not initiate new policies.

16. The validity of notification dated 30th December, has been challenged on three grounds-

(1) That the notification has been given retrospective effect. It is contended that the State Government had no power to issue a notification with retrospective effect.

(2) That even if the State Government had the powers of the Central Government under Clause (b), the powers could not be utilised for dealing with individual licenses. All or any licenses could be cancelled throughout the State of Assam or in any particular part of the territory.

(3) Clause (b) of Section 18 had conferred unrestricted powers on the Central Government to cancel or suspend all or any licenses throughout India or any part thereof. The conferment of unfettered power was unconstitutional. It was repugnant to the provisions contained in Article 14 and also offended Clauses (g) and (f) of Article 19(1) of the Constitution. It permitted discrimination and operated as a very unreasonable restriction on the rights of the licensee guaranteed to him by Clauses (g) and (f) of Article 19(1).

17. Section 18 does not confer any power on the Central Government to cancel any license with retrospective effect. Such a course would be anomalous. Where licenses are cancelled with retrospective effect, the possession of arms under the licenses would become illegal with retrospective effect. Yet it would not be possible to prosecute a man for possession of the arms before the date of the cancellation of the license. The State Government, it appears, adopted this course to cover the seizure of arms under the first order of the Deputy Commissioner dated 22-11-1952. It was apparently adopted under the compulsion of circumstances, but it is not possible to support its legality.

The learned Advocate-General has not been able to justify it. His argument was that the notification could operate prospectively from the date of its issue. He relied on -- *G.P. Stewart Vs. Brojendra Kishore Roy Chaudhury*, and -- "*Jorhat Electric Supply Ltd. v. The State*" ILR (1954) GAU 66 at p. 80 (B), in support of his contention that a notification or order issued with retrospective effect by the executive Government may take effect prospectively from the date of its issue and may not be adjudged void or of no effect when no legal difficulty comes in the way of its having prospective effect.

Following the principle laid down in *G.P. Stewart Vs. Brojendra Kishore Roy Chaudhury*, we hold that the entire notification may not be adjudged void or of no effect merely by reason of the provision that it will have retrospective effect though it can have no retrospective effect. The learned Advocate-General has not been able to refer us to any provision in the statute authorising the Government to give retrospective effect to its order under Clause (b) of Section 18 of the Arms Act.

18. The next question is whether the power given to the Central Government could be exercised in individual cases even. The provision in question authorises the Central Government to cancel or suspend all or any licenses throughout India or any part thereof by a notification in the official Gazette. Mr. Lahiri has contended that the words "any licenses" though in plural include singular by virtue of Clause 13, General Clauses Act.

A single license could also be cancelled if the clause is read literally. Section 13, General Clauses Act provides that unless there is anything repugnant in the subject or context, words in the singular shall include the plural and vice versa. The question then would arise whether there is anything repugnant in the context in this case. The answer to this question does not appear to be difficult.

The power is to cancel or suspend all or any licenses throughout India or any part thereof.

The cancellation and suspension of all or any licenses has to be throughout India or any part thereof. The notification should apply to the entire territory of India or some part thereof. The cancellation has to be of all or any licenses either in the whole of the country or in some part thereof. The notification has to have a territorial operation.

It is difficult to read in it the authority for cancellation of a licence of anyone person in any part of the territory, of India. The Central Government would not be the appropriate authority for that purpose. It was not necessary for the Central Government to acquire any power by legislation for cancellation or suspension of individual licenses.

19. The context affords an even more conclusive answer to the contention raised by the learned Advocate General. Section 18 Clause (a) provides that:

any license may be cancelled or suspended 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 licenses were issued by the Deputy Commissioner. He had the power to cancel these licenses under Clause (a). The State Government also could cancel these licenses u/s 18(a) as the District Magistrate is subordinate to the State Government. The reasons justifying cancellation of individual licenses are specified. These licenses may be cancelled for the security of the public peace and the officer cancelling them has to record his reasons in writing.

The powers of the Central Government under Clause (b) have been delegated to the State Governments. If the power can be utilised for cancellation or suspension of individual licenses, the result will be that the Provincial Government may cancel individual licenses without recording its reasons in writing and also for reasons other than those specified in Clause (a). The effect would be that the protection given to the licensees under Clause (a) is taken away completely.

For, it would be possible for the Central Government or the Provincial Government to utilise powers under Clause (b) whenever it finds it necessary or convenient to cancel or suspend licenses without complying with the requirements of Clause (a). The guarantee and the protection given by Clause (a) thus would become illusory. It would be possible to cancel any license without giving reasons and for purposes other than the security of the public peace.

The legislature could not have intended that the authority conferred on the

Central Government may be so utilised by the Central Government or its delegate the State Government in such a way that provisions contained in Clause (a) of Section 18 may be rendered nugatory and of no effect. The plain meaning of the words used in the 2nd part of Clause (b) indicates that the clause is intended for use where all or any licenses are intended to be cancelled in the whole of India or any part thereof. The context also points to the same conclusion. The clause therefore rightly construed could not be utilised for the cancellation of a single license.

20. Clause (b) embodies a disarmament provision for use when on grounds of policy or in an emergency cancellation or suspension of licenses is found necessary. Its use in individual cases so completely nullifies the effect of Clause (a) that it would be against the recognized canons of construction to give that meaning to it. The two clauses have to be read together. They constitute one whole. They are complementary.

They may not be so read that one completely nullifies the other. Clause (b) deals with classes and territories and not with individuals. The State Government therefore could not cancel the licenses of the petitioner under Clause (b). For effective cancellation of his licenses it was necessary that provisions contained in Clause (a) should have been complied with. Even the State Government is bound to act on grounds specified in the Clause (a) and has to state that these grounds exist.

21. The Constitutional validity of the Clause (b) of Section 18 under which all or any licenses may be cancelled or suspended in the territory of India or any part thereof has also been challenged on the ground that it is repugnant to the provisions contained in Article 14 of the Constitution. The ground of objection is that power is vast and uncontrolled. The law lays down no objective standard for the exercise of this power. Even a capricious and arbitrary exercise of jurisdictions would be within its scope. Its use can easily lead to discrimination.

22. It is also contended that if given effect to, it would constitute an unreasonable restriction on the rights of the petitioner to acquire & dispose of property & to practice any profession or to carry on any occupation, trade or business, which are guaranteed to him by Article 19(f) and (g). The reason is that when the power is absolute and unrestricted and no objective standard is laid down for its exercise, individual judgment or discretion which need not conform to any objective standard is substituted for the law.

If any restrictions are sought to be imposed on freedoms guaranteed by Clauses (f) and (g) of Article 19, the restrictions have to be reasonable. So far as Clause (f) is concerned, reasonable restrictions on the exercise of the right may be imposed either in the interest of the general public or for the protection of any scheduled tribe. Similarly restrictions on the right guaranteed by Clause (g) have to be in the interest of the general public, though professional or technical qualifications necessary for carrying on a trade or profession or business may be

prescribed.

23. The contention raised has got considerable force. The Central Government is authorised under the second part of Clause (b) of Section 18, Arms Act to cancel or suspend any license throughout India or any part thereof. If all licenses are cancelled or suspended throughout India, nobody can have any justification for complaint on the basis that there has been discrimination. There will be equal treatment in that case.

But the Central Government is not bound in any event to cancel or suspend all licenses. It has the power to cancel or suspend all or any licenses throughout any part of India. When the power is delegated to Provincial Government the Provincial Government will also have the authority to cancel or suspend all or any licenses throughout any part of its territory. It would be possible for it to cancel the licenses even in a part of the territory.

The learned Advocate-General has argued that even individual licenses may be cancelled under this clause. I have not been able to subscribe to this proposition. If this is so, the Central Government and the State Government, when power under this clause is delegated to it, would have ample power of discrimination. But even if individual licenses cannot be cancelled under this clause, as held by me, there is ample room for discrimination.

All or any licenses may be cancelled in any part. There may be trade licenses in the area selected for cancellation or suspension of licenses. Rights to property in arms held under licenses would be curtailed. Normally the Central Government and the State Government will be persuaded to take drastic action under this clause only for good reasons. But as they are not bound to conform to any standards which reason might dictate or any standards at all for the matter of that, an arbitrary exercise of the power is possible.

Equality before the law or equal protection of the laws within the territory of India may thus be denied by cancellation or suspension of licenses in one part of the territory. Discrimination between different parts may not always infringe the law. But a State Government may select a small part of its territory for cancellation of licenses and may discriminate, it not being bound to act under specified circumstances or to state its reasons. Section 18 does not lay down any test or measure for the guidance of the authority acting under the clause when determining whether any part of India or any part of a State can be selected for cancellation or suspension of licenses.

24. It is also argued that the expression "reasonable restriction" signifies that the limitation imposed on a person in the enjoyment of the right guaranteed to him should not be arbitrary or of an excessive nature. It should not go beyond what is required in the interest of the public.

25. The contention put shortly is that the authority conferred on the Central Government which admittedly has been delegated to the State Government

virtually substitutes the rule of an individual or of a body in place of the rule of the law which is the foundation of the democratic set up provided by the Constitution. It is urged that so long as there is a possibility of any law being applied in a manner obnoxious to any provision contained in the Constitution, it would be unconstitutional.

In support of his contention, the learned Counsel has relied on the famous decision of the Supreme Court of United States in -- "Yick Wo v. Hopkins" (1886) 118 US 356 (C). In this case it was held that the ordinance in question "confers a naked arbitrary power upon the board to give or withhold consent and makes all engaged in the business, the tenants at will as to their means of living under the Board of Supervisors." This decision lends support to his contention.

26. In R. Balakrishnan Vs. State of Madras, it was held that Clause 12(4) of the Cotton Textiles (Control) Order, 1948 read with Clause 33 did not enact any absolute prohibition. It merely imposed a restriction for the 2 clauses read together left to the discretion of the Textile Commissioner to permit in particular cases the acquisition and installation of new looms.

It was held that if this discretion was completely unfettered, it can be said that the provision conflicts with the right of equal protection conferred by Article 14. It was further held that such an arbitrary and unfettered discretion would not amount to a reasonable restriction within the meaning of Article 19, Clauses (5) and (6). In coming to this conclusion, reliance was placed on -- Chintaman Rao Vs. The State of Madhya Pradesh, wherein their Lordships of the Supreme Court held that the prohibition on the manufacture of beedies during the agricultural season was void as being unreasonable. Mahajan J., (as he then was) who delivered the judgment of the Bench, interpreted "reasonable restriction" in the following terms:

The phrase "reasonable restriction" connotes that the limitation imposed on a person in employment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by Clause (6). of Article 19, it must be held to be wanting in that quality.

In Romesh Thappar Vs. The State of Madras, it was observed that

Where a law purports to authorise the imposition of restrictions on a fundamental right in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting such rights, it is not possible to uphold it even so far as it may be applied within the constitutional limits as it is not severable. So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out; it

must be held to be wholly unconstitutional and void.

If this test is applied, the provision cannot be saved from the taint of invalidity by reason of its repugnance to the Constitution. The basis of action under the clause is merely the opinion of the Central or the State Government. That is the only standard provided by the clause. The power, therefore, is arbitrary. As observed by the learned Chief Justice of Madras in -- *M.B. Namazi Vs. Deputy Custodian of Evacuee Property and Others*, it would be unreasonable to gamble on the reasonableness of the authority exercising the power. When power can be exercised even in an unreasonable manner, the law is hit by both Article 14 and Article 19(1)(f) and (g).

27. Reliance also has been placed on the decision of the Supreme Court in -- *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, by which it was held that Clause 4(3) of the Uttar Pradesh Coal Control Order, 1953, conferred on the licensing authority the absolute power to grant or refuse to grant, renew or refuse, suspend, revoke, cancel or modify any license under the order and the only thing the authority has to do is to record reasons for the action it takes. The impugned provision was held to be void as imposing an unreasonable restriction upon the freedom of trade and business guaranteed under Article 19(1)(g) of the Constitution and not coming within the protection afforded by Clause (6) of the Article.

28. In *Anumathi Sadhukhan Vs. A.K. Chatterjee*, it was held that

Clauses 9 and 13 of the Rice Mills Control Order which empower cancellation or refusal of a license already issued and refusal to issue a new license without assigning any reason, overstep the limits of reasonableness and must be held to be invalid in the face of the written Constitution.

29. The view taken in the authorities relied, on by the learned Counsel for the petitioner would show that absolute and unrestricted power conferred on the Central Government by the last clause of Section 18 of the Arms Act which can also be delegated to the State Government, is repugnant to Article 14 inasmuch as it leaves very wide scope for discrimination. It is also obnoxious to the right of the citizen guaranteed to him under Clauses (f) and (g) of Article 19(1). Power so absolute and arbitrary would not be within the scope of reasonable restrictions" which Clauses (5) and (6), of Article 19 permit.

30. The learned Advocate-General has argued that the latest decision of the Supreme Court reported in *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, and, other Indian decisions relied on by the learned Counsel for the petitioner were distinguishable. He contended that in determining whether the restriction on the particular trade is reasonable or not, the nature of the trade is very important factor.

As trades vary in nature, the restrictions also will assume a variety of forms and the reasonableness of these restrictions has to be adjudged by reference to the

nature of the trade itself in each case. In support of his contention, he has relied on -- Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, In this case, it was held that

in order to determine the reasonableness of the restriction, regard must be had to the nature of the business and the conditions prevailing in the trade. It is obvious that these factors must differ from trade to trade and no hard and fast rules concerning all trades can be laid down. The right of every citizen to pursue any lawful trade or business is obviously subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, order and morals of the community.

In this case, the constitutional validity of the Excise Regulation of 1915 was challenged. It was contended that the petitioner had a valid right to carry on trade and business in liquor and this right had been guaranteed to him under Article 19(1)(g). It was conceded that the State had the power to prohibit trades which were illegal or immoral or injurious to the health and welfare of the public. It was also not disputed that the laws prohibiting trade in noxious or dangerous goods or trafficking in women cannot be held to be illegal as enacting a prohibition and not a mere regulation.

The right of every citizen to pursue any lawful trade or business was obviously subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, order and morals of the community. The contention before their Lordships of the Supreme Court was that there was something wrong in principle and objectionable, in restrictions being applied to the business or sale by retail in small quantities of spirituous and intoxicating liquors and that the State had no right to create a monopoly in them. Their Lordships repelled this contention. They concurred in the view expressed by Field J., in -- "Crowley v. Christensen" (1890) 34 Law Ed. 620 (K), that the

police power of the State is fully competent to regulate the business to mitigate its evils or to suppress it entirely. There is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of a citizen of the United States. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority.

31. Reference has also been made to -- "Sheoshankar v. State Govt. of Madhya Pradesh" AIR 1951 Nag 58 (FB) (L)., In this case, it was held that

what the Constitution safeguards is a right to property or to follow a trade. It does not guarantee, that what is regarded as property or what is regarded as an object of trade shall for ever be continued to be so regarded. The legislature having come to the conclusion that the consumption of intoxicating liquor is not in the public interest, its conclusion is not open to question before a Court of law.

From this conclusion it follows that intoxicating liquor must be regarded as a noxious object. It therefore ceases to be a legitimate object of property or a legitimate object of commerce.

Both the cases above referred to are not of much assistance to the respondents. In *Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others*, the very power of the State to control the trade in spirituous liquors was in question. The question in the case was not whether even in that trade unrestricted power to cancel or suspend licenses without any obligation to conform to any objective standard or standards of reason was valid.

Their Lordships were not invited to pronounce on the validity of unfettered power to cancel or suspend licenses in that case, though the case certainly is an authority for the proposition that trades vary in nature and conditions and therefore the reasonableness of restrictions imposed on a trade could be considered only in relation to them. In "*AIR 1951 Nag 58 (FB) (L)*", it was held that the regulation or prohibition of consumption of liquor by the impugned Act did not. infringe the prohibition contained in Article 19(1)(f).

The challenge in the case before us is not to the Arms Act which seeks to regulate the manufacture, possession, transport, export and import of arms. It is merely the unrestricted power of the Central Government which may be made available to the State Government which is challenged on the ground that it may be utilised in a discriminatory manner or it may operate as an unreasonable or excessive restriction on the right of citizens to hold property or to engage in trade even subject to the provisions of the Act and the rules made thereunder. These cases therefore are not very helpful.

32. I have come to the conclusion that the last clause of Section 18 which confers power on the Central Government to cancel or suspend any license in India or in any part thereof is what may be described as a disarmament provision. It could not be applied in individual cases which are covered by Clause (a) of Section 18. The provisions contained in Section 18(a) also supply an answer to the argument of the learned Advocate-General.

The State undoubtedly has the right to regulate the trade in arms. The possession of arms by individual requires regulation. This is not disputed. When licenses are granted, the individual licensee whether he is having a license for arms for personal use or is having a trade license of the nature that the petitioner was having, his license can be cancelled only if cancellation or suspension becomes necessary for the security of public peace.

A further safeguard which the section provides is that not only must the reasons given in the section exist but that the reason should be recorded in writing by the officer or the authority exercising power u/s 18(a). Right of appeal has also been given to the licensee if the license is cancelled by an authority subordinate to the State Government.

These guarantees have been given to the licensee notwithstanding the nature of the trade, the control of which is undeniably necessary. The prohibitive provisions obviously recognise a right in a person who has succeeded in obtaining a license. If he becomes a licensee, he may not be dealt with arbitrarily. Law insists on reasons of a certain kind and it further requires that the reasons must be stated. The nature of the trade, therefore, would be no answer to the objection against any exercise of arbitrary power in the matter of cancellation or suspension of licenses.

Yet it is obvious that the State may in certain circumstances be completely justified in cancelling or suspending all licenses throughout the country or any part of the country. It is not difficult to imagine circumstances under which such a course may be unavoidable for purposes of security and public peace or in public interest. War or aggression from without, civil commotion or disturbances and a state of emergency may justify action of the kind contemplated by the impugned clause of Section 18.

These are occasions on which the drawing on the vast reserve of power left to the Central Government can be envisaged, but it can be easily provided that the Central Government, and the State Government, if the power is delegated to it, may under specified conditions, cancel or suspend the licenses as laid down in the clause in question. There will then be an objective standard for the exercise of discretion under this provision. As it stands, the impugned clause does expose itself to very reasonable criticism about its validity.

I have already come to the conclusion that action under this clause could not be taken in individual cases. The clause has no application to such cases. In this view of the matter, it is neither necessary nor desirable to pronounce finally on the constitutional validity of the impugned clause, though if it had been necessary to decide the question, I would have found it very difficult to resist the charge of invalidity levelled against it.

It is not surprising to find that the clause should appear repugnant both to the letter and the spirit of the Constitution. It was enacted when the Government of India had plenary powers of legislation and could assume vast and uncontrolled power without fear of the law being adjudged unconstitutional. The clause, I think, may be suitably amended so that on occasions when the exercise of this power becomes necessary, it should be available both to the Central and the State Government.

The above discussion leads to the conclusion that the notification of 30-12-1952, was illegal and in excess of the powers of the State Government. It had no jurisdiction to cancel petitioner's license in the exercise of its delegated power u/s 18. If the licenses become liable to cancellation the power given to the State u/s 18(a) ought to have been utilised. The notification relied on by the State Government stands vitiated by an excessive exercise of jurisdiction which the State Government did not possess and was therefore of no effect.

The notification of the State Government that preceded it (dated 23-12-53), would also be illegal and of no effect for similar reasons. The only difference between the two notifications is that the later notification provides for retrospective effect while the earlier one takes effect from the date of its issue. The result is that the licenses cannot be regarded as having been validly cancelled by the two notifications of the State Government.

33. In para. 4 of the affidavit of the Chief Secretary it is averred that the State Government directed the Deputy Commissioner (District Magistrate), Gauhati, to take steps to cancel the petitioner's licenses as it considered such action necessary for the security of the public peace. It was in pursuance of the order of the State Government that the licenses No. IX, X, XII and K were originally cancelled on 22-11-1952, by the Deputy Commissioner, who also, in pursuance of his own order, took possession of the stock which was in the shop at the time and also some stock that was in transit.

The affidavit further reveals that the State Government was advised to issue direct orders of cancellation and, therefore, the two notifications cancelling petitioner's licenses No. IX, X and XII were issued. License No. K which was cancelled by the order of the Deputy Commissioner was not included in these notifications. The order of the Deputy Commissioner was superseded by these notifications. They were intended to have that effect.

The order of the D. C. also suffers from a very obvious defect. The Deputy Commissioner did not give his reasons. He acted admittedly under the orders of the State Government. The cancelling authority thus did not direct cancellation of the licenses on the ground that the reasons which were required by law existed. That would also account for his omission to state reasons.

The order obviously fails to comply with statutory requirements. Mr. Lahiri, though not depending on this order for the validity of the act of cancellation, did point out that the omission to state reasons was a mere irregularity. It did not constitute a defect of jurisdiction, nor would it necessarily make the order illegal.

34. The learned Counsel for the petitioner has on the other hand contended that even this order is without jurisdiction. He has relied on -- *Sudhansu Kanta Acharyya Vs. State of Bihar and Others*, In this case, it was laid down that

the power of cancellation of a license under the Arms Act is not untrammelled. The preliminary condition for exercise of the power is that the authority must "for reasons to be recorded in writing" deem it necessary for the security of the public peace to cancel the license. That is an imperative condition and not merely directory and upon it depends the jurisdiction of the Magistrate to cancel the license.

If reasons specified in Section 18(a) exist, the necessary condition for the exercise of jurisdiction u/s 18(a) would be there. Where these reasons do not exist at all, the order would be without jurisdiction. But if reasons exist and they

are not stated, in that case there may not be any want of jurisdiction. Yet there would be a contravention of an express provision of the Statute. The learned Advocate-General describes it as an irregularity.

But the distinction between an irregularity and an illegality is one of degree and not of nature. Every contravention of the law may be described as an irregularity or as an illegality. These terms have not been defined, perhaps they do not admit of a precise definition. Where an imperative provision of the law provides a safeguard for person against whom action may be taken and there is an apparent disregard of that provision, the contravention would amount to an illegality and a patent illegality of this description may well rank with excess of or absence of jurisdiction, in its consequences and for purposes of the exercise of the jurisdiction conferred on the High Courts by Article 226. In this case, the Deputy Commissioner (Mr. Ahmed) acted merely on orders received from the State Government without knowing the reasons for his order. It is, therefore, without jurisdiction also.

35. The Government had received a communication (No. 645 T. C., dated 24-10-1952) from the predecessor in office of Mr. Ahmed about certain activities of the petitioner. He had forwarded a report from the Deputy Superintendent of Police, Gauhati (Memo No. A-7(2)51/52/213/C, dated 23-10-52, along with his letter). The Government decision was presumably based on this communication.

This document is not on the Deputy Commissioner's record sent to us though it is averred in para. 2 of the affidavit of the Chief Secretary that it was ascertained from authoritative reports that the petitioner was actively supporting the C. P. I., candidate of Gauhati in the last general election and contributing handsomely towards the reception of a certain C. P. I. leader.

It was also averred that the State Government considered it necessary for the security of the public peace to direct the cancellation of these licenses. The existence of subversive activities with the aid of unlicensed arms in Gauhati Elaka was also stated. From the affidavit it would appear that the order was sought to be defended on the ground that the cancellation of licenses was necessary by reason of petitioner's association with the subversive elements which were then in operation though the material on which the Government acted is not being disclosed on the ground that the public interest would suffer by its disclosure. The communication received from the Deputy Commissioner is being withheld.

36. The learned Counsel for the petitioner urges with considerable force that if the petitioner was really an undesirable person to hold the licenses which were cancelled, he would not have been allowed to remain a licensee at Silchar and Jorhat in Assam with permission to keep an office at Gauhati for import of arms for those stations. It is further pointed out that the report on which the decision to cancel licenses was taken is being withheld.

The Chief Secretary has affirmed that public interest would suffer by the

disclosure of the contents of this letter. Privilege has also been claimed by the learned Advocate-General for the report under Sections 123 and 124, Evidence Act. The learned Counsel for the petitioner points out that the Government is bound to disclose reasons for the cancellation of the licenses.

If cancellation is sought to be justified under the first clause of Section 18, it is not possible in law to cancel licenses for reasons which cannot be disclosed. The cancellation is possible only for the security of the public peace and reasons which induce the decision to cancel licenses have to be stated in the order itself. These reasons cannot be kept secret. The order u/s 18(a), he argues, was treated as quasi-judicial in *Sudhansu Kanta Acharyya Vs. State of Bihar and Others*,

It is contended further that Sections 123 and 124, Evidence Act have no application. The learned Counsel has also pressed that it should be presumed against the State of Assam that if the contents of the reports on which action was taken were disclosed, they would not support the contention put forward. These are weighty arguments. The learned Advocate-General has not answered them effectively.

But it is not necessary to examine them in any great detail, for, I have already found that the order of the Deputy Commissioner was tainted with illegality and no attempt has been made to justify the notifications of the Government u/s 18(a). On similar grounds it is not necessary to go into allegations of "mala fides" made against the Deputy Commissioner, nor is it necessary to consider whether in cancelling the licenses the Deputy Commissioner or the State of Assam has contravened the principles of natural, justice.

37. It follows from what I have found above that the order of the Deputy Commissioner and the two subsequent notifications being illegal and in excess of jurisdiction, there was no legally operative order cancelling the licenses.

38. The licenses were not cancelled effectively. They could endure for their specified duration. They all expired on 31-12-1952, i.e., one day after the publication of the last notification cancelling them. Renewal of these licenses could have been applied for. But no application for renewal was put in before their expiry or even after it at any time during the year 1953.

On 3-10-1952, before the first order for cancellation of licenses was passed, the petitioner obtained a certificate from the Deputy Commissioner, Kamrup, on the basis of which he had applied to Joint Chief Controller of Import, Ministry of Commerce and Industry, Government of India, for import licenses for the period July to December, 1952.

It was certified that the petitioner was the holder of dealers licenses in forms X and XII and was authorised to import and deal in arms and ammunition. But before the import license could be issued to him, the Deputy Commissioner, Kamrup, cancelled the trade licenses on 22-11-1952. The Import Trade Controller

at Calcutta learnt about his cancellation. He asked the Deputy Commissioner, Kamrup, on 25th January as to whether the certificate issued to the petitioner on 23rd October retained its validity.

The Deputy Commissioner referred the matter to the Government of Assam. The Government informed the Trade Controller on 17-2-1953, that the certificate issued to the petitioner was to be treated as valid and that there was no objection to the firm carrying on import business from Gauhati. In their letter, the Government expressly stated that storage and sale at Gauhati was not permitted to the petitioner.

As a consequence, the petitioner got the import license and placed orders for arms in January. The petitioner again applied for import licences for the period January to June, 1953. The Deputy Commissioner, Kamrup, again issued to him a certificate on 25-2-1953, as the proprietor of East End Arms Company, Gauhati, stating that he was a holder of dealers license in forms X and XII under the Arms Act and was authorised to import and deal in arms and. ammunition.

The reference could only be to his licenses for Silchar and Jorhat. On the basis of this certificate, the petitioner got another import license and placed orders for arms in Belgium. The learned Counsel for the petitioner has referred us to an order of the Additional Deputy Commissioner, dated 25-2-1952, by which he directed that licenses might issue as usual. He added in his order that

the fact that storage and sale was not allowed at Gauhati was known to the licensee and the certificate will not remove the ban. He may be informed accordingly.

It is obvious from the order itself that the terms "license" and "certificate" have been used interchangeably and as synonyms, though this may not be correct. The learned Counsel for the petitioner has urged that the renewal of licenses was directed by this order, but actually a certificate was issued. The licenses were not renewed, nor were they returned. The petitioner affirms that a direction for the renewal of licenses was given.

He then deposited fees for the renewal on 2-3-1953. These fees were accepted. It is urged on these facts that the licenses in point of fact stood renewed. It is also pointed out that the petitioner was permitted to carry on his import business from Gauhati. The certificates allowed to him authorised him to import arms as a dealer in arms with his office at Gauhati. Once the Government decided to permit him to import arms as a licensee, the imposition of the ban on storage and sale was without jurisdiction and of no effect. The result of these acts was that the licenses stood renewed.

39. Rule 39(1) of the Indian Arms Rules, 1951, provides that

every licence shall be granted or renewed in the appropriate Form, and subject to the conditions set forth in such Form, and, save as therein otherwise expressly provided, the arms, ammunition or military stores specified and the persons

named in the licence shall alone be covered thereby.

Rule 40(3) provides that

every licence may, at its expiration and subject to the same conditions (if any) as to previous sanction as would apply in the granting thereof, be renewed by the authority who granted it, or by any other authority empowered to grant a licence of the description in question.

A licensee has to apply for renewal of his license before its expiry and the possession of an arm after the expiry of the license amounts to an offence u/s 19(f), -- "Emperor v. Bakhshi Ram" AIR 1942 Lah 300 (N); -- "Zainub Abdin v. Emperor" AIR 1937 Pesh 30 (O). No application for renewal of the license was made in this case before the expiry of license or even within the month of grace that is generally allowed. There has been no endorsement of renewal on the license in appropriate form, nor has the Government or any officer of the State of Assam agreed to renew or order the renewal of the licences No. IX, X and XII which were cancelled,, though illegally, by notification dated 30th December.

The notification was issued by the State Government. There was no right of appeal against the order. In these circumstances whatever view may be taken of the notification now, the Government and the authority subordinate to it could not conceivably contemplate the renewal of licenses which for all practical purposes had been cancelled. In fact the act of cancellation influenced the conduct of the petitioner also. He did not ask for the renewal of these licenses at the proper time.

It was in March, 1953, that he assumed that his licenses stood renewed by reason of the certificates which have been issued to him for purposes of import. These certificates were qualified. It was expressly stated on both the occasions that the petitioner shall not have any right of storage or sale at Gauhati. These certificates do not imply that the licenses had been renewed or would be renewed. The assumption on the basis of which the fees were paid has no support from facts. The acceptance of fees for renewal in March was followed by subsequent Communications by which the petitioner was informed in express terms that his licenses had not been renewed and, therefore, they could not be returned to him with or without endorsement of renewal.

The petitioner may have his right to recover back the fees. But the deposit of the fees in the Treasury alone would not impose any obligation on the Government to renew licenses which it had cancelled some months before. No kind of estoppel against the statute can be pleaded. The letter (No. HMI 87/52/78, dated 8-7-53) embodies a categorical statement that the licenses could not be renewed as they had been cancelled.

The head office of the firm was allowed to be retained at Gauhati for correspondence work and not for sale and storage of arms and ammunition. The petitioner was also informed that he should send licenses in forms X and XII of

his Jorhat Branch to his agents, M/S. Graham Trading Co. (India) Ltd., for obtaining delivery of his consignments.

40. The rules relating to renewal have the force of law. The renewal of the licenses is required to be according to the provisions contained in the rules. There is nothing on the record to show that there was any valid renewal of the licenses either in point of fact or in law. The acts on which reliance is placed for showing that there was renewal in substance do not support the contention raised. They militate against it and may well be urged in refutation thereof.

41. The permission given to the petitioner by certificates to have his head office at Gauhati for purposes of carrying on correspondence for import of arms to be diverted to Silchar and Jorhat, may not be strictly in accordance with rules. But even if the permission given had been regular, it would not have amounted to the renewal of the licenses. Its irregularity cannot conceivably result in the renewal of licenses which was never intended.

42. On 30th November, 1953, the petitioner again requested the Government for the release of cancelled licenses in order to enable him to obtain delivery of goods from the Calcutta Port. The Government directed the Deputy Commissioner on 18-12-1953 to grant to the petitioner licenses in forms X and XII only, with instructions not to permit the petitioner's firm to dispose of these goods at Gauhati.

The direction was later on cancelled. The petitioner's counsel has not relied on this circumstance in support of his contention that the licenses of 1952 stood renewed. Licenses for a week were nevertheless issued. They were also qualified and according to the petitioner, were worthless. He could not utilise them even for purposes of import. On 26th December, the petitioner again applied for renewal of the old licenses for the year 1954, and he was informed on 15-3-1954, that the licenses could not be renewed.

On 26-12-1953, the situation had not altered. The notification cancelling the licenses had not been challenged. The licenses were not renewed for 1953.

43. The petitioner may not be blamed for not applying for renewal of his licenses before they expired. There were 3 successive orders of cancellation of these licenses. The last cancellation order came on 30th December. The cancellation orders were no doubt illegal, but the petitioner failed not only to challenge the orders of the Government cancelling the licenses but also to apply for renewal within the period of grace in January, 1954.

In the face of the orders of cancellation which had gone unchallenged and in the absence of any renewal for the year 1953, an application for such renewal of the licenses as is contemplated by the rules, for 1954 could not have been entertained, for the application would involve the assumption that licenses were renewed for 1953 and could be validly renewed for 1954. The licenses for 1952 had not only been cancelled, they had expired also.

They were not renewed for 1953, When the application for renewal for 1954 came up for consideration, there were no licenses in existence which could be renewed. The wrongful cancellation does not help the petitioner, for after it the licenses had been allowed to expire and they had died a natural death. The position remained the same till 15-3-1954 when the renewal of licenses for 1954 was refused. This order has been challenged by the present proceeding. Even now the technical difficulty in the way of the renewal of 1952 licenses stands in the way of the petitioner.

The licenses expired at the end of 1952. There was no valid renewal for 1953. Under the rules, the petitioner could not ask for renewal of 1952 licenses for 1954 which he had allowed to expire by not applying for their renewal. He may have asked for fresh licenses, which would have, in substance, meant revival of licenses which had admittedly expired, taking the cancellation as not having affected their validity. It is in these circumstances difficult to hold that the order, dated 15-3-54, is illegal.

It is in consonance with the letter and spirit of rules governing renewal strictly so called. The year 1954 has run out and there is no point in directing the Government to consider petitioner's application for renewal of licenses for 1954.

44. The petitioner petitioned to the Chief Minister, Assam, on 28th August, 1953, through a pleader (Secretary, District Congress Committee) for removal of the ban on sale and storage of arms at Gauhati. He also prayed for a hearing. In the meanwhile respondents 4 to 6 also applied to the Chief Minister resisting the move. Notices were issued to both the parties of the hearing which was fixed for 19-12-1953.

The prayer of the petitioner was resisted by respondents, it is alleged, on grounds which had been considered by the Government when licenses were originally issued to him. It is contended that the respondents were permitted to appear with advocates who happened to be M. L. As. (Congress party), even though the respondents had no locus standi to contest the proceedings initiated by the petitioner.

At the hearing, the petitioner alleges he was told to shift his head office from Gauhati and was informed that his other licenses may be cancelled if he insisted on the restoration of the Gauhati licenses. The case was adjourned for one month at the request of the respondents. The petitioner requested the Government on 26-12-1953, for intimation of the date of the adjourned hearing. He sent a telegram on 13-1-1954. On 20th January he was informed that the case had been fixed for 4th February. On this date also respondents could not produce anything material against the petitioner. The parties were heard on this date.

The petitioner alleges that he was again pressed to close his office at Gauhati. Parties were fully heard and the case was adjourned "sine die" with instructions to the parties to furnish information about petitioner's business in Mymensingh

before he came over to the Indian Union. The order, it is stated, was complied with by the petitioner. He requested the Government for final orders on the subject but no orders were passed till 24-4-1954, when this petition was put in.

45. The petition for removal of the ban on sale and storage at Gauhati assumes that the licenses for 1953 had been renewed. It is only on this basis that it could be contended that the ban on sale and storage was without jurisdiction or illegal. If licenses were not renewed, the ban was merely a qualification of the concession extended to the petitioner to import arms from Calcutta into Assam for his branches other than Gauhati.

This was expressly stated. The procedure adopted by the Government has been characterised as irregular. It would have been in accordance with the requirements of the rules if the certificates issued from Gauhati had been issued from Silchar where the petitioner had licenses No. X and XII. The procedure by which concession was made available to the petitioner may not strictly conform to the rules.

But as found above, this does not amount to renewal of the licenses under the law. The removal of the ban alone would have constituted permission to carry on his trade even though his licenses were not renewed. This is not conceivable. For all practical purposes, the petition to respondent 3 is a petition for revival of licenses which, though not cancelled in accordance with law, had been allowed to expire. This petition has not been disposed of so far.

It appears from the counter affidavit that as objections were received from respondents 4-6, a hearing was given to parties on 19-12-1953. The case was adjourned to 4-2-1954, as discussion on the hearing revealed need for further enquiry. The hearing could not be concluded even on 4th February as some necessary information was not forthcoming. Parties were directed to put in their respective statements supported by affidavits within two months and it was ordered that final hearing may be fixed after expiry of two months.

The parties did not submit their statements. An ex-employee of the petitioner however did put in an affidavit. But this did not contain necessary information. The final hearing of the case was directed to be fixed towards the end of May, but before the case could come up again before respondent 3, the petitioner moved this Court by a petition under Article 226 of the Constitution.

46. Certain allegations bearing on the plea of "mala fides" have been made in paras. 11, 30, 31, 32, 53 and 55. Some of these allegations, particularly those in para. 55, are couched in extravagant language. Attempts at coercion into submission to the orders of the Government imposing a ban on sale and storage of arms at Gauhati, favouritism and prejudice have been alleged. Comments on the conduct of the pending proceeding have also been made.

The language of these comments is of questionable propriety. The allegations referred to above have been completely repudiated in the counter-affidavit of the

Chief Secretary who has affirmed this part of the affidavit on the basis of information received directly from respondent 3. The allegations of the petitioner do not receive any support from the record and it is inconceivable that any responsible functionary of the State should indulge in language or be responsible for the conduct complained of. It is not necessary to go into great detail in these allegations in view of the conclusion I have reached in regard to the pending proceeding.

47. A petition under Article 226 is a pleading in an extra-ordinary proceeding. Facts must be stated in it with precision. In the absence of any rules on the point, principles of the CPC governing pleadings should be followed as far as possible. The petition should contain only a statement in a concise form of the material facts on which the party relies for his claim. Arguments should not form part of the petition. Comments based on impressions or opinions are completely out of place. Any tendency to scandalise should be scrupulously avoided.

48. Two consignments of arms have been received at Calcutta. They have not yet been cleared from the port. The import business of the petitioner was permitted to be carried on from Gauhati. The petitioner applied for the release of his cancelled licenses in order to obtain delivery of goods from the port through his agents. They were not released as they have been cancelled. The Government enquired from the Collector of Customs, Calcutta, by their letter dated 8-1-1954, whether goods lying in Calcutta could be released to Messrs. East End Arms Company without their dealer's licenses for Gauhati, which had been cancelled on the strength of his licenses for shops at Jorhat and Silchar. The Collector intimated that it could be done under a valid licence from the Commissioner of Police, Calcutta. He was also consulted. He replied that it could be done if certain formalities mentioned by him were observed. This information was received during the pendency of this petition.

The Government intimated the contents of the Police Commissioner's reply to the petitioner, assuring him also of necessary assistance in the matter of releasing his goods from Calcutta Wharf. The petitioner has only to comply with the directions contained in the letter No. GHY/775/54, dated 17-3-54, for obtaining delivery of arms lying at Calcutta port.

Instead of insisting on the release of cancelled licenses or a no-objection certificate from the Deputy Commissioner, Kamrup, he has to take a no-objection certificate from the Deputy Commissioner at Jorhat or Silchar and on that basis to obtain necessary facilities for obtaining delivery of the arms. No directions in this regard are necessary at this stage. The Government have no objection to his importing arms already lying at the Calcutta Port in Assam to his branches other than Gauhati. They have already assured him of their willingness to grant necessary facilities for the purpose.

49. The petitioner has also claimed compensation for illegal seizure of and damage to his arms. Apart from other questions that may arise in regard to the

liability of the Government or its officers to compensate the petitioner, the assessment of compensation by itself is a question for which the jurisdiction of this Court under Article 226-may not be utilised.

The petitioner has his remedy by suit. The remedy is adequate and effective and it is far more appropriate in cases where compensation is claimed for wrongful acts on the part of the Government or its officers. No formal orders cancelling the notifications of the Government by which licenses were cancelled, are necessary as the licenses have expired. Renewal of licenses for 1953 and 1954 is not possible under the law in the circumstances of this case.

Removal of the ban on storage and sale is also not possible. The petitioner however can approach the appropriate authority for grant of fresh licenses. The authorities which are vested with discretion in the matter have to be guided by similar considerations which govern disposal or cases for renewal of licenses. Petitioner's prayer for fresh licenses could not have been considered before.

The cancellation of his licenses was a serious impediment in his way. The order of cancellation has been found to be illegal. The licenses in question expired on 31-12-52. There is now no legal bar to the consideration of petitioner's application for fresh licenses. His difficulties were due mainly to orders of cancellation and there is nothing to prevent the appropriate authority from disposing of on the merits and according to law any application for fresh licenses.

50. In the view of the matter that we take, the petition has to be dismissed and we order accordingly. The Rule is discharged. We make no order as to costs.

Deka, J.

51. I agree.

52. BY THE COURT: Leave to appeal to the Supreme Court is allowed to the petitioner.