

(2000) 01 KAR CK 0021
In the Karnataka High Court
Case No : Writ Petition No. 4141 of 1993

Prabhakara Shetty

APPELLANT

Vs

The Divisional Commissioner, Mysore Division, Mysore and
Another

RESPONDENT

Date of Decision : 17-01-2000

Acts Referred:

Arms Act, 1959 — Section 17 (3) (b)
Penal Code, 1860 (IPC) — Section 307, 333, 34, 341

Citation : (2000) CriLJ 3692 : (2000) ILR (Kar) 1589 : (2000) 4 KarLJ 221 :
(2000) 2 KCCR 1510 : (2001) 1 RCR(Criminal) 268

Hon'ble Judges : A.V. Srinivasa Reddy, J

Bench : Single Bench

Advocate : Sri A. Jagannatha Shetty, for the Appellant; Sri N.K. Ramesh,
Government Advocate, for the Respondent

Judgement

A.V. Srinivasa Reddy, J.—The petitioner who has been deprived of his arms licence calls in question the correctness and validity of the order dated 27-7-1991, produced as Annexure-A, passed by the second respondent revoking his licence and the order passed by the Divisional Commissioner, produced at Annexure-B, dismissing the appeal filed by the petitioner.

2. The brief facts of the case are:

The petitioner is a resident of Thalipadi Village of Dakshina Kan-nada District. At present he resides in Bombay where he is running a bar in the name and style of Hotel Vaishali, He holds an arms licence which was issued to him under Order No. DK. MAN 258/1-III. He possesses a 32 bore revolver. It is contended by the petitioner that on 23-12-1999 at about 7.30 p.m. the petitioner heard shouts from the members of the public who were shouting "thief thief and the petitioner saw a person running and the public trying to catch him. The said person fired 2 to 3 rounds from his revolver and the petitioner who was standing on the first floor of the open terrace of his hotel at Chembur, Bombay, left the building and

went to the spot and tried to apprehend the person. The said person pointed his revolver at the petitioner and the petitioner also drew the revolver and with the revolver in his hand tried to apprehend the said person and in that process a shot was fired from his revolver incidentally. It later turned out that the said person is an Inspector of Enforcement Directorate and he had come to the locality to detect some offences allegedly being committed by some persons of the locality. The police booked a case against the petitioner and some other persons under Sections 307, 333, 341 read with Section 34 of the IPC. In the meanwhile the Bombay police issued a show-cause notice as to why the arms licence should not be revoked. The petitioner replied to the show-cause notice. The second respondent after considering his reply passed an order dated 27-7-1991 revoking the licence of the petitioner and the appeal preferred against the said order was dismissed by the first respondent. Hence, the petitioner has filed the present writ petition.

3. I have heard the learned Counsel on both sides.

4. The test to be applied is to see whether allowing the petitioner to continue to possess a revolver under licence would be a threat to the safety and security of the general public. A balance has to be struck between the safety and security of the petitioner and that of the general public. The right guide to decide this would be the manner in which the petitioner conducted himself in relation to possession and use of the licenced firearm. If it is proved that he has a tendency to flaunt and fire his firearm even when there is not a semblance of danger to his person or property, surely such a man cannot be permitted to continue to possess a firearm as it would endanger the safety and security of the general public. It is not necessary that the firearm should have been used in committing any criminal offence. The averments made in the petition clearly establish that there was no danger to either the property or the person of the petitioner when he rushed to the spot where there was some commotion and fired his firearm. The petitioner appears to have acted on the spur of the moment and his action has resulted in injury to a Government Servant whose presence at the spot was in the course of performance of his duty. The averments made in the writ petition and the facts set out in the impugned order at Annexure-A are enough to draw a conclusion that the licensee is not a fit person to hold a licence as he is likely to commit dangerous offences by misusing the licensed gun. The necessity imposed by law on the authority to show how prima facie the possession of a gun by the licensee would endanger public peace before passing the order revoking licence is rendered unnecessary by the facts and circumstances of the case.

5. What matters in such cases of proved misuse by the licensee is the subjective satisfaction of the authority concerned preceded by an enquiry in which the licensee was provided with a reasonable opportunity of being heard. In the present case these essential requirements have been met with by the authorities concerned which amounts to the authorities acting judicially and in accordance with the principle of natural justice. It is not necessary that a roving enquiry

should be held by the authority before revoking licence. It is sufficient if the record shows that reasonable opportunity has been provided to the licensee. The decision arrived at by the authorities concerned after satisfying these requirements cannot be interfered with lightly in exercise of the extraordinary jurisdiction of this Court.

6. The learned Counsel for the petitioner relied on two decisions to contend that the order revoking licence is opposed to principles of natural justice. In *M.J. Sivani and Others Vs. State of Karnataka and Others*, , the Apex Court, stressing on the importance of complying with the principles of natural justice before passing an order of revocation of licence, stated thus:

"When the licensing authority seeks to place reliance on any adverse material gathered behind the back of the applicant to which he had no prior opportunity to meet or explain such adverse material, principles of natural justice does require that before taking a decision to reject the licence such material or the gist thereof must be brought to the notice of the applicant and an opportunity given to meet the grounds or such material".

The facts in this case are entirely different. The adverse material which served as the basis for revocation of the licence was well-within the knowledge of the petitioner and the same is not disputed by him at all. In fact, the Apex Court before laying down the principle as extracted hereinabove has said:

"It is not mandatory that hearing should be extended before rejecting licence".

The learned Counsel for the petitioner also relied on the decision in *Labh Singh Chattar Singh Vs. The Divisional Commissioner, Amble Division, Ambala and Another*, , wherein it is held that, "it is incumbent on the authority passing an order or cancellation to act judicially and to follow principles of natural justice". In the case on hand, as stated earlier, the authority has acted judicially and followed the principles of natural justice in that sufficient opportunity was provided to the petitioner before passing the order of revocation.

7. The revocation in the present case has been done u/s 17(3)(b) of the Indian Arms Act which reads:

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

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

As stated earlier, a balance has to be struck between public safety and the right to protect one's self and property. No doubt, the right to protect one's self and property is sacrosanct but when it translates into a right to possess a firearm it takes the form of a privilege rather than a right. When one can be said to have a right to work and a right to vote it cannot be said in the same vein that one has a right to possess a firearm. In that sense the right to protect one's self and

property is different and distinct from the right to possess a firearm. When the former is a solemn right, the latter is a privilege. The right to protect one's self and property cannot be confused with the right to possess a firearm. That privilege granted is subject to the provisions of the Act and any misdemeanour on the part of the licensee would render him unfit to continue to have that privilege. That privilege once granted cannot be misused. The one in possession of a firearm under licence must resort to it only as a last form of defence. Courts cannot lose sight of the fact that only a miniscule and almost negligible percentage of our populace possess firearm under licence. Therefore, the necessity of using a firearm in self-defence would accrue on rare occasions excepting may be in case of some areas affected by terrorism. A trigger happy person cannot be allowed to have that privilege as it would amount to putting the safety of the entire populace to risk. This is one such case where the petitioner has used the firearm when there was no semblance of risk either to his self or property. Therefore, the licence in the present case having been revoked u/s 17(3)(b) of the Act after providing sufficient opportunity of being heard to the petitioner, the same cannot be interfered with. The authority has also relied on the decision in *Shesh Nath Singh v State of Bihar*, wherein it has been held that pendency of a criminal case is sufficient ground to revoke a licence. It shows that the authority has also applied his mind in the matter of revoking the licence.

8. The learned Counsel for the petitioner relied on two other decisions viz., *Brij Bhusan Pandey Vs. State Transport Authority, Lucknow* and *Another, , and Sisir Kurnar v State of Orissa* . In *Brij Bhusan Pandey's* case, supra, the Court was considering the question of cancellation of permit or refusal to renew it and in that respect it was held that only when a person is convicted that he can be held to be guilty. The yardstick applied in that case cannot be applied to the facts of the present case. In that case the charge against the driver of the vehicle in question was overloading and the trial was on. It is in that connection the Court observed that it is only when a person is convicted that he can be held to be guilty. What is at stake herein is the public safety. The principle laid down in *Brij Bhusan Pandey's* case, supra, would hold good to offences committed under the Motor Vehicles Act. The licence under the Motor Vehicles Act cannot be equated with a licence under the Indian Arms Act. Therefore, that principle would not apply to the facts of this case.

9. In *Sisir Kumar's* case, supra, it was held by the Court that the licensee is entitled to a hearing by the original revoking authority and a reasonable opportunity of defending his right. This decision would not help the petitioner in any way as, admittedly, the petitioner has been provided with sufficient opportunity to defend his right.

10. In the result, for the reasons stated above, there is no merit in the writ petition and it is, accordingly, dismissed.

However, this would not deprive the petitioner of his right to apply afresh for licence after completion of the trial and the authorities will be at liberty to decide

the same on merits.