

(1991) 03 MP CK 0035

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2893 of 1990

Ramprakash and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 08-03-1991

Acts Referred:

Arms Act, 1959 — Section 13, 14, 17, 17(1), 2
Constitution of India, 1950 — Article 261
Evidence Act, 1872 — Section 114

Citation : (1991) 03 MP CK 0035

Hon'ble Judges : T.N. Singh, J;K.K. Varma, J

Bench : Division Bench

Advocate : R.D. Jain, for the Appellant; P.N. Kelkar, Dy. A.G., for the Respondent

Judgement

T.N. Singh, J.—One common order, passed on 7-7-1990 is the root-cause of the grievance which 32 petitioners have made, separately and/or jointly, in seven petitions heard analogously, being disposed of by this common order. District Magistrate, Bhind, has cancelled by that order, cumulatively, the gun licences issued by Shri R.S. Yadav, Deputy Collector, Bhind; the list appended to the order contained necessary particulars of all those licences.

2. True, some of the petitioners preferred unsuccessfully appeals, while others have approached us directly on the Writ Side, challenging the aforesaid order. In this connection, it may be mentioned that earlier also the same order was challenged in M.P. No. 1917 of 1990 and in the order passed on 29-8-1990 in that matter, this Court expressed the view that even if the impugned order affected 180 persons, that would not vest jurisdiction in this Court to entertain the petition as a Public Interest Litigation. Each of the licensee had the right to challenge in appeal the cancellation order and jurisdiction of the appellate authority could not be usurped by this Court.

3. It may be noted in this connection that only in M.P. No. 349 of 1991, the licence stands renewed up to 31-12-1991; in all other cases, applications for

renewal were filed. However, by the impugned order aforesaid, those stand disposed of. Indeed, the Collector's order is that the licences issued being void the applications for renewal were also illegal and void.

4. From the "list" appended to the impugned order, Annexure P/14 of M.P. No. 18 of 1971, we find that licences granted as far back as on 22-8-1985 are cancelled. We also find that on a single day, such as on 13-5-1986, licences were granted wholesale to a large number of persons named at S. Nos. 105 to 171. In his order, District Magistrate stated that the licences were void during the relevant period Shri Yadav was neither A.D.M. Bhind nor in any other manner, he had been empowered or authorised to issue those licences. He also stated that in Police Station, Kotwali, Bhind, F. I. R. was lodged for action to be taken in that regard. He held that the licences being void, possession of arms in virtue of those licences was illegal. Superintendent of Police, Bhind and S.D.M., Bhind were directed to take necessary action in the matter.

5. Counsel appearing for petitioners have submitted that the District Magistrate, Bhind and also the Commissioner, Chambal Division, in appeal, acted illegally and without jurisdiction in taking the view that the licence issued by Shri R.S. Yadav were void. It is submitted that he had the requisite authority and the legal competence to issue those licences and that in any case, rights of a large number of persons being affected, the order passed by Shri Yadav ought to have been maintained in appeal invoking the "De facto Doctrine". We propose to examine in due course the factual basis of Shri Yadav's alleged legal competence, but before that, we would like to disarm counsel, canvassing the view that any person to whom an arms licence is once granted gets elected with a legal "right" to possess any fire-arm in the exercise of that right. To obtain a licence to possess a firearm, whether any statutory or constitutional right exists? That question is of primal significance.

6. When the old Arms Act, 1878 of pre-Independence era was found out-of-tune with the new dispensation and Parliament referred the Bill for enacting Arms Act, 1959, for short, the "Act", two views were expressed by members of the Joint Committee. (See --Gazette of India (Extra Ordinary) Part II, Section 2, dated 10-8-58 (pp. 763 et. seq.) and dated 20-2-59 (pp. 107 et. seq.). One view was that "the right to bear and carry arm is an inviolable and sacred right of every free citizen", conceding though that in the list of Fundamental Rights enumerated in the Constitution, that had not been included. The argument was that because Indian Penal Code contemplated the right of self-defence, impliedly it acknowledged the right to possess arms. This constitutional perspective was based on the position obtaining in America. Article 2 inserted in 1791 in the Federal Constitution of that country by an amendment, contemplated that "right of the people to keep and bear arms shall not be infringed". Evidently, a pre-existing right available to people of the different States joining the Federation was protected thereunder. Colonial rulers, in India, had conceded no such right.

7. Parliament did not find for other reasons too American experience rewarding

because Indian conditions with vastly different circumstances of our people called for a different domestic approach. Composite culture and the distinctive common heritage of our people was forged through the non-violent freedom-struggle. Even when the Constitution for Free India was adopted, concern for nurturing the nascent democracy was expressed and as a "necessary evil" preventive detention was harmonised with personal liberty of free people. While recognising right to dissent as an essential component of democracy, freedom to "assemble peaceably (but) without arm" was guaranteed. Emergency provisions of our Constitution also sing the same tune. If we look around today in our country or even beyond, we must admire the far-sightedness of the Parliament. Judicial notice can be taken of near-anarchical conditions brought about in some pockets inside the country and also in some part of the world by private armies and mafia gangs threatening the delicate democratic structures of the third world countries. Article 30 of Universal Declaration of Human Rights adopted in 1948 took care to provide that no "group or person (has) any right to engage in any activity or to perform any act aimed at the destruction of any of the freedom set forth thereunder"; Article 29(1) secures "due recognition and respect for the rights and freedom of others" to ensure "general welfare in democratic society". Freedom guaranteed under Article 19(1)(b) of our Constitution expressly eschewed liberty to bear and carry arms while guaranteeing other variety for common good of the citizens.

8. Provisions of the Act, on a plain reading provides ample evidence of the legislative intent that no "right" to obtain licence or possess arms or fire-arms is contemplated. Because "privilege" to be conferred by issuing a "licence" was contemplated, guidelines were considered necessary to exclude arbitrary action in the matter of grant of the privilege. That constitutional necessity, embodied in Articles 14 and 15 envisaging equal treatment for all citizens, had to be fulfilled. Indeed, that imperative is applicable squarely to distribution of any State largesse. (See -- *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, It has been appropriately observed in *State of U.P. and Others Vs. Jaswant Singh Sarna*, that the Act is a regulatory measure in respect of acquisition and possession of firearms and of occupation, trade or business therein.

9. Although at one time, some High Courts taken the view that the right to acquire and possess arms is a fundamental right, that view has ceased to be good law for more than one reason. True, R.S. Pathak, J. (as he then was), in the Allahabad High Court's decision in *State of U.P. and Others Vs. Jaswant Singh Sarna*, in dealing with the contention of an arms dealer complaining against refusal of renewal of his licence had observed, "it is not easy to comprehend in the exercise of the fundamental rights involved for their regulation u/s 14(1)(b) (i) to be denied protection of the principles of natural justice" and he also referred to Clauses (f) and (g) of Article 19(1). But, speaking for the Court in *Ranjit Singh and Others Vs. Union of India (UOI)*, his Lordship accepted the contention of the Government of India that there is no fundamental right under

Article 19(1)(g) to carry on the trade of manufacture of arms. The Court held, "an applicant for a licence is entitled to have it considered in accordance with the terms of the statute and to press for its grant on the basis of the criteria set forth in it". A learned single Judge in Harisingh Harnamsingh Khalsa Vs. E.F. Deboo and Another, took the view that citizen's right to hold fire-arm being property right and that being guaranteed under the Constitution, arbitrary power of summary interference with the vested right of the licensee had to be eschewed. The view expressed by a Full Bench in Hazi Mohd. Hasan Ali v. Commissioner of Plains AIR 1969 Assam 50, denying the right of pre-decisional hearing in regard to cancellation of licence u/s 17 of the Act was dissented from. In that case, the Full Bench did not accept the Allahabad view expressed in Jai Narain Rai Vs. District Magistrate and Others, that loss of the right to hold or possess fire arms resulted from cancellation of licence and the order being a quasi-judicial order, principles of natural justice were to be followed. Another learned single Judge in Labhsingh v. Divisional Commr., AIR 1972 Punj & Har 122 also expressed the view that right to acquire and possess a gun was a fundamental right but gave no reason for that proposition. On the same lines is the view expressed in a Kerala case by a learned single Judge who, however, took care to observe, "These cases may perhaps be distinguishable on the ground that a person who has obtained a licence may well claim to have a right of property and that the refusal of renewal of the same, or cancellation of the licence may well involve a violation of his fundamental right of property". (See, K.S. Abdulla Vs. District Collector and Others, As Ranjit Singh and Others Vs. Union of India (UOI), now holds the field and Article 31 guaranteeing the right to property is repealed, there remains no valid basis for the older view.

10. Such articles which can be used as "weapons for offence or defence" are brought as per Section 2(1)(c) within the purview of the Act. Section 3 enacts a prohibition: "no person shall acquire, have in his possession, or carry any fire-arm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and Rules made thereunder". Manufacture, sale, repair and transfer of fire-arms are prohibited likewise u/s 5. Power to "refuse" a licence (though carefully circumscribed) is contemplated u/s 14 and power of grant of licence u/s 13 is to be exercised only "after making such enquiry" as may be considered necessary. Section 14(3) requiring recording of reasons and furnishing the same to the applicant but licensing authority may refuse to do so when considered necessary in "public interest". Power to vary any condition of licence, suspend and revoke a licence is contemplated u/s 17 and that is vested in the licensing authority. Suspension or revocation of the licence by Court while convicting a licensee for any offence is also contemplated and in the Assam Full Bench case (supra) power to confiscate the weapons u/s is concerned only to the Court. Section 25 creates "offences and penalties" in respect of such acts among others as acquiring, carrying or possessing any fire-arm without licence; failure to "deliver up" licence for verification is also an "offence". Section 21 contemplates depositing in the nearest Police Station of arms and ammunitions,

whereof possession ceases to be lawful. Section 42 contemplates "census of fire-arms".

11. The scheme of the Act and indeed Sections 13 and 14 read together, make the object and purpose of the Act clear that only right to make an application for licence to acquire and hold any fire-arm and that to be considered and disposed of in accordance with the provisions of the Act and the Rules made thereunder is contemplated. Apex Court's holding in *Ranjit Singh and Others Vs. Union of India (UOI)*, supports directly this view. However, right of appeal is also similarly contemplated u/s 18 against orders passed u/s 17 refusing a licence as well as suspending or revoking a licence. No property right or any other right can be claimed in the licence issued in respect of any fire-arm. Exercise of licensing power in a welfare State by the Government is meant to control activities of an individual in public interest, such as, for public safety, (See, *Harry Street's Justice in the Welfare State*, pp. 69 et. seq.). At para 16 in *Bishnu Ram Borah and Another Vs. Parag Saikia and Others*, Apex Court has observed : "The grant of a liquor licence was not a matter of right but in the nature of privilege¹". According to *Black's Law Dictionary* (5th Edn. p. 529), "licence" means, among others, -- to exercise a certain privilege; permission by competent authority to do an act which, without such permission would be illegal. According to *Stroud's Judicial Dictionary*, the general concept of "licence" is that it "passeth no interest" and that "when one finds the word licence used in a statute the presumption is that it is intended to designate a purely personal privilege" (Vol. 2, p. 1638, 1952 Edn.). Jurisprudentially, a "right" is a legally protected interest; but, any "particular and peculiar benefit and advantage enjoyed by a person" (not contemplated in law) is a "privilege" (*Black* (supra) p. 1077). In *Corpus Juris Secundum*, the word is stated to connote "some sort of a special grant from the Sovereignty in regard to which absolute discretion vests in the Sovereign. Law, it seems clear, is that a privilege is granted; it cannot be claimed. It is enjoyed during the pleasure of the grantor; the enjoyment does not vest any "title" in the grantee in respect of the advantage or benefit. It is neither heritable nor transferable; the enjoyment of the benefit is personal to the grantee. No duty any person owes to the grantee which the latter can enforce at law. When "licence" for enjoyment of any "privilege" is granted, no property right is accrued in favour of the grantee to be enforced against the grantor or anybody else. Evidently, however, when the grant is made under a statute the grantee can enforce against the grantor any right that may be secured to him under the statute in respect of the privilege despite the latter being per se unenforceable.

12. Two decisions of the Apex Court are cited in pressing "De facto Doctrine" for assailing the order passed by the District Magistrate, Bhind, on the footing that the grant of gun licences to petitioners and others named in the list aforesaid, by Shri Yadav, Deputy Collector, was sustainable on the basis of that doctrine. In *Gokaraju Ranga-raju AIR 1981 SC 1472*, after examining the scope of that doctrine by referring to Common Law experience in England and America the Court held that the said doctrine had also been recognised by Indian Courts. At

para 12 of the Report is extracted the following passage from the judgment of Sir Asutosh Mukherjee, J. in *Pulin Behari v. King Emperor* (1912) 15 Cal LJ 517 :

"The substance of the matter is that the de facto doctrine was introduced into the law as a matter of policy and necessary, to "protect the interest of the public and the individual where these interests were involved in the official acts of persons exercising the duties of an office without being lawful officers. The doctrine in fact is necessary to maintain the supremacy of the law and to preserve peace and order in the community at large. Indeed, if any individual or body of individuals were permitted, at his or their pleasure, to collaterally challenge the authority of and to refuse obedience to the Government of the State and the numerous functionaries through whom it exercised its various powers on the ground of irregular existence or defective title, insubordination and disorder of the worst kind would be encouraged. For the good order and peace of society, their authority must be upheld until in some regular mode their title is directly investigated and determined .

(Emphasis added.)

13. Summing up, after examining English, American and Indian authorities, their Lordships observed, "Such is the de facto doctrine, born of necessity and public policy to prevent endless confusion and endless mischief". However, they pointed out also to the Rule against collateral attack, as a limitation of the doctrine. In the appeal preferred, the conviction made under Essential Commodities Act, which was confirmed by lower appellate Court, was challenged on the ground inter-alia that the learned Additional Sessions Judge was not validly appointed. While on merits their Lordships found no case made out for interference, they also held that the impugned judgment passed by the learned Additional Judge was not assailable even otherwise on the ground of his jurisdictional incompetence arising from his defective appointment. Reliance of petitioners on the decision in *Beopar Sahayak (P) Ltd. and Others Vs. Vishwa Nath and Others*, is also to be noted. What is significant, however, is that both decisions have a common feature, of the doctrine being invoked in respect of rights vested under decision rendered by a judicial authority. In this case, it was the "Prescribed Authority" constituted under U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, whose appointment was challenged collaterally. *Gokaraju Rangaraju Vs. State of Andhra Pradesh*, was cited with approval and in this case also primacy of rule against collateral attack was stressed.

14. It is necessary to analyse carefully inherent limitations of the doctrine. One of the basic feature of the doctrine is that it is not meant to be invoked against the State to its detriment. Its underlying basic concept, indeed, "State necessity", which received judicial recognition in *Shipmoney's case* (1637) 3 St. Tr. 826, when the levy under a writ issued by King Charles I was held valid on the ground that money was needed for strengthening English Navy for the "Safety" of the Kingdom to avert the "danger" which the Kingdom faced. The doctrine cannot operate to nullify enforcement by the State of any law enacted

for public safety. It is indeed an extension of that concept that the State is required under the doctrine to protect vested rights or citizens legally acquired in order to discharge its essential function of ensuring "peace, order and good Government". Constitutional and legal norms envisaging presumption of validity of public acts are, therefore, set out to avert the "danger" to the established order, in other words, chaos in public life. In our country, such a provision exists in Section 114(e), Evidence Act contemplating "the Court may presume that judicial and official act has been regularly performed". Article 261 of the Constitution also deserves to be noticed in this connection and that is extracted in extenso:

"261. Public acts, records and judicial proceedings.-- (1) Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.

(2) The manner in which and the conditions under which the acts, records and proceedings referred to in Clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament.

(3) Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law,"

15. True, Article 261 finds place in Chapter II, Part XI of the Constitution. On that account, however, its scope, ambit and purport need not be misjudged. Apex Court's Constitution Bench in *Jayantilal Amrit Lal Shodhan Vs. F.N. Rana and Others*, observed in regard to Article 258 (reported in the same Chapter/ Part) that inappropriate placement of the said provision, or the setting or context of the provision was not decisive of its character; the parallelism between Clause (2) of Article 258 and Clause (3) of Article 261 was also pointed out. No doubt, Clause (1) of Article 261 embodies essentially a rule of evidence, but the purport of Clause (2) is evidently different because due importance must be attached to the expression, "and the effect thereof determined shall be as provided by law made by Parliament" occurring therein. By envisaging under Clause (3) that final orders and judgments of Civil Courts shall be executable throughout India "according to law" (to mean the law applicable for that purpose), the rule against collateral attack was enforced to exclude extraneous challenge. Clauses (2) and (3) are enacted as substantive law. Whether it is in respect of "public acts" or of "judgments" or "orders", validity thereof is made amenable to investigation and test only as per appropriate enacted law. Although formal validity of public acts and judicial acts is duly ensured under Article 261 of Constitution and Section 114 of Evidence Act, necessity of challenging that as and when occasion arises is recognised though only in the particular manner as may be laid down for determining the "effect" of such acts by the relevant law. Any act done through usurpation of authority to achieve an unlawful object and not done bona fide under "colour of lawful authority" is not protected. It is indeed in this manner that limitation of the De facto doctrine is marked but even in *Gokaraju Rangaraju*

Vs. State of Andhra Pradesh, by observing that such acts are protected when performed within the scope of "assumed official authority in the interest of the public or third person and not for their own benefit" by public officers.

16. In the instant case, obviously, the exception or the rule against collateral attack can have no scope to operate. Shri Yadav's order is not challenged but Collector's order passed under the Arms Act is directly challenged. On the other hand, the doctrine cannot be invoked due to its own limitations. Firstly, because, each of the petitioners obtained under the licences granted to them by Shri R.S. Yadav, separately and independently, a "privilege" only and no "right" vested in them thereunder to hold and possess the gun indefinitely. If that privilege was withdrawn in accordance with law by the competent authority, namely, District Magistrate, Bhind, exercising power vested in him in that regard, that was done to ensure public safety so that the weapons do not remain in possession of undeserving persons. Secondly, the act of Shri Yadav was not a lawful act and that was not done in the interest of the petitioners purely or even purely in public interest. In the appellate order, District Magistrate's reference to F.I.R. in his impugned order has been examined. It is found that against Shri Yadav, that was lodged charging him with offences under Sections 120B 419 420 467 468 472, I.P.C. and Section 5 of the Prevention of Corruption Act.

17. It was obviously a case of Shri Yadav's usurpation mala fide of the powers that did not vest in him and not a case of bona fide exercise of powers under assumed official authority. Because, it was a case of his not acting "according to law". He ignored and overlooked the statutory requirement that it was necessary for him to ascertain first if the licence to any petitioner could be granted for a purpose contemplated under Clause (a), Section 13(3) or to a person who had "a good reason for obtaining the same" as per Clause (b) thereof and indeed after making due "inquiry" as per Section 13(2-A) of the Act and upon "considering the report" received from officer-in-charge of the nearest Police Station. He had deliberately, by passing the screening process, abused the power of the licencing authority of selective grant. He made a wholesale grant of licences, to 70 or 80 persons, on a single day. It was well within the competence of the District Magistrate passing the impugned order and also of the appellate authority to test the validity of the acts of person Shri Yadav of issuing licences in that manner and for that purpose exercising their jurisdiction in that regard contemplated under Sections 13, 14, 15, 17 and 18 of the Act. Indeed, the Doctrine, it bears repetition, does not, and cannot, impinge on the power of the State to make law for testing validity of any act of a licensing authority purported to be done under the act and to enforce that law.

18. From a perusal of the appellate orders filed in these matters it appears that several petitioners agitated before the Commissioner, Chambal Division, two contentions: one, Shri Yadav was legally competent and authorised to issue the licences; two, the District Magistrate acted illegally in passing the impugned order as notice u/s 17(1) had not been issued separately to each of the

appellants. Both contentions were, rejected dismissing the appeals on one and, the same ground that licences issued were void is Shri Yadav had no legal authority to issue the same. The Commissioner has held that Collector had not appointed Shri Yadav to act as S.D.O. of any sub-division, during his absence. Shri Yadav had also not been appointed to act as additional Collector, Bhind by any notification issued under M.P. Land Revenue Code, 1959, for short the Code. He had also not been vested with the powers of S.D.M. by any notification made in accordance with Section 20(2), Cr.P.C.

19. Before us in this Court, reliance is placed on annexures P/ 3 and P/4 filed in this matter. The first one is the Distribution Memorandum which was District Magistrate (Shri Hoshier Singh), passing the impugned, order, had drawn up and signed as Collector, on 16-5-1985. Shri Yadav, holding the substantive Officer of "Deputy Collector" was allowed to discharge the duties, among others, of Additional Collector A.D.M., L. A.O., etc., the second one is a radio message dated 27-5-1986 from Bhopal, from Under Secretary to Government, Madhya Pradesh, General Administration Department, addressed to Collector, Bhind of which copy was endorsed to Commissioner, Chambal Division and Shri R.S. Yadav, Deputy Collector. That message states inter alia, "Shri R.S. Yadav (State Civil Service), Deputy Collector (A.D.M.), is appointed to hold current charge of the post of Collector, Bhind in addition to his own duties for the duration of Shri Hoshier Singh's absence on training".

20. We have no doubt that Shri Yadav's legal competence to issue the licences is required to be examined in the context only of the provisions of the Act as the "licensing authority" is defined in the Act and the Rules framed thereunder with due care and circumspection. Reference may be made in this connection to Section 2(0) and Rules 2(f) and 4. Section 13 vests power in the "licensing authority" to make an "order in writing either (to) grant the licence or refuse to grant the same". According to Section 2(f). as "officer "or authority empowered to grant or renew licences under the rules made under the Act" is the licensing authority. According to Rule 4, licences may be granted or renewed" "by such authorities" as are specified in Schedule II of Rules. For a muzzle-loading gun, a District Magistrate is empowered under the First Schedule to issue licence for the whole of India, while a Sub-Divisional Magistrate has jurisdiction to act in that regard within the district or in specified part of the district. Rule 2(0) defines "District Magistrate" to include among others "an Additional District Magistrate or any other officer specially empowered in this behalf by the government of the State concerned" (emphasis added).

21. We do not think if it is at all necessary to refer to Section 20(2), Cr.P.C. for the reason earlier stated. It may still be noted that the State Government may, thereunder, invest any Executive Magistrate with "such of the powers of the District Magistrate under this Code or under any other law for the time being in force as may be directed by the State Government". Patently, in specific terms, whether under Rule 2(f) or u/s 20(2), Cr.P.C., authority is required to be

delegated so any Executive Magistrate or A.D.M. specifying categorically (mark the expressions "in this behalf" and "such of the powers") that the person concerned had been empowered to act as a licensing authority under the Act. Under the M.P.L.R. Code, Section 17, State Government may appoint one or more Additional Collectors of a district to "exercise such powers and discharge such duties conferred and imposed on a Collector by or under this Code or by order under any other enactment for the time being in force". Evidently, that provision can have no relevance to the controversy raised. We have no hesitation, therefore, to hold that as "Deputy Collector", without specific authority being conferred on him by the State, Government in accordance with the provisions of Section 2(0 or Rule 2(0, Shri Yadav could not act as "licensing authority" under the Act.

22. Reliance is also placed on this Court's decision in *Amrik Chand Saluja Vs. State of M.P. and Others*, to submit that refusal of renewal after 3 years is illegal. The complaint in that case was made by a single arms dealer and as such; on facts, that decision is distinguishable. Obviously, however, that holding cannot in any manner help the petitioners. Section 15(3) contemplates renewal in the case of such a licence which is lawfully and validly issued in accordance with the provisions of the Act. About that, there can be no doubt because in express terms, it is contemplated u/s 15 that "the provisions of Sections 13 and 14 shall apply to the renewal of a licence as they apply to the grant thereof.

23. To the contention that Section 17(1) having contemplated issuance of notice in writing to a "licence-holder" to deliver up the licence to it within such time as may be prescribed in the notice" it is provided as per Sub-section 3(e), therefore, that a licence can be revoked duly when the terms of the notice are not complied with, there are three answers. Firstly, according to us, the requirement of the "notice" contemplated u/s 17(1) is to be satisfied when a licence is duly and validly issued in accordance with the provisions of the Act as the notice has to be issued to a person who has duly and lawfully acquired the status of a "licence-holder". Evidently, that status can be conferred by a legally constituted "licensing authority", discharging duties and functions as per procedure prescribed in the Act. Secondly, when there is an order that a licence in question is void because that has not been validly issued and there is no order to any person to "deliver up" the licence, there can be no scope for any complaint u/s 17(1) which contemplates notice for that purpose while the impugned order, in terms, renders that purpose redundant. Thirdly, as held in the Assam Full Bench case (*Haji Mohd. Hasan AH (AIR 1969 Assam 50)* (*supra*) pre-decisional hearing is not contemplated for revocation of a licence. As we have already expressed the view that the "licence" issued under the Act confers only a "privilege" the holding in *Bishnu Ram Borah and Another Vs. Parag Saikia and Others*, is also attracted. Their Lordships have held in that case that a complaint of violation of principles of natural justice in respect of a privilege, is impermissible. Support for our view, we find also in *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*, which justifies the ratio of Assam Full Bench decision. The law now, it seems, is

well-settled that the rule *audi alteram partem* applies differently to different situations and when provision exists for a post-decisional hearing at some Stage denial of pre-decisional hearing is not fatal. In the Assam case it was held that the licensee being provided with the opportunity of hearing in appeal, revocation *ex parte* cannot be invalid.

24. Evidently, in the instant case, the licences issued to the petitioners by Shri Yadav were not authorised by Section 13, being not issued in accordance with the statutory requirement of the postulated legal authority. Indeed Shri Yadav could not exercise that authority u/s 2(f) and Rules 2(f) and 4. Those licences were ineffective and invalid therefore, they conferred no legal authority on any person to hold or possess any fire-arm to satisfy the requirements of Section 3. Indeed, Shri Yadav not being the "licensing authority" authorised to issue any licence under the Act, it shall be deemed that the applications made by the petitioners u/s 33 had not been disposed of because the order passed by Shri Yadav in the purported exercise of powers of the "licensing authority" u/s 13(2-A) was a void order. The petitioners are accordingly possessing the weapons without any authority of law and they are required u/s 21 to deposit the same in accordance with provisions thereof. Indeed, their possession of those weapons has ceased to be lawful on the impugned order in that regard being passed by District Magistrate, Bhind. It is true that Section 25 contemplates prosecution for a weapon unlawfully possessed, but the petitioners cannot claim that their applications for renewal have to be considered on the footing that prosecution has not been launched as yet. On the other hand, we are of the view that the petitioners have no right to renewal of invalid licences, issued to them unlawfully. The right secured to them for consideration of their application for issuing them valid licences u/s 13 shall, however, not be deemed lost as we have held that any order which was passed by Shri Yadav granting them licences is a nullity.

25. For all the aforesaid reasons, we uphold and confirm order dated 7-7-1990, passed by District Magistrate, Bhind and also the several orders passed by Commissioner, Chambal Division, in the appeals preferred by the petitioners. However, we direct that after the petitioners deposit the weapons acquired and possessed by them severally or after those have been seized from them as per impugned order, the District Magistrate shall consider afresh separately applications of each of the petitioners for disposing of the same in accordance with the provisions of Section 13. This direction we are making because it has been submitted to us that Bhind is a dacoit-infested area and the case of each of the petitioners for grant of a gun-licence to him for his protection has to be examined separately to see if he has a "good reason for obtaining licence" applied for as contemplated u/s 13(3)(b). Obviously, when any petitioner is granted a licence in accordance with law, he shall then be entitled to claim return, as per Section 21(2), of the gun deposited by him or seized from him.

26. The petitions are accordingly disposed of in terms of the directions hereinabove made. There shall be no order as to costs.

27. This order shall also dispose of M.P. Nos. 53 of 1991 (Kamlesh v. State of Madhya Pradesh), 85 of 1991 (Kripashankar Sharma), 138 of 1991 (Vasudeo Prasad), 18 of 1991 (Dheer Singh) 181 of 1991 (Prayag Singh), and M.P. No. 349 of 1991 (Radheshyam); respondents in all cases being the State of Madhya Pradesh).