

(1990) 01 KL CK 0028
In the High Court Of Kerala
Case No : O.P. No. 978 of 1988-N

R.K. Kesavan

APPELLANT

Vs

Board of Revenue, Trivandrum and Others

RESPONDENT

Date of Decision : 23-01-1990

Acts Referred:

Arms Act, 1959 — Section 17, 22
Constitution of India, 1950 — Article 19, 226

Citation : AIR 1990 Ker 253

Hon'ble Judges : Chettur Sankaran Nair, J

Bench : Single Bench

Advocate : K. Ramakumar, for the Appellant; Molly Jacob, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Chettur Sankaran Nair, J.—Petitioner seeks to quash an order cancelling a licence issued to him under the Arms Act, and prays for return of the D.B.B.L. gun seized from him. On 22-11-1985, it is said that three policemen went to the house of petitioner, and demanded to see his licence. Instead of verifying the licence, it is alleged that the gun was seized. Upon this, petitioner made Ext. P 1 and P 2 complaints to the Additional District Magistrate, and Superintendent of Police, respectively. These were followed by Ext. P3 representation to the Minister for Revenue. By Ext. P 4, the District Magistrate issued a notice to petitioner to show cause why the licence issued to him should not be cancelled. Petitioner showed cause by Ext. P 5, stating that the gun was needed for self-protection. After considering Ext. P5, by order dated 16-7-1986 (not exhibited) the licence was cancelled. Petitioner appealed against that order, to no avail, and by Ext. P 9 the appeal was rejected.

2. Petitioner would contend that the cancellation of licence is illegal, and that seizure of the gun was not preceded by a show cause, as should have been. Counsel for petitioner relied on the decision of the Supreme Court in Mahendra

Singh Vs. State of West Bengal, to contend that possession of a fire arm by itself is no offence.

3. The files were placed before me. It is seen that the District Magistrate called for reports from the Superintendent of Police, from the Sub Inspector of Police, Puddussery, Circle Inspector of Police, Palghat (Rural) and the Tahsildars, Alathur and Chittur, He considered their reports, as also a petition filed by the divorced wife of petitioner and his three daughters. It was on consideration of these and the cause shown by petitioner, that the District Magistrate decided to cancel the licence.

4. The Sub Inspector who conducted an enquiry, reported that it was not safe to allow petitioner to possess a gun. Fortyfive persons had sent signed petitions against petitioner, to the District Magistrate. The Circle Inspector also reported that possession of a gun with petitioner, might imperil the life of petitioner's divorced wife and the three daughters. According to his information, petitioner had picked up quarrels with the members of his family and had threatened to kill them. To the same effect were the other reports. As already noticed, petitioner's divorced wife Sarojini and her daughters stated in the petition before the District Magistrate, that petitioner was involved in a criminal case, that her son was threatened by petitioner with his gun leading to his disappearance from the palce, out of fear. She would say that petitioner had threatened her saying that he would kill some people and then kill himself. Petitioner's brother-in-law one Wing Commander P. V. Ramankutty had also sent a similar representation to the District Magistrate. Even the ground stated by petitioner, namely that he needs the gun to protect his cultivation in various villages, does not appear to be correct. Tahsildar, Palghat had reported that petitioner does not live in Pulpally village, and that he has only 82 cents of land in that village. Tahsildar, Alathur stated that petitioner has no properties in Mangalam. These were the reasons that weighed with the authority in cancelling the licence.

5. Petitioner submits that respondents erred in cancelling the licence, since petitioner had not committed any offence. True. Commission of offence is not the only situation which justifies cancellation of licence. Prevention is part of Criminal law, and action need not await commission of offences. Preventive and punitive actions are justified and preventive action is certainly better. Legal niceties, de hors living realities, cannot do honour to the rule of law. If there are good grounds for cancellation of licence, cancellation would be justified. It is not the gift of administrative authorities to see the future with a degree of precision, or to see the visage of things to come. An element of subjective opinion is inevitable in these regions. If the authority forms an opinion on reasonable premises and objectively, the opinion cannot be assailed, only because it lacks the quality of prediction. The material before the District Magistrate which he found acceptable, furnished justification for preventive action. Whether petitioner would kill his former wife or daughter, would be known with certainty only after the event. Law does not postulate such eventualities, as condition precedent for

preventive action.

6. Contention of petitioner that requirements of natural justice had not been satisfied, cannot be accepted. The requirements of natural justice are neither inelastic, nor indeterminate. Requirements would depend on the context and circumstances. There are no invariables or hard and fast rules in an area like this. In a situation of imminent danger, notice before seizure of a gun may not be necessary, or feasible. If such an insistence is to be made, the object sought to be achieved for public good is likely to be stultified. Anyway, petitioner was heard before a final decision was taken in the matter, and the decision was based on relevant material.

7. Then, petitioner submits that the fundamental right to hold property was infringed. Though the gun as a physical object, may be property, right to hold a gun for use is not an unqualified property right. A gun is a potentially dangerous object. Reasonable restrictions can be imposed, on the right to possess and use a gun.

8. Petitioner contends further that the reasons given for cancellation are not valid. As pointed out by P. B. Mukherji, J. in *Sardar Chand Singh Vs. Commissioner, Burdwan Division and Another*, it is sufficient if the authority considers the applicant's case and gives his reason for the conclusion. Question whether such reasons are right or not, is not for the court to consider, unless reasons are perverse or the exercise of power mala fide. The Arms Act does not confer a privilege on the person to whom the licence is granted, as observed by Wanchoo C. J. (as His Lordship then was) in *Kishore Singh v. State of Rajasthan* AIR 1954 Raj 264. The right to possess a gun is subject to restrictions in the Act in the interest of public order and safety, as already indicated. On the facts of this case, I am not persuaded to think that the impugned orders are vitiated.

9. In the matter of licensing firearms and regulating possession of guns, State must evolve a proper and realistic policy. Liberal issue of licences for firearms could create a dangerous situation posing even security risks. Firearms can often imperil protection, than ensuring it. A detailed study of the dangers arising from the availability of large number of guns, licit and illicit, has been made by Shri V. N. Rajan IPS, Director of the Institute of Criminology and Forensic Sciences in the Ministry of Home Affairs, New Delhi and Member of Indian Delegation to the Sixth U. N. Congress on Prevention of Crime and Treatment of Offenders, held at Venezuela in 1980. It is noticed that "Nalanda", once the cradle of a great civilization going into India's immemorial past, is now a producer of illegal arms. Nalanda is occasionally described as the Birmingham of India and a paradise for gun runners. They make firearms for the under-world and gun making has passed the cottage industry's stage and come of age acquiring sophistication. Hundreds of concealed factories in the area using drilling machines and lathes were discovered in a raid between 1979 and 1980, and police seized 1900 unfinished guns. In Monghyr District also, a gun factory was located. Likewise, Bhojpur and Rohtas are known to produce large number of guns. The daily

production of guns was assessed at 800 and this is said to have crossed the 10000 mark during the time of an election. The communal carnage in Nalanda brought to the fore the enormous danger from the presence of firearms. In November, 1981, 170 bombs, 10 maunds of gun powder, ten bottles of acid and 76 country-made guns were unearthed by the police. In January 1981, Police intercepted and seized a mobile gun making set up in Telmar village. Police sources unearthed grenades, fuse-bombs and semi-automatic weapons with foreign markings from various areas in Bhojpur. In the State of Uttar Pradesh also, recoveries were made in large quantities. As Assam is no exception, other States also are following the trail.

10. Arms in large quantities and those possessing it can pose serious threats to individuals and also to the State. These are matters for the appropriate authority to consider, while formulating a realistic policy, not only regarding licensing of fire arms, but also in evolving an effective programme to contain the growth and spread of dangerous weapons.

11. As stated hereinbefore, the impugned orders cannot be challenged on any of the grounds urged.

Writ Petition fails and is dismissed. No costs.