
(2016) 12 GAU CK 0045
In the Gauhati High Court
Case No : WP(C) No. 7207 of 2015

Safdar Khan

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 20-12-2016

Acts Referred:

Arms Act, 1959 — Section 17
Constitution of India, 1950 — Article 14

Citation : (2017) 2 GauLR 763 : (2017) 1 GauLT 365

Hon'ble Judges : Mr. Arup Kumar Goswami, J.

Bench : Single Bench

Advocate : Mr. A.M. Bora, Advocate, for the Petitioner; Mr. T.C. Chutia, GA, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Arup Kumar Goswami, J.— Heard Mr. A. M. Bora, learned counsel for the petitioner. Also heard Mr. T. C. Chutia, learned State counsel, appearing for the respondents.

2. The case projected in the writ petition is that the father of the petitioner was shot dead by extremists on 10.05.1996 and the petitioner was also subjected to threats from different extremist organisations. There being serious threat to the life of the petitioner and to his other family members, he applied for an arms licence and the Additional District Magistrate, Udalguri, issued an arms licence to the petitioner, being No. 67/UDL and, accordingly, the petitioner acquired an N.P. BORE pistol, bearing No. RT-1101/84. The further case of the petitioner is that the All Assam Students Union ("AASU"), Tangla College unit, wanted the petitioner's son, Sri Sajid Khan, to contest the election slated to be held on 29.09.2015 for the post of General Secretary. However, Sajid Khan was not interested and, therefore, did not file his nomination. 21.09.2015 was the last date of filing nomination and Sajid Khan was summoned by the members of the AASU on that day, at 6-30 P.M., to Tangla Swahid Bhawan. Sensing trouble, the

petitioner also accompanied his son to the said meeting and, in such meeting, they were threatened with dire consequences and, ultimately, the matter took an ugly turn. They, somehow, could leave the place, but, subsequently, an ejahar was lodged against the petitioner and his son by one Chintu Moni Chakraborty, a student of the college, alleging that they had vandalized the Tangla Swahid Bhawan and that they took out a pistol brought by them and prepared to shoot the leaders/workers of AASU, who were present there. Attempts made by the members of AASU could not calm them down and they attacked a number of persons and injured them. Based on the aforesaid ejahar, Tangla Police Station Case No. 115/2015, under Section 326/427/294/506/34 IPC, was registered. The petitioner and his son were arrested and, during investigation, the licensed pistol of the petitioner was also seized. Charge-sheet in the aforesaid case was submitted on 30.09.2015. Subsequently, the petitioner had filed an additional affidavit bringing on record the judgement dated 31.03.2016, passed in G.R. Case No. 980/2015, under Section 324/294/427/506/34 IPC, corresponding to Tangla Police Station Case No. 115/2015, whereby the petitioner and his son, Sajid Khan, were acquitted of the charges and set at liberty. At paragraph 14 of the judgement, it was recorded as follows:

"A minute scrutiny of the evidence of the prosecution clearly shows that a meeting was held at the place of occurrence in respect of the facts mentioned in Ext.-1 on the alleged date of occurrence. However, none of the prosecution witnesses, including the alleged injured persons, deposed anything against the accused persons from which it can be concluded that they committed the offence charged against them. On the contrary, from the evidence it transpires that though some verbal altercations had taken place between the accused persons and the members of the AASU, nothing worse than that had happened as alleged in Ext.1. Thus, I hold that the allegations made against the accused persons had been exaggerated in Ext.1, which is not appreciable at all."

3. While the aforesaid G.R. case was in trial stage, respondent No. 3 issued an order dated 18.11.2015 in exercise of its powers under Section 17(3)(b) and (d) of the Arms Act, 1959 (for short, the "Arms Act"), whereby the arms licence issued to the petitioner was cancelled with immediate effect and the petitioner was directed to surrender his licence. The Officer-in-Charge of Tangla Police Station was also directed to confiscate the pistol and ammunitions with the direction to keep the same in safe custody. Perusal of the aforesaid order goes to show that the respondent No. 3 took note of (a) report of the Officer-in-Charge, Tangla Police Station, submitted by the Superintendent of Police, Udalguri, regarding misuse of the pistol by the petitioner, (b) a petition submitted by the President and Secretary of Udalguri District Students Union and (c) a photograph of Sajid Khan carrying the pistol. Accordingly, the respondent No. 3 had concluded that the petitioner often threatened people with his licensed pistol and allowed his son to carry the pistol thereby violating the provisions of the Arms Act.

4. The respondent No. 4, Superintendent of Police, Udalguri, filed an affidavit admitting killing of the petitioner's father by extremist elements and stating that on an application submitted by the petitioner for licence, the same was recommended by the Circle Inspector, Tangla Police Station, opining that the petitioner was a fit person for getting arms licence for his self defence as he was a long-standing businessman. It is stated in the affidavit that after seizure of the licensed pistol and five rounds of ammunitions, they are kept at Tangla Police Station.

5. Respondent No. 3, District Magistrate, Udalguri, had also filed an affidavit stating that a memorandum dated 22.09.2015 was received from Pranjal Patowary, Sariful Haque, President and Secretary of Udalguri Students Union, respectively, wherein it was stated that the petitioner had threatened the office bearers of AASU on 21.09.2015 showing a firearm. Reports were also received from the Inspector and Officer-in-charge of Tangla Police Station to the effect that the petitioner often used his licensed firearm to threaten people and such behaviour might lead to untoward incident in future. It is pleaded that notice under Section 17(1) of the Arms Act, was not issued as the matter required urgent and immediate legal action as the display of firearm by the petitioner and his son in public created a tense situation in the area.

6. Mr. A. M. Bora, learned counsel for the petitioner has submitted that the impugned order of cancellation of the petitioner's arms licence was issued in gross violation of the principle of natural justice and, therefore, the same is liable to be set aside and quashed. In support of his submission, he has relied on the judgement of the Supreme Court rendered in *Maneka Gandhi v. Union of India*, reported in AIR 1978 SC 597, a judgement of this Court in *Rahul Kar v. State of Assam and Ors.*, reported in 2012 (2) GLT 671 and paragraphs 29 and 30 of a Full Bench judgement of the Allahabad High Court in the case of *Rana Pratap Singh v. State of Uttar Pradesh*, reported in 1996 CrL. Law Journal 665.

7. Mr. T. C. Chutia, learned State counsel, on the other hand, has supported the impugned order and has contended that grant of opportunity of hearing is not envisaged before an order is passed under Section 17(3)(b) and (d) of the Arms Act and, therefore, there is no illegality in the order dated 18.11.2015.

8. The point that has fallen for consideration is as to whether the arms licence of the petitioner could have been revoked without affording any opportunity of hearing to the petitioner and as to whether the impugned order dated 18.11.2015 is liable to be quashed on the ground that the petitioner had been acquitted in Tangla Police Station Case No. 115/2015 (G.R. Case No. 980/2015).

9. For better appreciation, Section 17 of the Arms Act is reproduced herein below:

"17. Variation, suspension and revocation of licences.-

(1) The licensing authority may vary the conditions subject to which a licence has been granted except such of them as have been prescribed and may for that

purpose require the licence-holder by notice in writing to deliver-up the licence to it within such time as may specified in the notice.

(2) The licensing authority may, on the application of the holder of a licence, also vary the conditions of the licence except such of them as have been prescribed.

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

(a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force, from acquiring, having in his possession or carrying any arms or ammunition, or is of unsound mind, or is for any reason unfit for a licence under this Act; or

(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; or

(c) if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it; or

(d) if any of the conditions of the licence has been contravened; or

(e) if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver up the licence.

(4) The licensing authority may also revoke a licence on the application of the holder thereof.

(5) Where the licensing authority makes an order varying a licence under sub-section (1) or an order suspending or revoking a licence under sub-section (3), it shall record in writing the reasons therefor and furnish to the holder of the licence on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

(6) The authority to whom the licensing authority is subordinate may by order in writing suspend or revoke a licence on any ground on which it may be suspended or revoked by the licensing authority; and the foregoing provisions of this section shall, as far as may be, apply in relation to the suspension or revocation of a licence by such authority.

(7) A court convicting the holder of a licence of any offence under this Act or the rules made thereunder may also suspend or revoke the licence: Provided that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void.

(8) An order of suspension or revocation under sub-section (7) may also be made by an appellate court or by the High Court when exercising its powers of revision.

(9) The Central Government may, by order in the Official Gazette, suspend or revoke or direct any licensing authority to suspend or revoke all or any licences granted under this Act throughout India or any part thereof.

(10) On the suspension or revocation of a licence under this section the holder thereof shall without delay surrender the licence to the authority by whom it has been suspended or revoked or to such other authority as may be specified in this behalf in the order of suspension or revocation."

10. In Section 17 of the Arms Act, the word "cancel" is not employed. The expression used therein is "revocation". It is apparent that by the impugned order dated 18.11.2015, in effect, the arms licence of the petitioner was revoked. A perusal of Section 17(3) of the Arms Act goes to show that the licensing authority may, by order in writing, recording the reasons therefore, suspend or revoke a licence. So far as suspension is concerned, it can be for such period as the licensing authority thinks fit. Apart from Section 17(3), the licensing authority may also revoke a licence on the application of the holder thereof under Section 17(4). The authority to whom the licensing authority is subordinate is also empowered to suspend or revoke a licence on the grounds on which licensing authority could have suspended or revoked a licence. Under Section 17(7) of the Arms Act, a court convicting the holder of licence of any offence under the Arms Act or the rules made thereunder may also suspend or revoke the licence. However, if the conviction is set aside the suspension or revocation shall become void. Such power, as conferred under Section 17(7) to the trial court, is also available to the appellate court or to the High Court while exercising powers of revision. Under Section 17(9), the Central Government may, by order in the official gazette, suspend or revoke or direct any licensing authority to suspend or revoke all or any licence granted under the Arms Act throughout India or any part thereof.

11. It is manifest that under Section 17 of the Arms Act, no notice is required to be given to the licence holder. However, Section 17(5) requires recording of reasons and furnishing of a brief statement of the same to the holder of a licence on demand. The requirement of furnishing brief statement can also be dispensed with in a case where the licensing authority is of the opinion that it will not be in public interest to furnish the statement.

12. Section 18 of the Act, amongst others, provides that any person aggrieved by an order of the licensing authority refusing to grant licence, or varying the conditions of a licence, or by an order of the licensing authority or the authority to whom the licensing authority is subordinate, suspending or revoking a licence, may prefer an appeal to the appellate authority. It is also noticeable that no appeal lies against any order made by or under the direction of the Central Government.

13. At this stage, it will be appropriate to take note of the judgements cited at the Bar.

14. A perusal of the judgement of the Allahabad High Court in Rana Pratap Singh (supra) goes to show that in Changa Prasad Sahu v. State of U.P., reported in 1984 AWC 145, which was noted therein, the Full Bench of the Allahabad High Court had observed that if already there is material before the licensing authority and it becomes apparent that possession of arms by the licensee is going to endanger public peace and safety, it can straightaway and without holding any enquiry proceed to revoke/suspend the arms licence after recording the reasons therefore and if the licensee is aggrieved by such order, he would have the right to ventilate his grievance before the appellate authority. It was also held that if there is no such material it cannot be said that there is any such urgency so as to justify the revocation/cancellation of the licence even before the licensing authority gets the requisite satisfaction. Another Five-Judge Bench of the Allahabad High Court, in Kailash Nath v. State, reported in 1985 AWC 493, which was also noted in Rana Pratap Singh (supra), held that arms licence may be cancelled without prior opportunity of hearing to the licensee, but such licensee must be heard subsequently. The judgement in Changa Prasad Sahu (supra) was supplemented by stating that after taking the provisional action of immediate revocation of the licence, the licensing authority must issue notice to the licence holder giving an opportunity to file objection against the preliminary order and after hearing him proceed to pass the final order affirming or revoking the provisional order. It was clarified that it is incumbent upon the licensing authority to refrain from attaching finality to the order of cancellation until the aggrieved person had been heard by such authority and his objections had been adjudicated.

15. In Maneka Gandhi (supra), the majority judgement observed that since right to prior notice and opportunity of hearing arises only by implication from the duty to act fairly, it may equally be excluded where, having regard to the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions, fairness in action does not demand its implication and even warrants its exclusion. It was noted that natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances. But the core, namely, the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relation exercise, nevertheless, remains. In the context of impounding of passport, the Supreme Court held as follows:

"62. ... The passport authority may proceed to impound the passport without giving any prior opportunity to the person concerned to be heard, but as soon as the order impounding the passport is made, an opportunity of hearing, remedial in aim, should be given to him so that he may present his case and controvert that of the Passport Authority and point out why his passport should not be impounded and the order impounding it recalled. This should not only be possible but also quite appropriate, because the reasons for impounding the passport are required to be supplied by the Passport Authority after the making of the order and the person affected would, therefore, be in a position to make a

representation setting forth his case and plead for setting aside the action impounding his passport. A fair opportunity of being heard following immediately upon the order impounding the passport would satisfy the mandate of natural justice and a provision requiring giving of such opportunity to the person concerned can and should be read by implication in the Passports Act, 1967. If such a provision were held to be incorporated in the Passports Act, 1967 by necessary implication, as we hold it must be, the procedure prescribed by the Act for impounding a passport would be right, fair and just and it would not suffer from the vice of arbitrariness or unreasonableness. We, must, therefore, hold that the procedure "established" by the Passports Act, 1967 for impounding a passport is in conformity with the requirement of Article 21 and does not fall foul of that article."

16. In *Rahul Kar* (supra), this Court had held that the order impugned in the writ petition had visited the petitioner therein with civil consequences of grave nature as his licence under the Excise Act, 1910, was cancelled and his security deposit was forfeited. Having regard to the provisions of the Excise Act, 1910, it was observed by this Court that requirement of giving a notice to show cause and also reasonable opportunity of being heard must be read into when cancellation of a licence is ordered under Section 29 of the Excise Act, 1910.

17. The principles of natural justice get attracted whenever a right of an individual is affected and civil consequences ensue. A person affected must be afforded a reasonable opportunity of being heard. Principles of natural justice cannot be sacrificed at the altar of administrative exigency or convenience. Unless a statutory provision, specifically or by necessary implication, excludes the application of principles of natural justice, the requirement of giving a notice and a reasonable opportunity of being heard before an order is passed is generally read into the provisions of a statute when the order has adverse civil consequences. Even an administrative act, which involves civil consequences, must be made consistently with the rules of natural justice. However, it must not be forgotten that the rule of *audi alteram partem* is flexible enough to admit of modifications and variations to meet and suit exigencies of myriad kinds. In exceptional situations where there is compulsive necessity and need for utmost promptitude, application of principles of natural justice has to be viewed pragmatically.

18. Section 3 of the Arms Act deals with acquisition and possession of firearms or ammunitions on the strength of a licence issued. It cannot be gain said that suspension and/or revocation of a licence may compromise the licensee's security and protection and may also lead to loss of his reputation and, thus, may lead to grave consequences. The provisions about recording of reasons in Section 17(3) and (5) in writing indicate that while ordering suspension or revocation, the authority discharges a quasi-judicial function.

19. The powers to control and regulate activities by the licensing authority cover a wide spectrum and, therefore, it will not be possible to lay down a rigid formula

as to in what manner the rules of natural justice have to be followed. Rules of natural justice are not ends in themselves but they serve the cause of justice. In the interest of public safety or maintenance of public security or public order, absence of hearing before the action can be compensated by a post-decisional hearing. It is important to note that though the learned counsel for the petitioner had submitted that the impugned order is liable to be quashed on the ground of violation of principles of natural justice, he had heavily relied on the judgments in *Maneka Gandhi (supra)* and *Rana Pratap Singh (supra)*. In both the cases, having regard to the provisions of the relevant Acts, it was held that a fair opportunity of being heard following immediately upon the order passed would satisfy the mandate of natural justice and a provision requiring giving of such opportunity to the person concerned can and should be held to be incorporated by a necessary implication.

20. In view of the provisions of the Arms Act, I am of the considered opinion that it will be permissible to suspend or revoke an arms licence without affording opportunity of hearing before the action is taken and an opportunity of prior hearing cannot be read into Section 17 of the Arms Act before the action is taken. However, such action taken has to be construed as provisional and without a ring of finality. A fair opportunity of being heard immediately following such suspension or revocation by issuing a notice has to be read into the provision and the licensing authority will be obliged to pass final order either affirming or revoking the initial order which can be termed as provisional order of suspension or revocation. The Court is of the further opinion that the licensing authority shall be deemed to have the incidental power of directing the licensee to surrender his licence and take into custody the firearm and ammunitions for furtherance of immediate remedial action.

21. It is noticed that the petitioner was not charged under the provisions of the Arms Act in G.R. Case No. 115/2015. His licence was also not revoked for conviction under offences under the Arms Act and, therefore, acquittal of the petitioner in G.R. Case No. 980/2015 would not automatically result in revival of the licence.

22. In view of the above discussion, the order dated 18.11.2015 has to be considered to be a provisional order of revocation of the petitioner's licence. The licensing authority, in the light of interpretation given to Section 17 of the Arms Act, is directed to issue a notice to the petitioner within a period of two weeks from the date of service of a certified copy of this order asking him to show cause, by stating the grounds, as to why his arms licence should not be revoked. After the petitioner shows cause, it will be incumbent on the part of the licensing authority to consider and dispose of the matter, after affording opportunity of hearing to the licensee, within a period of six weeks there from by passing a reasoned order, either affirming the order dated 18.11.2015 or recalling the said order dated 18.11.2015. In the event of recalling the order dated 18.11.2015, the firearm and the ammunitions will be restored to the petitioner. It is also

made clear that if no order is passed by the licensing authority within a period of six weeks from the date of reply to the show cause, the order dated 18.11.2015 shall automatically stand recalled.

23. The writ petition stands disposed of with the aforesaid directions and observations. No cost.