
(1958) 04 CAL CK 0012
In the Calcutta High Court

Sardar Chand Singh

APPELLANT

Vs

Commissioner, Burdwan Division and Another

RESPONDENT

Date of Decision : 24-04-1958

Acts Referred:

Arms Act, 1959 — Section 17
Arms Rules, 1962 — Rule 41, 41B
Constitution of India, 1950 — Article 226

Citation : AIR 1958 Cal 420 : (1958) 1 CALLT 108 : 62 CWN 526

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, for the Appellant;

Final Decision : Dismissed

Judgement

P.B. Mukharji, J.—This is an application under Article 226 of the Constitution by Sardar Chanda Singh of Burdwan. The purpose of this application is to get a revolver licence. The applicant asks for the writ of mandamus and Certiorari against the orders of the District Magistrate and the Commissioner of the Burdwan Division refusing to issue any revolver licence to the petitioner.

2. The facts are short and brief. On 1st May, 1957, a notice was issued to the petitioner by the District Magistrate, Burdwan, stating;

"Whereas it appears from police report copy of which is enclosed that you are not a suitable person to hold revolver licence, you are therefore directed to show cause by 6-5-57 why your revolver licence shall not be cancelled on the grounds stated therein in the interest of public safety."

The police report stated:

"Sardar Chanda Singh and Babu Singh, sons of Mostama Singh of G. T. Road, Burdwan, are accused of a gruesome murder (vide Burdwan P. S. Case No. 27 dated 12-1-57 u/s 148/302, I. P. C.). These two persons had guns which were seized in the case. These persons are dangerous and desperate, having no

regard for law and order. There were several other incidents of highhandedness of these two persons and that they were prosecuted against u/s 107/117(3), Cr. P. C.

These two persons are holders of non-prohibited bore revolvers. There is every chance of loss of life, if these persons are allowed to retain revolvers with them.

Under the above circumstances I pray that their licences to keep revolvers may kindly be cancelled. I may be permitted to seize the revolvers."

This was the report of the Burdwan police station to the District Magistrate of Burdwan through the Superintendent of Police. To that notice the petitioner showed cause. The gist of that reply of the petitioner is that in fact they were innocent although these criminal proceedings were admitted.

3. Thereupon the District Magistrate by an order dated 25th May, 1957, issued the following order :

"In view of the circumstances pointed out therein, the revolver licences of Chanda Singh and Babu Singh are cancelled for public safety and order."

4. There was no appeal from that order to the Commissioner of the Burdwan Division. The petitioner appears to have accepted that position although 011 4th June, 1957, the petitioner made an application to the District Magistrate for reconsideration of the case. In that he refers again to these criminal proceedings as well as to an armed raid on the petitioner's petrol pump. Again, on 1st August 1957, the petitioner made another application to the District Magistrate for reconsideration of the order of 25th May, 1957, and to pass an order re issuing the licence for a six-chambered revolver. In that petition he makes a ground that he is the Managing Director of Messrs. Chanda Singh Motor Service Ltd. owning stage carriages, three taxies and a petrol pump, out due to difference of opinion amongst the Directors and taking advantage of that, two criminal cases were started against him. There was also a proceeding u/s 107 of the Code of Criminal Procedure, but ultimately that was dropped.

5. This petition is now used as a fresh petition for the grant of a fresh licence according to the argument of the learned Advocate for the petitioner. Upon this the District Magistrate passed an order on 4th November, 1957, stating:

"Seen papers. I do not think it safe or desirable to allow the petitioner any revolver at this stage, at any rate."

It is against this order that the petitioner appealed to the Commissioner of me Burdwan Division as provided by the Rules under the Indian Arms Act. In mat appeal the petitioner makes the case: --

"That as the criminal cases were either pending police investigation or sub judice, your petitioner did not agitate the matter further then but as he came out scot free honourably your petitioner renewed his application on 1-8-57 for grant or re-issue of revolver licence as the adverse circumstances and presumptions, if

any, under which the licence was cancelled no longer stood and prayed for reconsideration on merits."

6. On the 9th January, 1955, the Commissioner of the Burdwan Division dismissed his appeal and recorded the following order:--

"Heard the learned lawyer for the appellant. Nobody appears for the other side.

The revolver licence of the appellant Sardar Chanda Singh was cancelled by the District Magistrate of Burdwan on 25-5-57. No appeal was filed against the order. The appellant submitted a petition before the District Magistrate of Burdwan for restoration of the licence. This petition was rejected by the District Magistrate on 4-11-57. As the cancellation was ordered on 25-5-57, the time for filing an appeal against that order expired long before the present appeal was filed. Therefore, strictly speaking, the present appeal is only against the order about the restoration of the licence. I have, however, examined the whole matter.

It is clear from the record that the appellant was involved in several litigations of a serious nature with certain other parties. A man, who is involved in litigation in this way, cannot be considered to be suitable for the possession of the licence for a revolver. It is also not in public interest to keep a revolver with such a man under such circumstances. The learned District Magistrate was, therefore, right in refusing to restore the licence for the revolver to the appellant. There is, therefore, no reason to interfere with his order. I uphold his order and dismiss this appeal."

This completes the account of facts.

7. The petitioner submits in the first instance that the District Magistrate in his order of the 4th November, 1957, does not give any reasons, as he must, under Rule 41-B of the Indian Arms Rules which provides that an authority refusing to grant or renew a licence shall record in writing his reasons for such refusal. The argument cannot be upheld because on the facts reason is given. The reason given by the District Magistrate's order of the 4th November, 1957, is that "I do not think it safe or desirable to allow the petitioner any revolver at this stage, at any rate."

Whether the reasons of safety or desirability are sufficient or not is a different question. Whether this Court should have considered the reasons good is also a different question. The point under the Rule is that the granting authority did consider the petitioner's application and give his reasons for refusing the licence. It is not, therefore, a case where reasons for refusal have not been stated as required by the Rules. The reasons stated are of safety and desirability. In any event, this order is not the final order because the petitioner appealed to the Divisional Commissioner as provided by Rule 41-A of the Indian Arms Rules.

The Divisional Commissioner has given reasons fairly and fully. The reason is that the appellant was involved in several litigations of a serious nature and that a person who is so involved in that way could not be considered to be a suitable

person for possessing a revolver. There, again, the reasons are there. The question whether such reasons are right or wrong is not for this Court to examine under Article 226 of the Constitution, unless they are perverse or mala fide. I cannot help expressing the view that the reasons appear to me to be good.

The law as I understand it is not that a person can only be refused a licence for a revolver if in such a case he has been convicted by a criminal court. Even if he is not convicted or even if he is acquitted, it may very well be a ground to refuse him a gun licence as not being a safe person to have such fire arms. Even if the Magistrate's reasons were far too brief the Commissioner's reasons are fuller and as the Commissioner is the appellate authority under the Rules, the requirement of reasons for the refusal is in these circumstances amply satisfied.

8. Two cases were cited before me to induce me to issue a Rule. One was the Supreme Court decision in *State of U. P. v. Mohammad Nooh*, reported in AIR 1958 SC 86 (A). The other is a Madras decision in *P. Narasimha Reddy Vs. District Magistrate, Cuddapah*, (B). The Supreme Court decision was cited on the question how far the doctrine that the order of the first court merges in the order of the appellate authority applies in this case. I do not think that this question at all arises in the facts of this case.

But before I distinguish the facts of this case I need only say that in the Supreme Court] case, the appeal was to the Deputy Inspector General of Police "who simply dismissed the appeal from that order or the Inspector General simply dismissed the application for revision." Here, on the facts of this case there is no ""simple" dismissal of the appeal by the Commissioner of the Division. He gives a fairly elaborate set of reasons for refusing the licence in this case, while even if the order of the District) Magistrate refusing the licence has not merged in the order of the Divisional Commissioner in this case, the fact remains that briefer reasons of the District Magistrate's order are more fully supplemented by the fuller reasons of the order of the Divisional Commissioner. I do not see how the question of merger can at all help the applicant.

9. Coming to the Madras decision it appears to me again a case which does not help the petitioner's contention at all. That was a case of gun licence. The facts there were entirely different. There was no appeal from the District Magistrate's order refusing to grant the licence in the Madras case; nor was any reason at all given. The order simply stated in the Madras case "the gun licence applied for will not be granted." No reason whatsoever was given. Here, the District Magistrate put forward the reason of public safety. The Divisional Commissioner gives more reasons. I, therefore, do not see how this Madras decision at all helps the applicant's petition for a Rule on the facts of this case.

10. Finally, the learned Advocate for the petitioner urged that Rule 41 of the Indian Arms Eules is itself ultra" vires the Indian Arms Act. Rule 41 provides inter alia:--

"Every authority empowered to grant or renew a licence or to give his previous

sanction to such grant or renewal may, in his discretion,--

(a) refuse to grant or renew such licence or to give such sanction -

* * * *

Provided that in any case in which such authority refuses to grant or renew a licence, the applicant for such grant or renewal may within thirty days of the date of the passing of the order of refusal, appeal to the immediate official superior of the authority so refusing". Now, the contention is that this Rule is made under the rule-making power contained in Section 17 of the Indian Arms Act. It is said that Section 17 of the Indian Arms Act does not provide for any rule making power to confer discretion upon the authority to grant a licence. I am unable to accept this contention on the face of the language of that section. Section 17 of the Indian Arms Act provides -

"The "Central Government* may from time to time, by notification in the "official Gazette" make rules to determine the officers by whom, the form in which, and the terms and conditions on and subject to which, any licence shall be granted" etc.

It is, therefore, open under the language of this section for the Central Government to make a rule, to provide the officers and to say that the officers' discretion has to be satisfied in order to obtain a licence. It was argued that the terms and conditions are only those terms and conditions which are inherent in the licence itself and not such a condition as would make the discretion of the officer granting the licence a factor at all. Again, I am unable to accept that construction. There is no such limitation in the language itself.

The terms and conditions may be of the licence itself and also on which such licence shall be granted. The expression in Section 17 of the Indian Arms Act on this point is "on and subject to which". Besides, Rule 41 although stating that the authority to grant a licence may in his discretion refuse yet the Rules provide that such discretion is controlled by two significant factors, one being that the reasons for refusal must be stated under Rule 41-B and the other being that such discretion is revisable and appealable. It is therefore not an arbitrary or uncontrolled discretion. I, therefore, hold that Rule 41 is intra vires Section 17 of the Indian Arms Act. The Madras decision of Subba Rao, J. which was cited on behalf of the petitioner on another point is against the petitioner on this point where at page 477, of that report the learned Judge come to the same conclusion as I do when he said

"I, therefore, hold that the provisions of Rule 43 are not illegal and that under that rule the District Magistrate can either issue or refuse to issue a licence in his discretion."

The Madras decision, however, on this point dealt with a different argument from the one made before me u/s 17 of the Indian Arms Act. The conclusion, however, is the same.

11. For these reasons I dismiss this petition summarily without issuing a Rule.