

(1972) 12 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 5355 of 1970

Sheo Shankar

APPELLANT

Vs

Sub-Divisional Magistrate and Another

RESPONDENT

Date of Decision : 12-12-1972

Acts Referred:

Arms Act, 1959 — Section 17, 17(3), 18

Citation : AIR 1973 All 293 : (1973) 43 AWR 290

Hon'ble Judges : K.B. Asthana, J

Bench : Single Bench

Advocate : R.C. Srivastava, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

K.B. Asthana, J.—In March 1970 the petitioner was granted a licence for a double barrel gun. On some information having been laid before the Sub-Divisional Officer by the Superintendent of Police to the effect that the petitioner had been bound down to keep peace for a period of one year under Sections 107/117, Cr. P. Code, the Sub-Divisional Officer passed an order on 8-5-1970 suspending the licence and directed a show cause notice to issue to the petitioner why his licence be not cancelled. The petitioner appealed to the District Magistrate who upheld the order of the Sub-Divisional Officer and dismissed the appeal. It is against these two orders, one passed by the Sub-Divisional Officer suspending the licence, and the second passed by the District Magistrate as an appellate authority that this petition under Article 226 is directed. It is prayed that the said two orders be quashed by a writ of certiorari as the orders are not in conformity with the law.

2. The first contention raised by the learned counsel for the petitioner was that the order suspending the licence passed by the Sub-Divisional Officer on 8-5-1970 was vitiated as no reasonable opportunity was afforded to the petitioner to show cause and no notice ever was served upon him that on the

information laid by the Superintendent of Police the petitioner's licence was intended to be suspended and cancelled. Reliance was placed by the learned counsel on a learned Single Judge's decision in Jugal Kishore v. District Magistrate 1971 All WR (HC) 727 where it was held that a reasonable opportunity must be afforded before an order of suspension of arms licence can be passed. This view of the learned Judge also finds support from a Division Bench decision of this Court in Jai Narain Rai Vs. District Magistrate and Others, . But the Supreme Court has reiterated the law as to the scope and applicability of principles of natural justice in Union of India (UOI) Vs. Col. J.N. Sinha and Another, as follows:

"Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. Their aim is to secure justice or to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. If statutory provisions can be read consistently with the principles of natural justice, the Court should do so. But if a statutory provision either specifically or by necessary implication excludes the application of any rule of natural justice, then the Court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, in the nature of the power concerned, the principles for which it is conferred and the effect of the exercise of that power."

3. In view of what the Supreme Court has explained some doubt has arisen in my mind as to the correctness of the approach made in the two cases cited above decided by this Court in so far as the applicability of the principles of natural justice in the sphere of suspension and revocation of the licence under the Indian Arms Act is concerned.

4. It will be seen that Sub-section (5) of Section 17 of the Arms Act requires an order in writing by the licencing authority recording the reasons for suspending or revoking a licence. There is no express provision in that section to give a prior notice to the licensee to show cause why his licence be not suspended or revoked as the case be. By Section 18 of the said Act the order passed by the licensing authority suspending or revoking the licence is made appealable and the requirement of Sub-section (5) of that section is that no appeal shall be disposed of unless the appellant has been given a reasonable opportunity of being heard. The appellate provisions do not put any restriction on the scope of the appeal except that a period of limitation has been fixed. It is open to a licensee to place all the material in support of his case before the appellate authority. Then reading the provisions of Sections 17 and 18 as an integrated scheme for exercise of the power of suspension or revocation of licence, it is clearly brought out that a licensee is afforded ample protection by the statute which imposes a duty on the licencing authority to give reasons in writing for revoking or

suspending a licence and then affording a licensee an opportunity to be heard by the appellate authority on all the relevant aspects of the matter. As the Supreme Court observed: "If the statutory provisions can be read consistently with the principles of natural justice the court should do so." In my judgment the scheme under the two Sections 17 and 18 of the Arms Act, as explained above is found to be consistent with the basic principles of natural justice, no matter a prior notice to the licensee is not required to be given by the licensing authority to show cause why the licence be not suspended or revoked. However, I do not propose to decide this petition on the basis of the contention of the petitioner that failure to give a prior notice to show cause vitiates the proceedings. Hence, it is not necessary for me to make a reference to a larger Bench.

5. The second contention raised on behalf of the petitioner by his learned counsel was that the impugned order of the Sub-Divisional Officer suspending the licence was vitiated as it did not disclose any reason relevant to the provisions of Clauses (b), (c), (d) or (e) of Sub-section (3) of Section 17 of the Act. A perusal of the impugned order of the Sub-Divisional Officer (Annexure "A") shows that he passed the order suspending the licence in the interest of the maintenance of peace and order as he found that the petitioner was bound down to keep peace for a period of one year under Sections 107/117, Cr. P. C. showing that he was a man of doubtful antecedents. A perusal of the appellate order of the District Magistrate (Annexure "C") would show that he was much influenced in dismissing the appeal by the fact that the petitioner had suppressed the information that he had been bound down and procured a Police report in his favour also suppressing that fact. Thus the Sub-Divisional Officer, the licensing authority, took action under clause (b) of Sub-section (3) of Section 17 of the Act which empowers the licensing authority to suspend or revoke the licence if it is deemed necessary for the security of public peace or public safety, while the District Magistrate justified the suspension under Clause (c) of Sub-section (3) of Section 17 of the Act which empowers the licensing authority to suspend or revoke the licence 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. There is great force in the submission of the learned counsel for the petitioner that the appellate authority was not entitled to substitute a reason not given in writing by the licensing authority for taking action. The appellate authority would remain confined to the validity and propriety of the order passed by the licensing authority by taking into consideration the merits of the reasons that impelled the licensing authority to take action as disclosed ex facie by the order. I have, therefore, to consider whether there was any material before the Sub-Divisional Officer for suspending the petitioner's licence for maintenance of public peace and order and such a reason could sustain the order.

6. It is not disputed that the case against the petitioner under Sections 107/117 of the Cr. P. Code was decided in 1966 and he was bound down for one year. That period expired in 1967. The Sub-Divisional Officer on being informed of the fact

thought that the petitioner was not a man of satisfactory antecedents and in the interest of public peace he be disarmed. Neither the impugned order of Sub-Divisional Officer at the face of it shows nor is there anything in the counter-affidavit showing that when the petitioner applied for the grant of a licence he was involved in any criminal case or that soon after the grant of licence he got involved in cases relating to the breach of public peace. There was no evidence before the Sub-Divisional Officer that in the year 1970 when the licence was granted and soon thereafter when suspended, there were any reports by the Police or by any other person accusing the petitioner of threatening to commit criminal offences and disturbing the public peace. On the other hand the affidavit of the petitioner disclosed that when he applied for the licence he made a representation that he needed a gun for his own protection as his adversaries who had once been run down under Sections 107/117, Cr. P. C. were still active and threatening him, they being in possession of licenced arm. It cannot, therefore, be said that the licencing authority did not know of the fact that the petitioner had been bound down under Sections 107/117 at the time when the licence was granted. The feeble attempt of the learned Standing Counsel to support the impugned order on the basis that the petitioner was guilty of suppression of material information, therefore, falls to the ground as also the order of the appellate authority based on this approach, Since there was no material before the Sub-Divisional Officer that it was necessary for the security of public peace or for public safety to disarm the petitioner, his order suspending or revoking the licence was not in conformity with the law and is bound to be quashed.

7. Accordingly I allow this petition, quash the impugned order of the Sub-Divisional Officer dated 8-5-1970 (Annexure "A") and the order of the District Magistrate dated 21-10-1970 (Annexure "C"). The petitioner would be entitled to his costs.