

(1987) 06 KAR CK 0036
In the Karnataka High Court
Case No : W.A. No. 1 of 1987

State of Karnataka

APPELLANT

Vs

G. Lakshman

RESPONDENT

Date of Decision : 23-06-1987

Acts Referred:

Arms Act, 1959 — Section 13 (3), 14 (1) (b), 17 (3), 5 (1)

Citation : (1987) ILR (Kar) 2223

Hon'ble Judges : Prem Chand Jain, C.J.; Shivashankar Bhat, J

Bench : Division Bench

Advocate : R.N. Narasimhamurthy, for S.A. Khader, for the Appellant; V.P. Raman, for Vishwanatha Shetty, for the Respondent

Final Decision : Dismissed

Judgement

Shivashankar Bhat, J.—This appeal is by the State of Karnataka, which is the respondent in W.P. No. 16532/1986. The parties will be referred with reference to their rankings in the Writ Petition for the sake of convenience. The Learned Single Judge has issued a Writ directing the renewal of four licences issued to the petitioner earlier, under the provisions of the Arms Act, 1959 (shortly called "the Act"). The facts in brief, which are summarised by the Learned Single Judge may be repeated hereinafter :

2. The petitioner questioned the correctness of the order passed by the Government of Karnataka (Home Department) refusing to renew the four licences held by him which were valid upto 31-12-1984. It is not in dispute that these licences were granted to him to enable him to carry on business in the manufacture and sale of fire arms Stores situate at Sathyanarayanapet, Bellary. The Government being the Renewal Authority under the Act, the petitioner made an application for the renewal of these licences in accordance with the provisions of Section 15 of the Act. The State Government made an order on 13-12-1985 rejecting his application for renewal. This order was challenged by the petitioner in W.P. No. 19681/85 and this Court by its order dated 16-7-1986 set aside the

said order on the short ground that the petitioner was not afforded an opportunity of being heard, before the said order was made, depriving him of his licences. Accordingly, the Government heard the petitioner on 20-8-1986 and the impugned order was made by the Home Secretary to the State Government on 27-8-1986.

3. The petitioner was an employee of the State Government till about 1965. He is a Diploma Holder in Mechanical Engineering and was employed as an Instructor in the Government Polytechnic College, Bellary, in the year 1956. It is common ground that even during his employment in Government service he was acting as a Technical Adviser to his brother-in-law one Jaya Vittal who had obtained from the Government of Andhra Pradesh a licence in the year 1964 in Form No. XI bearing Licence No. 25/1964 u/s 5(1) of the Act read with Rule 21 of the Rules framed thereunder for the purpose of conversion, repair and sale of arms and ammunitions. It transpires that in view of the petitioner's technical qualifications he was taken as a sleeping partner by his brother-in-law. There is some dispute whether the petitioner had obtained permission from the Director of Technical Education for the purpose of tendering technical advice to his brother-in-law. But, it is not very material to go into the dispute relating to the petitioner's entry into Fire Arms business since the authorities, viz., the Central Government and the State Government had granted valid licences to the petitioner in Form No. 9 ever since 1969 in which year the petitioner took over the business as the sole proprietor and the licence granted to the firm of Dwaraka Arms Stores continued right upto 1984 without any interruption. In this appeal before us, no contention was raised by the Counsel for the respondent-Government, on this question.

4. After petitioner took over the business as the sole proprietor, he obtained another licence from the Government of Karnataka in Form No. XI for the purpose of conversion, repair, test and sale of arms and ammunitions at Bellary in the year 1968. The said licence was in Form No. XI and numbered as Licence No. 3/1968. The business under the said licence continued till 1977. Subsequently, this licence was converted into licence in Form No. IX pursuant to the policy of the Central Government which treated the conversion-license in Form No. XI as licence for manufacturing arms and ammunitions by granting Form No. IX licence. The petitioner made the necessary application for grant of manufacturing licence on the basis of Form No. XI licence held by him and the Government of India, after making the necessary inquiries in this regard, granted him licence bearing No. 1/77 in Form No. IX. Under this licence the petitioner was granted permission to manufacture 250 breach load and muzzle load guns per annum.

5. Subsequent to the grant of the licence bearing No. 1/77 in Form No. IX, the Government of India, after making the necessary inquiries and in consultation with the Governments of Karnataka and Andhra Pradesh amalgamated Licence No. 25/1964 held by the petitioner earlier with Licence No. 1/77 and granted a comprehensive licence bearing No. 67/78 in Form No. IX fixing the quota of

manufacture to 700 guns per annum. This licence bearing No. 67/78 in Form No. IX is produced as Annexure "C" in the petition.

6. The petitioner also obtained another licence from the Government of India bearing No. 12/1979 in Form No. IX for manufacture of 3,00,000 blank fire cartridges per annum and 1,700 boxes of percussion caps per annum. In that application filed by the petitioner he had stated that he proposed to manufacture blank fire cartridges and percussion caps in the premises where he was manufacturing guns. He was granted licence No. 1/80 in Form No. IX for manufacture of 1,00,000 kilograms of lead shot projectiles per annum. Again in the year 1981 he was granted another licence bearing No. 1/81 for manufacture of 3,75,000 short gun cartridges having single projectile or multiple projectiles of less than 5 mm. dimension. According to the petitioner, all these licences, viz., Licences bearing No. 12/79, 1/80 & 1/81 were granted to him after the Central Government conducted the necessary inquiries and after being fully satisfied that he was entitled to the grant of same. In the application for these licences he had mentioned that he would be manufacturing arms and ammunitions at premises bearing No. 46/18, Gandhinagar, Bellary, now shifted to T.S. Nos. 607, 473 and 474, Sathyanarayanpet, Bellary. The Revenue Authorities, the Fire Brigade, P.W.D., Inspector of Factories, Electricity Board and the Municipality had no objection for the grant of licences referred to above, to the petitioner. The endorsement bearing No. MAG/ARMS. 242/82-83 issued by the District Magistrate, Bellary, which is produced as Annexure "E" in the Writ Petition shows that the District Magistrate had noticed the change of place of business from premises No. 46/18, Gandhinagar, Bellary, to T.S. Nos. 473, 474 and 607. That letter is also proof of the fact that the petitioner's two sons, viz., Jagannath and Raghunath, were also permitted to be inducted in the business of the petitioner as joint proprietors and that the petitioner was possessed of four licences as on 8-9-1982, viz., Licence No. 67/78 for the manufacture of Breach Load and Muzzle Load Guns, Licence No. 12/79 for manufacture of blank fire cartridges. Licence No. 1/80 for manufacture of lead shots and Licence No. 1/81 for manufacture of gun cartridges. The Government of India was also informed by the Under Secretary to the State Government, under Annexure "F" dated 30-9-1982 that, the admission of the petitioner's sons as joint proprietors as also the change of the premises in the manufacturing licence held by the petitioner had been effected in the records of the Home Department Office on the basis of the photostat copies of the licences furnished by the petitioner.

7. From these facts, it could be gathered that the petitioner was carrying on business in the manufacture of guns (B.L. & M.L.) on the basis of the licence bearing No. 67/78. The Government of India in the light of the decisions of the Supreme Court in similar case arising out of the applications made by the manufacturers of guns in Jammu & Kashmir, enhanced the quota to 3,000 guns per annum and he was accordingly permitted to manufacture 3,000 guns per annum. It could thus be seen that the petitioner till 1984 was continuously engaged in the manufacture, repair and conversion of arms and ammunitions

under Form No. IX licences held by him and these licences were granted by the Government of India (which is the Licensing Authority under the Act) after making the necessary inquiries. It is not in dispute that the petitioner is one of the three licence holders in South India for the manufacture of guns and the remaining 130 licences are granted to the manufacturers in North India mostly concentrated in Jammu & Kashmir, Uttar Pradesh and Bihar.

8. Since these licences granted to the petitioner were about to expire on 31-12-1984, he made an application for the renewal of the same on 13-11-1984. In law, his applications for renewal had to be considered by the State Government before the expiry of the renewal period, i.e., 31-12-1984. But, it is not in dispute that the same was not considered by the State Government till 6-12-1985. Finally, the Home Secretary by an endorsement dated 6-12-1985 rejected the petitioner's application for renewal of the four licences. The petitioner did not know the reasons for such rejection and therefore, he made an application requesting the respondent to furnish him the reasons for refusing to renew the licences. The respondent gave the reasons by its order dated 13-12-1985 which was, as noticed earlier, quashed by this Court in W.P. No. 19681/85.

9. Six reasons were given for refusal of the renewal of the licences in the impugned order and they are as follows :-

(i) The petitioner manufactured 5-Chambered chamber loading gun under Licence No. 67/78 though the licence does not cover the same.

(ii) The petitioner installed several machineries for the production of the licenced articles without obtaining separate licences for the same.

(iii) The petitioner suppressed that he was a Government employee in the year 1965, when he entered the business and was party to the obtaining of the licence earlier.

(iv) That the petitioner was involved in several criminal cases (though there was no convictions).

(v) The petitioner has manufactured a revolver unauthorisedly.

(vi) The petitioner has contravened the Official Secrets Act, 1983 and has committed an offence thereunder in respect of which the investigation is pending.

10. One more ground was also stated generally that the petitioner carried on manufacturing activities of fire arms under the licences granted in the same premises in which he manufactured blank fire cartridges without disclosing the commonness of that premises.

11. The learned single Judge considered the four grounds, even though only three grounds were urged by the learned Advocate General, and found that there was no merit at all in any of these grounds and consequently a Writ was issued to the respondent to renew the licences, against which the present appeal has been filed.

12. Sri R.N. Narasimhamurthy, learned Senior Advocate, appearing for the State, raised the following contentions :

(a) Grant of the licence and its renewal for the manufacture of arms or ammunitions is a matter of statutory power and there is no fundamental right to carry on the trade or business of manufacturing arms and ammunitions and hence the learned Single Judge misdirected himself in considering the right of the petitioner as if it is a fundamental right.

(b) The renewal of a licence is not only governed by the, provisions of Section 15 of the Act, but also by the provisions of Section 17. According to the learned Counsel, while considering the question of renewal of the licence u/s 15 not only the provisions of Sections 13 and 14 are to be applied, but also the provisions of Section 17(3) and the principle stated in the said sub-section can be applied. Therefore, he contended that the learned Single Judge erred in ignoring the provisions of Section 17(3) as inapplicable.

(c) It was not for this Court under Article 226 of the Constitution to go into the question of sufficiency of the grounds in rejecting the application for renewal of the licence and that is what exactly, according to him, has been done by the learned Single Judge.

(d) At any rate, the Court could not have directed renewal of the licence. He said, at the most the Court should have sent back the matter to the Licensing Authority for a fresh consideration in accordance with law.

(e) The fact that the petitioner was involved in a series of criminal cases and that some charges are pending against him should have weighed with the learned Single Judge while considering the question and thus he should have rejected the Writ Petition.

(f) It was further pointed out that the petitioner indulged in the manufacture of 5-Chambered chamber loading gun as well as a Dummy Revolver without a proper licence and this renders the petitioner unfit to hold any licence under the Act and therefore the prayer for the renewal of the licences was rightly rejected by the respondent.

RE: (a):

13. The first question urged is, whether there is a fundamental right in the petitioner to carry on the business of manufacturing arms and ammunitions. But, we consider it unnecessary to decide this question, the contention of Sri Narasimhamurthy was that there is no fundamental right to trade or indulge in the business of manufacturing arms in India and he pointed out the analogy pertaining to the statement of the law regarding the trades in noxious or dangerous goods, trafficking in women or the manufacture and sale of intoxicating liquors and the business involving gambling. The Counsel wanted to extend the principles stated in the decisions of the Supreme Court in (i) R.M.D. Chamarbaugwalla Vs. The Union of India (UOI), (ii) The State of Bombay Vs.

R.M.D. Chamarbaugwala, and (iii) Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, . There is no direct ruling of the Supreme Court on the question as to whether the manufacturing of arms will be a fundamental right. On the question whether there is a fundamental right to own and possess arms, High Courts have taken different views. A Full Bench of the Allahabad High Court in Kailash Nath and Others Vs. State of U.P. and Another, observed at para-3 that there is no fundamental right to possess arms, though such a right exists for the manufacture of arms. The observations are as follows :-

"The licence for acquisition and possession of firearms is materially different from a licence for manufacture, sale etc. While the latter confers a right to carry on a trade or business and is a source of earning livelihood the former is merely a personal privilege for doing something which without such privilege would be unlawful In my opinion the obtaining of a licence for acquisition and possession of firearms and ammunition under the Arms Act is nothing more than a privilege and the grant of such privilege does not involve the adjudication of the right of an individual nor does it entail civil consequences."

14. The question was directly raised before the Supreme Court in the decision reported in Ranjit Singh and Others Vs. Union of India (UOI), but was not answered. Para-8 of the said decision reads thus : --

"On behalf of the Government it is urged that there is no fundamental right under Article 19(1)(g) of the Constitution to carry on the manufacture of arms. That contention is disposed of shortly. The Arms Act, 1959, expressly contemplates the grant of licences for manufacturing arms. 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."

15. We think that the question raised about the renewability of the licences of the petitioner can be decided on the basis of the statutory provisions and the principles governing the exercise of such a power. Therefore, this contention need not be gone into.

RE: (b) :

16. The next question is the applicability of Section 17(3) to a case of renewability of a licence u/s 15(3). Section 13 provides for the grant to licence and the inquiry to be held for (he said purpose. What is important is Section 14 which has been relied upon by the Counsel on both sides. The relevant portion of which states, as per Section 14(1)(b) as follows :

"14(1) : Notwithstanding anything in Section 13, the licensing authority shall refuse to grant :

(a) xxx xxx xxx (b) a licence in any other case under Chapter II,

(i) where such licence is required by a person whom the licensing authority has

reason to believe :

(1) to be 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

(2) to be of unsound mind, or

(3) to be for any reason unfit for a licence under this Act ; or

(ii) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence".

17. For the sake of emphasis it may be noted that the respondent-State Government in this case rejected the applications for renewal of licences on the ground that the petitioner was unfit for a licence. Therefore, it is wholly unnecessary to examine the other ingredients of Section 14. The order of the State Government (Annexure "A"), in the concluding part - para-30, says that, - -

"The applicant in the totality of the circumstances can only be considered as unfit for the purpose of renewal of its four arm licences."

18. Section 15 provides for the duration of the licence and its renewal Section 15(3) which is relevant reads thus:-

"13(3) : Every licence shall, unless the licensing authority for reasons to be recorded in writing otherwise decides in any case, be renewable for the same period for which the licence was originally granted and shall be so renewable from time to time, and the provisions of Sections 13 and 14 shall apply to the renewal of a licence as they apply to the grant thereof."

19. Thus, it is clear that the provisions of Sections 13 and 14 are attracted while considering the question of renewability of a licence. It is also necessary to note here that the licence granted is to be renewed unless the Licensing Authority decides otherwise for reasons to be recorded. Here, the burden is certainly on the Licensing Authority before negating the claim for renewal. The reasons for non-renewal will have to be based on relevant factors governing the entitlement of a person to obtain and hold the licence. For the said purpose, this sub-section attracts the provisions of Sections 13 and 14.

20. Section 13(3)(b) states that the Licensing Authority, shall grant a licence if the Licensing Authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same. Here the emphasis is on the reason for seeking the licence. When the said reason is good, the applicant has a right to have the licence. Thereafter, before granting the licence, the Licensing Authority will have to consider the question u/s 14 and if any one of the bars stated in Section 14(1)(b) is attracted, the application for licence can be refused. Section 14(1)(b) in substance provides for four kinds of such bars, i.e., - -

(i) the subject matter is prohibited under any law ;

(ii) the claimant for the licence is of unsound mind ;

(iii) there is reason to believe that the claimant is to be for any reason unfit for a licence under the Act ; and

(iv) refusal of the grant of licence is necessary for the sake of public peace and/or public safety.

21. Mr. Narasimhamurthy contended that Section 17 of the Act empowers the Licensing Authority to vary, suspend or revoke a licence. His contention was that u/s 17(3) if a licence can be suspended or revoked for the reasons stated in the said sub-section, there is no reason, as to why the same reasons should not govern the situation when a licence is sought to be renewed. Section 17(3) reads as follows :-

"17(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."

22. It may be noted here that Clause (a) substantially represents the grounds stated in Section 14(1)(b) and all the four situations covered by Section 14(1)(b) are covered by Section 17(3)(a) and (b). The additional factors stated in Section 17(3) are found in its Sub-clauses (c)(d) and (e). They are in substance as follows :-

(1) that the licence was obtained by the suppression of material information or on the basis of wrong information ;

(2) that the conditions of the licence have been contravened by the licensee ; and

(3) that the holder of the licence failed to comply with a notice referred in Section 17(1).

23. These are the additional grounds which are to be the basis for the suspension or revocation of the licence. These grounds come into existence after the licence is granted. A licence might have been obtained by suppression of material information etc., but its discovery will be only after the licence is granted.

Similarly, contravention of the condition of the licence will be a subsequent event. The next ground of failure to comply with the notice to deliver up the licence when called upon also is a subsequent event. These grounds or any one of them actually add to the ineligibility of the person claiming a licence. These factors certainly derogates the fitness of the person. If those grounds or any one of them can be a valid cause for revocation of the licence, there is no reason to hold that they are irrelevant while considering the case of renewal. In other words, it will be a futile exercise of the power of renewing a licence u/s 15(3), even though the grounds u/s 17(3) were available and thereafter resort to Section 17(3) to revoke it again. Therefore, we consider that the grounds stated in Section 17(3)(c)(d) and (e) can be validly considered in estimating the fitness of the person to hold the licence and to conclude whether he is fit or unfit u/s 14(1)(b). Thus so read, we consider that these two Sections can be harmonised. But the view expressed by the learned Single Judge, on this Section, ultimately had no bearing on his conclusions and therefore, the order made in the Writ Petition cannot be set aside on this view of the matter.

RE: (c): 24. There is no doubt about the answer to the next question raised by Mr. Narasimhamurthy. It is true that this Court cannot go into the question of sufficiency of the material to reject an application for renewal of the licence. But the question is, whether there was any material at all. If the material on which the Licensing Authority acted was a non-existent material in the sense that as a fact there was no such material or the inference of the authority that such a material existed was based on irrelevant factors, or that the authority came to such a conclusion ignoring the relevant factors, this Court can certainly set aside the order of the Licensing Authority. As we have already pointed out, u/s 13(3) (b), a person is entitled to a licence if there is a good reason for the same. That right can be nullified u/s 14(1)(b) in respect of a person "whom the Licensing Authority has reason to believe that.... to be for any reason unfit for a licence under this Act." In other words, the authority should have reason to believe that for any reason the claimant is unfit for a licence. The foundation for the finding that the person is unfit for a licence should be a valid reason recognizable by law. The said provision does not say that a licence can be rejected if the authority believes" that the claimant is unfit. The legislature has been very emphatic in attracting the "reason" by repeating it not only in Section 14(1)(b)(i) but also at Sub-clause (3) thereof. Before opining or believing a person to be unfit, there should be a reason for the same.

25. The phrase "reason to believe" is the subject matter of interpretation by the Supreme Court. In Ganga Saran and Sons P. Ltd. Vs. Income Tax Officer and Others, the question involved was the interpretation of the phrase "reason to believe" in Section 147 of the Income Tax Act. The Supreme Court said that these words "has reason to believe" are stronger than the words "is satisfied". In para-6 it was observed that :-

"The belief entertained by the Income Tax Officer must not be arbitrary or

irrational. It must be reasonable or in other words it must be based on reasons which are relevant and material. The Court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the Income Tax Officer in coming to the belief, but the Court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice u/s 147(a). If there is no rational and intelligible nexus between the reasons and the belief, so that on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the ITO could not have reason to believe that any part of the income of the assessee had escaped assessment and such escapement was by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts and the notice issued by him would be liable to be struck down as invalid."

26. In an earlier case, in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, similar words were considered by the Supreme Court wherein it is stated :-

"The scheme of the law clearly is that where the Income Tax Officer has reason to believe that an under-assessment has resulted from non-disclosure he shall have jurisdiction to start proceedings for re-assessment within a period of 8 years ; and where he has reason to believe that an under assessment has resulted from other causes he shall have jurisdiction to start proceedings for re-assessment within 4 years. Both the conditions, (i) the Income Tax Officer having reason to believe that there has been under assessment and (ii) his having reason to believe that such under assessment has resulted from non-disclosure of material facts, must co-exist before the Income Tax Officer has jurisdiction to start proceedings after the expiry of 4 years. The argument that the Court ought not to investigate the existence of one of these conditions, viz., that the Income Tax Officer has reason to believe that under assessment has resulted from non-disclosure of material facts cannot therefore be accepted."

The existence of these conditions referable to the Income Tax Officer having reason to believe certain facts, was held to be a jurisdictional fact and therefore the Supreme Court held that the Writ Petition was rightly entertained by the learned Single Judge of the Calcutta High Court.

27. We may also refer to the decision of the Supreme Court in Rohtas Industries Vs. S.D. Agarwal and Others, Here the question was the validity of the order of the Government directing investigation of the affairs of a company u/s 237(3) of Indian Companies Act, 1956. The said provision of law empowered the Government to direct such investigation if "in the opinion of the Central Government there are circumstances, suggesting...." existence of certain factors. It was held that the power of Government was a discretionary power. But the Government while forming the requisite opinion (which is the foundation for the exercise of the power) should direct itself to relevant material and the power should be exercised in a reason table way. It was held that the existence of

circumstances set out in Clause (b) is a condition precedent to the formation of the requisite opinion and therefore the fact that the impugned order contains recitals of the existence of those circumstance does not preclude the Court from going behind those recitals and determining whether they did in fact exist and further whether the Central Government in making that order has taken into consideration any extraneous consideration.

At para-37 reference is made to a decision involving the cancellation of a liquor licence, observation in which being pertinent to this case, may well be repeated :

"A decision to deny or cancel such a privilege lies within the "discretion" of the Commissioner ; but that means that decision is to be based upon a weighing of consideration pertinent to the object of the administration.

In public regulation of this sort there is no such thing as absolute and untrammelled "discretion" that is that action can be taken on any ground or for any reason that can be suggested to mind of the administrator ; no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute. Fraud, and corruption in the Commission may not be mentioned in such statutes but they are always implied as exceptions "Discretion" necessarily implies good faith in discharging public duty ; there is always a perspective within which a statute is intended to operate ; and any other departure from its lines or objects is just as objectionable as fraud or corruption. Could an applicant be refused a permit because he had been born in another province, or because of the colour of his hair ? The ordinary language of the legislature cannot be so distorted. In particular we would like to emphasize the observation that "there is always a perspective within which a statute is intended to operate."

Again in para-39 (p.719) the scope of Court's power to interfere is stated as follows:-

"... existence of circumstances.... is a condition precedent for the government to form the required opinion and if the existence of those conditions is challenged, the Courts are entitled to examine whether those circumstances were existing when the order was made."

The approach of the learned Single Judge in these case, cannot in any way be said, as going beyond this limit under Article 226 of the Constitution.

28. When it is said that the Government should have "reason to believe" to call a person as unfit, that belief should be the product of reason. No belief can be founded on reason, if the basic facts leading to the belief, cannot reasonably lead to the particular belief. If the facts relied upon by the authority from which, it has to arrive at a particular belief, cannot be relied upon at all because, the facts are irrelevant, or immaterial, or so trivial that no reasonable man would take note of such facts, there is no escape from the conclusion that the belief is not founded

on reason.

29. Reason presupposes, logic. The, various stages of (reasoning should be properly interlinked. Mere assertions cannot be equated to a belief arrived at reasonably. Jumping to a particular conclusion, overlooking any intermediate fact or event, is a process opposed to reason. As observed by the Supreme Court in Union of India (UOI) Vs. Mohan Lal Capoor and Others, "reasons are the links between the materials on which certain conclusions are based and the actual conclusions."

30. To say, - that a person is unfit to hold the licence, because, he was involved in several criminal cases (though, long ago, all the cases ended in his favour), or to stigmatise a half finished, dummy revolver, as a revolver itself, because of a remote possibility of it being converted into a lethal weapon, or to attribute a serious offence having been committed by him, on the basis of an incomplete investigation in respect of an alleged offence, of which proper cognizance has not been taken at all for want of sanction by the Central Government (re. alleged offence under the Official Secrets Act) and which was not relied by the Learned Advocate General before the Learned Single Judge, nor discussed by the respondent in its impugned order according to us- cannot be a statement made on the basis of a belief arrived at reasonably.

RE : (d) :

31. The question whether this Court should send back the matter to the Licensing Authority for fresh consideration or whether the Learned Single Judge was right in issuing a Mandamus to renew the licences will have to be considered in the background of this case. The duration of the licences was over on 31-12-1984. The petitioner applied for renewal on 13-11-1984. The question of renewability should have been considered normally before 31-12-1984. But actually the application was rejected by an endorsement dated 6-12-1985. The reasons for rejecting the application were furnished on 13-12-1985. The petitioner challenged the said order by filing an earlier Writ Petition No. 19681/85. Since the petitioner was not given an opportunity of being heard by the respondents, while rejecting the application for renewal, the aforesaid Writ Petition was allowed on 16-7-1986. The respondent was directed to give an opportunity to the petitioner and after hearing him to pass appropriate orders in accordance with law within six weeks. Thereafter, the order was made on 27-8-1986.

32. A perusal of the present impugned order dated 27-8-1986 shows that the approach of the respondent was as if it was considering a review Petition against its earlier order which was set aside by this Court. The respondent refers to the said earlier order at para-17 of the order. After summarising the respective contentions and observing that the petitioner had a fundamental right etc., the actual discussion practically starts thereafter. It is stated therein that the earlier order was made on 5-12-1985 in consultation with the Law Department and was

approved by the Government and thereafter the respondent states that, "it cannot be said that the provisions of Section 15 dealing with the renewal of licence requiring the reasons for refusal to be recorded in writing have not been strictly complied with". In other words the respondent was justifying its earlier order rather than approaching the case on its merits after hearing the petitioner as required by law and as ordered in the aforesaid Writ Petition. Again in concluding para-31 this approach is highlighted in the observation as follows :

"Government do not find any ground for revising or amending the earlier substantive decision of the government in having refused to renew the said four licences."

Thus an impression is certainly created by the respondent that the hearing of the petitioner was a formality to satisfy the letter of the Writ issued against it earlier rather than a sincere attempt to follow a fair procedure, before considering the applications of the petitioner for renewal. This is the second Writ Petition by the petitioner. Since 1-1-1985 the petitioner's activities under the expired licences have stopped and his source of livelihood has been crippled. The approach of the authority, as already stated above, is not quite proper. Added to this, the provisions of Section 15(3), according to us give rise to a right in the petitioner for the renewal of the licences, unless the Licensing Authority has made out a case for refusal. The Licensing Authority has failed to discharge this onus. Unlike other licensing cases this Act in question, creates a right in the licensee for the renewal of the licences in the absence of a case being validly made out for refusing the renewal. Therefore, the discretion exercised by the learned Single Judge cannot be held to be bad.

33. We are sitting in Appeal against the decision of the learned Single Judge of this Court. Unless the said decision is established to be "clearly wrong", we cannot interfere with the said decision just because it is shown to be "not right". In *Padma Uppal and Others Vs. State of Punjab and Others*, it is observed that a Court of appeal interferes not when the Judgment under attack is not right, but only when it is shown to be wrong.

34. The learned Single Judge referred to the decision of the Supreme Court in *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, for the proposition, that the High Court may make a final order in Writ Petitions without remanding the matter to the authorities, in appropriate cases. In para-79 the Supreme Court observed that :

"....So broad are the expressive expressions designedly used in Article 226 that any order which should have been made by the lower authority could be made by the High Court. The very width of the power and the disinclination to meddle except where gross injustice or fatal illegality and the like are present, inhibit the exercise but do not abolish the power."

Again at para-146 (at page 1931) it is said.:

"What the tribunal may in its discretion do, the High Court too, under Article 226, can, if facts compel do."

This proposition is reiterated in another decision, in Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, . It is suffice, if para-20 (at page 546) is reproduced here :-

"There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion "

(emphasis is ours)

Having regard to these principles, and the facts of this case, it has to be held that, this Court need not send back in every licensing case, the matter for a fresh decision by the Licensing Authority.

35. Whether the right of the petitioner is a fundamental right or not need not be considered for our purposes. Here is a case where the petitioner has been carrying on the business under various licences issued to him for a long number of years. Even if we ignore the earlier history, admittedly the petitioner has been carrying on the business since about the year 1967. The licences in question are of the year 1978 and thereafter. The petitioner has stated that he has invested huge sums of money. He has employed a fairly large number of persons to work under him. His sons have joined him as joint proprietors. The charges against him are found to be flimsy or irrelevant. In fact, before the learned Single Judge the learned Advocate General tried to justify the impugned order only under three grounds, giving up other grounds. The grounds relied were that the petitioner had no licence to manufacture 6 Chambered revolving short guns, that he had no licence for possessing machinery for manufacturing fire arms and ammunitions and that there are several criminal cases pending against the petitioner (para-11 of the order of the learned Single Judge). Also the last sentence in para-16 (d), there is a categorical statement that "the other grounds

on which renewal was refused were not seriously pressed by the learned Advocate General and in my view rightly too." In this appeal, Mr. Narasimhamurthy, who appears for the respondent, gave up the plea regarding the alleged lack of licence for the machineries. He tried to sustain the order of the Government on the ground that the petitioner was a party to an offence under the Official Secrets Act, 1923 and that investigation was pending in that regard. This was one of the grounds just referred in the impugned order of the State Government without any definite finding thereon and this was not the ground on which the Learned Advocate General tried to sustain the order of the State Government. It has also come on record that the Competent Authority to sanction the prosecution is not the State Government and therefore cognizance of this offence has not been so far taken. It has also come on record that the COD (investigating agency) has not completed its investigation on this question and has approached the Learned Magistrate for further time. Therefore, this ground now raised by Mr Narasimhamurthy cannot be a relevant ground at all to sustain the order of the State Government rejecting the licence. We consider the said ground is entirely irrelevant, without expressing our opinion whether there is any justification for prosecution against the petitioner for the said alleged offence. The petitioner's Counsel placed before us the documents alleged to have been seized by the authorities, which are said to be the basis to opine that the petitioner committed an offence under the Official Secrets Act. They pointed out that they are very innocuous documents. It is not for us to make any comment on this aspect of the matter except to state that the ground urged by Mr. Narasimhamurthy is not at all relevant or germane to reject the application of the petitioner for renewal of the licences. We repeat that, the Licensing Authority except referring to this alleged offence, at para-24(v) of the impugned order, has not given any categorical finding on this ground. The Learned Advocate General also thought it not a proper ground. Therefore, a new ground at this stage cannot be raised, for which there is no conclusive basis.

35A. We are primarily concerned with the State of things that existed at the time the renewal was sought. Any subsequent factor that disentitles a licensee from having the licence renewed cannot be now agitated before this Court, as a ground to have the matter remanded for consideration by the licensing Authority. It is very clear that the alleged offence under the provisions of the Official Secrets Act was not the basis of the rejection of the renewal. If, as on the date of the renewal, the licensee was entitled to have it renewed, the Licensing Authority should have granted the renewal. After the renewal, if any fresh cause occurs for the cancellation or revocation of the Licence, the law has provided for an appropriate action by the Licensing Authority. We have to decide this question, before us, on the basis of the facts and events available to the Licensing Authority when the renewal was sought and considered. Therefore, the contention of Mr. Narasimhamurthy that the matter should be sent back to the Licensing Authority on this question cannot be accepted.

35B. Regarding the other ground that the petitioner was involved in several

criminal cases, the Learned Single Judge has given a finding that there was no substance in the allegation. Most of the Criminal cases resulted in the acquittal of the petitioner and some of them culminated in his favour far earlier to the renewal of the licences on earlier occasions. The petitioner has elaborately given the particulars of those cases and explained as to how they are not relevant at all. But the respondent in the impugned order has not considered the explanations given by the petitioner. Similarly in the Writ Petition the petitioner has pointed out as to how these cases are irrelevant and the charges are flimsy. The statement of objections filed by the respondent in the Writ Petition does not deal with these averments in any detail.

36. Earlier we have stated that it is not necessary to go into the question whether the petitioner has a fundamental right to manufacture arms. His right can be decided on the basis of the provisions of the statute in question. Here, the question involved is the petitioner's right to the renewal of the licences. Renewal can be denied only when the Licensing Authority has reason to believe that for any reason the petitioner is unfit for the licences. The nature of a right available to a licence for its renewal is quite different from the right which a person has before seeking a licence originally. This is made clear by De Smith, in his Judicial Review of Administrative Action IV Edn. at page 223, as follows :-

"Non renewal of an existing licence is usually a more serious matter than refusal to grant a licence in the first place. Unless the licensee has already been given to understand when he was granted the licence that renewal is not to be expected, non-renewal may seriously upset his plans, cause him economic loss and perhaps cast a slur on his reputation. It may therefore be right to imply a duty to hear before a decision not to renew when there is a legitimate expectation of renewal, even though no such duty is implied in the making of the original decision to grant or refuse the licence".

37. Though the above observations were made in the context of giving opportunity to the claimant for renewal of the licence, the said observation shows that even a privilege to get a licence may fructify itself in to a right at the time of seeking renewal of a licence. The right claimed by the licensee u/s 15(3) is certainly more valuable to him than his right to seek a licence originally u/s 13. If the non-renewal of the licence is based on non-existent grounds, the licensee is entitled to the licence as a matter of course u/s 15(3). For this reason also, the learned Single Judge was perfectly justified in issuing the Writ.

For these reasons, we are of the opinion that the learned Single Judge cannot be held to be unjustified; in issuing the Writ for the renewal of the licences, instead of sending back the case for a fresh consideration.

RE: (e) AND (f) :

38. The fact that the petitioner was involved in some criminal cases, cannot be a ground to refuse renewal of the licences. The seriousness of the charges has not been brought out anywhere. At the concluding stage of his argument, Mr.

Narasimhamurthy also did not seriously press this ground except emphasising that the petitioner indulged in manufacturing a dummy revolver without a licence and further that he has also manufactured, without a licence, 5-Chambered - chamber loading gun. The opinion of the Expert supports the contention of the petitioner that the subject matter were covered by the licences issued to the petitioner, as held by the learned Single Judge in para-16(a) and 16(c) Of his order. In the Circumstances, there is absolutely no merit in the contention of the respondent in this regard.

39. On the other hand we find that the broad approach of the respondent in this case was not proper at all. The respondent ignored the opinion of the Ballistic Expert regarding the manufactured items being covered by the licences. In spite of the fact that the installation of machineries did not require licence, the respondent holds that the petitioner contravened the licensing provisions in installing the machineries. The petitioner pointed out that in all similar circumstances a separate licence was not obtainable for the machineries. The Central Government also seems to have taken the same view that a separate licence for machineries as unnecessary. No doubt in the Writ Appeal these grounds were not urged in the course of argument, but we have to consider this aspect just to highlight the mis directions of the authority and as to why we should not interfere with the Writ issued by the learned Single Judge in directing the renewal of the licences.

40. Respondent's Counsel referred to a few decisions to state that involvement in criminal cases is a vital ground to deny a licence under the Act. In Shesh Nath Singh Vs. State of Bihar and Others, a third party sought the cancellation of the gun licence held by the petitioner, alleging that petitioner attempted to kill him. This application, was allowed and the licence was cancelled. Finding was that there were several Civil and criminal cases involving both the parties and there was an apprehension that they were likely to use the fire arms. In para-5 it was observed that, --

" --I do not find it possible to interfere with the order. I also do not find any substance in the argument advanced by Mr. Chandra Shekar, that until a judgment of conviction is recorded in the criminal case, the licensing authority should not and could not have, in law, cancelled the licence. In my view, this is a very wide proposition and in the circumstances prevailing in this part of the country to accept this kind of submission would lead to a great anarchy as criminal trial may take several years before a licensee, who is prima facie found to have indulged in some criminal act, is brought to book and in the meantime to allow him to carry the weapon for repeating the offences and, thus, terrorising the public as well."

The observations are to be confined to the particular facts of the case as indicated by the lines emphasised by us.

41. In Sardar Chand Singh v. Commissioner, Burdwan Division & anr. AIR 1953

Cal 420 petitioner's application for a revolver licence had been rejected. Hence the petitioner sought Writ of Certiorari and a consequential mandamus. Para-6 of the order summarised the order of the Commissioner, which indicates that the petitioner therein was involved in several litigations of a serious nature with certain other parties. It was observed that such a person was unsuitable to be in possession of a licence for a revolver. The reason, thus given, was held to be relevant by the High Court. Here again the facts of the case, are quite different and the decision rested solely on the basis of the said facts.

42. *Moti Miyan Vs. Commissioner, Indore Division and Others*, is anr. citation. The petitioner therein challenged the order of the District Magistrate, refusing to renew the gun licence under the Indian Arms Act, 1870. The High Court held the order granting or refusing a licence was purely an executive order. In para-10, it was observed that in the matter of licensing the possession of arms, the authority has to pay due consideration to the maintenance of law, order and public safety and possession of arms is a matter ultimately affecting the security of the State and the executive authorities are the proper persons to judge whether a particular person is or is not a fit and suitable person to possess arms. On facts, it was found that the materials relied therein were relevant and that the sufficiency of the material was not for the Court to examine. We need not express our opinion about the correctness of the said decision, which was under the old enactment. The object and reasons for the present Act, The Arms Act, 1959, and its scheme are quite different. Further, what was involved, was the question pertaining to the grant of a licence to possess arm. If charges are serious and are germane to the grant of licence, the Licensing Authority may be right in denying the licence. But the Authority should consider the nature of the charges, the stage of the criminal cases, if any, the quantum and width of the investigations held, the ultimate order in case the trial was over, the proximity in point of time between the involvement in criminal cases and the time when renewal of the licence is sought as also the relevancy of the charges to the fitness of the licensee to hold the licence to manufacture arms and ammunitions.

43. Here, the respondent in the impugned order at para-24(iv) relies on a ground that the petitioner was involved in a series of criminal cases. The respondent records the facts that the licensee was not convicted in any one of when and in most of the cases "B" reports were filed. Still, the order says, that the very involvement is sufficient to "arrive at the subjective satisfaction of holding the licensee unit to hold the licence". The respondent has not examined the facts of any one of these cases. Each of the cases was referred and explained by the petitioner in the statement filed before the respondent (Annexure "C"). Most of the cases were disposed of between 13 to 15 years prior to the date of seeking the renewal of the licences. Most of these facts were available, when licences were renewed on earlier occasions. Reference to these stale matters should not have been made by the respondent and they have now become wholly irrelevant. The specific averments as to these criminal cases in the Writ Petition and the assertion of the petitioner that they are stale and irrelevant, has not been

specifically traversed in the statement of objections.

44. Regarding the cases pertaining to the manufacture of 5-Chambered breach loading revolving gun and dummy model revolver, in respect of which offences under Sections 25 and 30 of the Arms Act, etc, have been alleged, the learned Single Judge has held that, on the face of it, the allegations cannot be sustained. As already pointed out, neither the impugned order of the respondent, nor its statement of objections to the Writ Petition, explain as to how these alleged involvement actually constitute a serious charge, specially when the opinion of the Ballistic Expert and of the Central Government support the petitioner's claim.

45. Para-24(vi) of the order refers to unauthorised manufacture of a revolver by the petitioner. There is no dispute that this was a half finished product. A remote possibility of this half finished product into a revolver has been equated to the manufacturing of a revolver itself ignoring the report of the Ballistic Expert who stated that it was a dummy revolver and cannot be converted into a lethal fire arm by small modifications. Elaborate reasons are given by the Learned Single Judge in para-16(c) of his order to reject this ground as irrelevant. In fact, a finding has been given that manufacture of an "imitation firearm" does not require a licence. During the course of argument, no serious attempt was made to dislodge the findings of the Learned Single Judge on this issue. It is one thing to make allegations in damaging term. But, when it comes to analyse the allegations, the allegations will have to stand the test of reason. As shown above, these allegations when scrutinised, are shown to be immaterial, trivial and irrelevant.

46. In the result, for the foregoing reasons, we see no merit in this appeal and accordingly it is dismissed.