

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

LABH SINGH,—Petitioner.

versus

The Divisional Commissioner, Ambala Division, Ambala,—Respondents.

Civil Writ No. 1741 of 1971.

July 19, 1971.

Arms Act (LIX of 1959)—Section 17—District Magistrate issuing show cause notice before cancelling an arm license—Personal hearing to the licensee—Whether necessary—Such Magistrate while suspending or revoking the license—Whether acts judicially—Order of cancellation—Whether must adopt a particular phraseology to express satisfaction of the authority—Use of ex-parte reports against the licensee without divulging contents thereof—Principles of natural justice—Whether violated—Criminal case pending against a licensee relating to the use of the licensed arm—License suspended and the arm taken possession of—Cancellation of the license—Whether should await the decision of the criminal case.

Held, that the law does not require a personal hearing in every case. Though it is necessary for the competent authority to afford an adequate opportunity to a licensee to show cause why his arms license should not be cancelled before passing an order under section 17 of the Arms Act, 1959, it does not necessarily envisage a personal hearing. Thus, the order of the District Magistrate cancelling a license after issuing a show cause notice to the licensee, cannot be set aside merely because no personal hearing had been afforded to him even if he has asked for it. (Para 5)

Held, that the order revoking a license is appealable. Sub-section (5) of Section 17 of the Act enjoins on the competent authority a duty to record in writing reasons for suspending or revoking a license, and to furnish to the holder of the license on demand a brief statement of the same except in the special cases where the licensing authority is of the opinion that it would not be in public interest to furnish such a statement. From the scheme and scope of section 17, it is clear that the law does cast a duty on the authority cancelling a license to act judicially. The right to acquire and possess a gun, subject to restrictions laid down in the Arms Act in the interest of public tranquillity, is itself a fundamental right. Any order likely to affect such a right can be passed only in conformity with the principles of natural justice. (Para 6).

Held, that in order to uphold the validity of an order under section 17(3) (b) of the Act, it is not necessary to stick to any magic incantation, or to adopt any particular phraseology or language to express the satisfaction of the competent authority about it being necessary to suspend or revoke a license for the security of public peace or public safety. If a competent

authority is satisfied that a particular licensee is not a fit person to hold a license as he is likely to commit dangerous offences by misusing the licensed arm and sufficient facts are set out in the order which justify such a conclusion in the circumstances of a given case, the order would not be liable to be quashed merely because the language of section 17(3) (b) is not repeated therein. (Para 7)

Held, that where the competent authority while cancelling a license relies upon the ex-parte reports obtained by it against the licensee and the contents of the reports are not divulged to the latter, the order of cancellation stands vitiated as being contrary to the principles of natural justice, because the decision is rendered without affording to the licensee a reasonable opportunity of being heard which is *sine qua non* of a fair hearing. (Para 8)

Held, that it cannot be laid down as a matter of law that a gun license cannot be cancelled during the pendency of the criminal case relating to the use of the arm by the licensee. The cancellation of a gun license does not in all cases pre-judge the criminal case. But where a criminal case regarding the use of the licensed arm is pending against a licensee, his license is suspended and the possession of the arm is taken over from him it is better if the District Magistrate should await the decision of the case before cancelling the license. The arms of the licensee having been taken over, he cannot possibly use the same till it is restored to him. His license having been suspended, he cannot acquire another arm. The Court trying the criminal case also has the jurisdiction to direct cancellation of the arms license of the accused, if he is convicted of any offence under the Arms Act, or the Rules made thereunder. The non-cancellation of the license, therefore, till the decision of the criminal case will not endanger public peace. (Para 10)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of mandamus, certiorari, or any other appropriate writ, order or direction be issued quashing the order dated 5th January, 1971, passed by Divisional Commissioner, Ambala, Respondent No. 1, confirming the order of the District Magistrate, Karnal, Respondent No. 2, dated 4th July, 1970, revoking the Arms License of the petitioner.

SUNDER LAL AHLUWALIA, ADVOCATE, for the petitioner.

NAUBAT SINGH, DISTRICT ATTORNEY, HARYANA, for the respondents.

JUDGMENT

NARULA, J.—The order of the District Magistrate, Karnal, dated July 4, 1970 (Annexure 'A'), cancelling the gun licence of the petitioner under section 17 of the Arms Act, 1959 (hereinafter called the Act), has been impugned by Labh Singh, petitioner in this petition

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under Articles 226 and 227 of the Constitution on various grounds to which reference will be made after setting out the relevant facts briefly.

(2) In connection with an incident which occurred in village Chanar Heri, Police station Thaska Miranji, district Karnal, on October 24, 1969, a rival version of that incident was given to the Police two days later, i.e., on October 26, 1969, an allegation was for the first time made against the petitioner to the effect that he had fired his gun in the course of the said incident. Though the firing of the gun had originally been attributed to Jhabra etc. and though it is alleged that the name of the petitioner did not even occur in the daily diary report originally lodged in connection with the occurrence in question, the Police took over possession of the petitioner's gun during the course of the investigation of the case. There is no dispute about the fact that the gun is still in the custody of the State, and the criminal case registered against the petitioner in connection with the abovementioned occurrence is still pending.

(3) A show cause notice, dated January 9, 1970, issued by the District Magistrate, Karnal, was served on the petitioner on or about February 21, 1970. In that notice it was stated that whereas the petitioner had been arrested and challaned under section 324 read with section 34 and section 307 of the Indian Penal Code, he had misused his gun in the aforesaid case against his opposite party, and was, therefore, unfit for holding an arms license. Besides asking the petitioner to show cause against the proposed cancellation of the license, the District Magistrate suspended the arms license of the petitioner under section 17 of the Act. Petitioner claims that he submitted an appeal against the abovesaid order to the Divisional Commissioner on July 22, 1970, and that someone else preferred an appeal against the same order on that very day. Whereas an appeal said to have been preferred by the other person is stated to have been returned to him as it was not accompanied by a certified copy of the order under appeal, the memorandum of appeal alleged to have been submitted by the petitioner has not been traced. In any case a fresh appeal was filed by him on November 27, 1970, which was dismissed by the order of the Commissioner, Ambala Division, dated January 5, 1971 (Annexure 'B'), on the short ground that it was barred by time. The effective order of which the validity has, therefore, been questioned is that of the District Magistrate, though

the same was upheld by the Commissioner without going into the merits on account of the appeal being barred by time.

(4) In the State's return it has been admitted that according to the first information report about the occurrence it was stated that Jeera etc. were armed and had fired at the complainant's party, but "the other version of the incident was given by Shri Maldev Singh on 26th October, 1969," which is asserted in paragraph 2 of the writ petition, according to which the petitioner was alleged to have fired from his licensed gun from the roof of his house. It has also been admitted that the police had taken into possession the licensed gun of the petitioner and that both the parties have been challaned by the police and those cases are still pending in Court.

(5) The first submission made by Mr. Sunder Lal Ahluwalia, learned counsel for the petitioner, is that personal hearing having been specifically asked for by the petitioner and the District Magistrate not having afforded the same in spite of such a request having been made in writing the impugned order stands vitiated as being contrary to the principles of natural justice. The law does not require a personal hearing in every case. Though it is in my opinion necessary for the competent authority to afford an adequate opportunity to a licensee to show cause why his arms license should not be cancelled before passing an order under section 17 of the Act, it does not necessarily envisage a personal hearing. In a case of this type where the gun license had already been suspended and possession of the gun taken over by the police, it might perhaps have been better to afford the satisfaction of a personal hearing to the petitioner, but that is no ground on which the impugned order is liable to be set aside because the petitioner had given a detailed reply to the show-cause notice and even now counsel has not been able to point out what else he could have brought to the notice of the District Magistrate at the time of the consideration of the matter if a personal hearing had been afforded to him.

(66) Mr. Naubat Singh, the learned counsel who appears for the State, has referred to the judgment, of a Division Bench of the Rajasthan High Court in *Kishore Singh v. State of Rajasthan and another* (1), wherein it was laid down that no duty was cast on the authority cancelling a license under section 18(a) of the Arms Act, 1878, to act judicially as the order under that provision was only an

(1) A.I.R. 1954 Rajasthan 264.

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administrative or executive one and was neither open to appeal nor revision, and not even open to review by a writ of certiorari. That case was decided under the 1878 Act. The provisions of the 1959 Act are materially different from those of the old Act. The order revoking a license is now appealable. Sub-section (5) of section 17 of the Act goes to the length of enjoining on the competent authority a duty to record in writing reasons for suspending or revoking a license, and to furnish to the holder of the license on demand a brief statement of the same except in the special cases where the licensing authority is of the opinion that it would not be in public interest to furnish such a statement. The case before me admittedly does not fall within that exception. The scheme and scope of section 17 of the Act are materially different from the provisions of section 18 of the old Act. I am, therefore, unable to agree with Mr. Naubat Singh that the present law does not cast any duty on the authority cancelling a license to act judicially. The right to acquire and possess a gun, subject to restrictions laid down in the Arms Act in the interest of public tranquillity, is itself a fundamental right. Any order likely to affect such a right can be passed only in conformity with the principles of natural justice. The law laid down by the Rajasthan High Court in respect of the old provision cannot, therefore, be made applicable to the corresponding provisions of the present Act.

(7) It is the common case of both sides that the petitioner's license has been cancelled under section 17(3) (b) of the Act which authorises the licensing authority to suspend or revoke an arms license "if the licensing authority deems it necessary for the security of the public peace or for public safety." Counsel submits that a mere statement to the effect that a licensee "is not a fit person and can commit dangerous offences by misusing his gun" (the solitary reason given in the impugned order for cancellation of the petitioner's license) does not fall within the four corners of section 17(3) (b). According to Mr. Ahluwalia, the District Magistrate should have specifically stated that he was satisfied that it was "necessary for the security of public peace" or it was necessary "for public safety" to revoke the petitioner's license. This argument appears to me to be somewhat far-fetched. In order to uphold the validity of an order under section 17(3) (b) of the Act. it is in my opinion not necessary to stick to any magic incantation, or to adopt any particular phraseology or language to express the satisfaction of the competent authority about it being necessary to suspend or revoke a

license for the security of public peace or public safety. If a competent authority is satisfied that a particular licensee is not a fit person to hold a license as he is likely to commit dangerous offences by misusing the licensed gun and sufficient facts are set out in the order which justify such a conclusion in the circumstances of a given case, the order would not be liable to be quashed merely because the language of section 17(3)(b) is not repeated therein.

(8) There is, however, substance in the third contention of Mr. Ahluwalia. The District Magistrate has stated in his impugned order that the petitioner had in his explanation denied the charges on which he had been prosecuted in the pending criminal cases, and that "the comments of the Superintendent of Police, Karnal, were obtained thereon (on the petitioner's explanation)". Reference is then made to the comments of the Superintendent of Police, Karnal, according to which the petitioner had injured Joginder Singh and Mohinder Singh with his gun, and had thus misused his licensed fire-arm. Mr. Ahluwalia has made a three-pronged attack against the abovementioned portion of the impugned order on the basis of which alone the petitioner's license has been cancelled. Firstly, he has stated that if the District Magistrate had called for the comments of the Superintendent of Police, he should have taken the petitioner into confidence about the same before placing any reliance thereon, in order to enable the petitioner to show that either the report of the Superintendent of Police was not correct, or that an order cancelling the license could not be based thereon. Counsel has emphasised that using the contents of the report obtained ex-parte against the petitioner's interest without divulging its contents to the petitioner before referring to the same in the impugned order is wholly out of accord with the principles of natural justice, and is by itself sufficient to vitiate the order Annexure 'A'. In *Brajlal Manilal and Co. v. Union of India and another* (2) it was held that the Central Government in the course of disposing of a review petition under the Mineral Concession Rules, 1949, cannot act on the basis of the material as regards which the party applying for review had no opportunity to make his representation. In that case, the Central Government had obtained a report from the State Government (which had passed the original order) which report afforded the Central Government a basis on which the application for review of the State Government's order was rejected. Their Lordships of the Supreme Court held that the order of the Central Government

(2) A.I.R. 1964 S.C. 1643.

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upholding the decision of the State Government and dismissing the review petition was vitiated as being contrary to the principles of natural justice, in that the decision was rendered without affording to the review petitioner a reasonable opportunity of being heard which was a *sine qua non* of a fair hearing. The law laid down by the Supreme Court in the case of *Brajlal Manilal and Co.* (2) (supra) appears to me to apply even more forcefully to the facts of the present case. Whereas the Central Government was merely considering the review petition in the case of *Brajlal Manilal and Co.* (2), the District Magistrate in the instant case was acting as the original authority to decide the question of revocation of the petitioner's license for the first time. The order itself shows that he was mainly, if not solely, influenced by the report of the Superintendent of Police. The impugned order is liable to be set aside on that short ground.

(9) The second branch of the third submission of Mr. Ahluwalia is that the District Magistrate does not seem to have seriously considered the points brought out by the petitioner in his reply to the show-cause notice except for noticing that he had denied the allegations made against him in the rival criminal case. The original record of the relevant proceedings has been shown to me by the learned State counsel. In the reply to the show-cause notice submitted by the petitioner, he had specifically made out at least three points which needed consideration. He had contended that the question whether he had or had not used his gun, or taken part in the occurrence was *sub judice* in a criminal Court, and that the consideration of the question of cancellation of his license should be deferred till the decision of the criminal case. He had referred to his version of the occurrence, and had pointed out that his name had not even been mentioned in the original proceedings and that he had been falsely implicated at a late stage of the case, after a day or two of the lodging of the first report. Thirdly, he has pointed out that possession of the gun had already been taken from him, and his license had been suspended. This clearly implied that there could be no question of any possibility of his misusing the gun till the disposal of the criminal case. No reference at all was made by the District Magistrate to any of these contentions.

(10) In the peculiar circumstances of this case I find force in Mr. Ahluwalia's argument that the District Magistrate dose not

appear to have seriously applied his mind to the matter before him and appears to have passed the impugned order merely on the report of the Superintendent of Police. If he had applied his mind to the various contentions raised by the petitioner, he would have seriously considered whether it was at all necessary or not to pass final orders in connection with the revocation of the petitioner's license at that stage. It cannot be laid down as a matter of law that a gun license cannot be cancelled during the pendency of the criminal case, nor am I prepared to hold that cancellation of a gun license would in all cases pre-judge the criminal case. But it is clear on the facts of the present case that the gun of the petitioner having been taken over by the police, he could not possibly himself use the same till it was restored to him. His license having been suspended, he could not even acquire another gun. The Court trying the criminal case also has the jurisdiction to direct cancellation of the arms license of the accused, if he is convicted of any offence under the Arms Act, or the Rules made thereunder. If the District Magistrate had dealt with the submission of the petitioner in this connection and had given some justification, even if not very strong, for not deferring the decision till the disposal of the criminal case, it would have appeared that the District Magistrate had brought his mind to bear on the matter. He seems to have dealt with the matter in a very casual manner. In *Kakku Venkataramaiah v. The State of Andhra Pradesh and another* (3), it has been held that an order revoking a license must show at least *prima facie*, how the possession of a gun by the licensee would endanger public peace, as such reasons alone would sustain an order of the cancellation of a license. In the present case when the gun was not in the possession of the petitioner, and his license stood suspended, it would have been impossible for the District Magistrate to show even *prima facie* how the non-cancellation of his license would endanger public peace. In the same case it was further held by the learned Judge of the Andhra Pradesh High Court that where a statute prescribes certain procedural safeguards, they cannot be disregarded by the administrative agency to the prejudice of the subject, as the fundamental right of an arms licensee to hold the licensed arms cannot be interfered with arbitrarily or capriciously. The petitioner, therefore, appears to have a good case for interference with the impugned order on that additional ground.

(3) A.I.R. 1960 A.P. 420.

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(11) The last submission of Mr. Ahluwalia is entirely misconceived. He submits that the show-cause notice having been issued by Mr. H. V. Goswami, the order revoking the gun license could not have been lawfully passed by his successor Mr. R.N. Singh, who was only an officiating District Magistrate. I am unable to find any force whatever in this argument.

(12) I asked the learned State counsel if he could show that any possible prejudice to the cause of peace or public tranquillity would have occurred if the decision of the question of the revocation of the petitioner's gun license was deferred till the final disposal of the criminal case against the petitioner when the license in question had already been suspended and the petitioner had been temporarily deprived of his gun. He was not able to refer to any such prejudice. This, therefore, is not a case where the order of revocation of a license is being set aside on a mere technical ground. The impugned order appears to me to have been passed in violation of the principles of natural justice and the quashing of that order cannot in any way prejudice the public peace or public tranquillity.

(13) I, therefore, allow this petition and quash the impugned order of the District Magistrate (Annexure 'A'). The appellate Order (Annexure 'B') cannot hold the field after the setting aside of the original order and must, therefore, fall with it.

(14) Nothing stated in this judgment may be understood to prejudice the legal right of the District Magistrate to reconsider the question of revocation of the petitioner's arms license after the decision of the criminal case (after affording the petitioner such further opportunity to show cause against the proposed order as may become necessary in the circumstances of the case), if the District Magistrate thinks necessary to adopt such a course.

(15) In the circumstances of the case the parties are left to bear their own costs.

N. K. S.