
(1968) 04 AHC CK 0013

Allahabad High Court

Case No: Special Appeal No.181 of 1965

State of U.P. and Others

APPELLANT

Vs

Jaswant Singh Sarna

RESPONDENT

Date of Decision: April 22, 1968

Acts Referred:

- Arms Act, 1959 - Section 13, 14, 14(1)
- Constitution of India, 1950 - Article 19, 19(1), 226

Citation: AIR 1968 All 383 : (1968) 38 AWR 404

Hon'ble Judges: V.G. Oak, C.J; R.S. Pathak, J

Bench: Division Bench

Advocate: K.N. Singh, for the Appellant;

Final Decision: Dismissed

Judgement

Pathak, J.

This Special Appeal has been preferred against the judgment of a learned Single Judge allowing a petition under Article 226 of the Constitution

2. The respondent carries on business as an arms Healer at "Gorakhpur under the name Gorakhpur Arms Corporation and at Lucknow under the name "Indian Arms Corporation The licences held by the respondent in the name of the Gorkhpur Arms Corporation in Forms Nos. IX, X, XII and XIII and in the name of the Indian Arms Corporation in Forms Nos IX, X and Xi expired and the respondent applied for their renewal The State Government by two separate orders dated August 17, 1964 refused to renew the licences. The orders purported to be u/s 14(1)(b)(i)(3) of the Arms Act, 1959 read with Section 15(3) of that Act. The orders declared that the State Government had reason to believe that the respondent was not fit to hold the licences It came to that belief on information which appeared to show that the respondent had contravened the conditions of the licences The orders alleged a number of transactions in breach of the licences and falsification of the stock

registers maintained by the respondent

3. The respondent filed a petition for certiorari against the orders of August 17, 1964. The writ petition has been allowed by Broome, J. He has held that the State Government was bound to afford a hearing to the respondent before renewal was refused, and as that opportunity was not extended he has quashed the impugned orders and directed the State Government to consider the respondent's renewal application afresh and, if grounds for refusal were found to exist to inform the respondent of them and give him an adequate opportunity of being heard before final orders were made.

4. The State of Uttar Pradesh now appeals

5. The question before us is whether the respondent was entitled to a hearing before renewal of his licences was refused. It is urged by the appellants that the law casts no duty upon the licensing authority to hear a person before refusing to renew his licence. The powers exercised by the licensing authority in the matter, it is said, are not quasi-judicial but fall entirely within its administrative discretion.

6. The impugned orders have been made under the Arms Act, 1959 but before that Act was brought on the statute book the law governing such matters was set out in the Indian Arms Act, 1878. To appreciate the scope and limitations of the powers conferred by the Arms Act, 1959, it will be pertinent to briefly refer to some provisions of the enactment which preceded it. Section 5 of the Indian Arms Act, 1878 required that a person intending to manufacture, convert or sell arms and ammunition must take out a licence. Section 14 similarly required a licence if a person intended to keep fire arms or ammunition in his possession or under his control. The Act did not specify the grounds upon which a licence could be granted or refused under Sections 5 and 14 nor the conditions subject to which such licence could be granted. The power conferred upon the licensing authority was not circumscribed by any express limitations. Section 18 provided for the cancellation or suspension of a licence. Here again apart from the case where the licence-holder is convicted of an offence under the Act or the rules made thereunder, the section did not expressly specify the grounds upon which the licence could be cancelled or suspended. The only requirement mentioned was the recording of reasons in writing for such order. It must be remembered that the Indian Arms Act, 1878 was enacted in an age when the British Government had, only some years before, quelled a massive uprising which had threatened to remove British power from the country altogether and when considerations of military ascendancy and law and order were paramount in the consolidation of British rule in India. This legislation held sway over the country during the entire period of foreign rule. The order of things was completely changed when India attained independence and began to be governed under a Constitution which guaranteed to a free people a body of rights described as "fundamental". The Arms Act, 1959, reflects the constitutional change, and a schematic analysis of the enactment will at once demonstrate the contrasting

liberalism so noticeably absent from the Act of 1878.

7. The Arms Act, 1959, divides all arms and ammunition into two categories; fire arms and ammunition and arms other than fire arms. Generally no licence is required for the acquisition, possession or carrying of arms other than fire arms. Such a licence becomes necessary only where the Central Government u/s 4 considers it necessary or expedient in the public interest to regulate the acquisition possession or carrying of such arms. As to fire arms and ammunition. Section 3 requires a licence for possessing or carrying them and Section 5 requires a licence for their manufacture, sale conversion and repair. But there is a class of fire arms which is subject to an absolute prohibition generally Section 7 declares that prohibited arms and prohibited ammunition cannot be acquired or possessed, manufactured, sold, converted or repaired by any person without special authority in that behalf by the Central Government. What are prohibited arms and prohibited ammunition is defined by Section 2(1)(i) and Section 2(1)(h). The definitions show that they are fire arms and ammunition which a law-abiding individual would not ordinarily be expected to possess or manufacture or deal in. They are weapons which are normally associated with Military and Police organisations.

8. Chapter III contains provisions relating to licences. Section 18 makes provision for the grant of licences. Upon application made to the licensing authority, the licensing authority is bound to grant a licence for acquiring and possessing a fire arm or ammunition by a citizen of India in respect of a gun used for protection or sport or for crop protection or a rifle to be used for target practice by a member of a Rifle Club or a Rifle Association licensed or recognised by the Central Government. It is obligatory upon the licensing authority to grant a licence also where an applicant for a licence satisfies the licensing authority that he has good reason for obtaining it. It is clear that section 13 recognises a right to a licence. Apart from cases where the fire arm is required for protection or sport or crop protection or for target practice in a Rifle Club or Rifle Association, any one is entitled to it if he has good reason for obtaining it. There must be good reason for obtaining the licence, and that condition regulates the grant of a licence. The requirement has been imposed to prevent an abuse of the right by members of the public. Nonetheless, as soon as the condition is satisfied the grant is obligatory and it is not open to a licensing authority to refuse a licence arbitrarily. The grounds for refusing a licence have been carefully detailed in section 14. The licensing authority is forbidden to grant a licence where it is required in respect of any prohibited arms and prohibited ammunition. That is Section 14(1)(a). Section 14(1)(b) provides:

"Refusal of licences: (1) Notwithstanding anything in Section 13, the licensing authority shall refuse to grant--

(a)

(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.""

Section 14(2) enjoins upon the licensing authority not to refuse a licence merely on the ground that the applicant does not own or possess sufficient property. Limited as the power to refuse a licence is by virtue of Section 14(1)(b) and Section 14(2), the licensing authority refusing to grant a licence is, by Section 14(3), required to record in writing the reasons for such refusal and to furnish to the applicant on demand a brief statement of the same unless public interest renders it inexpedient to furnish such statement. Section 15(2) provides that every other licence shall continue in force for such period as the licensing authority may determine in each case. Section 15(3) is the provision with which we are immediately concerned. It reads:

" (1) A licence u/s 3 shall, unless revoked earlier, continue in force for a period of three years from the date on which it is granted:

Provided that such a licence may be granted for a shorter period if the person by whom the licence is required so desire or if the licensing authority for reasons to be recorded in writing considers in any case that the licence should be granted for a shorter period.

(2) A licence under any other provision of Chapter II shall, unless revoked earlier, continue in force for such period from the date on which it is granted as the licensing authority may in each case determine.

(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."

The grounds upon which renewal may be refused are those set out in section 14, the relevant provisions of which have already been set out. Section 17 provides for the variation, suspension or revocation of licences. A perusal of that section discloses the severely limited circumstances in which the power may be exercised. Then Section 18 provides for appeals. The section creates a right of appeal against an order refusing a licence or varying the conditions of a licence or suspending or revoking it licence. No appeal is provided where the order is made by or under the

direction of the Government. That relates to a case which is an exception rather than the rule. When disposing of an appeal the appellate authority is required to follow a prescribed procedure and there is express provision for giving the appellant a reasonable opportunity of being heard before the appeal is disposed of.

9. We may now consider the merits of the question raised before us. While doing so, we may point out that we are concerned essentially with Section 14(1)(b)(i) by reference to which the respondent has been denied renewal of his licences.

10. The renewal of a licence can be refused only upon the grounds mentioned in Section 14. It is apparent that there is no express requirement in section 14 requiring the licensing authority to afford a hearing to the applicant before renewal of his licence is refused. The obligation to hear, however, is a necessary concomitant of the power to refuse if the power is quasi-judicial in nature and must be imported in the exercise of the power. It is now generally recognised that while the duty to act judicially may not always be expressly stated in the statute, yet there may be considerations embodied in the statute which give rise to that duty. The principle was expounded by the Supreme Court in [Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others](#), where it was pointed out:

"No one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to act judicially or not. The inference whether the authority acting under a statute where it is silent has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the rights affected, the manner of the disposal provided, the effect of the decision on the person affected and other *in dicta* afforded by the statute."

This statement of the law has held the field ever since and has been repeatedly followed by the Courts in India.

11. We may now turn to the provisions of the statute itself and examine whether it is contemplated that the licensing authority has a duty to act judicially when refusing renewal of a licence.

12. It has already been stated that the Act recognizes a right in a person to a licence. The grant of the licence is, subject to specified conditions, obligatory u/s 13. The refusal of a licence is controlled by the express limitations enumerated in Sub-sections (1) and (2) of Section 14. Then, where a licence is refused the licensing authority must record the reasons in writing. The order of refusal has been made subject to appellate scrutiny, and an appellant is entitled to be heard before the appeal is disposed of. The renewal of a licence is governed by the same considerations as the grant of a licence. The aforesaid considerations, considered in their totality, indicate clearly that the power of the licensing authority in respect of the grant or renewal of a licence is not left to the play of administrative discretion. The detailed provision made by the Act in respect of the grant or refusal of a licence

is at variance with the conferment of a purely administrative discretion. The limitations which hedge the exercise of the power to refuse a licence and the provision for appellate examination of the exercise of the power postulate the play of objective considerations. When objective considerations are involved, there is a strong indication that the nature of the jurisdiction exercised is quasi-judicial.

13. The aforesaid conclusion is fortified by the nature of the legislation. The Act is plainly a regulator's measure intended to regulate the rights of a citizen to hold, acquire and dispose of fire arms and ammunition and to carry on the occupation, trade or business of dealing in them. The provisions of Sub-clauses (f) and (g) of Clause (1) of Article 19 of the Constitution are immediately attracted, and an enquiry into the question whether the provisions of the Act constitute a reasonable restriction upon the exercise of those fundamental rights becomes relevant. In that enquiry, it is pertinent to consider whether a right of hearing is afforded, expressly or by necessary intendment, before the fundamental right is prejudicially affected. The statutory powers conferred upon the licensing authority must pass the test of a reasonable restriction. It is now settled that a procedure which affects the fundamental rights of a citizen but does not comply with the principles of natural justice must be held to be unreasonable unless there are present abnormal circumstances justifying the departure. See *Mineral Development Ltd. v. State of Bihar* AIR 1960 SC 468. The rights to possess fire arms and ammunition and to carry on a business in them, -- and throughout we must be understood to refer only to those firearms and ammunition which are not prohibited by the Act -- are rights the exercise of which does not give rise to activities inherently dangerous to society. They are activities not different substantially from the other activities contemplated by Sub-clauses (f) and (g) of Clause (1) of Article 19, except that as the possession of arms and ammunition may produce a situation dangerous to law and order and human life the enjoyment of those rights has been made the subject of statutory regulation. The Courts in India have recognized two categories of cases where fundamental rights may be abridged by the exercise of administrative or executive power. They arise in the case of a trade or business inherently dangerous to the community, [Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others](#), and in the case of commodities essential to the life of the community: [Harishankar Bagla and Another Vs. The State of Madhya Pradesh](#). Neither of these exceptions operate in the instant case. If circumstances arise making the possession of fire arms and ammunition or business in them a danger to the community there is ample power within the provisions of section 14(2) to refuse a licence and u/s 17 to suspend or revoke it. There is nothing so inherently dangerous in the possession of fire arms as to justify the relegation of the licensing power to administrative discretion. In the matter of the grant of a licence or its renewal, Section 14(1)(b)(i) contains sufficient safeguard for ensuring that a licence is not entrusted to irresponsible hands. The grounds upon which a licence may be refused under that provision extend over a sufficiently wide area. A licence may be

refused to a person prohibited by the Act or by any other law from acquiring, possessing or carrying on arms and ammunition. It may be refused to a person of unsound mind. It may also be refused to a person who for any reason is considered unfit for a licence. It is worthy of note that this last class is wide enough to cover a multitude of cases where a licence can be reasonably refused. It is difficult to conceive of a wider envelope of power within which a licence may be refused. When that is so, it is not easy to comprehend why the exercise of the fundamental rights involved should in their regulation u/s 14(1)(b)(1) be denied the protection of the principles of natural justice.

14. It is said that a threat to the security of the public peace and public safety may arise rendering it necessary to exclude a hearing to the applicant before a licence is refused. That argument can be appreciated when it is raised to respect of the suspension or revocation of a licence. But when it is sought to be employed in respect of the grant or refusal of a licence it is not intelligible. Until a licence is granted there is no right to the possession of fire arms and ammunition or to a business in them. We find it difficult to comprehend how the public peace or public security can be endangered merely because there is an application for the grant of licence.

15. We are then referred to Section 14(3) which requires the licensing authority to record in writing the reasons for refusal and to furnish a statement of the same to the applicant and it is urged that the requirement sufficiently safeguards the rights of the applicant. Reference has also been made to the provision u/s 18 for an appeal against the refusal of a licence. It seems to us that neither the requirement that the reasons for refusal be recorded in writing nor the provision for appeal against such refusal can adequately substitute for the opportunity to the applicant of being heard before the licence is refused. The right to be heard before the licence is refused enjoys a significance of its own distinct from that flowing from the recording of the reasons and the right of appeal. It is not the same thing. A person afforded a hearing before his application is turned down is in a position to satisfy the licensing authority that no ground exists for refusing the licence. There is no reason why that opportunity should be deferred and postponed to the appellate stage. Not only will it save the applicant time and effort, economy in both of which may be imperative in an emergency personal to the applicant, it will also enable the licensing authority to properly and fairly exercise the powers entrusted to it. If regard be had to the considerations set out in Section 14(1)(b)(i) for refusing a licence the desirability of a hearing before the refusal can not be sufficiently emphasised.

16. The appellants rely upon [Kishan Chand Arora Vs. Commissioner of Police, Calcutta](#). That was a case involving an examination of the nature of the power conferred u/s 39 of the Calcutta Police Act upon the Commissioner of police in respect of grant of licences to keepers of houses and places of public resort and entertainment. The section read :

"The Commissioner of Police may, at his discretion from time to time, grant licences to the keepers of such houses or places of public resort and entertainment as aforesaid for which no licence as specified in the Bengal Excise Act, 1909 is required, upon such conditions to be inserted in every such licence, as he, with the sanction of the State Government, from time to time shall order, for securing the good behaviour of the keepers of such houses or place of public resort or entertainment, and the prevention of drunkenness or disorder among the persons frequenting or using the same and the said licences may be granted by the said Commissioner for any time not exceeding one year."

The Supreme Court held that the section did not contravene Article 19(1)(g) of the Constitution but was a reasonable restriction within the meaning of Article 19(6). In coming to that opinion, it was influenced by the consideration that the Commissioner was guided in his discretion by the two objects mentioned in the section and that where he was satisfied that the applicant for a licence had actual and effective control of the place, where he was going to keep the eating house, and was a person of good behaviour and could prevent drunkenness and disorder among the clientele he was bound to grant the licence. The reasons for that view are apparent from the very object for which the discretion has been conferred upon the Commissioner. It was necessary to confer upon the Commissioner the power to decide in his subjective satisfaction whether the person applying for a licence satisfied the conditions mentioned above. The Supreme Court pointed to the absence of a provision for appeal against the Commissioner's order. In our opinion, the case is clearly distinguishable from the one before us which must be decided with reference to entirely different statutory provisions.

17. The appellants also rely on [Kishore Singh Vs. State of Rajasthan and Another](#), and [Kshirode Chandra Pal Vs. District Magistrate, Howrah and Another](#), . In both cases, the Court was called upon to consider the provisions of Section 18 of the Arms Act, 1878. There is a material difference between that section and Section 14 of the Arms Act, 1959. We have already adverted to the context in which the two enactments were brought in. We have also referred to the contrasting provisions of the two Acts, Moreover, in the case of [Kishore Singh Vs. State of Rajasthan and Another](#), the Court was influenced by the consideration that an order u/s 18 was not open to appeal or revision and also that Section 18 did not expressly require that the authority cancelling the licence should give a hearing to the licensee. With respect, we may point out that the latter consideration no longer holds good in view of what the Supreme Court has said in [Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others](#), . We are of opinion that none of the cases relied upon by the appellants can be of any assistance in the decision of this special appeal.

18. Upon the aforesaid considerations we hold that it was necessary for the State Government to give an opportunity of hearing to the respondent before disposing

of his renewal applications. We agree with the conclusion reached by the learned single Judge and the order made by him.

19. The appeal is dismissed with costs.