

**(1955) 05 GAU CK 0003****Gauhati High Court****Case No:** None

Mohd. Abul Hussain

APPELLANT

Vs

Deputy Commissioner and Others

RESPONDENT

**Date of Decision:** May 20, 1955**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** AIR 1955 Guw 278**Hon'ble Judges:** Ram Labhaya, J; Haliram Deka, J**Bench:** Division Bench**Judgement**

Ram Labhaya J.

1. Md. Abul Hussain, Manager, Moslem Brothers, Golaghat, has applied under Article 226 of the Constitution of India for writs in the nature of certiorari and mandamus, and for orders directing the Opposite Party, the Deputy Commissioner, Sibsagar, to forbear from giving effect to his order, dated 31-3-55, declining to renew three licences of the Petitioner for arms and ammunition under orders of the State Government.

2. The facts bearing on the question raised may be briefly stated. The firm of the petitioner has been dealing in arms and ammunition under licences granted to it for quite a long time. It had three licences, namely, (1) licence No. 3 of 1945-46 in form "K" for the purpose of gunpowder; (2) licence No. 7 of 1941 in form "X" for fire works cartridges caps, blank cartridges, shot cartridges etc., and (3) licence No. 3 of 1938, which was numbered as No. 3 of 1941 in form X for M. L. B. L. and smooth bore" guns, sulphur, saltpetre, etc.,

These licences were being renewed from year to year. The last renewals of licence No. 7 of 1941 and licence No. 3 of 1938 for 1954 were ordered on 26-12-53. Licence No. 3 of 1945-46 was renewed on 31-3-54 for the year ending 31-3-55.. The other

two licences (No. 7 of 1941 and No. 3 of 1938) were also extended up to 31-3-55. On 30-3-55, the petitioner applied to the Deputy Commissioner, Sibsagar, for the renewal of all the three licences.

Before this, he had applied to the Government for renewal of all these licences as he apprehended that the licences may not be renewed. The Deputy Commissioner, by his order, dated 31-3-55, finally declined to renew the licences under Govt. eminent orders. These facts are not disputed.

3. Sri S. K. Datta, Chief Secretary to the Government of Assam, has filed an affidavit in opposition, in which he has disclosed that on 22-7-53, the Deputy Commissioner, Sibsagar, reported to Government that according to information received from the Police, Messrs. Moslem Brothers of Golaghat, who had been dealing in arms and ammunition for several years, had been black-listed for reasons of their divided loyalty.

The Government at that stage did not consider it fair to pass any prejudicial order against the petitioner by cancellation of his licences, two of which were later extended up to 31-3-55. On 2-3-54, however, the Deputy Inspector General of Police (C. I. D.) reported to Government that from the security viewpoint it was not desirable to permit the petitioner firm to deal in arms and ammunition in Assam.

On 19-4-54, the Government, after careful consideration, felt satisfied that, for the security of the State, the firm should not be permitted to deal in arms and ammunition and requested the Deputy Commissioner, Sibsagar, not to renew its licences after the expiry of their existing terms.

4. On behalf of the petitioner, it has been contended that the Deputy Commissioner, when passing the order, acted under directions received from the Government, and has, therefore, failed to exercise his discretion in the matter. The proceeding was a judicial or at least quasi-judicial one, and the Deputy Commissioner should have come to his own decision in the matter; he should not have been influenced by any direction or order from the State Government. The order of the Deputy Commissioner is, therefore, contrary to law.

5. The second contention raised is that since the said order has been passed in pursuance of directions received from the State Government, the petitioner has been virtually deprived of his right to appeal.

6. We have given our careful consideration to the contentions raised on behalf of the petitioner. The order of the Deputy Commissioner in this case "is, in effect and in substance, an order passed by the State Government. It cannot be regarded as an order of the Deputy Commissioner. The State Government was moved by the Deputy Inspector General of Police (C. I. D.) in the matter. It was proposed that, for reasons of security, it was not desirable that the said firm should continue to deal "in arms and ammunition any more.

The State Government decided that the licences of the firm be not renewed. The Deputy Commissioner in this case has merely conveyed the orders of the State Government to the petitioner. He did not purport to decide the question of renewal off the said licences on the merits. He has merely informed the petitioner that the renewal of the licences is being refused under orders of the State Government.

Therefore, what we have in this case is simply an order of the State Government directing that the licences in question be not renewed. The Deputy Commissioner was bound by this order. The contention, therefore, that the Deputy Commissioner failed to apply his mind or use his discretion in the matter, is not of any avail to the petitioner. The Deputy Commissioner" himself did not decide the matter and had no chance of applying his mind to the issue that was involved in the proceeding for renewal of the licences.

7. The next question that arises is whether die State Government had the authority to issue the direction to the Deputy Commissioner in pursuance of which he has declined to renew the licences in question. Rule 41 of the Indian Arms Rules, 1951, provides that

1. every authority empowered to grant or renew a licence or to give his previous sanction to such grant or renewal may, in his discretion (a) refuse to grant or renew such licence or to give such sanction, or, (b) where the authority is subordinate to the Government of a State, refer the application for orders to such Government : provided that in any case in which such authority refuses to grant or renew a licence, the applicant for such grant or renewal, may appeal to the immediate official superior of the authority so refusing.

In the State of Madras, the Board of Revenue and in the State of Assam, the State Government, shall be considered to be the immediate official superior of the District Magistrates for the purpose of such appeals.

2. Every such authority shall exercise all powers and perform all duties conferred or imposed by these rules, subject to the control of the executive authorities to whom he is subordinate.

8. It is not disputed that the Deputy Commissioner had the authority to grant or renew the licences. Under clause (2) of this Rule 41, the Deputy Commissioner was bound to exercise his powers and perform his duties subject to the control of the executive authorities to whom he was subordinate. Apart from the fact that the State Government in this case is the appellate authority under the Rules, the Deputy Commissioner, in the exercise of his powers, is under the control of the executive authorities to whom he is subordinate.

The State Government certainly is the executive authority to which the Deputy Commissioner is subordinate. The effect of the Rule, therefore, is that the grant or renewal of licences by the Deputy Commissioner may be controlled by the executive

authorities, viz., the State Government, to which the Deputy Commissioner is subordinate. Clause (2) of Rule 41 invests the State Government with the power to issue directions in the matter of renewal or grant of licences.

The State Government, in these circumstances, has not exceeded its jurisdiction in directing the Deputy Commissioner not to renew the licences in question. It had the power to direct the Deputy Commissioner not to renew the licences if it thought that it was a desirable course to adopt in the case of the petitioner. The reasons which have persuaded the State Government to take this action have been stated by the Chief Secretary in his affidavit.

It is not for us to go into the question of the adequacy of these reasons. We exercise no appellate authority in the matter. All that we have got to see is whether the State Government was acting within its Jurisdiction. The order being within the jurisdiction of the State Government, and also not being contrary to law, is not liable to interference in the exercise of the extraordinary jurisdiction of this Court under Article 226.

9. The second contention of the learned Counsel that the petitioner has been deprived of the right of appeal, is substantially correct, but, as the State Government had the authority and the jurisdiction to direct the Deputy Commissioner to refuse renewal of the licences, the petitioner has no reasonable ground for complaint. The rules do not provide for an appeal when the order is passed by the State Government. An appeal is permissible only when the orders are passed by subordinate authorities, the State Government being itself the appellate authority. The validity of the relevant rules has not been challenged.

10. In these circumstances, we see no reason to interfere. The petition is dismissed and Rule-discharged.

Deka, J.

11. I agree.