(1999) 05 CAL CK 0028

Calcutta High Court

Case No: Writ Petition No. 7645 (W) of 1999

Biswapati Ghorai and Others		APPELLANT
	Vs	
State of West Bengal and Others		RESPONDENT

Date of Decision: May 6, 1999

Acts Referred:

- Arms Act, 1959 - Section 17, 17(3), 17(3)(b)
- Constitution of India, 1950 - Article 21

Citation: 105 CWN 280

Hon'ble Judges: Kalyan Jyoti Sengupta, J

Bench: Single Bench

Advocate: Biswajit De, for the Appellant;Sanjib Misra and Shampa Sarkar, for the Respondent

Final Decision: Dismissed

Judgement

Kalyan Jyoti Sengupta, J.

By this petition, a group of petitioners numbering 14 have challenged the several orders passed by the District Magistrate and Licensing Authority Midnapore, dated 1st April, 1999. The text of all these impugned orders are identically same. By this impugned orders, the licence held by the petitioners for possession of fire-arms have been suspended. It appears from all the aforesaid impugned orders suspending licence that stereotype reasons have been set out in the manner as follows:

Whereas I have information that there is serious law and order situation in the area under Keshpur Police Station threatening security of life and property of local citizens, and

Whereas I have reasons to believe that the fire-arms held in possession by citizens under licence are being extensively used and/or likely to be used in the prevailing situation arising out of clashes between political parties.

From the impugned orders, it appears that the aforesaid licences have been suspended in exercise of the power u/s 17 of the Arms Act, 1959.

2. The learned Lawyer, appearing for the writ petitioners, submits that all these stereotype orders suspending possession fire-arms, by the Licensing Authority ought not to have been issued as the same is passed without giving any opportunity to the petitioners of being heard. He also submits that u/s 17(3) of the Arms Act, 1999, this kind of general order cannot be passed by the District Magistrate and the same is exclusive jurisdiction of the Central Government u/s 17(3) of the aforesaid Act. He also argues on the self-same facts and circumstances of this case, a learned Single Judge of this Court in a writ petition being No. 9855(W) of 1999 has been pleased to seta side and quash the similar nature of impugned order of suspension of the licence. Therefore, in this case all the aforesaid impugned orders of suspension shall be quashed.

3. Mr. Sanjib Mishra, learned Lawyer, appearing for the State-respondents, submits that District Magistrate has passed this impugned order having regard to the adverse law and order situation in the particular area. The situation is so serious that in order to secure the lives and properties of the local citizens, the aforesaid orders of suspension were necessary inasmuch as the District Magistrate reasonably is of opinion that the fire-arms held by the petitioners are being extensively used and/ or likely to be used in the prevailing situation arising out of clashes between political parties. He had also handed over a copy of the F.I.R. substantiating the aforesaid bad law and order situation in that area.

4. Having heard the learned Lawyers for the parties, it appears to me admittedly no hearing was given before the aforesaid impugned orders of suspension were passed. It appears to me further from the aforesaid impugned orders that all these orders are stereotype and the same has been passed mechanically reproducing the language of the Section 17 (3)(b) of the Arms Act, 1959. In my view, suspension of licence for holding arms has got civil consequences inasmuch as the same deprived a citizen to hold fire-arms for his self-defence and to secure his life by himself. It is now settled law that to hold a licence in order to possess fire-arms for self-defence is now a right guaranteed under Article 21 of the Constitution of India. Such right partakes the character of right to life. So this right cannot be taken away without due process of law.

5. It is true u/s 17(3) of the Arms Act, 1959, the power has been conferred upon the District Magistrate to suspend licence on certain grounds and situation. In the FIR, I do not find name of any of the petitioners as an accused person. So, there is no material available before the Licensing Authority to come to conclusion that suspension of licence held by the petitioners are necessary for the security of the public peace or public safety. There was no complaint against the petitioners of using their fire-arms in any political clashes or in any unlawful assembly. So, the reasons mentioned in the impugned orders that he has reasons to believe the

fire-arms held in possession by any of the petitioners are being extensively used or is likely to be used, is without having any material. Moreover, the petitioners have a right to be heard before the impugned order of suspension of licence is passed. The provision for compliance of natural justice is engrafted and/or inherent in Section 17(3) itself. The order of suspension, as I have already held, has got civil consequences. It is settled law laid down by the Supreme Court when any order passed either by Executive or by quasi judicial authority and having civil consequences, the same shall be passed after compliance of principles of natural justice. In this case as I have already observed no notice was served nor any hearing was given to any of the petitioners before the impugned order of licences have been revoked.

6. In any event, on the similar facts and circumstances of this case His Lordship, the Hon''ble Mr. Justice Altamas Kabir in His Lordship''s judgment in W.P. No. 8855(W) of 1999, the similar nature, of suspension order was quashed and set aside. I have no reason nor I have been persuaded to come to a different reason to differ with the judgment of His Lordship. Therefore, I set aside and quash all the impugned orders of suspension annexed to the writ petition. But, considering the facts and circumstances of this case, some direction is necessary though the orders of suspension have been quashed. I direct the District Magistrate, Midnapore, in conjunction with the local police authorities to conduct enquiries with regard to the possible use of the fire-arms held by the individuals within Keshpur Police Station for unlawful purposes, and, in the event, the said authorities are satisfied that the fire-arms or the licence of any particular individual is required to be deposited and/or revoked, the Licensing Authority shall, thereafter, proceed afresh in these matters under the provisions of Section 17(3)(b) of the Arms Act, 1959 after serving notice and giving opportunity of being heard to the person or persons against whom such steps will be taken. The writ petition is allowed. There will be no order as to costs.

This judgment and order, however, will be effective and operative provided the petitioners pay additional Court fee of Rs.1,300/- within seven days from date. This additional Court fee is necessary as all the petitioners have their distinct and several causes of action but they have been clubbed in one petition. In default in paying the aforesaid additional Court fees, this order will stand recalled and the writ petition will stand dismissed.