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Naneppa Vs. Divisional Commissioner, Bangalore Division and anr.

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Court : Karnataka

Decided On : Jun-28-1966

Reported in : AIR1967Mys238; 1967CriLJ1666; (1966)2MysLJ305

Judge : A.R. Somnath Iyer and ;Ahmed Ali Khan, JJ.

Acts : Arms Act, 1959 - Sections 17(3) and 18; Constitution of India - Article 226

Appeal No. : W.P. No. 503 of 1964

Appellant : Naneppa

Respondent : Divisional Commissioner, Bangalore Division and anr.

Advocate for Def. : G.V. Shantaraj, Adv. for ;H.C. Spl Govt. Pleader

Advocate for Pet/Ap. : M. Range Rao, Adv.

Judgement :

Somnath Iyer, J.

1. This Writ Petition is directed against an order made by the Additional District Magistrate Kolar, on December 3, 1963 by which he cancelled a licence granted to the petitioner for possession of a double barrel gun This order made by the Additional Distric) Magistral? was confirmed by the Divisional Commissioner in an appeal under Section 18 of the Arms Act.

2. The argument maintained before us bv Mr Ranga Rao appearing for the petitioner is that the order made by the Licensing Authority, namely the Additional District Magistrate, was without power since before he cancelledthe petitioner's licence, he gave no opportunity to the petitioner to make a representation against the cancellation of the licence. He contended, in addition, that the Divisional Commissioner mentioned in the course of Ms order many facts in support of the order by which the licence was revoked, which, the petitioner had no opportunity to meet.

(8) The order made by the Licensing Authority cancelling the petitioner's licence reads:

MEMO

'In the circumstances reported by the S. P., Kolar, the arms licence standing in the name of Sri Nanappa, son of Narayanappa, of Sadali village, Sidlaghatta Taluk, is cancelled.'

4. The denunciation made of this order by Mr. Ranga Rao was that the Licensing Authority gave no reasons in support of his order beyond making a vague reference 'to the circumstances reported by S. P.. Kolar' It was said that it was the duty of the Licensing Authority to make that report available to the petitioner and to call upon him to show cause why on the basis of the allegations contained in that report, the license should not be revoked under Section 17(3) of the Arms Act (6) Mr. Shantharajn, the learned Government Pleader, however, contended that there was nothing in Section 17(3) which authorises the revocation of the license, to make available to the holder of a licence any opportunity to make any representation against the cancellation of the licence (6) The relevant part of Section 17 is Sub-section (3) of that section which authorises the Licensing Authority to revoke a licence for any one of the reasons which clauses (a) to (e) of that sub-section incorporate We are of the opinion that notwithstanding there being nothing in Section 17 which enjoins the Licensing Authority to afford the holder an opportunity to show cause why the licence should not be revoked, it is the duty of the Licensing Authority to make that opportunity available to him (7) The Licensing Authority could revoke a licence only if such revocation was justified for any of the

reasons contained in Clauses (a) to (e) of Sub-section (3) of Section 17 Such revocation is possible where under Clause (a) the holder of the licence was prohibited from acquiring or being in possession of a fire arm, or is of unsound mind or for any reason unfit for a licence under the Act. Likewise the revocation becomes permissible when the interests of public peace and public safety demand such revocation under Clause (b) Then again If the licence was obtained by suppression of material information or on the basis of wrong information it could be revoked under Clause (c): under Clause (d) a contravention of the condition of the licence would entail such revocation and finally failure in comply with a notice under Sub-section (1) requiring the holder of the licence to deliver up the licence would also be a ground for revocation.

8. It is obvious that before a Licensing Authority could exercise power under Section 17(3), he should inform the holder of the licence the grounds on which it was proposed to revoke the licence The nature of the power which is created by the sub-section and the manner of its exercise is, such as to create a right in the holder of the licence to establish the non-existence of the ground on which the revocation was proposed to be made. That the right to an opportunity to do so is a right which flows from the power created by Section 17(3), is also what is manifest from Section 18 of the Act which provides for an appeal from an order made under Section 17(3). An appeal would he quite purposeless and unmeaning if an order could be made by the Licensing Authority in the absence of the petitioner and without hearing him. An order made in that way could not be satisfactorily assailed with any efficacy in an appeal, if the petitioner had no right to refute the charge or the accusation made against him

9. Mr. Ranga Rao, in our opinion, is right in asking us to say that the Additional District Magistrate did not have the power to revoke the licence without affording to the petitioner an opportunity to show cause that there was no ground for revocation.

10. It is true that the Divisional Commissioner did set out in the course of his order many reasons why he thought that the licence was rightly revoked but those grounds on which the Divisional Commissioner depended were never put to the

petitioner as they should have been That being so, the enumeration of the many facts which are contained in the order of the Divisional Commissioner cannot infuse any vitality into the order of the Additional District Magistrate which is plainly defective

11. We allow this Writ Petition and quash the order of revocation made by the Additional District Magistrate and also the order of the Divisional Commissioner by which that order was affirmed

12. The fire arm belongs to the petitioner, If it has been taken away from him will be restored to his possession

13. No costs.

14. Petition allowed.

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