

**Gianoba and anr. Vs. the Collector (Additional District Magistrate)**

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**SooperKanoon Citation :** [sooperkanoon.com/431969](http://sooperkanoon.com/431969)

**Court :** Andhra Pradesh

**Decided On :** Jul-18-1966

**Reported in :** 1967CriLJ1713

**Judge :** Venkatesam, J.

**Appellant :** Gianoba and anr.

**Respondent :** The Collector (Additional District Magistrate)

**Judgement :**

ORDER

**Venkatesam, J.**

1. This is a petition under Article 226 of the Constitution for the issue of a writ of certiorari or other appropriate writ or direction for quashing the order of the Collector, Medak at Sangareddy, D/- 25 7-1962 cancelling the Gun licences issued to the two petitioners who are-brothers.

2. It is averred in the affidavit that a Head, constable of the Police Station at Jagipet came and made enquiries on certain petitions said to have been filed by one Yadhav Rao and Maha. rudrappa before the Circle Inspector, that the petitioners submitted their explanation in writing to the Circle Inspector, and that after sometime when they were informed that an adverse order was passed they applied for a copy of the order. They received a memo from the Collector-Medak,

stating that a copy of the endorsement could not be given.

3. This order is impugned firstly on the-ground that it is based solely on the recommendation of the Superintendent of Police; secondly that the order does not disclose reasons for the cancellation; and thirdly that on principles of natural justice, a notice should have been given to the petitioners and heard before their licences are cancelled.

4. This is opposed by the District Magistrate contending that there were two parties in the village of Chapta, the petitioners being the leaders of one of the parties, some Criminal cases were pending for offences under Sections 147, 323 and 354, I.P.C. against the petitioner and his party members, and the relations between the two groups were strained and as there was imminent danger of breach of peace in the village, cases were also registered under Section 107, Criminal P. C. In these circumstances on the report of the Superintendent of Police, Sangareddy, the licences were cancelled.

It was also averred that the petitioners had not made a request for a copy of the reasons for cancellation of the licences. It is urged that the petitioners have alternative remedy by way of appeal as provided for by Section 18 of the Indian Arms Act, and the petition should, therefore, be dismissed.

5. The order of the Collector, Medak D/- 25-7-1962 which is impugned is in the following terms:

The following two licences are hereby cancelled as-recommended by the Superintendent of Police, Medak District.

The order does not show that notices were served on the petitioners or that they were heard before the licences were cancelled. The order does not give reasons for the cancellation, apart from the fact that it was recommended by the Superintendent of Police.

6. The Indian Arms Act, 1887 is now repealed and replaced by the Arms Act, 1959 which according to both the parties governs this case, and Section 17 of this Act lays down the provisions for the revocation of the licences for Fire Arms under the

Act and corresponds to Section 18 of the Indian Arms Act, 1887. i Section 17 of the present Act is more exhaustive and deals with variation, Suspension and revocation of licences, while Section 18 of the previous Act dealt only with cancellation and suspension of licences. Section 17(5) makes it clear that where the licensing authority makes an order varying, suspending, or revoking a licence, it shall record in writing the reasons therefor and furnish to the holder of the licence on demand a brief statement of the same, except where it is not in public interests to furnish such statement. There can, therefore, be no doubt that the order cancelling the licence must be a speaking order, and must indicate the reasons in writing as to why the District Magistrate thought it necessary to cancel the gun licence, and also show that cancellation was necessary in the interests of public peace. It is needless to state that the order must indicate that the authority cancelling the licence had applied its mind to the question, and come to its own conclusion.

7. In the instant case, the impugned order Buffers from several defects. For one thing, it does not show that the District Magistrate, Medak had applied his mind to the question whether the gun licence should be cancelled in the circumstances or not. All that appears from the order is that the licence was cancelled as recommended by the Superintendent of Police, and no reasons have been given for accepting that recommendation.

8. In *Kakku Venkantaramaiah v. State of Andhra Pradesh* : AIR 1960 AP420 , which was a case under Section 18 of the old Act, it was held by Basi Reddy, J. that an order cancelling fire-arm licence, which does not satisfy the requirements of the Act, is liable to be set aside in exercise of the powers of this Court under Article 226. It was laid down that the reason given by the District Magistrate that the licence was cancelled on administrative grounds was not a reason contemplated by Section 18 of the old Act, and that the order must specify the grounds on which action was taken and, must show, at least prima facie, how the possession of the fire-arm by the licensee could endanger public peace. In view of the fact that a right of appeal is also provided against that order, it is necessary that it should be a speaking order. The learned Judge held that once a person has been granted a licence, and he acquires a gun, he has a fundamental right under

Article 19(1)(f) to hold that property subject only to the restrictions imposed by the Act and the Rules, and that the procedural safeguards cannot be disregarded by the administrative agency to the prejudice of the subject. The question whether a notice should be given before the order of cancellation is passed was not decided by the 4 learned Judges in that case, though he noticed a difference of judicial opinion on that question between the High Courts of Rajasthan and Madras.

9. In the instant case, it is evident from the endorsement of the District Magistrate dated 6-9-1962 that the petitioner supplied with the endorsement which he wanted in his petition dated 29-8-1962. The result therefore is, that even if any reasons were given by the District Magistrate, they are not communicated to the petitioner. For all these reasons, I hold that the impugned order is arbitrary and initiated on account of an error apparent on the face of the record. The order is, accordingly, quashed.

10. It is made clear that if the District Magistrate is of opinion that even to-day in the interests of public peace, it is not safe to allow the petitioners to remain in possession of the fire arms, it is open to him to follow the procedure laid down in the Act, and take the necessary action.

11. The Writ Petition is allowed, but, in the circumstances, there will be no order as to costs.