

Digambar Panda Vs. Additional District Magistrate

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Court : Orissa

Decided On : Sep-23-1969

Reported in : AIR1970Ori110

Judge : G.K. Misra, C.J. and ;R.N. Misra, J.

Acts : [Arms Act, 1959](#) - Sections 17, 17(3) and 18(5); [Constitution of India](#) - Article 226

Appeal No. : O.J.C. No. 174 of 1966

Appellant : Digambar Panda

Respondent : Additional District Magistrate

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : G.M. Mohanty, Adv.

Disposition : Petition allowed

Judgement :

G.K. Misra, C.J.

1. The petitioner had one S. B. M. L. gun with license. On 11-9-63 the Additional District Magistrate, Dhenkanal cancelled the license by passing the following order:

'Discussed with the Sub-divisional Officer. The licensee Sri Digambar Panda is reported to be a rowdy element. He is reported to be threatening to kill some of his opponents with his gun. He has also been suspected in some arson cases and has been removed from the Naib Sarpanchship of Chandrasekharprasad Grama Panchayet on charge of misappropriation of (and?) forgery. S. P. has recommended cancellation of his license. It is undesirable to permit him to hold a gun in view of his anti-social activities.

His license is therefore cancelled.'

Against this order, M. A. No. 4 of 1965 was filed before the Revenue Divisional Commissioner who dismissed the appeal on 9-2-66. The substantive part of the appellate order runs thus:

'I find that the order dated 11-9-63 of the Additional District Magistrate, Dhenkanal, is self-explanatory. It shows clearly that possession of a gun license by the petitioner (who?) adduced no evidence to disprove the allegations. The appeal is dismissed.

Sd/. D. D. Surk.'

2. The writ application has been filed under Article 226 of the Constitution for quashing the aforesaid two orders.

3. Mr. G. B. Mohanty for the petitioner advanced the following contentions:--

(i) Neither the revoking authority nor the appellate authority recorded reasons for revoking the petitioner's gun license. The orders should have been a speaking order.

(ii) The order is mala fide.

(iii) No reasonable opportunity was given to the petitioner to show cause prior to the cancellation of the license. The order is therefore liable to be quashed as having been passed in violation of the principles of natural justice.

4. We do not find any substantial reason for holding that the order was mala fide. The second contention is accordingly rejected.

5. In order to appreciate the first contention, the relevant provisions of Sections 17 and 18 of the (new) [Arms Act, 1959](#) (Act 54 of 1959) may be noticed.

'17 (3) The licensing authority may, on the application of the holder of a license by order in writing suspend a license for such period as it thinks fit or revoke a license--

x x x x x (b) if the licensing authority deems if necessary for the security of the public peace or for public safety to suspend or revoke the license.

(5) Where the licensing authority makes an order varying a license under Sub-section (1) or an order suspending or revoking a license under Sub-section (3), it shall record in writing the reasons therefor and furnish to the holder of the license on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.'

'18. Appeals : (1) Any person aggrieved by an order of the licensing authority refusing to grant a license or varying the conditions of a license, or by an order of the licensing authority or the authority to whom the licensing authority is subordinate, suspending or revoking a license, may prefer an appeal against that order to such authority (hereinafter referred to as the appellate authority) and within such period as may be prescribed:

Provided that no appeal shall lie against any order made by, or under the direction of, the Government, (5) In disposing of an appeal the appellate authority shall follow such procedure as may be prescribed:

Provided that no appeal shall be disposed of unless the appellant has been given a reasonable opportunity of being heard.

* * * (7) Every order of the appellate authority confirming, modifying, or reversing the order appealed against shall be final.'

6. The first contention urged on the basis of Section 17(3)(b) is that the licensing authority must have the satisfaction that the revocation of the license was necessary for the security of the public peace and or public safety, and in support of such satisfaction he shall record, in writing, the reasons. Mr. Mohanty contends that the order of the Additional District Magistrate dated 11-9-63 does not furnish reasons in support of his conclusion that the cancellation of the license was necessary for securing public peace and public safety.

We are unable to accept this contention. The Additional District Magistrate relied on the Police report and came to the conclusion therefrom that the petitioner was rowdy element and had threatened to kill some of his opponents with his gun. His complicity in some arson cases was also suspected. Ultimately, the Additional District Magistrate says that it is undesirable to permit the petitioner to hold a gun in view of his anti-social activities. The expression 'anti-social activities' clearly includes threat to the security of public peace and public safety. The contention that ex facie the Additional District Magistrate's order does not contain the reasons in support of his satisfaction cannot be sustained.

7. There is, however, considerable force in the contention that the appellate order is perfunctory and does not furnish any reason why the conclusion of the revoking authority was upheld. But as the order of the revoking authority is a speaking order and the appeal was dismissed, we are not inclined to interfere with the appellate order in the facts and circumstances of this case merely because the appellate authority has not given its reasons in detail.

8. We would accordingly reject the first contention of Mr. Mohanty.

9. The third contention is that the petitioner was not given a reasonable opportunity to show cause against the cancellation of the license. Section 17, Sub-section (3) (b) and Sub-section (5), do not prescribe that notice of the reason for cancellation is to be issued to the petitioner and he is to be called upon to show cause against cancellation and to give evidence in support of his case. Section 18(1) prescribes a forum of appeal. Subsection (5) indicates the procedure to be followed in disposing of appeals, and lays down that the appeal shall not be disposed of unless the appellant has been given a reasonable opportunity of being

heard.

10. Mr. Mohanty urges that the right of appeal would be illusory unless at the stage of revocation the petitioner gets a reasonable opportunity of establishing that the materials on the basis of which the revoking authority proposes to act are without foundation; and further as the petitioner had the right to possess the gun revocation of the license affects his fundamental right to hold property and unless reasonable opportunity is given to plead and prove that no case is made out for cancellation of the license, such cancellation would be ultra vires.

11. On this question there seems to be divergence of authority.

The exponents of one view hold that as the statute makes no provision for framing of charge and issue of notice and giving of opportunity to the holder of the license to destroy the materials placed before the cancelling authority, there is no violation of the principles of natural justice when the cancelling authority, acts on materials placed before him, without giving the affected party a hearing provided the authority has the subjective satisfaction and records his reasons in writing.

The rival view is that as the cancellation would infringe the right of a citizen to hold a gun, that right cannot be destroyed or extinguished without giving him an opportunity of showing that there was no justification for cancelling the license.

12. The first view has been advocated in *Hassan Ali v. Commr. Plains Division*, AIR 1969 Assam & Nagaland 50 (FB) Their Lordships observed that when there are no two parties excepting the authority proposing to do the act and the subject opposing it, the obligation to decide judicially is still there if, from the statute as a whole and other circumstances which will naturally vary from case to case, a duty to make a judicial approach may be inferred. As Section 17 does not make provision for hearing the holder of the license, the principle of natural justice was not violated,

We are unable to subscribe to the aforesaid view. The principle of natural justice has now been given a wide connotation in (1969) 1 S. C. A. 605 --(AIR 1970 SC 150) *A.K. Kraipak v. Union of India*. At page 614 their Lordships observed thus:

'The aim of the rules of natural justice is to secure justice, or, to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it. The concept of natural justice, has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a judge of his own case and (2) no decision shall be given against a party without affording him a reasonable hearing. Very soon thereafter, a third rule was envisaged and that is, that quasi judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently, it was the opinion of the courts that unless the authority concerned was required, by the law under which it functioned, to act judicially, there was no room for the application of the principles of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcated administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry.'

The aforesaid dictum widens the vista of the concept of natural justice.

13. As the right of the petitioner to hold the license is clearly affected by the order of cancellation, the petitioner is entitled to a hearing by the original revoking authority and a reasonable opportunity of defending this right. Section 17, doubtless, makes no provision for hearing the party. It is exactly here that the principle of natural justice would be invoked to supplement the law.

14. That the principle of natural justice should be followed in revoking the license is also apparent from the provision for appeal. Under Section 18(5) no appeal can be disposed of unless the appellant has been given a reasonable opportunity of

being heard. The right of appeal would be wholly illusory and husk if the delinquent had no opportunity of placing materials before the revoking authority on the strength of which the order appealed against could be assailed. Otherwise, if the original revoking authority is careful enough to pass a reasoned order in support of his subjective satisfaction, the right of appeal has no value.

15. Though the statute makes no specific provision for a right of hearing at the initial stage the same could be legitimately inferred from the provision in appeal.

This view gets full support from AIR 1957 Mad 692, (Ponnambalam v. Sara-swati); AIR 1966 All 265, (Jai Narain Rai v. District Magistrate, Azamgarh); AIR 1967 Mys 238, (Naneppa v. Divisional Commr. Bangalore Division). We respectfully differ from the view expressed in AIR 1969 Assam and Nagaland 50 (FB) and some other decisions like AIR 1954 Raj 264, Kishore Singh v. State of Rajasthan and AIR 1960 Madh Pra 157, Moti Miyan v. Commr. Indore Division on which the Assam case is based.

16. On the aforesaid analysis, we hold that the two impugned orders are without jurisdiction inasmuch as the petitioner was given no reasonable opportunity of being heard and of placing materials in support of his case and challenging the materials placed by the Police. We quash the two orders and direct that the petitioner's gun be restored to him with a proper license.

17. In the result the application is allowed. The impugned orders are quashed by issuing a writ of certiorari. A writ of mandamus be Issued commanding opposite party No. 1 to restore the gun to the petitioner with a valid cense, as soon as the petitioner applies for license. In the circumstances there will be no order as to costs,

R.N. Misra, J.

18. I agree.