

CIVIL WRIT

Before Kapur, J.

GODHA SINGH—*Petitioner.*

versus

THE DISTRICT MAGISTRATE, FEROZEPORE AND THE
PUNJAB STATE,—*Respondents.*

Civil Writ No. 321 of 1954

1954

Dec., 7th

Indian Arms Act (XI of 1878) Section 18—Licence cancelled by District Magistrate upon a detailed report of Senior Police Officers— District Magistrate only writing "cancelled" and giving no reasons—Order of cancellation whether valid—Constitution of India—Article 226—Such Orders whether call for interference under Article 226 of the Constitution.

Held, that on a detailed report made to the District Magistrate he wrote the word "cancelled". In such circumstances the word "cancelled" should be read as if the District Magistrate after agreeing with the reasons given in the report and accepting them to be sufficient cancelled the licence and thus there was no violation of the provisions of section 18 of the Arms Act.

Held further, that the possession of arms is a matter which deals with the security of the State and the proper persons to judge that a particular person is fit to have a licence for a fire-arm like a revolver or not are the persons in whom discretion is vested by the State and it is not for Courts to substitute their discretion for that of the Executive Officers in whom the Legislature has reposed confidence.

Beni Chand v. The District Magistrate, Banda and another (1), and Haji Mohammad Vakil v. Commissioner of Police and another (2), distinguished; Regina v. Metropolitan Police Commissioner, Ex-parte Parker (3), relied upon.

Petition under Article 226 of the Constitution of India, praying that the order of respondent No. 1 be quashed and respondents be refrained from giving effect to the same.

J. N. SETH, for Petitioner.

S. M. SIKRI, Advocate-General, for Respondents.

ORDER

Kapur, J.

KAPUR, J.—The applicant has moved this Court for an order of *mandamus*, as he called it, to quash the order passed by the District Magistrate of Ferozepore, dated the 31st October 1953, cancelling the applicant's licence for a revolver.

According to the applicant, he is a peaceful citizen of the Union of India, being a resident of Gidderbaha, an elected member of the village Panchayat and belongs to no political party. He owns about a hundred *ghumaons* of land and was granted a licence for a revolver in about 1947, and he claims that he has not been convicted of any offence under the Arms Act or any rules made thereunder. His licence was cancelled under section 18 of the Arms Act and he assails that order on several grounds given in paragraph 6 of his petition.

The State has filed an affidavit in reply according to which the petitioner was not granted a licence for a revolver after considering the merits of the case but he got illegal possession of a revolver, and as that was registered a licence was granted. The State has placed on the record a list of cases in which the applicant was convicted and of cases in which he was suspected of various offences of theft and of house-breaking. The

(1) A.I.R. 1953 All. 476

(2) A.I.R. 1954 Cal. 157

(3) (1953) 1 W.L.R. 1150

State have submitted that they cancelled the licence because of the bad record of the applicant and they have also placed on the record a report by the Police which shows what kind of man the applicant is. This is marked Exhibit R.B. and I am quoting it *in extenso*:—

Godha Singh
v.
The District
Magistrate,
Ferozepore
and Punjab
State

“SIR,

I have consulted the record of Police Station, Kot Bhai. Really Godha Singh, son of Jabra Singh, Jat, resident of Village Gidderbaha, is a licensee of 38 bore, 6 shots pistol, No. 3740Z. He is found convicted under section 110, Criminal Procedure Code, once and has eight suspicions under sections 457, 458 and 379, Indian Penal Code, etc. He was also found convicted in a case under section 13 of Act III of 1867 (The Public Gambling Act), Police Station, Kot Bhai. I am here in this *thana* since 2½ years. In this period this Godha Singh has not helped me in any case. I am astonished to see how this man got the licence. I have no objection if his licence is cancelled. The detailed vernacular lists of convictions and suspicions prepared by Assistant Moharrir are being attached herewith. His real brother Prem Singh is also found to be convicted in three cases and suspected in four cases. Their list is also attached herewith.

—
Kapur, J.

MIT SINGH,

S. H. O.

4-10-1953.

The report of the Sub-Inspector, Police Station Kot Bhai, is worth perusal. Submitted in original to the Deputy Superintendent of Police, Fazilka, for cancellation of the licence for a revolver.

KARAM SINGH,

D. I. Gidderbaha,

10-10-1953.

Godha Singh Forwarded for favour of necessary orders.
 v. May be cancelled.

The District
 Magistrate,
 Ferozepore
 and Punjab
 State

JOWALA SINGH,

D. S. P. Fazilka,
 25-10-1953.

Kapur, J.

He is a previous convict and H. Sheeter.
 His Arms Licence may be cancelled immediately.

AJAIB SINGH.

S. S. P.
 31-10-1953."

The order of the District Magistrate is contained on the sheet containing the report of the Station House Officer, of the District Inspector Gidderbaha, of the Deputy Superintendent Police, Fazilka and of the Senior Superintendent of Police, Ajaib Singh, at the end of which the District Magistrate has written the word "cancelled". It is true that he has not written a separate order giving his reasons that "it is necessary for the security of public peace" but it appears to me that the District Magistrate in this case after considering the reports of the Police accepted the reasons given therein and cancelled the licence of the petitioner. I am unable to agree, therefore, that there are no reasons given in writing by the District Magistrate.

Mr. Jagan Nath Seth for the applicant has relied on a judgment of the Allahabad High Court in *Beni Chand v. The District Magistrate, Banda and another* (1), where in paragraph 6 the learned Judges said that the statute required that the authority suspending or cancelling a licence must himself record the reasons why the order had been passed and it should also appear from the order that it was necessary for the security of the public

peace to do so, and as those two conditions were not satisfied the Court cancelled the order. Sinha, J., in *Haji Mohammad Vakil v. Commissioner of Police and another* (1), has relied on the judgment of the Allahabad High Court and set aside an order for the cancellation of a licence on the ground that the necessary conditions prescribed under section 18 of the Arms Act had not been satisfied and that no order in writing had been made by the Commissioner of Police. Sinha, J., was of the opinion that it was necessary that a person whose licence was cancelled should know the reasons for cancelling it and the Court before which it is challenged has a right to look into it and the order was set aside because—

Godha Singh
v.
The District
Magistrate,
Ferozepore
and Punjab
State
Kapur, J.

- (1) There is the ignominy of a charge that the petitioner is guilty of something which is prejudicial to the security of public peace; and
- (2) his chances of procuring a fresh licence become prejudiced.

Reliance is also placed on the judgment of the Patna High Court in *Sudhansu Kanta Acharyya v. State of Bihar and others* (2), where the notice which was given under section 18, Arms Act, did not mention any ground which could fall under the words "for the security of the public peace".

These cases are really distinguishable. In the present case a detailed report was made to the District Magistrate who, after going through it, wrote the word "cancelled". I must read the word "cancelled" as if the District Magistrate is agreeing with the reasons given in the report and is accepting them to be sufficient for cancellation of the licence. Although the words in that Act which were being interpreted by a Divisional Court in England in *Regina v. Metropolitan Police Commissioner, Ex-parte Parker* (3), were different yet

(1) A.I.R. 1954 Cal. 157

(2) A.I.R. 1954 Pat. 299

(3) (1953) 1 W.L.R. 1150

Godha Singh
v.
The District
Magistrate,
Ferozepore
and Punjab
State
—
Kapur, J.

those words are apt to be used in cases such as the one before me. It should be remembered that the possession of arms is a matter which deals with the security of the State and the proper persons to judge that a particular person is fit to have a licence for a firearm like a revolver or not are the persons in whom discretion is vested by the State and it is not for Courts to substitute their discretion for that of the Executive Officers in whom the Legislature has reposed confidence. Lord Goddard, C.J., at page 1,155 said in the case I have quoted above—

“He was in fact exercising a disciplinary authority. Where a person, whether he is a military officer, a police officer or any other person whose duty it is to act in matters of discipline, is exercising disciplinary powers, it is most undesirable, in my opinion, that he should be fettered by threats of orders of *certiorari* and so forth, because that would interfere with the free and proper disciplinary exercise of the powers that it may be expected he would otherwise use”.

In my opinion no case has been made out for interference by this Court in regard to the granting of licence and I would, therefore, dismiss this petition and discharge the rule. The State will have its costs. Counsel's fee Rs. 100.