

Judgment Book.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

SUIT NO. M68/1987

REGINA V THE SUPERINTENDENT OF POLICE

FOR THE PARISH OF SAINT ANDREW (CENTRAL)

EX PARTE RAYMOND ANTHONY CLOUGH

AND

IN THE MATTER OF SECTION 37(1) (c) OF

THE FIREARMS ACT.

Frank Phipps Q.C., Carl Rattary Q.C. and Miss Jacqueline Hall for the Applicant.

Neville Fraser and Wendell Wilkins for the Respondent.

Heard: November 25, 1987 and February 15, 1988.

CORAM: WOLFE, ELLIS and PANTON JJ

WOLFE J.

The Applicant herein is an Attorney-at-law, duly admitted to practice in the Supreme Court and the several courts in the Island of Jamaica.

The Applicant was on the 5th day of October 1982 granted a Firearm User's Licence in respect of the undermentioned firearms:

- (a) (i) Smith and Wesson . 38 calibre, serial No. R313196
- (ii) Smith and Wesson 9mm. serial No. A728773010
- (iii) Smith and Wesson .22 Target, serial No. A796596

Further thereto on the 9th day of March 1984 he was granted another Firearm User's Licence in respect of the undermentioned firearms:

- (b) (i) Browning 9mm. serial No. 245PM51465
- (ii) Smith and Wesson .38 serial No. R73854

The licences remained in force until the 3rd day of April 1987 when by letter of even date under the hand of Douglas Richard Grayson, Superintendent of Police for the parish of Saint Andrew (Central) the

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applicant was informed that the licences had been revoked. The said letter is set out hereunder:

"Mr. Raymond Clough
6 Circle Close
Kingston 6

3rd April, 1987.

Sir,

Pursuant to Section 36 Sub Section 1A
the Firearm Act of 1967, I revoked your
Firearm Users Licence with immediate effect
in respect of:-

1. Smith and Wesson .38 Revolver #R73854
2. Smith and Wesson .38 Revolver #R3113196
3. Smith and Wesson .9mm Pistol #A725773010.
4. Smith and Wesson .32 Pistol #A796598
5. Browning 9mm Pistol #245PM51465

You are therefore required to deliver to
me any other firearm and ammunition you may
have in your possession within seven (7) days
of receipt of this notice.

Sgd. D.R. Grayson
Superintendent of Police
St. Andrew Central".

. The superintendent in issuing the order of revocation purported
to act under section 36 (1) (a) of the Firearms Act 1967.

Section 36 (1).

"Subject to section 37, the appropriate authority
may revoke any, licence, certificate or permit if -

- (a) he is satisfied that the holder thereof
is of intemperate habits or of unsound
mind, or is otherwise unfitted to be
entrusted with such a firearm or
ammunition as may be mentioned in the
licence, certificate or permit or
- (b) requiring such person to deliver up such
licence, certificate or permit to him on
or before the day (not being less than
three days after delivery of such notice)
specified in such notice."

Section 37 which is referred to in section 36 gives the applicant a right
of appeal to the Minister against any decision of an appropriate authority.

Section 38 (5) states:

"The appropriate authority for the grant, amendment or revocation of any firearm user's licence or firearm disposal permit or firearm user's (Employee's) certificate shall be the chief officer of police for the parish or police division in which the applicant for such licence, permit or certificate resides or carries on business."

There was no issue joined as to the fact that the superintendent of police for the parish of Saint Andrew (Central) was the appropriate authority in the instant case.

Mr. Phipps Q.C. for the applicant submitted that the Revocation of a Firearm Licence is a judicial act which must be performed in accordance with the principles of natural justice. He further submitted that the principle of natural justice were not observed in the making of the Revocation Order and therefore the Order should be quashed.

In support of his submission Counsel for the applicant cited and relied upon a number of cases. It is my intention to examine the cases relied upon.

1. B Surinder Singh Kanda v Government of the Federation of Malaya 1962 A.C. P322.

The appellant, B Surinder Singh Kanda, was an inspector of police in the Royal Federation of Malaya Police. On July 7, 1958 he was dismissed by the Commissioner of Police on the ground that he had been guilty of an offence against discipline. Inspector Kanda brought an action in the High Court challenging that dismissal. Riley J. declared that his dismissal was void and of no effect. The government appealed. The Court of Appeal by a majority (Thomson C.J. and Hill J. with Neal J. dissenting) allowed the appeal and held that Inspector Kanda was validly dismissed. He appealed to the Privy Council. Two questions were raised in the appeal: (1) The first was whether the Commissioner of Police had any power to dismiss him. Inspector Kanda said that under the constitution the power rested only with the Police Service Commission: (2) The second question was whether the proceedings which resulted in his dismissal were conducted in accordance with natural justice. Inspector Kanda said they were not. For purpose of this

case I shall concern myself only with the latter question. It may be opportune at this stage to say that I disagree with Mr. Phipp's submission that the exercise of the power of Revocation by the appropriate authority is a Judicial Act. I am of the view and I so hold that it is a purely administrative Act.

Even if I am wrong in so holding it must be noted that in the case cited the governing article of the Constitution on the point viz article 135(2) stipulated that the officer could not be dismissed or reduced in rank without being given a reasonable opportunity to be heard. The decision therefore turned upon whether or not Kanda had been given a reasonable opportunity to be heard.

2. University of Ceylon v Fernando [1960] 1 All E.R. p. 631.

Fernando a student at the University of Ceylon was suspended from University examinations for a breach of examination rules he having acquired knowledge of the substance of or content of the examination paper in Zoology. A commission of Inquiry was set up to investigate the matter and two witnesses were questioned by a member of the Commission in the absence of the other members and in the absence of the student.

Again this decision was based upon whether or not the student had been given the opportunity to be heard.

3. R v. Hill Prison Board of Visitors, Ex parte St. German and others (No. 2) [1979] 3 All E.R. 545.

"In 1976 a riot broke out among the prisoners at a prison and serious damage was done to it. It was decided not to take criminal proceedings against the prisoners but to deal with them under the prison disciplinary procedure. They were accordingly charged with disciplinary offences under the Prison Rules 1964, which were made under s47(2) of the Prison Act 1952, and brought before the prison's board of visitors. Rule 49(2) of the rules provided that at such an inquiry the prisoner should be given a full opportunity of hearing what was alleged against him and of presenting his own case.

The prisoners applied for an order of certiorari to quash the findings of the board on the grounds that they had not been given an opportunity of presenting their cases in accordance with rule 49(2) and that the board had failed to observe

the rules of natural justice in that it had, inter alia, refused to allow them to call witnesses in support of their cases and had admitted and then acted on statements made during the hearing by the governor which were based on reports by prison officers who had not given oral evidence."

De Verteuil v Knaggs and Another [1918] A.C. 557.

4. The appellant, the owner of an estate in Trinidad, sued the respondents, the acting Governor of Trinidad and the Protector of Immigrants, for a declaration that an order made under s. 203 of the Immigration Ordinances for the transfer of the immigrants indentured on the estate was of no effect, and for an injunction.

On December 16, 1915, the acting Governor *ex parte*, and affording no opportunity to the appellant to make any answer or explanation, made an order for the removal of the indentured immigrants from La Gloria estate and for the transfer of their indentures to some other employer. The first intimation which the appellant received was in a letter of December 20, 1915, from the Protector of Immigrants to the Appellant's manager. After the receipt of the letter the Appellant and his manager sought and obtained a personal interview with the acting Governor on December 23, 1915. The acting Governor nevertheless ruled that the order made on December 16, would remain in force.

Section 203 of the Immigration Ordinance provides:

"If at any time it appears to the Governor, on sufficient grounds shown to his satisfaction, that all or any of the immigrants indentured on any plantation should be removed therefrom, it shall be lawful for him to transfer the indentures of such immigrants for the remainder of their respective terms of service to any other employer who may be willing to accept their services and pay the remaining indenture fees."

In the judgment of the court delivered by Lord Parmoor it was held that the power given by section 203 of the Immigration Ordinances Act of Trinidad to the Governor "on sufficient ground shown to his satisfaction" to transfer the indentures of immigrants from one employer to another cannot properly be exercised without inquiry; except in special

circumstances such as an emergency any person against whom a complaint is made must be given a fair opportunity to make a relevant statement, and to controvert any relevant statements made to his prejudice.

I have taken the trouble to set out extracts from these cases because I am of the view that a reading of all shows clearly that the court accepted that the functions which had to be performed in each and all of them were quasi-judicial.

However, careful examination of section 36 of The Firearms Act makes it plain that the function exercised by the appropriate authority is purely administrative.

Section 36(2) is in my view rather instructive because all it requires the appropriate authority to do upon the revocation of a licence, certificate or permit is to serve a notice in writing upon the holder specifying that the licence, certificate or permit has been revoked. It does not require the appropriate authority to give any reasons for the revocation.

It is also instructive to consider section 4 of the Regulations made under section 48 of The Firearms Act.

Section 4.

"Within fourteen days of the receipt of a notice of appeal the appropriate authority shall forward to the Minister a statement in writing, setting out the reasons for the decision from which the applicant is appealing together with a copy of every other document relating thereto."

A comparison of the two sections as worded makes clear the intention of the Statute namely that the appropriate authority is only required to give reasons to the Minister in order to enable him to properly review the decision by way of appeal.

For the reasons set out herein I would ordered that the motion be dismissed.

ELLIS J.

I agree.

PANTON J.

I AGREE.