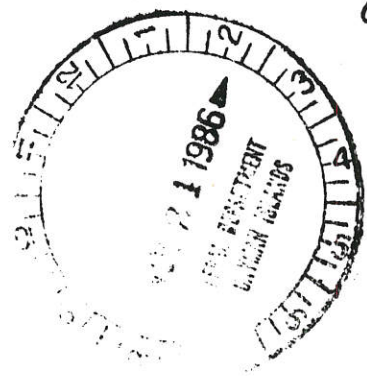


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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEROGE TOWN, GRAND CAYMAN
BEFORE THE HON. MR. JUSTICE HULL

CAUSE NO: 333/85



BETWEEN: LEON CUMMINGS LAZZARI APPLICANT

AND: THE DISTRICT COMMISSIONER OF THE LESSER ISLANDS RESPONDENT

Mr. Ritch for the applicant.

Mr. Smellie for the respondent.



REASONS FOR JUDGMENT

Mr. Lazzari is a cattle farmer who lives on Cayman Brac. Until 24th April 1985, he held firearm licences for a Colt .32 pistol and a 12 gauge shotgun.

On that day, the District Commissioner informed him in writing that pursuant to section 28(2) of the Firearms Law and to a police report of 23rd April alleging that Mr. Lazzari had threatened harm to persons with his weapons, the licences had been revoked. The District Commissioner also by the same letter required him to deliver up the licences not later than 3rd May 1985 and to surrender the firearms to the officer-in-charge of the Cayman Brac Police Station. No time limit was specified in the letter for handing over the guns. It ended by informing Mr. Lazzari that under section 29 of the Law, he had a right of appeal to the Governor, against the District Commissioner's decision, within 21 days.

The facts leading up to this, so far as they were disclosed, were really not contentious. What had happened was that on 21st February 1985, Police Constable E. Tibbets had given Mr. Lazzari a verbal warning.

On 18th April, Inspector Kenroy Lumsden, the officer-in-charge, interviewed Mr. Lazzari and on 23rd April the Inspector made the report to the District Commissioner referred to above. This was in writing.

The report recited various allegations made by six members of the public concerning Mr. Lazzari. The affidavits do not disclose the details of the allegations nor the time or times at which they were made, but neither side challenged the evidence for the other in this respect. (subject however to Mr. Lazzari's complaint that he was never given details.)

Done by John West and Alvin P. ...

From the affidavit of the District Commissioner, Mr. Ryan, what is clear is that Constable Tibbets' warning had stemmed from allegations, which Mr. Lazzari at that time had denied. It is also clear that when Inspector Lumsden interviewed him, he had put allegations to him which Mr. Lazzari denied.

It does appear from Mr. Ryan's affidavit, though it is not entirely clear, that the two police officers were concerned with the same allegations, which is the interpretation more favourable to Mr. Lazzari because otherwise the narrative would be one of a series of two or more allegations at different times. I proceeded on this basis. The clear inference from Mr. Ryan's affidavit and the letter he had sent to Mr. Lazzari on 24th April was that the allegations, or at least one of them, were that Mr. Lazzari had threatened people with his firearms. Mr. Lazzari, however, has in his affidavit denied that Mr. Ryan has given him any details of the allegations referred to in the letter of 24th April.

Mr. Ryan said that the report he had received from Mr. Lumsden was to the effect that although Mr. Lazzari denied the allegations put to him, the Inspector had accepted them. The District Commissioner said he accepted the report in substance, and proceeded to act on it because he saw no point in pursuing the matter further with Mr. Lazzari.

The latter went ahead and exercised his right of appeal to the Governor. On 24th May he was informed in writing that the Governor in Council had upheld Mr. Ryan's decision.

Mr. Lazzari subsequently obtained leave to seek an order of certiorari quashing the orders of the District Commissioner revoking the licences and an order of mandamus for the return of the firearms to him. The application was contested. The essence of his case was he should have been given prior notice and the opportunity to be heard before the District Commissioner took any decision to revoke the licences. He also complained that Mr. Ryan had not given him any details of the allegations referred to in the letter of 24th April.

On 27th March 1986, I refused the application and said I would give reasons in writing if required, which I now do, Mr. Lazzari having decided on 1st August to appeal against my decision.

By virtue of section 3(1) of the Firearms Law, a person must hold a Firearm Import Permit in order to import any firearm into the Cayman Islands, and by virtue of section 15, a person may not be in possession of a firearm except under and in accordance with the terms of a Firearm User's Licence. The appropriate licensing authority in Cayman Brac is the District Commissioner.

Section 21(1) reads: "Subject to the provisions of section 20 and of subsections (2), (3), (4) and (5) of this section and of section 29, the grant of any licence or permit shall be in the absolute discretion of the appropriate authority."

Subsection (2) provides that the licensing authority may not grant a licence or permit to a person who -

- "(a) is of intemperate habits, liable to fits of uncontrolled temper, notoriously careless in the use of firearms, is of unsound mind; or
- "(b) is for any reason unfitted to be entrusted with a firearm."

This is an absolute restriction.

The power to revoke licences and permits is contained in section 28 which states:

"28. (1) Subject to the provisions of section 29, and of subsection (2), the appropriate authority may in his absolute discretion revoke any licence or permit under this Law.

"(2) The appropriate authority shall upon being required so to do by any person who he is satisfied is the owner of any firearm in respect of which any Firearm User's Licence has been granted to any other person, revoke such Firearm User's Licence.

"(3) Where the appropriate authority revokes any licence or permit under this section, he shall give notice in writing to the holder thereof -

- "(a) specifying that he has revoked such licence or permit;
- "(b) requiring such person to deliver up such licence or permit to him on or before the day (not being less than three days after the date of the receipt of such notice by such person) specified in such licence.

"(4) Whoever on being required so to do under paragraph (b) of subsection (3) fails to deliver to the appropriate authority such licence or permit on or before the day specified in such notice is guilty of an offence and liable on summary conviction to a fine not exceeding \$20 or to imprisonment for a term not exceeding thirty days."

And section 29, which confers a right to appeal against revocation, says:

"29. (1) Subject to the provisions of this section, any aggrieved party may appeal to the Governor against any decision of an appropriate authority -

- "(a) refusing to grant any licence or permit; or
- "(b) amending or refusing to amend any licence or permit; or
- "(c) revoking or refusing to revoke any licence or permit.

" (2) Notice of appeal under this section shall be given to the Governor in the prescribed form within twenty-one days of the date on which the aggrieved party first has notice of the decision against which he desires to appeal and shall be accompanied by the prescribed fee.

" (3) Every appeal under this section shall be considered by the Governor at such time and in such manner (whether in the presence or in the absence of the aggrieved party) as the Governor may in his absolute discretion think fit.

" (4) Upon the determination of any appeal under this section the Governor shall give to the appropriate authority against whose decision such appeal is taken such directions as the Governor may, in his absolute discretion, think fit.

" (5) In this section the expression 'aggrieved party' means the applicant for or the holder of any licence or permit in respect of the refusal to grant, the amendment or the revocation of which any appeal is taken and the owner of the firearm to which such application, licence or permit relates.

" (6) The provisions of this section shall not apply to any licence or permit -

" (a) the appropriate authority for the grant of which is the Governor; or

" (b) the grant of which is subject under this Law to the prior approval of the Governor."

On behalf of Mr. Lazzari, Mr. Ritch submitted that the District Commissioner, in acting under section 28(1), must observe the rules of natural justice. He said that the audi alteram partem rule applied, so that the District Commissioner ought to first have given notice to Mr. Lazzari, stating that he proposed to consider revoking the licences and specifying the grounds on which he was going to do so. He should also have invited Mr. Lazzari to make representations and allowed him the opportunity to do so. In support of these propositions, he referred me to (inter alia) Hood Phillips on Constitutional and Administrative Law and cited the cases of Ridge v. Baldwin [1963] 2 All E.R. 66 and Maria Audrey-Smith v. The Commissioner of Police a decision of the Cayman Islands Court of Appeal (Civil Appeal 4/79).

Mr. Ritch submitted that although the owning of a firearm was a privilege it was one that related to property. Having been granted licences by the licensing authority, Mr. Lazzari had obtained firearms on the strength of them. The revocations therefore deprived him of property.

He said that the words "in his absolute discretion" did not exclude judicial review of the District Commissioner's decision and that the cases showed that the old distinction between administrative functions and judicial or quasi-judicial functions had been eroded: the basis

to be heard, in cases where national security or the public peace was involved, the right to be heard should be subordinated to it. In this case it had not been submitted for the applicant that the severity of the sanction (by which I took him to mean the revocation) was a very pressing thing. Any slur involved was not of a serious nature. Because the discretion was very wide, the Court should not review it.

Mr. Smellie referred to De Smith's Judicial Review of Administrative Action, 4th Edition, at pages 175 to 194. He also referred to Ackers v. Taylor [1974] 1 All E.R. 771 in support of his arguments.

Section 28 does not itself state in terms that before revoking a licence, the licensing authority must give notice of his intention to the holder, nor that it must tell him the grounds on which it is proposing to do so, nor to give him an opportunity to first be heard. Subsection (1) is very broadly framed. I agree with Mr. Ritch that the formula "in his absolute discretion" does not necessarily exclude review by the courts in any situation, but I do not think this case turns on that point. The section does address itself to the issue of notice. Once the licence is revoked, the authority must in writing tell the holder that he has taken this step and he must require him to deliver up the licence. It would follow that the firearm must also be surrendered because once the licence is revoked, the former holder cannot lawfully keep it. So the legislature addressed the question of notice to the holder but only after the event, and one obvious purpose of this is of course so that he will know he may not lawfully keep the firearm.

I do not think it would be correct, however, in the context of this particular section, to give it the common law gloss which Mr. Ritch advocated. The discretion to revoke, so far as its wording runs in favour of the holder, is couched in the same words as the discretion to grant a licence in section 21(1). I agree with Mr. Smellie that if there is any element of a proprietary interest in a firearms licence, it is nevertheless much closer to a pure privilege than are a taxi driver's licence and many other kinds of licence. The wording of sections 21(1) and section 28(1) are to be contrasted with that in subsections (1) and (2) of section 43 of the Traffic Law (under which taxi licences are granted and revoked). In the latter section, the discretions of the Commissioner of Police are not described as "absolute". Criteria are laid down. In the one case, if they are met, the Commissioner must grant a licence. In the other, he may only revoke it if specified criteria are established. I think I am entitled to take some notice of the way in which firearms are generally viewed by the public and by the authorities in these Islands. There is of course certainly no accepted attitude that citizens have some right to carry weapons. The Firearms Law itself clearly reflects (and

for the application was that the District Commissioner had a duty to act fairly, and had not done so.

Citing R. v. Gaming Board for Great Britain ex parte Benaim [1970] 2 Q.B. 417 he contended that that case was authority that in every case involving the grant or revocation of a licence, there was a prior right to be heard. (I understood him to be relying on this to the extent that the licence related to something of economic value.) He said that it was not accepted that Mr. Lazzari had been made aware that his licences were at risk, and no criminal charge had ever been brought against him in respect of any allegations concerning the firearms. Accepting that the possession of firearms was a more serious matter than the operation of a taxi (the subject matter of Maria Audrey Smith's case), Mr. Ritch said that if the District Commissioner or the Police had considered that the allegations were of a grave nature, a criminal prosecution ought to have been brought. This had not been done. There could be any number of motives for the allegations against Mr. Lazzari.

The seriousness of the possession of a firearm was a matter with two sides to it. Mr. Lazzari had been considered responsible enough to be allowed to have them in the first instance; It followed that the licences should not have been revoked without giving him the opportunity to answer the allegations at a due inquiry. The District Commissioner had a duty to exercise his discretion properly. He had to take into account all relevant factors. It was not enough to act on the word of the Police. The identity of the six persons and the nature of the threat or threats had not been disclosed to Mr. Lazzari, and it was clear that they were not considered sufficient to justify criminal proceedings. By relying on the Police report, the District Commissioner was invalidly delegating his responsibility. He ought to have applied his mind to the issue and to have acted fairly.

For the District Commissioner, Mr. Smellie submitted that there are circumstances in which a statutory discretion is so widely framed that the audi alteram partem rule does not apply (always assuming good faith).

The thrust of his submission, if I may summarise it in this way, was that the discretion in section 28(1) of the Firearms Law to revoke a licence is widely framed. Moreover, Maria Audrey Smith was concerned with a licence that would enable a person to earn a living. This was not the case here. The subject matter was different. The licence did not relate to an interest that was fundamental to Mr. Lazzari or his liberty. It bordered on being purely a privilege. Mr. Smellie said that while accepting that where the revocation of a licence would cast an aspersion on the holder, it would almost invariably involve a right

reflected at the time to which these event relates) the concern of the legislature that their possession and use should be strictly controlled. That undoubtedly reflected public concern. Section 21(2) spelled out specific cases in which individuals were not to be granted licences. Those referred to in paragraph (a) of that subsection are obvious ones, but I also think its division into two paragraphs was not accidental. Paragraph (b) was, I think, intended to say then the test was whether a person could be entrusted with a gun and to emphasize that if for any reason he could not be, he was not to have one.

Allowing for Mr. Ritch's submission that generally, the revocation of a licence (once granted) may be looked at more critically than the initial application for it, I think that the use of the same formula in sections 21(1) and 28(1), in describing the discretion in each case, is significant, as is in my view the fact that both of them make express provision for notice by the licensing authority after the event coupled with the omission to mention it before the event, and the fact that a specific subsequent right of appeal to the Governor is provided. In my view the policy underlying sections 28 and 29 is that that firearms are inherently dangerous and that situations may arise in which the need to maintain the public peace and public safety means that the licensing authority must be able to act swiftly in anticipation of potential danger to recover a firearm from a licensee. I think this is why the licensing authority is given a very wide discretion and that the correct interpretation is that if in good faith he thinks it proper to do so, he may revoke a licence without prior notice, and that the recourse which the owner then has is to appeal to the Governor, but only after the event and without being relieved of the obligation pending the outcome of the appeal to turn in his revoked licence and the firearm.

It is true that in section 29(3) of the Law, relating to the procedure on appeal, the legislature has expressly said that the Governor may consider an appeal in the absence of an aggrieved party. That might be said to raise an inference that the licensing authority should give a holder a hearing. On balance, I do not think so, however. There is obviously a greater need for swift action at the stage at which the initial decision to revoke is taken. I think the proper inference is that at the stage of an appeal to the Governor, by which time any danger concerning the firearm will have been prevented, there would arguably be a stronger case for granting an audience, but that section 29(3) was so expressed to make it clear that even then there was no right to be personally present.

Another ground for complaint was that the District Commissioner had relied on the assessment of the Police and so had failed to exercise his own discretion. It is not in dispute that he did consider the Inspector's

assessment. In my view, on the facts of this case, that was not objectionable. It was not shown that he had completely subordinated his own judgment to that assessment. I think he was entitled to take it into account. Mr. Smellie did not try to argue that a decision to revoke could not be revoked on a case where bad faith was established and there may be other cases in which an authority could be shown to have acted unfairly so as to render itself liable to review, but the nature of the discretion in this case is in my view such that a wide element of executive judgment must be involved. I do not think the licensing authority is precluded from considering a Police assessment, or event from relying on it to a substantial extent if in his judgment he thinks it reliable.

For these reasons, I refused the application.



D. Hull

David Hull
Puisne Judge

21 November, 1986.