

1937

Present : Abrahams C.J.

In re APPLICATION FOR A WRIT OF *Mandamus* ON THE ASSISTANT
GOVERNMENT AGENT, UVA.

S. C. No. 578.

Firearms Ordinance—Refusal of G. A. to renew gun licence—Reasons for refusal—No duty to hear applicant—Writ of mandamus—Ordinance No. 33 of 1916, s. 6.

A Government Agent must exercise his discretion in granting or withholding the grant of a gun licence in a judicial manner.

Once a licence has been granted its renewal can be refused only on the grounds mentioned in section 6 of the Firearms Ordinance.

Where the Government Agent has given his reasons why he deemed it necessary for the security of the public peace to refuse to renew a licence, the decision cannot be canvassed by a writ of *mandamus*.

The Government Agent is not bound to hear the party affected before he decides to refuse to renew a licence.

THIS was an application for a writ of *mandamus* on the Assistant Government Agent of the Province of Uva.

S. P. Wijewickrema, for petitioner.

M. F. S. Pulle, C.C., for the Assistant Government Agent.

14 M. & W. 43.

October 15, 1937. ABRAHAM'S C.J.—

The applicant in this matter obtained from my brother Soertsz a rule for a writ of *mandamus* on the Assistant Government Agent of the Province of Uva. The applicant's petition stated that the Assistant Government Agent had unlawfully refused to renew his gun licence for the year 1936.

The applicant stated that when he applied for a renewal of the licence he was informed by the Assistant Government Agent that he was not considered to be a fit and proper person to possess a gun, and on asking for further reasons he received no reply although he wrote on several occasions covering a period which carried him well into 1936, so that, on the face of it, it would appear that he could not in any event obtain an order from this Court for the renewal of the licence for the year which has already expired, but it is not necessary to go into this point, and I propose to deal with the case on its merits.

Now under the Firearms Ordinance, No. 33 of 1916, which is the relevant enactment in this case, the licensing authority in his discretion may refuse to issue a gun licence (section 4), but once this licence has been granted the Government Agent can only cancel it or refuse to renew it if certain circumstances exist. These are set out in section 6 and are as follows :—

“ (a) When the holder of such licence or permit is convicted of any offence under this Ordinance, or under any of the sections of the Ceylon Penal Code enumerated in schedule B ; or

(b) When (for reasons to be recorded by him in writing) the Government Agent deems it necessary for the security of the public peace to withdraw such licence or permit.

The decision of the Government Agent shall be final and conclusive.”

A writ of *mandamus* is a writ discretionary on the part of this Court. The applicant for a writ must show that the officer against whom the remedy is prayed has infringed a right, or, to put it another way, that an officer who is under a duty to do something on his behalf has refused to do so. It is clear from the Ordinance that the grant of a gun licence is not a mere privilege to be exercised at pleasure by some public officer. It ought not to be withheld from any member of the public unless for good cause. The Government Agent must exercise his discretion in granting or withholding the grant in a judicial manner, though it is not necessary for me to discuss what consideration should actuate him in withholding the grant.

Once the licence is granted, it will be observed by the wording of section 6 that the powers of the Government Agent in refusing to renew are narrower than those referred to in respect of the grant of the licence. The causes for which he can refuse are clearly expressed, and if those causes do not exist, in my opinion it would be an infringement of his duty to refuse to renew.

In his affidavit the Assistant Government Agent annexes the reasons which actuated the refusal. They are contained in a report by the Inspector of Police to the Government Agent of the Province. This report mentioned that the applicant had been convicted of shooting in so

negligent a manner as to endanger human life, that it had been said on the estate where he was employed that he created a disturbance and threatened to shoot some labourers with a gun, and that in the opinion of the proprietor of the estate it was unsafe to give him a gun as he was a very hard drinker, had a bad temper and was most quarrelsome, and that the dispenser on a neighbouring estate said that if he was allowed a gun there was bound to be murder, and that there were two factions living in the lines on the estate who were constantly quarrelling and on one occasion actually fought.

It appears from this statement of reasons that the Government Agent did deem it necessary for the security of the public peace to refuse to renew the licence, and apart from the provision as to the finality of his decision I do not see how his reasons can be questioned as it is for him and not for me to say what he thinks necessary.

The applicant however points out that he has been given no opportunity to protest to the Government Agent that the information upon which he is acting is unreliable, and he urges that the discretion vested in the Government Agent to come to a definite conclusion as to what is necessary in the public safety could not be said to have been properly exercised where he has decided *ex parte*. No doubt there are cases where the exercise of discretion is the essential point for decision, in which the Court has held that a party affected by the decision ought to have been given an opportunity to make representations on the other side, but I am by no means sure that in the circumstances it is required of the Government Agent in his consideration of what is for the public security to hear the other side, if, in his opinion, the information that he has had is sufficient. There is a sanctity about the public safety which is more important than the possession of a gun by an individual. It is a great responsibility that is placed upon the officer, and it might very well be that to hold an inquiry in which the applicant for the gun licence is informed of the people upon whose statements of opinion the licence was likely to be refused might lead to some act of violence one way or the other and precipitate the very mischief which the Government Agent is seeking to avoid.

However, if that is not so, and without the words relating to the finality of the Government Agent's decision he would be bound to hear the applicant, I think he is absolved from doing so by the order of the legislature that his decision should be final and conclusive. These words are either superfluous or they must be given due effect to. If they are superfluous, of course, then in their absence the Government Agent is not obliged to hear a person seeking the renewal of a licence, but if the fact is otherwise, then I consider that their presence absolves him from the necessity of doing any more than coming to a genuine conclusion on the information that he has that the security of the public peace will be affected by the renewal of the licence. Therefore the only consideration for this Court is whether on the reasons that the Government Agent reported he did deem it necessary for the security of the public peace to refuse the renewal. I think he did and I discharge the rule.

Rule discharged.