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RANJIT SINGH ETC. ETC.

v.

B

UNION OF INDIA

September 26, 1980

[V. R. KRISHNA IYER AND R. S. PATHAK, JJ.]

C

Constitution of India 1950, Arts. 19(1) (g) and 32 and Arms Act 1959—Petitioner granted licence to manufacture a specified number of guns—Curtailment of quota—Whether valid—Whether laches in invoking the jurisdiction of the Court.

In 1950, the State Government issued a manufacturing licence renewable every year to the petitioners for the manufacture by hand of a specified number of guns per month. The guns were however not proof-tested.

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After the Arms Act 1959, came into force, the government insisted that the guns manufactured should undergo proof-testing. Pursuant to that condition in 1960, the petitioners installed machinery and plant, by making substantial investment of funds. From 1964, the Government of India, reduced the monthly quota of guns.

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The petitioners in their writ petitions under Article 32 alleged that this reduction had resulted in considerable hardship to them because of the fixed overhead costs which could not be avoided. They also alleged that though in the case of a number of other such manufacturers quotas were restored, in their cases, the Government refused to restore the quotas.

The Union of India, however, denied the allegation of arbitrariness, and stated that: (a) what was done was pursuant to the Industrial Policy Resolution of 1956 which envisioned an exclusive monopoly in the Central Government in the matter of manufacturing arms and ammunition and that in fixing the quota the manufacturing capacity of a concern was not a determining factor; (b) there is no fundamental right under Article 19(1)(g) of the Constitution to carry on the manufacture of arms; and (c) there was laches on the part of the petitioners.

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Allowing the writ petitions,

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HELD: (a)(i) Any curtailment of the quota must proceed on the basis of reason and relevance. The Government is entitled to take into consideration the requirements of current administrative policy pertinent to the maintenance of law and order and internal security. If all relevant factors are not considered, or irrelevant considerations allowed to find place, the decision is vitiated by arbitrary judgment. [850 F; E]

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In the instant case the Government of India had not taken into careful consideration the several elements necessary for forming a decision on the

A quota permissible to each of the petitioners. That should be done and for that purpose the petitioners would be entitled to place before the Government a fresh and complete statement of their case, with supporting material, to enable the Government to reach a just decision. [850G-H]

(ii) The Industrial Policy Resolution envisaged a prohibition against an increase in the quota of guns, not its curtailment. No objection could be B taken to the government's instructions on the subject. The other factors governing the fixation of the actual quota are the production capacity of the factory, the quality of the guns produced and the economic viability of the unit. The Industrial Policy Resolution contains a specific commitment to permit the continuance of the factories which were functioning for several years earlier. [850C; D-E]

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(b) The Arms Act 1959, expressly contemplates the grant of licences for manufacturing arms and an applicant for a licence is entitled to have it considered in accordance with the terms of the statute and to press for its grant on the basis of the criteria set forth in it. [851A-B]

(c) The licences are granted for specific periods with a right to apply for D renewal on the expiry of each period. Each renewal constitutes a further grant of rights and it is open to the applicant to show on each occasion that the quota governing the preceding period should be revised in the light of present circumstances. [851C]

In the instant case the petitioners had been continuously agitating for the restoration of their quota. They are, therefore, not guilty of laches and are E entitled to relief. [851D]

ORIGINAL JURISDICTION : Writ Petition Nos. 833-835 of 1979.

(Under article 32 of the Constitution)

F *P. Parmeswara Rao, G. D. Gupta* and *Ashwani Kumar* for the Petitioners.

U. R. Lalit and *Miss A. Subshashini* for the Respondent.

The Judgment of the Court was delivered by

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PATHAK, J.—In these three petitions under Article 32 of the Constitution, the petitioners separately pray for a restoration of the quota originally granted to them in their respective licences for the manufacture of fire-arms.

H Writ Petition No. 833 of 1979 has been filed by Ranjit Singh who alleges that his father Pritam Singh commenced the business of manufacturing guns in 1950 under a licence issued by the Government of Jammu and Kashmir. The licence permitted him to manufacture

30 guns per month. The guns were manufactured by hand and were not proof-tested. The licence was renewed annually and the quota was maintained throughout. Later, with the enactment of the Arms Act, 1959, the licence was issued under that statute. The Government insisted that the guns manufactured by Pritam Singh should undergo proof-testing, and for that purpose it became necessary for the manufacturer to purchase and install the necessary machinery and plant. The machinery was installed shortly after 1960 on a substantial investment of funds raised with great difficulty and, it is said, in the result the factory is now capable of manufacturing 50 guns per month. Until the year 1963, the licence in favour of Pritam Singh was renewed by the Government of Jammu & Kashmir for the full quota of 30 guns. But with effect from the year 1964 the Government of India began to issue the licences. The quota was reduced from 30 guns to 10 guns per month, and it is alleged that this has resulted in considerable hardship in view of the financial liability and the establishment expenses suffered pursuant to the installation of the machinery. On the death of Pritam Singh in 1969, the business was carried on by the petitioner and his mother, and the licence now stands in their names. Several representations were made to the authorities for the restoration of the original quota but there was no satisfactory response. The petitioner claims that his plea for the restoration of his original quota has been supported by the State Government. The petitioner cites a number of cases where the quota reduced in the case of other manufacturers has been restored and relies on other material to show that the determination of his quota has been arbitrary.

Writ Petition No. 834 of 1979 has been filed by Bachan Singh. The facts incorporated in the petition run a materially similar course, except that the original quota granted to the petitioner consisted of 50 guns per month and has now been reduced to 5 guns per month.

The petitioner in the third Writ Petition, No. 835 of 1979, is Uttam Singh. In his case, the original quota of 50 guns a month has been reduced to 15 guns a month. Here again, the pattern of facts is substantially similar to that traced in the other two writ petitions.

In opposition to the writ petitions, the Union of India which is the sole respondent, relies on an Industrial Policy Resolution of 1956 which envisions an exclusive monopoly in the Central Government in the matter of manufacturing arms and ammunition while permitting existing manufacturers in the private sector to continue to carry on their business on a limited scale. It is asserted that in fixing a quota the manufacturing capacity of a concern is not a determining factor,

A and it is denied that the Government has acted arbitrarily. It is also urged that the petitioners should be denied relief on the ground of laches.

The Union of India rests its case on the Industrial Policy Resolution of 1956. Under that Resolution, however, it was decided that no objection would be taken to the continuance of the manufacture of arms and ammunition by existing units in the private sector already licensed for such manufacture provided the operation of those units was strictly restricted to the items already manufactured by them and that no expansion of their production or increasing the capacity of the items already produced was undertaken without the prior sanction of the Government of India. Plainly, what was envisaged was a prohibition against an increase in the quota, not its curtailment. Purporting to implement the Industrial Policy Resolution, the Government issued instructions that the quota fixed should be such that the market was not flooded with arms and ammunition. No objection can be raised to that. It is as it should be, but with that primary consideration defining the outer limits, there are other factors which govern the fixation of the actual quota. There is the production capacity of the factory, the quality of guns produced and the economic viability of the unit. The Government is bound to keep these in mind while deciding on the manufacturing quota. There is need to remember that the manufacture of arms has been the business of some of these units for several years and the Industrial Policy Resolution contains a specific commitment to permit the continuance of those factories. On the other side, the Government is entitled to take into consideration the requirements of current administrative policy pertinent to the maintenance of law and order and internal security. Any curtailment of the quota must necessarily proceed on the basis of reason and relevance. If all relevant factors are not considered, or irrelevant considerations allowed to find place, the decision is vitiated by arbitrary judgment. On the material placed before us, we are not satisfied that the Government of India has taken into careful consideration the several elements necessary for forming a decision on the quota permissible to each of these petitioners. We are of opinion that it should do so now. And, for that purpose, the petitioners should be entitled to place before the Government a fresh and complete statement of their case, with supporting written material, to enable the Government to reach a just decision in each case.

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We need not, in the circumstances, consider the other grounds on which the petitioners claim relief.

On behalf of the Government it is urged that there is no fundamental right under Article 19(1)(g) of the Constitution to carry on the manufacture of arms. That contention is disposed of shortly. The Arms Act, 1959, expressly contemplates the grant of licences for manufacturing arms. An applicant for a licence is entitled to have it considered in accordance with the terms of the statute and to have for its grant on the basis of the criteria set forth in it.

The other contention on behalf of the Government is that the petitioners are guilty of laches. We are not impressed by the contention for the reason that the licences are granted for specific periods with a right to apply for renewal on the expiry of each period. Each renewal constitutes a further grant of rights and it is open to the applicant to show on each occasion that the quota governing the preceding period should now be revised in the light of present circumstances. Besides, the petitioners have been continuously agitating for the restoration of their quota. Having regard to the peculiar circumstances of these cases, we are not inclined to deny them relief.

Accordingly, we allow the writ petitions and direct the respondent Union of India to reconsider the manufacturing quota fixed in the case of each petitioner after allowing a reasonable period to the respective petitioners to set forth their case on the merits, with such supporting written material as they may choose to place before it.

N.V.K. *Petitions allowed.*