1968 *Present :* **Weeramantry, J., and Wijayatilake, J.**

P. B. DISSANAYAKE, Petitioner, *and* I. O. K. G. FERNANDO and another, Respondents

S. C. 132/67—Application for Writs of Certiorari and Mandamus

Firearms Ordinance (Cap. 182)—Sections 6 (1) (b), 6 (1) (c), 6 (1) (d)—Licence to use a gun—Power of Government Agent to withdraw the licence—Communication of reasons not necessary—Certiorari—*Delay in application—Reasons must be set out.*

(i) Section 6 (i) (*b*) of the Firearms Ordinance reads as follows :—

"A Government Agent may by notice served upon the holder thereof withdraw any licence or permit issued under this Ordinance 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."

Held, that, when a Government Agent withdraws the licence issued to a person to use and possess a gun, Section 6 (1) (*b*) imposes no requirement on him to communicate to the licence holder the reasons which he may record.

(ii) Where there has been delay in seeking relief by way of *Certiorari,* it is essential that the reasons for the delay should be set out in the papers filed in the Supreme Court.

APPLICATIONS for writs of *certiorari* and *mandamus.*

Nihal Jayawickrema, for the Petitioner.

V. C. Gunatilaka, Crown Counsel, for the 1st Respondent.

Cur. adv. vult.

September 25, 1968. WEERAMANTRY, J.—

The petitioner, a Grade I teacher and the Head Master of a Government School, was the holder of a licence to possess and use a single barrel breach loading gun from the year 1950.

The first respondent, the Government Agent within whose local jurisdiction the petitioner resided at the material time, by a letter dated 4th December 1965. withdrew the licence issued to the petitioner to use and possess this gun. This action of the first respondent was stated to be in the exercise of the powers vested in him under the provisions of sections 6 (1) (*b*) and 6 (1) (*d*) of the Firearms Ordinance, Cap. 182.

The petitioner contends that this action of the first respondent is contrary to law and not in conformity with the provisions under which he purported to act inasmuch as the requirements of neither section 6 (1) (*b*) nor section 6 (1) (*d*) have been satisfied. On this basis the petitioner seeks a Writ of Certiorari quashing the decision of the first respondent and a Writ of Mandamus on the 2nd respondent renewing the licence issued to the petitioner to use and possess the gun for the year 1967 and directing him to return the gun, which the petitioner had surrendered to the first respondent in deference to his orders.

The petitioner stresses in particular the phraseology of section 6 (1) (*d*) which permits the Government Agent to withdraw a licence if *he is satisfied* that the possession and use of the gun by its holder is dangerous to the life or property of any other person or persons. In contrast to this language, section 6 (1) (*b*) enables the Government Agent to act if *he deems it necessary* for the security of the public peace to withdraw such licence.

The submission based on this difference in phraseology is that section 6 (1) (*d*) requires that the Government Agent be satisfied after due inquiry into the existence of an objective state of affairs, namely that the possession and use of the gun by its holder is dangerous. On the other hand section 6 (1) (*b*) only requires the Government Agent to deem it necessary, involving therefore no finding of fact by him and imposing a requirement of a purely subjective nature.

The decision under section 6 (1) (*d*) is therefore, in the petitioner's contention, a judicial or quasi-judicial one, and on this basis a Writ of Certiorari is sought to quash the order in so far as it purports to be based on section 6 (1) (*d*).

In regard to section 6 (1) (*b*) the decision of the Government Agent is impugned on the basis that this section must be read as containing a requirement that the reasons recorded by the Government Agent should be communicated to the licence holder. This procedural requisite not having been complied with, the order in so far as it purports to be made under section 6 (1) (*b*), is said to be irregular and invalid.

It is submitted for the petitioner, and the Crown does not contest this position, that there was no communication to the petitioner of the reasons for the decision of the Government Agent. The Crown contends, however, that the Government Agent has in fact recorded reasons for his decision and that the language of section 6 (1) (*b*) imposes no requirement on the Government Agent to communicate to the licence holder the reasons which he may record.

I shall deal first with this objection raised in regard to section 6 (1) (*b*) as it is the simpler of the two bases on which the order is attacked.

It is apparent that section 6 (1) (*b*) does not specifically require the Government Agent to convey to the petitioner the reasons he records. It is particularly important to note that section 6 (1) (*b*) deals with the case where the security of the public peace is involved and one can well visualise situations where a Government Agent, finding it necessary to act under this provision, has good reason to consider it inexpedient to communicate or divulge the grounds of his action to the licence holder. Government Agents in taking this kind of decision no doubt act upon credible information which they receive, information which may emanate from sources to reveal which at that particular stage may tend to prevent rather than to promote the public peace which this provision is designed to foster.

The petitioner contends that the requirement that reasons be recorded in writing is meaningless unless it be construed as requiring a communication of such reasons to the licence holder. It is easy however to appreciate the need for such a recording of reasons, for it is essential that there should be a permanent record of the reasons underlying the order. Without such a record it would not be possible for the order to be reviewed by any higher administrative authorities who may have occasion to consider it, nor would the successor of the official who made the order have any guide as to why it was made. The need for a statutory requirement that these reasons be recorded can therefore well be understood in the context of internal and purely departmental requirements. Such a record would also be essential in the event of any further application by the licence holder at any future point of time.

We do not therefore feel justified, in the absence of express language in the section itself, in reading the section as imposing on the Government Agent the duty of communicating his order. Had this been the intention of the statute this could certainly have been expressed with greater clarity as for example by using phraseology such as " for reasons to be recorded in writing and communicated to the licence holder. " To read this section in the sense contended for by the petitioner is to limit its operation by restricting the Government Agent's right to act to an extent beyond what the statute contemplates, and it is a settled principle that words of limitation ought not to be read into a statute if this can be avoided[1].

[1] *Craies, Statute Law, 6th ed. p. 176.*

It is not without significance that the legislature has used in section 6 (1) (*b*) language making the decision a purely subjective one, and requiring only that the Government Agent should deem it necessary for the security of the public peace, whereas by contrast in section 6 (1) (*c*) and 6 (1) (*d*) he is required to be satisfied objectively in regard to the existence of a particular state of fact. It is also not without significance that the situation of a danger to the public peace, contemplated by section 6 (1) (*b*), is one of potentially graver import and possibly greater urgency than the situations contemplated by sections 6 (1) (*c*) and 6 (1) (*d*).

Should it be the position in a given case that a Government Agent acts perversely or maliciously without in fact deeming such action necessary for the security of the public peace there may be other reliefs open to an aggrieved licence holder, but no such ground of complaint exists or has been urged upon the present application.

In the result no valid grounds of objection exist in regard to the action the Government Agent has taken in terms of section 6 (1) (*b*).

If the petitioner is to succeed in his present application he must satisfy this Court that there has been non-compliance with the requirements of both sub-sections under which the Government Agent has purported to act. So long, therefore, as the Government Agent was entitled to act under 6 (1) (*b*) the question whether he was entitled also to act under 6 (1) (*d*) becomes purely academic. I do not propose, therefore, to go into the implications of the argument that Certiorari lies in respect of 6 (1) (*d*) and the many interesting and difficult questions it raises regarding the attributes of a judicial or quasi-judicial decision. Indeed there may well be substance in the petitioner's contention, though we express no opinion on this matter, that in regard to the latter sub-sections the Government Agent cannot act unless satisfied upon an inquiry of a quasi-judicial nature.

Inasmuch as the petitioner fails to satisfy us in regard to the illegality of the Government Agent's action under section 6 (1) (*b*), his petition that the Government Agent's decision be quashed must clearly fail.

The application for a Writ of Mandamus for the return of the gun must also necessarily fail inasmuch as its issue is dependent on the petitioner being successful in his application to quash the order of the Government Agent.

Another ground on which the petitioner would in any event be faced with difficulty is that although the order of the Government Agent was communicated to him in December 1965 he did not seek relief from this court till March 1967. It is submitted that this delay has arisen in consequence of an attempt by the petitioner to have this matter reconsidered departmentally. However, where the extraordinary process

of this Court is sought after such a long lapse of time, it is essential that the reasons for the delay in seeking relief should be set out in the papers filed in this Court.

Before parting with this judgment we feel constrained to observe that this Court expects of public officers to whom wide powers have been entrusted by the Legislature, the utmost fairness and responsibility in the performance of the duties so committed to them. This view, often expressed by this Court, bears repetition in the context of the ever increasing powers committed by modern statutes to public functionaries. Such powers, it need hardly be observed, are conferred in the confidence that their very amplitude imposes upon their recipients a duty to ensure that fairness and responsibility will characterise the manner of their exercise.

It is fortunately not necessary in the present case for us to consider further the legal implications of a failure to observe these requisites in the decision to withdraw the petitioner's licence, for no allegation of such a nature has been made against the respondents.

For the reasons indicated earlier in this judgment, the petitioner's application is dismissed with costs.

WIJAYATILAKE, J.—I agree.

Application dismissed.