IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 9864 OF 2015

IN THE MATTER OF:

An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

-AND-

IN THE MATTER OF:

Syed Mehedi Ahmed Rumi
.....Petitioner
-Versus-
Government of Bangladesh represented by the Secretary, Ministry of Home Affairs, Bangladesh Secretariat, Police Station Shahbagh, Dhaka and others
..... Respondents

Mr. Ragib Rauf Chowdhury, Advocate
.....For the petitioner.

Mr. Md. Motaher Hossain (Sazu), DAG with
Ms. Purabi Rani Sharma, AAG and
Ms. Purabi Saha, AAG
…..For the respondent no. 1.

Heard on 14.07.2016, 04.09.2016 & 05.09.2016.
Judgment on 01.12.2016.

Present:
Mr. Justice Moyeenul Islam Chowdhury
-And-
Mr. Justice Ashish Ranjan Das

MOYEENUL ISLAM CHOWDHURY, J:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh filed by the petitioner, a Rule Nisi was issued calling

upon the respondents to show cause as to why the Memo No. 00.00.5000.004.59.25.2015-1205 dated 25.08.2015 (Annexure-'D' to the Writ Petition) issued by the respondent no. 3 cancelling the licences of the petitioner for keeping fire-arms, namely, one shot gun and one pistol without affording him an opportunity of being heard should not be declared to be without lawful authority and of no legal effect and why the respondents should not be directed to release the fire-arms in favour of the petitioner immediately which were earlier surrendered to the respondent no. 4, Officer-in-Charge, Kushtia Model Police Station, Kushtia vide letter dated 31.08.2015 (Annexure-'F' to the Writ Petition) and/or such other or further order or orders passed as to this Court may seem fit and proper.

The case of the petitioner, as set out in the Writ Petition, in short, is as follows:

The petitioner is a former Member of Parliament. He is also a former Chairman of Parliamentary Standing Committee on Estimates. At present, he is the President of Kushtia District Bangladesh Nationalist Party (BNP) and Relief and Rehabilitation Secretary of the National Executive Committee, BNP. Anyway, he obtained two licences dated 17.09.1996 and 20.01.2000 to keep one shot gun and one pistol respectively for the purpose of his private protection from the respondent no. 3, District Magistrate, Kushtia. Both the licences of the fire-arms were renewed by the petitioner from time to time till 31.12.2015. The petitioner was implicated in several criminal cases including G. R. Case No. 469 of 2012 arising out of Kushtia Model Police Station Case No. 15 dated 10.12.2012 upon sheer false and fabricated allegations just to harass him politically. However, it appears from the charge-sheet dated 14.11.2014

submitted therein that there was no allegation of misuse of the fire-arms by the petitioner. His name was specifically mentioned in the ejahar of that case as the financier of the violent political activities of Kushtia. The petitioner was also implicated in G. R. Case No. 07 of 2015 arising out of E.B (Islamic University) Police Station Case No. 07 dated 28.01.2015 and in that case, he obtained ad-interim anticipatory bail from the High Court Division of the Supreme Court of Bangladesh. However, the Investigating Officer with mala fide intention submitted charge-sheet bearing no. 58 dated 15.07.2015 in G. R. Case No. 07 of 2015. On his surrender before the Court below after submission of charge-sheet, the petitioner was sent to custody on 12.08.2015. While the petitioner was in custody, the respondent no. 3 (District Magistrate, Kushtia) issued Memo No. 00.00.5000.004.59.25.2015-1205 dated 25.08.2015 cancelling the fire-arm licences of the petitioner without affording him an opportunity of being heard. The principle of natural justice is to be observed in the matter of exercising the power of cancellation of the fire-arm licence of a person under Section 18 of the Arms Act, 1878. So the impugned order cancelling the fire-arm licences of the petitioner without adhering to the principle of "Audi Alteram Partem" is without lawful authority and of no legal effect. However, Mrs. Syed Fahima Banu, wife of the petitioner, by her letter dated 29.08.2015, requested the District Magistrate, Kushtia to give her proper guidelines as to the mode of surrender of the fire-arms of the petitioner as he was in custody at the relevant point of time. In response, the respondents insisted on her surrendering the fire-arms of the petitioner to Kushtia Model Police Station, Kushtia immediately. Thereafter Mrs. Syed Fahima Banu, by her letter dated 31.08.2015, surrendered the two licensed fire-arms, namely, one shot gun and one pistol to the Officer-in-Charge

of Kushtia Model Police Station, Kushtia. Anyway, the petitioner was enlarged on bail on 08.09.2015. The two fire-arms are indispensably necessary for his personal safety and security as he has many political rivals and there are many miscreants and terrorists groups in Kushtia who may fall upon him at any time. As the cancellation of the fire-arm licences of the petitioner by the respondent no. 3 under Memo No. 00.00.5000.004.59.25.2015-1205 dated 25.08.2015 as evidenced by Annexure-'D' to the Writ Petition is violative of the principle of natural justice, the same is liable to be struck down as being unsustainable in law.

In the Supplementary Affidavit dated 30.08.2016, it has been averred that if the respondents are not directed to release the fire-arms of the petitioner immediately, he will suffer irreparable loss and injury.

In the Supplementary Affidavit dated 05.09.2016, it has been stated that the respondent no. 3 cancelled the fire-arm licences of the petitioner by the impugned Memo dated 25.08.2015 arbitrarily and whimsically. The necessity of recording reasons by the appropriate authority in writing for the cancellation of any fire-arm licence is to be emphasized as a general rule. If the appropriate authority chooses not to make its order a speaking one and merely relies on the materials on record, its order stands a greater risk of being struck down. Therefore the issuance of the impugned Memo cancelling the licences of the petitioner without any allegation of misuse of the fire-arms is not tenable in law. Section 18 of the Arms Act, 1878 contemplates that the concerned District Magistrate, for reasons to be recorded in writing, may cancel the fire-arm licence of a person; but a mere reference to the police report is not recording reasons. There is no violation of the terms and conditions of the licences by the

petitioner. That being so, the impugned cancellation of the fire-arm licences of the petitioner is 'de hors' the law.

The respondent no. 1 has contested the Rule by filing an Affidavit-in-Opposition. The case of the respondent no. 1 as set out therein, in brief, runs as under:

The District Magistrate of Kushtia cancelled the fire-arm licences of the petitioner under Section 18(a) of the Arms Act, 1878 in that he was in jail custody at the relevant time. As the petitioner was in jail custody, there was an opportunity of misusing his fire-arms by the miscreants. On 15.08.2015, while observing the National Mourning Day in the country, an incident took place at Kushtia town and a person was killed. So there was a serious apprehension that the fire-arms of the petitioner might be used at any time for subversive activities. This is why, the District Magistrate of Kushtia cancelled the fire-arm licences of the petitioner by the impugned Memo dated 25.08.2015 taking stock of the then prevailing situation of Kushtia town. The petitioner is an accused in G. R. Case No. 469 of 2012 arising out of Kushtia Model Police Station Case No. 15 dated 10.12.2012 under Sections 143/ 144/ 149/ 332/ 323/ 307/ 114 of the Penal Code. Besides, the petitioner is an accused in E. B (Islamic University) Police Station Case No. 07 dated 28.01.2015 under Sections 15(3)/25D of the Special Powers Act, 1974 and in E.B (Islamic University) Police Station Case No. 04 dated 12.01.2015 under Sections 15(3)/25D of the Special Powers Act, 1974. The petitioner and others assaulted the law-enforcing personnel in broad daylight with sharp-cutting weapons, iron roads, hockey sticks, ram daos, Chinese axes and stones etc. as a result of which many police personnel were seriously injured. In order to protect themselves, the police personnel lobbed 30 tear gas

shells with a view to dispersing the unruly mob. This being the state of affairs, the District Magistrate of Kushtia felt constrained to cancel the fire-arm licences of the petitioner. The petitioner is the financier of violent and destructive activities in Kushtia town. In such a situation, his fire-arm licences were cancelled by the impugned Memo dated 25.08.2015 on the basis of the report of the Superintendent of Police, Kushtia dated 23.08.2015 for the security of the public peace. As the petitioner is an accused in several criminal cases, his fire-arm licences were lawfully cancelled and from that standpoint, there is no question of invocation of the principle of natural justice. As such, the Rule is liable to be discharged.

In the Affidavit-in-Reply filed on behalf of the petitioner, it has been mentioned that an incident took place at a rally on 15.08.2015 at the time of celebration of the National Mourning Day at Kushtia town as two factions of the ruling party got involved in violent activities and in the process, one Jubo League leader was shot dead. The petitioner had no connection with the killing of Jubo League leader and there was no specific allegation against him in this regard. The petitioner was not involved in that occurrence and as per ejahar 20(twenty) activists of the ruling party were implicated therein vide G. R. Case No. 249 of 2015 arising out of Kushtia Model Police Station Case No. 18 dated 16.08.2015. However, unfortunately with a view to justifying the impugned Memo dated 25.08.2015, the petitioner was shown as an accused in the charge-sheet of that case. So the impugned Memo was issued for a collateral purpose.

At the outset, Mr. Ragib Rauf Chowdhury, learned Advocate appearing on behalf of the petitioner, submits that admittedly no prior notice was given to the petitioner in the matter of cancellation of his fire-arm licences and as the

impugned Memo dated 25.08.2015 was issued in violation of the principle of natural justice, the same can not be sustainable in law. In this regard, Mr. Ragib Rauf Chowdhury has drawn our attention to the decisions in the cases of Riazuddin (Md)…Vs…Government of Bangladesh and others, 52 DLR (HCD) 361 and Rezaul Karim (Md) and another…Vs…Secretary, Ministry of Home Affairs and others, 44 DLR (HCD) 110.

Mr. Ragib Rauf Chowdhury also submits that any order of cancellation of any licence under Section 18 of the Arms Act must record reasons for making it and a mere reference to the materials furnished by the police does not amount to recording any reasons and there should also be a statement that the Magistrate deemed it necessary for the security of public peace to cancel the licence and a non-compliance therewith renders the order of cancellation illegal. To buttress up this submission, Mr. Ragib Rauf Chowdhury refers to the decision in the case of Samarendra Nath Roy…Vs…R. N. Basu reported in AIR 1955 Calcutta 599.

Mr. Ragib Rauf Chowdhury further submits that the necessity of recording reasons as per law by the appropriate authority in writing for the cancellation of any licence ought to be emphasized as a general rule and if the appropriate authority chooses not to make its order a speaking one and merely relies on the materials on record, its order stands a greater risk of being struck down. In support of this submission, Mr. Ragib Rauf Chowdhury adverts to the decision in the case of Sk. Ali Ahmed…Vs…The Secretary, Ministry of Home Affairs, Government of the People's Republic of Bangladesh and others reported in 40 DLR (AD) 170.

Mr. Ragib Rauf Chowdhury also submits that indisputably at the time of cancellation of the fire-arm licences of the petitioner, he was in jail custody and

there was no allegation of misuse of the fire-arms by him at any point of time and it is also admitted that he did not breach any terms and conditions of the fire-arm licences and this being the scenario, the cancellation of the fire-arm licences of the petitioner by the respondent no. 3 by the impugned Memo dated 25.08.2015 is clearly without lawful authority and of no legal effect.

Mr. Ragib Rauf Chowdhury next submits that undeniably the petitioner is a political personality and a former Member of Parliament and he stands implicated in several criminal cases so as to victimize him politically and by that reason, the fire-arm licences of the petitioner were cancelled by the impugned Memo dated 25.08.2015.

Mr. Ragib Rauf Chowdhury further submits that the impugned Memo dated 25.08.2015 is a replication of the materials furnished by the Superintendent of Police of Kushtia to the District Magistrate of Kushtia for all practical purposes and this being the position, it can be safely concluded that the District Magistrate of Kushtia did not independently and objectively apply his mind to the materials on record before issuance of the impugned Memo and considered from this angle, the impugned Memo is liable to be struck down as being illegal.

Mr. Ragib Rauf Chowdhury also submits that in the facts and circumstances of the case, the cancellation of the fire-arm licences of the petitioner by the impugned Memo is tainted with bad faith and it is primarily based upon conjectures, surmises, speculations and inferences and as such the impugned Memo should be knocked down as being ‘de hors’ the law.

Per contra, Mr. Md. Motaher Hossain (Sazu), learned Deputy Attorney-General appearing on behalf of the respondent no. 1, submits that in view of the

then prevailing situation of Kushtia town, the respondent no. 3 felt constrained to cancel the fire-arm licences of the petitioner, lest those fire-arms should be used by the local miscreants, terrorists and gangsters.

Mr. Md. Motaher Hossain (Sazu) also submits that in the ordinary course of things, it was incumbent upon the District Magistrate of Kushtia to adhere to the principle of "Audi Alteram Partem" before cancellation of the fire-arm licences of the petitioner; but the instant case is an exceptional case and regard being had to the exigency of the situation prevailing at that point of time, the respondent no. 3 cancelled the fire-arm licences of the petitioner without affording him any opportunity of being heard and since this is an exceptional case, it can not be argued at all that the respondent no. 3 committed any illegality by issuing the impugned Memo dated 25.08.2015. In this respect, Mr. Md. Motaher Hossain (Sazu) relies upon the decision in the case of Sk. Ali Ahmed…Vs…The Secretary, Ministry of Home Affairs, Government of the People's Republic of Bangladesh and others reported in 40 DLR (AD) 170.

We have heard the submissions of the learned Advocate Mr. Ragib Rauf Chowdhury and the counter-submissions of the learned Deputy Attorney-General Mr. Md. Motaher Hossain (Sazu) and perused the Writ Petition, Supplementary Affidavits, Affidavit-in-Opposition, Affidavit-in-Reply and relevant Annexures annexed thereto.

There is no gainsaying the fact that the principle of "Audi Alteram Partem" was not adhered to prior to cancellation of the fire-arm licences of the petitioner. Both the learned Advocate Mr. Ragib Rauf Chowdhury and the learned Deputy Attorney-General Mr. Md. Motaher Hossain (Sazu) have relied upon the decision reported in 40 DLR (AD) 170 in support of their respective

submissions. In other words, this decision is the sheet anchor of both the parties. Now let us examine the decision at some length. In that decision, it was held in paragraphs 15 and 16:

> "15. As to the question whether the appellant was entitled to a show cause notice/hearing before the decision to cancel his license was taken, the High Court Division took the view that there is no such requirement under the Arms Act nor can such a requirement be imported into the statute because of the sensitive nature of the subject matter. This view seems to find support from some decisions in the Indian Jurisdiction (vide AIR 1956 Calcutta 96, AIR 1954 Rajasthan 264). It must, however, be pointed out that there is a long line of decisions from the Pakistan Jurisdiction, (The University of Dhaka Vs. Zakir Ahmed, PLD 1965 S.C. 90=16 DLR (SC) 722) which have consistently taken the view that in all proceedings by whomsoever held, whether judicial or administrative, the principles of natural justice have to be observed if the proceedings might result in consequences affecting "the person or

property or other right of the parties concerned". This rule applies even though there may be no positive words in the statute or legal document whereby the power is vested to take such proceedings, for, in such cases this requirement is to be implied into it as the minimum requirement of fairness.

16. We are in respectful agreement with the above principle but like to add a rider that so far as exercise of power under Section 18 the Arms Act is concerned, the absence of a prior notice/hearing may not always invalidate the order passed thereunder, the subject matter being directly related to the security of the public peace. It may not be possible or advisable to adhere to the principles of natural justice of a prior show cause in every case because of the exigencies of the situation. Each case has to be examined on its own merit to see whether a prior notice was required to be given. It may be pointed out that Wanchoo C. J. in the aforesaid Rajasthan case while holding that absence of hearing would not invalidate the order observed that 'It may perhaps be

> advisable, before such action is taken, that the licensee should be heard and we believe that generally licensees are heard before licenses are cancelled'."

Reverting to the case in hand, we find that at the relevant time, admittedly the petitioner was in jail custody. It is also admitted that there was no allegation of misuse of his fire-arms at any point of time. It is further admitted that he did not breach any of the terms and conditions of his licences. Be that as it may, it is true that the petitioner stands implicated in some criminal cases. It has been asserted in the Affidavit-in-Opposition of the respondent no. 1 that the petitioner was the financier of the violent and terrorist activities of Kushtia town at the material time. It is undisputed that the petitioner is an ex-Member of Parliament and the incumbent President of Kushtia District Bangladesh Nationalist Party (BNP). So he is very much involved in the local politics of Kushtia. Consequently motivated allegations against him from interested quarters are not unlikely. However, we do not find any exigency of the situation that debarred the respondent no. 3 from giving any prior notice to the petitioner before issuance of the impugned Memo dated 25.08.2015. This being the landscape, we are led to hold that it was incumbent upon the respondent no. 3 to afford the petitioner an opportunity of being heard prior to cancellation of his fire-arm licences by the impugned Memo dated 25.08.2015.

The principles of natural justice are applied to administrative process to ensure procedural fairness and to free it from arbitrariness. Violation of these principles results in jurisdictional errors. Thus in a sense, violation of these principles constitutes procedural ultra vires. It is, however, impossible to give an

exact connotation of these principles as its contents are flexible and variable depending on the circumstances of each case, i.e., the nature of the function of the public functionary, the rules under which he has to act and the subject matter he has to deal with. These principles are classified into two categories-(i) a man can not be condemned unheard (audi alteram partem) and (ii) a man can not be the judge in his own cause (nemo debet esse judex in propria causa). The contents of these principles vary with the varying circumstances and those can not be petrified or fitted into rigid moulds. They are flexible and turn on the facts and circumstances of each case. In applying these principles, there is a need to balance the competing interests of administrative justice and the exigencies of efficient administration. These principles were applied originally to courts of justice and now extend to any person or body deciding issues affecting the rights or interests of individuals where a reasonable citizen would have legitimate expectation that the decision-making process would be subject to some rules of fair procedure. These rules apply, even though there may be no positive words in the statute requiring their application.

Lord Atkin in R. Vs. Electricity Commissioners ([1924] 1 KB 171) observed that the rules of natural justice applied to 'any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially'. The expression 'having the duty to act judicially' was used in England to limit the application of the rules to decision-making bodies similar in nature to a court of law. Lord Reid, however, freed these rules from the bondage in the landmark case of Ridge…Vs...Baldwin ([1964] AC 40). But even before this decision, the rules of natural justice were being applied in our country to administrative proceedings which might affect the person, property or

other rights of the parties concerned in the dispute. In all proceedings by whomsoever held, whether judicial or administrative, the principles of natural justice have to be observed if the proceedings might result in consequences affecting the person or property or other right of the parties concerned. In this context, reliance may be placed on the cases of The University of Dacca and another…Vs…Zakir Ahmed, 16 DLR (SC) 722; Sk. Ali Ahmed…Vs…The Secretary, Ministry of Home Affairs and others, 40 DLR (AD) 170; Habibullah Khan…Vs…Shah Azharuddin Ahmed and others, 35 DLR (AD) 72; Hamidul Huq Chowdhury and others…Vs…Bangladesh and others, 33 DLR 381 and Farzana Haque….Vs…The University of Dhaka and others, 42 DLR 262.

In England, the application of the principles of natural justice has been expanded by introducing the concept of 'fairness'. In Re Infant H (K) ([1967] 1 All E.R. 226), it was held that whether the function discharged is quasi-judicial or administrative, the authority must act fairly. It is sometimes thought that the concepts of 'acting fairly' and 'natural justice' are different things, but this is wrong as Lord Scarman correctly observes that the Courts have extended the requirement of natural justice, namely, the duty to act fairly, so that it is required of a purely administrative act (Council of Civil Service Union…Vs...Minister for the Civil Service [1984] 3 All E.R. 935). Speaking about the concept, the 'acting fairly' doctrine has at least proved useful as a device for evading some of the previous confusions. The Courts now have two strings to their bow. An administrative act may be held to be subject to the requirements of natural justice either because it affects rights or interests and therefore involves a duty to act judicially, in accordance with the classic authorities and Ridge…Vs... Baldwin; or it may simply be held that in our modern approach, it automatically

involves a duty to act fairly and in accordance with natural justice. The Indian Supreme Court has adopted this principle holding "….this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands" (Swadeshi Cotton Mills…Vs... India, AIR 1981 SC 818).

The English Courts have further expanded the horizon of natural justice by importing the concept of 'legitimate expectation' and holding that from promise or from established practice, a duty to act fairly and thus to comply with natural justice may arise. Thus the concepts of 'fairness' and 'legitimate expectation' have expanded the applicability of natural justice beyond the sphere of right. To cite a few examples, not only in the case of cancellation of licence which involves denial of a right, but also in the case of first-time grant of licence and renewal of licence, the principle of natural justice is attracted in a limited way in consideration of legitimate expectation. An applicant for registration as a citizen, though devoid of any legal right, is entitled to a fair hearing and an opportunity to controvert any allegation levelled against him. An alien seeking a visa has no entitlement to one, but once he has the necessary documents, he does have the type of entitlement that should now be protected by due process, and the Government should not have the power to exclude him summarily.

In the case of Chingleput Bottlers…Vs...Majestic Bottlers reported in AIR 1984 SC 1030, the Indian Supreme Court has made certain observations which create an impression that the rules of natural justice are not applicable where it is a matter of privilege and no right or legitimate expectation is involved. But the application of the rules of natural justice is no longer tied to the dichotomy of right-privilege. It has been stated in "Administrative Law" by H.W.R. Wade, 5th edition at page-465: "For the purpose of natural justice, the question which

matters is not whether the claimant has some legal right, but whether the legal power is being exercised over him to his disadvantage. It is not a matter of property or of vested interests, but simply of the exercise of Governmental power in a manner which is fair …" In the American jurisdiction, the right-privilege dichotomy was used to deny due process hearing where no right was involved. But starting with Gonzalez…Vs...Freeman (334 F. 2d 570), the Courts gradually shifted in favour of the privilege cases and in the words of Professor Schwartz, "The privilege-right dichotomy is in the process of being completely eroded" ("Administrative Law", 1976, Page-230). However, Article 31 of our Constitution has incorporated the concept of procedural due process and the English decisions expanding the frontiers of natural justice are fully applicable in Bangladesh.

In English law, the rules of natural justice perform a function, within a limited field, similar to the concept of procedural due process as it exists in the American jurisdiction. Following the English decisions, the Courts of this sub-continent have held that the principle of natural justice should be deemed incorporated in every statute unless it is excluded expressly or by necessary implication by any statute.

The basic principle of fair procedure is that before taking any action against a man, the authority should give him notice of the case and afford him a fair opportunity to answer the case against him and to put his own case. The person sought to be affected must know the allegation and the materials to be used against him and he must be given a fair opportunity to correct or contradict them. The right to a fair hearing is now of universal application whenever a

decision affecting the rights or interest of a man is made. But such a notice is not required where the action does not affect the complaining party.

It is often said that mala fides or bad faith vitiates everything and a mala fide act is a nullity. What is mala fides? Relying on some observations of the Indian Supreme Court in some decisions, Durgadas Basu J held, "It is commonplace to state that mala fides does not necessarily involve a malicious intention. It is enough if the aggrieved party establishes: (i) that the authority making the impugned order did not apply its mind at all to the matter in question; or (ii) that the impugned order was made for a purpose or upon a ground other than what is mentioned in the order." (Ram Chandra…Vs…Secretary to the Government of W.B, AIR 1964 Cal 265)

To render an action mala fide, "There must be existing definite evidence of bias and action which can not be attributed to be otherwise bona fide; actions not otherwise bona fide, however, by themselves would not amount to be mala fide unless the same is in accompaniment with some other factors which would depict a bad motive or intent on the part of the doer of the act" (Punjab…Vs… Khanna, AIR 2001 SC 343).

The principle of reasonableness is used in testing the validity of all administrative actions and an unreasonable action is taken to have never been authorized by the Legislature and is treated as ultra vires. According to Lord Greene, an action of an authority is unreasonable when it is so unreasonable that no man acting reasonably could have taken it. This has now come to be known as Wednesbury unreasonableness. (Associated Provincial Picture…Vs… Wednesbury Corporation [1948]1 KB 223)

In the decision in the case of HFDM De Silva Gunesekere…Vs…Bangladesh represented by the Secretary, Ministry of Home Affairs and others reported in 2 BLC (HCD) 179, it was held in paragraph 7 that the blacklisting of the petitioner without an opportunity of being heard was illegal and for the same reason, the impugned order deporting him from the country by 27.07.1995 without giving him an opportunity of being heard was violative of natural justice, and must be held to have been made illegally and without lawful authority. So it is seen that in this decision, the blacklisting of the petitioner by the authority and the consequent deportation order of the authority were found to be without lawful authority for violation of the principle of natural justice.

We have already observed that failure to adhere to the principle of "Audi Alteram Partem" results in a jurisdictional error. As the respondent no. 3 (District Magistrate, Kushtia) committed a jurisdictional error by not giving any hearing to the petitioner prior to cancellation of his fire-arm licences by the impugned order dated 25.08.2015 (Annexure-'D' to the Writ Petition), the same must be held to be without lawful authority and of no legal effect.

It is on record that the impugned Memo dated 25.08.2015 is a virtual reproduction of the materials furnished by the Superintendent of Police of Kushtia to the District Magistrate of Kushtia. From the tone and tenor of the impugned Memo, we find that the respondent no. 3 did not independently and objectively apply his mind to the materials furnished by the police before its issuance. What we are driving at boils down to this: the impugned Memo cancelling the fire-arm licences of the petitioner was issued behind his back mechanically, mala fide and in a cavalier fashion. Since admittedly the

petitioner is a political personality, his victimization for political reasons, in the facts and circumstances of the case, can not be ruled out altogether. His mere implication in some criminal cases without any allegation of misuse of the fire-arms or without any allegation of breach of the terms and conditions of licences, in our opinion, is not sufficient for cancellation of his fire-arm licences by the impugned Memo. Precisely speaking, the impugned Memo issued by the respondent no. 3 does not satisfy the requirements of Section 18 (a) of the Arms Act.

It appears that some reasons have been recorded in the impugned Memo, but those are not sustainable in law inasmuch as a mere reference to the materials furnished by the police does not amount to recording any reasons as contemplated by Section 18(a) of the Arms Act. This view finds support from the decision reported in AIR 1955 Calcutta 599 (supra) as rightly referred to by the learned Advocate Mr. Ragib Rauf Chowdhury.

From the foregoing discussions and in the facts and circumstances of the case, we conclude that the impugned Memo dated 25.08.2015 is tainted with bad faith and the same is unfair, unreasonable, violative of the principle of natural justice and is virtually based upon conjectures, surmises, speculations and inferences. So the impugned Memo must go. In the result, the Rule succeeds.

Accordingly, the Rule is made absolute without any order as to costs. It is hereby declared that the impugned Memo bearing No. 00.00.5000.004.59.25.2015-1205 dated 25.08.2015 as evidenced by Annexure-'D' to the Writ Petition is without lawful authority and of no legal effect.

The respondent no. 3 (District Magistrate, Kushtia) is, however, directed to return the fire-arms of the petitioner, namely, one shot gun and one pistol

along with necessary documents and papers to him within 30(thirty) days from the date of receipt of a copy of this judgment.

Let a copy of this judgment be immediately transmitted to the respondent no. 3 for information and necessary action.

ASHISH RANJAN DAS, J:

I agree.