Neutral Citation
2023:CGHC:33804-DB

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1723 of 2021

Order reserved on: 09/08/2023

Order delivered on: 21/09/2023

Hardeep Singh Benipal, S/o Late Shri Rajendra Singh, Aged about 51 years, R/o 25-B/4, Udaya Society, Tatibandh, Raipur, District Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Home, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)
2. Collector, Raipur, District Raipur (C.G.)
3. Union of India, Through Secretary, Ministry of Home Affairs, North Block, New Delhi – 110001, India
4. Director (Arms), Government of India, Ministry of Home Affairs, MDC Nation Stadium, New Delhi, India
5. Senior Superintendent of Police, Raipur, District Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Sabyasachi Bhaduri and Mr. Pankaj Singh, Advocates.
For Respondents No.1, 2 & 5 / State: -
Mr. Amrito Das, Additional Advocate General.
For Respondents No.3 & 4 / Union of India: -
Mr. Manoj Mishra, Advocate.

Hon'ble Mr. Sanjay K. Agrawal and
Hon'ble Mr. Radhakishan Agrawal, JJ.

C.A.V. Order

Sanjay K. Agrawal, J.

1. The petitioner herein seeks to challenge the constitutional validity of the Arms (Amendment) Act, 2019, by which amendment has been made in sub-section (2) of Section 3 of the Arms Act, 1959 whereby for the words “three firearms”, the words “two firearms” have been substituted with effect from 14-12-2019 and eventually also seeks to quash the order dated 10-9-2020 (Annexure P-2) issued by the Collector directing the petitioner to deposit the third firearm in compliance of sub-section (2) of Section 3 of the Arms (Amendment) Act, 2019 read with the proviso appended to it.

2. The petitioner seeks to question the constitutional validity of the said amendment on the following factual backdrop: -

3. The petitioner is license holder of three firearms under license No.57/III/R/2004, which he has inherited from his father and eventually, got the license transferred in his name, which he is holding for significant period of time. It is the case of the petitioner that consequent to the impugned amendment in the Arms Act, 1959 by virtue of notification dated 13-12-2019 which came into force with effect from 14-12-2019, the petitioner’s capacity to retain firearms has been limited to two in place of three and if a person is holding more than two, then he is required to deposit the same with the concerned authority within a period of one year from the date of commencement of the Act. It is the further case of

the petitioner that the limitation of a person to hold firearms not more than two which has been introduced by the Arms (Amendment) Act, 2019 (for short, 'the Amendment Act, 2019') in sub-section (2) of Section 3 of the Arms Act, 1959 has been made without reasonable basis as to class of the license holders since the said Act applies equally to all the license holders and is to the detriment of rightful license holders, who have been a peaceful holders of the firearms for generations without any complaints whatsoever being made against them. It is also the case of the petitioner that the Amendment Act, 2019 could not in any manner be suggestive of being reasonable as there appears to be no causal connection which could justify that limiting the number of firearms for a firearms license holder. If a person who is a holder of three firearms intends to commit a crime, he could very well do so with two firearms as well, but that does not justify the deprivation of peaceful possession of firearms from licensed holders who are holding more than two licensed firearms for a fairly long time. It is the further case of the petitioner that licensed firearms are strictly regulated under the provisions of the Arms Act, 1959 and more-so the issuance of firearms in itself is a strict procedure which is the prime reason for an almost a nil percentage of population being license holder of a firearm. That being so, making it more stringent, best suits the

wisdom of legislature, as to its citizen who are peaceful possessor of firearms, retracting the same is depriving of their right to peaceful possession of property. It has been further pleaded that by virtue of Article 300A of the Constitution of India, a property connotes everything which is subject to ownership, corporeal or incorporeal, tangible or intangible, the term property has a more extensive signification and according to its legal definition, consists in free use, enjoyment and disposition of a person of all its acquisitions without any control or diminution, which cannot be taken away without authority of law. It has been finally pleaded that the impugned amendment in Section 3(2) of the Arms Act, 1959 limiting the number of firearms to two is illegal, bad in law being arbitrary and reasonable. Failure to make a rational classification amongst the class effected by the Act, also results in inequality and is against the constitutional mandate of being unjust and unreasonable. There being no casual connection which could justify limiting the number of firearms for a license holder, it fails to meet the test of Articles 14 & 21 of the Constitution of India denying a person of peaceful enjoyment of the property (firearms in the present case) without there being a reasonable classification and it amounts to deprivation of right to property under Article 300A of the Constitution and

is liable to be struck down as unconstitutional and consequently, the order dated 10-9-2020 be also quashed.

4. Return has been filed by respondents No.3 & 4 / Union of India stating inter alia that the provisions of the Arms Act, 1959 were amended in the years 1971, 1983, 1985, 1988 and 1995, based on requirements and needs of the time and, thereafter, it was recently got amended in the year 2019 to strengthen the provisions to ensure public safety and security in the country, and it was amended with an intent to curb proliferation of firearms in the country and to strengthen the existing legislative framework further which, inter alia, included to amend sub-section (2) of Section 3 of the Arms Act, 1959, to reduce the maximum number of firearms a person can acquire and only the number was reduced from three to two. The amendment under challenge did not curtail the legitimate needs of an individual of acquiring and possessing the firearms he needs for self defence. It has further been pleaded that the amendment in the Arms Act, 1959 has been made after following the due process of law. Before its enactment, the process of inter-ministerial consultation, obtaining views/comments of the stake holders/Ministries/Departments/ States & Union Territories was followed and the draft of the amendment was also placed on the website of the Ministry of Home Affairs for obtaining the views/comments of the public. It has also

been pleaded that the impugned amendment made in no way violates the constitutional provisions including fundamental rights of the citizens and, wherever needed, the licensees are made accountable for their obligations and duties. It has also been pleaded that still two firearms a person can have after grant of licence is a very good number for the common citizen for the safety of his / her life and property. As such, the writ petition deserves to be dismissed.

5. The State Government / respondents No.1, 2 & 5 have filed return stating inter alia that the Arms Act is the Central Act which has been amended by the Central Government, therefore, the State is a formal party and the impugned order Annexure P-2 has been passed in compliance of Section 3(2) of the Amendment Act, 2019 and as such, writ petition against the State is not maintainable and deserves to be dismissed.

Submissions of Parties: -

6. Mr. Sabyasachi Bhaduri, learned counsel appearing for the petitioner, would submit that the aforesaid amendment made in the Arms Act, 1959 by way of the Arms (Amendment) Act, 2019 limiting the number of firearms which a person can have to two is unconstitutional and violative of the fundamental right guaranteed under Article 21 and also Article 300A of the Constitution of India. He

would rely upon the decisions of the Supreme Court in the matters of **State of West Bengal v. Anwar Ali Sarkar**[1], **Navtej Singh Johar and others v. Union of India through Secretary, Ministry of Law and Justice**[2] and **Union of India and another v. Tarsem Singh and others**[3] to buttress his submission.

7. Mr. Amrito Das, learned Additional Advocate General appearing for the State / respondents No.1, 2 & 5, would submit that the Arms (Amendment) Act, 2019 was introduced considering the acts of terrorism and insurgency and the use of arms. He would further submit that the object of the amendment clearly shows that it was intended to reduce the number of firearms required by an individual for his protection and self-defence. He would also submit that holding of more than two firearms at a time by an individual does not stand in consonance with the object for which an arms license is to be granted and holding of two firearms would be sufficient in the usual course on account of sudden threat. As such, there is neither any illegality nor any arbitrariness to allege that cutting down of the number of permissible firearms from three to two would in any manner violate any of the fundamental rights of the petitioner. He would rely upon the decision of the Delhi High

1 (1952) 1 SCC 1
2 (2018) 10 SCC 1
3 (2019) 9 SCC 304

Court in the matter of **Adv. Shiv Kumar v. Union of India and others**[4] in support of his contention. As such, the writ petition deserves to be dismissed.

8. Mr. Manoj Mishra, learned counsel appearing for the Union of India / respondents No.3 & 4, would submit that license for acquisition and possession of firearms is only a privilege and it does not involve the fundamental right guaranteed under Article 21 of the Constitution of India, as such, the writ petition deserves to be dismissed.

9. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

Principles for Examining the Constitutional Validity of the provisions of an Act: -

10. A Statute is construed so as to make it effective and operative on the principle expressed in the maxim "*ut res magis valeat quam pereat*". Therefore, a presumption that the Legislature does not exceed its jurisdiction, and the burden of establishing that the Act is not within the competence of the Legislature, or that it has transgressed other constitutional mandates, such as those relating to fundamental rights, is always on the person who challenges its *vires*. (See ***Principles of Statutory Interpretation*** *by Justice G.P. Singh, 12th Edition, page 592.*)

4 2023 SCC OnLine Del 3104

11. It is a settled principle of law that the Statute enacted by the Parliament or State Legislature cannot be declared unconstitutional lightly. The Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provisions under challenge cannot stand.

12. The Constitution Bench of the Supreme Court in the matter of **Shayara Bano v. Union of India and others (Ministry of Women and Child Development Secretary and others)**[5] held that legislation can be struck down if it is manifestly arbitrary and manifest arbitrariness is the ground to negate legislation as well under Article 14 of the Constitution of India. It has been observed by their Lordships as under: -

> "101. It will be noticed that a Constitution Bench of this Court in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*[6] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of

5 (2017) 9 SCC 1
6 (1985) 1 SCC 641 : 1985 SCC (Tax) 121

> the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

13. Very recently, in the matter of **Dr. Jaya Thakur v. Union of India and others**[7], it has been held by three-judge Bench of the Supreme Court that judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive by observing as under: -

> "68. It could thus be seen that the role of the judiciary is to ensure that the aforesaid two organs of the State i.e. the Legislature and Executive function within the constitutional limits. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The role of this Court is limited to examine as to whether the Legislature or the Executive has acted within the powers and functions assigned under the Constitution. However, while doing so, the court must remain within its self-imposed limits."

14. Thereafter, in **Dr. Jaya Thakur** (supra), their Lordships of the Supreme Court relying upon their earlier judgment in the matter of **Binoy Viswam v. Union of India and others**[8] and reviewing their earlier decisions, speaking through B.R. Gavai, J., have held that the statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly, and observed as under: -

> "70. It could thus be seen that this Court has held that the statute enacted by Parliament or a State Legislature cannot be declared unconstitutional

7 2023 SCC OnLine SC 813
8 (2017) 7 SCC 59

lightly. To do so, the Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. It has been held that unless there is flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature cannot be declared bad.

71. It has been the consistent view of this Court that legislative enactment can be struck down only on two grounds. Firstly, that the appropriate legislature does not have the competence to make the law; and secondly, that it takes away or abridges any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions. It has been held that no enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. It has been held that Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom.

72. It has been held by this Court that there is one and only one ground for declaring an Act of the legislature or a provision in the Act to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. It has further been held that if two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. It has been held that the Court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope.

73. It has consistently been held that there is always a presumption in favour of constitutionality, and a law will not be declared unconstitutional

unless the case is so clear as to be free from doubt. It has been held that if the law which is passed is within the scope of the power conferred on a legislature and violates no restrictions on that power, the law must be upheld whatever a court may think of it.

74. It could thus be seen that the challenge to the legislative Act would be sustainable only if it is established that the legislature concerned had no legislative competence to enact on the subject it has enacted. The other ground on which the validity can be challenged is that such an enactment is in contravention of any of the fundamental rights stipulated in Part III of the Constitution or any other provision of the Constitution. Another ground as could be culled out from the recent judgments of this Court is that the validity of the legislative act can be challenged on the ground of manifest arbitrariness. However, while doing so, it will have to be remembered that the presumption is in favour of the constitutionality of a legislative enactment."

15. Furthermore, in the matter of **Dental Council of India v. Biyani Shikshan Samiti and another**[9], their Lordships of the Supreme Court have held that there is always a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. B.R. Gavai, J., speaking for the Supreme Court, held in paragraphs 27 & 28 of the report as under: -

"27. It could thus be seen that this Court has held that the subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be

9 (2022) 6 SCC 65

questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. Though it may also be questioned on the ground of unreasonableness, such unreasonableness should not be in the sense of not being reasonable, but should be in the sense that it is manifestly arbitrary.

28. It has further been held by this Court in the said case that for challenging the subordinate legislation on the ground of arbitrariness, it can only be done when it is found that it is not in conformity with the statute or that it offends Article 14 of the Constitution. It has further been held that it cannot be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant."

16. Similarly, in the matter of **PGF Limited and others v. Union of India and another**[10], their Lordships of the Supreme Court have laid down certain guidelines by taking note of certain precautions to be observed whenever the vires of any provision of law is raised before the Court and cautioned the Courts in paragraph 37 as under: -

"37. The Court can, in the first instance, examine whether there is a prima facie strong ground made out in order to examine the vires of the provisions raised in the writ petition. The Court can also note whether such challenge is made at the earliest point of time when the statute came to be introduced or any provision was brought into the statute book or any long time-gap exists as between the date of the enactment and the date when the challenge is made. It should also be noted as to whether the grounds of challenge based on the facts pleaded and the implication of the provision

10 (2015) 13 SCC 50

really has any nexus apart from the grounds of challenge made. With reference to those relevant provisions, the Court should be conscious of the position as to the extent of public interest involved when the provision operates the field as against the prevention of such operation. The Court should also examine the extent of financial implications by virtue of the operation of the provision vis-a-vis the State and alleged extent of sufferance by the person who seeks to challenge based on the alleged invalidity of the provision with particular reference to the vires made. Even if the writ court is of the view that the challenge raised requires to be considered, then again it will have to be examined, while entertaining the challenge raised for consideration, whether it calls for prevention of the operation of the provision in the larger interest of the public. We have only attempted to set out some of the basic considerations to be borne in mind by the writ court and the same is not exhaustive. In other words, the writ court should examine such other grounds on the above lines for consideration while considering a challenge on the ground of vires to a statute or the provision of law made before it for the purpose of entertaining the same as well as for granting any interim relief during the pendency of such writ petitions. For the abovestated reasons it is also imperative that when such writ petitions are entertained, the same should be disposed of as expeditiously as possible and on a time-bound basis, so that the legal position is settled one way or the other."

Legal Analysis and Discussion: -

17. The Indian Arms Act, 1878 (11 of 1878), was intended to disarm the entire nation. Even after independence, the law declaring "swords, daggers, spears, spear-heads, bow and arrows" as "arms" had been allowed to continue unaltered on the Statute Book. The rigours of the Arms Act and rules

thereunder continued to make it difficult for law abiding citizens to possess firearms for self-defence. The Indian Arms Act, 1878 was found out of tune and consequently, the Indian Arms (Amendment) Bill was introduced in the Lok Sabha on the 27th November, 1953 to focus Parliament's attention on this vital subject. It was discussed in the House on 26th March, 1954 and was circulated for public opinion. The Parliament referred the Bill to the Joint Committee and the Joint Committee in its report dated 10th August, 1959 recommended the Government to (1) consider whether a provision could be made in the rules for allowing a licencee to use temporarily, for purposes of sport another licencee's firearms of the type for which he holds a licence; (2) examine the question of providing in the rules for transport of properly packed firearms through an area notified by the Central Government under clause 4; and (3) give instructions to the State Governments to take a decision on applications for renewal of licences within a specified period.

18. One of the objects of the Indian Arms (Amendment) Bill was that firearms required for training purpose and ordinary civilian use are made easily available on permits and accordingly, the Indian Arms (Amendment) Bill was passed on 23rd December, 1959 and the Arms Act, 1959 came into force on 1-10-1962 as an Act to consolidate and amend the law relating to arms and ammunition. A careful perusal and

plain reading of the provisions of the Arms Act, 1959 would show that as per the legislative intention, no right to obtain license or possess arms or firearms is contemplated. Because privilege to be conferred by issuing a license under Section 3 of the Act is contemplated, sufficient guidelines have been provided to exclude arbitrary action in the matter of grant of the privilege. In fact, the Arms Act, 1959 is a regulatory measure in respect of acquisition and possession of firearms and of occupation, trade or business therein.

19. To resolve the controversy, it would be appropriate to notice Section 3(1) of the Arms Act, 1959, which provides as under:

> "**3. Licence for acquisition and possession of firearms and ammunition**.—(1) No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder:
>
> Provided that a person may, without himself holding a licence, carry any firearms or ammunition in the presence, or under the written authority, of the holder of the licence for repair or for renewal of the licence or for use by such holder."

20. Section 3 of the Arms Act, 1959 provides that no person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a license issued in accordance with the provisions of this Act and the rules made thereunder. As such, there is a legislative injunction

that no person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a license issued in accordance with the provisions of the Act and rules made thereunder. The word "licence" has been defined in clause (ea) of Section 2 of the Arms Act, 1959, which states as under: -

> (ea) "licence" means a licence issued in accordance with the provisions of this Act and rules made thereunder and includes a licence issued in the electronic form;

Similarly, the term "licensing authority" has been defined in clause (f) of Section 2 of the Arms Act, 1959, which states as under: -

> (f) "licensing authority" means an officer or authority empowered to grant or renew licences under rules made under the Act, and includes, the Government;

As such, license has to be issued in accordance with the provisions of the Arms Act, 1959, as contemplated in Section 3. Chapter III of the Arms Act, 1959 makes provisions relating to licences. Section 13 of the Arms Act, 1959 provides for grant of licences and Section 14 provides for refusal of licences. The scheme of the Arms Act, 1959 makes the object and purpose of the Act vividly clear that only right to make an application for licence to acquire and hold any firearm has been provided and that has to be considered and

disposed of in accordance with Section 13 of the Act and the rules made thereunder i.e. the Arms Rules, 2016.

21. The term 'license' means and is synonymous with 'permit', 'permission', or 'authority'. The word, in its general and popular sense, means a right or permission granted in accordance with law by some competent authority to do some act, to do a certain thing, to engage in some transaction which but for such license would be unlawful. A document embodying such authority is often times called 'license'. (See **United India Insurance Co. Ltd. v. Tilak Ram**[11].)

22. According to **Webster's Third New International Dictionary**[12], the word 'licence', inter alia, mean: (i) permission to act; (ii) a right or permission granted in accordance with law by a competent authority to engage in some business or occupation, to do some act, or to engage in some transaction which, but for such licence, would be unlawful; (iii) formal permission from local authorities, and (iv) a document embodying such permission or evidencing the license granted.

23. In **Words and Phrases**, permanent edn, Vol 32, pp 233–234, the word 'license' is stated to signify: the term 'license' in its general and popular sense, as used with reference to

11 AIR 1986 HP 27 at 31
12 1996 edn, Vol II, p 1304

occupations and privileges, means a right or permission granted by some competent authority to carry on a business or to do an act which without such license would be illegal and is the grant of a special privilege not enjoyed by citizens generally and words 'license' and 'permit' are often used synonymously. … 'License' means and is synonymous with 'permission' or 'authority'. … The law dictionary and lexicographers concur in saying that a 'license' is a 'permit' to do a certain thing, and it is clear that these words are used synonymously.

24. According to **Black's Law Dictionary**, 5th Edn. p. 529, "licence" means, among others, – to exercise a certain privilege; permission by competent authority to do an act which, without such permission would be illegal.

25. Similarly, the Supreme Court in the matter of **Bishnu Ram Borah and another v. Parag Saikia and others**[13] has held that the grant of a liquor licence was not a matter of right but merely in the nature of privilege.

26. In the matter of **Ranjit Singh etc. etc. v. Union of India**[14], it has been held by their Lordships of the Supreme Court that 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

13 AIR 1984 SC 898
14 AIR 1981 SC 461

of the statute and to press for its grant on the basis of the criteria set forth in it.

27. Right to appeal is also similarly contemplated under Section 18 of the Arms Act, 1959, against the orders passed under Section 17 refusing to grant a licence as well as suspending or revoking a licence and no property right or any other right can be claimed in the licence issued in respect of any firearm. Exercise of licensing power in a welfare State by the Government is meant to control activities of an individual in public interest, such as, for public safety.

28. As such, grant of licence to the licensee in accordance with Section 13 of the Arms Act, 1959 read with the Arms Rules, 2016 is only a statutory privilege under the Arms Act, 1959 and it is not even a statutory right of the licensee in whose favour the license has been granted in accordance with the Arms Act, 1959 read with the Arms Rules, 2016 to hold a firearm. The holder of license, which is granted in accordance with Section 13 of the Arms Act, 1959 read with the Arms Rules, 2016, only holds it as a holder of statutory privilege and he has no fundamental right to hold firearms under the Arms Act, 1959 read with the Arms Rules, 2016. Therefore, a privilege is enjoyed during the pleasure of the grantor; the enjoyment does not vest any “title” in the grantee in respect of the advantage or benefit.

29. In contrast with India, in the United States of America, the right to keep and bear arms in the United States is a fundamental right protected by the Second Amendment to the United States Constitution, part of the Bill of Rights, and by the constitutions of most U.S. States. The Second Amendment states as under: -

> "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

30. However, at this stage, it would be appropriate to notice Section 3(2) of the Arms Act, 1959, which states as under: -

> "(2) Notwithstanding anything contained in sub-section (1), no person, other than a person referred to in sub-section (3), shall acquire, have in his possession or carry, at any time, more than two firearms:
>
> Provided that a person who has in his possession more firearms than two at the commencement of the Arms (Amendment) Act, 2019, may retain with him any two of such firearms and shall deposit, within one year from such commencement, the remaining firearm with the officer in charge of the nearest police station or, subject to the conditions prescribed for the purposes of sub-section (1) of section 21, with a licensed dealer or, where such person is a member of the armed forces of the Union, in a unit armoury referred to in that sub-section after which it shall be delicensed within ninety days from the date of expiry of aforesaid one year:
>
> xxx xxx xxx"

31. Sub-section (1) of Section 3 of the Arms Act, 1959 requires that no person shall acquire, have in his possession, or carry

any firearm unless he holds a licence in accordance with the provisions of the Act and the rules made thereunder. However, sub-section (2) of Section 3 begins with a *non obstante* clause stating that notwithstanding anything contained in sub-section (1), no person, other than a person referred to in sub-section (3), shall acquire, have in his possession or carry, at any time, more than two firearms. As such, sub-section (1) of Section 3 has been limited by sub-section (2) of Section 3 of the Arms Act, 1959, by limiting the number of firearms which a person can have in his possession by issuance of license under Section 3(1) of the Arms Act, 1959 and he can get licence only for two firearms as per the impugned amendment in terms of Section 3(1) of the Arms Act, 1959.

32. A clause beginning with 'notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force', is sometimes appended to a section in the beginning, with a view to give the enacting part of the section in case of conflict an overriding effect over the provision or Act mentioned in the *non obstante* clause. It is equivalent to saying that in spite of the provision or Act mentioned in the *non obstante* clause, the enactment following it will have its full operation or that the provisions embraced in the *non obstante* clause will not be an impediment for the operation of the

enactment. Thus a *non obstante* clause may be used as a legislative device to modify the ambit of the provision or law mentioned in the *non obstante* clause or to override it in specified circumstances. (See page 364 of **Principles of Statutory Interpretation** by **Justice G.P. Singh**, 12th Edition 2010.)

33. The nature and object of *non obstante* clause came to be considered by their Lordships of the Supreme Court in the matter of **Union of India and another v. G.M. Kokil and others**[15] in which it has been held that a *non obstante* clause is a legislative device employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment to avoid the operation and effect of all contrary provisions.

34. It is pertinent to mention here that the petitioner has only called in question the constitutional validity of notification dated 13-12-2019 limiting the number of firearms from three to two in sub-section (2) of Section 3 of the Arms Act, 1959 and has not questioned the constitutional validity of even sub-section (2) of Section 3 of the Arms Act, which curtails or limits the power of a person to have a licence in accordance with Section 3(1) of the Arms Act, 1959 read with the Arms Rules, 2016, more particularly, read with Section

15 AIR 1984 SC 1022

3(2) of the Arms Act, 1959 which has overriding effect over the provisions of Section 3(1) of the Arms Act, 1959 and in absence of challenge to Section 3(2) of the Arms Act, 1959, the petitioner would not get any relief by merely questioning the number of firearms which has been limited from three to two by the Arms (Amendment) Act, 2019.

35. A Full Bench (five Judges' Bench) of the Allahabad High Court in the matter of **Kailash Nath and others v. State**[16] has considered the issue and held that grant of licence for acquisition and possession of firearms under the Arms Act, 1959, is only a privilege and it does not involve rights of individual comprehended by Article 21 of the Constitution of India. It has been observed as under: -

> "3. ... A right is distinct from a mere privilege. The case of a licencee to possess or use firearm is materially different from a case of licence to deal in or sell firearms. Section 3 of the Arms Act, 1959 deals with acquisition and possession of firearms or ammunition on the strength of a licence whereas Section 5 provides for a licence for manufacture, sale etc. of arms and ammunition. The licence for acquisition and possession of firearms is materially different from a licence for manufacture, sale etc. While the latter confers a right to carry on a trade or business and is a source of earning livelihood, the former is merely a personal privilege for doing something which without such privilege would be unlawful. In my opinion the obtaining of a licence for acquisition and possession of firearms and ammunition under the Arms Act is nothing more than a privilege and the grant of such privilege does not involve the adjudication of the right of an

16 AIR 1985 Allahabad 291

> individual nor does it entail civil consequences. I may, however, hasten to add that even an order rejecting the application for grant of licence may become legally vulnerable if it is passed arbitrarily or capriciously or without application of mind. No doubt, a citizen may apply for grant of a licence of firearms mostly with the object of protecting his person or property but that is mainly the function of the State. Even remotely this cannot be comprehended within the ambit of Article 21 of the Constitution which postulates the fundamental right of protection of life and personal liberty. It deals with deprivation of life and as held in *Gopalan v. State of Madras*[17]. Article 21 is attracted only in cases of deprivation in the sense of total loss and that accordingly has no application to the case of a mere restriction upon the right to move freely or to the grant of licence for possession and acquisition of firearms which stands on an entirely different footing from the licence to carry on a trade or occupation. ..."

36. The principle of law laid down in **Kailash Nath** (supra) has further been affirmed by the Allahabad High Court in the matter of **Rana Pratap Singh v. State of U.P.**[18] in which it has been held that right to carry non-prohibited firearms is not fundamental right guaranteed under Article 21 of the Constitution of India, and observed as under: -

> "42. It will thus be seen that branding the observation in Kailash Nath's case (supra), with regard to the right to carry firearms and it not coming under Article 21 of the Constitution, as being merely per incuriam was not founded upon any law or precedent and was, therefore, wholly unwarranted, rather it constitutes a striking instance of the manner in which the per incuriam rule never can or should be applied. It follows,

17 AIR 1950 SC 27
18 1996 Cri.L.J. 665

> therefore, that the right to carry firearms does not come within the purview of Article 21 of the Constitution. We are thus, again constrained to hold that both Ganesh Chandra Bhatt's case 1993 (30) ACC 204 as also Devendra Pratap Singh's case Civil Misc. Writ Petn. No. 29963 of 1993, D/- 7-10-1993, do not lay down correct law and are consequently hereby over-ruled."

37. Similarly, three-Judges Bench of the Patna High Court in the matter of **Kapildeo Singh v. State**[19] has held that under the Indian law, the right to carry arms is a privilege conferred by the Act and there is no fundamental right to bear arms unlike the Second Amendment to the American Constitution. It has been observed in paragraph 5 of the report as under: -

> "5. ... In our Constitution and jurisprudence there is no fundamental right to bear arms unlike the Second Amendment to the American Constitution which at least suggests such a right in the following terms :
>
> > "A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.""

38. A Division Bench of the Madhya Pradesh High Court in the matter of **Ramprakash and others v. State**[20] has clearly held that right to hold firearms under Section 3 of the Arms Act, 1959, is only a privilege and not a right, and observed as under: -

> "8. Provisions of the Act, on a plain reading provides ample evidence of the legislative intent that no "right" to obtain licence or possess arms or fire-arms is contemplated. Because "privilege" to

19 AIR 1987 Patna 122
20 AIR 1992 Madhya Pradesh 151

be conferred by issuing a "licence" was contemplated, guidelines were considered necessary to exclude arbitrary action in the matter of grant of the privilege. That constitutional necessity, embodied in Articles 14 and 15 envisaging equal treatment for all citizens, had to be fulfilled. Indeed, that imperative is applicable squarely to distribution of any State largesse. (See – Ramanna Shetty v. International Airport Authority[21]). It has been appropriately observed in State of U.P. v. Jaswant Singh[22] that the Act is a regulatory measure in respect of acquisition and possession of firearms and of occupation, trade or business therein."

39. The above-stated legal position qua the right of a person to hold firearms only under Section 3 read with Section 3(1) and Section 13 of the Arms Act, 1959, would bring us to the Amendment Act, 2019, by which following amendment has been incorporated in Section 3 of the Arms Act, 1959, which states as under: -

"3. In section 3 of the principal Act, in sub-section (2),–

(i) for the words "three firearms", the words "two firearm" shall be substituted;

(ii) for the proviso, the following provisos shall be inserted, namely:–

"Provided that a person who has in his possession more firearms than two at the commencement of the Arms (Amendment) Act, 2019, may retain with him any two of such firearms and shall deposit, within one year from such commencement, the remaining firearm with the officer in charge of the nearest police

21 AIR 1979 SC 1628
22 AIR 1968 All 383

> station or, subject to the conditions prescribed for the purposes of sub-section (1) of section 21, with a licensed dealer or, where such person is a member of the armed forces of the Union, in a unit armoury referred to in that sub-section after which it shall be delicensed within ninety days from the date of expiry of aforesaid one year:
>
> Provided further that while granting arms licence on inheritance or heirloom basis, the limit of two firearms shall not be exceeded."

40. A focused perusal of the aforesaid amendment in sub-section (2) of Section 3 of the Arms Act, 1959, would show that by the aforesaid amendment, the Parliament has amended sub-section (2) of Section 3 to reduce the maximum number of firearms acquired and number has been reduced from three to two.

41. It is the case of respondents No.3 & 4 / Union of India that the amendment under challenge did not curtail the legitimate needs of an individual of acquiring and possessing the firearms he needs for self-defence of his person and property, more particularly, now licenses are issued and renewed with validity of five years instead of three years by amending Section 15(1) of the Arms Act, 1959. It is also the case of respondents No.3 & 4 / Union of India that such amendment has brought with an intent to curb proliferation of firearms in the country and to strengthen the existing legislative framework keeping in view the experience in various countries with liberalised gun licence regimes which

shows that liberal licensing regimes have resulted neither in the increase in public safety nor in the enhancement of perception of public safety. On the contrary, the high rate of gun violence in the United States with equally high fatality rates, are thought to be attributable to its high rate of gun ownership. It is the further case of the Union of India that the impugned amendment in the Arms Act, 1959 has been made after consultation with various authorities, inter-ministerial consultation, obtaining views / comments of the stake holders / Ministries / Departments / States & Union Territories and thereafter, the draft amendment was placed on the website of the Ministry of Home Affairs for obtaining views / comments of the public and thereafter the amendment has been carried out and still number of firearms which a person is entitled to hold is two which is sufficient in itself and is a very good number for a common citizen for safety of his / her life and property.

42. In view of the aforesaid legal analysis, in our considered opinion, since the right to hold firearms in our country is regulated by the Arms Act, 1959 and the Arms Rules, 2016 and further, right to own a firearm is not a fundamental right guaranteed under the Constitution of India and is only a statutory privilege under Section 3 read with Section 3(2) of the Arms Act, 1959 and the Arms Rules, 2016, and considering the reasons advanced by the Union of India to

bring down the number of firearms which a person is entitled to hold as per license, it cannot be held that the amendment made in sub-section (2) of Section 3 of the Arms Act, 1959 by the Amendment Act, 2019 is either unconstitutional or it takes away any fundamental right of the petitioner, or it takes away the petitioner's constitutional right under Article 300A of the Constitution of India. More particularly, it is mandatory for a person to have a license in possession or carry firearms in accordance with the Arms Act, 1959 and the rules made thereunder, however, sub-section (1) of Section 3 of the Arms Act, 1959 is controlled and limited by sub-section (2) of Section 3 which starts with a *non obstante* clause and which mandates that no person other than a person referred to in sub-section (3) (dealer in firearms or any member of a rifle club or rifle association licensed or recognised by the Central Government), shall acquire, have in his possession or carry, at any time, more than two firearms.

43. Consequently, the writ petition questioning the constitutional validity of the amendment made in sub-section (2) of Section 3 of the Arms Act, 1959, deserves to be and is accordingly dismissed and challenge to Annexure P-2 i.e. the order of the Collector dated 10-9-2020 directing the petitioner to deposit the third firearm also, is not in

accordance with law and is hereby rejected. No order as to cost(s).

Sd/-	Sd/-
(Sanjay K. Agrawal)	(Radhakishan Agrawal)
Judge	Judge

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