
(1953) 04 MP CK 0004
In the Madhya Pradesh High Court

Mahendra Bahadur Singh	Vs	APPELLANT
State of Madhya Bharat and Another		RESPONDENT

Date of Decision : 09-04-1953

Acts Referred:

Constitution of India, 1950 — Article 143, 19, 226, 31
PART B STATES (LAWS) ACT, 1951 — Section 1, 2, 3, 6

Citation : AIR 1953 MP 236 : (1953) CriLJ 1409

Hon'ble Judges : Shinde, C.J.;Dixit, J

Bench : Division Bench

Judgement

Dixit, J.—This is an application under Article 226 of the Constitution of India for the issue of a suitable writ or a direction to the State of Madhya Bharat to forbear from acting in any manner by virtue of or under the Indian Arms Act, 1878 and for an order to the District Magistrate restraining him from enforcing a notice, directing the petitioner to deposit certain arms in his possession with the officer in charge of the police station in Laxmi Ganj Lashkar.

2. The petitioner stated that he is in possession of two guns, two rifles and two revolvers; that he is the owner of these arms, which were duly registered under the Gwalior State Arms and Ammunition Control Order; that in anticipation of the extension of the Indian Arms Act to this State by the Part B States (Laws Act) 1951 (Act 3 of 1951) which came Into force on 1.4.1951, the Madhya Bharat Government issued a notification in the Gazette dated 25.3.1951 directing persons in possession of fire arms to apply for licenses in accordance with the Indian Arms Act; that accordingly he applied to the District Magistrate for a license in respect of the six fire arms in his possession, that on 4.10.1951 the District Magistrate gave a notice to the petitioner directing him to deposit the fire arms within a week at the nearest police station. The petitioner further states that, thereupon, he made a representation to the District Magistrate and in reply the District Magistrate assured him that he would be granted the necessary licenses. The petitioner's grievance is that the District Magistrate instead of issuing the licenses again gave him a notice on 23.12.1952 to surrender all the

arms in his possession at the nearest police station. The petitioner challenges this action of the District Magistrate and the validity of the Indian Arms Act 1873 on several grounds. The main grounds are that the Indian Arms Act, 1878 though extended to this State has not yet been brought into force and that the Arms Act being repugnant to Articles 19(1)(f) and Article 31 of the Constitution of India is void. He prays that an order be Issued to the State and the District Magistrate of Gird restraining them from giving effect to the Act and to the notice calling upon him to surrender the arms in his possession.

3. The non-applicants oppose the petition. In the return filed on behalf of them it is said that the Indian Arms Act, 1878 came into force in this State on 1.4.1951 under a notification issued by the Central Government u/s 1(2), Part B States (Laws) Act, bringing the latter Act and the several Acts and Ordinance 3 mentioned in the schedule to it into force with effect from 1.4.1951, It is admitted that in anticipation of the coming into force of the Indian Arms Act 1878 the Government of Madhya Bharat published "a directive" to the citizens of Madhya Bharat to apply for licenses as required by that Act; that in response to this notice the petitioner did apply for a license in respect of the six fire arms in his possession. It is further stated that the petitioner being in possession of revolvers of prohibited bore was asked to explain how he came to possess those revolvers, as under Rs. 7 and 31, Indian Arms Rules 1951 no license in respect of revolvers of prohibited bore could be granted unless it was lawfully procured or purchased; that the petitioner did not give any satisfactory explanation of his possession of the revolvers; that as the power of granting or refusing a license in respect of revolvers and pistols is vested under Rule 31(1)(aa) in the Chief Secretary or any officer authorized by him, the District Magistrate subsequently reported to the Home Secretary that the petitioner could not explain satisfactorily his possession of the revolvers and was suspected of smuggling arms and ammunition, and that, therefore, no license should be granted to him in respect. of the revolvers; that the Home Secretary having been authorized by the Chief Secretary to deal and dispose of matters concerning the administration of the Indian Arms Act ,1878 considered the report submitted by the District Magistrate and came to the conclusion that no license should be granted to the petitioner and that he should be called upon to deposit all the fire arms in his possession at the nearest police station. The District Magistrate, therefore, in compliance with the orders of the Home Secretary issued a notice dated 23.12.1952 to the applicant calling upon him to deposit the fire arms in the Laxmi Ganj Police Station, Lashkar.

The opponents deny that the Indian Arms Act, 1878 in any way interferes with the fundamental rights of the petitioner or that it is consecratory in nature. In the return it is further stated that the order dated 23.12.1952 directing the petitioner to deposit his arms at the nearest police station is purely an executive order passed by the appropriate authority in its discretion and as such is not open to challenge under Article 226 of the Constitution.

4. In the petition, the applicant has taken several grounds. But at the hearing of the petition Mr. Anand Bihari Misra learned Counsel for the applicant confined his arguments to two points only, namely, that the Indian Arms Act 1878 has not yet come into force in the Madhya Bharat and that Sections 14, 16, Arms Act under which he is being required to obtain a license and deposit the fire arms at the nearest police station being repugnant to Articles 19(1)(f) and 31 of the Constitution are void and Inoperative.

5. On the first question, the contention of the learned Counsel for the petitioner is that the Part B States (Laws) Act 3 of 1951 which came into force on 1.4.1951 no doubt extended the Indian Arms Act 1878 to Part B States; but by the mere coming into force on 1.4.1951 of the Act 3 of 1951 the Indian Arms Act did not come into force on that date in this State. It is argued that the Arms Act contains a special commencement section, namely, Section 2 which provides that the Act shall come into force on such day as the Central Government by a notification in the Official Gazette appoints. But nothing appears to have been done so far under this provision and that, therefore, the Arms Act cannot be said to be in force in Madhya Bharat. I do not accept this submission. I think the learned Advocate-General is right when in reply he says that Section 3 of Act 3 of 1951 amends the Acts and Ordinances specified in the schedule to that Act as they existed at the time of the enactment of Act 3 of 1951 and that if, therefore, at that time any of the Acts or Ordinances mentioned in the Schedule having already come into force was in an active and not in a dormant state, then the extension of such in Act or Ordinance to a new territory or area would necessarily imply that the Act or Ordinance has been brought into force in the area or territory to which it has been extended. The Arms Act when it was enacted in 1878 extended to British India. Section 2 of the Act provided that it shall come into force on such day as the Government by a notification in the Gazette appoints in that behalf. A notification bringing the Act into force was issued on 1.10.1873. Subsequently the Act was extended to other areas by various Acts and Regulations, and on the date of the passing of the Part B States (Laws) Act, 1951 it extended to the whole of India except Part B States and was effective in that territory. Now, Section 3 Part B States (Laws) Act 1951 is as follows:

The Acts and Ordinances specified in the Schedule shall be amended in the manner and to the extent therein specified, and the territorial extent of each of the said Acts and Ordinances. shall, as from the appointed day be as stated in the extant clause thereof as so amended.

6. The Indian Arms Act, 1878 is one of the Acts specified in the Schedule and has been so amended as to include in its territorial extent Part B States. It must be noted that Section 3 besides amending in certain respects the Acts and Ordinances specified in the Schedule also amends the extant clause of each of those Acts and Ordinances so as to extend them to Part B States. It does not re-enact the provisions of the Acts and Ordinances mentioned in the Schedule with

the modification that they shall Attend to Part B States. The question, therefore, of bringing into force any "re-enactment" by the issue of a notification such as the one contemplated by Section 2, Arms Act does not arise.

What we have to consider is whether the law amended by Section 3 of Act 3 of 1951 was an effective or inactive law at the time of the amendment. If the law was effective when its territorial extent was amended then the result of the amendment would be to make the Act actually effective in the territory to which it has been extended. If on the other hand the law was inactive at the material time then an amendment of its territorial extent would mean a change in the area in which the law would be effective when it is put in force. This follows from the fact that in relation to laws the term "amendment" means a change in some of the provisions of law as they are at the time of the amendment. Amendment is of an existing law and not of a law as it was in the past or as it would be in the future. It will thus be seen that the Arms Act which had already become effective at the time of the amendment in its extant clause by Section 3 of Act 3 of 1951, is effective also In the Part B State³ to which it has now been extended by the amendment.

The learned Advocate-General relied on Section 6, Part B States (Laws) Act 1951 as supporting this conclusion "in a negative manner". He argued that as Section 8 of Act 3 of 1951 repeals from 1.4.1951 any law in force in any Part B State corresponding to any of the Acts or Ordinances attended to that State and as an intention to create a vacuum cannot be attributed to the Legislature, it must be taken that the extended law came into force in the State also from 1.4.1951.

I do not think that Section 6 is of much assistance in deciding the point before us. For, the question whether u/s 6 any corresponding law in force in Part B State is or is not repealed itself depends on the question whether the material provisions of the extended Act have become operative in the Part B State concerned, and this question in its turn depends on the terms of the extended Act and Section 3, Part B States (Laws) Act 1951. For example, if as in the case of the Bar Councils Act, 1926 or the Legal Practitioners Act, 1879 with the extension of the Act to Part B States, only some sections come into force leaving the substantial provisions of the Act to be brought into force by a subsequent notification, then it cannot be said that with the mere extension of such an Act by Section 3 of Act 3 of 1951, the corresponding law in any Part B State would stand repealed u/s 6. However, no such provision is to be found in the Indian Arms Act, 1878.

Section 2 of the Act is concerned with the issue of a notification bringing the provisions of the Act into force for the first time after its enactment. The object of postponing the effectiveness of the Act until the issue of a notification u/s 2 was obviously to give to the public sufficient notice of the enactment of the law. Sections 1 and 2 of the Act do not say that Section 1 alone shall extend to the whole of India and the rest of the Act shall come into force in any territory to which the Act applies on such date as the Government may by a notification

appoint. It is noteworthy that the Parliament in enacting Section 1(2), Part B States (Laws) Act, 1951 which empowers the Government to appoint a suitable date by a notification in the Gazette for the commencement of the Act, took notice of the fact that it would be a hardship to the general public if the first intimation of the President's assent to the Part B States (Laws) Act, 1951 was also to be the date of the coming into force in Part B State of the Acts and Ordinances specified in the Schedule. It cannot, therefore, be maintained that the issue of a notification bringing the Arms Act into force in Part B States was necessary also on the ground of giving to the public sufficient notice of the Act. It must also be stated that although the Arms Act after its enactment in 1878 was extended between the years 1878 to 1951 to various territories by several laws and regulations and brought into force in those territories without a notification u/s 2, there does not appear to be any case in which an objection similar to the one raised here was taken and decided by any High Court. Learned Counsel for the applicant was unable to draw our attention to any such decided case, I am, therefore, disposed to reject the contention of the learned Counsel for the applicant that the Arms Act has not come into force to this State as no notification u/s 2 of the Act has been issued.

7. The next contention of the learned Counsel for the petitioner is that Sections 14 and 16 of the Act abridge the petitioner's fundamental right under Article 19(1)(f) of the Constitution to acquire, hold and dispose of arms and are, therefore, void. Section 14 prohibits possession inter alia of fire arms except under a license and in the manner and to the extent permitted thereby. Section 16(1) provides that any person possessing arms, ammunition or military stores shall deposit them with the officer in charge of the nearest police station or with the license dealer, if his possession thereof becomes unlawful for any of the reasons stated in that section. The person so depositing the arms is u/s 16(2) entitled to receive them back if his possession again becomes lawful or to dispose, or authorize the disposal of the arms by sale or otherwise to any person whose possession of the same would be lawful and to receive the proceeds of any such sale. Sections 16(4) and 17 empower the Government to make rules to determine the officers by whom, the conditions, fees, subject to which any license shall be granted and the condition subject to which arms, ammunition etc. may be deposited with a license dealer and the period after the expiry of which things deposited u/s 16(1) shall be forfeited to Government, if they are not returned or disposed of within that period. In exercise of these powers the Government has framed complete and exhaustive rules laying down the purposes for which licenses to possess arms may be granted, prescribing the authority by whom the licenses may be granted or renewed, and the manner in which any person wishing to obtain a license should apply. It seems to me unnecessary to summarize here all these rules. For our purposes it is sufficient to state that under the rules no license for the possession of revolvers, pistols, muskets and rifles of certain prohibited bore is granted unless the authority granting the license is satisfied that it has been lawfully procured by the person applying for a

license. The authority empowered to grant or renew a license may in his discretion refuse to grant or renew a license (Rule 41). An appeal is also provided by Rule 41 from an order refusing to grant or renew a license.

8. The argument of Mr. Anand Bihari Misra learned Counsel for the applicant is that Article 19(1)(f) confers on the petitioner the fundamental right to acquire, hold and dispose of property which includes arms; that the only restriction put by the Constitution on the possession of arms, is that under Article 19(1)(b) the assembly of citizens with arms is prohibited; that, therefore, the Constitution gives to the petitioner a fundamental right to possess arms for purposes other than that of assembly; and that inasmuch as Sections 14 and 16, Arms Act and the rules framed under the Act interfere with the rights of a citizen to possess, hold and dispose of arms and also in some cases totally prohibit a person from possessing arms and deprive him of the arms in his possession without any compensation, they are repugnant to Article 19(1)(f) and Article 31 and are, therefore, unconstitutional.

In my opinion the contention is without any substance. A right to acquire, hold and dispose of arms is no doubt a right to property. But I am unable to see how the restriction put on the right of assembly by Article 19(1)(b) imports in Article 19(1)(f) an unrestricted fundamental right to acquire, hold and dispose of arms. The right to hold, acquire, dispose of property is not absolute. It is subject to the limitations specified in Article 19(5) and to the provisions contained in Article 31. It is obvious from an examination of the provisions of Article 19(1)(f) read with Clause 5 of the Article, and Article 31 firstly that reasonable restriction on the exercise of the right to acquire, hold or dispose of property can be imposed either in the interests of the general public or for the protection of the interests of any Scheduled Tribe; secondly a person may be deprived of his property by authority of law; and thirdly that the State may acquire any property or take possession of it for public purposes on payment of compensation.

When, therefore, it is urged that Sections 14 and 16, Arms Act and the rules framed thereunder interfere with the petitioner's right to property, what we have to see is whether the restrictions imposed by the Impugned provisions on the right to possess arms are reasonable, and in the interests of general public, there being no question of the protection of any Scheduled tribe here. Now, it is plain that the question whether the restrictions imposed are reasonable or unreasonable has to be decided in the context of, social, economic and political conditions in which they are imposed. Again as pointed out by the Supreme Court in the case of - Dr. N.B. Khare Vs. The State of Delhi, in deciding on the reasonableness or otherwise of the restrictions imposed by law, the substantive as well as the procedural provisions of law should be examined and the question whether the provisions of the Act provide reasonable safeguard against the abuse of the power given to thagr executive authority to administer the law is not relevant for the true interpretation of the law. In - Chintaman Rao Vs. The State of Madhya Pradesh, it was observed as follows:

The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in that quality.

9. This reasoning applied equally to Article 19(1)(f) and Article 19(5). Judged by these tests I do not think that the restrictions put by Sections 14 and 16, which I have already summarized above, on the possession and disposal of arms can be stated to be unreasonable in relation to the present-day economic, political and social conditions. That a person should not possess arms except under a license; that he should not be allowed to sell them to persons whose possession of the arms would be unlawful; that a license in respect of dangerous arms of prohibited bore should not be granted unless it is shown that they are lawfully procured; that the authority empowered to grant a license or renew it should have the power to refuse it to persons whose possession of arms would be quite incompatible with the maintenance of peace, good order requires no expatiation whatsoever. The restrictions imposed on the possession and disposal of arms by Sections 14 and 16 are reasonable restrictions necessary to the preservation, of peace and prevention of danger to life and property and permissible under Clause 5 of Article 19 of the Constitution. Consequently, it cannot be held that these two sections in so far as they prohibit the possession of arms except under license, require a person to deposit the arms already in his possession, if his possession thereof becomes unlawful, and restrict the sale of arms to persons whose possession of the same would be unlawful constitute an infringement of Article 19(1)(f) of the Constitution and are, therefore, void.

10. The contention that these provisions of Arms Act offend Article 31 is equally untenable. Here, the petitioner has not been deprived of the arms in his possession. He has been merely asked to deposit them at the nearest police station. If he obtains a license In respect of them, the arms would be returned to him. Otherwise he would be entitled to receive the proceeds of the sale of the arms to a person whose possession of the same would be lawful. That being so, Article 31 of the Constitution which is operative only when a person Is deprived of his property or when his property has been acquired or taken possession of for a public purpose has no applicability here. The Article that is relevant here is Article 19(1)(f) which applies in cases where property has not been taken away under article 31. Article 31 is of no help in Judging the validity of the provisions such as those impugned here, which do not deprive any person of his property or acquire or take possession of his property but simply lay down the conditions under which a person is entitled to hold and dispose of the property. The argument that as under certain conditions such as those stated in Sections 24

and 26, Arms Act the arms in possession of a person can be confiscated without compensation or detained and, therefore, they are repugnant to Article 31 overlooks the fact that Article 31(1) implies that a person may be deprived of his property by authority of law and that in the exercise of police powers a person may be deprived of his property for the prevention of danger to life or property even without compensation. I am, therefore, unable to accept the contention that Sections 14 and 16, Arms Act being repugnant to Article 31 are void.

11. Learned Counsel for the petitioner also took the objection that Section 14 was ultra vires the Legislature which passed the Act as by simply providing that no person shall have in his possession any fire arms, ammunition etc. except under a license and in the manner and to the extent permitted thereby and by empowering the Government to frame rules to determine the officer by whom, the form in which, and the terms and conditions subject to which a license may be granted, the Legislature virtually abdicated its legislative power in favour of the executive. I do not see how the question of delegated legislation arises in this case. The Supreme Court considered the question as to how far "delegated legislation" is permissible. "In re Article 143, Constitution of India and Delhi Laws Act 1912 Etc. AIR 1951 S C 332 (C), and a reference to its final conclusion will show that delegation of the character which Section 14 involves cannot On any view be held to be invalid. The Legislature has laid down in Section 14 itself the principle that no person shall possess fire arms except under a license. Such matters as the authority competent to issue licenses, the form in which they should be Issued and the terms and conditions on which they should be granted are all matters of detail. Section 17, Arms Act does no more than enable the Government to make rules to carry out the principle embodied in Section 14. This delegation of power to administrative bodies is permissible.

12. Learned Counsel for the petitioner also sought to argue that u/s 14 read with Section 17, Arms Act he was entitled as of right to obtain a license; that a Government was not empowered to frame a rule giving the authority empowered to grant a license, a discretion to refuse the license; that under the Indian Arms Rules 1951 the authority empowered to grant a license for the possession of D.B.B.L. Guns and S.B.B.L. Guns is the District Magistrate, and Chief Secretary is empowered to grant licenses for revolvers and pistols; and that, therefore, the order dated 11.11.1952 of the Home Secretary rejecting the petitioner's application for license was one without Jurisdiction and invalid, on these grounds it was urged that a direction be issued to the Chief Secretary and the District Magistrate to grant to the petitioner the necessary licenses for the arms in his possession.

I agree with the learned Advocate-General that the applicant cannot be allowed to raise this objection which has not been taken in the petition but which is founded on the statement in return, namely,

that the Home Secretary Mr. Bamroo after a perusal of the whole record and taking into consideration the opinion of the District Magistrate, by order dated

11.11.1952 refused the application for license of the petitioner and ordered that the applicant should be called upon to deposit all fire arms.

In his application the petitioner has only stated the facts and grounds for the enforcement of a right to possess arms without any license and to have the notice given to him for the deposit of the arms cancelled. The rule nisi was issued to the opponents to show cause in respect of the grounds and relief stated in the petition; and the opponents have filed their answers to these grounds and not to the grounds which the petitioner is now putting forward. The petition is not for quashing the determination of any authority refusing a license to the applicant and the non-applicants have not been called upon to show cause why a license should not be granted to the applicant. In regard to applications for prerogative writs, the settled practice of English and American Courts is that no ground shall be relied upon or relief sought at the hearing of the motion except the grounds and relief set out in the application and a writ would be refused where the case tendered by the petition is radically different from that set up upon argument. The practice being one which only carries out the object with which a copy of the application for the issue of a writ is served on the opponent and he is called upon to show cause in respect of the grounds stated in the application, must be adopted as regards applications under Article 226 also. In my view, the applicant cannot be permitted to argue on the basis of an incidental statement in the return that the Home Secretary has passed an order rejecting his application for license, that the order is illegal and that he is entitled to the grant of a license as of right. If he thinks there has been a determination refusing a license to him and it is illegal, and that a license must be granted to him, the applicant is at liberty to take appropriate proceedings for quashing the determination and for enforcing his alleged right to obtain a license.

In so far as the notice given to the applicant by the District Magistrate is concerned, it is merely one by way of reminder to the applicant that as after the coming into force of the Arms Act his possession of arms without a license has become unlawful, he must u/s 16 deposit the arms with the officer in charge of the nearest police station. Even without a notice from the District Magistrate the applicant is under an obligation to deposit the arms u/s 16 if his possession thereof under the Arms Act is unlawful. The notice, therefore, cannot be objected to on the ground that it violates the provisions of Section 16 or on the ground that the District Magistrate as the Chief Administrative and executive authority of the District was not competent to draw the attention of the applicant to these provisions.

13. For the above reasons, I am of the opinion that this application must be dismissed with costs, fixing the counsel's fee at Rs. 75/-.

Shinde, C.J.

14. I agree.