
(2012) 12 MP CK 0114
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1205 of 2012

Mahendra Bhatt

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 13-12-2012

Acts Referred:

Arms Act, 1959 — Section 44, 44(2)(e)
Constitution of India, 1950 — Article 162, 246

Citation : AIR 2013 MP 49 : (2012) ILR (MP) 3021 : (2013) 2 MPHT 301 :
(2013) 2 MPLJ 467

Hon'ble Judges : S.A. Bobde, C.J.; M.C. Garg, J

Bench : Division Bench

Advocate : Rajendra Mishra, Sanjay Agrawal and Jeetendra Dixit, for the
Appellant; Kumares Pathak, Dy. A.G., for the Respondent

Judgement

S.A. Bobde, C.J.—The issue involved in all the three matters is identical one, hence they are being disposed of by the common judgment. Heard.

Rule returnable forthwith.

Heard finally by the consent of the parties.

2. The petitioners have questioned the authority of State Government to issue the impugned Notification No. F-12-29/2011/B-1/U dated 10.6.2011 purporting to levy renewal fees for renewal of arms licenses for the following category of weapons:

Weapons

1. Prohibited and Non-prohibited weapon
2. Non-prohibited Rifle
3. Barrel Loading Gun
4. Magazine Loading Gun.

3. The petitioners are holders of gun licenses for self protection in respect of their weapons which include revolvers and rifles. At the time of renewal, they applied to the respondent/Collector.

4. The respondent/Collector, who is a licensing authority, demanded renewal fees according to the rates mentioned in the notification:

5. The petitioners have filed this petition challenging the said notification under which the renewal has been demanded.

6. Learned counsel for the petitioners submitted that the subject of the arms is covered by Entry-V of the Union List in the Seventh Schedule of the Constitution of India which reads as follows:

Seventh Schedule [Article 246] List I-Union List

1 *** 2 *** 3 *** 4 ***

5. Arms, firearms, ammunition and explosives,

7. Further, by reason of Article 162 of the Constitution of India, according to the petitioners, the Executive Powers of a State can only be coextensive with the powers of the Legislature of the State. The State could not have issued any notification for charging renewal fees since the Legislature of the State itself does not have power to make laws in this regard.

8. Learned counsel for the petitioners relies on Section 44 of the Arms Act enacted by the Parliament which authorizes the Central Government to make rules of the Arms Act. Section 44(2)(e) of the Arms Act, 1959 reads as follows:

44 Power to make rules:

(1) *** (2) (a) *** (b) *** (c) *** (d) ***

(e) the fees payable in respect of any

application for the grant or renewal of a licence and in respect of any licence granted or renewed and the manner of paying the same.

9. The Central Government has enacted the rules in exercise of the said powers known as the Arms Rules, 1962. Rule 54 of the Arms Rules deals with renewal of licenses, which reads thus:

Rules 54 provides for renewal of licenses.

54. Renewal of licenses.-

(1) Every licence may, at its expiration and subject to the same condition (if any) as to the grant thereof, be renewed by the authority mentioned in Schedule II as renewing authority.

10. Rule 57 of the Arms Rules, provides for payment of fees in respect of grant and renewal of arms licenses as specified in Schedule IV. The relevant part of

Schedule IV and Rule 51 of the Arms Rules reads thus:

57. Fee payable for licence.- (1) {(a) Every licence granted or renewed under these rules shall, save as herein otherwise expressly provided, be chargeable with the fee (if any) specified in Schedule TV}

(b) In any case where fee is prescribed for a year, fee for a fraction of a year shall be the same as for a whole year.

(2) Where a licensee submits his application for renewal of his licence after the expiry of the period for which the licence was granted, the licensing authority may, if he decides to renew the licence, at his discretion levy--

(a) full fee as for initial grant of the licence, and

(b) if he is satisfied that the delay is not justifiable, or excusable, nor serious enough to warrant revocation of the licence or prosecution of the licensee, a late fee not exceeding the amount of the licence fee is charged, or (Rs. 100) in other cases.

(3) The Central Government may, by general or special order and for reasons to be recorded in writing and subject to such conditions, if any, as it may specify in the order, grant exemption from, or reduction of, the fee payable in respect of any licence:

Provided that it shall be a condition of every exemption from payment of the fee chargeable in respect of the grant or renewal of any licence, in Form III that if application for renewal of such licence is not made within one month of the date on which the licence expires, the licensing authority may, unless the applicant satisfies the licensing authority that he had sufficient cause for not making the application within that period, levy renewal fee at the rate specified in the Form.

(4) No separate fee shall be chargeable from retainers.

(5) No fee shall be chargeable in respect of the grant or renewal of a licence in Form XV by a State Government or the Board of Revenue (in the State of Andhra Pradesh, Kerala or [Tamil Nadu] for the import of sulphur in reasonable quantities, if the State Government or the Board of Revenue is satisfied that the sulphur is required in good faith for medicinal, industrial or agricultural purposes (other than for manufacturing arms, ammunition or explosives).

(6) Any political representative authorised to grant licenses in Form XVIII may remit the fee payable in respect of the grant or renewal of any such licence in the case of arms or ammunition exported for personal use, or in the case of ammunition exported for use for blasting purposes (whether on a public works or not) of the Government of any territory or place outside India.

(7) (i) No fee shall be chargeable for the grant of a licence for export and re-import of any arms or ammunition in a case or package legibly addressed to a person lawfully entitled to possess such articles, in compliance with a requisition

made by a such person for the supply of such articles in reasonable quantities for his own use or after carrying out necessary repairs thereto.

(ii) Where any arms or ammunition are imported under a licence into any customs port in India and re-exported thence for re-import in to any other customs port in India under rule 35 the necessary licence for such re-export and re-import under the said rule shall be chargeable with a fee of rupee one only.

(8) No fee shall be chargeable in respect of:

(i) a change of description of the weapon entered in a licence granted for its acquisition under proviso to rule 52(2) but if the licence fee in respect of the weapon so changed is higher than that for the original weapon, the difference of such fee may be charged;

(ii) an endorsement under rule 12 of a licence granted in the State of Pondicherry or endorsement to extend or change the area of validity of a licence under sub-rule (1) of rule 53;

(iii) a change of name, under rule 53(2), or member, agent or other representative of the company or retainer; or

(iv) a grant of consent or permit/certificate or endorsement or any other document under these rules, except as otherwise expressly provided.

11. In the submission of the learned counsel for the petitioners, the matters relating to the charge of renewal fees for arms licenses having been legislated upon by the aforesaid provisions, the State has no power to make any legislation much less to take executive action and charge renewal fees in respect of arms licenses.

12. Shri Kumaresh Pathak, learned Deputy Advocate General submitted that the impugned circular was issued in exercise of the executive powers of the State since law and order is a State subject and it was found so having regard to the general increase in fees.

13. We find substance in contentions on behalf of the petitioners. Only Parliament is empowered to legislate on the subject of the arms. Parliament has, therefore, enacted the Arms Act 1959. The Central Government has enacted Rules in exercise of its powers to make rules. There is no doubt that the Central Government alone could have enacted such rules having regard to the power conferred by Section 44 of the Arms Act. Specifically, the Central Government has provided for fees on both, the initial grant and the renewal of licence.

14. The State Government has, in the circumstances, no power whatsoever either to legislature or to take executive action in respect of arms in general and, in any case, in respect of imposing or enhancing licence fees either for the initial grants or the renewals.

15. Shri Sanjay Agrawal, learned counsel for the petitioner, in Writ Petition No.

11209/2011, submitted that the State Government could not have exercised any executive powers since the Legislature of the State does not have any authority to make laws in respect of the subject and the authority for which is conferred exclusively on Parliament and the Central Government.

16. Learned counsel of the petitioner has relied on a judgment of a Single Judge of this Court reported in 2001(1) M.P.H.T. 445, Smt. Sakinabai and others Vs. State of M.P. and another where the learned Single Judge has held that the power of the State extends only to matters in respect of which State Legislature has powers to make laws and that there is no such power in the State Government in the legislative scheme.

17. We find no reason to doubt the correctness of the finding of the learned Single Judge.

18. In the circumstances, the impugned notification/circular No. F-12-29/2011/C-1/II dated 10.6.2011 is hereby quashed and is set aside. Rule made absolute.

There shall be no order as to costs.