

(1998) 04 AHC CK 0040
In the Allahabad High Court
Case No : C.M.W.P. No. 1049 of 1998

Maresh Narayan Gupta

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 07-04-1998

Acts Referred:

Arms Act, 1959 — Section 30, 41, 43, 44
Arms Rules, 1962 — Rule 4
Constitution of India, 1950 — Article 14, 19, 226, 258(1), 32
Criminal Procedure Code, 1973 (CrPC) — Section 468, 473
Essential Commodities Act, 1955 — Section 3

Citation : (1998) 3 AWC 1611

Hon'ble Judges : S.K. Phaujdar, J; J.C. Misra, J

Bench : Division Bench

Advocate : K.K. Dubey, for the Appellant;

Judgement

S.K. Phaujdar and J.C. Misra, JJ.—Through the present writ petition, the petitioner has prayed for a writ, order or direction in the nature of certiorari for quashing an F.I.R. dated 2.3.1998 u/s 30 of the Arms Act in Case Crime No. 160 of 1998, P.S. Nawavad, District Jhansi. There is a further prayer for a mandamus for a declaration that the Notification No. 5197-R/VIII-Section 5-468-80. dated 31.10.1980 Issued by the Governor of Uttar Pradesh as void and ultra vires.

2. The F.I.R. In question speaks of possession of ammunition beyond the number prescribed by the licence for which the petitioner is sought to be prosecuted in the aforesaid case.

3. Section 30 of the Arms Act speaks of punishment for contravention of licence or a rule made under the Arms Act for which no punishment is provided elsewhere in the said Act. The maximum term for which a person may be punished under this section is Imprisonment for six months. There is also an alternative punishment of fine which may extend to Rs. 2,000.

4. A licence under the Arms Act is dealt with in Chapter III of the Act and the

form for such licence is spoken of in Rule 4 of the Arms Rules, 1962. This licence, according to Rule 4, has been given in Schedule 11 to the Rules. The licence in Form 3 is one for acquisition, possession and carrying of arms or ammunition for sport /protection /display. The proforma of the licence speaks of certain conditions which are to be observed by a licensee. In the present case, we are concerned with condition No. 7 which is quoted below :

"7. He shall not purchase ammunition of any kind in excess of the maximum which may from time to time be fixed by the Central Government. Such maximum may be prescribed both for the amount purchasable in a calender year and for the amount that may be possessed at any one time. If, however, a licensee exhausts the total quantity of ammunition purchasable in a year earlier than the close of the year, he may for good and sufficient reasons be given a temporary Increase in the total quantity purchasable at the discretion of the licensing authority."

5. The maximum number of ammunition which a licensee may purchase or possess at one time is to be fixed by the Central Government. Section 43 of the Arms Act empowers the Central Government, by notification in the official gazette, to direct that any power or function which may be exercised or performed by it under this Act other than the power u/s 41 or the power u/s 44 may be exercised or performed by the State Government. In pursuance to a delegation of this power by the Central Government to the State Government read with the general power of delegation under Article 258(1) of the Constitution, the State Government may Issue a notification prescribing the maximum number of ammunition to be purchased or kept by a licensee and, according to the allegations in the F.I.R., the petitioner had been in possession of ammunition more than those prescribed limit. The limit, according to the notification, was only 10 whereas he was found to be in possession of 22.

6. The learned counsel for the petitioner raised certain questions of law regarding the maintainability of the F.I.R. and the vires of the notification of the State Government. It was stated that according to the recovery memo, the alleged offence was committed on 2.11.1996 but the F.I.R. was lodged on 2.3.1998. This F.I.R. was a delayed one and the Court could not have taken cognizance after the lapse of one year from the date of offence as the offence was punishable with six months" Imprisonment only , and Section 468, Cr. P.C. Is a bar to such cognizance. The question of delay is certainly a point worth agitation but it may not be available to the petitioner before the writ court as Section 473, Cr. P.C. provides for extension of period of limitation in certain cases. This section states that notwithstanding anything contained in the foregoing provisions of this Chapter (Section 468 is covered under this Chapter), any Court may take cognizance of an offence after expiry of period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or it is necessary to do so in the Interest of Justice. Whether cognizance should or should not be taken or whether the period of limitation as

prescribed u/s 468, Cr. P.C. would be extended or not is to be determined by the Court taking cognizance and there may not be any direction at this stage from the High Court under Article 226 of the Constitution of India looking to the provisions of Section 468. Cr. P.C. only and not referring to Section 473 at all. "

7. The learned counsel further stated that the power of the Central Government was delegated to the State Government under Article 258(1) of the Constitution read with Section 43(1) of the Arms Act. It was an executive power which was delegated and it could never be read as a legislative power and for a violation of an executive order, no person could be prosecuted, punished or detained. It was contended that the power was delegated to the State Government and not to the Governor and the State Government had not framed any rule or order amending the terms of condition No. 7 of the proforma of the licence and as such, the notification dated 31.10.1980 was without Jurisdiction. It was contended, on the same facts but on a different point of view, that the rule making power was not delegated but, in fact, the Rules under which the licence was granted was virtually amended and that was beyond the scope of the delegated power.

8. We have before us the notification of the Central Government dated 1.10.1962, bearing G.S.R. 1309. This notification speaks of exercise of powers conferred by sub-section (1) of Section 43 of the Arms Act, 1959, and clause (1) of Article 258 of the Constitution and the President Issued the notification with the consent of all the State Governments and entrusted to each such Government the functions of the Central Government under the provisions of the Arms Act, 1959, and the Armed Rules, 1962. subject to such conditions as were specified in the specific columns in the schedule to this notification. It covers the powers of the Central Government as Indicated in condition number 7 of proforma for a licence and there is no condition to which the exercise of this power will be subject.

In exercise of this power delegated to the State of U. P., the impugned Notification No. 5197-R/VIII-Section 5-468-80, dated 31.10.1980 was Issued. From this notification. It was Indicated that the maximum amount of ammunition to be purchased in a calendar year was 25 cartridges for revolver. 50 cartridges for a semi-automatic rifle. 100 cartridges for sporting rifle and different other number of ammunition for different other weapons. It also spoke of maximum number of ammunitions which may be possessed at any one time. The limit was 10 cartridges for a revolver, 25 for a semi-automatic revolver. 25 for a sporting rifle and some other quantities for other types of weapons.

9. As stated above, it was the contention of the learned counsel for the petitioner that in the name of exercise of delegated executive power, the State Government had actually exercised a legislative power although there was no delegation of such power and there was bar of delegation of rule-making power in Section 43 of the Arms Act itself. In support of his contention, the learned counsel drew our attention to certain decisions of the Supreme Court. Reference was made to the case of *Prag Ice and Oil Mills and Another Vs. Union of India (UOI)*, . The

Supreme Court was approached with a petition under Article 32 of the Constitution challenging the Mustard Oil (Price Control) Order. 1977 Issued on 30.9.1977 u/s 3 of the Essential Commodities Act. It was held in this case that though the E. C. Act got protection of the IXth Schedule of the Constitution, a price control order issued under it could not enjoy the same protection and was open to be challenged under Article 32 of the Constitution. The particular Price Control Order, however, was held as not offending Articles 14 and 19 of the Constitution. The learned counsel referred paragraph 15 of the Judgment wherein it was observed :

"15. In practice, it is the exercise of power which is generally assailed and not the mere conferment of it which raises the somewhat different question of legislative competence. Indeed, the Ninth Schedule does not provide any protection at all against attacks based upon either the vice of excessive delegation or want of legislative competence defects which could be said to vitiate the grant of powers despite their place in the Ninth Schedule. But, questions of conflict with fundamental rights and of transgression of legitimate or reasonable limits upon their exercise arise when citizens complain of unreasonable impediments to the exercise of their fundamental rights."

The learned counsel proposed to argue that the limit of number of ammunition to be possessed at any one time by the notification by the State Government was unreasonable, even though it is conceded that power was there.

10. Reliance was also placed on the judgment in the case of Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others, . In this case, a question arose regarding the validity of certain restrictions regarding Inter-state movement of foodgrains. Certain directions were given by the State to implement the provisions of the U. P. Foodgrains Dealers (Licensing and Restriction on Hoarding) Order, 1976 and the U. P. Foodgrains (Procurement and Regulation of Trade) Order, 1978. The Supreme Court ruled in this case that Individual's rights of freedom and freedom of Inter-state trade as against the national interest was to be seen with the touch-stone of reasonable restrictions. It was held that regulatory measures to prevent price rise in wheat and its outflow were in the Interest of general public and would come within the reasonable restrictions.

11. The third case-law relied upon by the learned counsel stands in A.K. Roy and Others Vs. Union of India (UOI) and Others, . The Constitution Forty-Fourth Amendment Act, 1978. required u/s 3 of the Act that it would be brought into force by notification to be Issued by the Central Government. No such notification was issued and a mandamus was sought for. The Supreme Court held that the Parliament had left to the unfettered judgment of the Central Government the question as regards the time for bringing the provisions of the Forty-Fourth Amendment into force. It was not for the Court to compel the Government to do what, according to the mandate of the Parliament, lay in the discretion of the Central Government to do when it considered it opportune to do

it. The executive was held responsible to the Parliament and if the Parliament considered that the executive had betrayed the trust by not bringing any provision of the amendment into force. It could censure the executive. It was held :

"It is difficult to appreciate what practicable difficulty can possibly prevent the Government from bringing into force the provisions of Section 3 of the Forty-Fourth Amendment, after the passage of 2-1/2 years. But the remedy is not the writ of mandamus."

12. With all appreciation to the submission of the learned counsel, we must opine that the case-laws cited by him rather go against him instead of supporting his contention. Moreover, the case-laws dealt with Interference in fundamental rights of the respective petitioners and even then on the ground of reasonable restriction and for the benefit of general public, the particular orders which were challenged before the Supreme Court, were held to be *intra vires*. In the Instant case, the condition No. 7 in the proforma of the licence clearly empowers the Central Government to fix the limit of ammunition, that may be purchased at one time or may be possessed at any single time. The propriety or *vires* or reasonableness of this condition has not been challenged before us and it must, therefore, be presumed that the Central Government had the power to fix such limit. The power speaks of fixation of the limit by the Central Government and not by the Legislature nor by Rules. This simply suggests that the power of the Central Government spoken of under this condition No. 7 is merely an executive power and not a Judicial one. Article 258(1) empowers delegation of this executive power to a State Government after consultation with it. The notification of the Central Government made in 1962 Indicates that all the State Governments were consulted and then only the power was delegated to each State Government. The notification of the State Government is thus an exercise of an executive power which was delegated not only under Article 258(1) of the Constitution but also u/s 43(1) of the Arms Act. This section forbids delegation of a power u/s 41 and Section 44. Section 41 speaks of power to exempt any person or any particular description of arms from the operation of all or any of the provisions of the Act and Section 44 speaks of power to make rules. When condition No. 7 spoke of exercise of certain power by the Central Government, it was neither a power to exempt nor a power to make a rule and thus it did not come within Section 41 or Section 44 of the Arms Act. It was out and out an executive power which was delegated and exercised, upon such delegation, by the State Government. There is, thus, no excessive delegation nor delegation of any legislative power.

13. On the question of reasonableness, we find that in case of *Bishambhar Dayal* (supra), the Supreme Court had before it two orders concerning foodgrain dealers and it was held that in the Interest of general public, the Individual's right of freedom and freedom of inter-state trade could be put under reasonable restrictions. The power spoken of in condition No. 7 of the proforma of licence

was delegated to the State Governments as the situations of law and order were different in different States and law and order was certainly a subject within the domain of the State Government. Common experience shows how Indiscriminately arms and ammunition are being used these days to the detriment of maintenance of law and order and public order. Seen in this light, the Issuance of a notification by the State Government exercising its delegated powers to restrict possession at a time of ammunition, may not be deemed to be unreasonable. Rather, it must be held that it was done for public good.

14. The points raised by the learned counsel, therefore, fall and we hold that the power exercised by the State Government to Issue the impugned notification was duly delegated to it by the Central Government and was duly exercised and there was no unreasonableness in its exercise and the concerned notification may not, therefore, be declared ultra vires. This was the only remaining question challenging the F.I.R. and, as such, the challenge to the F.I.R. must also fall and it cannot be quashed. We reiterate that the question of delay must be judged by the concerned criminal court looking to Sections 468 and 473, Cr. P.C.

15. in view of the above, the present writ petition stands dismissed.