
(2013) 04 MP CK 0104

In the Madhya Pradesh High Court

Case No : Writ Petitions No. 3205, 2565, 3028, 3033, 3164, 3892, 4234, 5020 and 5958 of 2010, 4396 and 4651 of 2011

Pratibha Chouhan (Smt.)

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Arms Act, 1959 — Section 10, 11, 12, 13, 13
Constitution of India, 1950 — Article 162, 245, 246, 73, 73(1)

Citation : (2014) 1 Crimes 31 : (2013) 2 JLJ 250 : (2013) 4 MPHT 109 : (2013) 4 MPJR 144 : (2013) 3 MPLJ 219 : (2013) 4 RCR(Criminal) 165

Hon'ble Judges : Sujoy Paul, J;Sheel Nagu, J;S.K. Gangele, J

Bench : Full Bench

Advocate : Arvind Dudawat, N.K. Gupta and S.N. Seth, for the Appellant; M.P.S. Raghuvanshi, Additional Advocate General and Vivek Khedkar, D.A.G. for respondents/State and Ankur Mody, Assistant Solicitor General of India for Union of India, for the Respondent

Judgement

S.K. Gangele, J.—Hon''ble the Chief Justice has made following reference before this Full Bench:

(i) Whether State Government or its authorities can issue executive instructions/ letters to formulate conditions for issuing, varying or renewing the arm licence in view of the provisions of the Arms Act, rules made there under and as per the provisions of Constitution of India?

(ii) Whether the view taken by the Gwalior Bench in Arun Mangal (supra), is in accordance with law and correct?

(iii) It may be decided whether the view taken in Writ Petition No. 6265/2006 (Surendra Kumar Yadav and another v. State of M.P. and others) (Principal Seat), Writ Petition No. 838/2000 (Jiyauddin and others v. State of M.P. and another), and Writ Petition No. 8715/2011 (Mulla Sabbir Hussain v. State of M.P. and another) (Indore Bench), is correct or the view taken by Gwalior Bench in Writ

Petition No. 1224/2005 (Arun Mangal and others v. State of M.P. and Others), affirmed in Writ Appeal No. 561/2007 (Arun Mangal and others v. State of M.P. and others) is correct.

Brief facts of the case are that earlier the petitioners were granted arms dealer licence. They submitted application for renewal of licence after expiry of the period. It was rejected on certain grounds. State Government issued certain guidelines and fixed standard for the purpose of renewal of arms licence. The petitioners challenged the order issued by the State Government in regard to fixing standard for renewal of arms dealer licence and also challenged rejection of application of the petitioners for renewal of arms dealer licence on the ground that the arms is the subject of Union list, hence, the State Government or its authority has no power and jurisdiction to issue instruction or fix the standard. Learned Single Judge while hearing the writ petitions observed that there is a difference of opinion in regard to power of the State Government or its authority to issue instructions for the purpose of renewal of arms dealers licence. Consequently, he made reference to the Hon''ble Chief Justice for Constitution of Full Bench to answer the reference in accordance with the provisions of Chapter IV rule 8 of M.P. High Court Rules, 2008. The relevant provisions of rule 8(3) is as under:

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(2) xxx

(3) Where a Judge sitting alone while hearing a case is of the opinion that for the decision of that case, as earlier decision of coordinate or Larger Bench of this Court needs reconsideration, he may formulate question(s) and refer the same to the Chief Justice with a recommendation that it be placed before a Larger Bench.

2. Consequently, the Hon''ble Chief Justice ordered constitution of this Full Bench and referred the questions for consideration.

3. Learned counsel appearing on behalf of the petitioners have contended that the State Government or its authorities have no power and authority to issue any instruction in regard to grant or refusal of arms licence or grant or refusal to renew the arms licence because it is a subject-matter of Union list. It is further submitted that the instructions issued by Home Department in this regard are contrary to law. It has further been contended that the Indore Bench in Writ Petition No. 11058/2010 (Smt. Sakina Bandoowala v. State of M.P. and others), and Writ Petition No. 8715/2011 (Mulla Sabbir Hussain and others v. State of M.P.), and Smt. Sakinabai and others Vs. State of M.P. and another, has decided the correct law. The judgment of the learned Single Judge in Smt. Sakinabai (supra), has further been affirmed by the Division Bench of this Court in Writ Petition No. 1205/2012, Writ Petition No. 18914/2012 and Writ Petition No. 11209/2011. Hence, the decision in the case of Smt. Sakinabai (supra), is the correct proposition of law. In support of their contentions, learned counsel relied on the following judgments:

- (i) Smt. Sakinabai and others Vs. State of M.P. and another,
- (ii) Mohan Meakin Ltd. Vs. State of H.P. and Others,
- (iii) Jantia Hill Truck Owners Association Vs. Shailang Area Coal Dealer and Truck Owner Association and Others,
- (iv) The Secretary, Sh. A.P.D. Jain Pathshala and Others Vs. Shivaji Bhagwat More and Others,
- (v) N.D.M.C. and Others Vs. Tanvi Trading and Credit Pvt. Ltd. and Others,
- (vi) P.H. Paul Manoj Pandian Vs. Mr. P. Veldurai,
- (vii) A.P. Public Service Commission Vs. Balaji Badhavath and Others,
- (viii) Punjab Water Supply and Sewerage Board, Hoshiarpur Vs. Ranjodh Singh and Others,

4. Contrary to this, learned Additional Advocate General has contended that under the Arms Act, 1959 (hereinafter referred to as the Act of 1959) and the Arms Rules, 1962 (hereinafter referred to the Rules of 1962), as amended in the year 2010, the District Magistrate and the appropriate State Government are the authorities for grant of arms licence and renewal of arms licence. A discretion has been given to the authority, prescribed under the Act for grant or refusal of arms licence or grant or refusal of renewal of licence, hence, in exercise of the aforesaid discretion certain instructions have been issued by the State Government. Hence, the instructions are within the competence and authority of the Government. He has further contended that the State Government has not abridged or overstepped on the powers of the Union Government. In support of his contentions, learned Additional Advocate General relied on the judgments in the case of reported in Mohan Meakin Ltd. Vs. State of H.P. and Others, and in the case of Shri Rama Sugar Industries Ltd. Vs. State of Andhra Pradesh and Others,

5. Learned Assistant Solicitor General appearing on behalf of the Union of India has contended that under the provisions of Act of 1959 and Rules of 1962, the licencing authority has been given a discretion to grant or renew the licence or refuse to grant or renew the licence, hence, in exercising the discretion, the authority or the Government can issue certain guidelines for uniformity in consonance with the provisions of the Act of 1959 and Rules of 1962.

6. History of arms control in India starts from 1878 when an Act; Indian Arms Act, 1878 was brought into existence. The salient features of the Act were that no Indian could keep a weapon without a licence until it was issued by the District Magistrate. The Act further provided imprisonment of three years and fine for keeping a gun without a licence and in case an unlicensed gun was concealed the punishment was of 7 years. Act of 1959 was passed by both the houses and the objects of the bill were as under:

- (b) to classify firearms and other prohibited weapons so as to ensure-
- (i) that dangerous weapons of military patterns are not available for to civilians, particularly the anti-social elements;
 - (ii) that weapons for self-defence are available for all citizens under licence unless their antecedents or propensities do not entitle them for the privilege; and
 - (iii) that firearms required for training purpose and ordinary civilian use are made easily available on permits;
- (c) to co-ordinate the right of the citizen with the necessity of maintaining law and order and avoiding fifth column activities in the country.

7. In exercise of powers conferred under sections 5, 9, 10, 11, 12, 13, 16, 17, 18, 21, 41 and 44 of the Act of 1959, the Central Government made the rules named as Rules of 1962. Chapter III of the Act of 1959 prescribes provisions relating to licence. Section 13 is in regard to grant of licence, which provides that the licence could be granted by the licensing authority after being enquired. Licensing authority has also been given power of refusal of licence u/s 14 of the following grounds;

14. Refusal of licences.-(1) Notwithstanding anything in section 13, licensing authority shall refuse to grant-

(a) a licence u/s 3, section 4 or section 5 where such licence is required in respect of any prohibited arms or prohibited ammunition;

(b) a licence in any other case under Chapter II,-

(i) where such licence is required by a person whom the licensing authority has reason to believe-

(1) to be prohibited by this Act or by any other law for the time being in force from acquiring, having in his possession or carrying any arms or ammunition, or

(2) to be of unsound mind, or

(3) to be for any reason unfit for a licence under this Act; or

(ii) where the licensing authority deems, it necessary for the security of the public peace or for public safety to refuse to grant such licence.

8. Section 15 prescribes duration and renewal of licence. It is mentioned that a licence shall be enforced for a period of three years from the date from which it was granted. Section 15(3) is in regard to renewal of licence. Section 15 gives power to the licensing authority to vary the conditions of a licence and section 17(3) gives power to the licensing authority to suspend the licence.

9. Section 44 of the Act of 1959 prescribes power to the Central Government to make rules specially for the purpose of grant of renewal of a licence or confiscation condition of the licence. In this regard, provisions contained in

section 44(2)(b) and (c) are important, which are as under:

44. (1) xxx

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) xxx

(b) the form and particulars of application for the grant or renewal if a licence and where the application is for the renewal of a licence, the time within which it shall be made;

(c) the form in which and the conditions subject to which any licence may be granted or refused, renewed, varied, suspended or revoked.

10. Under Rules of 1962, the District Magistrate is the licensing authority for the purpose of grant of licence of certain nature of guns and the State Government is the licensing authority for the purpose of arms dealer licence. In all the writ petitions which were filed before the learned Single Judge, the State Government rejected the applications for renewal of arms dealer licence of the petitioners on certain grounds.

11. Rule 54 of the Rules of 1962 deals with the renewal of licence, which is as under:

54. Renewal of licences--(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:

Provided that the licence so renewed may be signed in the appropriate column of the licence by such officer as may be specially empowered in this behalf by the State Government under rule 4.

(2) The authority issuing a licence shall ordinarily be responsible for watching all future renewals of the licence. Where a licence is renewed by an authority other than the authority who granted it, the former shall forthwith inform the latter of the fact of renewal and the period for which such renewal is valid. The applicant for the renewal of a licence under this rule shall always be required to state his permanent residence, and, if he notifies a change in his permanent residence to the district in which the renewal is sought, the licensing authority of such district shall hence-forward become responsible for watching all future renewals of his licence and shall inform the original issuing authority accordingly. The procedure shall be repeated on each subsequent occasion of renewal of the licence, the necessary intimation being sent by the renewing authority to the original issuing authority or to the authority who last renewed the licence on a permanent change of residence, as the case may be.

12. Form XII prescribes details, which are necessary to be mentioned by an arms dealer. Certain conditions have also been prescribed, which are as under:

1. (a) This licence is granted subject to all the provisions of the Arms Act, 1959 and of the Arms Rules, 1962.

(b) This licence does not entitle the dealer to take any arms or ammunition for testing to a testing range or other place without a permit for the purpose, or to prove any firearms.

(c) This licence is valid only so long as he carries on the trade or business in the premises shown in column 3 thereof, and will ipso facto lapse if the business is discontinued for a continuous period exceeding six months.

2. The licensee shall maintain registers of all arms and ammunition in stock, and of all sales showing the particulars in such form as may be prescribed by the Central Government for the purpose.

3. He shall make available for inspection his stock and his registers on the demand of any Magistrate or any police officer of a rank not below that of Inspector, or, if the Central Government so directs, of Sub-Inspector.

4. (1) He shall affix on a conspicuous part of his place of business or shop a signboard, on which shall be painted in large letters in English/Hindi and in the language of the district his name and the words "licensed to sell, transfer or test (other than proof test) arms and ammunition".

(2) He shall also affix in his place of business, or shop a copy of section 36 of the Act, in English/Hindi or in the language of the district.

5. He shall not sell the arms or ammunition covered by the licence, elsewhere than at the place of business, factory or ship specified in column 3.

6. He shall not keep Government arms or ammunition unless he is specially authorised in this behalf by the Central Government.

Explanation: For the purpose of this conditions-

(a) "Government Arms" means a firearms or other weapons which is the property of the Government; and

(b) "Government ammunition" means ammunition manufactured in any Government factory, or prepared for an supplied to the Government other than such ammunition as may be released by Government for civilian use.

7. He shall at the time of sale or transfer of any arms or ammunition to a person holding a licence in Form III, Form IV, Form V, Form VII or Form VIII endorse on the licence-

(a) the name, description and residence of the person who takes delivery of the articles sold or transferred.

(b) the nature and quantity of the articles sold or transferred, and

(c) the date of sale or transfer.

8. He shall at the time of sale or transfer of a weapon enter in his register the number and other identification marks, if any, stamped on the weapon at the time of manufacture or otherwise.

9. He shall give information of all sales or transfers of arms and ammunition to such person and in such manner as the Central Government may direct.

10. He shall not sell or transfer ammunition to any person, licensed to possess or carry arms, without his first obtaining written certificate from such person to the effect that, with the quantity of ammunition proposed to be acquired by him, the total quantity of ammunition in his possession shall not exceed the maximum quantity which he is entitled to possess at any one time or his total allowance for the year.

Provided that he shall not in any case sell or transfer to any person any quantity of ammunition in excess of the maximum which may be fixed by the Central Government for such person or which is endorsed on such person's licence.

11. He shall not sell arms and ammunition to an officer non-commissioned officer or soldier of the armed forces of the Union unless such person produces a written pass or permit signed by the Commanding Officer, and then only to the extent and on the conditions specified in such pass or permit.

12. Where the licence is granted and for any local area in West Bengal or Assam, the licensee shall not sell arms or ammunition without a special permit from a Magistrate, to any member of a hill-tribe to which the Central Government may, from time to time by notification, apply this condition.

13. The licensee shall forthwith give information at the nearest police station of the loss or theft of any arms or ammunition covered by the licence.

14. Subject to the other conditions contained herein, no licensee shall, without reasonable causes, refuse to sell arms or ammunition to any person who is entitled to purchase or acquire such arms or ammunition under the provisions of the Arms Act, 1959 or the Arms Rules, 1962.

Explanation: The possibility or expectation of the seller obtaining a higher price of a later date or the refusal by a person to purchase or acquire arms or ammunition partly of a description demanded by him and partly of a different description suggested by the licensee, shall not be deemed to be a reasonable cause for the purpose of this condition.

13. From the aforesaid statutory provisions, it is clear that the licensing authority or renewal authority has been given discretion under the Act of 1959 and Rules of 1962 in regard to grant of licence or refusal of licence and also renewal of licence or refusal to renew the licence. It is specifically mentioned in section 15(3) of the Act of 1959 that provisions of sections 13 and 14 shall apply for the renewal of licence as they apply to the grant of licence. Section 14(1)(b)(i)(3) and (ii) prescribes that the licensing authority can refuse to grant a licence for

any reason if a person is unfit for licence under the Act of 1959. Similarly, licensing authority can refuse to grant licence if it deems fit for the security of the public peace or for public safety. Section 15(3) of the Act of 1959 prescribes that the aforesaid provisions shall apply in regard to renewal of licence, hence, on these grounds an authority can refuse to renew the licence. It means that a discretion has been vested with the authority to refuse renewal of the licence by the Act itself.

14. Additional Secretary, Government of M.P. issued certain guidelines for renewal of arms dealer licence. These guidelines are that if the dealer fails to sell less than 25 arms and 2500 cartridges in a year, then his licence shall not be renewed.

15. Article 162 of the Constitution prescribes executive power of a State to make laws, which is as under:

162. Extent of executive power of State.--Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

16. Under Seventh Schedule, List 1, which is a Union list, the Union Government has power to legislate in regard to arms, firearms, ammunition and explosives mentioned at Sl.No. 5. From the aforesaid provisions, it is clear that the State of M.P. has no executive power whatever matters included in the Union list i.e. in regard to arms, firearms, ammunition and explosives. However, the Act of 1959 and Rules made thereunder give discretion to the licensing authority in regard to grant of licence or refusal of licence so also renewal of licence and refusal of renewal the licence, hence, within the parameters of the Act of 1959 and Rules of 1962, the licensing authority can frame guidelines in order to bring uniformity in the matter of grant or refuse arms dealer licence or grant or refuse to renewal of arms dealer licence, then it cannot be said that the licensing authority has no such power. In the present case licensing authority State Government issued certain instructions in regard to renewal of arms dealer licence. It also fixed certain criteria and if the criteria is not contrary to the statutory provisions made under the Act of 1959 and the Rules made thereunder, then in our opinion, the licensing authority has power to fix the criteria because it has been given discretion. There is no provision in the Act of 1959 and Rules of 1962 that the authority is bound to renew the licence under whatever circumstances. Contrary to this, the authority has been given power to refuse the licence or refuse renewal of licence under certain circumstances.

17. The Union of India in its return has also pleaded that the State Government

is the licensing authority for issuing sale and keep licences of arms and ammunition in Form XI, XII and XIV as per Schedule II under rule 4 of the Arms Rules 1962. The Act of 1959 and Rules of 1962 explicitly prohibit any licensing authority from issuing licence against the interest of internal security and law and order and the answering respondent submits that the guidelines may be issued by the authorities of the State as far as the guidelines do not contradict any of the provisions of the Act of 1959 and Rules of 1962 or statutory order issued thereunder from time to time by the Union of India.

18. The aforesaid point has not been considered in the earlier judgment neither the opinion of the Union of India was considered.

19. Learned Single Judge in the case of Smt. Sakinabai (supra), has observed that the authorities have to exercise the powers within the framework of Act of 1959 and Rules of 1962. In the aforesaid case, the petitioners challenged the circular of the Government, which mandated a licensee to produce No Objection Certificate from the licensing authority certifying the genuineness of the licence. In that context, learned Single Judge quashed the circular. Division Bench of this Court in Writ Petitions No. 1205/2012, 18914/2012 and 11209/2011 has considered the notification, by which fees for renewal of licence was enhanced by the State Government. Division Bench has held that rule 57 of the Rules of 1962 prescribes renewal of arms licence fee. Hence, the State Government has no power and authority to make any legislation or executive action for the purpose of fixing renewal fee in respect of arms licence and the Division Bench has affirmed the ratio of judgment passed in the case of Smt. Sakinabai (supra). In the aforesaid context, the judgment of Division Bench is distinguishable.

20. The order passed by the learned Single Judge of Indore Bench in Writ Petition No. 8715/2011 and other connected writ petitions is based on the fact that subject of arms is under Union list. It has further been observed by the learned Single Judge that the learned counsel for the State failed to point out any provision under the Arms Act and the Rules of 1962, which gives power to the Central Government to issue any general instructions to the State Government. However, in the aforesaid order, learned Single Judge has not considered the fact that a discretion has been endowed on the licensing authority and the renewal authority by the Act of 1959 and Rules of 1962 and within this power the authority can frame certain guidelines or fix the norms for the purpose of exercise of discretion.

21. Constitution Bench of the Hon''ble Supreme Court in the case of Shri Rama Sugar Industries Ltd. Vs. State of Andhra Pradesh and Others, , while interpreting section 21(3) of the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act (45 of 1961), has quoted with approval the following observations of Halsbury Laws in regard to power of a public body, which endowed with a statutory discretion of framing guidelines or fixing parameters in regard to manner of exercising its own discretion in the given case and held as under:

11. It is, therefore, clear that it is open to the Government to adopt a policy not to make a grant at all or to make a grant only to a certain class and not to a certain other class, though such a decision must be based on considerations relevant to the subject-matter on hand. Such a consideration is found in this case. Halsbury (Vol. 1, 4th Edn., para 33 at page 35) puts the matter succinctly thus:

A public body endowed with a statutory discretion may legitimately adopt general rule or principles of policy, to guide itself as to the manner of exercising its own discretion in individual cases, provided that such rules or principles are legally relevant to the exercise of its powers, consistent with the purpose of the enabling legislation and not arbitrary or capricious. Nevertheless, it must not disable itself from exercising a genuine discretion in a particular case directly involving individual interests, hence it must be prepared to consider making an exception to the general rule if the circumstances of the case warrant special treatment. These propositions, evolved mainly in the context of licensing and other regulatory powers, have been applied to other situations, for example, the award of discretionary investment grants and the allocation of pupils to different classes of schools. The amplitude of a discretionary power may, however, be so wide that the competent authority may be impliedly entitled to adopt a fixed rule never to exercise its discretion in favour of a particular class of persons and such a power may be expressly conferred by statute.

22. From the aforesaid judgment of the Hon"ble Supreme Court, it is clear it is clear that a statutory body has power to fix guidelines in regard to exercise of discretion vested in it by a statutory provision. In the present case also the Act of 1959 and Rules of 1962 endowed discretion on the authority in regard to renewal of arms dealer licence and in such circumstances the authority has right to frame certain guidelines, or instructions for the purpose of exercising its own discretion in individual case.

23. Hon"ble Supreme Court in the case of Mohan Meakin Ltd. Vs. State of H.P. and Others, has held as under:

The appellant being a licensee must abide by the terms and conditions of the licence. It is also bound to follow the rules framed in this behalf. A subordinate legislation which, however, is beyond the legislative competence of the State would be ultra vires. There cannot be any doubt that the State possesses the right to have complete control over all aspects of intoxicants viz., manufacture, collection, sale and consumption, etc. It also has the exclusive right to manufacture and sell liquor and to transfer the said right with a view to raise revenue. Right to fix the amount of consideration for grant of said privilege for manufacturing or vending liquor is also beyond any doubt or dispute.

24. From the aforesaid judgment of the Hon"ble Supreme Court, it is clear that a licensee is bound by the terms and conditions of the licence and it is also bound to follow the rules framed in this regard. Under the terms and conditions of arms

dealers licence, the petitioners have no right of automatic renewal of licence. They have to fulfil certain conditions at the time of renewal of licence.

25. On the basis of the aforesaid discussion, we answer the substantial questions of law accordingly:

(i) That the State Government or its authorities are competent to issue executive instructions or conditions for issuing, varying or renewing the arms licence as far as the aforesaid conditions or instructions are not contrary to the provisions of Act of 1959 and Rules of 1962 or statutory order issued thereunder from time to time by the Union of India in exercise of power of discretion endowed on the authorities under the provisions of Act of 1959 and Rules of 1962.

(ii) That the view taken by the Gwalior Bench in *Arun Mangal and others v. State of M.P. and others* [Writ Petition No. 1224/2005] to the effect that the State authorities are competent to issue instructions to a licensing authority in regard to grant of licence in exercise of discretion by the authorities provided to them under Act of 1959 and Rules of 1962 is in accordance with law and correct.

(iii) That as regard to the decision of the learned Single Judge in Writ Petition No. 838/2000 (*Jiyauddin and others v. State of M.P. and another*), the aforesaid judgment was decided by the learned Single Judge vide common order dated 19.7.2000 passed in Writ Petitions No. 836, 838 and 839 of 2000. The judgment is reported in *Smt. Sakinabai and others Vs. State of M.P. and another*, . In the aforesaid judgment, the Court has not discussed about the power of discretion endowed on the licensing authority under the Act of 1959 and Rules of 1962. We have earlier observed that in the facts of the case, learned Judge has rightly observed that a particular circular in regard to verification that the person holding valid and genuine licence was not within the competence of the State authority. Hence, the aforesaid judgment is in accordance with law. In the order passed in Writ Petition No. 8715/2011 (*Mulla Sabbir Hussain v. State of M.P. and another*), the Court has not discussed the power of the Government about issuance of circular and the discretion given to the licensing authority under the Act of 1959 and Rules of 1962. Hence, the aforesaid order is not in accordance with law. Similarly, in Writ Petition No. 6265/2006 (*Surendra Kumar Yadav and another v. State of M.P. and others*), the discretion given to the licensing authority under the provisions of Act of 1959 and Rules 1962 has not been considered. Before the Court, the order passed by the District Magistrate was under challenge to the effect that the person had to deposit empty cartridges shell at the time of sell of cartridges. In the aforesaid judgment, the discretion given to the licensing authority has not been considered, hence, the judgment is distinguishable. The view taken by the Gwalior Bench in Writ Petition No. 1224/2005, which was affirmed in Writ Appeal No. 561/2007, is correct to the extent it is in consonance of the view expressed by us in answer to question No. (i). We further observe that the Court has to consider the instructions issued by the State authorities or licensing authority in accordance with answer to substantial question No. 1. The reference is answered accordingly.

Now the matter be placed before the learned Single Judge.

Sheel Nagu, J.

26. I had the pleasure and privilege of reading the order of learned brother Gangele, J. and I am in agreement with the findings and conclusion arrived at with only one additional finding which I would like to add to supplement and bolster the abovesaid order of my learned brother.

27. A perusal of the provisions of section 17 of the Arms Act, 1959, in particular, the term "the licensing authority may vary the conditions subject to which a licence has been granted except such of them as have been prescribed", contained in sub-section (1) of section 17 of the Arms Act, 1959, clearly spell out that the Legislature has bestowed the licensing authority (the State Government in this case) with powers to vary the conditions in the licence except those which have been already prescribed. The cases at hand pertains to the licence of dealers to keep and sell arms and ammunition, for which inter alia Forms XII and XIII are prescribed. Column 4 of Forms XII and XIII prescribes for "description and number of arms" whereas column 5 of Forms XII and XIII prescribes for "description and quantity of ammunition". Leaving the columns 4 and 5 of Forms XII and XIII empty elicits absence of any condition prescribed by the statute thereby, by virtue of section 17(1) empowering the licensing authority to prescribe condition as regards description and quantity of arms and ammunition. Thus, while issuing a licence to keep or sell arms or ammunition, the licensing authority can provide the description and quantity of arms and ammunition, which gives an indication that the restriction placed by the impugned notification dated 16.7.2010 prescribing for certain number of arms and ammunition as a condition precedent for renewal of licence can very well be prescribed by the licensing authority.

28. In the instant case, the State Government undoubtedly is the licensing authority for the licence in question. Since the statute in section 17(1) of the Arms Act, 1959 clearly empowers the licensing authority to vary those conditions of the licence subject to which it is granted except those which have been prescribed and since no specific quantities of arms and ammunition have been prescribed under columns 4 and 5 of Forms XII and XIII, the State Government is well within its powers to prescribe for certain quota of arms and ammunition as a condition precedent for grant or refusal of licence in question.

29. Thus, I concur with the view taken by the learned brother Gangele, J. in his order.

Sujoy Paul, J.

30. In my opinion, the first question referred to this Bench goes to the root of the problem. Answer to this question shall decide the answer of other questions referred.

31. Various Single Benches of this Court opined that the subject of arms,

firearms, ammunition and explosive is covered under Entry 5 of Schedule VII (List I--Union list). Being a subject of List I, only the Parliament can legislate on this aspect. The State Government cannot even issue executive instructions under Article 162 of the Constitution because the State has no power to legislate on this aspect.

32. Before dealing with the aforesaid aspect, I deem it proper to refer to the relevant provisions of the Constitution and the Arms Act, 1959 (for brevity, the "1959 Act").

33. Entry 5 of Schedule VII (List I--Union list) reads as under:

5. Arms, firearms, ammunition and explosive.

34. Article 245 of the Constitution deals with the territorial extent of laws made by the Union and the State Legislature whereas Article 246 read with list in Schedule VII deals with subject-matter of their respective legislative power. In *Central Bank of India Vs. State of Kerala and Others*, , the apex Court opined that Article 245 of the Constitution is the source of legislative power of Parliament and the State Legislatures. The legislative field of Parliament and the State Legislatures has been specified in Article 246. The combined effect of the different clauses of Article 246 is that in respect of any matter falling within List I, Parliament has exclusive power of legislation, whereas the State Legislature has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in Schedule VII and with respect to the matters enumerated in List III, both Parliament and the State Legislature have power to make laws. Applying the said test, it can be safely concluded that since Entry 5 deals with subject of arms and ammunition etc., the Parliament has the exclusive power to legislate on this aspect. The Arms Act, 1959 was enacted by Parliament in Tenth Year of the Republic of India and the Arms Rules, 1962 were made under the said Act.

35. The stand of the State Government is that u/s 17 of the Arms Act read with Article 162 of the Constitution, the State Government/licensing authority has power to issue executive instructions. The Central Government has taken the stand that Arms Act or Rules do not explicitly prohibit any licensing authority from issuing such guidelines in the interest of internal security, law and order. It is further stated by the Central Government that guidelines may be issued so far they do not contradict any of the provisions of the Arms Act or Rules made thereunder or statutory orders issued by the Central Government from time to time. On the basis of aforesaid, it is opined that the licensing authority/State Government are competent to issue executive instructions or conditions for issuing, varying or renewing the arms licence unless the said instructions are not contrary to the provisions of the Act and Rules. It is further opined that such powers can be exercised pursuant to the discretion endowed on the authorities under 1959 Act and the Rules made thereunder.

36. Section 13 of the Arms Act deals with "grant of licence". The methodology of

preferring the application and the manner in which application is to be processed and decided is mentioned in this section. Section 13(3)(b) provides that a licence can be granted if the licensing authority is ""satisfied" that the person by whom the licence is required has a "good reason" for obtaining the same. Pausing here for a moment, it is important to note that the basic factors or reasons for such satisfaction are not mentioned in this section nor this section provides any basis or reason for arriving to the conclusion of "good reason".

37. Section 14 deals with "refusal of licence". Section 14 provides various factors on which licence can be refused. It also provides that licence can be refused for any reason under the Act and where it is "necessary for the security of public peace or public safety". The ingredients which decide "security of public peace or public safety" are also not mentioned in this section.

38. Section 15(3) provides that for the purpose of renewal of a licence, provisions of sections 13 and 14 shall apply as they apply to the grant thereof.

39. A conjoint reading of sections 13, 14 and 15 shows that licensing authority is vested with certain discretion under the Act to grant, refuse or renew the licence. Section 14 to some extent provides in specific when licence is to be refused. In addition, it gives discretion to the authority to decide whether for any reason the claimant is unfit for a licence under this Act or grant of such licence may be improper for security of public peace or public safety.

40. Shri M.P.S. Raghuvanshi, learned Additional Advocate General, heavily relied on section 17 of the 1959 Act and Article 162 of the Constitution to submit that the licensing authority and State Government has power to issue executive instructions. It is apt to quote the relevant portion of section 17, which reads as under:

17. Variation, suspension and revocation of licences.--(1) The licensing authority may vary the conditions subject to which a licence has been granted except such of them as have been prescribed and may for that purpose require the licence-holder by notice in writing to deliver up the licence to it within such time as may be specified in the notice.

(2) The licensing authority may, on the application of the holder of a licence, also vary the conditions of the licence except such of them as have been prescribed.

A minute reading of section 17 would show that it deals with variation, suspension and revocation of an existing licence. The words in section 17(1)-"vary the conditions subject to which a licence has been granted" clearly shows that it deals with a licence which has already been issued and which is in existence. The complete reading of this section shows that the licensing authority is equipped with the power to alter/vary the conditions of a licence subject to which the licence has been granted except such of them as have been prescribed. The entire provision does not, in my opinion, deal with renewal of the licence. Present matter referred to this Bench is with regard to renewal of the

licence.

41. So far renewal is concerned, the Central Government has provided about it in section 44 of the Act. Section 43 deals with "power to delegate". The Central Government by way of a notification in the Official Gazette may direct that any power or function of the Central Government may be exercised by State Government or its officer or authority. Section 44 is the power of the Central Government to make rules by notification in the Official Gazette. Section 44(a) and (c) are relevant, which reads as under:

(a) the appointment, jurisdiction, control and junctions of licensing authorities including the areas and the categories of arms and ammunition for which they may grant licences;

(c) the form in which and conditions subject to which any licence may be granted or refused, renewed, varied, suspended or revoked.

A microscopic reading of section 44 shows that the power to make rules with regard to renewal is specifically vested with the Central Government. Thus, the power to make law with regard to Entry 5 of List I (Union list) and also the power to make rules are vested with the Parliament/Central Government. Thus, as per Article 246, the legislative power is with the Parliament. Article 162 is the power of the State Government to issue executive instructions on a field on which it has power to legislate. In other words, Article 162 read with Article 73 makes it clear as under:

(1) The executive authority of a State shall be exclusive in respect of the subjects enumerated in List II of Schedule VII.

(2) The executive authority of the State will also extend to matters included in List III, except as otherwise provided in the Constitution or in any law made by Parliament (Article 73(1) Proviso, Article 162, Proviso).

(3) The State Executive shall have no authority over the subjects enumerated in List I.

The executive power of the State Government is co-extensive with the legislative power of the State. Merely because the Central Government has not made any rule, it will not give authority to the State Government to make rule or issue executive instructions in this regard. In (1990) 4 SCC 557 (Bharat Coking Coal Ltd. v. State of Bihar and others), it was held as under:

Mere absence of any rule framed by the Central Government u/s 13 or 18 of the Act with regard to the disposal of slime or waste of a coal mine did not confer legislative competence on the State Legislature to make any law or rule. Since section 18 of the Act covers the field with respect to disposal of waste of a mine, there is no scope for the contention that until rules are framed, the State Legislature has power to make law or rules on the subject. Once the competent legislature with a superior efficacy expressly or impliedly evinces its legislative

intent to cover the entire field on a topic, the enactments of the other legislature whether passed before or after would be overborne.

42. In the light of aforesaid provisions of the Constitution, Arms Act and the judgments on the subject, I humbly disagree with the view taken that the licensing authority is competent to issue executive instructions unless the said instructions are not contrary to the provisions of the Act and Rules. At the cost of repetition, in my opinion, a field which is totally occupied and covered under the entry of Union list, on which the Central Government/Parliament has exclusive power to legislate, the State Government cannot issue executive instructions. Instruction can only be issued by licensing authority to regulate its own discretion vested/conferred on it under sections 13 to 15 of 1959 Act.

43. To elaborate, it is relevant to consider whether any executive instructions at all can be issued by the licensing authority to regulate its own discretion. Reverting back to sections 13 and 14 of 1959 Act, it is clear that certain amount of discretion is given to the licensing authority to decide whether it is "satisfied" and whether the applicant has shown "good reason". In addition, the facet of "security of public peace or public safety" etc. is also relevant. To deal with this discretionary element, the licensing authority can frame policy or issue instructions because the Act itself gives such power to licensing authority. In other words, rarely does the legislature enact a comprehensive legislation complete in all details. More often, the legislation is sketchy or skeletal, leaving many gaps and conferring powers on the administration to act in a way it deems "necessary" or "reasonable", or if it "is satisfied" or "is of opinion". Rarely does the legislature clearly enunciate a policy or a principle subject to which the executive may have to exercise its discretionary powers. Quite often, the legislature bestows more or less an unqualified or uncontrolled discretion on the executive. Administrative discretion may be denoted by such words or phrases as "public interest", "public purpose", "prejudicial to public safety or security", "satisfaction", "belief", "efficient", "reasonable" etc.

Aforesaid example is given by way of illustration which is not exhaustive in nature. The different statutes used different words as per the requirement of the enactment. On the basis of these words, the competent authorities decide the method to regulate the element of discretion. In *U.P. State Road Transport Corporation and another Vs. Mohd. Ismail and others*, the apex Court opined that "it is open to an authority to which discretion has been entrusted to lay down the norms or rules to regulate exercise of discretion but the general norms or rules or policy adopted cannot be so rigid as to prevent their departure when circumstances of particular case so require". The principle has been reiterated by the House of Lords in *British Oxygen Co. Ltd. v. Minister of Technology* [(1970) 3 All ER 165]. Lord Reid has stated that a Minister having a discretion may formulate a policy or make a limiting rule as to future exercise of his discretion, if he thinks that good administration requires it. Thus executive instruction or policy can be framed by the licensing authority to a limited extent up to which

Act and more particularly sections 13 and 14 give power to it.

44. In *Shri Rama Sugar Industries Ltd. Vs. State of Andhra Pradesh and Others*, , the apex Court opined that a public body endowed with a statutory discretion may adopt general rule or principle of policy, to guide itself as to the manner of exercising its own discretion in individual cases, provided that such rules or principles are legally relevant to the exercise of its power, consistent with the purpose of the enabling legislation and not arbitrary or capricious.

45. Justice G.P. Singh while speaking for the Bench in *Asbestos Cement Limited and Another Vs. Union of India (UOI) and Others*, opined that "putting it briefly, there is no objection if a licensing authority adopts a general policy which is fair and just and consistent with the statute under which it functions. Once such a policy is laid down, the authority is entitled to apply the policy in the individual cases which come before it".

46. On the basis of aforesaid legal position and analysis, I am of the opinion that the limited extent within which the licensing authority can issue executive instruction/policy is the discretion vested in it as per sections 13 and 14 of 1959 Act. In other words, instructions can be issued for regulating the discretion within the four corners of 1959 Act. In my opinion, executive instructions cannot be issued beyond aforesaid because it is within the province of Parliament and the exclusive power is with the Central Government/Parliament to legislate or issue executive instruction on it. Thus, there will be no illegality if executive instructions are issued to regulate the discretion in accordance with the power given to the licensing authority under sections 13 and 14 of the Act. This is the thin distinction which needs to be emphasized.

47. So far the various cases decided by different writ Courts are concerned, which are subject-matter of other question of this reference, in my opinion, in those cases writ Courts have basically dealt with Entry 5, Articles 245 and 246 of the Constitution, scope of Article 162 and other provisions of the Act and Rules. On that basis, it is opined that no executive instructions at all can be issued by the State Government. In my opinion, the element of discretion given to the licensing authority under the Arms Act itself is not dealt with. This discretion further gives implied power to frame policy/issue instructions to the limited extent as analyzed above. Since the power of licensing authority was not tested by earlier writ Courts on the anvil of the discretionary element with it given by the Central Act, there was no occasion for the writ Courts in the other judgments to address the aforesaid facet. Hence, executive instructions/policy issued by the licensing authority is to be tested on the anvil of the aforesaid test and to this extent, earlier judgments are distinguishable. The matters be placed before the writ Court for appropriate decision in individual cases.