

(2014) 06 MP CK 0117

In the Madhya Pradesh High Court

Case No : W.A. No. 472/2011 and W.A. No. 473/2011

Secretary

APPELLANT

Vs

Mulla Shabbir Hussain

RESPONDENT

Date of Decision : 24-06-2014

Acts Referred:

Citation : (2014) 06 MP CK 0117

Hon'ble Judges : A.M. Khanwilkar, C.J;Shantanu Kemkar, J

Bench : Division Bench

**Advocate : Mini Ravindran, Deputy Govt. Advocate, Advocate for the Appellant;
Vivek Dalal, Advocate for the Respondent**

Final Decision : Disposed Off

Judgement

1. Heard counsel for the parties for final hearing by consent.
2. Both these appeals take exception to the judgment of the learned Single Judge dated 17.3.2011, whereby the writ petitions filed by the respective respondents were allowed and the order passed against the respondents by the appropriate Authority (appellant) dated 4.9.2010 came to be quashed to the extent the conditions of license have been varied.
3. For the nature of order, it may not be necessary to advert to the factual matrix except to observe that the respondents were granted arms dealer license which was subsisting till 31.12.2012. The original license was renewed from 1.1.2009 to 31.12.2012 by imposing conditions specified in the policy dated 16.7.2010. This according to the respondents resulted in variation of the original license conditions. Instead, it ought to have been renewed on same conditions on which it was initially granted. This argument found favour with the learned Single Judge on the reasoning that the State Government was not empowered to form policy as articulated in terms of notification dated 16.7.2010, as the field was covered by the provisions of the Arms Act, 1959 and the rules framed thereunder namely the Arms Rules 1962.

4. The correctness of this question has considered by the Full Bench of this High Court in case of Pratibha Chouhan (Smt.) Vs. State of M.P. and others, . The Full Bench has negated that contention. In other words, the sole basis on which the impugned decision of the learned Single Judge rests cannot be countenanced and, therefore, the judgment under appeal deserves to be set aside.

5. Counsel for the respondents, however, submits that the State had filed appeal against the decision in Writ Petition No. 5138/2011 being Writ Appeal No. 578/2013. That writ appeal came to be dismissed. As a result, it necessarily follows that the view expressed by the learned Single Judge has been confirmed by the Division Bench of this Court.

6. We are not impressed by this submission for the simple reason that the legal position expounded by the Full Bench is binding on us and, more so, because the Division Bench has dismissed the appeal filed by the State essentially on the ground of limitation. No doubt, Paragraph No. 4 of the order dated 14.5.2013 passed by the Division Bench in W.A. No. 578/2013 refers to the observations of the learned Single Judge, but, no discussion is found as to whether the legal position stated by the learned Single Judge about the competency of the State Government to frame rules in exercise of executive powers. In any case, in view of the Full Bench decision, no other view is possible.

7. As a result, the impugned order deserves to be set aside and the parties are relegated before the learned Single Judge by restoring the writ petition to its original number.

8. Counsel for the appellant, however, submits that no fruitful purpose would be served by restoring the writ petition as the challenge in the writ petition has become academic as renewed license period has already expired.

9. According to the respondents, the reasons recorded by the appropriate Authority, which was the subject matter of challenge in the writ petition would bind the respondents and being recurring issue the respondents should be allowed to pursue the writ petition.

10. That matter, in our opinion, can be examined by the learned Single Judge. It will be open to the appellant to raise preliminary objection at the time of hearing of the writ petition which can be considered by the learned Single Judge on its own merits, in accordance with law. We may place on record that the counsel for the respondents was at pains to persuade us to examine other issues raised by the respondents in the writ petition. We refrain to do so, as we are exercising intra-Court jurisdiction and as those issues have not been specifically dealt with or referred to in the impugned decision by the learned Single Judge. Those questions can be agitated at the appropriate stage in the restored writ petition, which can be considered on its own merits, in accordance with law.

11. Appeals disposed of accordingly.