

**(2000) 07 MP CK 0042**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No's. 836, 838 and 839 of 2000**

Smt. Sakinabai and others

APPELLANT

Vs

State of M.P. and another

RESPONDENT

**Date of Decision : 19-07-2000**

**Acts Referred:**

Constitution of India, 1950 — Article 154, 162, 19, 19(1), 246

**Citation : (2001) 1 MPHT 445**

**Hon'ble Judges : Mr. N.K. Jain, J**

**Bench : Single Bench**

**Advocate : Shri A.H. Khan, Mr. S.S. Samvatsar and Ms. S. Waghmare, for the Appellant; Shri Prakash Verma, Government Advocate, for the Respondent**

**Final Decision : Allowed**

## **Judgement**

N.K. Jain, J.—All these petitions have been heard as connected matters and are being disposed of by this common order.

2. In all these petitions, the petitioners who are arm dealers, call in question the State Government Circular dated 4-10-99 (marked Annexure P-2 in all the petitions) whereby it is directed that before any arm is sold, by an arm dealer, he shall ask the purchaser licensee to produce "No Objection Certificate" from the Licencing Authority certifying the genuineness of his licence.

3. I have heard Sarvashri A.H, Khan, S.S. Samvatsar and Smt. S. Waghmare, learned counsel for petitioners; and Prakash Verma, Government Advocate for respondents.

4. The petitioners seek to impugn the Circular (Annexure P-2) on the ground that it is without any authority of law besides being unreasonable and arbitrary in nature. It is also violative of their fundamental right to carry business or trade, it is further submitted. As against it, learned Government Advocate has strenuously defended the impugned circular and it is submitted that the circular has been issued in exercise of executive power of the State Government with a view to

prevent sale of fire arms to unauthorised persons who may purchase the arms on the basis of forge or fake licences.

5. The impugned order is obviously issued by the State Government in exercise of their executive power. This power is vested in the State Government by Article 154 of the Constitution which provides that the executive power of the State shall be vested in the Governor and shall be exercised by him..... in accordance with the Constitution. The expression "executive power" is very wide and connotes the residue of governmental functions that remain after the legislative and judicial functions are taken away. It includes acts necessary for carrying out the administration of the State. These powers of the State executive, are however, co-extensive with the legislative power of the State Legislature. This limitation in exercise of executive powers, is contained in Article 162 which provides that subject to the provisions of the Constitution, the executive power of the State shall extend to the matters in respect of which the State Legislature of the State has power to make laws. Thus the power extends to the matters with respect to which the Legislature of a State has authority to make laws i.e., the subjects enumerated in List I-State List and List II-Concurrent List of the VIIth Schedule of the Constitution.

6. Subject relating to arms, firearms, ammunition and explosives falls within Union List at Item No. 5. The State Legislature has, therefore, no power to make law in respect of any matter relating to arms, firearms and ammunitions. That being so, the State Government or its authorities also cannot exercise their executive power in any such matter relating to that subject (of arms etc.). The Arms Act and the Rules made thereunder are the laws made by the Central Parliament and the Union Government in exercise of their power under Article 246 read with List I of Schedule VII of the Constitution. So, the executive power in respect of the subject covered by these laws can be exercised only by the Union Government.

7. True, the Arms Act and the Rules made thereunder, confer certain powers and also imposes certain duties upon the State Government authorities in certain matters such as grant of licences and their revocation etc., in respect of which the State Legislature cannot make laws. Such powers can be exercised and duties be performed only within the framework of the Act and the Rules and not their beyond. Such power, observed the Supreme Court in *Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others*, , "can be exercised only by authority of law and not by a mere executive fiat or order". In the instant case, the impugned order issued by the State Government, has no such authority of law. Firstly it is issued with respect of a subject about which the State Legislature cannot make law thus, attracting the limitation contained under Article 162. Secondly there is no authority conferred on the State Government or their authorities by the Arms Act or the Rules to issue such orders or instructions.

8. The impugned circular is also violative of petitioners' fundamental right to carry trade or business as guaranteed by Article 19(1)(g) of the Constitution.

Clause (6) of Article 19 only permits the State to make laws imposing in the interest of general public, reasonable instructions on the exercise of the right conferred by sub-clause (g). In the matter before me, the Central Legislature has already made law i.e., the Arms Act and the rules have also been framed in that behalf by the Union Government imposing restrictions in the matter of sale and purchase of arms. However, the impugned circular imposing further restrictions on the sale and purchase of the arms has been issued by the State Government without any authority of law. The restrictions contained in the circular cannot be also termed as reasonable inasmuch as they do not meet the test of reason and relevance. The direction contained in the circular is something like a Selection Board while interviewing candidates for appointment on some posts, requiring them to produce N.O.C. over and above the degrees and certificates of their educational qualification, from the University/Board that the degrees/certificates granted by the University/Board are not forged. Such an illogical and arbitrary order or instruction cannot be sustained in law.

9. The Supreme Court in *P. Nalla Thampy* (AIR 1984 SC 135) has quoted with approval following observations of Lord Denning :--

"A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

There are no creases either in the provisions of the Arms Act or the Rules made thereunder. On the contrary, the impugned circular tends to create creases which need to be ironed out by this Court by quashing that circular which is clearly ultra vires the Constitution as also the Arms Act and the Rules.

10. Even while quashing the Circular (Annexure P-2), it needs to be made clear that it is the responsibility of the petitioners and other arms dealers in the State to ensure that arms are sold to the persons holding valid and genuine licence to buy and possess the arms. Any sale to any unauthorised person, to be more precise, to a person holding a forged licence may render the seller dealer liable for prosecution and punishment under the appropriate penal law. Needless to add, that these dealers have to be now extra cautious in the matter.

11. With the observations as aforesaid, the Circular (Annexure P-2) is quashed. The petition is accordingly allowed with no order as to costs. A copy of this order be forwarded to the Principal Secretary (Home), Government of Madhya Pradesh, Bhopal, for circulation amongst all the licencing authorities in the State.

12. This order be retained in W.P. No. 836/2000 and a copy each be placed in the records of W.P. Nos. 836/2000 and 839/2000.

13. Writ Petitions allowed.