

PLEASED TO ISSUE ANY OTHER WRIT OR ORDER ON THE FACTS AND CIRCUMSTANCES OF THE CASE.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 03.04.2024, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned petitions challenge the blanket direction issued by the respondent-Deputy Commissioner and the consequent order declining to grant exemption.

2. Heard learned counsel for the petitioners and learned AGA for the respondents.

3. The central issue before this Court is to determine the legality and propriety of the impugned order particularly in the light of the guidelines issued by the Election Commission of India aimed at maintaining law and order during elections.

4. The Election Commission of India recognizing potential risk associated with possession of firearms during

the election period has issued comprehensive guidelines. The primary object of these guidelines is to maintain law and order with a specific focus on identifying and scrutinizing the person with history of criminal offences, especially those involved in rioting during previous election period.

5. The petitioners predominantly agriculturists residing in a forested area having obtained firearms license to safeguard their crops and livestock loss from wildlife induced damage. Therefore, petitioners in the captioned petitions have contended that their possession of firearms is for legitimate purpose and does not pose any inherent threat to election process. Petitioners contend that they are law abiding citizens who intend only to exercise their democratic right to participate in electoral process. Petitioners contend that they are seriously aggrieved by the blanket order passed by the respondent-Deputy Commissioner.

6. The short question that falls for consideration before this Court is as to whether the respondent-Deputy Commissioner was justified in issuing a blanket order calling upon the license holders to deposit the gun. The directive issued by the Election Commission envisages a review before asking for deposit of guns and not a review after deposit to determine. The procedure adopted by the Deputy Commissioner is clearly found to be in contravention of the guidelines issued by the Election Commission of India.

7. Each firearms license holder undergoes a rigorous vetting process by the authorities before being granted a license. This process includes a thorough background check, verification of antecedents and consideration of genuine need of firearm, such as protection from wildlife in relevant areas. Therefore, the action of the Deputy Commissioner in issuing directions by way of blanket order calling upon the license holders to surrender

their guns without individualized review, contradicts not only the guidelines issued by the Election Commission of India, but it encroaches upon the very essence of license procedure.

8. The Election Commission guidelines explicitly emphasizes need for individualized scrutiny of firearm license holders, especially those with a history of criminal offences or involvement in rioting. Therefore, the blanket order issued by the respondent-Deputy Commissioner disproportionately impacts vulnerable population such as farmers living in forested areas, those individuals who apprehend threat to life and have secured gun license for their personal protection. Therefore, imposing blanket restriction without considering these unique circumstances often leads to undue hardships and this Court is flooded with writ petitions on the eve of every ensuing elections.

9. Though Bombay High Court in the case of ***Govinda @ Bhai Ganesh Tilve vs. Vikram Kumar, District Registrar and Others***¹ and Allahabad High Court in the case of ***Ravi Shankar Tiwari & Others vs. State of U.P.***² have laid down several directives, the authorities have not adhered to the directions issued by various High Courts. This Court in W.P.No.7900/2023 has exhaustively dealt with this issue and has held that it is the screening committee which is vested with ample power to review all the issues in respect of holders of armed license. The coordinate Bench while taking cognizance of the action of the police officers issuing notice to surrender the firearms held that it is only the Screening Committee and District Administration who are vested with the authority to call upon the license holders to deposit firearms with the police station.

¹ Criminal Petition No.835 of 2009

² Writ C.No.2844 of 2024

10. In the background of the law laid down by the various High Courts and also the judgment rendered by the coordinate Bench, this Court has to examine the facts and circumstances of the present case on hand. In the present case on hand, this Court is more than satisfied that there is no individual review. The respondent-Deputy Commissioner by issuing a blanket order has set a dangerous precedent for future elections. It could encourage the authorities to resort to blanket orders as a short circuit bypassing a meticulous review process mandated by Election Commission. The object behind surrender of firearms as stipulated by the Election Commission guidelines and judicial pronouncements is to uphold the integrity of electoral process and ensure maintenance of law and order. The surrender of firearms is envisaged as a measure to mitigate potential threats to public safety and sanctity of democratic procedures during elections.

11. In spite of several judicial pronouncements, the authorities are resorting to blanket orders. Maybe this exercise is done by the authorities as they are not in a position to collect information about individual license holders which needs more time and effort, but that does not necessarily mean that the respondent-Deputy Commissioner can resort to one-size-fits-all approach by promulgating a general order. Statistically the gun deposited in pursuit of these orders are viewed as a feather in the cap in the endeavor to maintain peace on the eve of elections.

12. By way of *en masse* deposit of firearms, probably the authorities are happy that significant strides have been made in compliance with the directives and probably all stake holders are satisfied that something substantial is done by the District Magistrate in compliance of directions issued by the Election Commission of India. There must be a sense of balance in imposing prohibitions.

13. If *en masse* firearms are retrieved from the authorized license gun holders, it would be rather strenuous even for the Screening Committee to independently review each application and then ascertain as to whether exemption can be granted and the firearm recovered under a general order can be released to an individual. This task also leads to a mountainous task which cannot be accomplished within a short span.

14. There can be a very few cases of use of firearms in offences especially during the elections. Not all districts in the Karnataka State may have a potential threat of disruption of elections. Therefore, the respective Deputy Commissioner's and the screening committees are required to act anticipating to potential threat that is posed in each district. Each district in the State has a different culture and misuse of firearm is subjective. The authorities cannot generalize and in an anticipation of violation without application of mind, pass a general order. In few districts,

the citizens under compelling reasons secure firearms license. Possessing a firearm license is deeply embedded in their culture. The citizens are trained by culture as to how to use the firearms for limited purpose. The human wildlife conflict is a major issue where residents are found to be residing abutting to the forest area. The local farmers and agriculturists on account of wildlife induced damage to crops and livestock loss under compelling reasons seek gun license as a means of protection.

15. The need to obtain a gun license by agriculturalists is rooted in their fundamental need to safeguard their crops, fields, and livelihoods from an array of threats, including wildlife intrusion, pest infestations, and potential trespassers. Firearms serve as indispensable tools for agriculturalists, enabling them to protect their agricultural assets effectively and ensure the viability of their livelihoods. This reliance on firearms is not merely a matter of convenience but a vital aspect of preserving the

economic sustainability and security of agricultural operations. In every ensuing elections if the residents who hold gun license are *en masse* called upon to surrender firearms, that does not serve the purpose for which guidelines are issued by the Election Commission of India.

16. The jurisdictional Deputy Commissioner and the screening committee are required to review in terms of guidelines issued by the Election Commission only in the following cases i.e., where persons are released on bail, persons having a history of criminal offences and persons previously involved in rioting at any time especially during election period or there may be cases where the residents who are openly supporting any political party have an antecedent of using firearms to disrupt the fair election process. In such cases, the screening committee and the Deputy Commissioner have to implement the guidelines and only those license holders are to be screened and appropriate directions are to be issued calling upon them to

deposit the firearms with the jurisdictional police station or armory depot.

17. Since the authorities are consistently violating the guidelines issued by the Election Commission of India, this Court deems it fit to issue certain directions as follows:

i) The authorities are strictly prohibited from issuing blanket orders that demand the deposit of firearms from all license holders. Such blanket orders not only contravene the specific directives issued by the Election Commission but also fail to address the nuanced risks associated with individual license holders.

ii) The authorities have to take cognizance of the vulnerable communities who are often facing wildlife induced damage to crops and livestock. The Screening Committee therefore has to adopt a nuanced and evidence based approach to address the firearms possessed by the farmers abutting to forest area. They have to strike a balance between maintaining law and order during elections

and at the same time, protect the rights of vulnerable communities and the negative interactions between wild animals and the residents residing at the foot of the forest area. Therefore, the Screening committee while implementing the directives issued by the Election Commission of India has to demonstrate flexibility regarding surrender of firearms taking into account not only the individual circumstances of farmers and their specific threats faced at the hands of wild animals, but there has to be an overall assessment of that region which is often affected due to interaction between wild animals and the losses incurred by the farmers.

iii) There are several individuals including activists, Advocates who are often exposed to potential risk to their life. Therefore, during every elections, there cannot be a blanket order calling upon these individuals/activists/professionals to surrender guns/firearms especially when these individuals/professionals/activists have obtained

licenses for personal security and the same is critical to hold guns for ensuring their safety and wellbeing. Therefore, by way of blanket order, the authorities cannot expose the individuals vulnerable to threat to life. This may be also prevalent during election period and such individuals who have no nexus with election process may need firearms more during the elections, than otherwise.

iv) All directives and communications regarding the deposit or any other action related to firearms must be conveyed in written form. This ensures transparency, accountability, and provides a clear record of instructions issued. Oral instructions, whether given in person or over the phone, are susceptible to misinterpretation and should, therefore, be avoided to maintain the integrity of the process.

v) Before the commencement of any election, authorities must conduct a rigorous screening process of firearm license holders. This process should prioritize

individuals with a history of criminal offences, especially those previously involved in rioting or violence during election periods. The objective is to identify potential risks and take necessary precautions to maintain law and order.

vi) The Election Commission shall provide clear and comprehensive guidelines outlining the responsibilities and duties of concerned police officials in conducting the pre-election screening. These guidelines should detail the criteria for assessing risks and the procedures for documenting and reporting and volume of instructions issued by the Election Commission. There is a need for a concise and accessible guide. The Election Commission should compile and publish a user-friendly guide before every election, summarizing the key instructions and procedures for officials involved in the conduct of elections.

vii) Although police stations may not typically maintain lists of persons on bail, they should keep records of individuals charged in offences relating to rioting during

elections. This information is crucial for assessing the eligibility of firearm license holders and ensuring compliance with the Election Commission's directives.

viii) The Election Commission should actively monitor the implementation of its directives by securing reports from all district magistrates. These reports should provide insights into the effectiveness of the screening process and highlight any challenges or areas for improvement.

ix) A comprehensive review should be conducted after every election to evaluate the implementation of the Election Commission's directives. This review should aim to identify procedural errors, assess the overall effectiveness of the screening process, and make necessary adjustments to prevent future lapses.

x) In addition to the pre-election screening, an extensive review of firearm offences directly related to elections should be conducted. This review should analyze historical data, identify patterns of misuse, and assess the

potential threats posed by firearms in disrupting the electoral process. The insights gained from this review will inform the screening committee's decisions and contribute to a more targeted and effective approach.

xi) Rather than resorting to mass withdrawal of firearms, authorities should adopt a targeted approach based on individual risk assessments. This involves evaluating the potential threat of violence and misuse of guns by license holders on a case-by-case basis.

18. These guidelines are designed to strike a balance between safeguarding public safety and upholding individual rights. By adhering to these guidelines, authorities can ensure a fair, transparent, and accountable process that maintains the integrity of the electoral system while respecting the rights of firearm license holders.

19. In the light of the observations made *supra*, this Court proceeds to pass the following:

ORDER

(i) The writ petitions are allowed;

(ii) The impugned orders dated 18.03.2024 and 26.03.2024 issued by the respondent-Deputy Commissioner are hereby quashed insofar as petitioners are concerned;

(iii) Pending I.As., if any, do not survive for consideration and stands disposed of.

**Sd/-
JUDGE**

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