

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve : 17.09.2010

Date of decision: 20.05.2011

+

CM Nos. 11288/2002 and 11290/2002 IN WP(C) No. 2491/2000

PEOPLE FOR ANIMALS

.....PETITIONER

Through : Mr. Raj Panjwani, Sr. Advocate with Ms. Sonia Singhani,
Advocate for Petitioner.

VS

UNION OF INDIA & OTHERS

.....RESPONDENTS

Through : Mr. Anjana Gosain with Ms. Veronica Mohan, Advocates for
respondent UOI.
Mr. Sushil D. Salwan with Mr. Vinay Tyagi Advocates for
National Rifle Association of India.
Mr. Anshul Tyagi, Advocate for Respondent No.6.

CORAM:

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

- | | | |
|----|--|-----|
| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be
reported in the Digest? | YES |

MR. JUSTICE S. RAVINDRA BHAT

%

1. By way of these Interlocutory Applications, the applicants, (i.e. fifth and sixth respondents, referred to hereafter as such) have sought clarification/modification of order dated 30.09.2010 (hereafter, "impugned judgment"), whereby, *inter alia*, entry No. 1(3) of Schedule II of the notification bearing No. GSR 991 (hereafter, the "exempting notification"), dated

13.07.1962 issued under sub-clause (vii) of clause (b) of sub-section (i) of Section 2 of the Arms Act, 1959 (hereafter, “the Act”) by the Central Government exempting the air guns, air rifles and air pistols from all the regulations and controls under the Act, was quashed.

2. The facts, in brief, which led to the filing of these applications are that the petitioner (hereafter, “PFA”) preferred a writ petition challenging the above-said notification of the Central Government on the grounds, *inter alia*, that although the object of the Arms Act is to preserve public security, as also maintenance of public order, the basic requirements thereof have been given a go-bye by liberalizing the policy of grant of license of arms, which resulted in unhampered distribution, sale and possession of firearms in the country. The same lead to disastrous results, in as much as by reason thereof guns were being used for killing or maiming of animals or birds. The petitioner, however, was not against the target practice. The writ petition was allowed on 30.07.2002.

3. The applicants herein, i.e. National Rifle Association (respondent no. 5, hereafter, “NRA”) and Toy Air Gun, Air Rifle, Air Pistol & Pellets Manufacturers (W) Association (respondent no. 6, hereafter “Manufacturers’ Association”), claiming to be aggrieved by the impugned judgment filed separate applications seeking leave to file impleadment application and applications under Order I, Rule 10 of the C.P.C. seeking impleadment. They also filed applications under section 151 of the Code seeking stay of the impugned judgment and separate applications seeking clarification/modification of the impugned judgment.

4. The applications for stay under section 151 of the Code, being I.A. Nos. 11288/2002 (R5) and 11288/2002 (R6) dated 08.10.2002 and 07.10.2002, respectively were allowed by order of this Court, dated 01.11.2002. The Court also allowed the respondents’ applications for leave to file an application for impleadment and impleadment application and the stay of the impugned judgment was confirmed the same day, through its order dated 23.07.2003; and Rule D.B. was issued. Thereafter the hearing in the case could not commence as it was adjourned for various reasons including on the behest of applicants or sometimes that of the petitioner. Arguments in the matter finally heard, in these circumstances.

5. This Court shall now analyze their individual applications seeking clarification/modification of the Judgment dated 03.07.2002 are IA Nos. 11290/2002 and 11286/2002, which

were reserved for judgment by its last order dated 17.09.2010. The pleadings and the grounds urged in these applications are almost identical, as a matter of fact even the grammatical errors are same, therefore, the Court shall take them up simultaneously.

6. Both the respondents submit that the petitioner had deliberately not impleaded the present respondents in the original proceedings and impleadment of the Ministry of Home Affairs, Ministry of Environment and Forest, Director, Animal Welfare, Ministry of Social Justice and Empowerment and the Animal Welfare Board of India was also not *bona fide*. It is alleged that the name of the Chairperson of the petitioner, i.e. Mrs. Maneka Gandhi was deliberately not disclosed to this Court, as she was also the Minister of Social justice and Empowerment, at that relevant time. Further, in its two-page counter affidavit, the Ministry of Social Justice and Empowerment conceded to all the averments in the petition, this it is alleged was due to the influence of the Minister, being the Chairperson of the petitioner. It is stated that as the respondents were not impleaded at that relevant time, their case could not be presented properly nor could the crucial facts and legal issues be brought forth and deliberated.

7. Further, it is alleged that as a result of the impugned judgment no sports person who is participating in international events and is less than 18 years of age will be permitted to participate in shooting events and no minor between the age-group of 10 to 18 years can possess or hold an air pistol and that it has resulted in a virtual extinction of shooting as a sport, as far as India is concerned. The Manufacturers' Association adds that it has also resulted in closure of manufacturing industry, for this category of rifles, in India. The respondents have submitted a brief history of the Act and quoted the following provisions of the Act- Section 2(1)(c), i.e. definition of "Arms"; (e), i.e. definition of "Firearms" and (f), i.e. definition of "Licensing Authority"; Section 3, i.e. "Licence for acquisition and possession of Firearms and Ammunition"; Section 5, i.e. "Licence for the manufacture, sale etc. of Arms and Ammunition"; Section 9, i.e. "Prohibition of acquisition or possession by, or of sale or transfer to, young persons and certain other persons of Firearms, etc."; Section 13, i.e. "Grant of Licences"; Section 14, i.e. "Refusal of Licences"; Section 15, i.e. "Duration and renewal of Licences"; Section 41, i.e. "Power to exempt"; Section 44, i.e. "Power to make rules" and finally the entry 1(3) of Schedule 2 of Notification in question, i.e. GSR 991.

8. Further, the respondents also quoted the following provisions of the Wildlife Protection Act, 1972 (hereafter, “WPA”)- Section 2(1), i.e. definition of “animal”; Section 2(16), i.e. definition of “hunting”; Section 2(35), i.e. definition of “weapon”; Section 9, i.e. “Prohibition of Hunting”; Section 11, i.e. “Hunting of wild animals to be permitted in certain cases”; Section 12, i.e. “Grant of permit for special purposes” and certain other sections and finally Section 51, i.e. “Penalties” and Section 52, i.e. “Attempts and Abetment”. The respondents submit that the petitioner discussed the provisions of the Act and the WPA, which suited it and did not discuss some other relevant provisions and has misled the Court. Further, it is alleged that besides making bald assertions of the exempted rifles being used for killing and maiming small animals and birds, the petitioner failed to substantiate its averment. The NRA submits that the impugned judgment has caused grave injustice to it and its members and the sport of shooting, *inter alia*, and the Manufacturers’ Association complains of injury to itself, its members and thousands of workers, *inter alia*.

9. The respondents base their respective applications on the following grounds. It is urged that this Court should not have interfered (Sic interfered) with the legislative functions, as it does not have the power to legislate. It is not for the Court to enlarge the scope of a legislation or the intention of the legislature, when the language of the legislation is plain and that the Court could not correct or make up any deficiency, if any, in the words used by the statute. Further, the respondents state that the Courts should be slow in adopting a construction which tends to make any part of the statute meaningless and that an attempt should be made to reconcile, as far as possible, so as to advance the remedy intended by the statute and that it is the primary duty of the Court to give effect to the intention of the legislature as is evident from the language of the statute and not the will of the judges. It is the Court’s duty to give full effect to the intention of the legislature without scanning its wisdom and without engrafting, adding or implying anything which is not congenial to or consistent with the legislative intent. Where the legislature willfully omits to incorporate something, in a subsequent statute or if there is *casus omissus* in a statute the language of which is plain and unambiguous, the Courts, it is urged are not capable of supplying the omission by engrafting into it or introducing what it thinks to be a general principle of justice and equity. Further, the respondents urge that the power of exemption vests with the Central Government, in exercise of which the notification (GSR 991) was issued. This Court, it is submitted, while striking down the notification, has usurped the legislative power and

rendered the words of the statute meaningless. The respondents assert that the exclusion of certain weapons under the Arms Act, in no way defeats any of the provisions or objectives of the WPA.

10. The respondents allege that the petitioner has acted in collusion with the second and third respondents, misled the Court, suppressed material facts and legal propositions governing the issue. To substantiate, it is stated that the necessary and proper parties were deliberately not impleaded. The fact of the Minister of the third respondent ministry and also the Chairperson of the petitioner at the relevant time of filing the affidavit on Ministry's behalf, was again stressed. It is submitted that the impugned judgment has unreasonably restricted the professional growth of the shooters, further stating that- *"It is a universal practice and approach that persons who take up this event, start from early childhood, i.e. age group of 10 years and above and do target practice with air pistols/air-guns"*. The lead pellets used in such pistols are purely dart items, which are not explosive. Further, such pistols are not used to kill animals, is the submission of the respondents and that their purpose is squarely to serve persons interested in the sport of shooting and target practice and that the petitioner has attempted to confuse the Court into believing that by Sport the implication is Game-hunting or Shikaar.

11. It is urged that prior to 1959, i.e. prior to coming into force of the Act a licence was not required for Air Guns/Pistols. The Act was notified on 13.07.1962 to come into force from 01.10.1962 through Notification No. GSR 992. GSR 991 was also issued on 13.07.1962 and entry No. 1(3) of Schedule II excluded Air gun/rifles/Pistols from the licencing policy under the Act. It is urged that such guns/pistols/rifles were never intended to fall within the scope of the Act. The petitioners have failed to cite any specific instances of misuse of Air guns/rifles for killing or maiming birds and animals. Further, the WPA provides for punishment in case of breach of its provisions. It is submitted that only specific kinds on air rifles and pistols, etc. are excluded by the exempting notification. Therefore, according to the fifth and sixth respondents such Air Rifles/pistols/guns would fall in the category of toys. The respondents submit that the petitioner had failed to place material on record and as such the lack of reasonableness could not be examined by the Court, in such circumstances it was not proper for the Court to exercise its jurisdiction under Article 226. Air guns/air rifles/pistols do not fall within the definition of Arms and/or firearms as defined in the Arms Act, 1959. A Madhya Pradesh High Court decision in

W.P. No. 7757 of 2006 is cited in support of the proposition that such rifles/pistols/guns etc. are toys. The petitioners have not been able to establish any inconsistency between the Arms Act and the Prevention of Cruelty to Animals Act, 1960 (hereafter, "PCA") and the WPA.

12. The sum and substance of the respondents' arguments can be summarized as under:
- i. The Court should not have overstepped its jurisdiction and conferred upon itself legislative functions.
 - ii. The petitioner has not placed on record any material to show misuse of the air rifles/pistols/guns for killing or maiming animals.
 - iii. The petitioner has failed to show any inconsistency or repugnancy between the provisions of the Act on one side and the PCA and the WPA on the other.
 - iv. The petitioner has acted in collusion with the respondents one to four, especially third respondent.
 - v. Necessary and proper parties were deliberately not impleaded.
 - vi. The WPA provides for punishments in case of any violations.
 - vii. The NRA urges that the impugned judgment has had a crippling effect on the sports of Shooting and Target Practice.
 - viii. The Manufacturers' Association urges that as a result of the impugned judgment many industries involved in the manufacturing air rifles/pistols/guns etc. have shut operations.

On these major grounds, *inter alia*, the respondents base their respective applications.

13. The NRA and the Manufacturers' Association had filed applications, being IA no. 11287/2002 and 11285/2002 seeking leave to file respective applications for impleadment. It is noteworthy that in the said applications, the respondents nowhere disclosed who they were, what was their *locus standi*, how they were necessary and proper parties. In their applications under Order I, Rule 10 of the CPC, the NRA and the Manufacturers' Association made bald assertions that they were concerned and affected parties and that for the purposes of appreciation of facts and correct interpretation of law their impleadment was essential, without substantiating how they were necessary and proper parties. In all these applications both, fifth and sixth respondents submitted almost identical pleadings. The fifth respondent filed its written submissions and

urged that since impleadment is allowed, this Court ought to take the matter afresh and hear the parties on merits of the case.

14. In the opinion of this Court such impleadment shall be for the limited purpose of clarification/ modification of impugned judgment and it is not be open to the respondents to ask for a review of the impugned judgment under the garb of their application for clarification/ modification of the impugned judgment. Also, such impleadment in a disposed of writ petition, without disclosure of how the applicants were necessary and proper parties is limited to the case at hand. This shall not be a precedent for future purposes, as the Code of Civil Procedure prescribes a procedure for a person aggrieved by an order/judgment, who was not a party to the proceeding, to come in review. It is also open for such a person to file an application for clarification/ modification without seeking impleadment. The Court is also of the opinion that there is no question of either of the applicants claiming to be necessary or proper parties to the original writ petition, because it questioned the legality and Constitutionality of an exemption notification. It is settled law (*General Manager, South Central Railway v. A.V.R. Siddhanti And Ors.*, AIR 1974 SC 1755) that where the legality or *vires* any rule, regulation, or normative standard is questioned, the necessary party to such proceeding is the concerned government, or its statutory agency. Moreover, in the present case, the Court notices that there is no compulsion to implead parties such as manufacturers or traders, of airguns, since the licenses issued by the appropriate authorities, for manufacture or trade - in respect of their activities, or commerce was never in issue. Another aspect, which the Court cannot lose sight of, is that the writ petition was filed in public interest, and had sought intervention of the Court, to enforce provisions of the Prevention of Cruelty to Animals Act, 1960, contending that in view of its enactment, and India's being a signatory to various International Conventions and treaties, the impugned exemption notification had lost its legality and legitimacy. In such circumstances, particularly in the exercise of public interest jurisdiction, to promote ecological standards, when no discernable impact of Court directions are involved, it is not necessary to array or implead third parties, such as the present applicants in the writ proceedings.

Provisions of the Arms Act concerning shooting sport.

15. It would now be necessary to briefly discuss the purport and effect of the submissions made by counsel. Section 3 of the Act enacts a general bar prohibiting persons from acquiring/possessing firearms, unless they hold a valid licence for the purpose.

“Section 3. Licence for acquisition and possession of firearms and ammunition.- (1) No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder:

Provided that a person may, without himself holding a licence carry any firearms or ammunition in the presence, or under the written authority, of the holder for repair or for renewal of the licence or for use by such holder.

(2) Notwithstanding anything contained in sub-section (1), no person, other than a person referred to in sub-section (3), shall acquire or have in his possession or carry, at any time, more than three firearms....

(3) Nothing contained in sub-section (2) shall apply to any dealer in firearms or to any member of a rifle club or rifle association licenced or recognized by the Central Government using a point 22 bore rifle or an air rifle for target practice.”

Section 9 of the Act deals with ***“Prohibition of acquisition or possession by, or sale or transfer to young persons and certain other persons of fire arms, etc.”***; it reads as under:

“9(1) Notwithstanding anything in the foregoing provisions of this Act-

(a) no person,-

(i) who has not completed the age of twenty-one years, or

shall acquire, have in his possession or carry any firearm or ammunition

(2) Notwithstanding anything in sub-clause (i) of clause (a) of sub-section (1), a person who has attained the prescribed age-limit may use under the prescribed condition such firearms as may be prescribed in the course of his training in the use of such firearms:

Provided that different age-limits may be prescribed in relation to different types of firearms.”

16. What flows on a conjoint reading of the above provisions is that no person can acquire or possess a firearm, unless he holds a valid licence issued under the provisions of the Act. A person may carry firearms or ammunition either in the presence of or under express authority of the licence holder for the limited purpose of repair or for renewal of licence or for such use by the holder. Section 9(1)(a)(i) prescribes the minimum age of acquiring, possessing or carrying a fire arm as 21 years. Though sub-section (2) of section 9 opens with a non-obstante clause, it does not permit grant of licence to a person under the age of 21 years, as in the opinion of the Court the bar under sub-section (1) is only relaxed for the limited purpose of permitting use of the firearms in course of training in use of such fire arms, only after attaining the prescribed age and strictly under prescribed conditions. To give any other construction to the provision would

render the purpose redundant and nugatory. Section 9 (2) has to be read in line with Rule 16 of the Arms Rules, 1962 (hereafter, “the Rules”), which prescribes as under:

16. Age limit for training and target practice.- Any person below the age of sixteen years but not below the age of 12 years may be allowed to use a firearm for the purposes of training in the use of such fire-arm in the immediate presence, or under the direct supervision and guidance, of an adult instructor or the licensee:

Provided that no person below the age of sixteen years shall be allowed to carry any fire-arms requiring a licence, in public place, except in the immediate presence and supervision of the person who is lawfully entitled to carry such fire-arms.

Explanation- For the purposes of this rule, an “adult” means a person who has completed the age of twenty-one years.”

Thus, the minimum age for use of any kind of firearm is 12 years. Such use has to be for the limited purpose of training in the use of such firearm and for persons between the age group of 12 years to 16 years it has to be strictly under immediate presence, or under the direct supervision and guidance of an adult instructor or the licensee. Persons above 16 years of age may use the fire arm for such limited purpose, unsupervised. The proviso to Rule 16 provides that a person under the age of 16 years is prohibited from carrying any fire arms requiring a licence, in a public place, except in the immediate presence and supervision of the person who is lawfully entitled to carry such fire arm. This, in the opinion of the Court, has to be read in conjunction with the proviso of section 3(1), as such a person under 16 years of age, though may be permitted to carry a firearm in a public place under the immediate presence and supervision of the person as described in the proviso to Rule 16, he can do so for the limited purpose as described in proviso to Section 3.

17. Section 13 of the Act deals with the grant of Licences; sub-section (3) lists out cases for which the licensing authority shall grant a licence mandatorily, it says that:

“Section 13. Grant of Licences-

(3) The licensing authority shall grant-

(a) a licence under section 3 where the licence is required-

(i) by a citizen of India in respect of a smooth bore gun having barrel of not less than twenty inches in length to be used for protection or sport or in respect of muzzle loading gun to be used for bona fide crop protection :

Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle loading gun will not be sufficient for crop protection, the licensing authority may grant a licence in respect of any other smooth bore gun as aforesaid for such protection,

(ii) in respect of a 22 point bore rifle or an air rifle to be used for target practice by a member of a rifle club or rifle association licenced or recognized by Central Government.

.....”

Section 13(3)(a) prescribes for an obligatory grant of licence on satisfaction of conditions specified in the section for (i) sport, *inter alia*; and (ii) target practice by a member of a rifle association licensed or recognized by the Central Government. Such person applying for licence must also meet the requirements of Section 9 of the Act. Further, Rule 15 of the Rules, which provides as under:

“15. Licences for target practice.- *Where a licences in Form VI has been granted in the name of any military mess, club or association it shall be lawful for any member of such mess, club or association to use the fire-arms covered under by such licence for the purpose of the mess, club or association in accordance with the conditions of the licensee.”*

The rule thus provides that where a military mess, club or association holds a valid licence, their members may use the licenced firearms for the purposes of the mess, club or association in accordance with the terms of the licence. Therefore, even for persons above 21 years of age, who do not hold a licence in their name and wish to engage in target practice, they may do so after getting membership of a suitable club/ association and for persons in military services, as members of the military mess.

18. Therefore, it is obvious that the Act has provided sufficient safe guards for the purposes of training in use of fire arms, for target practice and sport purposes by prescribing an obligatory grant of licence for the use of firearms for the aid purposes to eligible and interested persons. Further, a person under the age of 21 years but above the age of 12 years is also permitted to use the firearms for the purposes of target practice and training in the use of such firearms in accordance with the provisions of the Act and the Rules.

Air guns/ rifles/ pistols are not mere toys

19. The respondents have argued that the air guns/ air rifles or air pistols used for the purposes of target practice are not firearms, as defined under the Act, but merely toys and as such these do not fall under the purview of the licencing regime under the Act. Section 2(e) of the Act defines “firearms”:

““firearms” means arms of any description designed or adapted to discharge a projectile or projectiles of any kind by the action of any explosive or other forms of energy, and includes,-

(i) Artillery, hand-grenades, riot-pistols or weapons of any kind designed or adapted for the discharge of noxious liquid, gas or other such things,

(ii) accessories for such firearms designed or adapted to diminish the noise or flash caused by firing thereof,

(iii) parts of, and machinery for manufacturing, firearms, and

(iv) carriages, platforms and appliances for mounting, transporting and serving artillery”

An air gun/ air rifle/ air pistols uses the energy or force produced from compressed air or other gas for discharging of the pellet or projectile. Normally these air guns, etc. use metal projectiles and the ones which use plastic projectiles are Air (soft) Guns. General internet search on air guns reveals that these are distinguished from firearms, which burn a propellant in order to shoot the projectile but under the definition of firearms, as provided under the Act and as extracted above, it is clear that the air guns/ air rifles/ air pistols are also covered, for not only the arms which discharge projectile(s) by *action of any explosive* are covered under the definition, but also arms which use *other forms of energy*, in this case being the energy or force generated from compressed air or gas. Thus, it is safe to conclude that air guns/air rifles/air pistols are not mere toys, as against the assertion of the respondents and they are very much subject to the provisions of the Act, being firearms.

No fundamental right to carry or trade in arms.

20. It is well established that the matter of grant of licence for acquisition and possession of firearms is only a statutory privilege and not a matter of fundamental right under Article 21 of

the Constitution of India. A Full Bench of the Allahabad High Court in *Kailash Nath and Ors. v. State of U.P. and Anr.*, AIR 1985 All 291 observed as under:

“A right is distinct from a mere privilege. The case of a licensee to possess or use firearm is materially different from a case of licence to deal in or sell firearms. Section 3 of the Arms Act, 1959 deals with acquisition and possession of firearms or ammunition on the strength of a licence whereas Section 5 provides for a licence for manufacture, sale etc. of arms and ammunition. The licence for acquisition and possession of firearms is materially different from a licence for manufacture, sale etc. While the latter confers a right to carry on a trade or business and is a source of earning livelihood, the former is merely a personal privilege for doing something which without such privilege would be unlawful. In my opinion the obtaining of a licence for acquisition and possession of firearms and ammunition under the Arms Act is nothing more than a privilege and the grant of such privilege does not involve the adjudication of the right of an individual nor does it entail civil consequences. I may, however, hasten to add that even an order rejecting the application for grant of licence may become legally vulnerable if it is passed arbitrarily or capriciously or without application of mind. No doubt, a citizen, may apply for grant of a licence of firearms mostly with the object of protecting his person or property but that is mainly the function of the State. Even remotely this cannot be comprehended within the ambit of Article 21 of the Constitution which postulates the fundamental right of protection of life and personal liberty.”

In the same judgment it was also observed that:

“The consistent trend of judicial decisions has been that the official granting of the licence involves the exercise of discretionary licensing powers which are concerned with privileges and not rights. See Randall v. Northcote Council (1910) 11 CLR 100, 117-119, Metropolitan Meat Industry Board v. Finlayson (1916) 22 CLR 340; Ex. P. Macarthy, re The Milk Board (1935) SR (NSW) 47; Nakkuda Ali v. Jayaratne 1951 AC 66; R. v. Metropolitan Police Commr., ex p. Parker (1953) 1 WLR 1150; Modern Theatres (Provincial) Ltd. v. Peryman (1960) NZLR 191 See also Merchants Bank Ltd. v. Federal Minister of Finance (1961) 1 All NLR 598 (Nigeria) (revocation of licence). The decision in Nakkuda Ali v. Jayaratne 1951 AC 66 was to the effect that the Controller of Textiles in Ceylon had cancelled a textile dealer's licence in pursuance of a power to revoke a licence when he had 'reasonable grounds' for believing its holder to be unfit to continue as a dealer. It was held that the Controller was not determining a question affecting the rights of subjects but was merely taking executive action to withdraw a privilege.”

It is therefore, apparent that no citizen has a blanket right to carry firearms. Its grant is subject to his applying for a license, and fulfilling the qualifications and criteria, spelt out in the Act and Rules. The National Rifle Association's position, therefore, that its members have a right to secure a license, is untenable. They have, at best a right to apply for, and be considered for the grant of a license, subject to fulfillment of the prescribed qualifications.

Manufacturing arms and trading in arms is a regulated activity.

21. The provisions of the Arms Act, make it clear that holding a license is not a right, but a qualified privilege; the applicant has to fulfill the conditions prescribed, to be granted the license; after its grant, he has to fulfill the conditions prescribed in the license, so as to be able to continue to hold it. As far as manufacturers are concerned, their right to trade and carry on the profession (as firearms manufacturers or traders) can be no higher than that of licensees.

22. The Supreme Court, in several decisions, has ruled that activities which are repugnant or abhorrent to the interests of the general public, though answering the description of “trade” or “commerce” are not afforded the status of a protected fundamental right, under Article 19 (1) (g). Such activities include gambling, dealing in liquor, drugs, narcotics, etc. It has also been held that while enacting a “restriction” and analyzing whether a law or policy is unreasonable, the courts can consider the nature of the activity, the need for restriction, and whether the enacted policy or law is proportionate to the right asserted, having regard to the times. The Supreme Court has even ruled in *Narendra Kumar v. Union of India*, AIR 1960 SC 430 complete prohibition of a commercial activity or profession can also be reasonable, having regard to its nature.

23. If one sees the issues arising in this case, it would be apparent that the provisions have been enacted with a specific public purpose. It is not as if there is complete prohibition from obtaining licenses. Nothing was brought on record to show that the result of the judgment under review would be so drastic, as to lead to complete shutdown of the manufacturing or trading activities. Most importantly, no prohibition from *manufacturing or sale* of airguns was relied upon. The mere possibility of sales being affected – since air gun users would have to secure licenses, cannot be a ground to say that the judgment is erroneous. The applicants have not substantiated these arguments and not supported them with any documents. These remain to be mere assertions.

24. The Court is conscious of the fact that the objective of the Prevention of Cruelty to Animals Act, 1960 is to prohibit the possibility of activities, which would result in cruelty against animals, especially species such as birds and animals, which are not declared endangered

and which do not come within the fold of the Wildlife Protection Act. In this context, the argument that regardless of existence of license, a firearm or air gun can potentially be used to kill, or maim animal or bird species, is a specious one. If that argument were to be taken to its logical conclusion, the basis for a gun licensing regime would be open to attack, since it can be urged that despite possessing a license, someone can commit a crime, and a heinous one, like murder. It is not the potentiality of misuse of a licensed firearm or weapon, which is being examined, but the greater possibility of use of such weapons, if they are not subjected to licensing regulations. The argument is untenable, and therefore, rejected.

25. While on the topic, it would be useful to remember that Parliamentary intention was to regulate the use of all categories of firearms –hence the inclusion of airguns, in the definition and other provisions of the Act. The executive’s compulsions in exempting air guns and other categories of such firearms, are not clear; this Court, after considering the subsequent developments by way of enactment of the two Acts (in 1960 and 1972), as well as the impact of international conventions, was of the opinion that the exemption did not serve any discernable purpose. The notification therefore, was set aside. In doing so, the Court merely affirmed the original Parliamentary objective behind the enactment, rather than uphold the unknown virtue of the exemption, contained in the notification. The Court also reinforced the objectives of the two latter enactments, i.e. the Prevention of Cruelty to Animals Act and the Wildlife Protection Act.

Allegations of bias

26. The last submission of the respondent review petitioners was the bias on the part of the Union of India, on account of the alleged involvement of Mrs. Maneka Gandhi, former Union Minister for Social Justice. It was submitted that she was the chairperson of the petitioner organization, and on account of her being a member of the council of ministers, was able to influence the stand of the Union of India, i.e. through the Ministry of Environment. It was submitted that the affidavits filed before this Court when the writ petition was heard, virtually conceded the claim, which clearly shows complicity and involvement on her part. In short, it is urged that being in a position to influence, Mrs. Gandhi in fact did it, which resulted in the petition being allowed. Her role has been characterized as improper; the decision, urge the respondents, therefore, requires a review.

27. 'Bias' has been defined as partiality or preference not founded on reason and is actuated by self-interest – whether pecuniary or personal. It means an operative prejudice, whether conscious or unconscious, in relation to a party or an issue. Such a prejudice may be a result of a preconceived opinion or a predisposition or a predetermination to decide the case in a particular manner, so much so that it does not leave the mind open. The rule against bias strikes against those factors, which may improperly influence a decision maker in arriving at a decision in any particular case. The requirement of this principle is that the decision maker must be impartial and must decide the case objectively on the basis of evidence on record. It is a fundamental principle often expressed in maxim *nemo in propria causa judex, esse debet*. In absence of statutory authority, consensual agreement or the operation of necessity, no man can judge his own cause. (*Charanjit Singh v. Harinder Sharma*, (2002) 9 SCC 732. Therefore, if a person having a direct interest in the subject matter of an enquiry before a tribunal, participates in the decision making process, the tribunal is improperly constituted and the Court will interdict the process, as well as the decision.

28. The Supreme Court, in *Crawford Bayley & Co. v. Union of India*, (2006) 6 SCC 25 restated that the rule against bias comes into play if it is shown that the officer concerned has a personal connection or personal interest or has personally acted in the matter concerned and/or has already taken a decision one way or the other which he may be interested in supporting. This rule of disqualification is applied not only to avoid possibility of a partial decision but also to ensure public confidence in the impartiality of the administrative adjudicatory process because not only must “no man be a judge in his own case” but also “justice should not only be done but should manifestly and undoubtedly be seen to be done.” A decision, which is a result of bias is a nullity and the trial is “Coram non-judice.” An inference of bias, can be drawn only on the basis of the factual matrix and not merely on the basis of insinuations, conjectures and surmises (*Federation of Railway Officers Assn. v. Union of India*, (2003) 4 SCC 289). It has also been held that bias cannot be presumed, it must be proved from the facts of the case (*Ref. Franklin v. Minister of Town & Country Planning*, [1948] A.C. 87)

29. If the above principles are kept in mind, what becomes clear is that neither the averments in the applications filed by the respondents, nor any documents, is there clarity about the role that Mrs. Maneka Gandhi allegedly played in seemingly influencing the course of the Union of India's

stand in the writ petition. While the petitioner does not deny that she was its chairperson, the fact that it was not revealed in the writ petition, should not lead this Court to harden suspicion of impropriety, into a finding. The standard of proof which a litigant alleging malice, or bias, has to satisfy is indeed high, and the courts have to be wary of personal predilections and prejudices straying into the judicial process. The applicants/ respondents, in the opinion of the Court have managed to insinuate, but not prove the allegations of improper behavior by Mrs. Maneka Gandhi. In any case, it was this Court, which finally decided the writ petition; the judgment was based not merely on the stand or omission to take a position – by the two Central Government departments- but on objective reasoning. This ground is therefore, rejected as devoid of any substance and merit.

Scope of review jurisdiction

30. In an earlier part of this judgment, the Court has held how the two applicants did not possess the *locus standi* to question the judgment of this Court, of which clarification and modification is sought. In this context, it would be appropriate to recollect the judgments of the Supreme Court, in *State of U.P. v. Brahm Dutt Sharma & Anr.*, 1987 (2) SCC 179 and *State of Haryana v. Babu Singh*, 2008 (2) SCC 85, where it was ruled that High Courts, after exercising jurisdiction under Article 226 of the Constitution of India, cannot entertain and decide applications to “clarify” or “modify” their judgments. These applications are, therefore, not maintainable.

31. It is trite law that a Court while exercising its review jurisdiction cannot decide upon the merits of the reasoning or judgment, rendered by it. Review jurisdiction is circumscribed to examining any error apparent on the face of the record, or examination of any material, which was not brought to the knowledge of the Court previously, and which could not have been so disclosed by the Applicant, despite exercise of due diligence. Besides the fact that the applicants here were not parties, and were not necessary parties to the writ petition (for the reasons discussed earlier) the mention of the facts highlighted in the two applications are really the subject matter of appeals. If the Court were to examine them too closely, as is urged, it would be exercising appellate, not review jurisdiction- which is clearly impermissible.

32. For these reasons, the Court is satisfied that the Applications preferred by the respondents are unmerited, and cannot succeed. The same are accordingly dismissed.

(S.RAVINDRA BHAT)
JUDGE

(A.K. SIKRI)
JUDGE

May 20, 2011