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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.173 OF 2021

1. Mr Siddharth Devidas
Tirodkar, Son of Devidas
Tirodkar, Aged 44 years,
Indian National, Resident of
Village Dabal-Kirlapal
Taluka, Dharbandora-Goa.

2. Mr Wilson I. Vaz
son of Isidorio M. Vaz,
Aged 53 years, Indian
National, Resident of
H.No.11, Razvoir,
Velsao, Mormugao – Goa.

3. Dr Yeshwant Dhume,
Son of Govind Dhume,
Aged 64 years, Indian
National, Resident of
H.No.42/A, 18th June Road,
Panaji-Goa.

... Petitioners

Versus

1. State of Goa,
Through its Chief Secretary,
Having Office at Secretariat,
Porvorim-Goa.

2. State Election
Commissioner, Through its
Secretary, Having office at
Altinho, Panaji, Goa 403 001.

3. The District Magistrate,

Office of the Collectorate and
District Magistrate,
Collectorate South, Margao-
Goa.

4. The District Magistrate,
Office of the Collectorate and
District Magistrate,
Collectorate North,
Panaji-Goa.

... Respondents

**Mr Dhaval Zaveri and Mr Nehal Govekar, Advocates for the
Petitioners.**

**Ms Sapna Mordekar, Additional Government Advocate for
Respondent No.1.**

Mr Abhishek Sawant, Advocate for Respondent No.2.

**CORAM : M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATE : 14th JUNE 2023

JUDGMENT : (*Per M.S. SONAK, J.*)

1. The petitioners hold arms under Arms License issued under the Arms Act, 1959. They challenge the promulgation of orders dated 23.02.2021 by the District Magistrates of North and South Goa under Section 144 of the Code of Criminal Procedure (CrPC), requiring them to deposit their respective firearms at the nearest police station of their respective jurisdictions effective from 23.02.2021 and up to 01.03.2021. The order states that such Arms would be released five days after the conclusion of the elections.

2. The impugned order was not directed only to the petitioners, but the same was directed to “*all the Arms license holders*” in North and South Goa Districts. Some exception was made regards Public Servants/Police/Defence Personnel and Security Personnel on duty/Sports persons who were members of the National Rifle Association of India at different levels who have to participate in various sports events in which they use their arms, responsible persons of banks and its retainer and to those members of the community who are entitled to display weapons by long-standing law, custom and usage unless they were found to be indulging in violence or posing a threat to the maintenance of law and order and peaceful conduct of elections.

3. Under protest and without any opportunity to rush to the Court, the petitioners deposited their licensed fire Arms. Still, quite immediately, on 08.03.2021, instituted the present petition to quash the impugned orders under Section 144 of CrPC. In addition to quashing the impugned orders under Section 144 of CrPC, the petitioners have questioned the order dated 30.10.2020 and sought an appropriate writ against the State Election Commissioner to issue instructions similar to those issued by the Election Commission of India in Annexure E to the petition.

4. The petitioners contend that the Election Commission of India revised its earlier instructions taking cognisance of the Bombay High

Court ruling in *Govind @ Bhai Ganesh Tilve V/s. Vikram Kumar & Ors.*¹. However, the State Election Commission or the Goa State Election Commission failed to undertake a similar exercise, ignoring binding precedents and the mandate of Articles 14 and 21 of the Constitution of India.

5. The Counsel for the respondents contends that the reliefs in this petition are rendered infructuous because the impugned order under Section 144 of CrPC has already worked itself out. They submit that even otherwise, the promulgation of such an order was necessary to ensure the peaceful conduct of elections.

6. Ms Mordekar submits that the impugned order was entirely consistent with the Goa State Election Commissioner's order dated 30.10.2020. This order had instructed the Collectors and District Magistrates to organise the seizure of illegal arms and ammunition and to issue prohibitory orders under Section 144 CrPC banning the carrying of licensed arms. She submitted that the expression “*carrying of licensed arms*” would imply even the retention of such licensed Arms by the Arms licensees, irrespective of whether they may be actually carrying the same or not.

7. Ms Mordekar referred to the affidavits filed by Mrs Ruchika Katyal, District Magistrate, South Goa and Mr Ajit Roy, District

1 (2009) 5 AIR Bom R 803

Magistrate, North Goa, justifying the promulgation of the impugned orders under Section 144 of CrPC.

8. Mr Abhishek Sawant learned Counsel for the Goa State Election Commission, also referred to the Goa State Election Commissioner's order dated 30.10.2020, including clauses 15, 16 & 17 thereof. He submitted that such an order was issued in the exercise of powers vested in the Goa State Election Commissioner under Article 243-K of the Constitution, read with Section 237 of the Goa Panchayat Raj Act, 1994. He submitted that this order was intra vires, and the District Magistrates were bound to issue prohibitory orders under Section 144 of CrPC banning the carrying of even licensed Arms.

9. Ms Mordekar and Mr Sawant submitted that the restrictions imposed on the Arms licensees were reasonable and proportionate. The restrictions were to apply only for a few days, after which the licensed fire Arms would be returned. Accordingly, they submitted that there was no violation of Article 14 or 21 of the Constitution of India.

10. Mr Zaveri, the learned Counsel for the petitioners, submitted that similar issues recur every time an election is announced and the Code of Conduct enters force. He submitted that identical objections about similar petitions being rendered infructuous were considered

and rejected by at least two Division Benches of this Court in *Govind @ Bhai Ganesh Tilve* (supra) and *Vijay Dinkarrao Patil & Anr. V/s. State of Maharashtra & Ors.*². He points out that the Goa State Election Commissioner's order dated 30.10.2020 was inconsistent with the rulings of this Court, even though the Election Commission of India duly accepted such rulings and modified its instructions. He, therefore, submitted that the Rule in this Petition be made absolute.

11. The rival contentions now fall for our determination.

12. The contention about such Petitions being rendered infructuous after the conclusion of elections or after the Section 144 order is worked out was considered and rejected by at least two Division Benches of our Court in *Govind V/s. Vikram (Supra)* and *Vijay V/s. State (Supra)*. Such an issue recurs every time an election is announced, and the model code of conduct enters force. The Section 144 orders are promulgated in compliance with the directives of the Goa State Election Commission. There is rarely any independent application of mind by the District magistrates. Therefore, adopting the reasoning of the two co-ordinate benches, the objection about the petition becoming infructuous cannot be sustained.

13. Besides, the Petitioners have questioned the order dated 30.10.2020 and sought an appropriate writ requiring the Goa State

² 2014 (6) Mh.L.J. 61

Election Commission to issue instructions similar to those of the Election Commission of India. In other words, the challenge is to the Goa State Election Commission's instructions/directives to the extent that they ignore the Bombay High Court rulings and are inconsistent with the instructions/directives issued by the Election Commission of India. This relief clearly survives because the Section 144 orders purport to comply with the challenged instructions/directives.

14. The argument about alternate remedies also cannot be accepted. This petition was admitted in 2021 and is now taken up for a final hearing. Secondly, the challenges in this petition are to the impugned orders under Section 144 of CrPC and to the Instructions/directives issued by the Goa State Election Commission. The latter relief could not have been questioned by instituting an appeal or a revision under the CrPC. Having regard to the composite reliefs, it would not be appropriate to dismiss this petition on the grounds of an alternate remedy. Thirdly, in *Gulam Abbas & Ors. V/s. State of Uttar Pradesh & Ors.*³, the Hon'ble Supreme Court has held that an order under Section 144 CrPC is executive in nature and, therefore, amenable to writ jurisdiction. In the said case, general guidelines were laid down for the proper exercise of power under Section 144 CrPC. At least *prima facie*, the impugned orders are not quite consistent with these general guidelines.

³ 1982 1 SCC 71

15. Therefore, for all these reasons, no case is made out to dismiss this petition either because the reliefs infructuous or based on the availability of alternate and efficacious remedies.

16. The impugned orders dated 23.02.2021 issued by the District Magistrate, North and South Goa, are identical. Therefore, one of the impugned orders issued by the District Magistrate of South Goa is transcribed below for the convenience of reference:

*“Most Urgent
Municipal Council Elections 2021*

*Office of the Collector & District Magistrate,
Collectorate South, Margao Goa.
Magisterial Section
Matanhy Saldanha Administrative Complex, Near ETC, Margao Goa – 403 601
Phone: 0832-2794810, 0832-2794731 Fax No.0832-2794402
Email.:magbr-cols.goa@nic.in*

No. 31/19/2021/MC Election/1991

ORDER U/S 144 OF CRIMINAL PROCEDURE CODE, 1973

***To
The Public Generally***

WHEREAS, the Goa State Election Commission announced the schedule for Municipal Council Elections and Bye Election to 16-Navelim Zilla Panchayat Constituency, 2021 to be held on 20th March 2021 and the Election Code of Conduct has come into force from 22/02/2021. Therefore, as directed by the Goa State Election Commission, the District Administration is required to ensure free, fair and peaceful conduct of Municipal Council Elections and Bye Election to 16-Navelim Zilla Panchayat Constituency, 2021.

AND WHEREAS, in my considered opinion there is sufficient ground for proceeding under Sub Section (1) of Section 144 of Criminal Procedure Code, 1973, and impose

ban for carrying of all type of Arms, firearms, and other lethal weapons, to ensure free, fair, peaceful and orderly conduct of the election process and to prevent obstruction, annoyance or injury to any person lawfully employed or cause danger to human life, or safety or disturbance of public tranquillity or riot, of any affray during the electioneering.

***AND WHEREAS,** I am satisfied that the circumstances do not permit serving of the notices individually in time to all the licensed Arms holders in South Goa District.*

***NOW THEREFORE, I, Ruchika Katyal, IAS,** in exercise of the powers vested in me under Section 144 of CrPC 1973 do hereby prohibit the carrying of all type of Arms, firearms, ammunition, lethal weapons, in any Public place, street, road squares, through fare, by lanes, or in any open place in entire District of South Goa with immediate effect until further orders,*

***FURTHER,** all the arm license holders in South Goa District are hereby directed to deposit all their firearms at the nearest Police Station of their respective jurisdiction with effect from 23/02/2021 to 01/03.2021. All the firearms deposited will be returned to the license holder after five days from counting i.e. after the Election process is over;*

***FURTHER,** it is also made known that if any person has a real threat to his or her person's property, he/she should approach the Director General of Police, for providing necessary security by the Police, but under no circumstances will any person be allowed to carry his own personal licensed firearm's or otherwise except with special permission or exemption granted by the undersigned.*

However, the above restrictions shall not apply to Public Servants, Police, Defence Personnel and Security Personnel on duty/Sports persons who are members of National Rifle Association of India, Responsible persons of Banks and its retainers, and to those members of the community who are entitled to display weapons by long standing law, custom and usage unless they are found to be indulging in violence or posing a threat to the maintenance of law and order and peaceful conduct of elections.

Given under my hand and seal of this Office on this 23rd day of February, 2021.

*Sd/-
(Ruchika Katyal, IAS)
District Magistrate & Municipal Council
Election Officer & Zilla Panchayat Election Officer,
South Goa, Margao.”*

17. The impugned orders made in the purported exercise of the powers vested in the District Magistrates under Section 144 CrPC issued a blanket direction to all Arms Licenced holders to deposit all their fire Arms at the nearest police station of their respective jurisdiction between 23.02.2021 and 01.03.2021. This blanket directive is in addition to imposing a ban on carrying all types of Arms, firearms and other lethal weapons to ensure the free, fair, peaceful and orderly conduct of the election process and to prevent obstruction, annoyance or injury to any person lawfully employed or cause danger to human life, or safety or disturbance of public tranquillity or riot, of any affray during the electioneering. The ban on carrying arms is not questioned in this Petition.

18. In the affidavits filed by Mrs Ruchika Katyal (District Magistrate, South Goa) and Mr Ajit Roy (District Magistrate, North Goa), which are again primarily identical, it is asserted that the impugned orders under Section 144 CrPC were issued “*in pursuance and in furtherance of the order dated 30.10.2020 issued by the respondent no.2 and in order to ensure the free, fair, transparent and*

peaceful conduct of the elections in the District". (Paragraph 7 of both affidavits).

19. Again, in paragraph 9 of the affidavit, reference is made to respondent no.2's order dated 30.10.2020, including clause 17 of the said order, which reads as follows:

"17. To issue Prohibitory orders under Section 144 of CrPC banning the carrying of licensed arms".

20. The affidavits state that respondent No. 2 has issued the above order dated 30.10.2020 in exercising powers under Article 243-K of the Constitution of India read with Section 237 of the Goa Panchayat Raj Act, 1994.

21. In short, the affidavits admit that the impugned orders have been issued by the District Magistrates based upon the directives issued by respondent no.2. From the tenure of the affidavits as well as the impugned orders, it is evident that both the District Magistrates have not independently applied their mind but have acted under dictation by the respondent no.2. The fact that a blanket direction has been issued relying entirely upon clause 17 of Order dated 30.10.2020, indicates a lack of independent application of mind by the District Magistrates. In any case, clause 17, did not direct a blanket order to all arms licensees to deposit their arms with the

Administration. On this short ground, the impugned orders warrant interference.

22. In *Anuradha Bhasin V/s. Union of India & Ors.*⁴, the Hon'ble Supreme Court has held that an order passed under Section 144, CrPC, should state the material facts to enable judicial review of the same. The power should be exercised in a bona fide and reasonable manner, and the same should be passed by relying on the material facts indicative of the application of the mind. This will enable judicial scrutiny of such orders.

23. Acting under dictation virtually amounts to non-application of mind. In *Anirudhsinhji Karansinhji Jadeja & Anr. V/s. State of Gujarat*⁵, the Hon'ble Supreme Court made the following observations in paragraph 13:-

"13. It has been stated by Wade and Forsyth in 'Administrative Law', 7th Edn. at pp. 358-359 under the heading "Surrender, Abdication, Dictation" and sub-heading "Power in the wrong hands" as below:-

"Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with someone else or may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect

4 (2020) 3 SCC 637

5 (1995) 5 SCC 302

then is that the discretion conferred by parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them.....

Ministers and their departments have several times fallen foul of the same rule, no doubt equally to their surprise...."

24. Apart from the issue of non-application of mind, orders similar to the impugned orders were the subject matter of judicial scrutiny in *Ganesh Mahadeosingh Thakur V/s. Sr. Inspector, Boisar Police Stateion, Thane & Ors.*⁶, *Govind @ Bhai Ganesh Tilve V/s. Vikram Kumar & Ors.* (supra) and *Vijay Dinkarrao Patil & Anr. V/s. State of Maharashtra & Ors.* (supra). In all these cases, the Division Benches of this Court have consistently disapproved the issue of orders under Section 144 CrPC containing blanket directions to all Arms License Holders to deposit their Arms once elections are commenced and until elections are concluded.

25. Based upon the guidelines issued in *Govind @ Bhai Ganesh Tilve V/s. Vikram Kumar & Ors.* (supra), even the Election Commission of India modified its earlier guidelines and issued new guidelines dated 01.09.2009. In terms of the new guidelines dated 01.09.2009, no blanket directions for the deposit of Arms could be

6 2000 ALL MR (Cri) 928

issued. Such orders could be made only in respect of some specified categories like persons released on bail, persons having a history of criminal offences or persons previously involved in rioting at any time but especially during the election period. It was clarified that these categories were only illustrative and not exhaustive. However, the practice of issuing blanket orders for the deposit of Arms by the license holders was not continued.

26. In *Ganesh Thakur* (supra), this Court referred to guidelines dated 13.03.1996 issued by the Election Commission of India. The Court noted that these guidelines clearly state that the authorities must acquire the data of the firearms license holders and scrutinise each in three categories. The categories are as under:

- a. Persons released on bail.*
 - b. Persons having a history of criminal offence and;*
 - c. Persons previously involved in rioting at any time, but especially during the election period.*
- (The above categories are only illustrative and not exhaustive).*

27. The Court noted that the guidelines required only the persons falling within the above categories to deposit their Arms with the District Administration during the elections. In the purported compliance with such guidelines, the District Magistrates made an order under Section 144 CrPC directing all the Arms license holders to deposit the firearms with the District Administration first and then

to apply before the regular committee making out the case for maintaining the firearms with justification. Such orders were questioned in *Ganesh Thakur (Supra)* .

28. The Court did not approve all such orders under Section 144 of CrPC. Accordingly, the Court directed that as and when necessary, during the period of election, if the powers are to be exercised in respect of the firearms under Section 144 CrPC as per the Election Commissioner's guidelines, the Screening Committee shall be formed and after categorising the three classes referred to above, the action as per the said guidelines shall be taken. The Court further held that any action beyond this obviously could not be sustained.

29. Despite a Division Bench ruling in *Ganesh Thakur (supra)*, once again, blanket orders were made under Section 144 of CrPC requiring all Arms license holders to deposit their Arms during the election period. These orders were challenged in *Govind @ Bhai Ganesh Tilve V/s. Vikram Kumar & Ors. (supra)*.

30. The Division Bench of the Bombay High Court comprising of Ranjana Desai, J. (as Her Ladyship then was) and R.G. Ketkar, J. expressed their extreme dissatisfaction about how respondents ignored the directives issued by Election Commission and the Division Bench in *Govind Thakur's* case (supra). Further, the Division Bench issued detailed guidelines on this precise issue in paragraph 18.

31. Accordingly, paragraphs 16,17,18 & 19 of *Govind @ Bhai Ganesh Tilve V/s. Vikram Kumar & Ors.* (supra) are transcribed below for the convenience of reference:

“16. Before we close, we must express our extreme dissatisfaction about how the 1st and 2nd respondents have ignored the directives issued by the Election Commission and the judgment of this court in Ganesh Thakur's case. Several orders issued for the same purpose were set aside during the last elections on the ground that Screening Committee was not in place and there was no prior review and assessment of arms licence holders. Once again similar mistakes are committed. There appears to be a lack of coordination and communication between the Election Commission and the State and its officers. The State has not perhaps, understood the significance of the Election Commission's directives. Such an approach may lead to unsavoury incidents during elections. The Election Commission must ensure that its directives are adhered to strictly by the State and its officers. The Screening Committees must be in place. The review and assessment of arms licence holders must be done post haste and then notice must be issued to the shortlisted arms licence holders to deposit arms. In deference to Article 324 of the Constitution, the Election Commission must supervise the steps taken by the State and reprimand those who do not abide by its directives.

17. Since the need to direct licence holders who fall into the categories mentioned in the directions of the Election Commission arises at the time of every parliamentary election and the experience has shown that review and assessment of arms ("screening" for convenience) is not done by the Scrutiny Committees

in terms of the directives of the Election Commission and as per the judgment of this court in Ganesh Thakur's case, which leads to setting aside of almost all the orders directing deposit of arms which is likely to jeopardise peaceful holding of elections Mr. Rajgopal, learned counsel for the Election Commission of India has requested this court to lay down guidelines. In fact after consulting the Election Commission and the State Authorities, Mr. Rajgopal and Mr. Borulkar, learned Public Prosecutor have given us AJN time-frame, which the Election Commission of India desires, should be laid down by us for the Screening Committees to abide by. We have taken on record a copy of the letter addressed by the Election Commission of India to Mr. Rajagopal dated 29/6/2009 and marked it 'X'. We are informed that the Election Commission of India desires that Scrutiny Committees should be in place. Mr. S. R. Chitnis, learned Senior Counsel and all other counsel also requested us to translate the Election Commission of India's suggestions into guidelines.

In the circumstances, we lay down the following guidelines:

- a) There shall be a Screening Committee in every District and in every Commissionerate area. In the District the Screening Committee shall consist of the District Magistrate and the Superintendent of Police. In the Commissionerate area it shall consist of the Commissioner of Police and Joint/Additional Commissioner of Police (Admn.)*
- b) The Screening Committee shall commence the work of screening from the day of declaration of dates of election by the Election Commission.*

c) Cases of all the licence holders as laid down by the Election Commission in its directive shall be placed before the Screening Committee. The categories are;

i) persons released on bail;
ii) persons having a history of criminal offences; and persons involved in rioting at any time but especially during the election period. The Screening Committee shall bear in mind that the above categories are only illustrative and not exhaustive.

d) The Screening Committee shall complete the exercise of screening in respect of licences placed before it as far as possible before the 1st date of filing of nominations.

e) On receipt of report from the Screening Committee, the licensing authority shall issue notice before the last date fixed for withdrawal of candidature to the individual licence holder for depositing his arms and inform the licence holder that failure to deposit the arms as directed would result in prosecution under Section 188 of the I.P.C. as stated in clause (h).

f) The licence holder thereafter shall deposit his arms forthwith and in any case within a period of seven days from the date of receipt of the notice. The Licensing Authority shall give proper receipt to the licence holder.

g) The decision taken by the Screening Committee shall be final.

h) Any licence holder who fails to deposit arms within the period specified above shall be liable for prosecution under section 188 of Indian Penal Code.

i) All the arms so deposited with the administration be returned to the licence holder within a period of one week after declaration of election results.

j) The above time-frame should be adhered to as far as possible.

19. The guidelines state that the time-frame should be adhered to as far as possible, obviously to ensure that the object behind issuing guidelines is not defeated and the entire exercise is not questioned because of minor deviation in the time-frame. But that does not absolve the officers who upset the time-frame. We make it clear that if the above time-frame is not abided by, the competent authority shall take action in accordance with law against the erring officers.

32. A Similar issue arose before this Court's Division Bench comprising A.S. Oka, J. (as His Lordship then was) and A.S. Chandurkar, J. in *Vijay Dinkarrao Patil & Anr.* (supra). The Court quashed and set aside a blanket direction calling upon Arms license holders to deposit their Arms with the concerned authorities. The Court noted that each case was not independently reviewed as per the directions by the Election Commission of India and the guidelines issued by the Election Commission of India, and the guidelines issued in terms of the judgment in *Govind @ Bhai Ganesh Tilve V/s. Vikram Kumar & Ors.* (supra). The Division Bench further directed the State Government to frame appropriate guidelines about the functioning of the Screening Committees.

33. In *Ram Chandra Bajpai V/s. Chief Election Commissioner, Govt. of India & Ors.*⁷, the learned Single Judge of the Allahabad High Court, interfered with the similar blanket order made by the District Magistrate under Section 144 of CrPC. Relying upon *Tula Ram Yadav V/s. State of U.P. & Ors.*⁸, the learned Single Judge held that in the garb of elections, the very purpose of granting firearms licences for self-defence and personal security could not be taken away from the bonafide licence holders of firearms which is against the law, makes it clear that rights to self-defence, personal security and protection of life are the basic criteria and these rights cannot and should not be taken away by sweepingly ordering the deposit of firearms during the elections putting the life and security of all and sundry who holds the arms licences in imminent dangers without following the provisions of law.

34. The learned Single Judge further clarified that if any citizen has criminal antecedents or is found displaying the arms, action may be taken against them per the provisions of law. District Magistrates are also directed to pass orders after examining the individual cases for suspending the licences and ensuring the deposit of arms in cases related to persons who have a criminal history or who are on bail or lacked clean antecedents as the same might involve interference in the conduct of the free and fair elections.

⁷ 2010 DGLS (Alld.) 3143

⁸ WP No.1487 (MS) of 2007

decided on 29.03.2007

35. Finally, the learned Single Judge disposed of the petition with the observation that in case the petitioner possesses a valid arms license for his firearm and no written order has been issued by the competent authority against him with the direction to deposit the arms, he shall not be compelled to deposit the arms till further orders of this Court. However, it shall be open for the opposite parties to proceed in accordance with the law on case to case basis in case they feel that continuing the firearms with them shall be detrimental to public peace or law and order.

36. In *Bhupinder Singh V/s. State of Punjab*⁹, the learned Single Judge of the Punjab and Haryana High Court took cognisance of the Instructions dated 01.09.2009 issued by the Election Commission of India on the subject of “deposit of Licensed Arms”. The Court held that on a co-joint reading of paragraphs 3.10 and 3.11 of the Instructions dated 01.09.2009, it was clear that only specified categories of persons could be directed to deposit their licensed weapons during elections. Therefore, the practice of issuing blanket orders requiring all licensed Arms holders to deposit their Arms was disapproved. The Court also disapproved passing of sketchy and mechanical orders.

37. As noted earlier, based upon the judgment in *Govind @ Bhai Ganesh Tilve V/s. Vikram Kumar & Ors.* (supra), the Election

⁹ 2017 Cri.L.J. 2959

Commission of India issued Instruction SI. No.112 dated 01.09.2009. Paragraph 2 of this Instruction takes specific cognisance of the judgment of this Court in *Govind @ Bhai Ganesh Tilve V/s. Vikram Kumar & Ors.* (supra). The Instructions deal with several aspects like electoral and criminal offences, a ban on the sale of liquor, a ban on carrying of licensed Arms, a ban on the issue of the license of Arms, seizure of unlicensed Arms and ammunition and deposit of licensed Arms.

38. Since, in this petition, we are concerned with the ban on carrying of licensed Arms and, mainly, the deposit of licensed Arms, extracts from the above Instructions are transcribed below for the convenience of reference:

“Ban on carrying of Licensed Arms

3.6 Prohibitory orders under section 144 of the Criminal Procedure Code, 1973 shall be issued banning the carrying of licensed arms as soon as an election is announced and should be effective till the declaration of results.

3.7 The States should conduct a 100% scrutiny of licenses of arms and ammunition shops with a view to ensuring that the records of their stocks are kept up-to-date and that their antecedents, recent involvement in irregularities, if any, and political leanings, if any, warrant a close super checking and monitoring of their business during the days of active electioneering.

Deposit of Licensed Arms

3.10 Immediately after the announcement of elections, District Magistrates shall make a detailed and individual review and assessment (in accordance with the prevalent State laws) of all licence holders so that licensed arms in those cases where they consider it essential are impounded in order to ensure maintenance of law and order so essential for ensuring free and fair elections. These arms should be deposited with the district authorities. Among cases which may need to be reviewed are the following:

- (a) Arms licenses of persons released on bail,*
- (b) Arms licenses of persons having a history of criminal offences, and*
- (c) Arms licenses of persons previously involved in rioting at any time but especially during the election period. The above categories are only illustrative and not exhaustive.*

3.11 As per the above-referred guidelines laid down by the Bombay High Court, for such review and assessment of all licence holders;

(a) There shall be a Screening Committee in every District and in every Commissionerate area. In the District, the Screening Committee shall consist of the District Magistrate and the Superintendent of Police. In the Commissionerate area, it shall consist of the Commissioner of Police (Admn.) and Joint/Additional Commissioner of Police (Admn.)

(b) The Screening Committee shall commence the work of screening from the day of announcement of election by the Election Commission and it shall complete the exercise of screening in respect of licences placed before it as far as possible before the date of issue of notification of elections.

(c) Cases of all licence holders as mentioned in para 3.10 above shall be placed before the Screening Committee.

(d) On receipt of report from the Screening Committee, the licensing authority shall issue notice before the last date fixed for withdrawal of candidature to the individual licence holder for depositing his arms and inform the licence holder that failure to deposit the arms as directed would result in prosecution under Section 188 of the I.P.C. as stated in clause 3.11 (g).

(e) The licence holder thereafter shall deposit his arms forthwith and in any case within a period of seven days from the date of receipt of the notice. The Licensing Authority shall give proper receipt to the licence holder.

(f) The decision taken by the Screening Committee shall be final.

(g) Any licence holder who fails to deposit arms within the period specified above shall be liable for prosecution under Section 188 of the Indian Penal Code.

3.12 The District Administration shall ensure foolproof arrangements for keeping the deposited firearms in safe custody. Proper receipt must be given to the licence holders depositing the firearms. It shall be the bounden duty of the District Administration to ensure that all firearms deposited with the Administration are returned to the licence holders immediately after one week after the declaration of results.

3.13. The sportsmen who are the members of National Rifle Association, at different levels and have to participate in various sporting events in which they use their rifles, will be exempted from these restrictions. This ban shall, also not be applicable to those communities who are entitled to display weapons by long standing law, custom and usage. This shall, however, not prevent the District Administration to impound weapons of any person, even from such communities, if they are found to be indulging in violence or posing a threat to the maintenance of law and order and peaceful conduct of elections. In such cases too, the seized firearms shall remain impounded till one week after the declaration of results.

39. Unfortunately, the Goa State Election Commission failed to take cognisance of the directions issued by at least three Division Benches of this Court or the revisions carried out by the Election Commission of India referred to above and modify its guidelines/Instructions so that the same are consistent with the guidelines/Instructions issued by the Election Commission of India on 01.09.2009. The Election Commission of India complied with the directions issued by the Division Bench of this Court in *Govind @ Bhai Ganesh Tilve V/s. Vikram Kumar & Ors.* (supra) and modified its earlier Instructions/guidelines. The Goa State Election Commission was duty-bound to undertake a similar exercise, which it has failed to undertake. Therefore, clause 17 of its order/Instructions dated 30.10.2020 continues to advise District Magistrates to issue prohibitory orders under Section 144 of CrPC banning the carrying of

licensed Arms without issuing any special instructions as regards to the deposit of licensed Arms during the period of elections.

40. The contention that the ban on “*carrying of licensed Arms*” would include a blanket direction to all licensed Arms holders to deposit Arms with the District Administration cannot be accepted. In the Instructions dated 01.09.2009, issued by the Election Commission of India, a distinction is made between “*Ban on carrying licensed Arms*” and “*Deposit of Licensed Arms*” during elections. Based on such distinction, the Election Commission of India, while approving the ban on carrying of licensed Arms during elections, has not approved a blanket direction for the deposit of licensed Arms.

41. The new instructions specify that directions for the deposit of licensed Arms can be made in respect of Arms licenses of persons released on bail, Arms licenses of persons having a history of criminal offences and Arms licenses of persons previously involved in rioting at any time but especially during the election period. These categories are only illustrative and not exhaustive. The direction for deposit can be made only after Screening Committees review a case of such persons and opine on the necessity of such a direction. Therefore, even in the case of these categories of persons, no blanket orders can be made.

42. The order dated 30.10.2020 to the extent the same ignores the rulings of at least three Division Benches of this Court in the case of *Ganesh Thakur* (supra), *Govind @ Bhai Ganesh Tilve* (supra) and *Vijay Dinkarrao Patil* (supra) warrant interference. Further, the order dated 30.10.2020 issued by the Goa State Election Commission to the extent the same is inconsistent with the Instructions issued by the Election Commission of India on 01.09.2009 at least to the aspect of "deposit of licensed Arms" warrants interference.

43. Accordingly, we declare that the impugned orders dated 23.02.2021 made by the District Magistrates were illegal and in excess of jurisdiction. There is no necessity of quashing the same at this point in time because such orders are not in force. However, the District Magistrates will have to take cognisance of the decisions of the Division Bench in *Ganesh Thakur* (supra), *Govind @ Bhai Ganesh Tilve* (supra) and *Vijay Dinkarrao Patil* (supra) and the present judgment and order before issuing such orders in the exercise of powers conferred upon them by Section 144 CrPC. Besides, the District Magistrates must take cognisance of the decision of the Hon'ble Supreme Court in *Anuradha Bhasin* (supra), which is the law of the land under Article 141 of the Constitution.

44. The order dated 30.10.2020 issued by the Goa State Election Commission to the extent the same is inconsistent with the rulings of at least three Division Benches of this Court in *Ganesh Thakur*

(supra), *Govind @ Bhai Ganesh Tilve* (supra) and *Vijay Dinkarrao Patil* (supra) and the Instructions dated 01.09.2009 issued by the Election Commission of India warrant interference. Accordingly, the Goa State Election Commission is directed to modify its order dated 30.10.2020 so the same is consistent with the directions issued by the three Division Benches of this Court and the Instructions dated 01.09.2009 issued by the Election Commission of India on the subject of “*ban on carrying of licensed arms*” and “*deposit of licensed arms*”. This exercise must be carried out within three months from today, and a compliance report must be filed in this Court on or before 08.09.2023.

45. The rule is accordingly made absolute in the above terms.

46. There shall be no order for costs.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

NITI K
HALDANKAR

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HALDANKAR
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