

A F R

Neutral Citation No. - 2023:AHC-LKO:83692**Reserved:** 05.12.2023**Pronounced:** 19.12.2023**Court No. - 31****Case :-** WRIT - C No. - 2461 of 2023**Petitioner :-** Amandeep Singh**Respondent :-** State Of U.P. Thru. Prin. Secy. Home Lko. And 2
Others**Counsel for Petitioner :-** Kuldeep Kaur, Ambrish Kumar
Dwivedi, Ravi Dwivedi**Counsel for Respondent :-** C.S.C.**Hon'ble Pankaj Bhatia, J.**

1. Present petition has been filed by the petitioner challenging the order dated 02.09.2021 whereby the arms license of the petitioner was cancelled by the Licensing Authority as well as the appellate order dated 07.11.2022 whereby the appeal preferred by the petitioner was dismissed.

2. The facts, in brief, in the present case are very interesting inasmuch as a young advocate – the petitioner – after enrolling in the noble profession in the year 2018 was charged with an offence under Section 188 IPC read with section 30 of The Arms Act for carrying arms in the Court premises. In pursuance to the lodging of an FIR against the petitioner, a news item was also published that in the District Judgeship of Barabanki, various persons were carrying arms without there being any restraint whatsoever. The petitioner was subsequently served with a show-cause notice calling upon the petitioner as to why the arms license of the petitioner may not be cancelled. The petitioner appears to have not filed a reply. Although, the show-cause notice has not been filed alongwith the writ petition, the same annexed alongwith the counter affidavit filed by the State. As the petitioner neither filed

any reply nor did he care to appear during the hearing, the Licensing Authority on the basis of the report submitted coupled with the fact that the petitioner was charged with an offence under Section 188 IPC read with Section 30 of the Arms Act, proceeded to cancel the arms license of the petitioner. While doing so, the Licensing Authority also noticed the general directions given by the High Court on 02.01.2020 in Public Interest Litigation (PIL) No.2436 of 2019 “In Re Suo Moto Relating to Security and Protection in All Court Campuses in the State of U.P.”. The petitioner preferred an appeal; an affidavit was also filed in the said appeal, which is on record as Annexure - 3.

3. In the said appeal, it was disclosed that the petitioner was a junior advocate enrolled vide Enrollment No.04435/2018 and was a Member of the District Bar Association. It was accepted that the petitioner was carrying the arms in the Court premises and the plea taken was that the petitioner was not aware that he could not carry the arms in the Court premises and thus, there was an error on his part and would not repeat the same in future. It was also stated that the petitioner had taken the arms license and only the petitioner was singled out for initiation of proceedings for cancellation of arms license, which according to the petitioner was an important issue to be considered.

4. The appeal of the petitioner came to be dismissed mainly on the ground of the petitioner facing criminal trial vide Case Crime No.644 of 2020 as well as the general directions issued by the High Court with regard to safety requirements in the District Courts.

5. Challenging the said orders, the present writ petition has been filed.

6. The main ground pleaded by the petitioner is that right to keep arms is a right necessary for preservation of life, liberty and

property. It is further pleaded that right to carry arms is a fundamental right enshrined under Article 21 of the Constitution, which fact has been ignored by the Licensing Authority. It is further pleaded that the life of the petitioner is in danger as he is a practicing advocate and the task of advocacy is very challenging due to annoyance of parties to litigation. It is also argued that while passing the order, the mandate of Section 17(3) of The Arms Act (hereinafter referred to as 'the Act') has been violated as there is no threat to public peace or public safety.

7. In support of the contention, learned counsel for the petitioner has relied upon a judgment of this Court in the case of **Ram Vilas versus State of U.P. & Ors.**¹, wherein this Court had the occasion to consider the power of cancellation only on account of pendency of the case, more so, in the light of mandate of Section 17(3) of the Act. The Court also had the occasion to consider the Government Order issued on 07.02.2018 prescribing guidelines with regard to power of cancellation.

8. The State, on the other hand, has filed the counter affidavit stating therein that in view of the general directions given by the High Court and the fact that the petitioner being a lawyer was found carrying arms in the Court campus was charged with an offence registered as Case Crime No.644 of 2020; and subsequently, in view of the report of the pendency of the case, a charge-sheet was issued for cancellation of the license. The petitioner did not even file a reply and the Licensing Authority rightly rejected the arms license.

9. It is argued by learned Standing Counsel that the petitioner who claims to be a young lawyer has violated the law with impunity in carrying the arms in the Court premises and has further failed to even reply to the charge-sheet issued to him which demonstrates the scant respect that the petitioner has as a lawyer in

1. Neutral Citation No. - 2023:AHC:139246

upholding the spirit of law. It is further argued that the petitioner himself had admitted to the charges levelled against him in the charge-sheet with regard to carrying of the arms as is clear from the pleadings in Appeal. It is further argued that the allegation of the petitioner that he has been singled out, amounts to pleading negative equality which is not permissible.

10. It is further argued that in terms of the mandate of the Arms Act as well as the General Rules (Civil) and the general directions issued, the arms license has been rightly cancelled. It is most vehemently argued that grant of the arms license is not a matter of right and is a privilege and thus, the plea that the carrying of the arms license is guaranteed under Article 21 of the Constitution merits rejection.

11. In the light of the arguments as raised and noted herein above, it is essential to note the scheme of the Arms Act and the Rules framed thereunder as well as the relevant provisions pertaining to the restrictions in the Court premises.

12. The Arms Act was enacted to regulate the possession of arms. Chapter III of the said Act governs the provisions with regard to grant of licenses which can be granted subject to the police report in respect of the person desiring the license and on the basis of inquiry. The mandate of granting license is further divided in two broad categories: first being specified in Section 13(3) of the Act which is in respect of grant of license for a smooth bore gun having a barrel of not less than twenty inches and to be used for protection or sport or in respect of a muzzle loading gun to be used for crop protection; and in respect of firearm to be used for target practice by a member of a rifle club duly recognized. With regard to grant of other licenses, the license can be refused in the manner as specified in Section 14(1)(b) of the Act.

13. Section 13 and Section 14 of the Arms Act are quoted herein below:

“13. Grant of licences.— (1) *An application for the grant of a licence under Chapter II shall be made to the licensing authority and shall be in such form, contain such particulars and be accompanied by such fee, if any, as may be prescribed.*

(2) *On receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.*

(2A) *The licensing authority, after such inquiry, if any, as it may consider necessary, and after considering the report received under sub-section (2), shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same:*

Provided that where the officer in charge of the nearest police station does not send his report on the application within the prescribed time, the licensing authority may, if it deems fit, make such order, after the expiry of the prescribed time, without further waiting for that report.

(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 a barrel of not less than twenty inches in length to be used for protection or sport or in respect of a 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; or

(ii) *in respect of a firearm to be used for target practice by a member of a rifle club or rifle association licensed or recognised by the Central Government;*

(b) *a licence under section 3 in any other case or a licence under section 4, section 5, section 6, section 10 or section 12, if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same.*

14. Refusal of licences.— (1) *Notwithstanding anything in section 13, the licensing authority shall refuse to grant—*

(a) a licence under section 3, section 4 or section 5 where such licence is required in respect of any prohibited arms or prohibited ammunition;

(b) a licence in any other case under Chapter II,—

(i) where such licence is required by a person whom the licensing authority has reason to believe—

(1) to be prohibited by this Act or by any other law for the time being in force from acquiring, having in his possession or carrying any arms or ammunition; or

(2) to be of unsound mind; or

(3) to be for any reason unfit for a licence under this Act; or

(ii) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

(2) The licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or possess sufficient property.

(3) Where the licensing authority refuses to grant a licence to any person it shall record in writing the reasons for such refusal and furnish to that person on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.”

14. It is essential to note that in terms of the powers conferred under the Arms Act in respect of framing rules, the rules have been framed known as The Arms Rules, 2016 (hereinafter referred to as ‘the Rules, 2016’). Relevant rule in the present case is Rule 32, which is quoted herein below:

“32. Restrictions on carrying of firearm in public place.— *(1) No person shall carry a firearm in a public place unless the firearm is carried –*

(a) in the case of a handgun –

(i) in a holster or similar holder designed, manufactured or adapted for the carrying of a handgun and attached to his person; or

(ii) in a rucksack or similar holder; or

(b) in the case of any other firearm, in a holder designed, manufactured or adapted for the carrying of a firearm.

(2) A firearm contemplated in sub-rule (1) must be completely covered and the person carrying the firearm must be able to exercise effective control over such firearm.

(3) Brandishing or discharge of firearms or blank-firing firearms in any public place or a firearm free zone is strictly prohibited.

(4) Any violation of this rule shall be liable to revocation of the licence and seizure of the firearm in addition to the penalty specified under the Act.”

15. On a plain reading of the mandate of Sub-Rule 3 of Rule 32 of the Rules, 2016, it is clear that carrying of a firearm in a firearm free zone is strictly prohibited and can lead to an additional ground to revocation of the license and seizure of firearm in addition to the penalty prescribed under the Act.

16. It is also interesting to note that the Civil Courts in the State of U.P. are regulated in terms of their working on the civil and the criminal side by the rules as the General Rules (Civil) and the General Rules (Criminal). The General Rules (Civil), specifically places restriction in the form of Rule 614-A of the said Rules, which are as under:

“614A. Restriction on carrying of Arms. - *Save as provided in Rule 614, no person, not belonging to the police force on duty, shall carry or have in his possession any arm as defined in clause (c) of sub-section (1) of Section 2 of the Arms Act, 1959, within the court premises.*

Explanation I. - The expression 'police force on duty' includes such members of the police force who escort under-trials or are posted at Hawalat guard or are otherwise posted within the Court premises for purposes of security and maintenance of law and order, or come to Court for evidence or pairvi of Government cases or other Government work.

*Explanation II. - **The expression 'Court premises' includes all lands, building and structures therein, but does not include residential quarters, if any, of the officer and the staff, situate within its limits.**”*

17. In terms of the Explanation II to Rule 614A, the Court premises has been defined to include all lands, buildings and structures except for residential quarters within the limits of the Courts, thus, the entire Court premises are included for restrictions in respect of carrying of the arms within the Court premises. It is also essential to note that with regard to incidents that had taken place in the District Court, suo moto cognizance was taken by this Court in PIL No.2436 of 2019 wherein the Division Bench of this Court after considering the various proposals issued a slew of

directions with regard to the safety etc., in the Court premises. Specific directions were contained in Para – 20 of the order dated 02.01.2020 passed in PIL No.2436 of 2019, which is quoted herein below:

“20. No person including Advocates, their Clerks and litigants shall be allowed to enter Court premises carrying any weapon. If any person is found with weapon, the matter shall immediately be reported giving details of such person to District Judge as also to Registrar General of this Court so that appropriate action may be taken against such person but in no case, any person carrying weapon shall be allowed to enter into the Court premises. This direction would not apply to security personnel deputed in Court premises as also Police personnel on duty, accompanying accused persons coming to Court to attend their cases.”

18. This Court also cannot ignore the fact that in the recent past, several incidents of the lawyers carrying and misusing the arms inside the Court premises have attracted the attention of the Hon’ble Supreme Court as well as other Courts from time to time. The Supreme Court in the case of **Pradyuman Bisht versus Union of India & Ors.**², noticing the manner on which incidents of misuse of arms had taken in Court premises and being deeply concerned with the same had issued certain directions.

19. To sum up the submissions and to decide the issues, it is important that this Court decides the following points of determination that arise in the present case:

- I. Whether right to carry arms is a fundamental right guaranteed under Article 21 of the Constitution as pleaded by the petitioner ?
- II. Whether the carrying of arms in the Court premises is permissible by the lawyers who claim that law profession is typical and is challenging due to annoyance of parties to litigation ?

III. Whether the carrying of arms in the Court premises can lead to cancellation of the arms license in terms of the provisions contained in Section 17 with the rules framed under the Arms Act ?

20. As regards the Issue No.I framed and quoted herein above, the same need not detain the Court for long as the said issue has been decided by two Full Benches; the first being **Kailash Nath and Ors. versus State of U.P. & Ors.**³ wherein considering the nature of the licenses, the Full Bench recorded as under:

*“3. The law is well settled that before an action is proposed to be taken against an individual which affects his rights and involves civil consequences, he must be given an opportunity to show cause. This is the essence of the rule of ‘audi alteram partem’ which is the principal doctrine of natural justice. This rule, however, must be confined to a case in which the adjudication of right of a party arises and which involves civil consequences. 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 S. 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 Art. 21 of the Constitution which postulates the fundamental right of protection of life and personal liberty. It deals with deprivation of life and as held in *Gopalan v. State of Madras*, 1950 SCC 228 : 1950 SCR 88 : (AIR 1950 SC 27). Art. 21 is attracted only in cases of deprivation in the sense of total loss and that accordingly has no application to the case of a mere restriction upon the right to move freely or to the grant of licence for possession and acquisition of firearms which stands on an entirely different*

3 AIR 1985 ALL 291

footing from the licence to carry on a trade or occupation. The rule of natural justice cannot be invoked unless civil consequences ensue. A civil right being adversely affected is a condition precedent for attracting the 'audi alteram partem rule'. The cases of *Ram Gopal Chaturvedi v. State of Madhya Pradesh*, (1969) 2 SCC 240 : AIR 1970 SC 158 and *Union of India v. J.N. Sinha*, (1970) 2 SCC 458 : AIR 1971 SC 40 were decided on the basis that the action under challenge in those cases did not involve any civil consequences. *Black's Law Dictionary, Fifth Edition*, at page 222 contains the following definition of "Civil":—

"Relating to private rights and remedies sought by civil actions as contrasted with criminal proceedings.

The word is derived from the Latin civilis, a citizen. Originally, pertaining or appropriate to a member of a civitas or free political community; natural or proper to a citizen. Also, relating to the community, or to the policy and government of the citizens and subjects of a State."

And the same was followed in another Full Bench in the case of **Rana Pratap Singh versus State of U.P.** ⁴, wherein the Full Bench recorded as under:

"37. Equally unsustainable is the view that the right to carry non-prohibited fire arms comes within the purview of Art. 21 of the Constitution, nor indeed one can we subscribe to the theory as expounded by M Katju, J. In Ganesh Chandra Bhatt's case 1993 (30) ACC 204, that it is only an armed man who can lead a life of dignity and self respect. As rightly held in Kailash Nath's case 1985 AWC 493 : AIR 1985 All 291 (supra), obtaining of a licence for acquisition and possession of fire arms under the Arms Act is no more than a privilege. M.N. Shukla, C.J. in this behalf, further observed "No doubt, a citizen may apply for grant of a licence of fire arms 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. It deals with deprivation of life and as held in Gopalan v. State of Madras, 1950 SCC 228 : 1950 SCR 88 Article 21 is attracted only in cases of deprivation in the sense of total loss and that accordingly has no application to the case of a mere restriction upon the right to move freely or to the grant of licence for possession and acquisition of fire arms which stands on an entirely different footing from the licence to carry on a trade or occupation". M.K. Katju, J. In Ganesh Chandra Bhatt's case (1993 (30) ACC 204), brushed aside this observation by fastening upon it the label of "per incuriam". On the face of it, this represents a glaring instance of a learned single Judge, as they say "Seeking to win the game by sweeping all the chessmen of the table" by so blatantly disregarding a binding judgment of a Full Bench of five Judges, by merely saying it is per incuriam, when it was clearly not so."

21. In view of the two Full Bench decisions, referred above, the Issue No.I is answered holding that arms license is merely a privilege granted by the State and is not a Right and right to carry arms is certainly not a fundamental right much less a right guaranteed under Article 21 of the Constitution of India.

22. Coming to the Issue No.II as framed and recorded above, whether, carrying of the arms in the Court premises is permissible by lawyers, the answer to the said issue is also clearly in negative inasmuch as it has been already held that the grant of arms license is not flowing out of any right but is a mere privilege which is subject to various restrictions enumerated under the Act, the Rules, 2016, and in particular Rule 614-A of The General Rules (Civil), which specifically bars any person who is not belonging to the police force to carry or have in his possession any arms in the 'Court premises'. In fact, the 'Court Premises' as explained in Explanation II of Rule 614-A of The General Rules (Civil) gives an enhanced definition to the Court Premises and is not confined to Courtrooms, thus, carrying of the arms in the Court premises is not only barred for lawyers but is also barred for any member of the public unless he belongs to a police force, that too only if the police official is on duty.

23. The second limb of Issue No.II with regard to the claim of the petitioner that law profession is typical and challenging requiring the carrying of the arms needs to be repelled with all condemnation. It is a somber moment in the judicial chronicles when a lawyer, having practiced for a mere two years, harbors the misguided notion that wielding arms within the courtroom is essential for professional success. This sentiment reflects a concerning departure from the principles of legal practice, undermining the integrity and decorum of the judicial process. Such beliefs run counter to the foundations of a fair and just legal

system, emphasizing the need for a reevaluation of values within the legal profession.

24. The said state of mind/impression of a young lawyer clearly needs to be deprecated as the same has no basis whatsoever. The young professional needs to be reminded that the legal profession is a noble profession and has continued to be so since ages; the worth of a lawyer flows from his pen, extreme hard work and his understanding of law and not from the barrel of a gun as is the impression carried by the young professional, the petitioner herein.

25. It is a common knowledge that ever since historical times never has a lawyer relied upon anything other than his sharp knowledge of law, hard work and the power that flows from his pen to make mark in the legal profession. The young professionals entering the Bar like the petitioner herein, needs serious counseling to get over such mistaken notion that he carries while entering the legal profession. This also highlights that the legal profession is being crowded by persons who are not undergoing any systematic training, which was earlier provided informally through chamber affiliations; this aspect is within the domain of Bar Council and the Bar Council is advised to redress this aspect through effective ways and means after discussion.

26. Thus, the Issue No.II is decided by holding that no one including any litigant or a lawyer, can carry any arms in the Court premises and that succeeding in law profession certainly does not require support of the barrel of a gun.

27. Coming to Issue No.III – this is one of the most important issues arising out of the present case. It has already been held that carrying of arms in the Court premises is specifically barred by virtue of Rule 614-A of The General Rules (Civil). In fact, this Court in its order dated 02.01.2020 passed in Public Interest Litigation (PIL) No.2436 of 2019 had specifically emphasised and

given directions for security in the Court premises; the Hon'ble Supreme Court also in its order in the case of **Pradyuman Bisht (Supra)** has also emphasised the security in the Court premises, which has a direct nexus with the administration of justice.

28. The moot question that arises is whether carrying of arms in the Court premises itself can be a ground for cancelling of the arms license? The cancellation of arms license flows from the mandate of Section 17 of the Act. Section 17(3) of the Act, which is quoted herein below, empowers the licensing authority to take steps for cancellation of the arms license in the event of any of the conditions existing and as clarified under Section 17(3) Clause (a) to (e):

“Section 17. Variation, suspension and revocation of licences. -

.....

(3) *The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence,*

- (a) *if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force, from acquiring, having in his possession or carrying any arms or ammunition, or is of unsound mind, or is for any reason unfit for a licence under this Act; or*
- (b) **if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence;** or
- (c) *if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it; or*
- (d) *if any of the conditions of the licence has been contravened; or*
- (e) *if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver-up the licence.*

29. Clause (b) of Section 17(3) of the Act states that the Licensing Authority may revoke or suspend the license to preserve the security of the public peace or public safety In this context, it is important to understand the scope and ambit of the power

conferred on the licensing authority by way of Section 17(3)(b). Specifically, this Court has to answer whether this power conferred on the licensing authority is merely a discretionary power, or the same is a power coupled with the duty. In other words, this Court has to answer whether the licensing authority can refuse to revoke a license under Section 17(3)(b), even though there is a threat to the security of public peace.

30. It has been argued before this Court that the use of ‘may’ in this section points that the power is merely enabling in nature, and that power is the sole discretion of the licensing authority. In other words it has been argued that the licensing authority can refuse to revoke a license under Section 17(3)(b), even though there maybe a threat to the security of public peace.

31. It is well settled by the various decisions of the Hon’ble Supreme Court that the use of the word ‘may’ does not necessarily suggest that the same is merely directory, but may also be interpreted as a power coupled with duty depending upon the context in which the expressions have been used, and the same has to be interpreted in light of the scheme in the purpose underlying the statute.

32. In **Sardar Govindrao v. State of M.P.**⁵, a Constitution bench of the Hon’ble Supreme Court held that the word may can be read as shall or must, when there is something in the nature of the thing to be done which makes it the duty of the person on whom the power is conferred to exercise the power. Analysing the scheme of the Central Provinces and Berar Revocation of Land Revenue Exemptions Act, 1948, J. Hidayatullah, speaking for the majority construed the word ‘may’ appearing in Section 5(3) of the Act as mandatory. The relevant portion has been quoted as under,

“9...The word “may” in Section 5(3) must be interpreted as mandatory when the conditions precedent, namely, the

5. 1964 SCC OnLine SC 93

existence of a religious, charitable or public institutions which ought to be continued or of the descendants of a ruling Chief, is established. The words “may pass such orders as it deems fit” in sub-section (2) mean no more than that Government must make its orders to fit the occasion, the kind of order to make being determined by the necessity of the occasion. As stated in Maxwell on the Interpretation of Statutes:

“Statutes which authorise persons to do acts for the benefit of others, or, as it is sometimes said, for the public good or the advancement of justice, have been given rise to controversy when conferring the authority in terms simply enabling and not mandatory. In enacting that they ‘may’ : or ‘shall, if they think fit,’ or, ‘shall have power,’ or that “it shall be lawful” for them to do such acts a statute appears to use the language of mere permission, but it has been so often decided as to have become an axiom that in such cases such expressions may have — to say the least — a compulsory force, and so would seem to be modified by judicial exposition.”

This is an instance where, on the existence of the condition precedent, the grant of money or pension becomes obligatory on the Government notwithstanding that in Section 5(2) the Government has been given the power to pass such orders as it deems fit and in sub-section (3) the word “may” is used. The word “may” is often read as “shall” or “must” when there is something in the nature of the thing to be done which makes it the duty of the person on whom the power is conferred to exercise the power. Section 5(2) is discretionary because it takes into account all cases which may be brought before the Government of persons claiming to be adversely affected by the provisions of Section 3 of the Act. Many such persons may have no claims at all though they may in a general way be said to have been adversely affected by Section 3. If the power was to be discretionary in every case there was no need to enact further than sub-section (2). The reason why two sub-sections were enacted is not far to seek. That Government may have to select some for consideration under sub-section (3) and some under Section 7 and may have to dismiss the claims of some others requires the contentment of a discretion and sub-section (2) does no more than to give that discretion to Government and the word “may” in that sub-section bears its ordinary meaning. The word “may” in sub-section (3) has, however a different purport. Under that sub-section Government must, if it is satisfied that an institution or service must be continued or that there a descendant of a former ruling Chief, grant money or pension to the institution or service or to the descendant of the former ruling Chief, as the case may be. Of course, it need not make a grant if the person claiming is not a descendant of a former ruling Chief or there is other reasonable ground not to grant money or pension. But, except in those cases where there are good grounds for not granting the pension, Government is bound to make a grant to those who fulfil the required condition and the word “may” in the third sub-section though apparently discretionary has to be read as “must”. The

High Court was in error in thinking that the third sub-section also like the second conferred an absolute discretion.

33. Similarly, in **Official Liquidator v. Dharti Dhan (P) Ltd.**⁶, it has been held that the power conferred by the use of ‘may’ would carry an obligation, when it can be show that on the fulfilment of certainly prescribed conditions, a particular order has to be passed. The relevant extract is as under,

“7. In fact, it is quite accurate to say that the word ‘may’ by itself, acquires the meaning of ‘must’ or ‘shall’ sometimes. This word, however, always signifies a conferment of power. That power may, having regard to the context in which it occurs, and the requirements contemplated for its exercise, have annexed to it an obligation which compels its exercise in a certain way on facts and circumstances from which the obligation to exercise it in that way arises. In other words, it is the context which can attach the obligation to the power compelling its exercise in a certain way. The context, both legal and factual, may impart to the power that obligatoriness.

8. Thus, the question to be determined in such cases always is whether the power conferred by the use of the word ‘may’ has, annexed to it, an obligation that, on the fulfilment of certain legally prescribed conditions, to be shown by evidence, a particular kind of order must be made. If the statute leaves no room for discretion the power has to be exercised in the manner indicated by the other legal provisions which provide the legal context. Even then the facts must establish that the legal conditions are fulfilled. A power is exercised even when the court rejects an application to exercise it in the particular way in which the applicant desires it to be exercised. Where the power is wide enough to cover both an acceptance and a refusal of an application for its exercise, depending upon facts, it is directory or discretionary. It is not the conferment of a power which the word ‘may’ indicates that annexes any obligation to its exercise but the legal and factual context of it.”

34. Again in **N.D. Jayal v. Union of India**⁷, after analysing the scheme of the Environment (Protection) Act, 1986, it was held that the power conferred under the Act was not merely a power, but the same was power couples with a duty.

35. Similarly, in **D.K. Basu v. State of W.B.**⁸ after analysing the scheme of the Protection of Human Rights Act, 1993, the Supreme Court held that the word ‘may’ appearing in Section 21 of the Act has to be construed as ‘shall’.

6. (1977) 2 SCC 166

7. (2004) 9 SCC 362

8. (2015) 8 SCC 744

36. Thus, in light of the above based precedents, it is important to determine whether the word ‘may’ appearing in Section 17(3)(b) is merely a power or a power coupled with a duty. Such interpretation has to be done in light of the statements and objects of the Arms Act, and the same has to be in sync with the rights provided under Part III of the Constitution. The Statement And Objects of the Arms Act, 1959 are as under:

“The objects of this Bill are—

(a) to exclude knives, spears, bows and arrows and the like from the definition of “arms”;

(b) to classify firearms and other prohibited weapons so as to ensure—

(i) that dangerous weapons of military patterns are not available to civilians, particularly the anti-social elements;

(ii) that weapons for self-defence are available for all citizens under license unless their antecedents or propensities do not entitle them for the privilege; and

(iii) that firearms required for training purpose and ordinary civilian use are made easily available on permits;

(c) to co-ordinate the right of the citizen with the necessity of maintaining law and order and avoiding fifth-column activities in the country;

(d) to recognize the right of the State to requisition the services of every citizen in national emergencies. The licensees and permit holders for firearms, shikaris, target shooters and rifle-men in general (in appropriate age groups) will be of great service to the country in emergencies, if the Government can properly mobilize and utilize them.”

37. Section 17(3) is to lay down the conditions in which the licensing authority ought to suspend or revoke the license. The object of the section is to further the reasons provided in the Statement and Objects of the Act. Section 17(3)(b) lists down ‘security of the public peace’ or for ‘public safety’ as a ground to revoke license and the object of the same is consistent with balancing the right of the citizen with the necessity of maintaining law and order in the country.

38. Thus I have no hesitation in holding that the word may occurring in Section 17(3) of the Arms Act is power coupled with duty. In other words, once the existence of the conditions laid down in Section 17(3)(b) are shown to exist, the licensing authority has to necessarily suspend or revoke the license.

39. Further, such an interpretation of Section 17(3)(b) would also be consistent with the judicial precedents which have held that the State is under a positive obligation to maintain law and order, in a way that all persons can enjoy their Article 19 and Article 21 rights. The positive obligations of the State to protect the Article 21 rights of all persons has been dealt by the Constitution Bench in **Kaushal Kishor v. State of U.P.**⁹ as under,

“108. In Gang-Rape Ordered by Village Kangaroo Court in W.B., In re [Gang-Rape Ordered by Village Kangaroo Court in W.B., In re, (2014) 4 SCC 786 : (2014) 2 SCC (Cri) 437] , this Court was dealing with a suo motu writ petition relating to the gang rape of a women under orders of a community panchayat as punishment for having a relationship with a man belonging to a different community. After taking note of two earlier decisions, one in Lata Singh v. State of U.P. [Lata Singh v. State of U.P., (2006) 5 SCC 475 : (2006) 2 SCC (Cri) 478] which dealt with honour killings of youngsters involved in inter-caste, inter-religious marriages and the other in Arumugam Servai v. State of T.N. [Arumugam Servai v. State of T.N., (2011) 6 SCC 405 : (2011) 2 SCC (Cri) 993] , which dealt with khap panchayats, this Court opined in para 16 as follows : (Kangaroo Court case [Gang-Rape Ordered by Village Kangaroo Court in W.B., In re, (2014) 4 SCC 786 : (2014) 2 SCC (Cri) 437] , SCC p. 796)

“16. Ultimately, the question which ought to consider and assess by this Court is whether the State police machinery could have possibly prevented the said occurrence. The response is certainly a “yes”. The State is duty-bound to protect the fundamental rights of its citizens; and an inherent aspect of Article 21 of the Constitution would be the freedom of choice in marriage. Such offences are resultant of the State's incapacity or inability to protect the fundamental rights of its citizens.”

In fact, this Court observed in the aforesaid decision that the obligation of the State does not get extinguished upon payment of compensation and that the rehabilitation of the victims of such nature was a must.

109. In *Shakti Vahini v. Union of India* [*Shakti Vahini v. Union of India*, (2018) 7 SCC 192 : (2018) 3 SCC (Cri) 1 : (2018) 3 SCC (Civ) 580] , while dealing with a writ petition seeking a direction to the State Governments and Central Government to take preventive measures to combat honour crimes and to submit a National/State plan of action, this Court issued a slew of directions directing the State Governments to take both punitive and remedial measures, on the ground that the State has a positive obligation to protect the life and liberty of persons. In para 49 this Court said : (SCC p. 213)

“49. ... We are disposed to think so, as it is the obligation of the State to have an atmosphere where the citizens are in a position to enjoy their fundamental rights.”

110. After quoting the previous decision in *S. Rangarajan* [*S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574] , which arose out of the infringement of the freedom of expression in respect of a cinematograph film, this Court said in *Shakti Vahini* [*Shakti Vahini v. Union of India*, (2018) 7 SCC 192 : (2018) 3 SCC (Cri) 1 : (2018) 3 SCC (Civ) 580] as follows : (*Shakti Vahini* [*Shakti Vahini v. Union of India*, (2018) 7 SCC 192 : (2018) 3 SCC (Cri) 1 : (2018) 3 SCC (Civ) 580] , SCC p. 214, para 49)

“49. ... We are absolutely conscious that the aforesaid passage has been stated in respect of a different fundamental right, but the said principle applies with more vigour when the life and liberty of individuals is involved. We say so reminding the States of their constitutional obligations to comfort and nurture the sustenance of fundamental rights of the citizens and not to allow any hostile group to create any kind of trench in them.”

111. At last, while dealing with the right to privacy, in *K.S. Puttaswamy (Privacy-9 J.)* [*K.S. Puttaswamy (Privacy-9 J.) v. Union of India*, (2017) 10 SCC 1] , this Court made it clear that : (SCC p. 634, para 644)

“644. ... It is a right which protects the inner sphere of the individuals from interference by both the State and non-State actors.”

113. Therefore, our answer to Question 3 would be that the State is under a duty to affirmatively protect the rights of a person under Article 21, whenever there is a threat to personal liberty, even by a non-State actor.”

40. Any other interpretation of the section would lead to grave and serious consequences, as the same would imply that the licensing authority has discretion not to revoke or suspend the license, even though there is a threat to public security or the same is necessary for public peace. Such an interpretation would not only go contrary to the objects of the Arms act, but also against the dictum of the Constitution bench in *Kaushal Kishore* (*supra*).

Carrying Weapons in Court – A threat of public peace and public safety?

41. Having held that it is obligatory on part of the licensing authority to revoke or suspend license, whenever there is a threat to Public Peace or Public Safety, it is necessary to determine whether the carrying of firearms in Court premises would ipso facto amount to a threat to public peace or Public Safety under Section 17(3)(b) of the Arms Act.

42. “Public peace” or “Public Safety” although not defined under the Act has to be interpreted conjointly with the mandate of Rule 614-A of The General Rules (Civil) as well as Rule 32 of the Rules, 2016, which place certain restrictions for carrying of arms in a public place and in fact, prohibits carrying of arms in the Court premises. The reason and analogy for enacting Rule 614-A under The General Rules (Civil) is to give a sense of security to the public who frequent the District Courts to ensure that their safety is not likely to be adversely affected and that administration of justice happens in a pristine atmosphere free from fear and exactly for that purpose, Rule 614-A was enacted.

43. In this context it is important to note the decision of **Imtiyaz Ahmad v. State of U.P.**¹⁰ wherein it has been held that access to justice is a fundamental right guaranteed under Article 21 of the Constitution. The relevant extracts have been quoted as under,

“25. ... A person's access to justice is a guaranteed fundamental right under the Constitution and particularly Article 21. Denial of this right undermines public confidence in the justice delivery system and incentivises people to look for short cuts and other fora where they feel that justice will be done quicker. In the long run, this also weakens the justice delivery system and poses a threat to the rule of law.

26. It may not be out of place to highlight that access to justice must not be understood in a purely quantitative dimension. Access to justice in an egalitarian democracy must be understood to mean qualitative access to justice as well. Access to justice is, therefore, much more than improving an individual's access to courts, or guaranteeing representation. It must be defined in terms of ensuring that legal and

10. (2012) 2 SCC 688

judicial outcomes are just and equitable [see United Nations Development Programme, Access to Justice — Practice Note (2004)].”

44. Permitting the lawyers or any litigant other than the member of the armed forces on duty to carry arms would be clearly a threat to public peace or public safety in the Court premises, which not only has an adverse affect on the litigants frequenting the District Courts but also has the affect of adversely affecting the credibility of the administration of justice, which is one of the basic features of the Constitution of India.

45. Thus, the Issue No.III is answered by holding that carrying of arms in the Court premises can not only lead to cancellation of arms license, it is a natural corollary that the cancellation of arms license would necessarily follow against anyone including the lawyers except for member of the armed forces on duty who are found carrying arms in the Court premises.

46. On all the three issues, the writ petition deserves to be dismissed and is accordingly **dismissed**.

47. However, considering the fact that carrying of the arms in the Court premises by litigants and other persons frequenting the Court premises is on the increase and is a cause for major threat to public peace and public safety coupled with the fact that the mandate of Rule 614-A of The General Rules (Civil) places restrictions on carrying of arms in the Court premises and despite directions by this Court Court in PIL No.2436 of 2019 the same are not being followed in letter and spirit,I deem it appropriate to issue general directions to the following effect:

- 1) All the District Judges and all the Judicial Officers working in the entire State of Uttar Pradesh shall take steps for registration of the cases under The Arms Act against any person whether it is a litigant or a lawyer carrying arms within the Court premises and shall forward a request to the

District Magistrate/Licensing Authority of the concerned area for taking immediate steps for cancellation of the arms license.

- 2) The District Judges and the Judicial Officers as well as the Security In-Charge of the District Courts are bound to take steps for registration of FIRs/complaints against the person carrying arms within the Court premises as defined under Explanation II to Rule 614-A of The General Rules (Civil) and to forward such report to the Licensing Authority for taking immediate steps for cancellation of the arms license.
- 3) The Licensing Authority under the Arms Act shall stake steps for cancellation of the arms license in respect of a person found or alleged to be carrying arms.
- 4) Any person found carrying 'Arms' in the entire Court premises including common areas, Court rooms, lawyers' chambers, Bar Associations, Canteens and other public areas within the entire Court premises would be deemed to be constituting breach of 'public peace' or 'public safety' for the purpose of exercise of powers under Section 17(3)(b) of the Arms Act.

48. The Registrar General/Senior Registrar of this Court is directed to communicate this order to all concerned Judicial Officers in the State as well as to Secretary, Home, State of U.P. for compliance as well as to Bar Council of India and Bar Council of the State to for taking steps for sensitizing lawyers for not carrying Arms in the Court Premises.

Order Date :- 19.12.2023

nishant

[Pankaj Bhatia, J.]