

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.

D.B. Civil Writ Petition (PIL) No.1595/2013

Akhil Rajasthan Anugyapatra Dhari Shashtra Dharak Sangh
Welfare Society, Jaipur & anr.
Vs.

State of Raj. & Anr.

DATE OF ORDER :: 3rd October, 2016

HON'BLE MR. JUSTICE K.S. JHAVERI
HON'BLE MR. JUSTICE BANWARI LAL SHARMA

Mr. B.B. Pareek, for the petitioner.
Mr. G.S. Gill, AAG for the State.
Mr. Ravi Chirani, for the respondent.

1. The facts of the case are that the Akhil Rajasthan Anugyapatra Dhari Shashtra Dharak Sangh Welfare Society, Jaipur petitioner no.1 is a society registered under Rajasthan Societies Registration Act, 1958.
2. The petitioner has challenged in this petition a notification issued by the Election Commission of India to all the Chief Secretaries and Chief Electoral Officer of all the States and Union Territories regarding deposition of arms of all licence holders during General Elections/Bye elections in order to ensure maintenance of law and order so essential for ensuring free and fair elections with following prayer:-

"10.1. In the facts and circumstances stated above the Hon'ble High may be pleased to issue appropriate writ, order or directions to the respondents in the best interest of public & democracy.

10.2 To direct the respondents, not to compel each and every arms licence holder to deposit their arms at Police Stations after announcement of elections being beyond the scope and ambit of Section 134B of the Representation of the People Act, 1951 and Section 144A of the Criminal Procedure Code, 1973.

10.3 To restrain the respondents from acting beyond the provisions of Section 134B of the RP Act, 1951 and 144A of the Cr.P.C. and provisions of the Arms Act, 1959 and the Rules made there under in the matter of unnecessary compelling the entire arms licence holders to deposit their arms at Police Station after announcement every type of elections."

3. The respondents have filed reply and stated that a criminal writ petition bearing number 835/2009 titled as Govind @ Bhai Ganesh Tilve Vs. Vikram Kumar, District Magistrate, Sindhudurg, Maharashtra & Anr. was filed before the Hon'ble Division Bench of Bombay High Court in which similar issue was raised and to be more specific the instructions dated 13.3.1996 which is Annexure-A/7 placed at page number 47 of the writ petition was under challenge. The Hon'ble Division Bench headed by Hon'ble Smt. Justice Ranjana Desai (as she then was) and Hon'ble Mr. Justice R.G. Kedkar vide judgment dated 10.07.2009 decided the above mentioned writ petition after considering the provisions of Arms Act, 1959 provisions of Section 144 of Cr.P.C. And other relevant judgments.

4. In view of affidavit reply filed by the Election Commission, we are of the opinion that the directions issued by Bombay High Court in paragraph 18 in a Criminal writ petition No.835/2009 which was filed before the Bombay High Court which came to be decided on 30.6.2009 where the Division Bench of the Bombay High Court has directed as under:-

"18. 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 iii) 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."

5. The Election Commission has accepted the same. The counsel for the petitioner made an endeavour that the directions

of the Single Judge ought to have been accepted. No direction has been issued by the learned Single Judge of the Rajasthan High Court but the direction issued by the Bombay High Court has been accepted by Election Commission which is proper and in

the interest of all concern. We approve the same direction.

The petition as well as stay application stand disposed of.

(Banwari Lal Sharma), J.

(K.S. Jhaveri), J.