

Jayaprasad Vs. State Of Karnataka

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Court : Karnataka

Decided On : Apr-25-2024

Judge : Sachin Shankar Magadum

Appeal No. : WP 9959/2024

Appellant : Jayaprasad

Respondent : State Of Karnataka

Judgement :

R1IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE25H DAY OF APRIL, 2024 BEFORE THE HONBLE MR. JUSTICE SACHIN SHANKAR MAGADUM WRIT PETITION NO.9932 OF2024(GM-RES) C/W WRIT PETITION NO.9918 OF2024(GM-RES) WRIT PETITION NO.9925 OF2024(GM-RES) WRIT PETITION NO.9941 OF2024(GM-RES) WRIT PETITION NO.9959 OF2024(GM-RES) IN WRIT PETITION NO.9932/2024 BETWEEN:

1. . M GOVINDA BHAT S/O M ACHUTHA BHAT AGED ABOUT70YEARS RESIDING AT MADHUVANA, MANIMOOLE, MANILA VILLAGE, BANTWALA TQ, D K DISTRICT-574 243 2 . NISHANTH NARAYANA S/O NARAYANA BAHT AGED ABOUT36YEARS BILLAMPADAVU HOUSE ALIKE VILLGE, BANTWALA TQ POST: SATHYA SAI VIHARA ALIKE, D K DISTRICT-574 243 ...PETITIONERS (BY SRI. SUBRAMANYA BHAT .M, ADVOCATE) 2 AND:

1. . THE DEPUTY COMMISSIONER AND DISTRICT MAGISTRATE AND DISTRICT ELECTION OFFICER DAKSHINA KANNADA DISTRICT OLD PORT ROAD MANGALORE-575 001 2 . THE STATION HOUSE OFFICER VITTAL POLICE STATION D K DISTRICT-574 243 3 . THE ELECTION COMMISSION OF INDIA REPRESENTED BY THE CHIEF ELECTION COMMISSIONER NIRVACHAN SADAN, ASHOKA ROAD NEW DELHI-01 4 . THE SCREENING COMMITTEE CONSTITUTED FOR DEPOSIT OF LINCENSED FIREARMS REPRESENTED BY THE DEPUTY COMMISSONER DAKSHINA KANNADA OLD PORT ROAD MANGALORE-01 RESPONDENTS (BY SRI. RAHUL CARIAPPA, AGA) THIS WRIT PETITION IS FILED UNDER ARTICLE226OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE

ORDER

BARING NO.ARM (1)125/2024-E-383376/C3 DATED2603/2024 ISSUED BY THE R2 (ANNEXURE-E) IN SO FAR AS THE SAME PERTAINS TO THE PETITIONERS AS THE SAME IS IN UTTER VIOLATION OF THE PRINCIPLES OF NATURAL JUSTICE BESIDES3BEING VIOLATIVE OF ARTICLES14 16, 19 AND21OF THE CONSTITUTION OF INDIA AND ETC. IN WRIT PETITION NO.9918/2024 BETWEEN:

1. . MR. M. SUDARSHAN KUMAR ADVOCATE S/O THIRUMALESHWARA BHAT AGED ABOUT46YEARS RESIDING AT NO.4-117(1) MULIYA HOUSE, ALIKE, BANTWAL TALUK DAKSHINA KANNADA DISTRICT - 574 235 2 . MR. A. MOHANA ADVOCATE S/O A.KRISHNA BHAT AGED ABOUT45YEARS RESIDING AT1133 MAIRA HOUSE, KEPU VILLAGE BANTWAL TALUK D.K.DISTRICT, PIN - 574 243 3 . MR. N. VASISHTHA BHAT S/O N GOPALA BHAT AGED ABOUT43YEARS RESIDING AT No.6-134 NAVANOOJIBAIL HOUSE KOLNADU, BANTWAL TALUK D.K.DISTRICT, PIN - 574 323 4 . MR. M KRISHNARAJA S/O M SHIVARAMA BHAT AGED ABOUT45YEARS RESIDING AT No.3-14 PERIYAPADDY HOUSE SATHYA SAI VIHAR4ALIKE, BANTWAL TALUK D.K.DISTRICT, PIN - 574 235 ...PETITIONERS (BY SRI. RAVISHANKR SHASTRY .G, ADVOCATE) AND:

1. . STATE OF KARNATAKA REPRESENTED BY ITS SECRETARY TO DEPARTMENT OF HOME VIDHANA SOUDHA DR. B.R. AMBEDKAR ROAD BENGALURU - 560 001. 2 . DEPUTY COMMISSIONER AND DISTRICT MAGISTRATE DAKSHINA KANNADA DISTRICT MANGALURU, D.K.-. 575 001 3 . SCREENING COMMITTEE FOR SURRENDER OF ARMS DAKSHINA KANNADA REPRESENTED BY DEPUTY COMMISSIONER MANGALURU, D.K.DISTRICT - 575 001 4 . STATION HOUSE OFFICER VITTAL POLICE STATION VITTAL, BANTWAL TALUK D.K.DISTRICT - 574 243 RESPONDENTS (BY SRI. RAHUL CARIAPPA, AGA) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE

ORDER

DATED 26/03/2024 IN No.A.R.M. (1) 125/2024/E- 5 383376/C3 PASSED BY THE DEPUTY COMMISSIONER AND DISTRICT MAGISTRATE, DAKSHINA KANNADA DISTRICT, MANGALURU IN SO FAR AS THE PETITIONERS ARE CONCERNED AND WHOSE NAMES ARE SHOWN AT SERIAL No.10, 4, 5 AND 6 OF THE LIST OF BANTWAL TALUK RESPECTIVELY COPY OF WHICH IS PRODUCED AT ANNEXURE-A AND CONSEQUENTLY DIRECT THE DEPUTY COMMISSIONER, DAKSHINA KANNADA DISTRICT TO PASS AN

ORDER

EXEMPTING THE PETITIONERS FROM DEPOSIT OF THEIR LICENSED ARMS AS PRAYED IN THEIR APPLICATIONS COPIES OF WHICH ARE PRODUCED AT ANNEXURE-D AND ANNEXURE-G DATED 20/03/2024 ANNEXURE-M AND ANNEXURE-R DATED 21/03/2024 RESPECTIVELY. IN WRIT PETITION NO.9925/2024 BETWEEN: PURUSHOTHAMA GOWDA S/O M BOLI ANNA GOWDA AGED ABOUT 52 YEARS ADVOCATE R/AT MALKAJE HOUSE KAMILA POST GUTHIGAR VILLAGE SULLIA TALUK D.K. DISTRICT-574 218 ...PETITIONER (BY SRI. K. RAVISHANKAR, ADVOCATE) AND:

1. . THE STATE OF KARNATAKA REP BY ITS PRINCIPAL SECRETARY DEPARTMENT OF HOME VIDHANA SOUDHA 6 AMBEDKAR VEEDHI BENGALURU - 560 001 2 . THE ELECTION COMMISSION OF INDIA REP BY

ITS CHIEF ELECTION COMMISSION NIRVACHAN SADAN ASHOKA ROAD
NEW DELHI - 110 001 3 . THE DEPUTY COMMISSIONER / DISTRICT
MAGISTRATE D.K. DISTRICT, MANGALURU OLD PORT ROAD D.K. DISTRICT
- 575 001 4 . THE SUPERINTENDENT OF POLICE D.K. DISTRICT,
MANGALURU D.K. DISTRICT - 575 001 5 . THE TASILDAR SULLIA TALUK D.K.
DISTRICT - 574 239 6 . THE STATION HOUSE OFFICER SUBRAMANYA
POLICE STATION SULLIA TALUK D.K. DISTRICT - 574 239 CAUSE TITLE
AMENDED AS PER COURT

ORDER

DATED 02/04/2024 RESPONDENTS (BY SRI. RAHUL CARIAPPA, AGA) THIS
WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE
CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED

ORDER

DATED 26/03/2024 BEARING No. ARM(1) 125/2024/E-383376/C3 PASSED BY
THE R3 (PRODUCED VIDE ANNEXURE-D) AND DECLARE THE SAME IS
WITHOUT JURISDICTION AND AS UNCONSTITUTIONAL TO THE WP IN SO
FAR AS IT CONCERNED TO THE PETITIONER AT SL. No. 79 OF SULLIA
TALUK AND SL. No. 5 AT SELF DEFENSE COLUMN AND ETC. IN WRIT
PETITION NO. 9941/2024 BETWEEN: GIRIJASHANKAR K S/O LATE K
PURANDARA BHAT AGED ABOUT 55 YEARS BADEKA IKOMBU HOUSE
MOODAPADUKODI VILLAGE AND POST BANTWAL TALUK-574 265
DAKSHINA KANNADA ...PETITIONER (BY SRI. K. SHRIHARI, ADVOCATE)
AND:

1. . STATE OF KARNATAKA BY ITS SECRETARY TO HOME DEPARTMENT
VIDHANA SOUDHA DR. B R AMBEDKAR VEEDHI BENGALURU-560 001 2 .
DEPUTY COMMISSIONER AND DISTRICT MAGISTRATE OFFICE OF THE
DEPUTY COMMISSIONER MANGALORE-575 001 3 . STATION HOUSE
OFFICER / SUB-INSPECTOR PUNJALAKATTE POLICE
STATION 8 BELTHANGADY TALUK-574 233 DAKSHINA KANNADA DISTRICT 4.
SCREENING COMMITTEE APPOINTED UNDER NOTIFICATION OF ELECTION
COMMISSION HEADED BY DEPUTY COMMISSIONER MANGALURU-575 001

RESPONDENTS (BY SRI. RAHUL CARIAPPA, AGA) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE

ORDER

BEARING NO.ARM(1)125/2024-E-383376/C3 DATED 18/03/2024 IN SO FAR PETITIONER CONCERNED AND THE

ORDER

DATED 26/03/2024 BEARING No.ARM(1)125/2024/E- 383376/C3 WHICH ARE FILED AS ANNEXURE-A AND B RESPECTIVELY ISSUED BY R2 AND GRANT SUCH OTHER AND FURTHER RELIEF ON THE FACTS AND CIRCUMSTANCES OF THE CASE. IN WRIT PETITION NO.9959/2024 BETWEEN: JAYAPRASAD S/O SHAMA JOSHI AGED 64 YEARS RESIDING AT BELLARE VILLAGE AND POST SULLIA TALUK, D.K. DISTRICT ...PETITIONER (BY SRI. K. SHRIHARI, ADVOCATE) 9 AND:

1. . STATE OF KARNATAKA REPRESENTED BY ITS CHIEF SECRETARY VIDHANA SOUDHA DR. AMBEDKAR VEEDHI BANGALORE-560 001 2 . DEPUTY COMMISSIONER AND DISTRICT MAGISTRATE OFFICE OF THE DEPUTY COMMISSIONER MANGALORE-575 001 3 . STATION HOUSE OFFICER / SUB INSPECTOR PUNJALAKATTE POLICE STATION BANTWALA TALUK-573 4233 DAKSHINA KANNADA DISTRICT 4. SCREENING COMMITTEE APPOINTED UNDER NOTIFICATION OF ELECTION COMMISSION HEADED BY DEPUTY COMMISSIONER MANGALURU-575 001 RESPONDENTS (BY SRI. RAHUL CARIAPPA, AGA) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE

ORDER

BEARING No.ARM(1)125/2024-E-383376/C3 DATED 18/03/2024 AND THE

ORDER

DATED 26/03/2024 BEARING No.ARM(1)125/2024/E-383376/C3 PASSED BY THE R2 FILED AS ANNEXURE-A AND B RESPECTIVELY AND MAY FURTHER

BE10PLEASED TO ISSUE ANY OTHER WRIT OR

ORDER

ON THE FACTS AND CIRCUMSTANCES OF THE CASE. THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR

ORDER

S ON0304.2024, COMING ON FOR PRONOUNCEMENT OF

ORDER

THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

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

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

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

4. The Election Commission of India recognizing potential risk associated with possession of firearms during 11 the election period has issued comprehensive guidelines. The primary object of these guidelines is to maintain law and order with a specific focus on identifying and scrutinizing the person with history of criminal offences, especially those involved in rioting during previous election period.

5. The petitioners predominantly agriculturists residing in a forested area having obtained firearms license to safeguard their crops and livestock loss from wildlife induced damage. Therefore, petitioners in the captioned petitions have contended that their possession of firearms is for legitimate purpose and does not pose any inherent threat to election process. Petitioners contend that they are law abiding citizens who intend only to exercise their democratic right to participate in electoral process. Petitioners contend that they are seriously aggrieved by the blanket order passed by the respondent-Deputy Commissioner. 12

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

7. Each firearms license holder undergoes a rigorous vetting process by the authorities before being granted a license. This process includes a thorough background check, verification of antecedents and consideration of genuine need of firearm, such as protection from wildlife in relevant areas. Therefore, the action of the Deputy Commissioner in issuing directions by way of blanket order calling upon the license holders to surrender 13 their guns without individualized review, contradicts not only the guidelines issued by the Election Commission of India, but it encroaches upon the very essence of license procedure.

8. The Election Commission guidelines explicitly emphasizes need for individualized scrutiny of firearm license holders, especially those with a history of criminal offences or involvement in rioting. Therefore, the blanket order issued by the respondent-Deputy Commissioner disproportionately impacts vulnerable population such as farmers living in forested areas, those individuals who apprehend threat to life and have secured gun license for their personal protection. Therefore, imposing blanket restriction without considering these unique circumstances often leads to undue hardships and this Court is flooded with writ petitions on the eve of every ensuing elections. 14

9. Though Bombay High Court in the case of Govinda @ Bhai Ganesh Tilve vs. Vikram Kumar, District Registrar and Others¹ and Allahabad High Court in the case of Ravi Shankar Tiwari & Others vs. State of U.P.² have laid down several directives, the authorities have not adhered to the directions issued by various High Courts. This Court in W.P.No.7900/2023 has exhaustively dealt with this issue and has held that it is the screening committee which is vested with ample power to review all the issues in respect of holders of armed license. The

coordinate Bench while taking cognizance of the action of the police officers issuing notice to surrender the firearms held that it is only the Screening Committee and District Administration who are vested with the authority to call upon the license holders to deposit firearms with the police station. 1 Criminal Petition No.835 of 2009 2 Writ C.No.2844 of 2024 15 10. In the background of the law laid down by the various High Courts and also the judgment rendered by the coordinate Bench, this Court has to examine the facts and circumstances of the present case on hand. In the present case on hand, this Court is more than satisfied that there is no individual review. The respondent-Deputy Commissioner by issuing a blanket order has set a dangerous precedent for future elections. It could encourage the authorities to resort to blanket orders as a short circuit bypassing a meticulous review process mandated by Election Commission. The object behind surrender of firearms as stipulated by the Election Commission guidelines and judicial pronouncements is to uphold the integrity of electoral process and ensure maintenance of law and order. The surrender of firearms is envisaged as a measure to mitigate potential threats to public safety and sanctity of democratic procedures during elections. 16

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

12. By way of en masse deposit of firearms, probably the authorities are happy that significant strides have been made in compliance with the directives and probably all stake holders are satisfied that something substantial is done by the District Magistrate in compliance of directions issued by the Election Commission of India. There must be a sense of balance in imposing prohibitions. 17

13. If en masse firearms are retrieved from the authorized license gun holders, it would be rather strenuous even for the Screening Committee to independently

review each application and then ascertain as to whether exemption can be granted and the firearm recovered under a general order can be released to an individual. This task also leads to a mountainous task which cannot be accomplished within a short span.

14. There can be a very few cases of use of firearms in offences especially during the elections. Not all districts in the Karnataka State may have a potential threat of disruption of elections. Therefore, the respective Deputy Commissioners and the screening committees are required to act anticipating to potential threat that is posed in each district. Each district in the State has a different culture and misuse of firearm is subjective. The authorities cannot generalize and in an anticipation of violation without application of mind, pass a general order. In few districts, 18 the citizens under compelling reasons secure firearms license. Possessing a firearm license is deeply embedded in their culture. The citizens are trained by culture as to how to use the firearms for limited purpose. The human wildlife conflict is a major issue where residents are found to be residing abutting to the forest area. The local farmers and agriculturists on account of wildlife induced damage to crops and livestock loss under compelling reasons seek gun license as a means of protection.

15. The need to obtain a gun license by agriculturalists is rooted in their fundamental need to safeguard their crops, fields, and livelihoods from an array of threats, including wildlife intrusion, pest infestations, and potential trespassers. Firearms serve as indispensable tools for agriculturalists, enabling them to protect their agricultural assets effectively and ensure the viability of their livelihoods. This reliance on firearms is not merely a matter of convenience but a vital aspect of preserving the 19 economic sustainability and security of agricultural operations. In every ensuing elections if the residents who hold gun license are en masse called upon to surrender firearms, that does not serve the purpose for which guidelines are issued by the Election Commission of India.

16. The jurisdictional Deputy Commissioner and the screening committee are required to review in terms of guidelines issued by the Election Commission only in the following cases i.e., where persons are released on bail, persons having a

history of criminal offences and persons previously involved in rioting at any time especially during election period or there may be cases where the residents who are openly supporting any political party have an antecedent of using firearms to disrupt the fair election process. In such cases, the screening committee and the Deputy Commissioner have to implement the guidelines and only those license holders are to be screened and appropriate directions are to be issued calling upon them to deposit the firearms with the jurisdictional police station or armory depot.

17. Since the authorities are consistently violating the guidelines issued by the Election Commission of India, this Court deems it fit to issue certain directions as follows: i) The authorities are strictly prohibited from issuing blanket orders that demand the deposit of firearms from all license holders. Such blanket orders not only contravene the specific directives issued by the Election Commission but also fail to address the nuanced risks associated with individual license holders. ii) The authorities have to take cognizance of the vulnerable communities who are often facing wildlife induced damage to crops and livestock. The Screening Committee therefore has to adopt a nuanced and evidence based approach to address the firearms possessed by the farmers abutting to forest area. They have to strike a balance between maintaining law and order during elections²¹ and at the same time, protect the rights of vulnerable communities and the negative interactions between wild animals and the residents residing at the foot of the forest area. Therefore, the Screening committee while implementing the directives issued by the Election Commission of India has to demonstrate flexibility regarding surrender of firearms taking into account not only the individual circumstances of farmers and their specific threats faced at the hands of wild animals, but there has to be an overall assessment of that region which is often affected due to interaction between wild animals and the losses incurred by the farmers. iii) There are several individuals including activists, Advocates who are often exposed to potential risk to their life. Therefore, during every elections, there cannot be a blanket order calling upon these individuals/activists/ professionals to surrender guns/firearms especially when these individuals/professionals/activists have obtained²² licenses for personal security and the same is critical to hold guns for ensuring their safety and wellbeing. Therefore, by way of blanket order, the authorities cannot expose

the individuals vulnerable to threat to life. This may be also prevalent during election period and such individuals who have no nexus with election process may need firearms more during the elections, than otherwise. iv) All directives and communications regarding the deposit or any other action related to firearms must be conveyed in written form. This ensures transparency, accountability, and provides a clear record of instructions issued. Oral instructions, whether given in person or over the phone, are susceptible to misinterpretation and should, therefore, be avoided to maintain the integrity of the process. v) Before the commencement of any election, authorities must conduct a rigorous screening process of firearm license holders. This process should prioritize 23 individuals with a history of criminal offences, especially those previously involved in rioting or violence during election periods. The objective is to identify potential risks and take necessary precautions to maintain law and order. vi) The Election Commission shall provide clear and comprehensive guidelines outlining the responsibilities and duties of concerned police officials in conducting the pre- election screening. These guidelines should detail the criteria for assessing risks and the procedures for documenting and reporting and volume of instructions issued by the Election Commission. There is a need for a concise and accessible guide. The Election Commission should compile and publish a user-friendly guide before every election, summarizing the key instructions and procedures for officials involved in the conduct of elections. vii) Although police stations may not typically maintain lists of persons on bail, they should keep records of individuals charged in offences relating to rioting during 24 elections. This information is crucial for assessing the eligibility of firearm license holders and ensuring compliance with the Election Commission's directives. viii) The Election Commission should actively monitor the implementation of its directives by securing reports from all district magistrates. These reports should provide insights into the effectiveness of the screening process and highlight any challenges or areas for improvement. ix) A comprehensive review should be conducted after every election to evaluate the implementation of the Election Commission's directives. This review should aim to identify procedural errors, assess the overall effectiveness of the screening process, and make necessary adjustments to prevent future lapses. x) In addition to the pre-election screening, an extensive review of firearm offences directly

related to elections should be conducted. This review should analyze historical data, identify patterns of misuse, and assess the 25 potential threats posed by firearms in disrupting the electoral process. The insights gained from this review will inform the screening committee's decisions and contribute to a more targeted and effective approach. xi) Rather than resorting to mass withdrawal of firearms, authorities should adopt a targeted approach based on individual risk assessments. This involves evaluating the potential threat of violence and misuse of guns by license holders on a case-by-case basis.

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

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

26.

ORDER

(i) The writ petitions are allowed; (ii) The impugned orders dated 18.03.2024 and 26.03.2024 issued by the respondent- Deputy Commissioner are hereby quashed insofar as petitioners are concerned; (iii) Pending I.As., if any, do not survive for consideration and stands disposed of. Sd/- JUDGE CA

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