

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

FRIDAY, THE 12TH DAY OF APRIL 2024 / 23RD CHAITHRA, 1946

WP(C) NO. 14477 OF 2024

PETITIONERS:

- 1 JOSE JOSEPH
AGED 76 YEARS
S/O JOSEPH, THARAPPEL HOUSE,
KIZHAPARAYAR P.O., POOVARANY VILLAGE,
PIN - 686578
- 2 RONI. M.GEORGE
AGED 54 YEARS
S/O M.C. GEORGE, MANAYANICKAL KATTAKKAYATH,
PALA P.O., LALAM VILLAGE,
KOTTAYAM, PIN - 686575
- 3 BABY JOSEPH
AGED 71 YEARS
S/O DEVASIA JOSEPH, MUNDATTTUCHUNDAYIL VEEDU,
POOVARANY P.O., POOVARANY VILLAGE,
KOTTAYAM, PIN - 686577
- 4 ANIL JOSE
AGED 51 YEARS
S/O JOSEPH, NJONDIMACKAL HOUSE,
EDAMATTOM P.O., POOVARANI VILLAGE,
KOTTAYAM, PIN - 686578
- 5 V.K. PRABHAKARAN
AGED 68 YEARS
S/O KUNJAPPAN, VALLIYAMTHADATHIL HOUSE,
PALA P.O., MEENACHIL VILLAGE,
KOTTAYAM, PIN - 686575
- 6 JOSHY JOSEPH
AGED 57 YEARS
JOSEPH, PINAKKATTU HOUSE,
EDAPPADY P.O. BHARANANGANAM VILLAGE,
KOTTAYAM, PIN - 686578
- 7 SAJU MON JOSEPH
AGED 60 YEARS
S/O K.T. JOSEPH, KUNNATH HOUSE,
NADACKAL P.O., TEEKOY VILLAGE,
KOTTAYAM, PIN - 686121

- 8 P.T. JOSEPH
AGED 70 YEARS
S/O THOMAS, PLATHOTTAM HOUSE,
POONJAR P.O., POONJAR VILLAGE,
KOTTAYAM, PIN - 686581
- 9 MATHEW SEBASTIAN
AGED 70 YEARS
S/O SEBASTIAN, PACHIKKAVAYALIL HOUSE,
NADACKAL P.O., TEEKOY VILLAGE,
KOTTAYAM, PIN - 686121
- 10 K.S. SEBASTIAN
AGED 68 YEARS
S/O DEVASIA, KANIPPARAMBIL HOUSE,
THIDANAD P.O., KONDOOR VILLAGE,
KOTTAYAM, PIN - 686123
- 11 JOHNY THOMAS
AGED 69 YEARS
S/O K.A. THOMAS, KUTTIKKATTU HOUSE,
NJANDUPARA P.O., CHENGALAM EAST VILLAGE,
KOTTAYAM, PIN - 686577
- 12 BEN JOSE
AGED 54 YEARS
S/O C.J. JOSEPH, CHORACKAL HOUSE,
ARUVIKKUZHY P.O., ANICKADU VILLAGE,
KOTTAYAM, PIN - 686503
- 13 DIAS BABY
AGED 26 YEARS
S/O BABY THOMAS, PAZHAYATHOTTATHIL HOUSE,
KANJIRAMATTOM P.O., AKALAKUNNAM VILLAGE,
KOTTAYAM, PIN - 686585
- 14 A.V. SEBASTIAN
AGED 61 YEARS
S/O A.M. VARKEY, ANITHOTTAM HOUSE,
CHENGALAM P.O., ELAMKULAM VILLAGE,
KOTTAYAM, PIN - 686585
- 15 SAJI C.K.
AGED 56 YEARS
S/O GOPALAN, CHANJANIRAPPEL HOUSE,
PAYAPPAR P.O., VELLILAPPILLY VILLAGE,
KOTTAYAM, PIN - 686651

- 16 **ALEX AUGUSTINE**
 AGED 57 YEARS
 S/O P.P. AUGUSTINE,
 CHOKKATTU HOUSE, KADANAD P.O.,
 VELLILAPPILLY VILLAGE, KOTTAYAM,
 PIN - 686653
- 17 **V.K. JINAN**
 AGED 64 YEARS
 S/O KESAVAN, VALAYAPPALLIL HOUSE,
 KUMARANELLOOR P.O., PERUMPAYIKKAD VILLAGE,
 KOTTAYAM, PIN - 686016

BY ADVS.
P.M.ZIRAJ
IRFAN ZIRAJ
ALEN J. CHERUVIL

RESPONDENTS:

- 1 **STATE OF KERALA**
 REPRESENTED BY ITS SECRETARY,
 DEPARTMENT OF HOME AFFIARS, SECRETARIAT,
 THIRUVANANTHAPURAM, PIN - 695001
- 2 **THE DISTRICT COLLECTOR, KOTTAYAM**
 COLLECTORATE, KOTTAYAM,
 CIVIL STATION, P.O. KOTTAYAM,
 PIN - 686002
- 3 **THE DISTRICT POLICE CHIEF KOTTAYAM**
 CIVIL STATION P.O. KOTTAYAM,
 PIN - 686502

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 12.04.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 12th day of April, 2024

The petitioners are aggrieved by the orders passed by the Screening Committee constituted for surrender of Arms in respect of which licences are issued under the Arms Act, 1959.

2. The petitioners hold Arms on the basis of licence issued under the Arms Act. In view of the impending Lok Sabha Elections, 2024, the Station House Officer directed the petitioners to surrender their Arms in order to ensure peaceful, free and fair Elections.

3. The petitioners are aggrieved by the directions. The petitioners submit that they have obtained Arms Licence for protection of their own person and property. The licences were granted to the petitioners after making due enquiries and finding that the petitioners require Arms Licence for protection

of their lives / property. The respondents are compelling the petitioners to surrender the Arms as Elections are notified.

4. Counsel for the petitioners pointed out that Election process will take two to three months for completion of polling and declaration of results. If during this period the Arms are surrendered, the life and property of the petitioners will be put to danger. Most of the petitioners are hailing from areas where threat from wild animals is rampant. The Screening Committee constituted pursuant to the directions of the Election Commission has not considered the issues in its true and proper perspective. The Committee has not taken into account the threat perception in respect of the petitioners. Therefore, the respondents are not justified in insisting surrender of Arms for such a long duration.

5. Senior Government Pleader entered appearance and resisted the writ petition. The Senior Government Pleader denied all the allegations made by the petitioners in the writ

petition. On behalf of the respondents, it is pointed out that the decision to direct the licence holders to surrender Arms has been taken with a good intention of ensuring free and peaceful Lok Sabha Elections, 2024. There were instances of law and order violations during earlier Election times and supporters of some political parties resorted to violence. Law and order has to be ensured for a free and democratic process of Election.

6. The decision to direct the licence holders to surrender the Arms has been taken on the basis of the directions of the Election Commission of India, which is a constitutional authority. There is no illegality or arbitrariness in doing so. The direction is strictly keeping in mind the larger public interest and for the smooth and peaceful conduct of Elections. The petitioners do not have a fundamental right to insist that they should be permitted to hold Arms. Furthermore, surrender of Arms is only for a brief and short

time. There is a possibility of security threat during Elections especially when prominent politicians are campaigning. The writ petition is devoid of merit and liable to be dismissed, contended the Senior Government Pleader.

7. I have heard the learned Counsel for the petitioners and the learned Government Pleader representing the respondents.

8. It is evident that the 2nd respondent-District Collector has issued directions to all the Station House Officers of Kottayam District insisting to surrender Arms on the basis of the directives of the Election Commission of India. Ext.P4 is a Circular issued by the Election Commission of India to the Chief Secretaries of all States and Union Territories and to the Chief Electoral Officers of all States and Union Territories. The Circular deals with preventing law and order issues and to ensure conduct of peaceful, free and fair poll during the general Elections / Bye-Elections.

9. A perusal of Ext.P4 Circular would indicate that the Election Commission has advised that immediately after the announcement of Elections, the District Magistrates shall make a detailed and individual review and assessment (in accordance with the prevalent State laws) of all licensed Arms 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.

10. Ext.P4 would indicate that the Election Commission has given certain instances where the surrender of Arms should be insisted. Among cases which may need to be reviewed, the Arms Licences of persons released on bail, Arms Licence of persons having a history of criminal offences and Arms Licence of persons previously involved in rioting at any time but especially during the Election period, all the afore categories should be subjected to review. The Election

Commission has also stated that afore categories are only illustrative in nature and not exhaustive.

11. From the pleadings and arguments, it emerges that the Screening Committee constituted pursuant to the directives of the Election Commission of India has taken a decision to grant exemption to certain Arms Licence holders, who are working for financial institutions. There is no material to indicate that the Screening Committee has considered the important aspects as to whether the petitioners herein are released on bail or whether they have any history of criminal offences and as to whether they were involved in any type of rioting etc., in the past.

12. It is not disputed that wild animal threats are rampant in certain areas of the State during the recent past. Most of the petitioners are farmers, who want to protect their lives, property as well as agriculture, for the purpose of their livelihood.

13. In the circumstances, I am of the view that the Screening Committee shall reconsider / review the cases of the petitioners. Unless the surrender of Arms is reasonably necessary in the light of the parameters provided by the Election Commission, there cannot be blanket directions to surrender Arms.

The writ petition is disposed of. Orders impugned in this writ petition rejecting the exemption application of the petitioners, are set aside. The Screening Committee is directed to reconsider the matter in the light of the Arms Act and Rules, notification and guidelines issued by the Election Commission of India and after obtaining necessary inputs from the police authorities as is found necessary. Till a decision is taken afresh, the status quo as regards possession of Arms by the petitioners shall be maintained.

Sd/-
N.NAGARESH
JUDGE

APPENDIX OF WP(C) 14477/2024

PETITIONER EXHIBITS

- | | |
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| Exhibit P1 | TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 1ST PETITIONER TO THE 2ND RESPONDENT DATED 19/03/2024. |
| Exhibit P1(a) | TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 2ND PETITIONER TO THE 2ND RESPONDENT DATED 19/03/2024. |
| Exhibit P1(b) | TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 3RD PETITIONER TO THE 2ND RESPONDENT DATED 19/03/2024. |
| Exhibit P1(c) | TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 4TH PETITIONER TO THE 2ND RESPONDENT DATED 19/03/2024 |
| Exhibit P1(d) | TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 5TH PETITIONER TO THE 2ND RESPONDENT DATED 19/03/2024. |
| Exhibit P1(e) | TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 6TH PETITIONER TO THE 2ND RESPONDENT DATED 19/03/2024. |
| Exhibit P1(f) | TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 7TH PETITIONER TO THE 2ND RESPONDENT DATED 19/03/2024. |
| Exhibit P1(g) | TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 8TH PETITIONER TO THE 2ND RESPONDENT DATED 19/03/2024. |
| Exhibit P1(h) | TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 9TH PETITIONER TO THE 2ND RESPONDENT DATED 19/03/2024. |
| Exhibit P1(i) | TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 10TH PETITIONER TO THE 2ND RESPONDENT DATED 19/03/2024. |
| Exhibit P1(j) | TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 11TH PETITIONER TO THE 2ND RESPONDENT DATED 19/03/2024 |
| Exhibit P1(k) | TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 12TH PETITIONER TO THE 2ND RESPONDENT DATED 19/03/2024. |

- Exhibit P1(l) TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 13TH PETITIONER TO THE 2ND RESPONDENT DATED 19/03/2024.
- Exhibit P1(m) TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 14TH PETITIONER TO THE 2ND RESPONDENT DATED 19/03/2024.
- Exhibit P1(n) TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 15TH PETITIONER TO THE 2ND RESPONDENT DATED 19/03/2024.
- Exhibit P1(o) TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 16TH PETITIONER TO THE 2ND RESPONDENT DATED 19/03/2024.
- Exhibit P1(p) TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 17TH PETITIONER TO THE 2ND RESPONDENT DATED 19/03/2024.
- Exhibit P2 TRUE COPY OF THE REPRESENTATION DATED 19/03/2024 TO THE 2ND RESPONDENT.
- Exhibit P3 TRUE COPY OF THE ORDER DATED 30/03/2024 BEARING NO. DCKTM/1567/2024-H3 ISSUED BY 2ND RESPONDENT.
- Exhibit P4 TRUE COPY OF THE INSTRUCTION BEARING NO.464/INST/2009/EPS DATED 1/9/2009 ISSUED BY THE ELECTION COMMISSION OF INDIA.
- Exhibit P5 TRUE COPY OF THE ORDER DATED 26/08/2023 ISSUED BY THE 2ND RESPONDENT.