



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF SEPTEMBER, 2021

PRESENT

THE HON'BLE MR.SATISH CHANDRA SHARMA,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.11948/2021 (GM-RES-PIL)

BETWEEN:

CAPT CHETHAN Y.K. (RETD)
S/O Y D KESHAVANANDA
AGED ABOUT 41 YEARS
GALIBEEDU VILLAGE AND POST
MADIKERI TALUK
KODAGU DISTRICT-571 201

...PETITIONER

(BY SMT B.V.VIDYULATHA, ADV.)

AND:

- 1 . UNION OF INDIA
REPRESENTED BY ITS SECRETARY
MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA
NORTH BLOCK
CENTRAL SECRETARIAT
NEW DELHI-110 001
- 2 . THE STATE OF KARNATAKA
REPRESENTED BY THE CHIEF SECRETARY
VIDHANA SOUDHA
DR B.R.AMBEDKAR VIDHI
BANGALORE-560 001
- 3 . UNITED KODAVA ORGANISATION TRUST
OFFICE AT HYSODLUR VILLAGE AND POST
VIRAJPET TALUK, KODAGU DISTRICT-571 249

REPRESENTED BY ITS FOUNDER
SRI MANJU CHINNAPPA KOKKALEMADA P.

- 4 CODAVA NATIONAL COUNCIL
REPRESENTED BY ITS PRESIDENT
SRI N.U.NACHAPPA CODAVA
P.B. NO.12, MADIKERI
KODAGU DISTRICT
- 5 KODAVA SAMAJA, BANGALORE
REPRESENTED BY ITS SECRETARY
#7, NO.7, 1ST MAIN, VASANTH NAGAR
BANGALORE-560 052
- 6 FEDERATION OF KODAVA SAMAJAS
REPRESENTED BY ITS PRESIDENT
BALUGODU, BETOLI POST,
VIRAJPET-571 218
- 7 C.B.GANAPATHY
S/O LATE C.M.BOPAIAH
NO.002, ALL SEASONS, 7 EGLES STREET
LANGFORD TOWN
BENGALURU-560 025
- 8 AKHILA KODAVA SAMAJA
REP. BY ITS PRESIDENT
VIRAJPET, KODAGU-571 218
- 9 FEDERATION OF KODAGU
GOWDA SAMAJA'S (R)
SUBHEDAR GUDDEMANE
APPAIAH GOWDA ROAD
GOWDA SAMAJA BUILDING
OPP. MANN'S COMPOUND
MADIKERI-571 201
REP. BY ITS DIRECTOR
T.S.RAJESH
S/O LATE HAVALDAR SOMANNA T.S.
AGED ABOUT 47 YEARS
- 10 KODAGU HEGGADE SAMAJA
VIRAJPET
REP. BY ITS PRESIDENT
SRI P.G.AIYAPPA
AGED 67 YEARS

S/O LATE P.A.GANAPATHY
SRI GANAPATHI ARCADE, FMC ROAD
VIRAJPET-571 218

- 11 PONNANNA K.A.
AGED ABOUT 69 YEARS
S/O LATE K.A.ARJUNA
R/A NO.39, 9TH MAIN, 1ST CROSS
ADITYA NAGAR, OPP. SBI, M.S.PALYA
BENGALURU-560 097
- 12 KODAGU DISTRICT SMALL GROWERS
ASSOCIATION
REP. BY ITS VICE-PRESIDENT
SIDDAPURA, KODAGU-571 253
- 13 KODAVA MUSLIM ASSOCIATION (R)
(AN ASSOCIATION REGISTERED UNDER)
THE KARNATAKA SOCIETIES REGISTRATION ACT
HAVING ITS REGD. OFFICE AT NO.90/14-1
AES BUILDING, BHAKTA MARKHANDEYA LAYOUT
BENGALURU- 560 026
REPRESENTED BY ITS PRESIDENT
MR.METHALATHANDA YHAMZATHULLA
- 14 KODAGU ZILLA OKKALIGARA SANGHA (R)
COFFEE KRUPA RAJA SEAT ROAD,
MADIKERI-571 201
REP. BY ITS PRESIDENT
SRI S.M.CHENGAPPA
AGED ABOUT 73 YEARS
R/AT KIRGANDOOR VILLAGE & POST
VIA MADAPUR-511 251
KODAGU
- 15 CAUVERY SENE (R)
KODAGU DISTRICT
KATAKERI VILLAGE & POST
MADIKERI TALUK
KODAGU DISTRICT-571 201
REP. BY ITS PRESIDENT
K.A.RAVI CHENGAPPA
- 16 KODAGU KEMBATTI SAMAJA
REP. BY ITS SECRETARY
SRI MOLLEKUTTADA DINU BOJAPPA

AGED 40 YEARS, S/O BOJAPPA
R/O DOOR NO.554, OPP.MARUTHI SCHOOL
4TH BLOCK, KUSHALNAGAR
SOMWARPET TALUK,
KODAGU DISTRICT

- 17 KODAGU AIRY SAMAJA HYSODLAR
REP. BY ITS PRESIDENT
SRI MELATHANDA A RAMESH
AGED 53 YEARS
S/O LATE APPACHU
HYSODLUR VILLAGE & POST
VIRAJPET TALUK
KODAGU
- 18 KOYAVA SAMAJA, MURNAD
REPRESENTED BY ITS PRESIDENT
DR.MECHIRA SUBASH NANAI AH
AGED 50 YEARS
S/O LATE DR.M.C.NANAI AH
R/O KANTHOOR MURNAD VILLAGE
MADIKERI TALUK
KODAGU DISTRICT
- 19 KUDIYA SAMAJA, KODAGU DISTRICT
MADIKERI, REPRESENTED
BY ITS PRESIDENT
SRI KUDIYARA MUTHAPPA
AGED 63 YEARS
S/O LATE APPACHU
R/O YUVAKAPADY VILLAGE
KAKKABE POST, MADIKERI TALUK
KODAGU DISTRICT
- 20 KODAGU BOONE PATTA SAMAJA
REPRESENTED BY ITS PRESIDENT
SRI JOKIRA A.JEEVAN
AGED 35 YEARS
S/O ANNAIAH, R/O MYTHADI VILLAGE & POST
VIRAJPET TALUK, S.KODAGU
- 21 KODAGU KOLEYA SAMAJA
REPRESENTED BY ITS PRESIDENT
SRI KOLEYANDA U.GIRISH
AGED 41 YEARS
S/O LATE UTHAIAH
R/O ARAPATTU VILLAGE & POST

KODANGA, MADIKERI TALUK
KODAGU

- 22 KODAGU MALEYA SAMAJA, MADIKERI
REPRESENTED BY ITS PRESIDENT
SRI MALEYARA N.MUTHAPPA
AGED 59 YEARS
S/O LATE NANJUNDA
R/O KODAMBOOR VILLAGE
MURNAD POST, MADIKERI TALUK
KODAGU DISTRICT
- 23 KODAGU SAVITHA (KODAGU HAJAMA)
SAMAJA REPRESENTED
BY ITS PRESIDENT
VEDAPANDA B.KIRAN,
AGED 50 YEARS
S/O LATE BHEEMAIAH,
R/O KAIKERY VILLAGE
& POST, GONICOPPAL,
VIRAJPET TALUK
KODAGU DISTRICT
- 24 KODAGU KANIYA SAMAJA
REPRESENTED BY ITS PRESIDENT
SRI KANIYARA J.PRAKASH
AGED 50YEARS
S/O LATE JOYAPPA
R/O ARAPATTU VILLAGE & POST
KADANGA, MADIKERI TALUK
KODAGU
- 25 KODAGU PANIKA SAMAJA
REPRESENTED BY ITS SECRETARY
SRI PONNAJIRA C.BHARATH
AGED 47 YEARS
S/O LATE M.CARIAPPA
R/O KARMAD VILLAGE, AMMATHY
VIRAJPET TALUK
S.KODAGU
- 26 KODAGU NAYER SAMAJA
REPRESENTED BY ITS PRESIDENT
SRI KOODANDA SABA SUBRAMANI
AGED 44 YEARS,
S/O APPANNA, R/O HODHUR VILLAGE & POST
MADIKERI TALUK, KODAGU DISTRICT

27 KODAGU BANNA SAMAJA
REPRESENTED BY ITS PRESIDENT
SRI B.M.BELLIAPPA
AGED 47 YEARS
S/O LATE MUTHANNA
R/O KEDAMULLOOR VILLAGE & POST
VIRAJPET TALUK
S.KODAGU

... RESPONDENTS

(BY SRI.M.B.NARAGUND,
ADDITIONAL SOLICITOR GENERAL OF INDIA WITH
SRI.GOWTHAM DEV C.ULLAL, CGSC FOR R1
SRI VIJAYKUMAR A PATIL, AGA FOR R2
SRI S.PRAVEEN, ADV. FOR R3 [VIDE IA-1/21]
SRI.A.S.PONNANNA, SENIOR ADV. WITH
SRI MANJUNATH L.S., ADV. FOR R4 [VIDE IA-2/21]
SRI SAJAN POVAYYA, SENIOR ADVOCATE A/W
SRI M.P.GAGAN GANAPATHI, ADV. AND
SRI M.T.NANAIAH, SENIOR ADV. A/W
SRI BALASUBRAMANYA B.N., ADV. FOR R5
[VIDE IA-3/21 AND IA 10/21]
SRI.A.S.PONNANNA, SENIOR ADV. WITH
SMT.SAJANTHI SAJAN POVAYYA, ADV. FOR R6
[VIDE IA-4/21]
SRI M.DHYAN CHINNAPPA, SENIOR ADV. A/W
SRI RAWLY MUDDAPPA I.P., ADV. FOR R7, R8 & R12
[VIDE IA 5/51, 6/21 AND 11/21]
SRI M.C.RAVIKUMAR, ADV. FOR R9, R10, R11, R14, R16, R17,
R18, R19, R20, R21, R22, R23, R24, R25, R26, R27
[VIDE IA 7/21, 8/21, 9/21, 13/21, 15/21, 16/21,
17/21, 18/21, 19/21, 20/21, 21/21, 22/21, 23/21,
24/21, 25/21, 26/21]
SRI M.H.HIDHAYATHULLA, ADV. FOR R13 [VIDE IA-12/21]
SRI PAVAN CHANDRA SHETTY, ADV. FOR R15
[VIDE IA-14/21])

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASHING THE
NOTIFICATION BEARING NO. SO.3872 (E) DATED 29.10.2019
ISSUED BY FIRST RESPONDENT AT ANNEXURE-R TO THE WRIT
PETITION AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS ON
16.09.2021 AND HAVING BEEN HEARD AND RESERVED FOR
ORDERS, THIS DAY, **ACTING CHIEF JUSTICE**, PRONOUNCED
THE FOLLOWING:

ORDER

The petitioner before this Court, who is an ex-army officer, resident of Galibeedu village of Madikeri Taluk in Kodagu District, has filed the present petition being aggrieved by the notification issued by the Government of India bearing No.SO.3872(E), dated 29.10.2019 continuing the arms exemption granted to 'Coorg/Kodava Race' and 'Jamma tenure-holders' claiming it to be violative of Articles, 14, 15 and 21 of the Constitution.

2. The petitioner's contention is that during the British regime the system of licence and exemptions were brought after the 1857 War and the British Government enacted Act No.31/1860, which was known as 'Disarming Act' repealing the earlier Arms Act, 28 of 1857. The British Government granted exemptions to Kodagas/Kodavas and few other Jamma Ryots vide notification dated 26.2.1861.

3. It has been stated that in the year 1878 the British Government enacted Act No.11/1878 known as 'The Indian Arms Act' and again exemption was granted from obtaining a licence in respect of certain category of arms to persons belonging to Coorg Race and Jamma tenure-holders.

The Arms Rules were also enacted i.e., Indian Arms Rules, 1909 and various notifications were issued from time to time granting exemptions to certain category of persons. The petitioner further stated that after Independence, vide notification dated 6.7.1963 and 26.12.1966, again exemptions were granted.

4. It is the petitioner's contention that the Arms Act, 1959 came into force on 1.10.1962. However, under the Act of 1959 also, in exercise of powers conferred under Section 41, exemptions were granted by issuing notification dated 6.7.1963 till 31.5.1965 and thereafter, another notification was issued bearing No.SO.3978, dated 26.12.1966 granting exemption to every person of Coorg Race and every Jamma tenure-holder in Coorg to possess a weapon without obtaining a licence.

5. The petitioner has further stated that the petitioner made a representation to the Government of India on 3.6.2014 and the same was not considered and therefore, another representation was submitted to the Ministry of Home Affairs, Government of India, on 27.9.2014. The petitioner has thereafter, preferred a writ petition i.e.,

W.P.No.35878/2015 before this Court challenging the validity of the notification dated 6.7.1963 and the writ petition was disposed of by this Court by order dated 30.9.2015 granting liberty to the petitioner to submit a representation to the Home Secretary, Ministry of Home Affairs, Government of India, for withdrawal of exemption notification and with a direction to the authority to consider the representation in accordance with law, within three months.

6. The petitioner has stated in the writ petition that he did submit a representation, keeping in view the order dated 30.9.2015 passed in W.P.No.35878/2015, however, as it was not considered a contempt petition was preferred i.e., CCC.No.622/2016 and finally, vide letter dated 27.6.2016, the petitioner's representation was rejected. The petitioner thereafter has again preferred a writ petition as a public interest litigation i.e., W.P.No.1386/2018 challenging the exemption granted to every person of Coorg Race and every Jamma tenure-holder in Coorg, dated 6.7.1963 and the subsequent notification dated 26.12.1966. This Court, by an order dated 13.8.2019 directed the Government of India to take appropriate decision for reviewing the notification dated 26.12.1966 within a period of eight weeks.

7. It is stated by the petitioner that the Government of India has thereafter, as directed by this Court, has issued the notification dated 29.10.2019 bearing No.S.O 3872(E) in exercise of the powers conferred under Section 41 of the Arms Act, 1959 granting exemption from obtaining a licence in respect of certain specified arms up to a period of 30.10.2029 i.e., for a period of 10 years from the date of the notification. The petitioner being aggrieved by the aforesaid notification has now filed the third petition in the nature of public interest litigation for quashment of the notification dated 29.10.2019.

8. The petitioner has raised various grounds before this Court and his contention is that the grant of exemption to every person of Coorg Race and every Jamma tenure-holder in Coorg, is discriminatory, arbitrary and violative of Article 14 of the Constitution of India.

9. The other ground raised by the petitioner is that the classifications "every person of Coorg Race' and 'every Jamma tenure-holder in Coorg" in the impugned notification are based on Race and land tenure; both are fictitious, irrelevant, arbitrary, discriminatory, illegal, opposed to public

interest and do not promote the constitutional goals of justice, equality and fraternity and hence, violative of Articles 14 and 15 of the Constitution of India.

10. The petitioner by challenging the impugned notification has again taken a ground that the classification 'every person of Coorg Race' and 'every Jamma tenure-holder' is not based on any intelligible or even real factors and such classification is not necessitated by the objectives of the Arms Act of 1959, hence, again violative of Article 14 of the Constitution of India.

11. Another ground raised is that the classification and use of the term 'Coorg Race' promotes discrimination between the citizens of Coorg region on the ground of caste, which is prohibited by Article 15 of the Constitution of India.

12. The other ground has been raised by the petitioner stating that exemption under Section 41 of the Arms Act, 1959 can only be granted, in case of a public interest, which has to be kept in mind while granting such exemption and in the present case, there is no public interest involved and therefore, the issuance of impugned notification for the reasons extraneous to Section 41 of the Arms Act,

1959, is arbitrary exercise of power by the Government of India. Hence, it violates Article 14 of the Constitution of India.

13. Another ground has been raised by the petitioner stating that Sections 3 and 4 of the Arms Act, 1959, provides for a detailed procedure to obtain an arm licence and by issuing the impugned notification, the process has been done away. Hence, as people have been exempted and are permitted to hold weapon, without any scrutiny of their antecedents of criminal record, it is violative of Article 21 of the Constitution of India.

14. The other ground raised by the petitioner is that under Section 14 of the Arms Act, 1959, the licensing authority is having a discretion to grant or refuse a gun licence. However, in case of person belonging to Coorg Race and Jamma tenure-holder, the licencing authority does not have such a power and even the licencing authority cannot scrutinize their cases and therefore, the notification issued by the Government of India is discriminatory and violative of Articles 14 and 21 of the Constitution of India as well as to

the statutory provisions as contained under the Arms Act, 1959.

15. The petitioner has also raised a ground that under Section 17 of the Arms Act, 1959, the licencing authority has the power to vary, suspend or revoke the licence. However, in the light of exemption granted to Coorg Race and every Jamma tenure-holder in Coorg, such a power is not available to the licencing authority keeping in view Section 41 of the Arms Act, 1959.

16. The petitioner raised another ground stating that for other citizens, initially the licence was granted for a period of 5 years, however after 14.12.2019 the validity of licence is 3 years and thereafter, it has to be renewed. But, for persons belonging to Coorg Race and every Jamma tenure-holder, they are exempted from obtaining the licence under a central legislation from 6.3.1963, which was extended by notification dated 26.12.1966 for an indefinite period and now the impugned notification has been issued on 31.10.2019 granting exemption for a further period of 10 years and therefore, this non intelligible discrimination

between the citizens of India and the chosen few, violates Articles 14 and 15 of the Constitution of India.

17. The petitioner has prayed for the following reliefs;

- a) Quashing the notification bearing No.SO.3872(E) dated 29.10.2019 issued by first respondent at Annexure-R to the writ petition.
- b) Granting such other/consequential reliefs as this Hon'ble Court deems fit in the facts and circumstances of the case."

18. A reply has been filed by the Union of India and it has been stated by respondent No.1 that the petitioner has earlier filed a writ petition i.e., W.P.No.35878/2015 before this Court and it was disposed of on 30.9.2015 with a direction to the petitioner to file a representation. After filing of such representation, it was examined in consultation with the State Government of Karnataka and was disposed of by the Government vide letter dated 27.6.2016. Thereafter, the petitioner had filed a writ petition i.e., W.P.No.1368/2018 challenging the exemption granted to the members of Coorg Race and every Jamma tenure-holder in Coorg. The aforesaid writ petition was also disposed of by this Court on 13.8.2019. Thereafter, the Ministry of Home Affairs, keeping

in view the order passed by this Court dated 13.8.2019, reviewed the exemption granted vide notification No.S.O.1920, dated 6.7.1963 and amended notification No.S.O.3979, dated 16.12.1966 and after taking into consideration the views of various stakeholders such as Government of Karnataka, office of the Deputy Commissioner and District Magistrate, Kodagu District, Madikeri, Central Security Agency, Office of the director General and Inspector General of Police, Police Department, Government of Karnataka and also looking into the past history of the Kodavas, a fresh notification No S.O.3872(E) dated 29.10.2019 was issued.

19. It has been further stated by respondent No.1 that the petitioner has filed the present petition seeking quashment of the impugned notification dated 29.10.2019 by which exemption has been granted to every person of Coorg by Race and every Jamma tenure-holder in Coorg in exercise of the powers conferred by Section 41 of the Arms Act, 1959.

20. It has been stated by respondent No.1 that the impugned notification was issued after review of the earlier notifications dated 6.7.1963 and 26.12.1966 and on the

basis of the observations of various stakeholders. It has been stated that the exemption by the impugned notification for 10 years i.e., till 31.10.2029 has been given after due diligence and deliberation and on the basis of report received from the State Government as well as the independent report that was sought from the Central Security Agency before the decision so as to analyze the matter on merit.

21. It has been further stated by respondent No.1 that the State Government had brought out to the notice of Government of India, the following facts;

"It is felt that the privileges extended to certain categories of persons in the district should be continued. It is also felt that Kodagu (Coorg) district has a hilly terrain and has very rich density of forest cover. Among the inhabitants, the striking community is of the Kodavas who have distinctive features, lifestyles and cultural ethos. They are generally dressed in traditional attire consisting of dhoti, mande, thuni (head gear) and a silver sheathed dagger called Peechekathi. The traditional life of Kodavas has always been associated with arms and they are considered as a martial race since time immemorial because of these unique qualities, large number of Kodava people join military services and they are held in high esteem in the armed forces. It may be pointed out that first General of Indian Army Field Marshal K.M.Cariappa was a Kodavas by birth.

Traditionally every person of Kodavas Race and every Jamma tenure-holder in Kodagu has been granted exemption from the provisions of the Arms Act even prior to Independence."

22. It has been further stated by respondent No.1 that the Ministry of Home Affairs had received the report that the use of gun is a customary practice amongst Kodavas and is an inseparable part of their culture. Guns are used by them during male childbirth in the family, marriage celebrations and ritual connected with the death in the family and in all festivals. Large sections of the community also perceive that the exemption helps them in protecting life, property and plantation from frequent attacks of wild animals in the area.

23. In respect of violation of Articles 14, 15 and 21 of the Constitution of India, it has been stated by respondent No.1 that the contention of the petitioner is ill founded. It is stated by respondent No.1 that exemption is need based for specific region for the aborigine of Coorg Race and every Jamma tenure-holder in Coorg due to their distinct features and lifestyle. Coorg District is a hilly region and the culture and tradition of district is entirely different from other parts

of the country and the exemption is granted on the basis of their distinct features and geographical conditions as based on the report from State Government. The exemption helps them in furtherance of their fundamental right to life and liberty and it brings them at par in mainstream, protecting life, property and plantation from frequent attacks of wild animals in the area of Coorg District. Further, the exemption is granted to the original inhabitants of the specific region only and there is no discrimination on the ground of sex, religion and caste etc.

24. It has been stated by respondent No.1 that the Ministry of Home Affairs regularly monitors the internal security situation of the country in coordination with the Central and State Security agencies and consistently reviews its rules and brings amendments from time to time in accordance with the existing situation and reports. The impugned notification also manifests the same and it is only for fixed time and subject to review if required at any stage.

25. It has been further stated by respondent No.1 that keeping in view the aforesaid facts, the impugned notification in no way violates the constitutional provisions

regarding fundamental rights of the citizens and any such exemption is subject to review from time to time. Hence, the contention of the petitioner that the amendment violates the provisions under Articles 14, 15 and 21 of the Constitution is not correct and a prayer has been made for dismissal of the writ petition.

26. Respondent No.2 – State of Karnataka has also filed a detailed reply and the contention of the State Government is that the petitioner has earlier filed a writ petition i.e., W.P.No.35878/2015 and the same was disposed of by an order dated 30.9.2015 and the petitioner was given an opportunity to make a representation and the respondent No.1 was requested to consider the representation within three months in accordance with law. A representation was also submitted by the petitioner and the same has been disposed of vide letter dated 27.6.2016.

27. It has been further stated that the Additional Chief Secretary, Home Department of the State of Karnataka received an e-mail dated 7.8.2019 from the Union of India requesting to provide views and comments in respect of W.P.No.1386/2018 and input was obtained from the Police

Department as well as the Deputy Commissioner, Kodagu District. The Additional Chief Secretary received a letter dated 27.8.2019 from the Deputy Commissioner and the District Magistrate, Kodagu District, in respect of exemption to be granted under the Indian Arms Act and a letter/opinion was also received from the Director General and Inspector General of Police on 31.8.2019 in respect of grant of exemption under Sections 3 and 4 of the Indian Arms Act. The Home Department of the State of Karnataka vide letter dated 11.2.2019 furnished its views for grant of exemption under Sections 3 and 4 of the Arms Act to every person of Coorg Race and every Jamma tenure-holder in Coorg. It has been stated that respondent No.2 has furnished a detailed reply/opinion as required by the Union of India and the petitioner is now re-agitating the matter and the writ petition deserves to be dismissed.

28. It has been stated that the petitioner on two earlier occasions has preferred two writ petitions i.e., W.P.No.35878/2015 and W.P.No.1386/2018 raising the same contentions, hence, the present petition deserves to be dismissed. It has been further stated that the exemptions granted under Sections 3 and 4 of the Indian Arms Act are

not blanket exemptions and suitable restrictions have been imposed by the concerned authorities for the purpose of entitling the relevant segment of persons to avail the exemptions as contemplated under the Indian Arms Act. It has been further stated that it is a well settled proposition of law that it is not open to the petitioner to agitate the issue involved in the petition under a public interest litigation and it is a frivolous petition filed by the petitioner, which deserves to be dismissed summarily.

29. Respondent No.3 – United Kodava Organization Trust has also filed a reply in the matter and it has been stated that the petitioner by making false and baseless averments in the writ petition is hurting the cultural sentiments of the respondent/members of the Trust and is promoting enmity between the groups of persons on the ground of caste and community. It has been stated that the exemption granted to Coorg Race is continuing since pre-independence era keeping in view the social and cultural fabric of the society and a stigma has been casted without there being any basis for the same and the petition filed by the petitioner is mischievous and it has been filed with an object to disturb the social and cultural fabric in Coorg.

30. It has been stated that the present petition is noting but a *mala fide* attempt by the petitioner against Kodava culture and a person, who is not a Kodava is making all kinds of averments hurting the sentiments of Kodava community. It has been further stated that exemptions have been granted to various other communities like Sikhs and Gurkhas keeping in view the religious and cultural practices and no case for interference is made out in the matter.

31. It has been further stated that the Union of India has conducted due study on the cultural and religious aspect of the Guns in Kodava Community prior to granting exemptions to Kodavas and Jamma tenure-holders and the decision taken by the Union of India does not warrant an interference. It has been further stated that the Guns are an important aspect of the Kodava culture and the Kodavas and Jamma tenure-holders are exempted from the provisions of the Arms Act and it does not mean that they are exempted from all other provisions of the Arms Act. They are required to obtain Exemption Certificate issued by the Deputy Magistrate and the Exemption Certificate is granted after

police verification and after conducting various other formalities.

32. It has been stated that the Kodavas have contributed extensively to the armed forces and the contribution of Kodava Stalwarts, such as, Field Marshal Kodandera Madappa Cariappa and General Kodandera Subayya Thimayya have made the nation proud. It has been further stated that the presence of Guns in Kodava culture have positively attributed to the huge number of Kodava Youths to join the armed forces and to serve the nation.

33. It has been further stated that the Kodavas are an endangered race with approximate populace of only 1,75,000 persons living across the globe. The UNESCO report of the year 2009 in respect of endangered languages on the verge of extinction, states that Kodava language is endangered and on the verge of extinction.

34. It has been stated that Guns are inseparable part of Kodava culture and the Kodavas worship their Guns and securely store them in the place of worship and pray to their guns twice a day. It has been stated that large number of

religious ceremonies takes place in Kodava community, in which they use Guns and few of them are narrated as under;

a) at the time of birth of a child the gun is fired and a bow and arrow is placed in the tiny hands of the newly born as an act of initiation into his future as a soldier;

b) at the time the child turns 16, celebration is again carried out by worshiping the gun and *Kailpod* is observed;

c) in marriage ceremony the groom marches with the posse of men to the bride's house and cuts banana's stumps with his Odi Kathi.

d) in Keilmuhurth festival, the kodavas worship their weapons;

e) during Huthri festival, guns play important role ;

f) besides worshiping the guns, on other social gatherings also the guns are worshiped and the Kodavas, who are peace loving citizens have proved their worth by serving the nation as leaders of armed forces.

Hence, the present petition is nothing but a sheer misuse of PIL jurisdiction and deserves to be dismissed.

35. Respondent No.5 – Kodava Samaja has filed a detailed and exhaustive reply and the contention of the respondent No.5 is that the prayer made by the petitioner

directly affects the religious practices, culture, customs, traditions and sentiments of the members of respondent No.5, who are Coorgies (Kodavas). It has been further stated that the petitioner has deliberately not impleaded the Kodava Samaj initially while filing the present petition.

36. It has been further stated that the petitioner with devious intentions, having his own personal agenda is trying to obtain an order behind the back of the Kodava community affecting their fundamental right to practice their culture and religion. It has been stated that respondent No.5 is a society registered under the Societies Registration Act and represents about 14,000 members of the Kodava community, who are the natives of the Kodagu District of Karnataka.

37. It has been further stated that Late Field Marshal K.M.Cariappa, the First Commander-in-Chief of the Indian Armed Forces was the Chief Patron of the respondent No.5 – society. It has been stated that Kodavas are an ethnic tribe having a distinct culture, custom, language and attire and are arms worshippers amongst other things.

38. A detailed history of Kodavas has been furnished in the reply filed by respondent No.5 and parawise reply has also been filed in the matter.

39. It has been stated that the Indian Constitution provides protection for every culture and custom including Kodava culture and it is an ancient custom. Under Articles 25 and 26 of the Constitution of India all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate their religion. In the community of the Sikh faith, wearing turban and carrying the kirpan is considered as included in the profession of the Sikh religion. Likewise, the members of Kodava community also have a right to profess, practice and propagate their religion and to manage the affairs of the religion. Article 29 concerns the protection of interests of minorities, which includes protection of their language, script and culture. The Article 13 of the Constitution provides that the State shall not make any law, which takes away or abridges the rights conferred by the fundamental right and any law made in contravention of the Article 13 shall be void and the law includes, any notification, custom or usage having force of law.

40. It has been further contended that the Kodavas worship their arms and even prior to independence, they were granted exemptions to carry their weapons under the Arms Act of 1878 and thereafter, by virtue of amendments issued under the Arms Act, 1959. It has been further stated that at present there are atleast 15 retired Generals from Kodava community and there are large number of officers serving in the armed forces and also there are about 40,000 ex-servicemen in the Kodava community. The independent India has seen one of its two Field Marshals, the first commander in chief of the army, Field Marshal Cariappa and another chief of army staff General Thimmaiah and both were Kodavas. The Kodava community has also received Mahaveer Chakra and other gallantry awards. It has been further stated that General Thimmaiah's own brother has served in Subhash Chandra Bose's Azad Hind Fauj and large number of Kodavas have participated in the freedom movement in Coorg (Kodagu). They also brought out Union Jack from the Madiker Fort in Kodagu and keeping in view their rich culture and heritage as the arms are integral part of their religion, the notifications have been issued from time to time. It has been stated that in a PIL jurisdiction the

question of interference by this court does not arise and the petition deserves to be dismissed.

41. Respondent No.6 – Federation of Kodava Samaja has also filed a detailed and an exhaustive reply in the matter and the contention of respondent No. 6 besides other contentions is in respect of maintainability of the writ petition as PIL. It has been stated that the notification has been issued under Section 41 of the Arms Act and various notifications have been issued under Section 41 of the Arms Act in respect of other persons also and Sikhs have been permitted to carry Kripans and Gurkahs are permitted to carry Khukris and even persons who are not of Indian origin, like Royal family of Bhutan have been granted exemptions by the Union of India.

42. It has been stated that the constitutional validity of Section 41 has not been challenged, which means the source of issuing such exemptions is not under challenge. It has been further stated that the first rule of PIL is that the petitioner/person must come with clean hands, clean heart, clean mind and with a clear objective. [see : **K.R.Srinivas vs. R.M.Premchand**, reported in (1994) 6 SCC 620].

43. The petitioner, who is personally interested in the matter has not challenged any other notification issued under Section 41 of the Arms Act except the notification issued in respect of Kodavas. The petition does not raise any issue of public importance and the petitioner has not been able to establish before this Court as to how the impugned notification is violative of Articles 14, 15 and 21 of the Constitution of India.

44. It has been stated that the present writ petition is a third round of challenge in respect of exemption granted to Kodavas and the same exemption granted to other religious groups/castes/section of people is not under challenge. The respondent has also given details of history and culture of Kodavas and the reasons for granting exemption under the Arms laws in the reply. The respondent's contention is that the impugned notification is not at all in violation of Articles 14, 15 and 21 of the Constitution of India, which is impugned before this Court.

45. This Court is not repeating the averments made in the reply filed by all the respondents in respect of Kodava

culture as the details are being dealt with in subsequent paragraphs.

46. Heard the learned counsel for the parties at length and perused the record. The matter is being disposed of with the consent of the learned counsel for the parties at admission stage itself.

47. The petitioner before this Court has filed the present petition for quashment of the Government of India notification bearing No.3872(E), dated 29.10.2019 in exercise of the powers conferred under Section 41 of the Arms Act, 1959 in supercession of the notification of Government of India, dated 6.7.1963. The aforesaid notification of the Government of India, exempts every person of Coorg by Race and every Jamma tenure-holder in Coorg from the ambit of Sections 3 and 4 of the Arms Act, 1959 in respect of arms and ammunitions except those specified in Category I and II of Schedule I to the Arms Rules, 2016.

48. In order to understand the necessity, which arose for issuance of the aforesaid notification, a brief history of Kodavas (Coorgs) and persons belonging to Jamma Tribe is

required to be looked into. The Kodavas (Coorgs) are an ethnic Tribe having a distinct culture, custom, language, attire and are arm worshipers among other things. Kodavas are a community with martial tradition having a population of around 1,15,000 in the entire world and they have occupied the highest office of the Indian Army.

49. Professor M.N. Srinivas, in his book titled as 'Religion and Society among the Coorgs of South India', has described Kodavas as a martial race holding important positions in administration, army and police under Rajas (Kings). The Hukumnama, which is also on record also reflects the Kodavas as of Martial Race. Kodavas being a Tribe, does not have any caste system. The community is only one and they are originally natives of Kodagu along with Holaya community.

50. The Gazetteer of Coorg published in 1870 by G.Richter also throws light on the use of gun and other arms in the custom and culture of Coorgs/Kodavas and also information in respect of other communities of Coorg, who migrated and settled in Coorg and followed an intermix of cultures after adopting some of the Coorg/Kodava customs

but not the martial culture of Coorgs. The gazette is also on record. The Gazette of 1870 also makes a reference that the Kodavas and the Coorgs were Jamma Ryots, who were called by the Raja to perform military and police duties as per the Hukumnama, which is on record.

51. The history of Kodavas based upon the documents filed before this Court by all parties makes it very clear that Kodavas belong to martial Race and the Book of History by B Lewis Rice in the 'Volumes of the Mysore' categorically mentions that the Kodavas formed the bulk of the armies of the Rajas. Keeping in view the limited population of Kodavas, Kodava Samajas all over the country were started to protect their culture and tradition and the Kodavas were granted exemptions to hold weapons even prior to independence. Similarly, the Rulers at the relevant point of time (Rajas) gave Jamma lands to certain individuals of other communities from neighbouring countries and encouraged them to settle down in Coorg and the Jamma lands have been allotted to certain communities irrespective of their caste, culture and creed, meaning thereby the Jamma holders are persons belonging to almost all communities of Kodagu except than those who stayed in

Coorg after the British stopped grant of land in terms of Jamma land tenures and there was no caste discrimination as alleged by the petitioner as Jamma holders are even Muslims, Christians, Hindus and persons belonging to other race/community.

52. The Kodavas, who were in possession of guns even before the British came to India and the Kodavas being a marital race, continued to possess weapons as they used to worship the weapons even before the British took over Coorg in 1834. The Kodavas possess special knowledge to manufacture the indigenous guns called Tiritoku and Tithunnde (a kind of explosive fire ball) by using the local forest material and the weapons are a part of the custom and tradition of Kodavas since time immemorial.

53. All festivals including the village temple festivals of these people are not complete without worship and use of weapons, arms and ammunition. The village temple festival of Coorgs include dances with arms in hand. The weapons including gun are held with sacred reverence in every Kodava/Coorg household. In the month of September, Coorgs/Kodava Race celebrate the festival of arms called

Keilmurtha/Kailpod, which is an important festival to Coorgs. In this festival celebrated by the youth and men of coorg, in the month of September, all weapons are worshipped and the gun held by coorgs/kodavas is religiously sacrosanct to the Coorgs as the kripans to Sikhs and Kukri to Gurkas. All religious ceremonies are held in Coorg in the presence of weapons.

54. The following religious ceremonies take place with weapons;

- a) In Hutri festival or harvest festival which is another important festival of the Coorgs at the time when the first sheaf of paddy of the season is cut, the whole family moves to the fields with gun in hand and the musicians playing the traditional band, a gunshot is fired to mark the cutting of the first sheaf of paddy crop. At the village temple festival martial games like coconut shooting and other games are played, in which all the young men and women participate.
- b) The birth of a baby is announced by firing a gunshot and a small bow made from the stick of the castor

oil plant and arrow made of a leaf of a leafstalk of the same plant, is put in the little hands of the new born baby boy and a gun fired at the same time in the yard. The new born is introduced to the world as a future huntsman and warrior.

- c) The gun plays a significant role on the death of a member of the Coorg race. On the death of a person, two gun shots are fired. On hearing this gunshot, all the members of the village men and women have to leave their work and join in the disposal of the dead. During the funeral ceremony, gunshots are fired in honour of the dead. On the arrival of a family member of the dead person, a gunshot is fired. On the finality of the funeral rites, a gunshot is fired. The dead body is bathed and dressed like a warrior in kodava attire with the pechekathi or waist knife. A gun is tied to the Chair in which the dead is carried to the thutengalla or family graveyard. Thus, a kodava who follows a martial tradition takes his first breath with a gunshot and takes his last breath with gunshots fired in the air.

d) Even to this day, the pechekathi a waist knife and odikathi a broad knife are part of the traditional costume worn by men in their wedding ceremonies and other festive occasions. The odikathi forms a part of the bridegroom's attire. The odikathi is used in the wedding ceremony to cut plantain stumps to honour and respectfully receive and welcome the new relations on both sides. The pechekathi is used at the Ganga pooja after the wedding ceremony and at the time of arrival of the bride groom at the wedding house of the bride to break a coconut and make offerings of puffed rice coconut etc., after invoking their ancestors and mother Cauvery and lord iguthappa in whom all kodavas have immense faith.

55. The British Government, in order to regulate the import, manufacture, sale, possession and use of arms, enacted the Arms Act, 1857 and the object was to curb revolt by the Indian people in the sacred war of independence. The British Government, in order to disarm the Indian people after witnessing the first Indian movement in 1857, passed Act 31 of 1860, which was commonly known as 'Disarming

Act' and replaced the earlier arms legislation, Act 28 of 1857. Under the Disarming Act of 1860, General M.Cubbon, the then Commission of Mysore, issued a notification disarming the entire population of India and granted exemption to the martial race of Coorg. The Indian Arms Act (Act 11 of 1878) was enacted by the British Government and again exemption was granted to the gallant people and Jamma tenure land holders. The exemption continued even after independence.

56. After independence, the Arms Act, 1959 was enacted by the Parliament replacing the pre-independence Indian Arms Act, 1878 and a notification was issued in exercise of the powers conferred under Section 41 of the Arms Act, 1959 by the Central Government on 6.7.1963.

The notification dated 6.7.1963 is reproduced as under;

"S.O. 1920, dated 6th July, 1963 - Whereas the Central Government is of opinion that it is necessary and expedient in the public interest to exempt certain classes of persons from the operation of some of the provisions of the Arms Act, 1959 (54 of 1959);

Now, therefore, in exercise of the powers conferred by Section 41 of that Act, the Central Government hereby exempts the classes of persons specified in Column 1 of Schedule I hereto annexed, in respect of the arms and ammunition of the category or description specified in Column 2 thereof when carried or possessed for their own personal use; from the operation of such of the provisions of the said Act and subject to such conditions as are mentioned in columns 3 and 4, respectively, of that Schedule:

Provided that the exemption hereby granted shall be subject to the following further conditions, namely:

(a) it shall be valid for a period ending 31st May 1965.

(b) it shall not be deemed to render lawful the import of arms or ammunition through the medium of post office;

(c) the classes of persons exempted shall-

(i) unless specifically exempted by the Central Government by notification in the Official Gazette, register in such manner and at such place as the Central Government may prescribe from time to time, any fire-arm or ammunition in respect of which the exemption has been granted;

(ii) render such statistical information about different description of arms and ammunition in respect of which the exemption has been granted in such proforma, if any, as may be required by the Central Government;

(iii) whenever any arm or ammunition in respect of which exemption has been granted is stolen, forthwith report the occurrence of such loss or theft together with the details of the articles lost or stolen at the nearest police station:

SCHEDULE

Class of Persons	Categories/descriptions Of arms and ammunition	Provisions of the Act	Condition
1	2	3	4
Every person of Coorg race and every Jumma tenure holder in Coorg	All except categories I and II of Schedule I to the Arms Rules, 1962.	Those contained in Sections 3 and 4	The arms or ammunition carried or possessed by any person herein exempted whilst residing or travelling outside the district of Coorg shall not exceed one rifle with 100 rounds of ammunition for the same and one smooth bore breech or muzzle loading gun with 500 cartridges or the equivalent in leaden shot and gunpowder.

2. In the Table appended to the Ministry of Home Affairs Notification No.F.15/13/59(VI)-P-IV, dated 13th July 1962 (G.S.R. 993, published in the Gazette of India, Part II, Section 3(i), dated the 28th July 1962 Clause (b) in Column 3 against Item 7 thereof shall be deleted.

(No.F.17/4/62-P.IV.)
L.I.Parija, Dy.Secy."

57. The aforesaid notification granting exemption to every person of Coorg Race and every Jamma tenure-holder in Coorg was valid upto 31.5.1965 and after expiry of the aforesaid notification, another notification was issued in exercise of the powers conferred under Section 41 of the Arms Act, 1959 granting exemption to every person of Coorg race and Jamma tenure-holder in Coorg, meaning thereby the notification dated 6.7.1963 was revived.

58. The notification dated 26.12.1966 is reproduced as under;

"New Delhi, the 26th December 1966

S.O.3979 – In exercise of the powers conferred by Section 41 of the Arms Act, 1959 (54 of 1959), the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Home Affairs No.S.O.1920 dated the 6th July, 1963, published in the Gazette of India, Part II, Section 3, sub-section (ii) dated the 13th July, 1963, namely: -

Amendment

In the said notification, in the proviso, clause (a) shall be omitted, and clauses "(b)" and "(c)" shall be relettered as clauses "(a)" and "(b)" respectively.

(No.F.17/1/66-P.IV.)
G.L.BAILUR, Under Secy."

59. The petitioner being aggrieved by the aforesaid notification has preferred a writ petition i.e., W.P.No.35878/2015 [Capt. Chethan Y K (Retd.,) v. Union of India and another] and this Court has disposed of the writ petition by an order dated 30.9.2015. The order dated 30.9.2015 passed in W.P.No.35878/2015 is reproduced as under;

"By filing this writ petition, the petitioner seeks withdrawal of the notification dated July 6, 1963, issued by the Ministry of Home Affairs, Government of India.

2. We feel justice will be sub-served if the writ petitioner is given liberty to make a representation to the Secretary to Government of India, Department of Home Affairs, ventilating his grievance against the said notification.

3. If such a representation is submitted within two weeks from today, the Home Secretary is requested to consider such representation within three months from the date of submission of representation, in accordance with law.

4. We express no opinion on the merits of the matter.

5. With the aforesaid direction, writ petition stands disposed of.

6. There will be no order as to costs."

60. In the light of the order passed in W.P.No.35878/2015, the petitioner did submit a representation and thereafter filed a second writ petition i.e., W.P.No.1386/2018 and the Division Bench of this Court has disposed of the aforesaid writ petition with a direction to the Government of India to take a decision in the matter. The order passed by this Court dated 13.8.2019 is reproduced as under;

"The learned counsel appearing for the first respondent has tendered the additional statement of objections on behalf of the Union of India. It is supported by the affidavit of Sri Amarjit Singh, Under Secretary to the Government of India, Ministry of Home Affairs.

2. In paragraph 14 of the additional statement of objections, it is stated that the Ministry of Home Affairs has constituted a Committee to review the provisions of the Arms Act, 1959 and suggest a draft amendment Bill for its approval. In paragraph 15, a reference is made to the letter dated 7th August 2019 addressed by the Under Secretary to the Government of India to the Additional Chief Secretary of the Home Department of the State of Karnataka in which it is stated that the Ministry is in the process of reviewing the notification dated 26th December 1966 which is the subject matter of a challenge in this writ petition. It also records that the Government of Karnataka will have submit its views and comments within a period of three weeks. A copy of the letter dated 7th August 2019 addressed by the Ministry of Home Affairs to the Director of Intelligence Bureau is also annexed. It shows that the views and comments of the Central Agency have been called for considering whether the exemption granted to every person of Coorg race and every Jamma tenure holders in Coorg needs to be continued and for what period.

3. The learned counsel appearing for the petitioner submits that in fact, the revival of the notification dated 26th December 1966 itself is illegal. The same is made after the expiry of the period provided in the said notification. Moreover, the Government of India had earlier extended the validity of the exemption.

4. We find from the stand taken before the Court as well as from the letters dated 7th August 2019 (Annexure R4) that the Ministry of Home Affairs of the Government of India has undertaken a very serious exercise of reviewing the notification dated 26th December 1966 and therefore, the views and comments of not only the State Government but also the Intelligence Bureau have been called for.

5. We have carefully considered the submissions. We have also considered the earlier notification of the Government of India whereunder exemption has been extended.

6. The learned counsel appearing for the Government of India states that the necessary decision will be taken within eight weeks from today. In view of the stand taken by the Government of India that it is reviewing the decision of continuing the exemption subject matter of challenge, we need not keep the petition pending. Accordingly, we are passing the following order :

(i) We accept the assurance given by the Government of India that the Ministry of Home Affairs has initiated the process of reviewing the notification dated 26th December 1966 and views of the stakeholders have been called for;

(ii) After considering the views of the stakeholders, including the grievances made by the petitioners in this writ petition, an appropriate decision shall be taken by the Government of India on the question of reviewing of the notification dated 26th December 1966 within a period of eight weeks from today;

(iii) A copy of the decision taken by the Government of India shall be furnished to the petitioner;

(iv) The decision to be communicated to the petitioner within a period of nine weeks from today;

(v) In view of the order passed in the writ petition, it is not necessary to deal with the merits of the application for intervention and accordingly, the same is disposed of.

(vi) The pending interlocutory applications do not survive and are accordingly disposed of."

61. The Union of India has issued the present/impugned notification dated 29.10.2019 after reviewing the earlier notifications dated 6.7.1963 and 26.12.1966 based upon the representations made by various stakeholders i.e., Home Department, State of Karnataka, Office of the Deputy Commissioner and District Magistrate and the report of the local police authority, Kodagu District, Karnataka. The exemptions granted vide notification dated 29.10.2019 are valid for a period of 10 years i.e., till 31.10.2029 and the aforesaid order has been passed keeping in view the report of the State Government, the report of the Central Security Agency and the other stakeholders.

62. The exemption notification dated 29.10.2019 is reproduced as under;

S.O. 3872(E).—Whereas the Central Government is of the opinion that it is necessary and expedient in the

public interest to exempt certain classes of persons from the operation of some of the provisions of the Arms Act, 1959 (54 of 1959);

Now, therefore, in exercise of the powers conferred by section 41 of the Arms Act, 1959, and in supersession of the notification of the Government of India, published in the Official Gazette vide S.O.1920, dated the 6th July, 1963, except as respects things done or committed to be done before such supersession, the Central Government hereby exempts the classes of persons specified in column (1) of the Schedule here to annexed, in respect of the arms and ammunition of the description specified in column (2) thereof, when carried or possessed for their own personal use, from the operation of such of the provisions of the said Act and subject to such conditions as are mentioned in columns (3) and (4) respectively, of that Schedule:

Provided that the exemption hereby granted shall be subject to the following further conditions, namely:-

(a) It shall be valid for a period ending 31st October, 2029.

(b) It shall not be deemed to render lawful the import of arms or ammunition through the medium of post office;

(c) The classes of persons exempted shall,-

(i) render such statistical information about different description of arms and ammunition in respect of which the exemption has been granted, if any, as may be required by the Central Government;

(ii) whenever any arms or ammunition in respect of which exemption has been granted is lost or stolen, forthwith report the occurrence of such loss or theft, as the case may be, together with the details of the arms or ammunition lost or stolen at the nearest police station.

SCHEDULE

Class of Persons	Descriptions Of arms and ammunition	Provisions of the Arms Act, 1959.	Condition
1	2	3	4
Every person of Coorg by race and every Jumma tenure holder in Coorg	All arms and ammunition, except those as specified in Categories I and II of Scheduled I to the Arms Rules, 2016	Those contained in Sections 3 and 4	The arms or ammunition carried or possessed by any person being Coorg by race and every Jumma tenure holder in Coorg and herein exempted whilst residing or travelling outside the district of Coorg shall not exceed one rifle with 100 rounds of ammunition for the same and one smooth bore breech or muzzle loading gun with 500 cartridges or the equivalent in leaden shot and gunpowder.

The aforesaid notification reveals that Coorgs and jamma tenure-holders are exempted from Sections 3 and 4 of the Arms Act, 1959.

63. The relevant statutory provisions under the Arms Act, 1959, which are necessary for deciding the present controversy i.e., Sections 3, 4 and 41 read as under;

3. Licence for acquisition and possession of firearms and ammunition.—

(1) No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder:

Provided that a person may, without himself holding a licence, carry any firearm or ammunition in the presence, or under the written authority, of the holder of the licence for repair or for renewal of the licence or for use by such holder.

(2) Notwithstanding anything contained in sub-section (1), no person, other than a person referred to in sub-section (3), shall acquire, have in his possession or carry, at any time, more than three firearms:

Provided that a person who has in his possession more firearms than three at the commencement of the Arms (Amendment) Act, 1983 (25 of 1983), may retain with him any three of such firearms and shall deposit, within ninety days from such commencement, the remaining firearms with the officer in charge of the nearest police station or, subject to the conditions prescribed for the purposes of sub-section (1) of section 21, with a licensed dealer or, where such person is a member of the armed forces of the Union, in a unit armoury referred to in that sub-section after which it shall be delicensed within ninety days from the date of expiry of aforesaid one year:

Provided further that while granting arms licence on inheritance or heirloom basis, the limit of two firearms shall not be exceeded.

(3) Nothing contained in sub-section (2) shall apply to any dealer in firearms or to any member of a rifle club or rifle association licensed or recognised by the Central Government using a point 22 bore rifle or an air rifle for target practice.

(4) The provisions of sub-sections (2) to (6) (both inclusive) of section 21 shall apply in relation to any deposit of firearms under the proviso to sub-section (2) as they apply in relation to the deposit of any arm or ammunition under sub-section (1) of that section.]

4. Licence for acquisition and possession of arms of specified description in certain cases.—

If the Central Government is of opinion that having regard to the circumstances prevailing in any area it is necessary or expedient in the public interest that the acquisition, possession or carrying of arms other than firearms should also be regulated, it may, by notification in the Official Gazette,

direct that this section shall apply to the area specified in the notification, and thereupon no person shall acquire, have in his possession or carry in that area arms of such class or description as may be specified in that notification unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder.

41. Power to exempt. —Where the Central Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette and subject to such conditions, if any, as it may specify in the notification,—

(a) exempt any person or class of persons (either generally or in relation to such description of arms and ammunition as may be specified in the notification), or exclude any description of arms or ammunition, or withdraw any part of India, from the operation of all or any of the provisions of this Act; and

(b) as often as may be, cancel any such notification and again subject, by a like notification, the person or class of persons or the description of arms and ammunition or the part of India to the operation of such provisions.

64. Section 41 of the Act empowers the Central Government to exempt any person or class of persons (either generally or in relation to such description of arms and ammunition as may be specified in the notification) or exclude any description of arms or ammunition or withdraw any part of India, from the operation of all or any of the provisions of the Arms Act, 1959. It also empowers the Central Government to cancel such notification.

65. Various notifications have also been issued from time to time by the Central Government in exercise of powers in respect of inclusion and withdrawals and the summary of the aforesaid notifications is detailed as under;

Sl. No.	Notification No.	Date	Subject
1	G.S.R.991	13.7.1962	Persons, classes of persons and arms and ammunition exempted from certain provisions of the Arms Act and Rules
2	G.S.R. 993	13.7.1962	Persons or classes of persons exempted from payment of fee for grant or renewal of licence in Form III.
3	S.O. 1920	6.7.1963	Persons of Coorg race and Jumma tenure holders in Coorg exempted from obtaining licence in Form III in respect of certain arms and ammunition.
4	S.O. 2461	9.7.1964	Classes of persons (ex-military officers) exempted from licence in respect of certain arms and ammunition.
5	S.O. 1124	22.3.1968	The Museum of Bureau of Investigation exempted from the operation of the Arms Act.
6	S.O. 2151	12.5.1969	Certain members of the General Reserve Engineer Force exempted from the operation of the Arms Act.
7	G.S.R. 2113	21.8.1969	Volunteers undergoing training or carrying out work in any organization under the Directorate General of Security exempted from licence in Form III in respect of certain arms and ammunition and subject to certain terms and conditions.

8	S.O 1451	25.3.1971	Members of the General Reserve Engineer Force serving under the Chief Engineer, Project Beacon (J&K) exempted from the operation of the Arms Act, subject to certain terms and conditions.
9	G.S.R. 693	30.4.1971	Volunteers undergoing training or carrying out work in Village Volunteer Force or organization under the Administrator, Manipur exempted from licence in Form III in respect of certain arms and ammunition and subject to certain terms and condition.
10	G.S.R. 950	2.6.1971	Member of the General Reserve Engineer Force serving under the Chief Engineer Project Sewak (Manipur) exempted from the operation of the Arms Act, subject to certain terms and conditions.
11	G.S.R. 591	3.5.1972	Cancellation of the exemptions granted under various notifications issued from time to time in the past, to the Rulers and the members of their families.
12	S.O. 3721	8.9.1972	Cancellation of the Hunters Diplomas issued by the then Portuguese Government granting exemption from licence under the Goa, Daman and Diu (Laws) Regulation, 1962.
13	G.S.R. 15	28.12.1974	Vikram Sarabhai Space Centre, Propellant Engineering Division, Trivandrum exempted from sections 3 and 5 of the Arms act in respect of Perchlorate subject to certain terms and conditions.
14	G.S.R. 388	9.3.1978	King of Bhutan, members of his family, Bhutanese Army/Police personnel exempted from licence in Form III in respect of certain

			arms and ammunition and subject to certain terms and conditions.
15	G.S.R. 1414	20.11.1978	Acquisition, possession or carrying of certain arms, other than fire-arms by tourists within certain areas of Rajasthan from the operation of section 4 of the Arms Act.
16	G.S.R. 282	15.12.1978	Her Royal Highness Ashi Phuntso Chodden pf Bhutan residing in Darjeeling exempted from section 10 (import/export) in respect of certain fire-arms and ammunition already brought into India.
17	G.S.R. 4	21.12.1979	General Manager, The Sawai Man Singh - II Museum, City Palace, Jaipur exempted from the operation of sections 3 and 4 of the Arms Act, in respect of certain fire-arms, subject to certain terms and conditions.
18	G.S.R 378(E)	23.6.1980	Licensed dealers and certain other licencees specially permitted to possess, sell, etc. certain prohibited ammunition subject to certain terms and conditions.
19	S.O. 667(E)	12.9.1985	Certain classes of persons (National/International shooters, etc.) and Associations, Rifle Clubs, etc. exempted from certain provisions of the Arms Act, in respect of certain arms and ammunition, subject to certain terms and conditions.
19-A	S.O. 831(E)	02.08.2002	1st Amendment to S.O. 667(E)
19-B	S.O. 568 (E)	12.05.2004	2nd Amendment to S.O. 667(E)
19-C	S.O. 1864 (E)	19.10.2007	3rd Amendment to S.O. 667(E)
20	S.O. 954	08.12.1987	Company, Firm, Bank or Industrial or other

			establishment exempted from the number of fire-arms to be possessed under Sub-section (2) of Section 3 of the Arms Act.
21	S.O. 952(E)	20.03.2009	Exemption from the operation of the provisions of sub-section (1) of section 3 of Act for the use of humane treatment of animals for drug delivery or administering tranquilizers or research purposes, etc., to certain organizations
22	S.O. 591(E)	06.06.2013	Exemption to Sports Persons - New Provisions Introduced -

All the notifications are also on record.

66. Much has been argued by the learned counsel for the petitioner alleging that the impugned notification is violative of Articles 14, 15 and 21 of the Constitution of India. The term Race is an anthropological word, which implies; (a) group of people sharing the same culture, language, tradition etc., (b) a group of people or things with a common feature.

67. The Kodavas are ancient inhabitants of the Kodagu region. They have a unique culture, language and custom distinct from the rest of the religions. All the Kodavas hail from Kodagu District whereas the other inhabitants of Kodagu are found outside Kodagu too.

Kodavas worship guns and other weapons and the practices are imbibed in their rituals whereas the other groups do not have the same tradition and by no stretch of imagination, the petitioner who is not a kodava can compare himself with kodavas.

68. The impugned notification does not violate Article 14 because the differentiation between Kodavas and other inhabitants of Coorg is intelligible. The exemption also has a nexus to the Arms Act, 1959 and it has been granted in public interest to protect and preserve the kodava's culture, tradition and religious practices. The petitioner has not shown as to how he or any particular class of persons stand to be impinged by the impugned notification. He is seeking negative equality which is not the concept recognized under Article 14 of the Constitution. The exemption is not in breach of Article 15 either, as the differentiation is not made only on terms of race or place of birth, but on the basis of the Kodavas' historically distinct culture and tradition.

69. The impugned notification has been issued by respondent No.1 after review of the earlier two notifications and after taking into account the report of the State

Government of Karnataka and other stakeholders including the Security Agency. The decision to impugned exemptions under the Act to certain class of persons is a policy decision of respondent No.1 based on public interest consideration.

70. The object of the Arms Act, 1959 is to inter alia regulate the acquisition, possession, use, manufacture, transfer, sale, transport, export and import of arms and ammunition. The impugned notification comes with certain conditions to be followed to continue to enjoy the benefit of exemptions, which serve as an inherent safeguard from misuse of the exemption.

71. It is nobody's case that Kodavas and Jamma tenure-holders can keep a weapon automatically without following the provisions as contained under the Arms Act, 1959 and there is a procedure prescribed for the same. A person has to apply for grant of exemption, a police verification is obtained, it is not granted to persons who are having criminal antecedents and after following a detailed and thorough procedure, the exemption certificate is granted. The exemption certificate contains all minute details in respect of arms and ammunitions and therefore,

the Government is having a record of each and every weapon possessed by kodavas as well as Jamma tenure-holders.

72. This Court has asked the learned Additional Advocate General to inform about the details, which are required to be furnished in respect of Kodava race and Jamma tenure-holders for grant of exemption certificate. The learned Additional Advocate General has placed before this Court the copy of the application for exemption certificate. The details which are required in the prescribed format includes all minute details in respect of the person applying for exemption, whether he belongs to kodava race; whether he is a Jamma tenure-holders; particulars of jamma holdings; the nature of the arm and ammunition; description of the arms and ammunition for which exemption is sought; whether he has been convicted for any offence, if so, the offence and the sentence; whether he has been ordered to execute a bond under Chapter VII of Cr.P.C for keeping the peace or good behavior; and whether he has been prohibited under the Arms Act, 1959 or any other law from possessing the arms, ammunition, meaning thereby the same requirement which is required for possessing a licence. Hence, this Court does not find that the notification issued on

the subject by the Union of India warrant any judicial interference at all.

73. The Apex Court in the case of **State of A.P. v. McDowell & Co.**, reported in (1996) 3 SCC 709, in paragraph 43 has held as under;

"43. Shri Rohinton Nariman submitted that inasmuch as a large number of persons falling within the exempted categories are allowed to consume intoxicating liquors in the State of Andhra Pradesh, the total prohibition of manufacture and production of these liquors is 'arbitrary' and the amending Act is liable to be struck down on this ground alone. Support for this proposition is sought from a judgment of this Court in *State of T.N. v. Ananthi Ammal* [(1995) 1 SCC 519] . Before, however, we refer to the holding in the said decision, it would be appropriate to remind ourselves of certain basic propositions in this behalf. In the United Kingdom, Parliament is supreme. There are no limitations upon the power of Parliament. No court in the United Kingdom can strike down an Act made by Parliament on any ground. As against this, the United States of America has a Federal Constitution where the power of the Congress and the State Legislatures to make laws is limited in two ways, viz., the division of legislative powers between the States and the Federal Government and the fundamental rights (Bill of Rights) incorporated in the Constitution. In India, the position is similar to the United States of America. The power of Parliament or for that matter, the State Legislatures is restricted in two ways. A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground. We do not wish to enter into a discussion of the concepts of procedural unreasonableness and substantive unreasonableness — concepts inspired by the decisions of United States Supreme Court. Even in U.S.A., these concepts and in particular the concept of

substantive due process have proved to be of unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive due process). The main criticism against the ground of substantive due process being that it seeks to set up the courts as arbiters of the wisdom of the legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterised, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary [An expression used widely and rather indiscriminately -- an expression of inherently imprecise import. The extensive use of this expression in India reminds one of what Frankfurter, J. said in *Hattie Mae Tiller v. Atlantic Coast Line Railroad Co.*, 87 L Ed 610 : 318 US 54 (1943). "The phrase begins life as a literary expression; its felicity leads to its lazy repetition and repetition soon establishes it as a legal formula, indiscriminately used to express different and sometimes contradictory ideas", said the learned Judge.] or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom. In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review is limited to three grounds, viz., (i) unreasonableness, which can more appropriately be called irrationality, (ii) illegality and (iii) procedural impropriety (see *Council of Civil Service Unions v. Minister for Civil Service* [1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174] which decision has been accepted by this Court as well). The applicability of doctrine of proportionality even in administrative law sphere is yet a debatable issue. (See

the opinions of Lords Lowry and Ackner in *R. v. Secy. of State for Home Deptt., ex p Brind* [1991 AC 696 : (1991) 1 All ER 720] AC at 766-67 and 762.) It would be rather odd if an enactment were to be struck down by applying the said principle when its applicability even in administrative law sphere is not fully and finally settled. It is one thing to say that a restriction imposed upon a fundamental right can be struck down if it is disproportionate, excessive or unreasonable and quite another thing to say that the court can strike down enactment if it thinks it unreasonable, unnecessary or unwarranted. Now, coming to the decision in *Ananthi Ammal* [(1995) 1 SCC 519] , we are of the opinion that it does not lay down a different proposition. It was an appeal from the decision of the Madras High Court striking down the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 as violative of Articles 14, 19 and 300-A of the Constitution. On a review of the provisions of the Act this Court found that it provided a procedure which was substantially unfair to the owners of the land as compared to the procedure prescribed by the Land Acquisition Act, 1894, insofar as Section 11 of the Act provided for payment of compensation in instalments if it exceeded rupees two thousand. After noticing the several features of the Act including the one mentioned above, this Court observed: (SCC p. 526, para 7)

"7. When a statute is impugned under Article 14 what the court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis."

74. The Apex Court in the aforesaid case has held that the law made by parliament and the State Legislatures can be struck down on two grounds. A law made

Parliament or the legislature can be struck down by courts on two grounds and two grounds alone viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision.

75. In the light of the aforesaid judgment, the petitioner has not been able to establish before this Court the violation of fundamental right guaranteed under Part III of the Constitution of India nor violation of any other constitutional provisions and the Union of India is certainly competent to issue notification keeping in view Section 41 of the Arms Act, 1959.

76. The Apex Court in the case of **Public Services Tribunal Bar Association v. State of Uttar Pradesh**, reported in (2003) 4 SCC 104 while dealing with the constitutional validity of Uttar Pradesh Public Services (Tribunal) Act, 1976, in paragraph 26 has held as under;

"26. The constitutional validity of an Act can be challenged only on two grounds viz. (i) lack of legislative competence; and (ii) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provisions. In *State of A.P. v. McDowell & Co.* [(1996) 3 SCC 709] this Court has opined that except the above two grounds

there is no third ground on the basis of which the law made by the competent legislature can be invalidated and that the ground of invalidation must necessarily fall within the four corners of the aforementioned two grounds."

In the aforesaid case, the Apex Court has again laid down the parameters in which the constitutional validity of a statute can be challenged. In the present case, none of the tests laid down by the Apex Court are fulfilled.

77. The Hon'ble Apex Court in the case of **Supreme Court Advocates-on-Record Association v. Union of India**, reported in (2016) 5 SCC 1, in paragraphs 853, 854 and 857 has held as under;

"853. The accepted view is that a parliamentary statute can be struck down only if it is beyond legislative competence or violates Article 13 or the fundamental rights. The basic structure doctrine is not available for striking down a statute. It was held in *State of A.P. v. McDowell & Co.* [*State of A.P. v. McDowell & Co.*, (1996) 3 SCC 709, para 43] that: (SCC pp. 737-38)

"43. ... The power of Parliament or for that matter, the State Legislatures is restricted in two ways. A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone viz. (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground."

854. This view was followed in *Public Services Tribunal Bar Assn. v. State of U.P.* [*Public Services Tribunal Bar Assn. v. State of U.P.*, (2003) 4 SCC 104 : 2003 SCC (L&S) 400, para 26] in the following words: (SCC p. 120)

"26. The constitutional validity of an Act can be challenged only on two grounds viz. (i) lack of legislative competence; and (ii) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provisions. In *State of A.P. v. McDowell & Co.* [*State of A.P. v. McDowell & Co.*, (1996) 3 SCC 709, para 43] this Court has opined that except the above two grounds there is no third ground on the basis of which the law made by the competent legislature can be invalidated and that the ground of invalidation must necessarily fall within the four corners of the aforementioned two grounds."

857. Strictly speaking, therefore, an amendment to the Constitution can be challenged only if it alters the basic structure of the Constitution and a law can be challenged if:

- (1) It is beyond the competence of the Legislature;
- (2) It violates Article 13 of the Constitution;
- (3) It is enacted contrary to a prohibition in the Constitution; and
- (4) It is enacted without following the procedure laid down in the Constitution."

78. In the light of the aforesaid judgment, as the Union of India keeping in view Section 41 of the Arms Act, 1959, does have the power to issue exemption notification. Hence, the question of interference by this Court does not arise and the petitioner has not been able to establish violation of any of the fundamental rights guaranteed in Part

III of the Constitution nor has been able to point out any of the violation of the provisions of the Constitution.

79. The Apex Court in the case of **Budhan Choudhry v. State of Bihar**, reported in AIR 1955 SC 191 in paragraph 5 has held as under;

"5. The provisions of Article 14 of the Constitution have come up for discussion before this Court in a number of cases, namely, *Chiranjit Lal Chowdhuri v. Union of India* [(1950) 1 SCR 869] , *State of Bombay v. F.N. Balsara* [(1951) 2 SCR 682] , *State of West Bengal v. Anwar Ali Sarkar* [(1952) 3 SCR 284] , *Kathi Raning Rawat v. State of Saurashtra* [(1952) 3 SCR 435] , *Lachmandas Kewalram Ahuja v. State of Bombay* [(1952) 3 SCR 710] and *Qasim Razvi v. State of Hyderabad* [AIR 1953 SC 156 : (1953) 4 SCR 581] and *Habeeb Mohamad v. State of Hyderabad* [(1953) 4 SCR 661] . It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure. The contention now put forward as to the invalidity of the trial of the appellants has, therefore to be tested in the light of the principles so laid down in the decisions of this Court."

80. In the aforesaid case, the Apex Court was dealing with the issue of reasonable classification under Article 14 of the Constitution and as per the aforesaid decision, two conditions that are to be satisfied to pass the concerned tests are as under;

- a) classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and
- b) differentia must have a rational relation to the object sought to be achieved by the statute in question.

81. In the instant case, the documents on record reflect that Kodava race has been considered to be a martial race from as early as 1890 (in the survey report of Coorg by Lt.Connor) and they are enjoying exemption since then. Even keeping in view the statement of objects and reasons for enactment of the Arms Act, the weapons are made available to citizens for self-defence unless their antecedents of proponents do not entitle them for the privilege. Hence,

the question of interference by this Court in the matter does not arise.

82. The conclusion of this Court is that the exemption provided to Coorg race and Jamma tenure-holders under Section 41 of the Arms Act, 1959 satisfy the tests of reasonable classification under Article 14 of the Constitution of India and question of quashing the notification dated 29.10.2019 does not arise.

83. In the light of the aforesaid, this Court is of the opinion that the present petition which has been filed as a PIL is devoid of merits and substance.

84. The Kodava community which is a martial race and is enjoying the benefit of exemption since pre-independence period and the Jamma tenure-holders are also enjoying the benefit of exemption since pre-independence period, have rightly been granted exemption for a period of 10 years and it is not a case where they have been granted exemption indefinitely and the exemption granted is certainly subject to certain terms and conditions. Therefore, the

constitutional validity of the notification issued by the Government of India is upheld and the petition is dismissed.

Pending applications, if any, shall stand disposed of.

No order as to costs.

Sd/-
ACTING CHIEF JUSTICE

Sd/-
JUDGE

nd

WP NO. 11948/2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

**[CAPT CHETHAN Y K (RETD) VS. UNION OF INDIA AND
ANOTHER]**

Aq.CJ & SSMJ:

30.09.2021

(Physical / Through Video Conferencing)

ORDER

Learned counsel for the petitioners has drawn the attention of this Court towards the cause title and his contention is that there is a spelling mistake in respect of the names of Sri Sajan Poovayya, learned Senior Advocate and M.B.Gagan Ganapathy. It is mentioned as Sri Sajan Povayya and M.P.Gagan Ganapathi whereas the correct spelling is "Sri Sajan Poovayya" and "Sri M.B.Gagan Ganapathy".

Resultantly, the mistake is corrected in the cause title and the names shall be read as Sri Sajan Poovayya, Senior Advocate along with Sri M.B.Gagan Ganapathy.

Further, the name of Smt. Sajanathi Sajan Povayya shall also be corrected and the same be read as "Smt. Sajanathi Sajan Poovayya."

I A.No.27/2021 stands allowed accordingly.

This order shall be read conjointly with the earlier order dated 22.09.2021.

**Sd/-
ACTING CHIEF JUSTICE**

**Sd/-
JUDGE**