* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 12 July 2022**
Judgment pronounced on: 1 August 2022

\+ W.P.(C) 11410/2021, CM APPL. 35134/2021 (Stay), CM APPL. 3871/2022 (Delay), CM APPL. 23607/2022 (Delay)

MEET MALHOTRA ..... Petitioner

Through: Mr. Meet Malhotra, petitioner in person along with Mr. Ravi S.S. Chauhan, Ms.Pallak Singh and Mr. Chantha Channan, Advs.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Rajendra Sahu, Adv. for UOI/R-1.
Mr. Shadan Farasat, ASC, GNCTD and Mr. Bharat Gupta, Adv. for R-2.
Mr. Jayant K. Mehta, Sr. Adv. with Mr. Aditya Singh and Mr. Amrit Singh, Advs. for R-3.
Mr. Atul Kumar, Ms. Sweety Singh and Mr. Rajiv Ranjan, Advs. for R-4.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

J U D G M E N T

1. The petitioner calls in question a communication dated 31 August 2021 issued by the Office of the Additional Commissioner of Police (Licensing) bringing to his attention the prescribed limit of an individual carrying or possessing not more than two firearms as per Section 3(2) of the Arms Act, 1959[1] and which was also asserted to apply to members of any

[1] the Act

rifle club or association. It was consequently observed that all licensees including the petitioner here would be obliged to deposit a firearm in excess of two within 15 days either with the jurisdictional police station or an authorized arms dealer. The aforesaid communication is based on the amendments introduced in Section 3 of the Act vide the **Arms (Amendment) Act 2019**[2] which came to be notified on 13 December 2019.

2. The petitioner held a valid license for a point 22 bore target pistol, a point 22 rifle and a point 32 revolver. Those three firearms were duly endorsed and entered on the license which the petitioner held and had been granted to him in 2002. In 2011 the petitioner is also stated to have become a life member of the **National Rifle Association of India**[3]. It would be pertinent to note that prior to the amendments which were introduced in 2019, Section 3, as it stood provided that no person would acquire, have in his possession or carry at any time more than three firearms. Persons referred to in Section 3(3) were excluded from the operation of Section 3(2) of the Act. The proviso to sub-section (2) as it existed prior to 2019 mandated that a person who may have in his possession more than three firearms at the commencement of the Arms (Amendment) Act 1983[4] may retain any three of such firearms and deposit the additional weapon within 90 days from the commencement of the 1983 Amending Act. Section 3(3) provides that nothing contained in sub-section (2) would apply to any dealer in firearms or to any member of a rifle club or association licensed or

[2] 2019 Amending Act

[3] NRAI

[4] 1983 Amending Act

recognized to hold and use a point 22 bore rifle or an air rifle for target practice.

3. When the writ petition initially came to be filed, it was based on the assertion that the 2019 Amending Act could not apply to those licensees who held more than two firearms pursuant to a license that may have been granted prior to the enforcement of that Act. Responding to the e-mail which is impugned, the petitioner took the same position before the respondents. It was further and additionally urged that since the petitioner was a life member of the NRAI, the requirement of depositing a licensed firearm in excess of two would not apply. The respondents by a communication of 13 August 2021 reiterated the position and required the petitioner to deposit firearms that may be held in excess of two. The petitioner thereafter is stated to have addressed detailed representations to the Commissioner of Police dated 16 and 23 September 2021. Since no response is stated to have been received, he filed the instant writ petition in October 2021. After the filing of the present writ petition, the petitioner is also asserted to have deposited the point 22 rifle held by him with an arms dealer on 8 October 2021. The petitioner is thereafter stated to have applied for renewal of the arms license as would be evident from the email dated 2 December 2021 addressed to the licensing authority. The request for renewal was reiterated by a further email on 6 December 2021.

4. On notices being issued, the respondents including NRAI as well as the Delhi State Rifle Association have filed their respective affidavits. Parties were thereafter heard on the merits of the issue which arises.

5. The principal question which has been addressed for the consideration of the Court was whether members of a rifle club or association stand exempted from the rigour of Section 3(2) of the Act. Before proceeding to notice the rival contentions which were addressed, it would be appropriate to advert to the provisions of Section 3 as they stood prior to and after the 2019 Amendment. The position of that Section is reproduced hereinbelow in a tabular form: -

Section 3(2) (Prior to the Arms (Amendment) Act, 2019)	**Section 3(2) (After the Arms (Amendment) Act, 2019)**
(*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.	(*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 two firearms: Provided that a person who has in his possession more firearms than two at the commencement of the Arms (Amendment) Act, 2019, may retain with him any two of such firearms and shall deposit, within one year from such commencement, the remaining firearm 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.

6. The petitioner who appeared in person fairly submitted that while the writ petition was initially instituted based on the contention that the 2019 Amending Act would not apply, that submission is not being pressed since it would be evident upon an interpretation of Section 3 that the petitioner by virtue of being a member of the NRAI stands absolved from the obligation to deposit a firearm which may be held or possessed in excess of two. The petitioner contends that a member of a rifle club or association is duly recognized by the statute itself as falling outside the ambit of Section 3(2). In view of the above, it was submitted that the amendments which were introduced in 2019 cannot be read as requiring the members of such an association or club to surrender any firearm in excess of two. This according to the petitioner is evident from the clear and express language of Section 3(2) and the usage of the phrase "*other than a person referred to in sub-section (3)*". It was the submission of the petitioner that the fact that a member of a club or association is treated distinctly is also evident from the provisions of Rule 40 which prescribes the quantity of ammunition which may be held or possessed by persons or class of persons. The petitioner specifically drew the attention of the Court to the fact that Rule 40 clearly recognizes the distinct character of shooters holding valid armed licenses and who may also be members of the NRAI or any other affiliated State Rifle Association or Shooting Club. The petitioner has taken the Court

through the **Statement of Objects and Reasons**[5] accompanying the 2019 Amending Act and contended that it would be evident that there was no legislative intent to require members of rifle associations or clubs to surrender the third firearm. The petitioner contends that as would be evident from a reading of the SOA, the primary concern of the Legislature was to tackle the menace of illegal firearms and to fight the proliferation of such firearms in the country.

7. The petitioner also assailed the correctness of a clarification which was issued by the Ministry of Home Affairs, Government of India dated 11 August 2021 which had explained the position as obtaining to be that the exemption under Section 3(3) of the Act to members of a rifle club or association is merely to enable them to use or carry a point 22 bore rifle or an air rifle available with a rifle club or association of which they are members. This clarification further and in unequivocal terms records that the member of such a club or association in an individual capacity would still be bound by the limit of two firearms as prescribed in Section 3(2) of the Act. That clarification is extracted hereinbelow: -

> "F. No. V-11026/29/2020-Arms
> Government of India
> Ministry of Home Affairs
> (IS-I Division/Arms Section)
>
> 2nd Floor, Dhyanchand National Stadium,
> Near India Gate, New Delhi Date
> 11th August, 2021
>
> To
>
> The Joint Commissioner of Police Delhi Licensing Unit, 1st Floor,

[5] SOA

P.S. Defence Colony, New Delhi

Subject: Clarifications in respect of granting permission for keeping third firearm to members of a rifle club or rifle association licensed or recognized by the Central Government.

Sir,

I am directed to refer your letter no. 183/Joint CP/DA-10(PRO/Arms), dated 07.06.2021 on the subject cited above and to clarify that as per the legislative intent, the purpose of exemption under section 3 (3) of the Arms Act, 1959, to the members of a rifle club or rifle association is to legally enabling them to use or carry .22 bore rifle or air rifle available with the rifle club or rifle association of which they are members. In this regard also refer to the provision under Rule 37 (3) & (4) of the Arms Rules, 2016. Further, it is to state that, in the individual capacity for any such member, the general limit of two fire arms as per section 3 (2) of the Arms, 1959, continues to apply.

Yours sincerely

Sd/-
(Sujeet Kumar)
Second-in-Command (Arms)
011-23075115"

8. The petitioner asserts firstly that the aforesaid clarification is in clear breach of the provisions of Section 3 as they stand. In the alternative and without prejudice to the above, it was argued that the aforesaid clarification cannot bind the petitioner nor would it be liable to be recognized as being determinative of the interpretation to be accorded to Section 3. The petitioner also referred to the notification dated 12 February 2020 issued by the Central Government which grants exemption to various categories of sportspersons engaged in shooting and which enables them to hold more than two weapons notwithstanding the restrictions placed by Section 3(2). It would be pertinent to note that the aforesaid notification specifies the

various firearms which may be held or possessed by Arjuna Awardees, International Medalists / renowned Shooters, Junior Target Shooters, Aspiring Shooters and NRAI along with other affiliated State Rifle Associations, District Rifle Associations and Shooting Clubs affiliated to the aforenoted organizations. Viewed in that light, the petitioner submitted that the stand as taken by the respondents and requiring the petitioner to deposit the third and additional firearm is not only arbitrary but wholly untenable.

9. Appearing for the NRAI, Mr. Mehta learned senior counsel, submitted that the language of Section 3(2) was a clear expression of the intent of the Legislature to exclude from its operation all persons who would fall within the contours of Section 3(3). Mr. Mehta submitted that in view of the express exclusion of persons who may fall within sub-section (3), the restriction as introduced by Section 3(2) must necessarily be interpreted as covering persons other than that class only. Turning then to Section 3(3), Mr. Mehta would contend that the exclusion of members of a rifle club or association from the ambit of Section 3 (2) is further fortified as one reads Section 3(3). According to Mr. Mehta, sub-sections (2) and (3) of Section 3 clearly and in unequivocal terms exclude members of a rifle club or association from the restriction of holding and possessing only two firearms. This Mr. Mehta would submit is evident firstly with the legislature excluding all persons who would fall within sub-section (3) from Section 3(2) and reiterated by Section 3(3) which explains the categories of persons who would be exempted from the requirements and restrictions of sub-section (2). Mr. Mehta submitted that Section 3(3) clearly provides that

nothing contained in sub-section (2) would apply to a dealer in firearms or to a member of a rifle club or association. According to Mr. Mehta, the categories of persons who are taken note of in Section 3(3) are those who would logically be in possession of firearms in excess of the limits prescribed in Section 3(2). According to Mr. Mehta, a member of a rifle club or association who is engaged in the sport of shooting cannot be placed under a restriction to carry only that number of firearms which may be otherwise held by an ordinary individual and who may otherwise not be engaged in pursuing shooting as a pursuit or a sport. Mr. Mehta also assailed the Guidelines issued by the Ministry of Home Affairs and submitted that not only was the same based on an incorrect appreciation of Section 3, in any case those Guidelines can neither be recognised to be binding nor would it be correct to interpret a statutory provision based on guidelines or notifications that may be issued by the executive. Learned counsel appearing for the Delhi State Rifle Association adopted the submissions addressed by Mr. Mehta.

10. Mr. Farasat, learned ASC appearing for the Delhi Police, on the other hand submitted that in order to understand the provisions of Section 3(2), it would be necessary to refer to Section 2(a) of the Act which defines the expression "acquisition". The word "acquisition" is defined in the Act to include hiring, borrowing or accepting as a gift together with all its grammatical variations and cognate expressions. Mr. Farasat contended that sub-sections (2) and (3) cannot be interpreted as placing no restrictions at all on the number of firearms that may be held or possessed by a member of a rifle club or association. It was submitted that the sole reason why

members of a rifle club or association may be recognized and be permitted to be in possession of more than two firearms is an acceptance of the position that by virtue of being a member of such association or club, they are also entitled to use, hold and possess a weapon which may otherwise be licensed to that club or association. According to Mr. Farasat, the Legislature being conscious of such an eventuality has made appropriate provisions in sub-sections (2) and (3). In any case it was contended those sub-sections cannot possibly be read as conferring a right on a member of such a club or association to hold any number of firearms in an individual capacity. According to Mr. Farasat, if the contention as advocated on behalf of the petitioner and which was reiterated by the Associations were accepted, it would lead to absurd results with members of a rifle association or club being recognized to hold any number of weapons without any limit on the total number of arms that may be held by them. Mr. Farasat contends that such an interpretation would result in doing violence to the provisions of the Act and Section 3 itself.

11. Mr. Farasat further contended that Section 3(3) itself links the possession of a firearm by a member of an association to its use for target practice. It was pointed out that as per the provisions of Rule 37 and more particularly sub-section (4) thereof, a member of a rifle club or association is granted the right to take a weapon which may otherwise be licensed to that club or association out of its premises for various purposes including the use of that weapon at a shooting range for training or target practice or for participation in a shooting competition. It was contended that it is to this limited extent alone and to cater to a situation where an individual by virtue

of being a member of an association or club may come to hold or possess firearms in excess of two temporarily, that sub-sections (2) and (3) make appropriate provisions.

12. Insofar as the notification permitting certain categories and classes of sportspersons to hold firearms in excess of the limit prescribed in Section 3(2) is concerned, Mr. Farasat drew the attention of the Court to the provisions of Section 41 of the Act and the power of the Union to grant exemption to persons or class of persons. It was thus submitted that the notification of 12 February 2020 is liable to be understood and appreciated in that light alone. It was lastly urged that no provision of the Act confers a distinct character or independent rights on members of rifle clubs or associations. Mr. Farasat would contend that the Guidelines issued by the Ministry of Home Affairs has rightly explained the provisions of Section 3 and thus urges this Court to dismiss the writ petition.

13. In order to appreciate the rival contentions, it would be appropriate to extract the salient provisions which would have a bearing on the questions raised. The principal submissions have pivoted upon the provisions contained in Section 3 which post its amendment in 2019 reads thus:-

> 3. Licence for acquisition and possession of firearms and ammunition .— 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 two firearms:

Provided that a person who has in his possession more firearms than two at the commencement of the Arms (Amendment) Act, 2019, may retain with him any two of such firearms and shall deposit, within one year from such commencement, the remaining firearm 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.

14. Since the petitioner has also relied upon an exemption notification issued by the Union Government and which is traceable to the provisions of Section 41 of the Act, the same is reproduced hereinbelow:-

"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."

15. Learned counsel for the respondents have also referred to Rule 37 of the **Arms Rules 2016**[6] which is extracted hereinunder: -

> "37. Licence for sport shooting association.─ (1) Sport shooting association or a club or a military mess affiliated to the respective State Rifle Association or National Rifle Association of India, shall be eligible to apply for a licence in Form V and to acquire and possess arms and ammunition that are used and/or stored at their premises.
>
> (2) An application under sub-rule (1) for grant of a licence at the time of initial grant or at every subsequent renewal thereof, shall be submitted along with the following documents, as may be applicable, namely:-
>
> (a) its memorandum and articles of association and the membership rules;
>
> (b) the lists of office bearers and permanent members;
>
> (c) particulars of the accredited shooting range for training and target practice;
>
> (d) details of the training/target practice activities undertaken for promoting or encouraging the sport of shooting;
>
> (e) details of the shooting sport tournaments or events conducted;
>
> (f) details of safe storage of arms and ammunition specified under rule 10; and
>
> (g) complete records of the ammunition consumed by the club or association and/or its members.
>
> (3) Where a licence in Form V has been granted in the name of any sport shooting association or club or a military mess, it shall be lawful for any member of such mess, club or association to use the arms or ammunition covered by such licence at the approved shooting range mentioned in the licence for the purpose of training and target practice, subject to the conditions of the licence.
>
> (4) Where a member of a rifle club or association intends to take the arms and ammunition out of the premises of the club or association for the purpose of repair or to a shooting range for training or target practice or for participation in a shooting competition, he shall be required to carry a pass in Form V-B signed by the President or the Secretary of the club or association in respect of the arms and ammunition and in the area and for the period specified in the pass."

[6] 2016 Rules

16. Before proceeding to deal with the contentions which were canvassed for the consideration of the Court, it would be appropriate to deal with the fundamental scheme of the Act. The Act is a consolidating statute and thus legislates on the subject of firearms, the regime of licensing and the regulations of arms and ammunitions generally. Since the promulgation of the Indian Arms Act, 1878, the subject of possession of firearms and its regulation was considered a topic of vital importance. The Act essentially seeks to balance the need of law abiding citizens to possess firearms for self-defense as also to ensure that firearms and ammunition which may be used for perpetrating heinous crime against society and the State are prohibited. Accordingly, while the Act seeks to ensure that dangerous weapons are not made available to citizens and more particularly, anti-social elements, it also seeks to strike a healthy balance to ensure the availability of weapons for self-defense which may be required by citizens. It was also aimed at enabling ordinary civilians to obtain licensed firearms which may be required for training purposes.

17. However, it is well settled that neither the Constitution nor the Act confers an indefeasible right upon citizens to hold, possess or bear firearms. The argument of a right to carry non prohibited weapons by virtue of the guarantee conferred by Article 21 of the Constitution was specifically rejected by five learned Judges of the Allahabad High Court in **Rana**

Pratap Singh vs. State of U.P.,[7] where the following pertinent observations were made: -

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

18. The aforesaid position in law was reiterated by a Full Bench of the Patna High Court in **Kapildeo Singh vs. State of Bihar and Ors.,**[8], where the following principles came to be enunciated:-

> "5. Before one proceeds to microscopically examine the provisions under Section 17 of the Arms Act, 1959 (hereinafter referred to as the 'Act') the broad approach to the issue may be first settled. In our Constitution and

[7] 1996 All LJ 301 (FB)

[8] AIR 1987 Pat 122 (FB)

jurisprudence there is no fundamental right to bear arms unlike the Second Amendment to the American Constitution which at least suggests such a right in the following terms:

> "A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed."

In construing the aforesaid provision the Supreme Court of the United States in *Presser* v. *Illinois*, (1884-1885) 116 US 252 has observed as under:

> "It is undoubtedly true that all citizens capable of bearing arms constitute the reserved military force or reserve militia of the United States as well as of the States, and, in view of this prerogative of the Federal Government, as well as of its general powers, the States cannot, even laying the constitutional provision in question out of view, prohibit the people from keeping and bearing arms, so as to deprive the United States of their rightful resource for maintaining the public security, and disable the people from performing their duty to the General Government. But……. we think it clear that the sections under consideration do not have this effect."

However, it is apt to notice that in modern times even in the United States any constitutional right to possess and bear arms has now come under carping criticism in view of the raising of the ugly heads of gun-running, gangsterism and the mafia. In sharp contrast therewith there is no such analogous provision in other jurisprudential system and indeed under the Indian law the right to carry arms is privilege conferred by the Act and other similar statutes which primarily leave the grant thereof in the discretion of the licensing authority. Reference in this connection may instructively be made to the relevant parts of Sections 3, 13 and 14 of the Act:

…..

It would be manifest from the aforesaid provisions that under the Act there is first a legal bar for having in possession or carrying a firearm unless a valid licence is first secured in accordance with the provisions of the Act. Secondly, even the original grant under Section 13(2A) is vested entirely in the licensing authority and it seems that the widest discretion has been given to it. Even after conforming to the procedural requirements, the licensing authority may, as regards the general category of arms, either grant the licence or refuse to grant the same. This discretion in this context has perhaps been deliberately kept untrammelled. Further, under Section 14 the law mandates a refusal to grant licence even where the licensing authority

has reason to believe that the applicant is for any reason unfit for licence under the Act. The larger tilt of the law in this context is thus somewhat too plain to call for further elaboration."

19. Having noticed the backdrop in which the legislation came to be promulgated as well as the rights of an individual to carry weapons under the statutory regime that prevails, the provisions of the Act may be now noticed. Chapter II of the Act incorporates provisions pertaining to the acquisition, possession, manufacture, sale, import, export and transport of arms and ammunition. It is this Chapter together with Chapter III of the Act which creates the structure of licensing in respect of acquisition and possession of weapons. Chapter II envisages licenses being given to individuals in accordance with the provisions contained in Section 3, to manufacturers and dealers of firearms in accordance with Section 5, to persons who may be engaged in the shortening of guns or conversion of imitation firearms as per Section 6. Section 4 deals with the issuance of licenses in favour of persons who may be residing in an area where having regard to the circumstances prevailing, the Union Government forms the opinion that the acquisition, possession or carrying of arms other than firearms should be regulated. Section 5 deals with licenses that may be issued to persons contemplating activities relating to use, manufacture, sale or transfer as well as those who intend to expose or offer weapons for sale, transfer, conversion, repair, test or approve. Section 13 contained in Chapter III then details the procedure to be adopted for the purposes of grant of license as contemplated under Sections 4, 5, 6, 10 and 12 of the Act. Section 10 deals with the subject of licenses to persons who seek to import or export arms. Section 12 of the Act relates to the transportation of

arms over India or any part thereof. It also by extension and in terms of Section 12(2) regulates the transshipment of arms or ammunition at the seaport or an airport in India.

20. Rule 5 of the 2016 Rules prescribes the forms which may be used for the purposes of obtaining licenses. In terms of Rule 11, Forms A-1 to A-14 are prescribed for different categories of applicants seeking a license under the Act. As per Rule 36, any person below the age of 21 years but not below the age of 12 years may be allowed by the licensing authority to use a permissible category of arms for the purposes of training, subject to the use being in the immediate presence of or under the direct supervision and guidance of an adult instructor or a licensee. Sports Shooting Associations, Clubs and Military Messes affiliated to respective State Rifle Associations or NRAI may apply for grant of licences in terms of Rule 37. Rule 37(4) enables a member of such a club or association to take arms or ammunition held by the club or association pursuant to a licence granted to it out of its premises for repair or for use at a shooting range for training or target practice or for participation in a shooting competition. Rules 38 and 39 control the subject of grant of licences to persons who may have established an indoor or outdoor private shooting range and for accredited trainers respectively. Rule 40 specifies the quantity of ammunition that may be possessed by various categories of sport persons for their personal consumption as well as organisations that provide a venue for pursuit of the sport of shooting. Similarly, licences covering distinct contingencies, activities and pursuits are governed by the provisions made in Rules 42, 43 and 44.

21. The provisions contained in the Act and the Rules essentially bear out four categories of licensees who may possess firearms in accordance with the provisions made therein. These are individual licensees, persons who are engaged in the manufacture or sale of firearms, persons who may be connected with the import/export of weapons and associations connected with the sporting activity of shooting. What emerges from the aforesaid discussion essentially is that the Act on a fundamental plane neither recognises nor confers a special or distinct status upon members of the NRAI or State Rifle Associations or their affiliates. Members of such associations are not conferred a special status either under the Act or the Rules. While a person may be a member of such an association or club, his individual right to bear or possess a firearm continues to be controlled and governed by the provisions of the Act which deal with any other ordinary citizen who may choose to apply for the grant of a licence.

22. It would be relevant to note that while the petitioner in person sought to draw sustenance from the provisions contained in Rule 40 and more particularly, on the basis of clause 5 of the table appended thereto, in the considered opinion of this Court, that Rule cannot be construed or understood as clothing a member of a club or association with a special or distinct status. It would be pertinent to note that Rule 40 does not control or regulate the number of weapons that may be held by an individual. It only deals with the quantity of ammunition that may be possessed by different categories of sportspersons and sports organisations. Clause 5 only prescribes the quantity and description of ammunition that may be possessed and held by shooters who while holding valid individual licences

may also be members of associations and clubs. Nothing further can possibly be read into Rule 40 and in any case this Court fails to discern any intent underlying Rule 40 in terms of which it may be held that a member of a club or association is entitled to hold firearms in excess of the quantity that may be otherwise prescribed for individuals.

23. Insofar as the exemption notification issued by the Union Government is concerned, it would be relevant to note that the same came to be issued in exercise of powers specifically conferred by Section 41 and empowering the Union to exempt a person or a class of persons from the operation of all or any of the provisions of the Act. As would be evident from a reading of the notification itself, it spells out various exemptions relating to the possession of arms in respect of specified categories of persons. Those persons who constitute a special class and with which that notification concerns itself are Arjuna Awardees, International Medallists, Renowned Shooters, Junior and Aspiring Shooters, Associations and Clubs. Significantly, Clause 2 of the Schedule while specifying the number of firearms that may be held by an international medallist or renowned shooter stipulates that the total number of weapons that may be held by that category of persons shall not exceed 12 and would be in addition to the number of weapons he / she may be entitled to possess *"as a normal citizen as per the provisions of the Act subject to an overall ceiling of 14 weapons."*.

24. Similarly, the Note appended to Clause 2 again prescribes that if a shooter be renowned in one event only, he / she would hold a maximum of 10 weapons in the exempted category in addition to the two weapons which

he/she may possess *"as a normal citizen in terms of Section 3(2)".* An identical prescription and the linkage of the maximum number of weapons that may be held by an international medallist or renowned shooter to the maximum limit prescribed in Section 3(2) is further amplified and reiterated in the Note accompanying sub clauses (b) and (c) of Clause 2. Dealing with junior and aspiring shooters, that exemption notification restricts the limit prescribed to two weapons of any category in which the person may be a junior or aspiring shooter. The only category of licenses envisaged to hold or possess weapons with no upper limit are the NRAI, State Rifle Associations, affiliated District Rifle Associations, Shooting Clubs, Shooting Ranges or the Sports Authorities of respective State Governments. This thus fortifies the view of the Court that an individual is clearly bound by the limitations placed by Section 3(2) subject only to the exercise of powers by the Union Government under Section 41 which may enable them to hold a firearm in addition to what they may hold or possess *"as a normal citizen."*

25. The Court then proceeds to deal with the principal submission addressed by the petitioner turning on the provisions of Section 3 of the Act. It would be pertinent to note that insofar as this aspect of the matter is concerned, the contention of the petitioner was reiterated by learned counsels appearing for the NRAI as well as the Delhi State Rifle Association. To recall, the petitioner essentially urged that since members of associations and clubs stand specifically excluded from the rigours of Section 3(2), the restriction on the number of arms that may be held or possessed by them would not apply. The Court has already found that

members of rifle associations and clubs are not placed on a separate or distinct pedestal per se under the statute. While they may be entitled to hold and possess ammunition in excess of what may be otherwise prescribed for an individual in terms of Rule 40, that provision alone cannot be construed as conferring a special or distinct status upon that class for the purposes of answering the question whether they are exempt from the restriction otherwise placed by the statute on the number of firearms that may be held by an individual. It would at the outset be important to bear in mind that Section 3(2) does not [and at least in express terms], exclude members of rifle associations and clubs from the restriction. The class of persons which stands exorcised from sub section (2) is *"other than a person referred to in sub-section (3)".* The restraint against acquiring, possessing or carrying more than two firearms at any time applies to all individuals *"other than a person referred to in sub-section (3)".* Section 3(3) firstly refers to a dealer in firearms. While the word "dealer" is not defined in the Act, Rule 2(19) of the 2016 Rules, defines that expression as follows: -

> "(19) "dealer" means a person who, by way of trade or business, buys, sells, tests (other than proof-test), exports, imports or transfers or keeps for sale, or test (other than proof-test) arms or ammunition and includes the Sports Authority of India (SAI), the National Rifle Association of India (NRAI) and the State Rifle Associations affiliated to NRAI or directly affiliated units of NRAI;"

26. As is evident from the definition of dealer as set out in the 2016 Rules, it would include not only a person who may be engaged in the trade or business of firearms but also the NRAI, State Rifle Associations and their affiliated units. The logic and the reason behind exempting dealers from the restriction of two firearms is neither difficult to comprehend nor

far to seek. A person who is engaged in the trade of selling, buying, exporting or importing firearms would obviously have in his possession more than two firearms. Similarly, NRAI or other rifle associations and clubs would undoubtedly have more than two firearms at any given point of time. In any case, any doubt that may have been remotely harboured in this respect is laid to rest by virtue of the express exemption orders issued by the Union Government in exercise of powers conferred by Section 41. The essential question to be answered is whether Section 3(3) when it uses the phrase *"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 to target practice"* is liable to be interpreted as conferring on them a right to carry or possess more than two firearms. In the considered opinion of this Court, the answer to the question posited must be in the negative for the following reasons. Firstly, and was noted hereinabove, a rifle club or association or a dealer in firearms would obviously have more than two firearms in their possession at any given point of time. The exemption notification dated 12 February 2020 lays all doubts in this respect to rest by unambiguously entitling them to hold firearms without any limit, subject of course to the discretionary consideration of the licensing authority. If Section 3(3) were to be read and construed as the petitioner would bid us to do, it would essentially mean that a member of an association or club would be entitled to hold firearms without any maximum limit being recognised as applying. It would be pertinent to note that upon being queried in this regard, the petitioner as well as learned counsels for the associations were ad idem that this is the correct and only import of sub sections (2) and (3) of

Section 3. The Court finds itself unable to countenance this submission for the following reasons.

27. It must at the outset be noted that acceptance of this contention would lead to absurd results with a person by virtue of being a member of an association or club being recognised in law to hold any number of firearms. This would essentially put such an individual at par with a dealer of firearms and rifle associations and clubs. That cannot possibly be construed as being the intent of Section 3(2). It is well settled, that Courts must eschew from conferring an interpretation on a particular statute which may lead to an absurdity. If literal construction of a provision leads to an anomaly or absurdity, it must be avoided, and Courts must undertake the exercise to discern the true meaning of the provision bearing in mind the intent of the statute. While these principles of statutory interpretation are well settled, it would be apposite to advert to the following pertinent observations as were made by the Supreme Court in **Southern Motors Vs. State of Karnataka**[9]: -

> "**35.** The following excerpts from *Tata Steel Ltd.* [*State of Jharkhand* v. *Tata Steel Ltd.*, (2016) 11 SCC 147] , being of formidable significance are also extracted as hereunder: (SCC pp. 161-62, paras 25-27)
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> > "*25.* In this regard, reference to *Mahadeo Prasad Bais* v. *ITO* [*Mahadeo Prasad Bais* v. *ITO*, (1991) 4 SCC 560] would be absolutely seemly. In the said case, it has been held that an interpretation which will result in an anomaly or absurdity should be avoided and where literal construction creates an anomaly, absurdity and discrimination, statute should be liberally construed even slightly straining the language so as to avoid the meaningless anomaly.

[9] (2017) 3 SCC 467

Emphasis has been laid on the principle that if an interpretation leads to absurdity, it is the duty of the court to avoid the same.

26. In *Oxford University Press* v. *CIT* [*Oxford University Press* v. *CIT*, (2001) 3 SCC 359] , Mohapatra, J. has opined that interpretation should serve the intent and purpose of the statutory provision. In that context, the learned Judge has referred to the authority in *State of T.N.* v. *Kodaikanal Motor Union (P) Ltd.* [*State of T.N.* v. *Kodaikanal Motor Union (P) Ltd.*, (1986) 3 SCC 91 : 1986 SCC (Tax) 461] wherein this Court after referring to *K.P. Varghese* v. *ITO* [*K.P. Varghese* v. *ITO*, (1981) 4 SCC 173 : 1981 SCC (Tax) 293 : AIR 1981 SC 1922] and *Luke* v. *IRC* [*Luke* v. *IRC*, 1963 AC 557 : (1963) 2 WLR 559 : (1964) 54 ITR 692 (HL)] has observed: (*Oxford University Press case* [*Oxford University Press* v. *CIT*, (2001) 3 SCC 359] , SCC p. 376, para 33)

> '*33.* … "*17.* The courts must always seek to find out the intention of the legislature. Though the courts must find out the intention of the statute from the language used, but language more often than not is an imperfect instrument of expression of human thought. As Lord Denning said [*Seaford Court Estates Ltd.* v. *Asher*, (1949) 2 KB 481 : (1949) 2 All ER 155 (CA)] it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. As Judge Learned Hand said, we must not make a fortress out of dictionary but remember that statutes must have some purpose or object, whose imaginative discovery is judicial craftsmanship. We need not always cling to literalness and should seek to endeavour to avoid an unjust or absurd result. We should not make a mockery of legislation. To make sense out of an unhappily worded provision, where the purpose is apparent to the judicial eye "some" violence to language is permissible.(*Kodaikanal Motor Union case* [*State of T.N.* v. *Kodaikanal Motor Union (P) Ltd.*, (1986) 3 SCC 91 : 1986 SCC (Tax) 461] , SCC p. 100, para 17)"'

27. Sabharwal, J. (as his Lordship then was) has observed thus: (*Oxford University Press case* [*Oxford University Press* v. *CIT*, (2001) 3 SCC 359] , SCC p. 384, para 58)

> '*58.* … It is well-recognised rule of construction that a statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. It was held that construction suggested on

behalf of the Revenue would lead to a wholly unreasonable result which could never have been intended by the legislature. It was said that the literalness in the interpretation of Section 52(2) must be eschewed and the court should try to arrive at an interpretation which avoids the absurdity and the mischief and makes the provision rational, sensible, unless of course, the hands of the court are tied and it cannot find any escape from the tyranny of literal interpretation. It is said that it is now well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even "do some violence" to it, so as to achieve the obvious intention of the legislature and produce a rational construction. In such a case the court may read into the statutory provision a condition which, though not expressed, is implicit in construing the basic assumption underlying the statutory provision.'

36. As would be overwhelmingly pellucid from hereinabove, though words in a statute must, to start with, be extended their ordinary meanings, but if the literal construction thereof results in anomaly or absurdity, the courts must seek to find out the underlying intention of the legislature and in the said pursuit, can within permissible limits strain the language so as to avoid such unintended mischief.

37. In *Seaford Court Estates Ltd.* v. *Asher* [*Seaford Court Estates Ltd.* v. *Asher*, (1949) 2 KB 481 : (1949) 2 All ER 155 (CA)] hallowed by time, outlining the duty of the Court to iron out the creases, it was enunciated that whenever a statute comes up for consideration, it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise and even if it were, it is not possible to provide for them in terms free from all ambiguity, the caveat being that the English language is not an instrument of mathematical precision. It was held that in an eventuality where a Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that or have been guilty of some or other ambiguity, he ought to set to work on the constructive task of finding the intention of Parliament and that he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy and then he must supplement the written word so as to give "force and life" to the intention of the legislature."

28. This Court in the preceding parts of this judgment has noticed the various categories of licenses which are envisaged to be issued under the Act. The Act does not carve out or create a separate category for members of a rifle club or association. They are also not placed on an equal footing with persons engaged in the business of firearms, exporters or importers of firearms, rifle clubs, associations or shooting ranges. Persons who pursue shooting as a sporting activity have been dealt with separately in terms of exemptions granted by the Union Government exercising powers under Section 41 of the Act.

29. Notwithstanding the above, that still leaves the Court to discern the true intent of sub sections (2) and (3) of Section 3. The reference made to members of associations and clubs in Section 3(3) appears to be based on the following consideration. Undoubtedly, the word "acquisition" is defined to include hiring or borrowing apart from its other grammatical variations and cognate expressions. The Court bears in mind the provisions of Rule 37 in terms of which a member of a club or association may come to hold or possess, albeit for a temporary period, a firearm which may otherwise be licensed to a club or association. In such a scenario, the member may come to hold at the relevant time a weapon in excess of the maximum otherwise prescribed and regulated by Section 3(2). That clearly explains Section 3(3) employing the phrase "or to any member of a rifle club or rifle association…..". This Court is of the firm opinion that the mention of members of a club or association is liable to be understood in that backdrop.

30. The Court also bears in mind the definition of the word "dealer" contained in the 2016 Rules which includes not just a person trading in

weapons but also the NRAI and other associations. While Section 3(3) could have stopped at exempting dealers generally speaking from the restrictions imposed by Section 3(2), it has additionally catered to a situation where a member of an association or club may be in possession of a firearm in excess of the maximum prescribed. That additional firearm comes to be held and possessed by virtue of permissive provisions of the Act and the Rules enabling that member to temporarily hold a weapon that may otherwise be licensed to a club or association. That permission is statutorily accorded to enable that member to use that weapon for the purposes of target shooting or participating in a competition. The provisions of Section 3(3) are liable to be interpreted and comprehended in that light

31. This is further fortified by Section 3(3) linking the sentence *"or to any member of a rifle club or rifle association….."* to *"using a point 22 bore rifle or an air rifle for target practise."* It is important to observe that Section 3(3) must be read in a contiguous manner and cannot be approached from a disjointed focal point. The provisions of Section 3(3) cannot be fragmented or dismembered. It must be read cohesively. Viewed in light of the above, the Court comes to the definite conclusion that a member of an association or club is statutorily accorded the permission to temporarily be in possession of a firearm in excess of two only in case he be holding or be in possession of an additional weapon which may be licensed to the club or association. In any case and for reasons recorded hereinabove, the Court fails to find any justification to accept the contention of the petitioner or the associations that members of associations or clubs are exempt from the restrictions imposed by Section 3(2) of the Act.

32. Accordingly, and for all the aforesaid reasons, the writ petition along with the pending applications fails and shall stand dismissed.

YASHWANT VARMA, J.

AUGUST 01, 2022
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