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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 16th June, 1999

Present

THE HON'BLE Mr Y. BHASKAR RAO, CHIEF JUSTICE

And

THE HON'BLE Mr JUSTICE A.V. SRINIVASA REDDY

Writ Appeal Nos. 3090 & 3091/1997

Between :

District Magistrate and
Deputy Commissioner,
Uttara Kannada District,
Karwar

: Appellant

(Sri N.K. Ramesh, G.A)

And :

1. Gawai Mohiddin,
s/o late Md. Saheb,
Major, r/o 18, Navayat
colony, Bhatkal,
Uttara Kannada District

2. Abdul Rahaman Abdul
Khader Nag-Armath, s/o
Abdul Khader Nagarmath
Major, Occ: Businessman,
r/o 54, Mushma street,
Bhatkal, Uttara Kannada
District

: Respondents

(M/s Dayanand S. Naik, Adv. for Respondents)

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Writ Appeals filed u/s 4 of the Karnataka High Court Act, praying to set aside the order dated 24.3.97 in W.P.Nos.1997 and 1998/1997 .

These Appeals coming on for orders this day, Chief Justice delivered the following :

J U D G M E N T

These appeals are filed by the State (Dy. Commr) N.K. assailing the order of the learned single Judge allowing the writ petitions and directing the ~~respondents~~ ^{appellant} to pay costs and making certain remarks against the respondent Appellant

The brief facts of the case are that the respondents herein were granted gun licences under the Indian Arms Act, 1959. Thereafter, the said licences were temporarily suspended for one month u/s 17(3)(b) of the Act to prevent communal disturbances . By impugned order dt.29.5.95 the gun licences were restored to the respondents subject to the condition that the guns concerning these licences were to be deposited in the Bhatkal Police station. Assailing the said order , writ petitions were filed.

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It was contended by the respondents before the learned single Judge that the direction to deposit the guns in the police station has violated their fundamental rights. It was contended by the appellant that due to prevailing law and order situation in Bhatkal since 1991 onwards and aggravation of the same in the year 1996, as stated in paras 4 and 6 of the statement of objections, there was requirement for imposing condition to deposit the guns .

The learned single Judge allowed the writ petitions and quashed the impugned order imposing costs of Rs.1,100/- payable to each of the writ petitioners through crossed Bank draft drawn in favour of the petitioners out of his own pocket . It was further directed that the District Magistrate will not be entitled to charge any Travelling Allowance and other incidental expenses which he might have incurred for coming over to Bangalore for filing the statement of objections in the case. The appellant was further directed to be more careful in future in passing orders pursuant to statutory powers . Against that order, present appeals are filed .

A. K. Rao

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The learned counsel for the appellant contended that imposing of costs and observations against the Appellant are uncalled for. In the impugned order, it is mentioned that it was passed in public interest. The Bhatkal town and surrounding areas are vulnerable and always under the threat of communal violence. Therefore, in order to maintain peace and tranquility in the area, gun licences though renewed, were directed to be deposited in the police station. This is not only in case of respondents, but ~~also~~ ^{also} others were directed to deposit the guns to avoid communal clashes. It is further stated that subsequently guns were handed over to respondents .

There is no dispute that once the licence is granted to a person, he is entitled for possession of the gun. In the present case , the Government has renewed the license but only directed to deposit the arms in the police station keeping in view the prevailing situation. Now it is stated that the guns are handed over to respondents .

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It should be noted that Society's interest is paramount interest than individual's interest . Where there are communal disturbances, it is the duty of the police to protect the same. In view of this circumstance, we think it just and proper to set aside the costs imposed on the appellant and ^{also} the observations of the learned single judge that the officer is not entitled to any Travelling allowance and other incidental expenses which he might have incurred for coming over to Bangalore . ^{We order accordingly..} The release of the guns in pursuance of the order of this court will not bar the authorities to take appropriate action in accordance with law, if such occasion arises.

Appeals are disposed of accordingly .

Sd/-
Chief Justice

Sd/-
Judge