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ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road,
New Delhi 110 001.
Dated the 13th March 1996.

No. 464/96-L & O/PLN-1/3534

Subject.—General Election/Bye-elections
restrictions on possession of arms during elections.

ORDER

In exercise of the powers conferred on the Commission under Article 324 of the Constitution of India and all other powers enabling it in this behalf and in supersession of all other instructions, the Commission hereby orders that the following instructions shall be observed during all future elections.

If Issue of licence for arms will be totally prohibited during the period commencing with the date of announcement of elections. This ban will continue to be operative till the completion of the election as notified.

2. The police should be directed, to be vigilant and asked to start mopping up operations of the areas infested with known goonda and other bad elements right from the date of announcement of elections. During such mopping up operations special attention should be paid to unearth and seize unlicensed arms and ammunition. A very thorough search and seizure by the State Police of unlicensed arms and places of indigenous manufacture of arms and ammunition shall be carried out and persons involved shall be arrested. While unearthing and seizure of unlicensed weapons is a normal ongoing responsibility of the police, it shall be vigorously intensified during the election period. Inter-State and intra-State movements of trucks and commercial vehicles shall be strictly checked with a view to preventing smuggling of arms and ammunition and anti-social elements. Raids should be carried out regularly and intensively on underground arms factories.

3. Immediately after the announcement of elections, District Magistrates shall make a detailed and individual review and assessment (in accordance with the prevalent State laws) of all licence holders so that licensed arms in those cases where they consider it essential are impounded in order to ensure maintenance of law and order an essential for ensuring free and fair elections. These arms should be deposited with the district authorities. Among cases which may need to be reviewed are the following —

- (a) persons released on bail,
 - (b) persons having a history of criminal offences, and
 - (c) persons previously involved in rioting at any time but especially during the election period.
- (The above categories are only illustrative and not exhaustive).

4. After such review all such licence-holders who are identified shall be directed to deposit their arms with the District Administration during the period of one week from the last date for withdrawal of candidatures.

5. The District Administration shall make foolproof arrangements for keeping the deposited fire arms in safe custody. Proper receipt must be given to the licence holders depositing the fire arms. It shall be the bounden duty of the District Administration to ensure that all fire arms deposited with the Administration are returned to the licence holders immediately after one week after the declaration of results.

6. Prohibitory orders under section 144 of the Criminal Procedure Code, 1973 shall be issued banning the carrying of licensed arms as soon as an election is announced and should be effective till the declaration of results.

7. This ban shall, not be applicable to those communities who are entitled to display weapons by long standing law, custom and usage. This shall however, not prevent the District Administration

to impound weapons of any such persons of even such communities if they are found to be indulging in violence or posing a threat to the maintenance of law and order and peaceful conduct of elections. In these cases also the fire arms shall remain impounded till one week after the declaration of results.

8. Strict vigil shall be maintained by thorough checking of lorries, light vehicles and all other vehicles from three days before the date of poll to ensure that no undesirable elements or arms and ammunition are being transported into the constituency from outside and to apprehend them if they are doing so. Such checking of vehicles shall continue till the completion of the counting of votes and the declaration of results. As and when such culprits are apprehended, the arms and ammunition and vehicles concerned shall be confiscated.

9. A copy of this order in English/Hindi and in the local official language(s) shall be made available to the local units of all recognised National/State political parties, in each district immediately and to each candidate or the agent authorised by him at the time of his nomination (repeat nominations and not scrutiny of nominations) under acknowledgement.

10. The receipt of this order shall be acknowledged immediately.

By order and in the name of the Election Commission of India,

Sd/-

(K. P. G. KUTTY)
Secretary.

To

- (1) The Chief Secretaries of all States and Union Territories.
- (2) The Chief Electoral Officers of all States and Union Territories

STANDARD DISTRIBUTIONS

Weapons.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4171 OF 2014

1.Vijay Dinkarrao Patil & Anr. ...Petitioners.

vs.

1.The State of Maharashtra & Ors. ...Respondents.

AND

WRIT PETITION NO.4243 OF 2014

Sheetal Ajit Patil. ...Petitioner

Vs.

1.The State of Maharashtra & Ors. ...Respondents.

Mr.V.P.Sawant i/b. Mr.Vinod Yashwantrao Jadhav, for the Petitioners in WP no.4171/14.

Mr.Nikhil Chavan, for the Petitioner in WP 4243 of 2014.

Mr.A.B.Vagyani, Government Pleader for Respondent nos.1 to 7.

CORAM : A.S.OKA & G.S.KULKARNI, JJ.

DATED : 10th OCTOBER, 2014.

P.C. :

In terms of the judgment and order dated 13th August,2014, fresh guidelines have been issued to the State Government on 20th September,2014. The suggestion of the learned Counsel for the petitioners in Writ Petition no.4171 of 2014 is that in case of the election of Local Authorities, a representative of the State Election Commission should be a member of the Screening Committee and in case of elections of the Parliament or Vidhansabha, a representative of Chief Electoral Officer of the State should be

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nominated as a member of the Screening Committee. His submission is that this exercise of screening is required to be done essentially for ensuring free and fair elections. We are of the view that this suggestion is worth considering and the State Government shall consider this suggestion and take appropriate decision.

2. The second suggestion made by the learned Counsel is that the only selected cases should be placed before the Screening Committee. The learned Government Pleader states that normally the cases are placed before the Screening Committee along with the reports of the local police stations recording antecedents of the licence holders. The emphasis of the Election Commission appears to be on the consideration of cases of all the licence holders who are holding weapons. The State Government may consider of modifying the guidelines for providing that while placing the cases of all licence holders before Screening Committee, a latest police report of local police station on antecedents of each licence holder shall be placed before the Screening Committee to facilitate the Screening Committee to take appropriate decision.

3. Another suggestion made by the learned Counsel is that in case of those licence holders where the Screening Committee finds that a case is made out for surrender of weapon, the Screening Committee should issue notice to them and give them an opportunity of being heard. We find that this suggestion may not be practicable in the sense that the time gap between the

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declaration of election programme and the date of voting can be only of three to four weeks and Screening Committee is required to examine large number of cases. However, the State Government may consider of giving discretion to the Screening Committee to issue notices to licence holders provided there is sufficient time available to the Screening Committee to give hearing to the affected licence holders.

5. Our attention is invited to Clause 5 of the guidelines. It is obvious that clause 5 contemplates that separate brief reasons for arriving at the decision and conclusion are required to be recorded by the Screening Committee in case of each licence holder. It is obvious that the decision of the Screening Committee will be by majority.

6. The learned Counsel pointed out that there are cases where the arms were found to have been damaged when the same were returned to the licence holders. In our view, it is necessary to provide in the guidelines that the Authority to whom the arms are surrendered shall make appropriate arrangements for proper storage of surrendered arms and shall ensure that there is no damage caused to the arms which are surrendered.

7. The State Government shall take appropriate decision for amending the guidelines in the light of what we have discussed above.

8. No further directions are required to be issued.

(G.S.KULKARNI, J.)

(A.S.OKA, J.)