

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT: Justice Qazi Faez Isa
Justice Muhammad Ali Mazhar
Justice Musarrat Hilali

Constitution Petition No. 2/2024.

(SubMachine Guns and other Prohibited Bore Weapons)

On Court's Notice: Malik Javed Iqbal Wains,
Additional Attorney General
Mr. Aftab Akbar Durrani, Secretary,
Ministry of Interior
Ms. Ayesha Khalid, Addl. Secretary,
Ministry of Interior
Mr. Ayyaz Shaukat,
Advocate General, Islamabad
Mr. Sibtain Mehmood,
Assistant Advocate General, Sindh
Mr. Amir Javed, Advocate General,
Khyber Pakhtunkhwa
Mr. Shakirullah, S.O. Home Deptt.
Mr. Muhammad Mumtaz Ali,
Assistant Advocate General, Punjab
Mr. Muhammad Ayaz Swati,
Assistant Advocate General, Balochistan

Date of Hearing: 06.03.2024

ORDER

This matter pertains to the surfeit of sub-machine guns ('SMGs') and other prohibited bore weapons in the country. Order dated 17 January 2024 had sought answers to the following questions:

- '(1) Under what legal authority had the Deputy Inspector General of Police, Mardan Region-I, Mardan issued the said document which purports to be a license to carry an SMG, which is a prohibited bore weapon?
- (2) Whether licenses of SMG and other prohibited bore weapons can be issued?
- (3) If the answer to the above is in the affirmative, the applicable law and procedure, and the person(s) who can issue exemptions/licenses?

- (4) The number of licenses, including permits, issued with regard to SMGs and other prohibited bore weapons.
- (5) The approximate number of SMGs and other prohibited bore weapons in private use in the country?
- (6) Whether exempting certain categories of persons or granting them the right to obtain licenses for SMGs and other prohibited bore weapons accords with Article 25 of the Constitution, which mandates that all citizens are equal before the law?
- (7) Whether enabling the easy availability of SMGs and other prohibited bore weapons accords with Article 9, the Fundamental Right to life guaranteed by the Constitution?

2. In response to the first question Mr. Muhammad Saeed, who was then the Deputy Inspector General of Police ('**DIG**') of the Mardan Region has filed CMA No. 1627/2024 stating, '*That the document in question (permit) was not issued*' by him. The application is submitted through the office of the Advocate General Khyber Pakhtunkhwa. It seems that the Province was only interested to save the former DIG but not interested to ascertain who had issued the said document/permit. This prima facie constitutes dereliction of duty. Khyber Pakhtunkhwa is awash with SMGs and many of those in possession of SMGs are issued such pieces of paper, which have no sanction in law.

3. The population is left at the mercy of those publicly brandishing SMGs and other prohibited bore weapons and the police, the home departments of the provinces and the Ministry of Interior appear uninterested in keeping the people safe. In the area of virtually every market, marriage hall, school and even hospital there are SMGs on open display, including pickups with gun-toting men; the police look the other way and do not challenge when they are illegally double-parked. A great sense of insecurity must undoubtedly be felt by the majority of the law abiding citizens, who are also intimidated by such offensive behaviour. This engenders an environment of *might is right*, the antithesis of rule of law, and

citizens are left unsafe and vulnerable. This lawless state of affairs cannot be allowed to continue.

4. The concise statement filed by the Ministry of Interior has not been signed by the Secretary Interior nor any other senior officer, it has been filed by the Advocate-on-Record. It states that prohibited bore licenses are issued pursuant to the Pakistan Arms Rules, 2023 (**'the Rules'**) made pursuant to section 11 of the Pakistan Arms Ordinance, 1965 (**'the Ordinance'**). Rule 4(1)(a) states that prohibited bore licenses are to be issued by '*Minister-in-charge/Secretary of the Interior Division*'. However, section 11-A of the Ordinance stipulates, that:

'Power of the Federal Government: (1) The Federal Government may by notification in the official Gazette, specify the description, caliber or bore of arms and ammunition which are to be prohibited bores for the purpose of this Ordinance.

(2) No licence for the arms and ammunition notified under sub-section (1) shall be issued except by the Federal Government.

(3) The Federal Government shall have the power to issue licences for non-prohibited bore weapons valid for the whole or any part of Pakistan.

(4) The Provincial Government shall have the power to issue licences for non-prohibited weapons only which power shall be exercised by the said Government subject to Section 11.'

5. Pursuant to section 11-A of the Ordinance notification No. S.R.O.492(I)/2013, dated 28 May 2013, was issued categorising prohibited and non-prohibited bore firearms. We queried about the criteria for the issuance of prohibited bore licenses and were told that the same is prescribed in rule 6 of the Rules, which includes virtually everyone. And, sub-rule (3) of rule 6 states that the following persons are exempted from even providing the required documentation:

(a) the President of Pakistan;

(b) the Prime Minister of Pakistan;

- (c) the Chairman, Senate;
- (d) the Speaker, National Assembly;
- (e) the Chief Justice and Judges of Supreme Court and High Court;
- (f) the Governors and Chief Ministers;
- (g) the Federal Ministers;
- (h) members of Senate, National Assembly, Provincial Assembly and legislative Assemblies of Azad Jammu and Kashmir and Gilgit-Baltistan; and
- (i) officers in BPS 19 to 22 or such other categories of officers as notified by Interior Division with the approval of the Minister-in-charge for the Interior.'

6. In reply to the above query No. 4 the figure of 117,479 is mentioned whereas the figure in respect of query No. 5 is 114,964; discrepancy is not explained; the estimate of unlicensed prohibited bore weapons in the country is also not provided. However, we are informed that licenses for prohibited bore weapons are issued '*for the purpose of protection or sports*'. With regard to whether any other document or permit allowing possessing and carrying prohibited bore weapons the Ministry of Interior skirts the query; it does not provide an answer.

7. During the hearing we enquired how the police or the members of any other law enforcement agency would verify whether the license shown is genuine; we were shockingly told that there is no such mechanism in place. Therefore, even if the police wanted to verify whether a person is in legal possession of a non-prohibited bore weapon they would not be able to do so.

8. The provinces have also filed their respective replies and state that they do not issue any license or permit with regard to non-prohibited bore weapons and that the same are issued by the Federal Government.

9. The Government of Pakistan, through the Secretary, Ministry of Interior, is directed to file a concise statement under his signature attending to the abovementioned seven questions and the other questions/concerns mentioned above and whether the Rules accord with the Ordinance, the necessity to permit prohibited bore weapons and whether creating exceptions for the persons categorized in rule 6(3) of the Rules accords with the Ordinance and the Constitution. It should also be stated whether there is any policy of the Federal Government with regard to firearms and their public display, and if there is such a policy in place how is it to be implemented and whether there is any prohibition on public display of weapons. In view of the seriousness of the matter let the Attorney-General for Pakistan personally attend to this matter.

Chief Justice

Judge

Judge

ISLAMABAD
06.03.2024
(Farrukh)