

Vidhan Sabha General Election-2009
Most Immediate/Date Bound

No. 4/14/2009-2Election
Haryana Government
Chief Secretary Office
(Election Branch)

Haryana Civil Secretariat
Dated 5th September, 2009.

To

1. The Financial Commissioner & Principal Secretary to Government Haryana,
Excise & Taxation, Department.
2. All the Divisional Commissioners in Haryana.
3. All the Deputy Commissioners in Haryana.

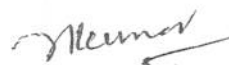
Subject: - Preventive Law & order action to ensure conduct of peaceful, free and fair poll
during the General Election / Bye-elections – Deposit of Arms-reg.

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Sir,

I am directed to refer to the subject noted above and to enclose a copy of letter No.464/INST/2009/EPS/87, dated 1st September, 2009 alongwith its enclosures, received from the Election Commission of India for immediate necessary action. It is requested that the said instructions may be complied with strictly.

Yours faithfully,


(Naresh Kumar)
Superintendent Election

Endst. No. 4/14/2009-2Election

A copy is forwarded to the Chief Electoral Officer, Haryana for information and necessary action.

Dated Chandigarh the 5th September, 2009.


(Naresh Kumar)
Superintendent Election

CC :-

1. PS/CS
2. PS/PSCM
- ✓ 3. Director, N/2

ELECTION

By Camp Bag / By speed
post

ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI-110001.

No. 464/INST/2009/EPS

Dated: 1st September, 2009

To,



1. The Chief Secretaries of All States and Union Territories.
2. The Chief Electoral Officers of All States and Union Territories.

Subject: Preventive Law & Order Action to ensure conduct of peaceful, free and fair poll during the General Elections/Bye-elections - Deposit of Arms - Regarding.

Sir/Madam,

I am directed to invite your attention to the Commission's letters No. 464/INST/2009/EPS dated 24.03.2009 and 01.04.2009 on the above subject, wherein it has been stated that 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 licensed arms holders so that licensed arms, in those cases where they consider it essential are impounded in order to ensure maintenance of law and order so essential for ensuring free and fair elections.

2. The above instructions of the Commission came to be reviewed by the Hon'ble High Court of Bombay in CWP No. 835 of 2009 (Sh. Govind Vs. Vikram Kumar, Distt Magistrate & others) wherein it was alleged that the Commission's instructions had not been strictly followed. Upon such review, the Hon'ble High Court in its judgement/order dated 10.07.2009 has laid down certain guidelines to

be strictly observed by all authorities concerned in respect of deposit of licence arms. A copy of the aforesaid judgement/order is enclosed herewith.

3. Accordingly, in view of the aforesaid judgement/order dated 10.07.2009, the Commission has reviewed its earlier instructions contained in its letters dated 24.03.2009 and 01.04.2009 and in supersession thereof issued the following instructions:-

(1.) The Commission being deeply aware of the increasingly vitiative role of criminality and muscle power at elections has been taking and directing to take a number of measures over and above the purview of normal law and order arrangements, for augmenting the measures taken for peaceful, free and fair poll. These measures include the deployment of Central Police Forces during the process of elections to assist the State law and Order machinery in prevention of pre-poll, poll and post-poll violence and inspire confidence in the impartiality of election machinery among the common electorate, regulation of vehicular traffic, regulation and ban on the sale of liquor in close proximity with the dates of poll and counting, seizure of illicit arms including review of licensed arms and carrying of weapons on person on the poll day etc.

(2.) These extra measures taken by the Commission cannot absolve the normal law and order outfit of the State from taking such preparatory steps as are necessary for generation of an atmosphere conducive to the conduct of peaceful, free and fair poll during the run up period to the elections. It is indispensable to tighten the local law and order outfit and enforce with adequate strictness the

day-to day criminal administration with a view to mitigating the requirement of the aforesaid extra measures.

(3.) The Commission desires the States/UTs to undertake the following prophylactic measures immediately and report regularly the progress and effect of these measures in the context of holding peaceful, free and fair elections:-

Electoral and Criminal offences

3.1 A special drive should be launched to compile a list of such persons as are reported to have indulged in electoral offences like booth capturing, intimidation, impersonation in each police station of each and every constituency during the past at least two elections and a list thus compiled of each constituency made available to the District Election Officer and the Returning Officer concerned of each Parliamentary/Assembly Constituency to be forwarded to the Commission if and when asked for.

3.2 A special drive should be launched to update the lists of history sheeters, declared absconders, fugitive criminals in each police station falling in each and every Parliamentary/Assembly Constituency and record of such updated list be handed over to the District Election Officers and Returning Officers concerned, constituency wise, to be kept ready for dispatch to the Commission if and when asked for.

3.3 A special drive should be launched to effect the service of all pending warrants and challans in each police station of each and every Parliamentary/Assembly Constituency and fortnightly updated constituency-wise information of unserved warrants be made available to the concerned District Election Officer and Returning Officer to be forwarded to the Commission, if and when asked for.

3.4 A special drive should be launched to expedite the investigation and prosecution of all electoral offences registered in previous elections in each police station of each and every Parliamentary Assembly Constituency and a fortnightly report be made available to the District

Election Officer and Returning Officer concerned to be forwarded to the Commission, if and when asked for.

Ban on Sale of Liquor

3.5 A special drive should be launched to unearth illicit liquor making factories and information about seizures be made available to the concerned District Election Officer and Returning Officer concerned, fortnightly to be forwarded to the Commission if and when asked for. All restrictions provided in excise law on the storage of liquor in unlicensed premises shall be vigorously enforced. Section 135C of Representation of the People Act, 1951 provides that no spirituous, fermented or intoxicating liquors or other substances of like nature shall be sold, given or distributed at a hotel, eating house, tavern, shop or any other place, private or public, within a polling area during the period of 48 hours ending with the hour fixed for conclusion of poll for any election in the polling area. Therefore, 'Dry Day' shall be declared and notified under relevant state laws for the stipulated period for the poll areas. The day on which counting of votes is to be taken up, shall also be declared 'Dry Day'.

Ban on carrying of Licensed Arms

3.6 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.

3.7 The States should conduct a 100% scrutiny of licenses of arms and ammunition shops with a view to ensuring that the records of their stocks are kept up-to-date and that their antecedents, recent involvement in irregularities, if any, and political leanings, if any, warrant a close super checking and monitoring of their business during the days of active electioneering.

Ban on issue of License of Arms

3.8 Issue of license for arms should be 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.

Seizure of unlicensed arms and ammunitions

3.9 A special drive should be launched 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.

Deposit of Licensed Arms

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

3.11 As per the above-referred guidelines laid down by the Bombay High Court, for such review and assessment of all licence holders;

- (a) There shall be a Screening Committee in every District and in every Commissionerate area. In the District, the Screening Committee shall consist of the District Magistrate and the

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- (a) There shall be a Screening Committee in every District and in every Commissionerate area. In the District, the Screening Committee shall consist of the District Magistrate and the

Superintendent of Police. In the Commissionerate area, it shall consist of the Commissioner of Police (Admn.) and Joint/Additional Commissioner of Police (Admn.)

- (b) The Screening Committee shall commence the work of screening from the day of announcement of election by the Election Commission and it shall complete the exercise of screening in respect of licences placed before it as far as possible before the date of issue of notification of elections.
- (c) Cases of all licence holders as mentioned in para 3.10 above shall be placed before the Screening Committee.
- (d) On receipt of report from the Screening Committee, the licensing authority shall issue notice before the last date fixed for withdrawal of candidature to the individual licence holder for depositing his arms and inform the licence holder that failure to deposit the arms as directed would result in prosecution under Section 188 of the I.P.C. as stated in clause 3.11 (g).
- (e) The licence holder thereafter shall deposit his arms forthwith and in any case within a period of seven days from the date of receipt of the notice. The Licensing Authority shall give proper receipt to the licence holder.
- (f) The decision taken by the Screening Committee shall be final.
- (g) Any licence holder who fails to deposit arms within the period specified above shall be liable for prosecution under Section 188 of the Indian Penal Code.

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

3.13 The sportsmen who are the members of National Rifle Association, at different levels and have to participate in various sporting events in which they use their rifles, will be exempted from these restrictions. This ban shall, also 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 person, even from 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 such cases too, the seized firearms shall remain impounded till one week after the declaration of results.

Transportation of Arms and Ammunitions

3.14 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.

3.15 An atmosphere in which each and every elector is able to access the polling station without being obstructed or being unduly influenced by anybody is an important prerequisite to a free and fair election. Undue influence at elections is an electoral offence under section 171C of the IPC. Any voluntary interference or attempt at interfering with the free exercise of any electoral right constitutes the crime of undue influence at an election. Section 123 (2) of the Representation of the People Act 1951 defines, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent with the free exercise of any electoral right, as a corrupt practice.

Confidence – building measures.

3.16 The DEO and SP shall initiate all preventive measures to ensure that such intimidation/ obstruction do not really happen on the poll day. They shall

initiate confidence-building measures to bolster the voters' confidence about the arrangements for free and fair poll. They shall undertake tours to such locations and meet the communities and explain the arrangements made for the free and fair poll.

3.17 The police patrolling parties should keep track of the vulnerable locations and keep the control room informed. Wherever necessary police pickets shall be established to ensure free access to all voters to cast their votes without fear.

3.18 The Commanders/Assistant Commanders of the CPF shall be given a list of such vulnerable locations. Wherever CPF arrives in advance for area domination, special attention shall be given for such locations. On the day of poll the Commanders/Assistant Commanders shall make it a point to visit such vulnerable pockets as a confidence building measure. In case they come across any obstruction they shall take note of that and immediately inform any of the electoral officials such as RO/DEO/SP/Observer/Sector Officer and keep a note of the time of their intimation.

3.19 If any complaint is received or information gathered from any sources about obstruction/threat to any voter/voters the same shall be enquired into by the local administration without any delay.

3.20 A special drive should be launched to compile a list of such persons as are reported to have indulged in the offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 during the election period.

Display of Arms

3.21 Display of arms in procession in support of a candidate during campaign period, tantamount to threat and intimidation to voters at election. The Commission directs that no individual or group of persons can be allowed to display arms during a procession or any meeting in support of a candidate, under any circumstances. The meeting/procession for campaigning of a party should be Video-graphed.

The Chief Secretary shall arrange for compilation of daily law & order report for each district in format prescribed in the Proforma (LOR – Form I, annexed) and for its transmission to the CEO. District authorities should not send this report directly to the ECI. The Chief Secretary shall also arrange for compilation of a consolidated report for entire state in another format (LOR – Form II, annexed) by the Home Department. This reports should be sent to the CEO, who in turn would fax the report with his/her comments to ECI.

5. It is clarified that Commission has not banned supply of arms and ammunitions from one State to other. However, such transfers should only be on the basis of valid papers, including 'no objection certificates' from the respective District Magistrates. It must be ensured that the supply reaches the actual consignee and it does not reach the hands of any unauthorised person. All care should be taken to ensure that trucks, lorries etc carrying arms and ammunitions to other states should reach actual consignee and do not find their way into the hand of unauthorised persons. Therefore trucks and other commercial vehicles shall be vigorously checked at interstate borders with a view to preventing smuggling of arms and ammunitions. The state authorities supplying the consignment shall inform the concerned authorities of the states wherein the supplies of arms and ammunitions are sent so as to take advance action to provide adequate security for remitting the consignment to the actual consignee.

Yours faithfully,



(SUMIT MUKHERJEE)
UNDER SECRETARY

Election Commission of India Daily
Law & Order Report for Districts for Electoral Events
Election ID: GENERAL ELECTIONS, 2009

Report for a day should cover a period of 24 hours from 6.00 AM of that day to 6.00 AM of next day)

To			
	1) District Election Officer 2) District Magistrate		
Copy to			
	1) Home Secretary 2) Director General of Police 3) Chief Electoral Officer		

Start Date for these Reports (1) :Date			Month			Year			
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Report for.....day (2) :Date			Month			Year			
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Name of State:

Name of Police District :

Police Range (of IG/DIG):

Part I : Summary

Sl. No.	Item	Reporting Day	Cumulative from Start Date upto and including Reporting day
1.	No. of Unlicensed Arms/Explosive seized		
	a)Arms/Weapons		
	b)Cartridges/Explosives(Quantity/Numbers)		
2.	No. of illicit arms manufacturing centres raided and seizures made		
3.	Licensed Arms deposited/impounded/cancelled		
4.	No. of persons bound down U/S 107/116 CrPC etc.		
5.	Execution of non-bailable warrants		
	a) Executed		
	b) Pending		
6.	No. of incidents of violence related to poll campaign, political rivalry etc.		
	a) No. of incidents		
	b) Total killed		
	c) Total injured		
	d) Damage to property (in Rs. Lakhs)		
7.	Number of Incidents occurred under Atrocities Act, 1989 during election		
8.	Information regarding Vulnerable Hamlets		
	(a) Name of hamlets identified as vulnerable		
	(b)Name of persons identified as		

probable source of trouble

c) Remarks (Type of Threat, e.g. caste domination, communal tension, criminal gangs etc)

Signature
of SP/SSP:

Name of
SP/SSP:

Daily Law & Order Report for Districts for Electoral Events

Election ID : GENERAL ELECTIONS, 2009

(Report for a day should cover a period of 24 hours from 6.00 AM of that day to 6.00 AM of next day)

Report for..... day (2) Date		Month		Year			
Name of State:							
Name of Police District:							
Part II : Details of Incidents of Violence							
(Use a separate sheet for each incident of violence covered in item 6 of part I)							
A. General Information							
1.	Incident No.:					Time :	
2.	Place/Location:						
3.	Brief Narrative Summary of incident of violence :						
4.	Political/Communal Affiliation of the Groups/People involved in the incident, if any :						
5.	Police Action taken, if any :						
6.	Break-up of persons killed and injured in the incident:			Killed	Injured		
	a) Political workers/Activists						
	b) Poll Officials						
	c) Policemen/Security Staff on Duty						
	d) Onlookers						
	e) Others						
	Total						
7.	Details of Damage to Property, if any :						

Signature
of SP/SSP:Name of
SP/SSP:

(Report for a day should cover a period of 24 hours from 6.00 AM of that day to 6.00 AM of next day)

Part IIB : Names & Particulars of Persons killed/injured
(Use a separate sheet for each incident of violence covered in item 6 of Part I)

[illegible]

- (4) Political worker or activist/Poll official/Police man or security staff on duty/Onlooker/Others.

Form LOR - FORM II

Election Commission of India
Daily Law & Order Report for State for Electoral Events
Election ID : GENERAL ELECTIONS, 2009

(Report for a day should cover a period of 24 hours from 6.00 AM of that day to 6.00 AM of next day)

To
The Secretary
Election Commission of India

Start Date for these Reports (1): Date			Month			Year			
Report for..... day (2) : Date			Month			Year			

Name of State:

Sl. No.	Item	Reporting Day	Cumulative from Start Date upto and including Reporting day
1.	No. of Unlicensed Arms/Explosive seized		
	a) Arms/Weapons		
	b) Cartridges/Explosives (Quantity/Numbers)		
2.	No. of illicit arms manufacturing centres raided and seizures made		
3.	Licensed Arms deposited/impounded/cancelled		
4.	No. of persons bound down U/S 107/116 CrPC etc.		
5.	Execution of non-bailable warrants		
	a) Executed		
	b) Pending		
6.	a) No. of incidents of violence related to poll campaign, political rivalry etc.		
	b) Total killed		
	c) Total injured		
	d) Damage to property (in Rs. Lakhs)		
Signature Of CEO:		Name of CEO:	

IMPORTANT: In case a violent incident has occurred for this day, please enclose, for each incident, a copy of the report for the concerned Police District in Form LOR-FORM I.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.835 OF 2009

Govind @ Bhai Ganesh Tilve,)
residing at 187/A, Ganesh Niwas)
at Nirukhe Wadi, Post Kolgaon,)
Taluka Sawantwadi, Dist.)
Sindhudurg, Maharashtra.) ... Petitioner

Versus

1. Vikram Kumar, District)
Magistrate, Sindhudurg,)
Maharashtra.)
2. The State of Maharashtra)
3. Election Commission,)
represented by Union of)
India, having office at)
Aayakar Bhawan, Mumbai.) ... Respondents

Mr. S.R. Chitnis i/b Mrs. V.R. Raje for the petitioner.

Mr. S.R. Borulkar, Public Prosecutor with Ms. U.V. Kejariwal, A.P.P. for the State.

Ms. Heena Shah with Mr. H.V. Mehta for Union of India.

Mr. Pradeep Rajagopal with Mr. Malar Manoharan i/b Ms. Rekha Rajagopal for respondent 3.

**CORAM : SMT. RANJANA DESAI &
R.G. KETKAR, JJ.**

DATE ON WHICH

**DATE ON WHICH THE JUDGMENT IS
PRONOUNCED : 10TH JULY, 2009.**

JUDGMENT:- (Per Smt. Ranjana Desai, J.)

1. Rule. The respondents waive service. By consent of the parties, Rule is made returnable forthwith.
2. The petitioner claims to be a social worker. He has agricultural lands at Kolgaon, Taluka Sawantwadi, District Sindhudurg. The petitioner has an arms licence issued by the District Magistrate, Sindhudurg, who is respondent 1 herein. The said licence is renewed upto 31/12/2011. The said licence has been granted for the protection of the petitioner's agricultural lands.
3. The petitioner received notice dated 17/3/2009 issued by the 1st respondent. The notice stated that the Police Superintendent Sindhudurg had brought to the notice of the 1st respondent that Election Commission has declared election programme for parliamentary elections and therefore it is necessary to pass order under Section

at persons who have arms licence should not be allowed to possess or move around with arms during the elections to ensure that fearless atmosphere is created during elections. The notice further stated that the 1st respondent is also of the confirmed opinion that it is necessary to restrain arms licence holders from possessing and carrying arms during parliamentary elections to prevent attempt to create fear in the minds of the voters by use of arms through personal and political feuds and to ensure that elections take place in peaceful, fearless and just atmosphere so that people exercise their right to vote fearlessly. The notice further stated that in the circumstances order under Section 144 of the Code is issued banning arms licence holders from possessing or moving around with arms between 1/4/2009 to 23/5/2009. The notice directed all arms licence holders in Sindhudurg to surrender their arms at the nearest police station on or before 1/4/09. In this petition the petitioner has challenged the said notice ("impugned notice" for

This petition along with other petitions was heard by us prior to elections. The information sought by us was not furnished by the Election Commission and, therefore, the petitions could not be disposed of prior to elections. We could have disposed of the petitions as infructuous as elections are now over, but we cannot do so because prosecutions have been launched against the petitioners in some of the petitions for not having abided by the direction to surrender arms which is impugned in these petitions. The contentions raised by the petitioners will have to be, therefore, considered. Besides the petitions raise certain important points which need to be dealt with.

5. Before we deal with rival contentions it must be noted that in the petition a solemn statement is made that the petitioner is a social worker and he does not fall in any of the categories laid down by the Election Commission in its letter dated 13/3/96 which is referred to

letter dated 13/3/96 are (a) persons released on bail, (b) persons having history of criminal offences and (c) persons previously involved in rioting at any time but especially during the election period. An impression is, therefore, created that the petitioner has no antecedents. Affidavit-in-reply has been filed by Shri Nandgaonkar, Residence Deputy Collector. Shri Nandgaonkar has stated in the affidavit that CR No. 54/2008 under Sections 143, 147, 342, 353, 323, 427, 504 and 506 of IPC was registered against the petitioner at Sawantwadi Police Station. The petitioner was arrested in the said case and released on bail. The said case is pending trial. It is further stated that CR No. 06/1995 was registered against the petitioner under Section 188 of the IPC. In that case the petitioner was acquitted. It is also stated that Chapter Case being Case No. 55 of 2008 was initiated against the petitioner and others under Section 107 of the Code. We are distressed to note that there is not a whisper about the above cases in the petition. On the contrary the petitioner has made false averments to misguide this

We deprecate this conduct of the petitioner.

The petitioner has assailed the impugned notice on several counts. According to the petitioner having regard to the provisions of the Arms Act 1959 ("Arms Act") the 1st respondent could not have initiated action under Section 144 of the Code. It is the petitioner's case that Section 17 of the Arms Act provides for surrender of licence. Therefore, order issued by the 1st respondent under Section 144 of the Code is without authority of law. Respondent 1 is not conferred with any such powers under the Arms Act and hence resort to Section 144 of the Code is uncalled for. The petitioner has placed reliance on judgment of the Division Bench of this Court (Pandya & Parkar, JJ.) in Ramakant Ovalekar v. R. N. Pradhan, Criminal Writ Petition No. 62 of 1995 and other companion writ petitions decided on 15/7/99 and judgment of this court in Ganesh Thakur v. Sr. Inspector, Belsar Police Station, Thane & Ors. 2000 ALL MR (Crim.) 928.

7. Mr. Chitnis, learned Senior Counsel for the petitioner reiterated all the submissions urged in the petition. Mr. Chitnis submitted in Ramakant Ovalekar's case in similar circumstances this court quashed the order directing surrender of arms relying on judgment of this court in Maharashtra Wine Merchants Association & Ors. Etc. The State of Maharashtra, AIR 1992 Bombay 3. It is urged in the petition and also argued by Mr. Chitnis that in Ramakant Ovalekar's case it is held that under the rules framed under the Arms Act, licence cannot be taken away without there being power under the Arms Act and respondent 1 could not have taken away licence under Section 144 of the Code.

8. We tried hard to find out any such exposition of law in the judgment in Ramakant Ovalekar's case. We could not locate it. In any case reliance placed on this judgment is wholly misplaced. In this case the Division Bench has referred to the judgment of learned Single

ge (Dhanuka, J.) in Maharashtra Wine Merchant's case. It is pertinent to note that Justice Dhanuka has not decided any issue finally. He has merely issued Rule and granted interim relief. All observations made by Justice Dhanuka are of an interim nature. Mr. Chitnis has not been able to tell us what was the final order passed in Maharashtra Wine Merchant's case. Moreover while relying on Maharashtra Wine Merchant's case, in Ramakant Ovalekar's case, the Division Bench has observed that Justice Dhanuka has struck down the Election Commissioner's Order ordering closure of wine shops during election period. With respect, we must observe that this is an incorrect observation because Justice Dhanuka has merely observed that prima facie the said order is ultravires and has stayed it pending disposal of the writ petition. In Ramakant Ovalekar's case the Election Commission was not represented by any lawyer. It is unfortunate that the above facts were not pointed out to the Division Bench by learned counsel for the petitioner or learned APP. In our opinion, since judgment of this

court in Ramakant Oyalekar's case proceeds on a wrong assumption and it is solely based on an interim order, the petitioner cannot draw any support from it.

9. We shall now come to the judgment of this court in Ganesh Thakur's case. In that case the petitioner had challenged the order issued by the State directing him to surrender arms during election period. The said order was based on the Election Commission's letter dated 13/3/96 which is referred to in the impugned notice. This judgment, therefore, has relevance to the present case.

10. It is necessary to reproduce relevant paragraphs of the Election Commissions letter dated 13/3/96.

"In exercise of the powers conferred on the Commissioner 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;

1. 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 attentions 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 so 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.

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- (2) persons having a history of criminal offences; and
- (3) persons previously involved in rioting at any time any 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."

Uplifted to ...

1. This order is issued under Article 324 of the Constitution of India which vests Superintendence, direction and control of elections in the Election Commission. Under clause 6 a direction is issued that prohibitory orders under Section 144 of the Code be issued banning the carrying of licensed arms as soon as an election is announced and should be effective till declaration of results. It is pursuant to this direction that order under Section 144 of the Code is issued by the 1st respondent. Therefore, we unhesitantly reject the submission that because Section 17 provides for surrender of licence, the 1st respondent could not have issued order under Section 144 of the Code or that the 1st respondent has not been entrusted with any powers under the Arms Act. The Election Commission and at its instance the 1st respondent have followed the Constitutional mandate and they cannot be faulted for it. In Ganesh Thakur's case this court has taken a similar view.

12. We shall now come to the most crucial aspect of the case. Clause 3 of the letter dated 13/3/96 directs that immediately after the announcement of the elections, District Magistrate shall make a detailed and individual review and assessment of all license holders so that licensed arms in those cases where they consider it essential are impounded in order to ensure maintenance of law and order during elections (emphasis supplied). Clause 3 gives cases which need to be reviewed. Clause 4 states that after such review all such license holders who are identified, shall be directed to deposit their arms. Implicit in this is the restriction imposed on the District Magistrates not to arbitrarily direct all arms licence holders to deposit their arms with the district authorities. Review is mandatory to identify cases where it is essential to impound arms so that only those persons can be directed to surrender arms. A law abiding citizen to whom a licence to possess arms is issued for his safety may take an order directing him to surrender his arm as an affront to his dignity and status. In Ganesh Thakur's case

admittedly no such review and assessment was made and the petitioner therein was directed to surrender the arms. This court, therefore, set aside the direction and ordered that "as and when necessary during the period of election, if the powers are to be exercised in respect of the fire arms under Section 144 of the Code as per the Election Commission's guidelines, the Screening Committee shall be formed and after categorizing the three classes referred to in the guidelines the action as per the said guidelines shall be taken".

13. Affidavit-in-reply has been filed on behalf of the Election Commission by Shri Channe, Deputy Secretary and Joint Election Officer Maharashtra State. He has clarified in his affidavit that for the Lok Sabha elections of 2009, the directives in force are dated 24/3/2009 and 1/4/2009 which are the same as directives contained in letter dated 13/3/96. Copies of the said directives are annexed to the affidavit. After comparing them, we find that material clauses of all these directives are the same.

Shri Channe has referred to the judgment of this court in Ganesh Thakur and stated that as per the said judgment Screening Committee has to carry out review of all arms licences and it is only thereafter that the District Magistrate may order the deposit of arms. Mr. Channe has stated that that is the intention of the instructions issued by the Election Commission of India.

14. In his affidavit Shri Nandgaokar, Residence Deputy Collector has stated that a Screening Committee was formed under the Chairmanship of Collector, Superintendent of Police, Sindhudurg, Additional Superintendent of Police, Sindhudurge, Additional District Magistrate Sindhudurg and Deputy Election Officer Sindhudurg were members of the said Committee. It is further stated that the Screening Committee held meetings on 23/3/2009 and 26/3/2009 in which applications pertaining to return of arms were scrutinized and some of the arms were returned. There is no categorical statement that the Screening Committee first

reviewed the cases and then called upon arms licence holders to deposit arms. The course adopted by the 1st respondent is, therefore, contrary to the directives issued by the Election Commission and contrary to the judgment of this court in Ganesh Thakur's case. The impugned notice dated 17/3/2009 will have to be therefore, set aside and is accordingly set aside qua the petitioner.

15. A grievance was also made before us that the arms which are surrendered are not kept in safe custody. They are dumped in the police station and in the process they get damaged. This is denied by the respondents. In this connection, we may only remind the respondents that the directives issued by the Election Commission state that the District Administration shall ensure that foolproof arrangements are made for keeping the deposited arms in safe custody. Some of the arms are very expensive. Fear expressed before us is justified. We expect the respondents to ensure that the arms are kept in safe custody so that they are not damaged.

15. Before we close, we must express our extreme dissatisfaction about the manner in which the 1st and 2nd respondents have ignored the directives issued by the Election Commission and the judgment of this court in Ganesh Thakur's case. Several orders issued for the same purpose were set aside during last elections on the ground that Screening Committee was not in place and there was no prior review and assessment of arms licence holders. Once again similar mistakes are committed. There appears to be a lack of coordination and communication between the Election Commission and the State and its officers. The State has not perhaps, understood the significance of the Election Commission's directives. Such approach may lead to unsavoury incidents during elections. The Election Commission must ensure that its directives are adhered to strictly by the State and its officers. The Screening Committees must be in place. The review and assessment of arms licence holders must be done post haste and then notice must be issued to the shortlisted arms licence holders to deposit

ms. In deference to Article 324 of the Constitution the Election Commission must supervise the steps taken by the State and reprimand those who do not abide by its directives.

17. Since the need to direct licence holders who fall in the categories mentioned in the directions of the Election Commission arises at the time of every parliamentary election and the experience has shown that review and assessment of arms ("screening" for convenience) is not done by the Scrutiny Committees in terms of the directives of the Election Commission and as per the judgment of this court in Ganesh Thakur's case, which leads to setting aside of almost all the orders directing deposit of arms which is likely to jeopardise peaceful holding of elections Mr. Rajgopal, learned counsel for the Election Commission of India has requested this court to lay down guidelines. In fact after consulting the Election Commission and the State Authorities, Mr. Rajgopal and Mr. Borulkar, learned, Public Prosecutor have given us

time-frame, which the Election Commission of India desires, should be laid down by us for the Screening Committees to abide by. We have taken on record a copy of the letter addressed by the Election Commission of India to Mr. Rajagopal dated 29/6/2009 and marked it 'X'. We are informed that the Election Commission of India desires that Scrutiny Committees should be in place. Mr. S. R. Chitnis, learned Senior Counsel and all other counsel also requested us to translate the Election Commission of India's suggestions into guidelines.

18. In the circumstances, we lay down the following guidelines:

-
- a) There shall be a Screening Committee in every District and in every Commissionerate area. In the District the Screening Committee shall consist of the District Magistrate and the Superintendent of Police. In the

Commissionerate area it shall consist of the Commissioner of Police and Joint/Additional Commissioner of Police (Admn.)

- b) The Screening Committee shall commence the work of screening from the day of declaration of dates of election by the Election Commission.
- c) Cases of all the licence holders as laid down by the Election Commission in its directive shall be placed before the Screening Committee. The categories are:
 - i) persons released on bail;
 - ii) persons having a history of criminal offences; and

- iii) persons involved in rioting at any time but especially during the election period. The Screening Committee shall bear in mind that the above categories are only illustrative and not exhaustive.
- d) The Screening Committee shall complete the exercise of screening in respect of licences placed before it as far as possible before the 1st date of filing of nominations.
- e) On receipt of report from the Screening Committee, the licensing authority shall issue notice before the last date fixed for withdrawal of candidature to the individual licence holder for depositing his arms and inform the licence holder that failure to deposit the arms as directed

would result in prosecution under Section 188 of the I.P.C. as stated in clause (h).

- f) The licence holder thereafter shall deposit his arms forthwith and in any case within a period of seven days from the date of receipt of the notice. The Licensing Authority shall give proper receipt to the licence holder.
- g) The decision taken by the Screening Committee shall be final.
- h) Any licence holder who fails to deposit arms within the period specified above shall be liable for prosecution under section 188 of Indian Penal Code.
- i) All the arms so deposited with the administration be returned to the licence holder within a period of one week after

declaration of election results.

- j) The above time-frame should be adhered to as far as possible.

19. The guidelines state that the time-frame should be adhered to as far as possible, obviously to ensure that the object behind issuing guidelines is not defeated and the entire exercise is not questioned because of minor deviation in the time-frame. But that does not absolve the officers who upset the time-frame. We make it clear that if the above time-frame is not abided by, the competent authority shall take action in accordance with law against the erring officers.

20. The petition is disposed of.

[SMT. RANJANA DESAI, J.]

[R.G. KETKAR, J.]

भारत सरकार
GOVERNMENT OF INDIA
विधि और न्याय मंत्रालय
MINISTRY OF LAW & JUSTICE
DEPARTMENT OF LEGAL AFFAIRS
(शाखा सचिवालय)
(BRANCH SECRETARIAT)

Advice : 022-2205 7544
Litigation : 022-2201 4133
Litigation : 022-2203 3161
(Appellete Side)
Fax : 022-2208 8345
: 022-2200 4132

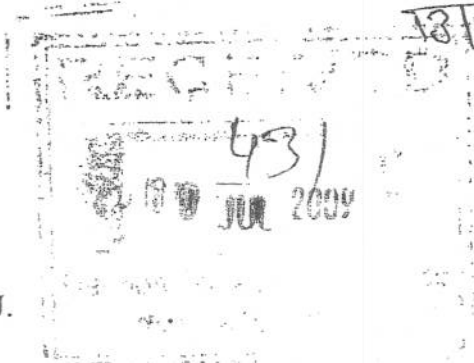
दुसरी मंजिल, आयकर भवन,
न्यू मरीन लाईन्स, मुंबई - ४०० ०२०.

2nd Floor, Aayakar Bhavan,
New Marine Lines, Mumbai - 400 020.

06th July, 2009.

04-16-1174/Rce

18/7/09



To,

The Election Commissioner,
Election Commission of India,
Nirvachan Sadan,
Ashoka Road, New Delhi 110 001.

Sub: Bombay High Court/A.S.Cr.J.
Cr. W.P.No.831/2009
Vikas Ranchhod shukla Vs.
State of Maharashtra & Ors.

Sir,

Please find enclosed herewith a copy of order dated 21.04.2009 in original received from the O/o. Bombay high Court vide letter No.A.D.Cri. No.10615 of 2009 dated 21.04.2009, the content of which is self-explanatory.

This is for your kind information and necessary action.

Encl.: a.a.

Yours faithfully,

(Dr.T.C. KAUSHIK)
Senior Government Advocate

IN THE HIGH COURT OF JUDICATURE, APPELLATE SIDE AT BOMBAY

(83)

WRIT PETITION
CRIMINAL APPEAL No. 831 of 2009
APPLICATIONS FOR REVISION

A.D.Cr. No. 10615 of 2009

The 21st day of April, 2009

- 1) The District Magistrate, Thane Head Quarter, Jawhar., Thane.
2) The Collector of Thane, Thane.
3) The Additional Collector, Jawhar, Tal-Jawhar, Dist-Thane.
To 4) The Sr. Inspector of Police, Boisar Police station, Dist-Thane.
5) The Sessions Judge, Principal Secretary, Home Dept., Mantralaya, Mumbai.
6) The Election Officer, through Union of India, Aayakar Bhavan, Mumbai.

Upon reading the petition of Appeal of the convict named in the margin
for Revision of the Petitioner
S.H. Joshi
presented through Advocate Mr. _____ the WRIT issued by this
submitted through the superintendent of Prison.

Vikas Ranchhod Shukla...Petitioner.

v/s.

- 1) The State of Maharashtra.
2) The Sr. Inspector of Police, Boisar Police Station, Talu-palghar Dist-Thane. 3) The Addl. Collector, Jawhar, Tal-Jawhar, Dist-Thane. 4) The Collector of Thane, Thane.
5) Ministry of Home Affairs through the Principal Secretary, Mantralaya, Mumbai.
6) Election Commissioner, through Union of India, Ayakar Bhavan, Mumbai...Respondents.

The Petitioner prays that:-

a) this Hon'ble Court be pleased to issue a writ of certiorary and/or any other order, direction or writ in the nature of certiorary thereby calling records & proceedings from Respondent No.3 & 4....

(PLEASE SEE FURTHER PRAYER ON SEPARATE PAGE.)

06 JUL 2009
11123

Court on the _____ day
of _____ 2009
No _____ and the Return
No. _____ thereunto made by
Sessions Judge _____ of

Chief Metropolitan Magistrate

on the _____ day of _____ 2009
in the case marginally noted and upon reading
the RECORD and PROCEEDINGS in the case,
and hearing Mr. S.H. Joshi, for
the Petitioner.
Appellant

of the _____ accused and

Applicant

Ms.P.H.Kantharia, APP, for State.

Public Prosecutor for the State, the High Court

(PLEASE SEE HIGH COURT ORDER ON SEPARATE PAGE) following Order :-

By The Court

For Additional Registrar and Sealer.

Seal

The day of 200

Through the Chier Metropolitan Magistrate of
 Sessions Judge of
 Despd. . 200

Note 1.—The within mentioned order (and the judgement accompanying it, if any) should be communicated to the court which originally tried the case after proper execution of the order (*vide* Circular No. 1667 of 15th July 1910).

Note 2.—When the Writ is addressed to First Class Magistrate who disposed of the accused's appeal, he should communicate the order noted within (and the judgement accompany it, if any) after proper execution thereof to the Magistrate who originally tried the case (*vide* Circular No. 1667 of 15th July 1910).

Note 3.—Returns should be made to all Writs issuing from the High Court, if possible within a fortnight, in the form of an endorsement on the Writ certifying its execution, or the reasons which may have prevented its execution (*vide* Circular No. 128 of the High Court Criminal Manual, Chapter XVII, Rules 11 to 13 of Criminal Manual, 1960).

and after perusal of the same be pleased to quash and set aside the impugned order dated 9-3-2009 as is passed by the Respondent No.3, being Exhibit "C" to this writ petition;

b) It be held and declare that the order dated 9-3-2009 as is passed by the Respondent No.3, being Exhibit "C" to this writ petition is bad in law inasmuch as the same is in contravention of Article 21 of the Constitution of India and also not in consonance with order dated 18-3-2009 passed by Respondent No.4 - Collector of District Thane and also in contravention of reported Judgment of this Hon'ble Court reported in 2000 All M.R. (Cri) 928;

c) This Hon'ble Court may be pleased to issue a writ of mandamus and/or any other order, direction or writ in the nature of mandamus thereby directing the Respondent No.2 i.e. Senior Inspector of Police, Boisar Police Station, Taluka Palghar, District Thane to hand over possession of the fire arm viz. .25 bore imported pistol bearing Sr.No. 244617 to the petitioner, which is deposited by the Petitioner with Respondent No.2;

✓ d) Pending hearing and final disposal of the present Writ Petition, the Respondent No.2 i.e. Senior Inspector of Police, Boisar Police Station, Taluka Palghar, District Thane be directed to hand over possession of the fire arm viz, .25 bore imported pistol bearing Sr.No. 244617 to the Petitioner which is deposited by the Petitioner with Respondent No.2;

e) Interim / ad-interim relief in terms of prayer clause (d) above be granted;

f) Costs of this petition be provided for;

g) Any such other just and equitable orders be passed;

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.831 OF 2009

Vikas Ranchhod Shukla ... Petitioner

Vs.

The State of Maharashtra & Ors. ... Respondents

Mr. S.H. Joshi for the petitioner.

Ms. P.H. Kantharia, A.P.P. for the State.

CORAM : SMT. RANJANA DESAI &
R.G. KETKAR, JJ.

DATED : 21ST APRIL, 2009.

P.C.:-

1. The petitioner has challenged letter dated 9/3/2009 sent by the Collector, Thane, which is annexed as Exhibit-C to the petition. Admittedly, the petitioner is a lawyer. The petitioner has no antecedents. The petitioner is practicing in the District & Sessions Court at Thane for the last 15 years. The petitioner's father is also a lawyer and is practicing in the District & Sessions Court at Thane for the last 50 years. It appears, therefore, that the petitioner comes from a reputed family.

-43-

2. It is the case of the petitioner that he has an arms licence from the year 1999 which is renewed upto 2010. The petitioner possesses a .25 bore imported pistol, which is a licenced arm. According to the petitioner pursuant to letter dated 9/3/2009 written by the Additional Collector, Thane to the Police Inspector, Boisar Police Station informing him that since the Election Commission of India has declared programme of Parliamentary Elections, arms licence holders in his jurisdiction should be directed to surrender arms at the police station, respondent 2 i.e. Senior Inspector of Police, Boisar Police Station directed the petitioner on telephone to deposit his firearm at the police station. On 21/3/2009, the petitioner deposited his firearm. On the same day, the petitioner addressed representation to respondents 3 and 4 stating therein that he is a law abiding citizen; that no offence is registered against him till date and calling upon respondent 4 to let him know under which provisions of law, Notification dated 18/3/2009 is issued. The petitioner received reply dated 24/3/2009 informing him that in order that the Parliamentary Elections should take place without hindrance, peace and public

order is to be maintained in the area and, therefore, in view of Items 1, 2 and 3 cited in the reference and in the light of letter at Item 3 cited in the reference of reply dated 24/3/2009, the petitioner has been directed to deposit the firearm. Items 1 and 2 refer to Section 144 of the Code and Section 37 of the Indian Penal Code respectively. Item 3 refers to letter of the Election Commissioner of India dated 8/1/2007.

3. We have perused letter dated 8/1/2007 issued by the Election Commission of India. Clauses 4.10 and 4.11 of the said letter are important and read as under:

"4.10. 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 so 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) Arms licenses for persons released on bail.*
- (b) Arms licenses of persons having a history of criminal offences, and*

- (c) Arms licenses of persons previously involved in rioting at any time but especially during the election period. (The above categories are only illustrative and not exhaustive).

4.11. 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."

4. The above clauses, therefore, make it clear that there has to be a detailed and individual review and assessment of all licence holders so that where it is necessary, licenced-arms could be impounded in order to ensure maintenance of law and order for ensuring free and fair elections. Admittedly, there is no review of the petitioner's case. In fact, no Screening Committee was in place at the relevant time. Upon query made by the court, on instructions from Mr. R.N. Parikh, PSI attached to Boisar Police Station, learned A.P.P. has informed us that no Screening Committee was constituted by the respondents prior to calling upon the petitioner to deposit the firearm. A copy of letter dated 24/3/2009 addressed by the Collector, Thane, to the A.P.P., High Court, Bombay, is taken

on record and marked "X". The letter states that the Screening Committee has now been established. Considering the fact that the petitioner is a lawyer; that the petitioner has no antecedents; that in response to the telephone call, he had personally gone and deposited the firearm and that the Screening Committee was not even in existence when the telephone call was made and the petitioner's case was not reviewed and assessed prior to asking him to deposit the firearm, in our opinion, the direction issued by the respondents to the petitioner asking him to deposit the firearm needs to be quashed and set aside and is accordingly quashed and set aside. We direct the respondents to return the firearm to the petitioner. We, however, make it clear that this shall not preclude the respondents from taking any action in accordance with law, if they so desire in connection with the firearm possessed by the petitioner.

6. The petition is disposed of in the aforesaid terms.

By The Court

[Signature]
220909

For Additional Registrar and Sealer.

The

day of 200

Through the

Chief Metropolitan Magistrate of
Sessions Judge of

Despd. 4/5/ 2009.

[Signature]
4/5/09

क्र.गृह/का-१/टे-३/समिती/८७/२००९
जिल्हादंडाधिकारी कार्यालय ठाणे
दि. २०/०८/२००९

आदेश :

ज्याअर्थी मा. भारत निवडणूक आयोग, नवी दिल्ली यांनी लोकसभा सार्वत्रिक निवडणूका - २००९ च्या कार्यक्रमाची दि.०२/०३/२००९ रोजी घोषणा केली असून, निवडणुकीच्या घोषणेच्या तारखेपासून दि.२८/०५/२००९ पर्यंत आचार संहिता अंमलात रहाणार आहे.

ठाणे ग्रामीण जिल्ह्यामध्ये सार्वजनिक शांतता व सुरक्षितता रहावी या दृष्टीने लोकसभा निवडणूक खुल्या व शांततामय वातावरणात पार पाडण्याच्या दृष्टीने ठाणे ग्रामीण जिल्ह्यातील सर्व शस्त्र परवाना धारकांची शस्त्रे संबंधित पोलीस स्टेशनला जमा करून घेणेच्या निवडणूक आयोगाच्या सुचना आहेत. त्यानुसार परवानाधारकांची शस्त्रे निवडणूक काळात जमा करून घेण्याची अंमलबजावणी सुरु झाली आहे.

ज्या परवाना धारकांना त्यांचे सुरक्षेसाठी व इतर तातडीचे कारणासाठी आपले शस्त्र आपल्याजवळ बाळगणे गरजेचे आहे अशा शस्त्र परवाना धारकांनी अर्ज केला असता सदरचे अर्ज पोलीस अधिक्षक, ठाणे ग्रामीण यांचे शिफारशीसह पुनर्विलोकन करणेकरीता लोकसभा सार्वत्रिक निवडणूका २००९ साठी खालीलप्रमाणे समिती स्थापन करणेत येत आहे.

- | | | |
|----|-----------------------------|------------|
| १) | जिल्हाधिकारी ठाणे | अध्यक्ष |
| २) | पोलीस अधिक्षक, ठाणे ग्रामीण | सदस्य |
| ३) | निवासी उपजिल्हाधिकारी | सदस्य |
| ४) | पोलीस उपअधिक्षक, गृह | सदस्य |
| ५) | नायब तहसिलदार गृह | सदस्य सचिव |

वरील नमूद समिती ही पोलीस अधिक्षक, ठाणे ग्रामीण यांचे शिफारशीसह आलेल्या अर्जाबाबत पुनर्विलोकन करून योग्य तो निर्णय घेईल.



जिल्हादंडाधिकारी ठाणे

TRUE COPY
Assistant Registrar
High Court Appellate Side
Bombay