

(1995) 02 PAT CK 0017

In the Patna High Court

Case No : C.W.J.C. Nos. 82, 128, 776, 897 and 964 of 1995

Md. Khurshid Alam

APPELLANT

Vs

Chief Election Commissioner and Others

RESPONDENT

Date of Decision : 24-02-1995

Acts Referred:

Citation : (1995) 02 PAT CK 0017

Final Decision : Allowed

Judgement

Banwari Lal Yadav, J.—In these five analogous writ petitions the point for our determination is as to whether the impugned orders passed by respective District Magistrates Zila/Nirvachan Padadhipkari in this State, even though purporting to have been passed in compliance with the Orders and Directions of the Chief Election Commissioner (Respondent No. 1 in the first writ petition), but in fact in utter disregard of the same for impounding and deposit of the fire arms, can be sustained? These analogous writ petitions would be referred as the first, second, third (and so on) etc. and would be disposed of by a common judgment. The relief sought for in these writ petitions is for quashing the impugned orders by issuing a writ of certiorari.

2. The factual matrix of the first writ petition is that Mr. Md. Khurshid Alam, an Advocate of this Court, has filed this writ petition under Article 226 of the Constitution as Public Interest Litigation (for short PIL) seeking the relief to issue a writ of certiorari, quashing the general orders (Annexure-1) published in the daily newspapers, issued by the District Magistrate/Zila Nirvachan Padadhipkari Vaishali at Hajipur Banka etc. by which all the fire-arms of the licence holders have been directed to be deposited with the nearest Police Station or the dealers of the firearms by the 2nd of February, 1995 in view of the General Election for Assembly in March, 1995, and also to issue a writ of Mandamus commanding the respondents not to take coercive measures and to return the fire-arms.

3. In the second writ petition the prayer is that as the fire-arms of the petitioner has been deposited in view of the orders of the District Magistrate/Zila Nirvachan

Padadhikari, hence adequate security arrangement may be made to his person and property. In the remaining three writ petitions on similar facts, similar reliefs have been sought for issuance of a writ of certiorari and mandamus.

4. The Chief Election Commissioner, in exercise of the powers under Article 324 of the Constitution of India, issued orders/directions, including the order dated 2.9.1994 Annexure R III and the order dated 21.9.1994 (Annexure RII to the counter-affidavit filed on behalf of Chief Election Commissioner in the first writ petition). These orders hereinafter would be referred as the first and second order respectively. Clause (2) of the second order provided that order was issued by the Chief Election Commissioner in exercise of powers conferred under Article 324 of the Constitution of India. Clause 3.1 provides that the issue of the new arms licence will be totally prohibited during the election period commencing with the date of the announcement of election till the completion of the election as notified. Clause 3.2 provides that the police should be directed to be vigilant and asked to start mopping up operations of the arms infested with the known Goondas and other bad elements right from the date of announcement of elections. Clause 3.3 of the second order is substantially a proviso prescribing conditions precedents before directing for impounding or deposit of fire-arms. It provides in so many words that before directing for deposit of fire arms, the District Administration shall identify the "sensitive areas".

How the "sensitive area," was to be identified, has been indicated in Clause 4 of the order of the Election Commission of India, dated 2.9.1994 (Annexure R-3 to the Counter affidavit filed on behalf of the Chief Election Commissioner in the first writ petition), and Clause 5(9) of the same provides that the State Administration should immediately identify the sensitive areas, in pursuance of the guidelines under paragraph 4, on the basis of past history of the constituency, or polling area, past incidents of booth capturing, riot, large scale impersonation and police records about abnormal law and order situation and specific complaints made by the candidates etc.

Thereafter a Screening Committee was to be constituted under the Chairmanship of the Collector and the Superintendent of Police Incharge of the District must be a member of the said Committee to make an exemption for deposit of the firearms in genuine cases. Exemption was to be granted only on a very selective and restricted basis. Impounding of the fire-arms effective till a week after the declaration of the result Clause 3.4 of the said order indicates that prohibitory orders u/s 144 of the Criminal Procedure Code shall be issued banning the carrying of licensed arms as soon as an election is announced. If in the opinion of the Director General of Police, any person has a serious threat to his person/property he should be provided with necessary security by the police.

Thereafter the police was to be vigilant and was asked to start mopping up operations of the areas, infested with known Goondas. The police must unearth and seize the unlicensed fire arms and ammunitions. Thereafter comes the stage for impounding and depositing of the fire-arms of the persons having licence, in

case it was necessary to do so.

5. We have advantage of hearing of all the learned Counsel for the parties in the analogous writ petitions and the learned Additional Advocate General No. 2, Mr. Shashi Anugrah Narain.

6. The learned Counsel for the petitioners urged that all the impugned orders have been passed by the respective District Magistrate of the State, directing deposit of the fire arms of all the fire-arms licence holders without complying with the directions of the Chief Election Commissioner hedged by a number of condition precedents, which were mandatory in nature and they were to be complied with positively by the District Administration including the District Magistrate and the Superintendent of Police. The first such condition was indicated in Clause 3.3 of the said order of the Election Commission dated 21.9.1994 to the effect that the District Administration shall identify the sensitive areas. How the sensitive areas were to be identified has been indicated in Clause 4 of the order dated 2.9.1994 (Annexure Rs. 3 to the Counter Affidavit in the first writ petition).

Thereafter it was to be considered whether in genuine case exemption can be granted and in case there was some genuine case in which there no likelihood of misuse of firearms, in that event the fire-arms need not be deposited. The next condition was that in case a person holding fire-arm which was sought to be deposited, requires protection to his life and property, that has to be provided. In Clause 3.6 it has indicated that the District Administration including the District Magistrate and the Superintendent of Police were personally responsible for ensuring the deposit of the fire-arms and satisfaction as to whether genuine case has been made out for exemption from deposit of the fire-arms.

The second was that a Screening Committee was to be constituted which would make a list of fire-arms-licence holders in respect of whom exemption may be granted from deposit of their fire-arms, the list of such genuine cases was to be prepared. Exemption must be given only in a very selective and restrictive basis and the third condition was that the persons having threat to their lives, personal liberty and property, they must be provided with security by the police, as indicated above. But none of these conditions precedents have been satisfied. All the District Magistrates of the State have issued directions and got them published in different news-papers that all the fire-arms licence holders must deposit their fire-arms with nearest Police Station or the dealers of the fire-arms. All of a sudden these directions, in utter violation of the order of the Chief Election Commissioner could not have been issued, inasmuch as, every citizen of the State including the fire arm licence holders have got fundamental right for safety of their life and property under Article 21 of the Constitution of India, which right cannot be curtailed. The orders passed and directions issued by the different District Magistrates of the State, directing deposit of all the fire-arms, in utter violation of the order of the Chief Election Commissioner are liable to be quashed.

7. The learned Additional Advocate General No. 2, appearing for the State was fair enough to concede that different directions of the Chief Election Commissioner have not been complied with and the fire-arm licence holders have been directed to deposit their fire-arms without following the conditions precedents.

8. The learned Counsel for the Chief Election Commissioner was directed to file a counter-affidavit with specific direction to indicate as to whether the District Magistrates have first complied with the direction of the Chief Election Commissioner and only thereafter the impugned orders have been issued, directing deposit of all three fire-arms. But it is very surprising and tortiorari distressing state of affairs that our directions were not complied with. No doubt, a counter-affidavit has been filed by Shri S.K. Mendiratta, Secretary to the Election Commissioner of India, but he has just posed certain question as follows:-

(i) Whether the police officers of the State particularly DGP and S.P. are to under control of Commission or to comply with the directions of the Commission in capacity of State Government officers responsible for maintaining law and order in State during the election.

(ii) Whether of the District Administration vide paras 3.3 and 3.4 of the Commission's order dated 21.9.1994 are to be performed simultaneously and independently or the performance of the latter is dependant upon the performance of the former?

(hi) What are the consideration for declaring any area sensitive and whether directions for surrender of arms licences are to apply to the areas declared sensitive or whole State uniformly?

(iv) Whether directions for deposit of the arms and licences are to be issued under some substantive law or only under Commission's direction under Article 324 of the Constitution and whether the latter can override licences' rights under the former?

9. We did not pose aforesaid questions. Rather our directions were as to whether the District Magistrate have issued orders for impounding and deposit of the fire-arms in the State without following the condition precedents indicated in the order of the Chief Election Commissioner, but nothing been said in the said counter-affidavit, rather different clauses of the said order issued by the Chief Election Commissioner have only been explained. Paragraph 4 of the counter-affidavit indicates that the Chief Election Commissioner's order dated 21.9.1994 (Annexure R-II) has been issued in exercise of his plenary powers of superintendence direction and control. Thereafter the meaning of Clauses 3.3. and 3.4 of the said order has been explained. Similarly in paragraph 5 of the said counter-affidavit me third question posed by the deponent of the said counter-affidavit has been explained with reference to Clause 3.3 of the order. Similarly in paragraph 6 of the said counter-affidavit question No. 4 posed by him, was

sought to be answered by the deponent. It is not very happy state of affairs that such counter-affidavits have been filed which are of no assistance and to the Court.

The learned Counsel for the Chief Election Commissioner tried to justify the impugned orders passed by the District Magistrates of different districts.

10. Having heard the learned Counsel for the parties, we are satisfied that three conditions were to be satisfied first, as indicated in different Clauses of the order of the Chief Election Commissioner dated 21.9.1994 (Annexure R-2 to the counter-affidavit of respondent No. 1) and the orders dated 7.9.1994 and 2.9.1994 (Annexure-6 to the supplementary affidavit filed in the second writ petition).

11. The directions issued by the Election Commission in the aforesaid orders were that first the District Administration has to identify the sensitive areas. How the sensitive areas were to be identified, has been indicated in Clause 4 of the order dated 2.9.1994, as indicated above. After the sensitive areas were identified, thereafter Screening Committee consisting of the District Magistrate and the Superintendent of Police of the respective district was to be constituted which would consider whether exemption can be granted in genuine cases to the fire arms-licence-holders, so that in particular cases to be decided by the Screening Committee the fire-arms licences were not to be deposited. The next stage was to direct in appropriate cases to deposit the fire-arms. But in case a licence holder has threats to his life, personal liberty and property, then adequate police security was to be provided. In other words without providing adequate security to those fire-arm-licence-holders, who were given threats to their lives, property and personal liberty, the fire-arms should not be deposited. The next condition was that in those cases after complying with the directions, the fire-arms of the licence holders in the sensitive areas could be directed to be deposited, but the said directions of the Chief Election Commissioner have not been complied with by those officers, i.e. the District Magistrates and the S.S.P.

12. We are entertaining grave doubts that if the direction of the Chief Election Commissioner purporting to have been issued under Article 324 of the Constitution, can be disregarded and thrown to the winds, rather disobeyed by the District Magistrates, can it be assumed that the District Magistrates of the State would be complying with the other directions and orders issued by the Chief Election Commissioner. It is for the latter to ascertain the same and to take appropriate action in the appropriate cases. These impugned orders issued by the District Magistrates appear to have been arbitrarily issued without following the guidelines the conditions precedents indicated by the Chief Election Commissioner in different orders as stated. Further these impugned orders do not contain any reasons.

13. There is a Maxim "CESSANTE RATIONE LEGIS CESSAT IPSA LEX," which connotes that the reason is the soul of law. Where reasons are absent in an

order, it is of no consequence and effect. Reason in an order of an authority or the Tribunal was must, particularly when it was with a view to curtail the fundamental right of a citizen of this State enshrined under Article 21 of the Constitution. See *Travancore Rayon Ltd. Vs. Union of India (UOI)*, . Giving reasons in an order effecting the rights and liberty of the citizens is an essential element of the Administration of Justice. The principle of natural justice has assumed a wider horizon these days. The right to reason is, therefore, an indispensable part of sound system of judicial review. See *State of West Bengal Vs. Atul Krishna Shaw and Another*, .

The problems posed in these identical writ petitions can be angulated from a different perspective with reference to another maxim "ACTUS LEGITIME NON RECIPIUNT MODUM" which connotes that when doing of any thing in a particular mode is sanctioned by law then that thing can be done only in that way and in nature either way.

14. In *Taylor v. Taylor* (1876) 1 Ch. D. 426. Jessal M.R. observed at page 431 as follows:

When a statutory power is conferred for the first time upon an authority or the Court and the mode of exercising it is pointed out, it means that no other mode is to be adopted.

In *Nazir Ahmad v. King Emperor* (1936) 36 I A 372 their Lordships of the Privy Council, Lord Roche held at page 381-82 as follows:

Rule which applies in a different and not recognised rule viz. that where power is given to do certain things in a certain way, the thing must be done in that way or in that stage. Other methods of performance are necessarily forbidden.

In the *State of Uttar Pradesh Vs. Singhara Singh and Others*, it was held by their Lordships of the Apex Court as follows:

The rule adopted in (1876) 1 Ch. D. 426 is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down a method in which that power has to be exercised it necessarily prohibits doing of the act in any manner than that which has been prescribed. The principle behind the rule is that if this were not so the statutory provision might as well not have indicated.

It would not be inapt to notice the American view on the object as follows:

The authority or court must be chary of reading of other remedies into the statute which expressly provides a particular remedy or remedies, which statute limits a thing to be done in a particular mode, it includes negative of any other mode.

(See *Traus A.T. Mortgage Advisors v. Harry Lawis* 444 U.S.S.C 11, 62 L E. 146.).

15. In brief we may state our reasons that as the particular mode for exercise of

the power of the District Magistrate for passing an order or directing impounding of fire-arms of the respective fire-arm licence holders was indicated in different orders, including the orders dated 2.9.1974 and 21.9.1994, passed by the Chief Election Commissioner, but the direction for impounding of the fire-arms or the direction to deposit the same at the nearest Police Station or at the dealers of the fire-arms was hedged with different condition precedents indicated above, and only after complying with those condition precedents, the orders for deposit of the fire-arms should have been issued. But without complying with those condition precedents or in other words without following the modes provided for exercise of the powers or for issuing the orders, the impugned orders could have been issued in the mode suggested by the Chief Election Commissioner, but we are constrained to say that none of the condition precedents has been followed by the District Magistrates, as it is obvious from the discussions made herein before. The orders of the District Magistrate do not contain any reason as to why these impugned orders have been issued curtailing the fundamental rights of the citizens of the State, particularly of different fire-arms licence holders, in utter violation of the fundamental rights enshrined under Article 21 of the Constitution, The object of Article 21 is to prevent encroachment upon the personal liberty by the Executive save in accordance with law and in conformity with the provisions thereof. To put it differently, before a person is deprived of his life or personal liberty the procedure established by law must be strictly followed and must not be departed from to the disadvantage of a person affected.

16. The matter can be angulated from another perspective. By the Constitution (42nd Amendment) Act, 1976, Part IV-A fundamental duties have added to the Constitution of India. Article 51A enumerates the fundamental duties of every citizen of this country. The important fundamental duty under Article 51A(i) is to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement. Every District Magistrate, being a citizen of this country, has fundamental duty under Article 51A(j) of the Constitution and he must strive towards excellence. We want to emphasise in the expression "excellent". The word "excellent" in common parlance connotes surpassing merit, virtues, and eminence, to be superior or pre-eminent. But in the instant case, instead of performing the duties in a more superior way or in a way surpassing merit, the duties have been performed in a most careless and unsatisfactory way, having no care for the directions issued and the orders passed by the Chief Election Commissioner. It was legal duty, rather a fundamental duty of all the District Magistrates to see that the direction issued and orders passed by the Chief Election Commissioner were not thrown to me winds, but these directions and orders must have been complied with, and only after complying with those directions and orders, necessary orders impounding and depositing the fire-arms must have been passed.

It goes without saying that the District Magistrates and the Superintendent of Police have responsible posts in the Administration of the State. If they do not

care for the orders issued by the Chief Election Commissioner, it is really a most unsatisfactory state of affairs.

17. In the present case we are satisfied that neither the procedure provided under the Arms Act directing forfeiture or impounding or deposit of the fire-arms of the respective firearms licence holders have been followed by the different District Magistrates in the State before passing the impugned orders directing deposit of fire-arms either at the nearest Police Station or at the nearest shop of the fire-arms dealer, nor different directions issued by the Chief Election Commissioner have been complied with. Consequently the different District Magistrates of this State have no authority or power under the law to pass the different such impugned orders directing impounding or deposit of the fire-arms of the different fire-arms-licence-holders. In our considered opinion, therefore, the impugned orders annexed with these writ petitions cannot be sustained in law and are liable to be quashed.

18. The upshot of the above discussions is that all the present five writ petitions succeed and they are accordingly, allowed, and the impugned orders passed by the District Magistrates, annexed with these writ petitions, are hereby quashed by issuing a writ of certiorari. The inevitable corollary is that all the District Magistrates of this State are directed to pass a fresh order immediately for return of the fire-arms to the different firearms-licence-holders within 24 hours of the receipt of the copy of this order judgment and within next 24 hours their fire-arms shall be handed over to those persons from whose possession the same were directed to be impounded or deposited (as indicated in the order-sheet of all these five writ petitions vide order of this date. It is, however, open to the District Magistrate to pass an appropriate order only after strictly complying with the directions issued by the Chief Election Commissioner, issued from time to time for such purpose. There shall, however, be no order as to costs.

Shashank Kumar Singh, J.

19. I agree.