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**(2004) 04 AHC CK 0222**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No"s. 12733, 13069, 13407, 13470, 13664, 13706, 13728, 13731, 13954, 13955, 14006, 14222, 14224, 14230, 14284, 14412, 14416, 14476, 14606, 14724, 14787, 14822, 14824, 14842, 14991, 15136, 15143 and 15147 of 2004

Pandhari Yadav

APPELLANT

Vs

State of U.P. and Station Officer

RESPONDENT

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**Date of Decision :** 15-04-2004

**Acts Referred:**

Arms Act, 1959 — Section 21, 21(1), 24B(4), 4  
Constitution of India, 1950 — Article 324, 324(1), 327

**Citation :** (2004) 04 AHC CK 0222

**Hon'ble Judges :** S.N. Srivastava, J

**Bench :** Single Bench

**Advocate :** Ali Hasan, for the Appellant;

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**Judgement**

S.N. Srivastava, J.—With ensuing general parliamentary election 2004 in the offing pursuant to notification issued by the election commission, this Court has been inundated with petitions by licensed fire-arm holders who seemingly panic-stricken by general orders seeking deposit of firearms have rushed to this Court for relief. "The basis" of all these petitions either appears to be news item clippings issued by the district administration or in some cases, arms-twisting being indulged in by the police, A further search for basis of orders for depositing of fire-arms revealed that the district administration has been galvanized into action pursuant to Election Commission's order dated March 1996 in its attempt to ensure free and fair election.

2. In almost all the petitions barring few, this Court granted time to the Standing counsel to seek instructions. When the matter was taken up on 12.4.2004, learned Standing counsel stated across the bar that in most districts excepting few, steps have been initiated to seek deposit of licensed fire-arms on the basis of Election "Commission"s Order dated March 1996 aforesaid. He further stated across the bar that from few districts like Basti instructions have been

received to the effect that no general or specific orders have been passed for seeking deposit of licensed fire-arms and petitioners have scrambled to the Court on mere apprehension. For the basis of orders passed or being passed by the District Administrations, the learned Standing counsel produced before the Court the order of the Election Commission dated 11th March 1996 which according to him, applied on all fours in the matter of restriction on possession of Arms during election. In vindication of the directives being issued by the Various district administrations, the learned Counsel drew attention of the Court to growing menace of disruptive forces obtaining in every nook and corner of the Country particularly, the menace posed by Nexalites, the terrorists and other disruptive forces. He also alluded to peril of Mao wadi forces in and around the area adjoining Nepal border and referred to instances of Nexalites movement in areas abutting Bihar borders. The learned Standing counsel also stressed that for free and fair election, the measures being taken by the. District administrations are essential and law and order situation is at a premium. The learned Standing counsel also emphasized that the directives as contained in Election Commission's order March 11,1996 are sanctified by Article 324 of the Const and have to be respected by the State.

3. On the other hand, the learned counsel for the petitioners conjoined to urge that petitioners in their respective cases are valid licence holders and they cannot be compelled to part with their fire-arms unless their licences are suspended or cancelled or revoked. It was further urged that no orders have been passed either for suspending their arms licence or for cancellation or revocation of their licence. It was further urged that even no notices have been issued by any licensing authority to deposit the Arms Licence. The learned Counsel made a legal proposition that petitioners in all cases were sanctioned licence under the Arms Act which is a Parliamentary Act and neither Election Commission nor District Administration can act in breach of the mandate of parliament while enacting the Arms Act. It was also urged across the bar that in some cases, arms licences were sanctioned considering immediacy of danger to the life and property of the individual inasmuch as in some cases, family members having been assaulted and murdered, the living members were sanctioned licence for a hedge against further misdemeanour by the culprits and in case, proceeds the submission, the licence holders are compelled to deposit their fire-arms, imminent danger to their life and limb would stare stark in their faces. In some writ petitions, argument was made assailing the arbitrary action of the district administrations in the garb of directives of the election commission. Ultimately, it was urged by the learned counsel for the petitioners that there was no review or objective assessment by any authority of individual cases and general orders issued in some districts are in blatant antagonism of the directives of the Election Commission.

4. Indisputably, the arms licences are issued under the Arms Act and conditions for revocation or cancellation or suspension of Arms Licences are stipulated in the Arms Act. Having regard to the plea of almost all the petitioners before the

Court that no action under the Arms Act having been taken for suspension, revocation or cancellation of the Arms Licence, the measures initiated by the District Administration seeking deposit of the Firearms are wholly without authority of law. In this perspective, the question that puts forth itself in the forefront for consideration is whether in the facts and circumstances, the District Administrative could seek deposit of fire-arms without initiating action under the Arms Act, and further it was obligatory on the District Administrative to make review and objective assessment of individual cases before exacting deposit of fire-arms from individual licence holder. It is worthy of notice that once elections are notified by the Election Commission, the entire State Machinery retreats into supervision to be exercised by the election Commission and the Government officers, for the purposes of election, are treated to be employees of the Election Commission, The power of Election Commission is traceable to provisions contained in Article 324(1) of the Constitution and it being relevant is abstracted below.

"324 (1). The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution...shall be vested in a Commission (referred to in this Constitution as the Election Commission)."

5. The guideline of the Election Commission has its genesis in Article 324(1) of the Constitution as quoted above. The power of issuing any such directives by the Election Commission has not been questioned or assailed before the Court. The only challenge, which appears, to my mind is that the district administration has not made review and objective assessment of individual cases and the district authorities have exceeded the bounds in seeking deposit of all the fire-arms in antagonism of the letter and spirit of the directives issued by the Election Commission. Guidelines 1,2 3 and 4 of the order of the Election Commission being germane to the controversy involved in all these petitions, are reproduced below.

"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 moping 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 un 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;

1. persons released on bail,
2. persons having a history of criminal offences, and
3. persons previously involved in rioting at any time but specially during the election period.

(The above categories are only illustrative and not exhaustive).

4. After such review, all such license 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...."

6. Since learned counsel for the petitioners made oral assault on the order of the Election commission, it is rendered essential to scan the scope of Issuing such orders by the Election Commission. By a string of decisions, the Scope of interference by the High Court with the order of Election Commission has been enunciated in the following manner.

(a) where it is contrary to the law enacted by Article 327,

(b) where such order is arbitrary or malafide or unfair,

(c) where it is without or In excess of Commission's jurisdiction being in contravention of any electoral law or the Rules made there-under by the competent legislature or any provisions of the Constitution itself and

(d) where a particular direction of the commission is submitted to the Government for approval as required by the Rules , it is not open to the commission to go ahead with the implementation of it at its own sweet will even if the approval of the Government is not given.

In *Moninder Singh Gill v. Chief Election Commissioner*, 1978 SC 851 which is an ex-cathedra decision, the Apex Court expatiated on words "superintendence, direction and control" and it was observed that the Election Commission is empowered to act in contingencies not provided for by law and to pass necessary orders for the conduct of the Election. The requisite observation having bearing on the point is excerpted below.

"The constitution contemplates a free and fair election and vests comprehensive responsibility of superintendence, direction and control of the conduct of election in the Election Commission. This responsibility may cover powers duties and functions of many sorts, administrative or other, depending on the circumstances. It is true that Article 324 has to be read in the light of the Constitutional scheme and the Representation of the Peoples Acts of 1950 and 1951. The Article, however, operates in areas left unoccupied by legislation and the words "superintendence, direction and control" as well as "conduct of all elections" are in the broadest terms. But the Commission cannot defy the law armed by Article 324 nor act arbitrarily...."

(Emphasis supplied).

At another place in the self-same decision, the Apex Court further clarified as under:

"Two limitations at least are laid on the plenary character of the power of the Election Commissioner in the exercise thereof. First, when Parliament or any State Legislature has made a valid law relating to or in connection with the elections; the Commission shall act in conformity with and not in violation of such provisions. But where such law is silent, Article 324 is a reservoir of power to act for the avowed purpose of not divorced from, pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, to act bona fide and be amenable to the norms of natural justice in so far as conformance to such canons can reasonably and realistically be required of as fair-play-in-action in most important area of the constitutional order, namely elections...."

7. In A.C. Jose Vs. Sivan Pillai and Others, the Three Judge Bench of the Apex Court laid down following legal and constitutional position as regards conduct of elections.

"(a) when there is no parliamentary legislation or rule made under the said legislation, the Commission is free to pass any orders in. respect of the conduct of elections.

(b) where there is an Act and express Rules made there under, it is not open to the Commission to override the Act or the Rules and pass orders in direct disobedience to the mandate contained in the Act or the Rules. In other words, the powers of the Commission are meant to supplement rather than supplant the law (both statute and Rules) in the matter of superintendence, direction and control as provided by Article 324.

(c) where the Act or the Rules are silent, the Commission has no doubt plenary powers under Article 324 to give any direction in respect of the conduct of election, and

(d) where a particular direction by the Commission is submitted to the Government for approval, as required by the Rules, it is not open to the

Commission to go ahead with implementation of it at its own sweat will even if the approval of the Government is not given."

In the light of the above observations, it is necessary to delve into the aspect whether order of the Election Commission was in the fold unoccupied by legislation. In connection with this aspect, Section 4 of the Arms Act may be referred to.

" If the Central Government is of opinion that having regard to the circumstances prevailing in any area it is necessary or expedient in the public interest that the acquisition, possession or carrying of arms other than firearms should also be regulated, it may, by notification in the Official Gazette, direct that this sections hall apply to the area specified in the notification, and thereupon no person shall acquire, have in his possession or carry in that area arms of such class or description as may be specified in that notification unless he holds in this behalf a licence. issued in accordance with the provisions of this Act and the rules made there-under."

Learned counsel for the petitioner or the learned Standing counsel has not drawn attention of the Court whether any such notification existed. Section 21 of the Arms Act, 1959 being germane to the issue involved in this petition may also be referred to. This section envisages conditions for deposit of arms etc. on possession ceasing to be lawful. The conditions envisaged In Section 21(1) may be quoted below for ready reference.

"(1) Any person having in his possession any arms or ammunition the possession whereof, has, in consequence of the expiration of the duration of a licence or of the suspension or revocation of a licence or by the issue of a notification u/s 4 or by any reason whatever, ceased to be lawful, shall without unnecessary delay deposit the same either with the officer in charge of the nearest police station or subject to such conditions as may be prescribed, with a licensed dealer or where such person is a member of the armed forces of the Union, in a unit armoury...."

The arms include ammunition as contemplated in Section 24B(4) of the Arms Act. I do not concur with the arguments of the learned counsel for the petitioners that the direction for deposit of fire-arms by the Election Commission are unwarranted inasmuch as none of the four conditions embodied in Section 21(1) of the Arms Act exist. I also do not view with favour the contentions of the learned counsel that as the fire arms were issued under the Arms Act which is a parliamentary Act, if conditions enumerated in Section 21(1) are not satisfied, the District Administration which is an authority under the Arms Act is wholly incompetent to direct depositing of fire-arms by the valid licensed holders inasmuch as in my considered view, the orders lies in the realm of precautionary measures so as to achieve free and fair election and since Election Commission has been vested with plenary powers attended with whole responsibility for Parliamentary as well as State election, it has all the concomitant powers to discharge functions envisaged in Article 324, of course, in the light of

Constitutional scheme and the Representation of the Peoples Acts of 1950 and 1951. Now the question arises whether precautionary measures could be ordered by the Election Commission. Indisputably, election Commission is entrusted with the duty and responsibility of conducting elections to Parliament and Legislature of every State and in view of such duty and responsibility invested in the Election Commission, it implies investment in it all power necessary for proper conduct of elections and for creating an atmosphere in the constituency which could be conducive to free and fair election. With such duties and responsibilities, the Election Commission has to take all precautionary measures, which it thinks necessary and expedient to ensure the conduct of the elections. The measures in this regard can be . Compared to anticipatory measures, which do not relate to any offence or misfeasance but dictated by suspicion. It can also be called "protective justice" which consists in obliging those persons on whom there is probable round to suspect of future misbehavior to stipulate with or to give assurance to the public that what is apprehended shall not happen. In such Situation, I am of the view that it is a discretionary matter, which should be left to be judged by the District Administration/Election Commission and to its subjective satisfaction as to what precautionary measures should be taken in a given situation for achieving free and fair elections. All ,that is required to see whether there is nexus between the directions so issued by the Election Commission and the objects sought to be achieved. In the instant case, the Object sought to be achieved is to ensure free and fair election and hence there is nexus between direction and object sought to be achieved. The object of the direction is that atmosphere is not polluted and the election is conducted fairly in congenial atmosphere. In the above perspective, it follows that the Election Commission has rightly issued guidelines to be observed by the District Administrations of the State in the matter of possession of fire- arms and on the other hand, the District Administration has to ensure that their action is based on valid justification and informed with the guidelines of the Election Commission and further that in doing so, lives of genuine, peace-loving and law abiding citizens are not imperiled and therefore, objection assessment is a necessary requirement.

8. Reverting to the guidelines issued by the Election Commission, I would not scruple to say that guidelines contained in the order of the Election Commission (supra) leave no manner of doubt that guidelines have been cushioned with enough safeguards to avoid harassment to genuine, peace-loving and law abiding citizens or to avoid accentuation of peril to their lives and property. Guideline No. 3 does envisage that the District Magistrate shall make detailed and individual review and assessment of all licences and it also cite instances by way of illustration which require review by the District Administration. Nowhere in the guidelines, there is any instruction for the District Administrative to drive all licence holders like cattle compelling them to deposit their fire-arms. The guidelines do not envisage deposit of fire-arms by such persons who have no criminal history or antecedents or who have . been sanctioned licence for reason

of being victim of circumstances or whose fire-arms are not involved in any election crime or any heinous crime or where there are materials on record or having regard to his past antecedents that fire-arms are not likely to be abused or misused in the course of (elections. The genuine licence holders ought not to be treated and conjoined with the classes depicted by illustration in the guidelines. In substance, action as a precautionary measure is envisaged for categories whose demeanour is antithetical to free and fair election. It has to be borne in mind by the State authorities that rule of law and constitutional democracy are the basic features of Constitution and every action which runs contrary to the procedure prescribed has to be abhorred in strongest and strictest terms as being violative of law. When the directive issued by the Election Commissioner envisages review and objective assessment, it is the bounden duty of State authorities to follow the prescribed procedure for review and objective assessment. Objective means a decision arrived at with full application of mind and supported by valid reasons after considering the materials available on record. When an administrative authority is required to decide objectively, it implies it has to consider and weigh the entire perspective in objective manner. In the above perspective, it is quite clear no general order can be issued by the District Administrative in the matter of seeking deposit of Firearms by all and sundry inasmuch as such orders are not based on requirements as contemplated in the directives of the Election Commission. All that is permissive according to the directives is to review and make objective assessment. Criteria for such assessment has to be fixed by the District Administrative. It all depends on the circumstances prevailing in a particular area and therefore the matter is incapable of peneralizations. Situation in a particular area may differ from situation in another area. Even assuming that a particular part of a State is disturbed or a particular district is dacoity infested area, even in such situation; review and objective assessment is required to be made by the district administration and criteria has to be fixed by" objective assessment taking into consideration the law and order situation with a view to insuring free and fair election.

9. The directives of election commission does enjoin district administrative to take appropriate decision seeking deposit of fire arms and where necessity be felt for review and objective assessment with the avowed object of maintaining law and order and for ensuring free and fair election. It necessarily entails that action for deposit of firearms can be taken without undergoing the tedium of initiating proceeding for suspension or revocation of arms licence under the Arms Act but at the same time, the action seeking deposit of fire-arms must be informed with review and objective assessment. In the special situation like the parliamentary election, free and fair election is of primary concern and in this regard, the District Administration is charged with the discretion to make review and objective assessment whether particular licence holder may pose danger to free and fair election even-if he may not have any criminal history or antecedents. In achieving free and fair election the district administration has

also to bear in mind whether disarming a particular person would imperil his security and appropriate in the fact-situation inasmuch as right to possess valid licence for fire arms to protect the person and property is a part of right to life in certain cases and where life of a person is in danger, the right to possess and retain fire-arms even in special situations cannot be taken away indiscreetly except through legitimate means.

10. In certain cases, it has been noticed that the police have been indulging in arms-twisting or taking coercive measures to pressurize the valid licence holders into depositing their fire-arms. The learned Standing Counsel is neither able to repudiate or support this situation for want of instructions, if it is so, it is a very iniquitous situation which has to be excoriated in the strongest terms. As stated *supra*, the deposit of firearms can be sought through legitimate means i.e. on review of each individual case on objective assessment and not through any other means in the letter and spirit of the directives issued by the Election Commission.

11. As a result of foregoing discussion, the petitions are disposed of attended with the directions to the District Magistrate or any other authority or authorities as the case may be, to observe in compliance the directive of the Election Commission as contained in its order dated March 11, 1996 by making review of individual cases on objective assessment in accordance with the State law as obtaining in the State of U.P. and pass appropriate orders accordingly. The District Authorities are also directed that after making review on objective assessment, the individual concerned may be served with the orders so passed. In case no such orders based on objective assessment have been passed as yet, the district authorities shall review the individual cases on objective assessment and pass orders afresh in the light of the observations made in the body of this judgment.

12. Coming to the prayer for interim orders, the learned Counsel for the petitioners has stated across the bar that none of the petitioners are involved in any heinous crime nor their fire-arms have ever been involved in any criminal activities. It was further urged that all the petitioners are genuine citizens and are peace-loving and law abiding and have roots in the society and are not likely to allow misuse of their fire-arms. In the peculiar facts and circumstances of the case and in view of the above statements made by the learned counsel for the parties, and also considering that lives of the petitioners may be imperiled in case they are compelled to deposit their fire-arms, I am of the view that retention of fire-arms by them is essential to protection of their lives and property. Therefore, I feel called to pass following interim orders.

13. Till review on objective assessment is made and district authorities have passed appropriate orders, the police or any other authorities are retrained from taking any measures or indulging in arms-twisting or pressure tactics for seeking deposit of fire-arms from individual licence holders.

14. Let a certified copy of this order be supplied within 24 hours on payment of usual charges.