

(2014) 04 AHC CK 0358

In the Allahabad High Court

Case No : Misc. Single No. 1785, 1841, 1858, 1868, 1869, 1875, 1920, 1930, 1937, 1943, 1947, 1950, 1954, 1955, 1956, 1958, 1959, 1990, 1994, 1995, 1996, 1999, 2005, 2007, 2008, 2011, 2020, 2029, 2030, 2036, 2044, 2046, 2047, 2048, 2049, 2052, 2054, 2055, 2081, 2082

Sangam Das Gautam and Others etc.etc.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144
Penal Code, 1860 (IPC) — Section 188

Citation : (2014) 4 ADJ 276 : (2014) 3 ALJ 675 : (2014) 104 ALR 431

Hon'ble Judges : Devendra Kumar Arora, J

Bench : Single Bench

Advocate : Angrej Nath Shukla in Misc. Single No. 1841 and 1858 of 2014, Anil Kumar Mishra in Misc. Single No. 1959, 2108, 1956, 2005, 2007, 2008 and 2055 of 2014, Surya Mani Singh Royekwar in Misc. Single No. 1758 of 2014, Ravi Shanker Singh in Misc. Single No. 1868, 1869, 1943 and 1990 of 2014, Rudra Pratap Singh in Misc. Single No. 1875 of 2014, Anand Dubey in Misc. Single No. 1920 of 2014, Ranjit Singh in Misc. Single No. 2113 of 2014, Gaya Deep Singh in Misc. Single No. 2136 and 2150 of 2014, Mahendra Singh Rathore in Misc. Single No. 2150 of 2014, Ajay Pratap Singh in Misc. Single No. 2081 and 2082 of 2014, Ambrish Tripathi in Misc. Single No. 2083 of 2014, Manish Pratap Singh in Misc. Single No. 2095, 2096, 2098, 2099 and 2100 of 2014, Rajesh Bahadur Singh Rath in Misc. Single No. 2096, 2098 and 2099 of 2014, Abdul Alim Khan in Misc. Single No. 2109 of 2014, Karunakar Srivastava in Misc. Single No. 1930 of 2014, Akhand Pratap Singh in Misc. Single No. 1937 of 2014, Ram Prakash Singh in Misc. Single No. 1947 of 2014, Vinod Kumar Singh in Misc. Single No. 1950 of 2014, Sharad Nandan Ojha in Misc. Single No. 1950 of 2014, Abhishek Mishra in Misc. Single No. 1954, 1955, 1958 and 2044 of 2014, Raghvendra Tewari in Misc. Single No. 1955 of 2014, Subhash Chandra Pandey in Misc. Single No. 1958 and 1994 of 2014, Satendra Nath Rai in Misc. Single No. 1995 of 2014, Arvind Pratap Singh in Misc. Single No. 1996 of 2014, Satish Chandra Kashish in Misc. Single No. 1999 and 2011 of 2014, Devendra Pratap Singh Kam in Misc. Single No. 2011 of 2014, Gayanendra Kumar in Misc. Single No. 2020 of 2014, Anoop Kumar Upadhyay in Misc. Single No. 2029 of 2014, Ajeet Kumar Mishra in Misc. Single No. 2030 of 2014, Dilip Kumar Pandey in Misc. Single No. 2036 of 2014, Sumit K. Srivastava in Misc. Single No. 2046 of 2014, Janardan Singh in Misc.

Single No. 2047 of 2014, Shailendra Kumar Singh in Misc. Single No. 2048 of 2014, P.S. Pandey in Misc. Single No. 2049 of 2014, A.A. Khan in Misc. Single No. 2052 of 2014, Ganga Prasad Mishra in Misc. Single No. 2054 of 2014, Advocate for the Appellant; Manish Mathur in Misc. Single No. 1841, 1959, 1858, 2113, 2083, 2109, 1947, 1950, 1956, 1958, 1994, 2005, 2007, 2008, 2029, 2044, 2047, 2048 and 2055 of 2014, V.K. Dubey in Misc. Single No. 1785, 2150, 2095, 2096, 2098, 2099, 2100 and 1996 of 2014, Aprajita Bansal in Misc. Single No. 1999, 2011, 2030 and 2054 of 2014 and C.S.C, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Dr. Devendra Kumar Arora, J.—Heard S/Sri A.N. Shukla, Anil Kumar Misra, Suryamani Singh Royekwar, Ravi Shankar Singh, Rudra Pratap Singh, Anand Dubey, Ranjit Singh, Mahendra Singh Rathore, Gayadeep Singh, Ajay Pratap Singh, Ambrish Tripathi, Manish Pratap Singh, Rajesh Bahadur Singh Rath, Abdul Alim Khan, Karunakar Srivastava, Akhand Pratap Singh, Ram Prakash Singh, Vinod Kumar Singh, Sharad Nandan Ojha, Abhishek Misra, Raghvendra Tewari, Subhash Chandra Pandey, Satendra Nath Rai, Arvind Pratap Singh, Satish Chandra Kashish, Devendra Pratap Singh, Gyanendra Kumar, Anoop Kumar Upadhyaya, Ajeet Kumar Misra, Dilip Kumar Pandey, Sumit Kumar Srivastava, Janardan Singh, Shailendra Kumar Singh, A.A. Khan and Ganga Prasad Misra, learned counsel for the petitioners, the learned Chief Standing Counsel for the State as well as Sri O.P. Srivastava, learned Senior Advocate assisted by Sri V.K. Dubey, Advocate appearing on behalf of Election Commission of India. Learned Standing Counsel filed single short counter affidavit separately with respect to the writ petitions relating to district Gonda, Amethi, Barabanki and Pratapgarh today in Court, the same are taken on record.

2. Learned counsels appearing on behalf of all the petitioners after going through the contents of the short counter affidavits, submitted that they do not want to file their reply/rejoinder affidavits and requested this Court to proceed with the hearing.

3. Taking into consideration the request of learned counsel for parties, this Court proceeded to hear the matter finally at the admission stage itself.

4. This bunch of writ petitions involve the same rather more of a legal question having similar facts, therefore, they are being heard and decided together by a common judgment and order.

5. By means of the instant bunch of writ petitions the petitioners are praying for a writ in the nature of certiorari for quashing of the orders, if any, after summoning the same in its original from the opposite parties, whereby the petitioners are required to deposit their fire arms with the concerned police station or authorized arms dealers (except in Writ Petitions No. 2099 (MS) of 2014, 2100(MS) of 2014, 2098 OMS) of 2014, 2096 (MS) of 2014 and 2095 (MS)

of 2014 where the Station House Officer of the concerned police station has passed a written order asking the petitioners to deposit their fire arms either with the Police Station or with Gun House.

6. Further prayer of the petitioners is that the opposite parties be commanded not to compel the petitioners to deposit their fire-arms with the concerned police station or authorized fire-arms dealers.

7. The common facts of the writ petition, in brief, are that the petitioners are having valid licenses of their fire-arms and the period of renewal of the same has not yet expired. The licenses of the petitioners have also not been suspended nor cancelled. Even no order in writing for depositing the fire-arms at the police station or with fire-arm dealers has been received. Grievance of the petitioners is that in spite of the above facts, the petitioners are being compelled by the police authorities to deposit their fire arms either with the police station or with the fire-arm dealers.

8. Submission of learned counsel for the petitioners is that the petitioners are law abiding citizens. They are not supports of any political party. Petitioners never misused their fire arms and they use the same for protection of their lives and properties. Petitioners will become defence-less by depriving them from their fire arms on the basis of oral directions during the ensuing parliamentary elections.

9. Learned counsel for petitioners further submits that in spite of the fact that there is no specific circular/order/directions for deposit of firearms, the police of the concerned police station are compelling the petitioners to deposit their firearms in the police station or with the firearm dealers.

10. By means of an order dated 27.03.2014, the learned Standing Counsel was directed to seek instructions in the matter and the bunch of writ petitions were listed on 31.03.2014. On 31.03.2014, complete instructions could not be obtained by the learned Standing Counsel therefore, a request was made to provide him some more time to seek instructions in the matter and the bunch was fixed for 01.04.2014. On 01.04.2014, the learned Chief Standing Counsel, on the basis of instructions, has made a statement before the Court that the District Magistrates of the districts concerned have issued no such directions for depositing the fire arms of the license holders. This Court, therefore, after considering the statement of the learned Chief Standing Counsel, directed him to file affidavit to this effect on behalf of the State and listed the bunch for 04.04.2014.

11. On 04.04.2014, learned Chief Standing Counsel filed short counter affidavits in one of the writ petitions relating to each district i.e. Amethi, Barabanki, Gonda and Pratapgarh after serving a copy thereof to the learned counsel for petitioners, which was taken on record.

12. A perusal of the short counter affidavits reveals that all the affidavits have

been filed by the Sub Divisional Magistrate, of respective districts, containing more or less the same averments, therefore, the affidavit filed in Writ petition No. 1841 (MS) of 2014 (Sangam Das Gautam & others vs. State of U.P. and others) is being examined and considered for disposal of the present bunch of the writ petitions.

13. Short counter affidavit filed on behalf of the State indicates that it is the responsibility of the district administration to ensure that free, fair and transparent elections are held and to implement the said intention in various districts the provisions of Section 144 of the Code of Criminal Procedure have been invoked and directions have been issued that no person, group of persons, political party or candidate shall move around along with fire-arms, sharp edged weapons, Lathi Danda etc. The District Magistrates, who, happens to be the District Election Officers, also issued directions to the Superintendent of Police, Additional District Magistrate, City Magistrate and Sub Divisional Magistrate of the concerned Districts to ensure free, fair and transparent elections. It is also contended that the District Magistrates have also issued directions that action with respect to deposit of fire-arms will be taken as per directions and guidelines issued by the Election Commission of India vide letter No. 469/INST/2009/E-PS dated 01.09.2009 as well as the directions and guidelines issued by the Bombay High Court in CWP No. 835 of 2009 (Shri Govind vs. Vikram Kumar, District Magistrate and others), which have been incorporated in the circular issued by the Election Commission of India, which reads as under:-

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

(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 license 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 licenses 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 license holder for depositing his arms and inform the license holder that failure to deposit the arms as directed would result in prosecution u/s 188 of the I.P.C. as stated in clause (h).

(f) The license 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 license holder.

(g) The decision taken by the Screening Committee shall be final.

(h) Any license holder who fails to deposit arms within the period specified above shall be liable for prosecution u/s 188 of Indian Penal Code.

(i) All the arms so deposited with the administration be returned to the license holder within a declaration of election results.

14. Lastly it has been contended by the learned Chief Standing Counsel that the district authority will proceed in accordance with the guidelines issued by the Election Commission of India vide its letter No. 469/INST/2009/E-PS, dated 01.09.2009, which is based on the judgment of the Bombay High Court and the individual assessment of the licensees would be made and if it is found that it is necessary to ask the licensee to deposit the fire-arms, for the purpose of peaceful and conducive environment for a free, fair, transparent and fearless election, the licensee shall be asked to deposit the fire-arms in accordance with law.

15. Sri O.P. Srivastava, learned Senior Advocate assisted by Sri V.K. Dubey learned counsel for the Election Commission, also confirmed that the Election Commission of India has issued a direction to the respective State Governments to ensure foolproof election and take necessary steps with respect to deposit of firearms in accordance with the guidelines laid down by Bombay High Court in the case of Shri Govind (supra).

16. In support of his submissions, learned counsel for the petitioners relied on a Division Bench Judgment of this Court rendered in the case of Mohd. Arif Khan Vs. District Magistrate and others, reported in 1994 LCD (12) 93, wherein the Division Bench of this Court had quashed the circular dated 16.7.1993 issued by the Election Commission requiring the firearm license holders to deposit all their firearms with the District Administration during the period of one week from the day after the last date for withdrawal of candidatures and the fire arm would remain deposited till the declaration of the result and no person shall be allowed to carry his own personal fire arms.

17. The relevant paragraphs 7, 21 and 22 are reproduced below:

7. We have heard the learned counsel for the petitioners and learned Chief Standing Counsel on behalf of the opposite parties nos. 1 to 5 and 7 in Writ Petition No. 4782 (MB) of 1993 and Dr. Ashok Nigam, Senior Standing Counsel,

Central Government on behalf of the Chief Election Commissioner, opposite party no. 6. After hearing the learned counsel for the parties and perusing the record, we passed the following order in their presence:-

We have heard the learned counsel for the parties at length.

We are satisfied that the impugned order dated 18.10.1993 passed by the District Magistrate, Lucknow contained in Annexure No. 3 to the writ petition and Annexure-A-4 to the counter-affidavit of opposite party no. 1 are liable to be quashed. Therefore, for reasons to follow, we allow the writ petition and quash the aforesaid impugned order subject, however, to the observation that it will be open to the opposite party no. 1 to pass such order afresh in his discretion in accordance with law as may be considered by him appropriate and warranted by the circumstances.

21. We have no doubt in our mind that the democracy being the basic feature of our Constitution, it must be ensured that free, fair and peaceful elections are held and for that purpose the Constitutional authorities as well as other authorities must have the fullest scope for taking appropriate action in exercise of their powers according to their discretion under the Constitution and the existing laws. We have, therefore, made it clear that even after the quashing of the impugned order dated October 18, 1993 it will be open to the District Magistrate to take such action in accordance with law, whether u/s 144 Cr.P.C. or otherwise, as he considers necessary and appropriate in his discretion in the circumstances of the case.

22. It is for these reasons that we have passed the order indicated earlier allowing the writ petitions and quashing the impugned order dated October 18, 1993 and leaving it open to the District Magistrate to take appropriate action according to law in future.

18. Reliance has also been placed upon the case of Shahabuddin Vs. State of U.P. and others, reported in 1999 (17) LCD 1171, wherein this Court had issued directions that the citizens who have valid firearm licenses including the petitioners shall not be compelled to deposit their firearms in general merely on the basis that Lok Sabha election is to be held in near future. The relevant paras 23 and 24 of the aforesaid judgment are reproduced below:

23. Considering the facts and circumstances of the case these writ petitions are disposed of with the following directions:

(1) A writ in the nature of Mandamus commanding the State of U.P. is issued directing that the citizens who have valid fire arm licenses including the petitioners may not be compelled to deposit their fire arms in general merely on the basis that Lok Sabha Election is to be held in near future.

(2) It is also directed that no District Magistrate or District Superintendent of Police or any officer subordinate to them shall compel the citizen in general to deposit their fire arm unless there is an order of the Central Government as

indicated in the body of the judgment.

(3) The decision made in the case of Mohd. Arif Khan v. District Magistrate (Supra) by the Division Bench of this Court shall be followed by the State Government and its officers posted in the districts within the State of U.P.

24. However, the above directions shall not preclude the competent officer/ authority to pass orders/prohibitory orders in individual cases or in general under the provisions of Arms Act or Code of Criminal Procedure 1973 after application of mind in accordance with law.

19. Learned Chief Standing Counsel while opposing the writ petition placed reliance on the decision of Division Bench Judgment of this Court in the case of Ashok Kumar Dixit Vs. State of U.P. and Others, and submitted that the arms license are granted liberally and sometimes it has been issued to the persons having criminal record and there is every likely-hood of firearms being misused during elections, therefore, apart from the directions issued by the Election Commission of India the State Government including the concerned District Magistrates be given liberty to proceed against individuals in accordance with the provisions of Arms Act as well as Code of Criminal Procedure. The relevant paragraphs of the judgment, read as under:-

7. It is informed that in consequence of the order passed in the case of Uma Kant Yadav (supra) the authorities have started completely desisting from seeking deposits of fire arms. We therefore think that a direction is needed to be issued to all the District Magistrates of all the Districts of U.P. to pass orders after examining individual cases within a week suspending licenses and thereafter direct immediate deposit of the fire arms in all cases of persons who have a criminal history or are on bail or lack clean antecedents as the same may involve interference with the conduct of free and fair elections and report compliance of the same to the Election Commission within ten days and to this Court on the next date of listing. It is being made clear that these directions must be passed without discrimination to person who may belong to any political party. In view of the full Bench decision in Chhanga Prasad Sahu Vs. State of Uttar Pradesh and Others, , if orders suspending licenses have to be passed in a situation of emergency, as possession of arms by the licensee may cause imminent danger public peace and safety, then the said orders may be passed straight away and without holding any enquiry, for reasons to be recorded in the order.

8. This order is necessary because many undeserving persons have liberally been granted licenses and we think that a distinction can be made between normal law abiding persons who have been granted licenses for their protection and persons with a criminal record who are likely to misuse the facility of the arms licenses issued to them or are likely to interfere with the conduct of the election process.

9. Our attention was also drawn to an interim order dated 20.03.2007 passed in the case of Ashok Kumar Singh by Hon"ble Mr. Justice Ashok Bhushan wherein an exemption was granted to the petitioner to keep his arm license on the

condition that the arm shall not be displayed in a public place nor participation be made in any programme with arms, arms could only be used for the purposes of self defence, the use of arms otherwise was made punishable under the Arms Act and on the day of polling display of arms in any circumstance was strictly prohibited.

20. I have perused the short counter affidavit filed on behalf of the State and have gone through the records of the writ petition as well as considered the submissions of learned counsel for respective parties.

21. On examining the submission of learned Chief Standing Counsel and going through the affidavits filed in the writ petitions, it is the admitted position that no oral directions have been issued for deposit of fire-arms by the respective licensees and the only direction has been issued to follow the directions and guidelines issued by the Election Commission of India, which contains the directions issued by the Bombay High Court regarding constitution of screening committee in every district and in every commissionerate area and the committee is required to complete the exercise of screening in respect of licenses placed before it as far as possible before the 1st date of filing of nominations and only on receipt of report from the screening committee, the licensing authority is required to issue notice before the last date fixed for withdrawal of candidature to the individual license holder for depositing his arms and inform the license holder that failure to deposit the arms as directed, would result in prosecution u/s 188 of the Indian Penal Code.

22. It is also provided in the guidelines issued by the Election Commission of India that the decision taken by the screening committee shall be final and any license holder who fails to deposit arms within the period specified above, shall be liable for prosecution u/s 188 of the Indian Penal Code and all the arms so deposited with the administration be returned to the license holder after the declaration of election results.

23. Learned Standing Counsel on the basis of instructions submits that the concerned District Magistrates in order to ensure free, fair, transparent and fearless elections, have already invoked the provisions of Section 144 of the Code of Criminal Procedure and also issued directions that no person, group of persons, political party or candidate shall move around along with fire-arms, sharp edged weapons, Lathi, Danda etc.

24. As the Election Commission of India has issued directions alongwith guidelines with respect to deposit of fire-arms by respective licensees, the present bunch of writ petitions is being disposed of with the following directions:-

i) the State Government/District Magistrates/Superintendents of Police will not insist the citizens, who have valid fire-arms license including the petitioners to deposit their fire-arms during ensuing parliamentary elections except in accordance with the procedure prescribed by the Election Commission of India, in its guidelines issued vide Circular No. 469/INST/2009/E-PS dated 01.09.2009;

ii) District Magistrates or District Superintendents of Police or any police officers, subordinate to them, shall not compel the citizens in general to deposit their fire-arms on the basis of oral directions;

iii) the above directions, shall not preclude the competent authority/officers to pass order/prohibitory order in individual cases or in general under the provisions of Arms Act or under the provisions of Code of Criminal Procedure, 1973, after due application of mind; and

iv) it shall also be open for the competent authority to proceed in accordance with law on case to case basis, in case, they feel that continuance of fire-arms with an individual will be detrimental to the public peace or law and order situation;

Subject to aforesaid directions, the bunch of writ petitions is, accordingly, disposed of.