

(2010) 10 AHC CK 0269

Allahabad High Court

Case No: None

Ram Chandra Bajpai

APPELLANT

Vs

Chief Election Commissioner
Govt. of India and Others

RESPONDENT

Date of Decision: Oct. 8, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 144

Hon'ble Judges: Anil Kumar, J

Bench: Single Bench

Final Decision: Disposed Of

Judgement

Anil Kumar, J.

Heard Sri Jai Pratap Singh, learned Counsel for the petitioner, Sri Rakesh Srivastava, learned Standing Counsel for opposite party No. 2 to 4 , Sri O.P. Srivastava learned Counsel for opposite party No. 1 and Sri N.C. Mehrotra learned Counsel for respondent No. 5.

2. With the consent of the counsel for the parties, the writ petition is finally disposed of at the admission stage.

3. Submission of the learned Counsel for the petitioner is that without any written order the police officials of the police station concerned have approached him and directed to deposit the fire arms for which he has got valid license issued by the competent authority and the period of the license is still continuing. He further submits that the police of Police Station concerned has approached and directed him to deposit the fire arms on account of certain orders passed by the District Magistrate in pursuance to the directions issued by the Election Commission.

4. Learned Counsel for opposite parties submits that general direction has been given by the Election Commission of India with an expectation that the arms holders should deposit their arms in spite of having valid fire arms license. The Election

Commission of India had directed the State Government to maintain law and order for peaceful holding of the election.

5. My attention has been drawn towards the judgment and order dated 25.01.2002 passed in Writ Petition No. 241 (M/S) of 2002. The Court while deciding the said writ petition observed as under:

In view of the direction issued by the Election Commission of India and the law declared by this Court, it is expected from the authorities that they shall not compel any license holders for fire arms to surrender their arms if they are not involved in any criminal case. It is also clarified that the State is free to take action against the person who have released on bail, against the persons who are having criminal history and those who were earlier convicted or previously involved in rioting at the time of election.

6. Further this Court in the case of Tula Ram Yadav v. State of U.P. and Ors. in Writ Petition No. 1487 (MS) of 2007 along with other connected matters on 29.03.2007 in the identical matter has passed an order:

In the garb of elections, the very purpose of granting fire arms licences for self defence and personal security cannot be taken away from the bonafide licence holders of fire arms which is against the law, makes it clear that rights to self defence, personal security and protection of life is the basic criteria and these rights cannot and should not be taken away by sweepingly ordering the deposit of fire arms during the elections putting the life and security of all and sundry who holds the arm licences in imminent dangers without following the provisions of law.

In view of the aforesaid facts and circumstances, the writ petitions are being disposed of with the direction:

- i. A writ in the nature of mandamus is issued commanding the State Government that the citizens who have valid fire arms license including the petitioners, may not be compelled to deposit their fire arms in general merely on the basis of the ensuing Assembly Elections.
- ii. It is also commanded that no District Magistrate or District Superintendent of Police or any Officer subordinate to them shall compel the citizens in general to deposit their firearm unless there is an order of the Central Government as indicated hereinabove in the judgment.

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

It will also not preclude the District Magistrates/SS Ps/S.P.s/Incharge of the Districts to seize weapons and take action against the holders of fire arms licence under the

provisions of the Arms Act in case any attempt is made by any citizen to display or carry firearms at any time till the end of the elections as the orders have already been passed by the District Magistrate u/s 144 Cr.P.C.

It is further clarified that in case any citizen has criminal antecedents or found displaying the arms, action may be taken against them in accordance with the provisions of law. District Magistrates are also directed to pass orders after examining the individual cases for suspending the licences and ensuring the deposit of arms in cases related to persons who have criminal history or who are on bail or lacked clean antecedents as the same might involved interference in the conduct of the free and fair elections.

7. For the foregoing reasons, the present writ petition is finally disposed of with the observation that in case the petitioner possess valid arm license for his fire arm and no written order have been issued by the competent authority against him with the direction to deposit the arms, he shall not be compelled to deposit the arms till further orders of this Court. However, it shall be open for the opposite parties to proceed in accordance with law on case to case basis in case they feel that continuance of the fire arms with them shall be detrimental to public peace or law and order.

8. The writ petition is disposed of finally subject to the above noted terms.