

Court No. - 5

Case :- WRIT - C No. - 2844 of 2024

Petitioner :- Ravi Shankar Tiwari And 4 Others

Respondent :- State Of U.P. Thru. Distt. Magistrate Amethi And 3 Others

Counsel for Petitioner :- Chandra Bhanu Singh

Counsel for Respondent :- C.S.C., Vijay Vikram Singh

Hon'ble Abdul Moin, J.

1. Heard Shri Chandra Bhanu Singh, learned counsel for the petitioners, learned Additional Chief Standing Counsel for the respondents no. 1, 3 & 4 and Shri Vijay Vikram Singh, learned counsel for the respondent no. 2.

2. There is consensus at the Bar that the matter in issue is squarely covered by judgement of this Court dated 16.12.2022 passed in **Writ C No. 9064 of 2022 in re: Ram Rang Jaiswal vs State of U.P. and others.**

3. For the sake of convenience, the order dated 16.12.2022 passed in the case of **Ram Rang Jaiswal (supra)** is reproduced below:

"Heard Sri Ajey Singh, learned counsel for the petitioner as well as learned counsel for the respondents.

Learned counsel for the parties agree that similar controversy as raised in the present petition has been disposed off by this court in terms of the order dated 30.03.2019 passed in Writ Petition Misc. Single No.8774 of 2019 (Ziaur Rahman Alvi vs State of U.P. and others) on the following terms :

"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/SSPs/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 under Section 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."

(11) Considering the order of the respondents issued under the direction of the Election Commission of India and observation made in the above referred judgments, this Court is of the opinion that no useful purpose will be served in keeping the writ petition pending.

(12) Thus, on the reasons recorded in the aforesaid judgments, this writ petition is finally disposed of with the direction that in case the petitioner possess valid arms license for his fire arms and no written order has been issued by the competent authority against him with the direction to deposit the arms, the petitioner will not be compelled to deposit his fire arms.

(13) However, it shall be open for the opposite parties to proceed in accordance with law on case to case basis, in case, if they feel that continuance of the fire arms with the petitioner shall be detrimental to public peace or law and order."

Thus, the present petition is also disposed off in terms of the order above extracted and on the same terms and conditions. "

4. Considering the aforesaid consensus, the writ petition is **disposed of.**

5. It is provided that the petitioner shall also be entitled for the benefit of the aforesaid judgement dated 16.12.2022 passed in the case of **Ram Rang Jaiswal (supra).**

6. Before finally consigning the petition, the Court is constrained to observe that matters pertaining to the authorities compelling the license holders to deposit their fire arms in view of impending elections are repeatedly coming to this Court.

7. This Court more than two decades back in **Mohd. Arif Khan and others Vs. State of U.P. and others, 2002 SCC OnLine All 67**, has 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 elections."

8. Incidentally while deciding the aforesaid petition this Court had placed reliance on earlier judgements passed in this regard namely in the case of **Mohd. Arif Khan vs District Magistrate, Lucknow, 1994 (12) LCD 93** and **Shahabuddin vs State of U.P., 2000 (40) ACC 839(H.C., L.B.)**

9. Further in the case of **Shahabuddin (supra)** the Court has specifically directed that citizens who have valid fire arm licenses may not be compelled to deposit their fire arms license in general merely on the basis that Lok Sabha elections is to be held in near future. Further the judgement in the case of **Mohd. Arif Khan (supra)** was directed to be followed by the State Government and its officers posted in the districts within the State of U.P.

10. As already indicated above despite more than two decades having lapsed of the aforesaid judgement yet petitions are still being filed before this Court whereby the authorities are compelling the license holders to deposit their fire arms without any formal orders being passed or communicated indicating the reasons why the deposit of fire arms are essential.

11. Here it would also be pertinent to mention that the year 2021 had also seen splurge of petitions pertaining to the authorities compelling license holders to deposit their fire arms without any written order being issued by the competent authority. This Court had taken cognizance of the same in **Writ Petition No. 6860 (M/S) of 2021 in re: Arun Kumar Singh and others vs State of U.P. and others** and had passed the judgement and order dated 15.03.2021.

12. For the sake of convenience, the relevant paragraphs of the judgement of this Court passed in the case of **Arun Kumar Singh (supra)** are reproduced below:

"While deciding the writ petition, the Court is constrained to observe that despite the controversy of deposit of fire arms during the election period having been settled beyond doubt by this Court in various judgments yet whenever the elections are announced, the fire arms owners are compelled to approach

*this Court praying for the same orders from the writ Court which have been passed earlier i.e of they being not compelled to deposit their fire arms merely because elections have been announced. Thus, apart from wastage of precious judicial time, the fire arms owners are also made to litigate for impugning such an action which should have been seen at the level of the State Government itself whereby avoiding the wastage of precious judicial time. In this regard, almost two and half decades earlier this Court in the case of **Mohd. Arif Khan Vs. District Magistrate, Lucknow** reported in **1994 (12) LCD 93** and in the year 1999 in the case of **Shahabuddin Vs. State of U.P and Ors** reported in **2000 (40) ACC 839** had issued following directions which for the sake of convenience are being reproduced below:-*

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 arms 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 Vs. District Magistrate (supra) by the Division Bench of this Court shall be followed by the State Government and its officer posted in the district within the State of U.P.

Despite the aforesaid specific mandamus having been issued by this Court repeatedly yet what the Court finds is that whenever

the elections are announced, the writ Courts get deluged with similar petitions praying for similar reliefs. It is thus apparent that the State Government and its officials are literally deaf to the specific mandamus having been issued by the writ Court in this regard decades earlier. Accordingly, while disposing of the present petition it is observed that in case, cases of such nature continue to come before this Court then the Court may be constrained to saddle the State Government with exemplary costs apart from summoning the officials responsible for not adhering to the earlier orders passed by the writ Court.

As an abundant precaution, it is provided that in individual cases where the Government feels that a person is required to deposit his fire arms license then an individual notice shall be issued to the person concerned requiring him to deposit his fire arms which would be without prejudice to the aforesaid directions issued by this Court.

Let the copy of this order be sent to the office of the Chief Secretary and Principal Secretary (Home), Uttar Pradesh, Lucknow within ten days for the purpose of issuance of appropriate directions to all the subordinate authorities for adhering to the judgment of this Court pertaining to the issue of deposit of fire arms during the election period. "

13. From perusal of the aforesaid judgement in the case of **Arun Kumar Singh (supra)** it clearly emerges that despite the Chief Secretary and the Principal Secretary, Home, Uttar Pradesh, Lucknow having been required to issue appropriate directions to all the subordinate authorities for adhering to the judgement of this Court pertaining to the issue of deposit of fire arms during the election period no heed has been paid to the same. Despite further period of two decades of judgement of this Court in the case of **Mohd. Arif Khan (supra)** and three

years of the judgement of this Court in the case of **Arun Kumar Singh (supra)** the Court is again faced with similar deluge of petitions. This indicates that the judgements which have been passed by the highest court of state under Article 226 of the Constitution of India and are binding on all the authorities in the State are being conveniently overlooked and are not being followed. The matters which can be sorted out at the level of the local authorities are engaging the attention of this Court again and again which itself reflects the lackadaisical approach of the authorities concerned.

14. The Court is constrained to observe that in case any further petitions come before this Court whereby the authorities are compelling the license holders to deposit the fire arms despite the order of this Court dated 25.02.2022 and no formal orders are issued indicating why it is essential for the license holders to deposit their fire arms then the Court may be compelled to impose exemplary cost on the authorities of the State who have failed to have the orders of this Court complied with in this regard.

15. Needless to mention that in case the authority has valid reasons requiring the license holder to deposit his fire arm then it would always be open for the competent authority to pass a specific order in this regard being uninfluenced by any of the observations made above.

16. At this stage, learned Standing Counsel on the basis of instructions sent in another matter informs that an order has been issued by the Election Commission vide letter no. 464/INST/EPS/2023/L & O dated 08.06.2023 and in pursuance thereto the Chief Election Officer, U.P., Lucknow has issued letter no. 466/CEO-2-04/2-2023 Dated 09.06.2023 for the purpose of holding of free and fair elections which requires a

committee headed by the District Magistrate of the concerned district and comprising of the S.P., A.D.M. and A.S.P. as its members to form a screening committee for the purpose of verification of the arms licenses and for their deposit.

17. Even if the said committee has been formed some cogent reasons should emerge from the order of the screening committee as to why it is essential for the fire arms to be deposited and there cannot be general order for deposit of fire arms keeping in view of the judgement of this Court in the case of **Mohd. Arif Khan (supra)**.

18. Let a copy of this order be sent to the Chief Secretary, State of Uttar Pradesh, Principal Secretary, Home and Director General of Police, State of Uttar Pradesh by learned Standing Counsel within 24 hours for appropriate action.

Order Date :- 22.3.2024
J.K. Dinkar