

**Ram Hit Vs. State of U.P. and Others**

**Ram Hit Vs. State of U.P. and Others**

**SooperKanoon Citation :** [sooperkanoon.com/481142](http://sooperkanoon.com/481142)

**Court :** Allahabad

**Decided On :** Jun-13-2000

**Reported in :** 2000(3)AWC2415

**Judge :** A.K. Yog. J.

**Acts :** [Constitution of India](#) - Article 226, 243K (1) and 324; [Arms Act, 1959](#) - Sections 13

**Appeal No. :** C.M.W.P. No. 26624 of 2000

**Appellant :** Ram Hit

**Respondent :** State of U.P. and Others

**Advocate for Def. :** S.C.

**Advocate for Pet/Ap. :** Manish Kumar, Adv.

**Judgement :**

**A. K. Yog, J.**

1. This is a writ petition under Article 226 of the [Constitution of India](#) praying for a writ of certtorari to quash the letter dated 26.5.2000 issued by Additional Commissioner, State Election Commission, U.P. respondent No. 5 (Annexure-III to the writ petition) to the extent it required all the District Magistrates, District

Panchayat Raj Officers and Senior Superintendent of Police, Superintendent of Police to take action for getting licenced arms to be surrendered and deposited with the concerned authority and for a writ of mandamus commanding the respondents not to compel the petitioner, holder of a valid licenced firearms to deposit his arm on the basis of sweeping observation that Panchayat Raj elections were going to be held in near future.

2. Petitioner has filed copy of a news report allegedly containing a statement of District Magistrate concerned disclosing that licenced arms of all the persons in the district shall be required to be deposited necessarily and in case firearms are not deposited on or before 26.5.2000, all the licences of such persons, shall be declared invalid and illegal.

3. Every day number of writ petitions are being filed before this Court on some what similar facts and allegations containing that no sweeping or general order can be issued for depositing firearms unless it is contemplated under Arms Act for such suspension and its cancellation.

4. In a nut-shell, grievance of all these petitioners is that District Election Commission has no power to direct the authorities for compelling citizen holding Fire Arms Licence to surrender on the mere ground that Panchayat Raj elections are in the offing.

5. Heard learned counsel for the petitioners in the present petition as well as in all other similar writ petitions before this Court on date, learned standing counsel on behalf of the State Authorities and the learned counsel representing U.P. District Election Commission.

6. With the consent of the parties, writ petitions are being decided finally at the admission stage. As agreed by the parties, particularly in view of the fact that ponchayat elections are expected to be over in a couple of weeks, this Court has decided the petitions finally without waiting for counter and rejoinder-affidavits. It was also agreed at the bar that these petitions may be decided on legal ground regarding competence of the respondents to issue a general order of the nature in question (i.e.. dated 26.5.2000 referred to above). Before this Court deals with the

legal submissions of the parties, it will be interesting to note that Additional Commissioner, District Election Commission vide its letter dated 26.5.2000 has given direction in a sweeping manner for all the firearms to be deposited. The said letter of the Commission dated 26.5.2000 merely required the District Administration to tighten its grip by rounding up unsocial elements, mafia etc. and further requiring these authorities to be on constant vigil for maintaining law and order. This letter merely states that while keeping an eye on unsocial elements and mafias, the preventive action contemplated under Criminal Procedure (107/116/151,1.P.C.) may be initiated and bond (muchalaka) may be obtained from such persons including getting their firearms deposited/ surrendered. This letter clearly mentioned that Election Commission was to make aware and conscious the Administration to ensure law and order and as a consequence thereof get free, fair and peaceful elections.

7. Alleged statement of the District Magistrate/Government Authorities on the basis of the said letter of the Commission that all the firearms will be got deposited in the district is not within the directions contained in the Commission letter under reference. It is interesting to note that on behalf of the Government authorities, no resistance was made except taking stand that State authorities are getting firearms deposited on the direction of the State Election Commission.

8. As already noted above, said stand of the State authorities placed before this Court through standing counsel is of no avail.

9. On behalf of State Election Commission, Sri B. D. Mandhyan, Advocate referred to Articles 243K and 324, [Constitution of India](#).

Article 243K(1) of the Constitution reads :

'The superintendence, direction and control of electoral rolls for, and the conduct of all elections to the panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.'

10. Article 324 is not relevant for our purpose as it relates/deals with elections of Parliament and Legislature of every State apart from the elections to the office of

President and Vice-President. The power of Superintendence and Control to hold elections vested in the Election Commission.

11. Reading of Article 243K(1) clearly shows that State Election Commissioner is vested with power to have over all control, superintendence and power to give directions to take all steps for the conduct of elections to the panchayat. This Article in no manner confers power upon the State Election Commissioner to override Legislative enactments e.g.. Arms Act or Cr.P.C.

12. Learned counsel for the State Election Commission has placed reliance on the case of Election Commission of India v. All India Anna Drautda Munetra Kazahagam and another, 1994 Supp (2) SCC 689. In the said case, question before the Apex Court was whether Election Commission under Article 324, [Constitution of India](#) had power to restricting the hours of using loudspeakers fitted on vehicles for electioneering purposes.

13. It may be noted that using of loudspeaker for the purpose of electioneering purpose was a matter directly related to the election and conducting of elections.

14. In the instant case, if a person carries firearm without violating any provisions of the Arms Act and without attracting any of the prohibitory provisions dealing with public order and law under Code of Criminal Procedure and also otherwise does not interfere with the peaceful life of the public at large, the matter will not be covered under the expression 'conduct of elections.'

15. On behalf of learned counsel for the petitioner reliance has been placed upon a few decisions. Two decisions which are relevant and deal with the question in hand are :

(1) Mohd. Arif khan and others v. District Magistrate, Lucknow and Others, 1994 ACJ 315. In this case Division Bench of this Court was dealing with a circular of Election Commission of similar nature. In para 17 of the said Judgment, Bench held that a circular of the nature, as has been issued in the instant case (dated 26.5.2000, Annexure-III to the writ petition), merely on the basis of the directive of the Election Commission suffers from non-application of mind and cannot be

upheld. It was further observed that Election Commission under Article 324, [Constitution of India](#) has jurisdiction to Issue appropriate directions within the scope of Article 324 with regard to conduct of election, but cannot control the exercise of power or discretion by a statutory authority under the provisions of the law conferring power on such authorities.

(2) *Shahabuddin v. State of U.P. and others*, 2000 (38) ALR 13(LB). A learned single Judge of this Court relied upon the decision of the case of *Mohd. Arif Khan*, after discussing the various sections of Code of Criminal Procedure and Arms Act did not approve the directions of the Election Commission on the basis of sweeping observation that elections were to take place shortly. This Court noticed all the facts and held that firearms on the basis of valid licence could not be directed to be deposited without there being written orders under Arms Act. In the aforementioned case, this Court took the view that a person holding firearm under valid licence could not be required to deposit the same on the basis of the order passed without application of mind and that too in accordance with law and that no law permits passing of general order to deposit firearm on the direction of Station House Officer of the Police Station/District Magistrate. This Court noticed that holding of elections was a constitutional obligation but in the garb of discharging such an obligation, persons holding firearms for their self-defence in absence of relevant material or even a shadow of suspicion for misusing the firearm could not be stripped off their fundamental right to protect their life. The very purpose of firearm is for personal security could not be taken away by an authority on whims for no reason particularly when State Election Officers and its authorities and officers did not, in turn ensure security of their property and life from unlawful and unsocial elements. Bona fide holders of firearms, thus, could not be compelled to deposit their firearm by placing them in the same category as the unlawful section in the society. There is another aspect of the matter. It is a matter of common knowledge that in a democratic country, elections are to take place at all levels i.e., Municipal elections, panchayat elections, election of societies, State elections, Parliamentary elections, etc., etc. This will mean that a person who has obtained valid licence and possess a firearm on that basis should deposit the same time and again only on the whim of State authorities ; namely, peace and order can be maintained by stripping off sensible bona fide valid licence holders where as it cannot ensure and

assure the public that unlawful elements In the society have been divested of their unlawful arms.

16. In the case of Shahabuddin (supra), this Court Issued following directions ;

(1) A writ in the nature of mandamus commanding the State of U. P. is issued directing that the citizen who have valid firearm licences including the petitioners may not be compelled to deposit their including the petitioners may not be compelled to deposit their firearms 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 firearm 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.

17. In Writ Petition No. 26563 of 2000, Samim Abbas v. District Magistrate, Allahabad, copy of the order dated 24.9.1996 passed by Hon'ble R. R. K. Trivedi, J. and in Writ Petition No. 18926 of 2000, Anil Kumar Chaudhary v. District Magistrate, Allahabad, copy of the order dated 21.4.2000 passed by Hon'ble R.H. Zaidl, J. (Annexures-3 and 4 to the said petition) directed that petitioners in those cases shall not be compelled to deposit their firearms except under orders passed by their licensing authority in accordance with law. In other words, unless the licenced firearms held by a citizen was suspended/cancelled by specific order under law viz.. Arms Act, he could not be compelled to deposit the same with the concerned police station or else where. Yet there is another aspect of the matter. A person holding a firearm on the basis of valid firearm licence may have to go out of his natural place of abode for so many compelling reasons where there may not be elections and he may be armed for his personal security. In that contingency, there will be no Justification for not allowing him to possess his arm. Similar wilt be position if one has to go with his family by road on highways.

18. Learned counsel for the respondent Commission also referred to the case of A. C. Jose v. Sivan Pillal and others, AIR 1984 SC 921, I do not find the said case to be an authority for the purpose of the present case. In the said case, question regarding use of mechanical process for casting votes in the context of Article 324, [Constitution of India](#) was considered. As also directed by this Court in the case of Shamim Abbas (supra) it shall be open to the concerned authority under Arms Act, to regulate sale and purchase of ammunition during such period like elections and reasonable restriction may be placed if necessary, on purchase of ammunition which may be allowed by considering cases individually considering the facts and circumstances of each case Independently.

19. In view of direct decisions of this Court and the reasons given above, there is no need to quash letter dated 26.5.2000 issued by Additional Commissioner, State Election Commission, U.P., Lucknow (Annexure-III to the writ petition) as It does not contain any direction for general depositing of firearms against the provisions of Arms Act and to this extent, I refuse to issue a writ of certiorari as claimed in the writ petition.

20. A writ in the nature of mandamus is issued commanding the respondents not to compel the citizens within their respective Jurisdiction to surrender/deposit their firearms provided they held valid licence, without there being a specific order passed by the competent statutory authority under Arms Act merely on the basis of the general order on the ground of holding of panchayat elections.

21. The writ petition is allowed in part as indicated above. There will be no order as to cost.

22. This order shall govern all other similar pending matters in this Court and shall be deemed to have been decided in terms of the orders and directions mentioned above.