

Court No. - 1

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Case :- MISC. BENCH No. - 10867 of 2021

Petitioner :- Abhishek Tiwari

Respondent :- State Of U.P. Thru Addl.Chief Secy. Home Lko. And Ors.

Counsel for Petitioner :- Anand Mani Tripathi, Himanshu Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Ritu Raj Awasthi, J.

Hon'ble Dinesh Kumar Singh, J.

[Delivered by Hon'ble D.K. Singh, J.]

1. The present petition under Article 226 of the Constitution of India has been filed by the petitioner, impugning the order dated 27th April, 2021, wherein the decision of the High Level Committee dated 16th April, 2021 regarding refusal to provide the petitioner personal security was communicated to the Commissioner of Police, Lucknow and vide communication dated 5th May, 2021 the said decision was communicated to the petitioner.

The petitioner claims to be a practicing lawyer of District Lucknow, conducting mostly criminals as well as public interest litigation cases. It is stated that due to nature of work being performed by the petitioner, he receives continuous threats to his life and property.

2. Initially, the petitioner submitted a representation dated 19th December, 2020 to the Additional Chief Secretary, Home, for providing him personal security. A report, regarding threat perception to the petitioner, was called upon from the Commissionerate Security Committee, Lucknow for consideration by the State Level Security Committee. The Joint Secretary, Home, on the basis of the recommendation of the Commissionerate Security Committee, Lucknow vide letter dated 19th December, 2020, ordered for providing one gunner on State expenses as personal security to the petitioner as an interim measure in anticipation of decision taken by the State Level Security Committee.

3. The aforesaid decision dated 19th December, 2020 for providing personal security to the petitioner, as an interim measure, for six months,

provided that the report/recommendation in the prescribed format should be provided by the Commissionerate Security Committee, Lucknow regarding real threat perception to life of the petitioner for consideration by the State Level Security Committee. The Commissionerate Security Committee, Lucknow, after two months i.e. on 13th February, 2021 re-assessed the threat perception to life of the petitioner in light of Government Orders dated 9th May, 2014 and 10th July, 2020 and, it was found that there was no threat perception to life of the petitioner. The report/recommendation was submitted to the State Government on the aforesaid subject matter.

4. The State Level Security Committee, in its meeting dated 17th February, 2021, considered the case of the petitioner along with others and, took decision to continue with the interim security provided to the petitioner for six months vide letter dated 19th December, 2020. However, from perusal of the decision taken in the meeting dated 17th February, 2021, it appears that the report/recommendation of the Commissionerate Security Committee, Lucknow dated 13th February, 2021 was not taken into consideration and, the decision was purely based on the letter dated 19th December, 2020 issued by the Joint Secretary, Government of Uttar Pradesh. In pursuance of the recommendation dated 17th February, 2021, consequential order dated 12th March, 2021 was issued by the State Government, extending personal security of one police personnel for six months to the petitioner. The State Level Security Committee, in its meeting dated 16th April, 2021, considered the recommendations of the several District Level Committees as well as the recommendations of the Commissionerate Security Committee, Lucknow and, threat perception of 188 citizens residing in the State was considered by the High Level Committee. The petitioner's name finds place at serial no. 102.

5. This Court, vide order dated 22nd July, 2021 requisitioned the recommendation/decision of the High Level Committee for providing/not providing personal security to persons, whose cases were considered on the basis of the recommendation of the District/Divisional Level Security Committees.

6. In respect of the petitioner, his profession is mentioned as Advocate, Allahabad High Court, Lucknow and, his yearly income is Rs. 4,50,000/-. It is mentioned in the minutes of the meeting that Commissionerate Security

Committee, Lucknow in its report dated 12th March, 2021 stated that the ground on which the petitioner requested for providing him security was that he had been appearing in several public interest litigation of general public importance and, he had to travel to the *naxalite* and *dacoit* affected areas for legal/judicial work and, for that purpose, there is persistent threat to his life. However, the Commissionerate Level Security Committee stated that there was no threat perception to the petitioner by a particular person or he was having any enmity with any particular person. He had not lodged any FIR or complaint against any particular person, threatening him of his life and property in District Lucknow and, there was no real threat to him as such. In view of the aforesaid, it has been stated that there is no reasonable basis for continuing with the interim security provided to the petitioner and, in view thereof the decision has been taken by the State Level Security Committee not to extend him security.

7. The petitioner did not disclose correct facts in the writ petition, as mentioned in paragraph-5 of the counter affidavit filed on behalf of the State authorities. It is stated that the petitioner was granted security by the State Government for six months at the expense of 10% vide order dated 23th November, 2020 on an application processed from District Jaunpur, which got expired on 13th May, 2021. Subsequently, the district administration of Jaunpur had extended the security granted to the petitioner till 15th June, 2021 and, in the meantime, the matter had been referred to the Divisional Level Security Committee for consideration for granting him security in the light of the Government Order dated 9th May, 2014. The petitioner was asked to deposit 10% expenses for one month vide letter dated 6th May, 2021.

8. In paragraph-15 of the rejoinder affidavit filed by the petitioner, he admitted the facts, stated in paragraph-5 of the counter affidavit. However, it was said that the present dispute was not in respect of the security provided by the District Administration, Jaunpur, but the dispute related to the security provided to the petitioner from District Lucknow.

9. Heard Mr. A.M. Tripathi, learned counsel for the petitioner, as well as Mr. Amitabh Rai, learned Additional Chief Standing Counsel, for respondents-State.

10. Learned counsel for the petitioner has submitted that the petitioner was provided security vide order dated 19th December 2020 for a period of

six months and, the same was extended for further period of six months vide decision dated 17th February, 2021. However, when the order was still in operation for providing security for six months, in a mala fide manner, the Commissionerate Security Committee, Lucknow vide its recommendation dated 12th March, 2021 recommended for withdrawal of the security and, on the basis of the said recommendation, the State Level Security Committee has passed the impugned order, withdrawing the Security cover from the petitioner. It is further stated that the said decision is arbitrary, illegal as well as mala fide. It is also submitted that the petitioner has been pursuing criminal and public interest litigation cases against the State, therefore, in a mala fide manner the security cover has been withdrawn from him.

11. When the Court asked whether any FIR or police complaint has ever been given by the petitioner of receiving any threat to his life or property, he fairly conceded that no such police complaint or FIR has been registered by him. However, it has further been stated that the impugned order dated 27th April, 2021 suffers from arbitrariness and is liable to be quashed and, the Government may be directed to provide security to the petitioner.

12. On the other hand, Mr. Amitabh Rai, learned Additional Chief Standing Counsel for the State, submits that this Court in Writ Petition No.6509 (M/B) of 2013 (PIL) 'Dr. Nutan Thakur Vs. State of U.P. and others' vide interim order dated 2nd December, 2013 directed the State Government to formulate a policy for providing security to private persons and in pursuance of the said interim order of this Court, the Government took a policy decision for providing personal security to private persons and VIPs. The said policy decision dated 9th December, 2014 has been placed on record as Annexure CA-3 to the counter affidavit.

13. According to the said policy decision, every person or a VIP seeking personal security has to make an application in a prescribed format to the District Magistrate/Senior Superintendent of Police. Threat perception to the life of such person shall be assessed by the District/Divisional Level Security Committee. The District Level Committee would consist of District Magistrate/Senior Superintendent of Police of the District and In-charge of the District Local Intelligence Unit. If the District Level Committee finds real threat perception to life of such person, who has made application, such a person shall be provided personal security for one month at the

district level which may be extended for two terms of one month each. After three months, if the District Level Committee considers that such person requires security for further period then, it would submit its report regarding threat perception of such person to his life to the Divisional Level Security Committee, consisting of Divisional Commissioner, Deputy Inspector General of Police, and Superintendent of Police, District Local Intelligence Unit. If the Divisional Committee, on consideration of the report submitted by the District Level Committee, agrees with the report of the District Level Committee then, it can extend security for another term of three months. After expiry of six months, Divisional Level Committee would consider the threat perception of the said person and, if it considers that the person requires security, considering his threat perception, it would place its recommendation before the State Level Committee at the High Level consisting of Principal Secretary, Home, Director General of Police and Additional Director General of Police (Security). The High Level Committee at State Level, if considers threat perception to the person, can grant the security cover for six months at one time and, thereafter again the District Level and Divisional Level Committee's recommendations should be called for assessing threat perception of such person.

14. Vide Government Order dated 10th July, 2020, further directions have been issued in respect of providing personal security to a person on the basis of threat perception in continuation of the order dated 9th May, 2014. It is, therefore, submitted that earlier decision for providing six months security to the petitioner was an interim decision and, on every six months, on the basis of threat perception of a person, decision for providing/not providing security is taken. In case of the petitioner, the Commissionerate Level Security Committee has specifically recommended that there is no real threat to the petitioner and, the High Level Security Committee at the State Level has concurred with the recommendation of the Commissionerate Level Security Committee and, therefore, decision has been taken not to extend security cover to the petitioner.

15. It has been further submitted that the petitioner has approached this Court with unclean hands, concealing the material facts of having one security personnel from the District Administration, Jaunpur and this fact has not been denied by him in his rejoinder affidavit. It has been further submitted that if the petitioner's contention is accepted then every Advocate, practicing on criminal-side, would be required to be given

personal security. It is said that there is no real threat perception to the petitioner and, his demand for personal security is for mere status symbol to have security to flaunt his status as VIP in the society. It has been further submitted that the writ petition lacks any merit and substance and, is liable to be dismissed as such.

16. A large number of private persons are being provided personal security. Many would consider it a wastage of tax-payers' money. To a parliamentary question, Minister of State (Home) replied that security for the President, Vice-President and the Prime Minister was provided according to the 'Blue Book'. Though not stated in so many words, it was clear from the context that the security was given ex-officio, that is, by virtue of the offices they held. It was told that Union Ministers, State Chief Ministers and Judges of the Supreme Court and High Courts were provided positional/statutory security cover to facilitate impartial decision-making process. The security arrangements for other political personalities were made after careful assessment of the threats emanating from terrorists/militants/fundamentalists outfits and organized criminal gangs, and that the mechanics of security arrangements was prescribed in the 'Yellow Book'. The degree of threat varies from individual to individual, depending on factors such as the nature of activities, status, and likely gains for the terrorists, etc. Accordingly, categorized security cover (Z+, Z, Y & X) is provided to them on the basis of gravity of the threat. Thus, threat perception is assessed on the basis of threats emanating from various terrorists, militants, fundamentalists outfits and organized criminal gangs for some work done by the protectees in their public life and, in national interest.

17. A person or political personality cannot claim security on the ground that he faces threats from his enemies because of some private dispute with them. There could not be any dispute about security for the President, Vice-President and Prime Minister, or Union Ministers, State Chief Ministers and Judges of the Supreme Court and High Courts, because they represent the core functioning and authority of the Indian State. There would be other political personalities, who hold public office and might have real threat from the terrorists/militants/fundamentalists outfits and organized criminal gangs for the work done or being done in the interest of nation by such political personality. These persons, on the basis of real threat perception, can claim security at state expense and, if they were to be

harmed by such elements, it would affect the prestige of the government and authority of the State and, it would adversely create an impression in the minds of the people that if, the government cannot protect high dignitaries and, the people who work for nation and society, how would it ever protect the common men and, this would lead to the insecurity in the minds of the public in general and diminish the State Authority. It would also make an impact on the decision making process impartially or boldly in detriment to the public and national interest.

18. In a country governed by the rule of law and democratic polity, a class of privileged persons should not be created by the State. India got its written Constitution in 1950 and, as per the preamble, the goal of the Indian Democratic Republic is to secure justice to all citizens (socially and economically and politically) liberty of thought, expression etc. and equality of status and of opportunity. The State cannot be seen as creating a privileged class in the society as it would amount abdication of the very principle of justice and equality enshrined in the preamble of the Constitution. There may be cases where public interest demand to provide personal security but same should be done in a transparent and fair manner and, the State should be able to justify its decision if the same is challenged in the Court of law.

19. In the case of ***M.A. Khan Chaman Vs. State of U.P., 2004 SCC Online All 373***, it was said that the petitioner, M.A. Khan Chaman was not having a right to enjoy the privilege of security ad infinitum. The Court noted that on flimsily grounds people exercise undue influence and manage to secure gunners and security at State expenses and at taxpayers cost. In fact acquisition of a gunner has begun to be treated as a status symbol. This practice must be brought to an end. It has been further held that the security can be provided to an individual provided it is needed in fact and there is a threat perception to the life of the applicant or any of his family members.

20. Case of providing security should be decided objectively by the authority taking into account all relevant factors and security should not be provided merely to enhance the status of the applicant. The competent Authority would be required to review the threat perception from time to time. Whether the applicant would be required to pay the expenses of the gunner or not would depend upon the recommendation of the Reviewing/Assessing Authority.

21. A person is entitled to get security as per the Government Order/policy if he comes within the parameters based upon the real threat perception. In the present case, no specific instance has been mentioned on the basis of which it can be assumed that the petitioner has any threat to his life or to any other member of his family. In paragraph-15 of the said judgment, this Court summarized the law that the security cannot be provided to a person unless it is needed in fact, based on real grave threat to his life.

22. This Court in the case of ***Hazi Rais Vs. State of U.P. and others, 2006 SCC OnLine All 621***, it was observed that undoubtedly, need to provide security to every individual/citizen by the State is imperative. The State is under obligation to protect the life, liberty and property of its citizens and any apathy in the matter is to be ridiculed. This Court also noted the unhappy reality that the demand for security was not as much for the personal security but had ripened into a status symbol. It is enjoyed not as cathedral but as casino and, therefore, it would be duty of the high powered committed to review the security arrangements in a most objective, bona fide and honest manner.

23. The Madras High Court in the case of N. Jothi Vs. The Home Secretary, Government of Tamil Nadu (2006) in a case of a Member of Rajya Sabha from Tamil Nadu when 'Y' skills of security provided to him was withdrawn on the basis of threat perception assessed by the State Level Security Committee held that the High Court is not expected to sit in appeal over the decision taken by the High Level Committee and, decide to what level security a person should enjoy. Whether there is a threat perception to the applicant or not is to be decided by the Security Committee and, these are the questions to be left to the decision making process of the authorities constituted for this purpose.

24. The Supreme Court in the case of Abhay Singh Vs. State of U.P. (2013) 15 SCC 435, in an appeal from the judgment and order of this Court in the case of Pramod Tiwari Vs. State of U.P. 2009 SCC Online All 2107 wherein the decision of withdrawing 'Z' skill security arrangement in favour of the petitioner was quashed by this Court and, the State Government was directed to consider the claim of the petitioner for providing 'Z' category security to him and family members, considered three questions which are as under:-

“1. Whether the use of beacons, red lights and sirens by persons other than high constitutional functionaries is lawful and constitutional?

2. Whether the provision of security to persons other than the constitutional functionaries without corresponding increase in sanctioned strength and without a specific assessment of threat is lawful and constitutional?

3. Whether the closure of roads for facilitating movement of VIPs is lawful and constitutional?"

25. In paragraphs-20 and 21 of Abhay Singh Vs. State of U.P. and others (supra), it was observed as under:-

"20. When we achieved Independence in 1947, India was a baby aiming to grow to become one of the respected members of the world community. The leaders of Independence movement undertook an onerous task of framing the Constitution for the country. They studied the Constitutions of various countries and adopted their best provisions for creating an egalitarian society with the aim of ensuring justice—social, economic and political, various types of freedoms, equality of opportunity and of status and ensuring dignity of every individual.

21. During the drafting of the Constitution, the preliminary notes on the fundamental rights issued by the Constitutional Advisor, B.N. Rau, specifically dealt with the issue of equality using examples from various Constitutions to emphasise its importance. One of the issues highlighted in the note was that if the instinct of power is concentrated in few individuals then naked greed for power will destroy the basics of democratic principles. But, what we have done in the last four decades would shock the most established political systems. The best political and executive practices have been distorted to such an extent that they do not even look like distant cousins of their original forms. The best example of this is the use of symbols of authority including the red lights on the vehicles of public representatives from the lowest to the highest and civil servants of various cadres. The red lights symbolise power and a stark differentiation between those who are allowed to use it and the ones who are not. A large number of those using vehicles with red lights have no respect for the laws of the country and they treat the ordinary citizens with contempt. The use of red lights on the vehicles of public representatives and civil servants has perhaps no parallel in the world democracies."

26. It would be apt to extract paragraph-6 of the judgment rendered by the Supreme Court in the case of Ramveer Upadhyay Vs. R.M. Srivastava and others, (2015) 13 SCC 370:-

"6. However, in our experience, we have hardly seen any security of 'Z' or 'Y' category provided to any ordinary citizen, howsoever grave the threat perception or imminent danger may be to the person concerned. The petitioner, however, has claimed it obviously as a "privileged class" by virtue of being an ex-Minister which at times, may be justified even to an ex-Minister or any other dignitary, considering the nature and function of the duties which he had discharged, which could facilitate the assessment of his threat perception even after laying down the office. But what exactly is his threat perception and whether the same is grave in nature, obviously will have to be left to be decided by the authorities

including the authorities of the State or the Centre which may include even the Intelligence Bureau or any other authority concerned which is entitled to assess the threat perception of an individual. But insofar as the court of law is concerned, it would obviously be in a predicament to come to any conclusion as to whether the threat perception alleged by a person claiming security is grave or otherwise which would hold him entitled to the security of a greater degree, since this is clearly a question of factual nature to be dealt with by the authorities entrusted with the duty to provide security after assessing the need and genuineness of the threat to any individual."

27. In the case of *Ramveer Upadhyay Vs. R.M. Srivastava and others* (supra) 'Z' category security of a Minister in the State of Uttar Pradesh had been downgraded after he ceased to be the Minister. The Supreme Court also observed that irrespective of a reference to ordinary citizens in the 'Yellow Book', they hardly ever got such security irrespective of the threat perception or imminent danger. A society governed by rule of law does not make any difference between the Minister or ordinary person and under Article 21 both are the same.

28. As per a report, 2,556 MLAs and MPs from 22 States are accused in various cases. If former MPs and MLAs from these States are included, the number rises to 4,442. Only convicted persons have been barred from contesting elections for six years. The Supreme Court has ordered political parties to publish the entire criminal history of their candidates for Assembly and Lok Sabha elections along with reasons that goaded them to field suspected criminals over decent people, but not barred them. Thus, the political personalities with criminal cases against them could theoretically be provided with security.

29. As a matter of principle, private individuals should not be given security at State cost unless there are compelling transparent reasons, which warrant such protection, especially if the threat is linked to some public or national service they have rendered and, the security should be granted to such persons until the threat abates. But, if the threat perception is not real, it would not be proper for the Government to grant security at the cost of taxpayers money and to create a privileged class. In a democratic country governed by rule of law and written Constitution providing security at State expense ought not to become an act of patronage to create a coterie of 'obliged' and 'loyal' persons. The limited public resources must be used carefully for welfare schemes and not in creating a privileged class. From a report of Bureau of Police Research and

Development (BPR&D), police think tank of the Ministry of Home Affairs (MHA), more than 20,000 additional policemen than the sanctioned strength were deployed in VIP protection duty in the year 2019. As per the report, Data on Police Organizations, 2019, as many as 66,043 policemen were deployed to protect 19,467 Ministers, Members of Parliament, Judges, Bureaucrats and other personalities and, thus number is growing up in every year.

30. In the case of *Rajinder Saini Vs. State of Punjab and others, C.W.P. No.19453 of 2015*, relying upon the judgment in the case of *Ramveer Upadhyay Vs. R.M. Srivastava and others (supra)*, it was observed that the politicians and holders of party offices just to show their might were seeking security and, the same could not be provided merely on asking. If there is actual threat then only concerned authority can consider the case and make recommendation to the Government at their own level for providing security. The Court cannot determine as to whether the petitioner has any threat perception and required security urgently.

31. In the case of ***Randeep Singh Surjewala Vs. Union of India and others, CWP No.13266 of 2016***, the Punjab and Haryana High Court denied inclusion of Surjewala's name as a categorized protectee in the Central list in Delhi as there was no specific input regarding threat perception to him, either from any terrorist, militant, outfit or fundamentalist groups.

32. This Court, while exercising writ jurisdiction under Article 226 of the Constitution of India, cannot substitute its decision to the decision of the competent Authority in respect of threat perception of the petitioner to his life and property. From the facts as emanate from the record, it is evident that the petitioner does not face any real threat to his life or property. He has been asking for security as authority of symbol to flaunt his status a VIP. This practice, creating a privileged class on State expense and taxpayers money, is to be deprecated. It is, therefore, provided that the threat perception has to be real and the Security Committee has to assess the threat perception, taking into consideration the reports from Intelligence Unit, the concerned police station and past record of the applicant. The security should be provided only to those who face real threat to their life for having done some work in the interest of the society or the nation from terrorist/naxalite or organized gangs and not otherwise. A personal enmity with other would not come within the parameters for

assessing the threat perception of the applicant for providing him security.

33. In view of the aforesaid discussions, we find that the present writ petition lacks merit. It is dismissed accordingly. Interim order, if any, stands vacated.

34. Let a copy of this judgment be sent to the Chief Secretary of the Government of Uttar Pradesh, Principal Secretary/Additional Chief Secretary, Department of Home, State of Uttar Pradesh and Director General of Police, Uttar Pradesh for its compliance and taking decision, accordingly, for providing security to an individual.

Order Date :-04.08.2021

MVS/-