

(1994) 12 AHC CK 0066

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 9118 of 1979

G.N.Mittal

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 05-12-1994

Acts Referred:

Constitution of India, 1950 — Article 19(1)(d)
Uttar Pradesh Police Regulations, 1948 — Regulation 236(6)

Citation : (1994) 12 AHC CK 0066

Hon'ble Judges : R.A.Sharma, J and M.Katju, J

Final Decision : Dismissed

Judgement

R. A. Sharma, J.—In 1960 historysheet of B Class was opened against the petitioner and since then he has been under surveillance. He has filed this writ petition for getting the historysheet and the surveillance quashed. Consequential relief in connection therewith has also been claimed.

2. State has filed counter affidavit and the petitioner has filed rejoinder affidavit in reply thereto. We have heard learned Counsel for the parties.

3. Regulation 228 of U. P. Police Regulations divides historysheets into two classes ; viz. (1) Class A historysheet which is meant for dacoits, burglars, cattle thieves, railway goods wagon thieves and abettors thereof; and (2) Class B historysheet which is meant for confirmed and professional criminals who commit crimes other than those mentioned above. Surveillance and what it consists of have been dealt with by Regulation 236. According to this regulation surveillance consists of :

- (a) Secret picketing of the house or approaches to the houses of suspects ;
- (b) through periodical inquiries by officers not below the rank of subinspector into repute, habits, associations, income, expenses and occupation;
- (c) the reporting by constables and chaukidars of movements and absences from

home.

(d) the verification of movements and absences by means of inquiry slip;

(e) the collection and record on a historysheet of all information bearing on conduct.

Supreme Court in *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295, declared Clause (b) of Regulation 236 which, at the relevant time, provided for domiciliary visit at night, as ultra vires. Thereafter the said Clause (b) was substituted by present Clause (b).

4. In the instant case there is no allegation of domiciliary visit at night by the police. But the petitioner's grievance is that by various measures, referred to in Regulation 236, he is being deprived of his fundamental right guaranteed under Article 19(1)(d) of the Constitution. This contention cannot be accepted. Measures provided for by Regulation 236, viz. secret picketing of the house, periodical inquiries into his repute, habits, associations, income etc. reporting of movements and absences from home of the suspects, collection and record on a historysheet of all information about his conduct, do not affect the right of free movement of the petitioner. Supreme Court in *Kharak Singh v. State of U. P.* (suora) has upheld the validity of Clauses (a), (c), (d) and (e) of Regulation 236. Regarding Clause (a) their Lordships have laid down that only that can constitute infringement of the right of personal liberty which is both direct as well as tangible "and it cannot be that under these freedoms the Constitutionmakers intended to protect or protected mere personal sensitiveness." Regarding Clauses (c),(d) and (e) of Regulation 236 it was held that measures covered by these clauses are really the details of the shadowing of the historysheeters for the purposes of having record of their activities and movements and such action does not infringe their fundamental rights. Newly added Clause (b), which provides for periodical inquiries into repute, habits, association, income, expenses and occupation of the historysheeter, also does not infringe any fundamental right of the petitioner. Police officials make inquiries and collect necessary information's and record them on history sheet. Such action can, in no way, affect the fundamental right of the history sheeter.

5. In the counteraffidavit there is reference of several criminal cases lodged against the petitioner, but all those cases relate to the period between 1958 and 1979. This writ petition was filed in 1979. In 1979 when the petitioner filed writ petition he was 56 years old and by now he must have completed 70 years. There is nothing on record as to the conduct and habits of the petitioner after 1979. Circumstances might have changed during this period necessitating the withdrawal of the historysheet and surveillance against the petitioner. But we express no opinion on this aspect. What our emphasis is that the respondents should reconsider the whole matter regarding historysheet and surveillance against the petitioner and if they find that he has changed considerably, they should withdraw the surveillance against him.

6. This writ petition is accordingly dismissed with the observation that it is open to the petitioner to make representation, along with certified copy of this order, before the Senior Superintendent of Police, for withdrawal of the surveillance and if such representation is made the same shall be decided by the said police officer, within a period of three months from the date the representation along with certified copy of this order, is filed before him. The order which may be passed shall be communicated to the petitioner within three weeks thereafter.