
(2015) 04 AHC CK 0094

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 12811 of 2015

Gulab Radhwaj

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2015) 4 ADJ 123 : (2015) 111 ALR 81 : (2015) 3 AWC 3238

Hon'ble Judges : Tarun Agarwala, J; Amar Singh Chauhan, J

Bench : Division Bench

Advocate : Sudhir Mehrotra, for the Appellant; A.K. Goel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—The petitioner alleges that he is a social worker and owns a Brick Klin. An incident occurred in his Brick Klin on 23rd December, 2009 in which one of his labourers was murdered. On investigation, one Madan Pasi was arrested, who is still in jail. The petitioner alleges that he came to know that Madan Pasi hired a contract killer Babboo Singh to eliminate the petitioner as Madan Pasi felt that the petitioner was responsible for his arrest. Upon this information, the petitioner filed an application before the DIG, Gorakhpur for providing security. This application was forwarded to the SSP concerned. The matter was placed before the District Level Committee and after due inquiry, the District Level Committee passed an order dated 25th May, 2014 providing one gunner to the petitioner for a period of 30 days on payment of 10% charges. This order was subsequently, extended by an order dated 3rd July, 2014 and 13th November, 2014 and in this way, the security cover was extended till 31st December, 2014. The petitioner contends that the District Level Committee has only power to provide a security cover for a period of six months and, thereafter, only the State Level Committee can extend the security cover. The petitioner contends that the District Level Committee has submitted a report dated 31st

December, 2014 to the State Government recommending one security gunner on payment of 10% expenses, which matter is pending consideration before the State Level Committee. The petitioner, accordingly, has filed the present writ petition praying for a writ of mandamus commanding the State Level Committee to consider the recommendation of the District Level Committee.

2. This Court by an order dated 20th March, 2015 directed the learned Standing Counsel to file a counter-affidavit. An affidavit has been filed by the Principal Secretary (Home) contending that pursuant to the directions given by this Court in *Dr. Nutan Thakur v. State of U.P. and others* in Writ Petition No. 6509 (MB) of 2013, the State Government has framed a fresh policy dated 9th May, 2014 for providing security where a threat perception actually exists on an applicant. This Government order provides that actual threat perception should exist and that on a mere apprehension security could not be provided. Further, the background, antecedent, criminal history and misuse of security are also relevant considerations to be examined objectively by the State Level Committee while considering the application for grant of security cover.

3. The respondent No. 1 further contended that the State Level Committee considered the recommendation of the District Level Committee on 30th January, 2015 and found that the District Level Committee did not indicate the actual threat perception to the life of the petitioner except the apprehension being felt by him and, accordingly, directed the District Level Committee to submit a fresh report with regard to the threat perception existing, if any, on the petitioner. Respondent No. 1 further submitted that the Divisional Level Committee submitted a report dated 16th March, 2015 indicating that no threat perception exists and, therefore, declined to recommend any security to the petitioner. Based on the said report of the Divisional Level Committee, the State Level Committee took a decision on 25th March, 2015 accepting the report of the Divisional Level Committee and declined to provide security to the petitioner.

4. In the light of the aforesaid contention, we have heard Sri Sudhir Mehrotra, the learned counsel for the petitioner and Sri A.K. Goel, the learned Additional Chief Standing Counsel for the State.

5. Even though the relief claimed in the writ petition has been given and the writ petition has become infructuous, the learned counsel for the petitioner submitted that the order of the State Government is illegal and is liable to be quashed. We accordingly, permitted the learned counsel to the petitioner to place his submissions.

6. The learned counsel for the petitioner contended that once the Divisional Level Committee gave a recommendation on 31st December, 2014 for providing a security cover to the petitioner, the State Level Committee committed an error in holding that there was only an apprehension on the part of the petitioner and that the report did not consider the actual threat perception existing or not. The learned counsel for the petitioner further submitted that once a recommendation

has been given by the Divisional Level Committee, it had no power to review its own order in the absence of any fresh material available with them. The learned counsel further submitted that in the recommendation of the Divisional Level Committee dated 31st December, 2014 it had come on record that three criminal cases were pending against the petitioner inspite of which a recommendation was made and, therefore, on this ground the security cover could not be declined at this stage. The learned counsel submitted that the threat perception still exists and, therefore, this Court should direct the State Government to provide a security cover.

7. On the other hand, the learned Additional Chief Standing Counsel submitted that the accused is still in jail and there is no evidence to indicate that the accused Madan Pasi has given a contract to Babu Singh to eliminate the petitioner and that it is only an apprehension on the part of the petitioner that a contract has been issued to eliminate him. Further, an arm licence has been provided to the petitioner, which is sufficient for the petitioner to protect himself and, consequently, the petitioner does not require any security cover. It was also urged that the petitioner has criminal antecedents and three criminal cases are pending and, consequently, it is not desirable to provide a security cover to the petitioner.

8. In *Dr. Pankaj Tripathi Vs. State of U.P. and Others*, (2014) 4 ADJ 115 : (2014) 104 ALR 113 , a Division Bench held:

"12. What constitutes the threat perception has not been indicated in the Government order. A threat perception, is therefore, a question of fact which can only be assessed by the State Investigating Agencies. It is not the domain of the Court to consider whether a threat perception exists in favour of a particular person or not."

"22. Article 21 of the Constitution ordains that no person shall be deprived of his life or personal liberty except according to the procedure established by law. We find that even though the State is under an obligation to provide security to a citizen and there is an obligation to protect them, individual security should only be provided in exceptional circumstances. "X" and "Y" category security is a high level security for which the State has to bear a very high cost. Such security could only be granted in exceptional cases especially since the cause for granting such security to such person involves the State Exchequer, which is the tax payers" money. The State cannot spend such money in a cavalier fashion. The mere fact that the orders have been issued by the top functionary does not mean that expenditure should be made from the tax payers money.

"24. No person can claim as of right that the State should provide him personal security to ensure that his life is protected. Once an arms licence has been granted, sufficient protection has been given by the State to protect his life. The philosophy of the State should be to maintain law and order at a macro level, rather than concentrating on safety of certain individuals in the society. More

fundamental question that needs to be addressed is, whether it is desirable to provide personal security to persons, who are part of factions with long criminal record. In our opinion, providing personal security would bolster the activities of such person to the detriment of the society at large. A person who has chosen violence and does not have any value of human life has no right to plead that the State should take special measures to protect his life from his rivals. The threat perception, if any faced by such a person, is of his own making for which the State cannot come forward to provide him security."

9. In *Gayur Hasan Vs. State of U.P. and Others*, (2009) 1 ACR 515 , a Division Bench held:

"Moreover, irrespective of any reason whatsoever, if a person has indulged in criminal activities and thereby has enhanced perception of threat to his life and liberty, he himself is responsible for the same, and cannot look to the State to provide him separate security at the cost of common man when he himself is responsible for enhancing threat perception due to his anti-social activities. Whatever position an individual occupy in our democratic system, if he is engaged in anti social criminal activities, in our view, there is no justification to provide him security at the cost of tax payer society and common people of the State. His criminal activities are against the society. It is inconceivable that such a person shall be provided extra security at individual level to ensure that such activities at his level may continue with impunity. This in fact amounts to an encouragement to anti-social criminal elements to go ahead with such criminal activities and also enjoy an edge over his counter parts by obtaining State's security cover at the cost of common man."

10. Recently in *Nutan Thakur v. State of U.P. and others*, in Writ Petition No. 6509 of 2013, a Division Bench of the Lucknow Bench of this Court, by an order dated 3rd March, 2014 held that security provided by the State to persons having criminal activities should be removed immediately and thereafter a review should be conducted by the State for providing security to those persons after considering objectively the evaluation of threat. The Court held:

"We, thus, provide that security to all such persons shall be removed within a period of ten days and thereafter review regarding threat perception may be conducted by the State Government at appropriate level within next fifteen days and depending upon the evaluation of threat perception in the manner provided herein above in this order, the State Government will consider for providing the security only if it is found that there is actual and real threat perception to the individuals concerned."

11. In the light of the aforesaid, we find that the recommendation of the District Level Committee dated 31st December, 2014 did not consider the actual threat perception that was existing, if any, against the petitioner and only recommended a security cover on the basis of an apprehension being made by the petitioner. The exercise made by the District Level Committee and the

recommendation given on 31st December, 2014 was against the tacit directions of the State Government given in its policy dated 9th May, 2014. The State Level Committee was consequently, justified in directing the Divisional Level Committee to give a fresh report on the actual threat perception existing, if any, against the petitioner. The Divisional Level Committee submitted a report dated 16th March, 2015 indicating that no threat perception exists.

12. A threat perception may exist today but not tomorrow. The threat perception keeps changing from day to day. Therefore, the Committee appointed for such purpose are competent to review their decisions from time to time. In Pankaj Tripathi's case (supra) a Division Bench of this held that the treat perception is a question of fact, which can only be assessed by the State Investigating Agency and it is not the domain of the Court to consider whether a threat perception exists in favour of a particular person or not. Once the State Government comes to the conclusion that no threat perception exists in favour of the petitioner, this Court should not interfere unless there exists extenuating circumstances, which in the instant case is lacking. Further, we find that an arm licence has been granted to the petitioner and, therefore, sufficient protection has been given by the State to protect his life. We also find that three criminal cases are pending against the petitioner.

In the light of the aforesaid, we do not find any reason to provide any security cover to the petitioner. The writ petition fails and is dismissed.