
(2000) 12 AP CK 0047
In the Andhra Pradesh High Court
Case No : Writ Petition No. 14542 of 2000

M. Mohan Babu

APPELLANT

Vs

Government of A.P. and others

RESPONDENT

Date of Decision : 17-12-2000

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2001) 1 ALD 263 : (2001) 1 ALD 262 : (2001) 1 ALT 490

Hon'ble Judges : Elip Dharma Rao, J;B.S.A. Swamy, J

Bench : Division Bench

Advocate : Mr. A. Ramanarayana, for the Appellant; Government Pleader for Home, Mr. C. Padmanabha Reddy, amicus curiae, for the Respondent

Judgement

B.S.A. SWAMY, J.—The petitioner one Mr. Mohan Babu, a popular Cine Artist and a former member of the Rajya Sabha filed this writ petition questioning the order passed by the third respondent in letter No. SB No.121/XI-CTR of 2000 dated 31-7-2000 rejecting his request stating as under:

"The threat perception in your case was reviewed by the Security Review Committee and decided to withdraw the security, as there is no threat to your life from CPI (ML) PWG or any other known source.

Therefore, the security cover provided to you is henceforth withdrawn.

For your information.

Supdt. Of police Chittoor 31-7-2000.

2. From the averments made in the affidavit filed in support of the writ petition, it is seen that initially the petitioner joined the politics in the year 1982 inspired by late Sri N.T. Rama Rao and he became the member of the Rajya Sabha in the year 1995. During the split-up of Telugu Desham party, he joined the Hon'ble Chief Minister. Thereafter, he developed some rift with Mr. Shanker Reddy who is the Telugu Desham party president and also with the Honourable Chief Minister,

and he parted his company with them. Thereafter while the police registered criminal cases against the petitioner as well as Shankar Reddy on the basis of the complaints given by them, some disputes concerning Heritage Foods between the petitioner and the Chief Minister family are pending. After expiry of the term of Rajya Sabha Membership of the petitioner, the State withdrew the security on 10-6-2000. Questioning that order, the petitioner filed WP No.10079 of 2000 and this Court seemed to have disposed of the said writ petition at the admission stage after hearing the learned Government Pleader to consider the threat perception report in the light of the guidelines given in G.O. Rt. No.655, Home (SC-B) Department dated 13-3-1997 and pass orders within three weeks and the State was directed to continue the security to the petitioner for ten more days. After the disposal of the said writ petition, the petitioner filed a detailed representation on 18-6-2000, wherein he has given reasons for his apprehension that there is threat for his life and requested the second respondent to provide him security cover on the same terms as was provided to him till 10-6-2000. Having considered the representation made by the petitioner, the third respondent in the impugned proceeding informed the petitioner that there is no threat to his life and the State has decided to withdraw the security cover provided to him forthwith. This proceeding has now been assailed in this writ petition by the petitioner on various grounds and we need not refer to all those grounds here, as we are disposing of the writ petition on the ground of non-application of mind by the third respondent, after perusing the entire record in this case. It is not in dispute that the Inspector-General of Police i.e., the second respondent is the authority empowered to take a decision with regard to providing security cover as and when people approach the Department seeking security cover. Though in the impugned order, there was no reference about the orders passed by the second respondent, on a perusal of the record, we find that the second respondent has in fact taken a decision to withdraw security cover and directed the third respondent to inform the same to the petitioner accordingly. But from the file it is seen that the decision was taken on the basis of the report sent by the Superintendent of Police dated 17-7-2000 and the report of the Deputy Superintendent of Police, Zonal Intelligence, Triupathi dated 20-7-2000.

3. We have gone through the threat perception reports sent by these two officers. The Superintendent of Police, having referred to the expulsion of the petitioner from the Telugu Desham Party, simply jumped to the conclusion that pending of criminal cases registered against the petitioner reflects his notoriety in creating problems to his political rivals and he has referred two Criminal cases in Crimine No.125 of 1999 and 126 of 1999 on the file of KVB Puram Police Station on account of the Election clashes that had taken place in the territorial jurisdiction of those police Stations between the supporters of TDP and Congress-(I) after the petitioner left the place having addressed an election meeting. Admittedly in these two cases, the petitioner was not shown as an accused. In the abstract with regard to crimes pending against the petitioner furnished by

the respondents, in the remarks column, it is stated that:

"Sri Mohan Babu while campaigning for Congress-I candidate in Srikalhashthi Assembly Segment criticised and abused TDP Leaders in a meeting on 30-8-1999 and after his departure the supporters of TDP and Congress (I) clashed"

4. From this it cannot be said that the petitioner is an accused in these two crimes. When this flaw was brought to the notice of this Court by the learned Counsel for the petitioner, the third respondent filed an additional counter-dated 23-11-2000. In para-3 of the counter, the third respondent categorically stated that by mistake these two cases pending in KVB Puram police station were mentioned instead of Crime No.153 of 1999 pending in Thottambedu PS and another case in crime No.105 of 1996 pending in Amadalavalasa Police Station. As far as Crime No.153 of 1999 is concerned, the same was referred as non-cognizable offence by the police on 15-12-1999 long before the threat of perception report was sent by Respondent No.3 on 17-7-2000. As far as crime No.105 of 1996 pending on the file of Amadalavalasa Police Station, the authorities never took this case into consideration. The third respondent who has brought into existence these two cases, with a view to cover-up the lapses committed by him while sending the threat perception report.

5. As far as the Deputy Superintendent of Police, Intelligence is concerned, he also did not examine the issue with regard to the apprehension of the petitioner as stated in his representation dated 18-6-2000. He simply stated that there was some dispute with regard to unauthorized usage of wasteland and some crime is pending and there is no threat from the villagers of Bandarupalli village to the petitioner. From the representation, it is seen that the apprehension of the petitioner is that he is having threat to his life from the Chief Executive and the District Telugu Desham party leaders and he has stated it in so many words. Neither the Superintendent of Police nor the Deputy Superintendent of Police examined the issue from that aspect while sending the threat perception report. The Inspector-General of Police passed the orders and the decision taken by the second respondent on the basis of these two perfunctory reports cannot be sustained in law.

6. The learned Government Pleader for Home Sri Rama Rao vehemently contended that the Superintendent of Police has sent a detailed report with regard to crimes that are pending against the petitioner in his proceedings dated 19-7-2000. Admittedly this report could not be seen in the office file of the Inspector-General of Police. At any rate he has not taken this report into consideration before taking a decision to withdraw the security cover to the petitioner.

7. This leaves us to answer one more contention raised by the learned Government Pleader. The learned Government Pleader for Home also vehemently contended that as the petitioner is having criminal background, he cannot be provided security cover as per G.O. Rt. No.655, Home (SC-B) Department dated

13-3-1997. It is useful to extract the definition of criminal background.

8. Under definitions Clause-A(6) Criminal background:- Any person against whom a criminal case is registered in any police station of India is said to be having criminal background.

9. Clause-C (6) deals with the guidelines for providing security for persons with criminal background, thus:

"A person having criminal background should not be given security except when the criminal case is closed or acquitted against him. Further in case there is a genuine threat from naxalities of PWG or in case he is holding public office, then specific permission from IGP Intelligence, who is the Nodal Authority, should be taken before providing him security."

10. On the basis of the criminal cases registered in various police stations in Chittoor District against the petitioner, the Government Pleader says that the petitioner has to be considered as a person with criminal background. In support of his contention, the learned Government Pleader relied on a Judgment of this Court in WA No.845 of 2000 dated 27-7-2000. We have carefully perused the said judgment It is true that this Court observed that a person with seventeen criminal cases pending against him cannot claim security cover. But in the last paragraph of the judgment, their Lordships observed that. "Before parting with the judgment, we cannot resist ourselves in observing that the respondent-State shall scrutinise reappraisal the threat perception of all the persons who have been provided with security from time to time and in cases where they come to the conclusion that threat perception still persists, they would continue to provide security, and in cases where is no threat perception, they shall withdraw the security provided."

11. From this it is evident that while refusing to grant the relief sought for by the petitioner in that writ appeal, their Lordships were cautious enough in directing the State to reappraise the threat perception report not only in respect of the petitioner therein but also to other persons similarly situated and take a decision as per the threat perception reports received in the case of each individual. But in the above case, their lordships have not considered whether an individual can be said to be having criminal background only on the ground that certain criminal cases were registered against him. The criminal jurisprudence in this country is based on an Anglo Saxon Criminal Jurisprudence, whereunder the presumption is that until and unless the guilt of the accused is proved, he is to be treated as innocent person and a person cannot be held to be having criminal background on mere registration of a crime against him in a police station on the basis of a report given by a person inimical towards him for various reasons.

12. In fact having entertained a doubt on the contention of the learned Government Pleader for Home, we requested Sri C. Padmanabha Reddy, learned senior Counsel to assist us as an amicus-curiae in this case. He submitted that unless a person is convicted by a competent Criminal Court, he cannot be said

to be having a criminal background. He further submitted that crimes may be registered for various reasons in the police stations. If a person has to be considered as a person with a criminal back-ground on the basis of registration of a crime, the very foundation of criminal administration of justice will become a mockery. In support of his contention he brought to our notice the commentary of RP Kathuria, Advocate on "Law of Crimes and Criminology". In the chapter on Criminology, at the end of paragraph-6, it is stated as under:

"The term crime should be used in its strict legal definition and the term criminal used only to refer to those who have been convicted in the criminal Court. The terms crime and criminal have severe implications and repercussions, and they should be used only after following proper procedures for establishing which acts are criminal, ask in the case of defining crime, or in the case of criminal, after one has been through a criminal trial and guilt decided by a Judge"

13. Therefore, from the above commentary it is seen that the definition of Criminal background in G.O. Rt. No.655 cannot stand to the scrutiny of the Courts. In fact Sri C. Padmanabha Reddy also brought to our notice that as per this definition if a person against whom a traffic offence is registered or an offence for nuisance is registered he is to be treated with criminal back ground, and if such a situation is warranted of this definition, the very administration of criminal justice will loose its utility and purpose. Hence we cannot uphold the definition given for criminal background in G.O.Rt.No.655, Home (SC-B) Department, dated 13-3-1997.

14. Accordingly, the writ petition is allowed and the impugned order is quashed and the matter is remanded to the Second respondent for taking a fresh decision in accordance with law. However, we also make it clear that the Inspector-General of Police, i.e., the second respondent herein while considering the request of the petitioner shall not take into consideration the criminal cases pending against the petitioner to take a decision whether security cover has to be extended to him or not. Till a decision is taken afresh by the second respondent, the interim arrangement made by this Court earlier shall continue to be in force. No costs.