
(2022) 11 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 511 Of 2019

Noor Ahmad Shah

APPELLANT

Vs

State Of J&K & Ors

RESPONDENT

Date of Decision : 11-11-2022

Acts Referred:

Citation : (2022) 11 J&K CK 0019

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : I. Sofi, Asifa Padroo

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) The petitioner has challenged the decision of the respondents, whereby his security cover has been withdrawn. A further direction has been sought upon the respondents to restore security cover of X-2 category in favour of the petitioner and also to provide him Y-category security with a security vehicle.

2) According to the petitioner he is an active political worker and he belongs to a far-flung area of District Kupwara which is infested with militancy right from the year 1989. It is averred that the petitioner has been a member of the Pahari Advisory Board district Kupwara. According to the petitioner, he has worked actively with the Army and the security forces in counter insurgency operations and he has also played an active role in making a number of militants to surrender and shun the armed struggle. According to the petitioner, because of his role and his active participation in counterinsurgency operations, he is facing grave threat from the militants operating outside and within the State. The petitioner claims that his brother, Farooq Ahmad Shah, and his brother-in-law, Qazi Israel, were killed by the militants. In order to substantiate his claim, the petitioner has placed on record certificates/communications issued by the Army and State authorities.

3) The petitioner is stated to have made representations to the respondents for granting him security and, accordingly, in terms of Government Order No.1123/GAD of 1997 dated 11.07.1997, the petitioner was provided security cover in the form of residential guard 1+4 and two PSOs. However, no security vehicle was provided to him, which constrained him to make further representations to the respondents. When nothing fruitful was achieved, the petitioner approached this Court by filing a writ petition bearing OWP No.423/2014, wherein an interim order dated 28.03.2014 came to be passed whereby the respondents were directed to consider the matter regarding providing of security vehicle and accommodation to the petitioner. Another writ petition bearing OWP No.462/2015 was filed by the petitioner and the said writ petition came to be disposed of by this Court in terms of order dated 24.03.2015, whereby the respondents were directed to consider the claim of the petitioner for continuation of his security cover. When the respondents did not comply with the aforesaid order, the petitioner filed contempt petition No.527/2015 and the same was disposed of in terms of order dated 30th of August 2016 and it was noted in the said order that the petitioner has been categorized as X-2 in militancy affected areas and that SSP, Kupwara, has been directed to provide security cover to him as per his category entitlement.

4) The petitioner felt aggrieved of the action of the respondents for categorizing him as X-2 and he filed a number of representations before the respondents including the Governor of the State. After the attack on the CRPF convoy in February 2019, the respondents decided to withdraw security of 409 protected persons including the petitioner. It is this action of the respondents which has been challenged by the petitioner through the media of instant writ petition.

5) It has been contended that the petitioner has actively participated in counter insurgency operations and helped the Army and the security forces and, as such, his case should not have been clubbed with other protected persons while taking a decision for withdrawal of the security. It is further contended that before withdrawing security of the petitioner, the respondents have not undertaken any review and thereby they have exposed the petitioner to attacks from the militants. It is also contended that the respondents have not recorded any reasons for withdrawal of security cover of the petitioner and the decision in this regard has been taken in hot haste.

6) The respondents have contested the writ petition by filing a reply thereto. In their reply, the respondent have submitted that the Government is having a well-defined policy regarding providing of security cover to the individuals facing threat. According to the respondents, the threat perception report is got assessed by CID wing of J&K through field agencies and the individuals facing threat are categorized by the Security Review Coordination Committee in accordance with the guidelines of Ministry of Home Affairs, Government of India, as laid down in Yellow Book, which is a classified document. It has been submitted that said committee comprising of representatives from the State

Special Branch, Subsidiary Intelligence Bureau, Zonal Police and the Home Department undertake a review periodically as per the provisions of the Yellow Book. The said Committee, according to the respondents, analyses the threat perception faced by each individual and decides categorization, whereafter the level of security is provided to a person.

7) It has been submitted that the petitioner's case was placed before the Security Review Coordination Committee in its meeting held on 21st and 22nd of February, 2019, and upon consideration of the case, the petitioner was not found entitled to any security cover/categorization. The petitioner was, however, allowed to retain the accommodation in hotel Snow Peak. According to the respondents, the matters regarding assessment of threat perception to an individual and the level of security required to such an individual are the matters within the domain of security agencies and the Courts have no role to play in such matters.

8) I have heard learned counsel for the parties and perused the record of the case.

9) The documents on record produced by the petitioner do suggest that the petitioner has assisted the Army and the security forces in anti-militancy operations including the surrender of active militants but the question arises whether this Court can issue a direction to the respondents to provide security to the petitioner of a particular level having regard to his past activities.

10) The respondents in their reply have submitted that they have constituted a Security Review Coordination Committee for the purposes of reviewing the assessment of threat to individuals, which is done after analyzing the reports of CID wing of J&K through field agencies in accordance with the guidelines of Ministry of Home Affairs, Government of India as laid down in the Yellow Book. The question whether a person or individual needs security cover and if so, what level of security is to be provided to him, cannot be gone into by the Courts. It is for the empowered Committee constituted by the Government which has to take a call on this issue. The Committee constituted by the respondents is best suited to assess the threat perception to an individual and recommend the level of security required in a particular case. It is only the security agencies of the Government which can take a call in this regard and not the Courts.

11) As has been indicated by the respondents in their reply, the assessment of threat to an individual is reviewed periodically by the Security Review Coordination Committee and, accordingly, appropriate decisions in this regard are taken. In the instant case, though the petitioner was initially provided security cover for a number of years but on the recommendations of the Security Review Coordination Committee made in its meeting dated 21st/22nd February, 2019, the petitioner was not found entitled to any security cover/categorization. This Court in exercise of its writ jurisdiction cannot sit in appeal over the recommendations of the Security Review Coordination Committee and it cannot

substitute its own opinion in place of the recommendations of the aforesaid Committee which had the benefit of analyzing the reports of the field agencies.

12) For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed. However, notwithstanding the dismissal of this writ petition, the respondents are at liberty to reassess threat perception of the petitioner and if it is found that in the changed circumstances, security cover is required to be provided to the petitioner, the same be provided to him accordingly.