
(1998) 11 AHC CK 0092
In the Allahabad High Court

Case No : Civil Miscellaneous Application Nos. 63023, 65460 and 15440 of 1998

Pramod Tiwari

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 18-11-1998

Acts Referred:

Citation : (1998) 11 AHC CK 0092

Hon'ble Judges : O.P.Garg, J

Final Decision : Disposed Of

Judgement

O.P. Garg, J.—The petitioner Promod Tewari who is a member of the Legislative Assembly of Uttar Pradesh, and his family members are enjoying the facility of Statesecurity. The petitioner has been granted "Z" grade security while certain security measures have been taken for the safety of his family members. By an order dated 16 41998, passed by the Joint Secretary, Home Department, State of U.P., the additional security given to the petitioner and his family members over and above the security, which is permissible to a member of the Legislative Assembly, has been withdrawn with immediate effect. It is this order, which has been challenged by the petitioner by filing Civil Misc. Writ No. 15440 of 1998. A Division Bench consisting of Hon"ble Mr. Justice D.S. Sinha and Hon"ble Mr. Justice M.L. Singhal of this Court has passed the following ad interim order on 551998:

?Heard Sri Gopal S. Chaturvedi, learned Senior Advocate, appearing for the petitioner and Sri Ashok Mehta, learned Chief Standing Counsel representing the respondents.

Learned Chief Standing Counsel prays for and is granted a month"s time for filing counteraffidavit. As prayed by learned Counsel of the petitioner, rejoinder affidavit may be filed within three weeks thereafter.

List the application for order immediately upon expiry of the period fixed herein above for exchanging the affidavits.

Meanwhile the operation of the impugned order dated 16th April, 1998, a copy whereof is Annexure 1 to the petition shall remain stayed and the respondent shall continue to provide to the petitioner and his family members such scale security arrangements in the manner it was being provided before passing the impugned order.

On behalf of the respondents, an application No. 63023 of 1998 has been moved with the prayer that the interim stay order dated 55/1998 be vacated, supported with a counteraffidavit filed by Sri Arun Kumar Pandey, Deputy Superintendent of Police Local Intelligence Unit, Allahabad. Subsequently another application has been moved on behalf of the State on 23/10/1998 in which it is prayed that the interim order dated 55/1998 be modified with a view to permit the respondents to take decision regarding security arrangements of the petitioner as well as his family members, in accordance with law. This application is supported with a supplementary counteraffidavit filed by Sri Praveen Singh, Special Secretary in the Home Department, State of U.P. The petitioner has also filed rejoinder affidavit. The matter of stay vacation came up before the Division Bench on 21/11/1998 on which the Court observed that in an admitted petition, the interlocutory matters are to be considered by a Single Judge of this Court. It is, in these circumstances, that the present application for vacating the stay order as well as that of modification have come up before this Court for consideration and decision.

2. Heard Sri R. N. Singh, Senior Advocate, assisted Sri AP. Shahi, learned Counsel for the petitioner and Sri Yatindra Singh, learned Additional Advocate General on behalf of the respondents at considerable length.

3. Before talking up the case of the petitioner, in particular, it would be proper to mention about the circumstances and the manner in which the security at the state expense of different categories is provided to the individuals. Undoubtedly, the 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. It has been well said that democracy is converted into a counterfeit currency if personal security is devalued politically. The dilemma of security, illusions and realities needs to be resolved without hypocrisy or political hue. Our democratic policy will be robbed of its finer values if our leaders are covertly and overtly downgraded in actual fact whatever the double speak of said power operators be.

4. One cannot deny the stark reality that presently there is a threat environment in our country. Terrorism and violence has become the menace to subvert political and narrow partisan objectives. The danger to the life and liberty of certain highly placed protected persons is sudden and grave. The present system of security arrangements for the protected persons has been supplemented by Area Security Scheme by an efficient back up of a communication and transport system. The guidelines for security arrangements were prepared by the Central Government in December, 1985. These guidelines are being followed in the State

of U.P. Security to the protected persons is classified and provided under these guidelines. In order to ensure the optimum use of the available resources the individuals to be protected have been classified on the basis of threat perceptions into three categories:

(i) Category Z or very High Risk Category. This would include those individuals who by virtue of their association with the administrative/political machinery or due to reasons of persona) vendetta face a grave and imminent threat to their security.

(ii) Category or High Risk Category. This would include those individuals who face a serious threat to their security because of their association with the political/administrative machinery.

(iii) Category X or Low Risk Category. This would include those individuals who are likely to be targets of terrorists because of their existing/past association with the political and administrative machinery or because of their stand on various issues.

The categorization of the security grades and the threat perception are not supposed to be static and, therefore, a regular review of the aforesaid categories so as to increase or decrease security deployment on the basis of threat evaluation is to take place and for this purpose a committee consisting of representatives of the State Special Branch, Subsidiary Intelligence Bureau and the State Home Department has been constituted which is to meet every three months for reviewing the security arrangements on the basis of threat perception. The committee is required to review the matters in such a manner that the tendency to perpetuate the security arrangements in the absence of real threat because of political pressures or other extraneous considerations should be avoided for one simple reason that the expensiveness of the security locomotion sometimes is scandalising. Unhappy reality is that the demand for security is not as much for the personal security, but has ripened into a status symbol. It is enjoyed not as cathedral but as casino. Therefore, an onerous duty is cast on the high powered committee to review the security arrangements either to decrease or increase the same in a most objective, bona fide and honest manner. Any order, which may be in an authoritarian defiance of administrative fair play on the basis of general, sweeping, scrappy, sketchy and jumpy reports submitted by the official minions is not to receive the approval of the Court.

5. Now, in the above background, the case of the petitioner Pramod Tewarifor his personal security and that of his family members has to be sifted. The petitioner, it is stated has a shining matchless political career with the result his rivals, who are unable to digest his success feel envious and are out to settle score and to take recourse to violence and political vendetta. He is the leader of the Congress I party in the Legislative Assembly. According to him, security to his life is threatened on account of his opposition to the militants and his efforts to

eliminate militancy. He has been raising the voice against Mafias and terrorists both inside and outside the Assembly. In the past he had approached the Chief Minister of the State for his security when there was a move to withdraw the same. On 17/9/1995, the then Chief Minister Ms. Mayawati ordered for continuing the existing security arrangement. The then Governor of the State of U.P. Sri Moti Lal Vohra wrote at least two letters on 19/9/1995 and 22/4/1996 to the then Union Home Minister Sri S.B. Chavan to provide "Z" grade security to the petitioner. It was on 31/5/1996 that a FAX message was received from Sri V.K. Jain, Special Secretary, I and P in the Union Home Ministry by which the then Director General of Police, U.P. Lucknow was required that the present security (Z scale) to the petitioner should be allowed to continue. Accordingly, the petitioner was provided Z scale security in pursuance of the orders passed by the Union Home Ministry of w.e.f. 3/6/1996. The communication of the Union Home Ministry was followed by another wireless message dated 15/11/1996 addressed to the Chief Secretary, U.P. Lucknow which reads as follows:

"SECURITY ARRANGEMENTS IN RESPECT OF SHRI PRAMOD TEWARI, MLA, UP HAVE BEEN REVIEWED BY THE CENTRAL SECURITY AGENCIES. IT IS UNDERSTOOD THAT HE IS BEING PROVIDED "Z" SCALE OF SECURITY IN UTTAR PRADESH. AS PER THEIR REPORT HE FACES THREATS FROM SIKH MILITANTS ON ACCOUNT OF HIS ROLE IN GETTING ARMY RECRUITS SURRENDERED DURING THE OPERATION BLUE STAR. HE ALSO HAS ACUTE RIVALRY WITH HIS POLITICAL OPPONENTS. IN VIEW OF THE THREAT TO THE SECURITY OF SHRI TEWARI, REQUEST THAT THE PRESENT SECURITY ARRANGEMENTS PROVIDED IN HIS CASE MAY CONTINUE MATTER URGENT.

The learned Additional Advocate General pointed out that the provision for "Z" grade security to the petitioner was made without any recommendation of the committee or the evaluation of the threat perception by the State Government and, therefore, the committee is empowered to review the security provisions made to the petitioner, and it was for this reason that in the meeting which was held on 8/10/1996, it was decided that a detailed threat perception report about the petitioner may be obtained. In the subsequent meeting dated 5/2/1997, a decision was taken that the Central Government be informed that since no particular category of security has been sanctioned to the petitioner, his security arrangements will be reviewed from time to time. Similar note was recorded in the subsequent meeting held on 17/4/1997. According to Sri Yatindra Singh, in the meetings held on 19/7/1997 and 10/9/1997, after considering the report of threat perception about the petitioner, the committee recommended "Y" category, security arrangement for the petitioner. It was also decided that the Central Government may be informed accordingly. Without going into the official rigmaroles as to who was competent to sanction the security measures and under whose orders the petitioner was provided "Z" grade security, there is no escape from the conclusion that the petitioner was, as a matter of fact, provided with "Z" grade security. The original record (in four covers) relating to the security arrangements provided to the protected persons under categories "Z",

"Y" and "X" and the reports of threat perception and the proceedings of the various trimonthly meetings held under the guidelines of the Central Government of the year 1985 was produced before the Court. I have waded through the said record and find that the "Z", category security was allowed to be continued in the meeting held on 17121997 as well as in the subsequent meeting dated 1131998 in which it was further decided that a fresh report about the threat perception in respect of the petitioner be called for. The matter was to come up in the next meeting which was convened on 551998. Before the reports of the threat perception in respect of the petitioner could be considered and taken into account, the impugned order dated 1641998, Annexure 1 to the writ petition was passed obviously at the instance of the Chief Minister, who had observed that there were no clear orders of the State Government to provide additional security to the petitioner over and above what is permissible to him in his capacity as a member of the Legislative Assembly. In the meeting dated 551998, the security category of the petitioner was down graded from "Z" to "Y" category.

6. The petitioner has given a political colour to the controversy. It is alleged that the orders to decrease the Category of his own security and that of his family members have been passed on account of political rivalry and animosity with the present Chief Minister. It has been asserted that since the petitioner has been instrumental in successfully overthrowing the Government of the present Chief Minister, the latter has a pique against him and bears grudge with the result the orders for down grading security measures with regard to the petitioner and his family members have been passed. The case of the respondents, on the other hand, is that the expenses borne by the State Government on the personal security arrangements of the petitioner and his family members appear to be unreasonable because there is no such danger nor any report or complaint has been received at the various Police Stations in the districts of Allahabad, Lucknow, and Pratapgarh, and, therefore,, there is no necessity to provide the "Z" category security to the petitioner.

7. Shorn Of all political overtones made by the petitioner, the fact remains, howsoever political visionary, unsullied democrat and tireless patriot the petitioner may be, the security is to be provided to him by the State in proportion to the threat perception. The Court, in spite of its awe some panoply is motionless in the sphere it has no yardstick to get measured or gauge the threat perception. This aspect of the matter, of necessity, has to be determined and ascertained with the help of the reports of the various intelligence and security agencies deployed for the purpose.

8. In the instant case, this fact cannot be lost sight Of that the "Z" category security to the petitioner was recommended by the (Governor of the State, and it was directed (to be provided at the instance of the Union Minister of Home. It was Central Security Agencies which reviewed the security arrangements in respect of the petitioner. As per their report, petitioner faced threat from Sikh militants on account of his role in getting Army recruits surrendered during the

operation Blue Star and also keeping in view the fact that he has acute rivalry with his political opponents. In view of the threat perception ascertained by the Central Government Security Agencies, it was thought desirable and proper that the petitioner be given "Z" grade security and accordingly orders were passed and he continues to enjoy security of "Z" grade right from 361996. Under the guidelines, the security arrangements are subject to periodical review. After having gone through the original record placed before the Court, my impression of the matter is that though attempts have been made to ascertain the threat perception at the local level, within the three districts of Lucknow, Allahabad and Pratapgarh, no attempts have been made to collect information whether the imminent threat which the petitioner was facing to his personal security according to the information gathered by the Central Security Agencies from the Sikh militants and his rival political opponents still survives. The threat to the life of the petitioner is not localised. Central Security Agencies have reported that he has threat to his life from the Sikh militants stationed outside the boundaries of the State. It was for this reason that in the meeting of the reviewing committee chaired by Sri Harish Chand Gupta, Principal Secretary, Home, U.P., held on 1991997 it was decided that before down grading the grade of security provided to the petitioner, the Central Government be approached to review the matter and till then, security to the petitioner of "Z" category may continue. There is nothing on record to indicate that the Central Government after obtaining the reports from the Central Security Agencies or any other agency deployed for the purpose has reviewed the decision to provide "Z" grade security to the petitioner. Till an overall view of the threat perceptionberth inside and outside the Stateis taken in the case of the petitioner and appropriate instructions are received from the Central Government, it would not be proper to withdraw "Z" grade security provided to the petitioner. After all, even according to the respondents, there is a threat to the security of the petitioner and he is being recommended for providing ?Y? grade or High Risk Category Security. This decision, as said above, is based on the reports of the local enquiries which after seeing the original record, I feel are far from being satisfactory. The petitioner has placed ample material on record by means of rejoinder affidavits to indicate that certain persons are out to annihilate him. These threats are all of quite recent origin. The basic question of threat perception requires to be gone into in all meticulous details by some senior responsible officer. The sketchy and sweeping reports submitted by the official minions would serve no purpose. The State Government, of necessity, has to obtain the report from the Central Security Agencies and after all these reports have been received, the matter may be reviewed in the light of the guidelines, referred to above, and a decision taken in the matter of the personal security of the petitioner.

9. As regards the security to the family members of the petitioner there is not much dispute. It is accepted at all hands that family members of a person holding ?Z? category of security are not entitled to any kind of security, merely because that person has been provided a particular type of security. They are,

however, entitled to security on the basis of their own threat perception. Normally, a gunner/shadow is provided to an individual family member by the Head of the District Police or the State Government. The learned Counsel for the petitioner frankly conceded that he does not dispute about the measures taken by the State to provide security to the family members of the petitioner. The petitioner would be satisfied, it was stated, if any type of security commensurate to the threat perception to each one of the family members on such terms and conditions, as may be laid down by the State Government, is provided.

10. In view of the above discussion, there can be no dispute about the fact that the security arrangements made by the Government are subject to review. The security provisions made in respect of the petitioner and his family members are to be reviewed in the conspectus of the above facts and circumstances. The interim order passed on 551998 by this Court staying the impugned order dated 1641998, Annexure 1 to the writ petition and the direction that the respondents shall continue to provide the petitioner and his family members "Z" scale security in the manner it was being provided before passing of the impugned order requires modification.

11. Accordingly, I modify the interim order dated 551998 passed by this Court to the following extent:

(1) Interim order dated 551998 passed by this Court shall not be treated to be an impediment in the way of the State Government or the appropriate authority to pass orders with regard to the security of the family members of the petitioner in proportion to the threat perception on such terms and conditions as may be laid down; and,

(2) Fresh reports shall be obtained about the threat perception to the personal security of the petitioner from the Central Security Agencies through Union Home Ministry as well as from the Senior Superintendents of Police/Superintendent of Police of the districts of Lucknow, Allahabad and Pratapgarh who shall themselves enquire into the whole gamut of threat perception, also, keeping in view the various facts and happenings of recent origin as set out by the petitioner by means of his rejoinder affidavits.

12. After obtaining and taking into consideration the views of the Central Government and the various reports about the threat perception of the agencies mentioned above, the matter may be reconsidered by the State Government in the light of the recommendations of the reviewing committee. Till a final decision is taken in the manner as provided above, the respondents shall continue to provide the security of "Z" grade to the petitioner.

13. The applications for vacating the stay order dated 551998 and the subsequent application for modification of the stay order are accordingly disposed of.

Applications disposed of.