

(1995) 07 AHC CK 0062

In the Allahabad High Court

Case No : Civil Misc. Writ Petns. No's. 16231 with 16419, 16439 and 16441 of 1995

Ramaveer Upadhaya

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 03-07-1995

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21, 226

Citation : AIR 1996 All 131

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : H.P. Dube and L.P. Naithani, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Disposed Of

Judgement

1. In the aforesaid petitions common questions of law and facts are involved, therefore, the said petitions were heard together.
2. In the Writ Petitions Nos. 16231 of 1995, 16419 of 1995 and 16441 of 1995, petitioners pray for a writ, order or direction in the nature of certiorari quashing the orders passed by the respondents dated 9-6-1995, 10-6-1995 and 11-6-1995 respectively, whereby the security guards earlier provided to them are sought to be withdrawn by the respondents and in Writ Petn. No. 16439 of 1995 petitioner prays for a writ, order or direction in the nature of mandamus directing the respondents to continue to provide the facility of security guard provided to him earlier.
3. It is not necessary to give the facts of each case in detail, inasmuch as in all these cases basic facts are that petitioners were provided security guards in the form of gunners and shadows by the respondents, which are now being withdrawn, therefore, the petitioners were obliged to approach this court under Art. 226 of the Constitution of India for seeking the reliefs noted above.

4. I have heard learned counsel for the petitioners and learned standing counsel at length. On the request made by the parties, I dispose of these petitions finally at this stage;

5. Neither any law nor any rule or regulation regulating the security guard or gunners etc. was brought to the notice of the court by the learned counsel appearing for the petitioners. Reliance was, however, placed on Article 19(1)(d) and Article 21 of the Constitution of India, which are quoted below:--

"19(1)--All citizens shall have the right-

(a) to (c).....

(d) to move freely throughout the territory of India.

21. No person shall be deprived of his life or personal liberty except according to procedure established by law."

It was contended that to make provision of security guards etc. to protect the lives of the citizens of this country, in the event of danger or threat, was sovereign duty of the State. It was further contended that every citizen has got freedom to move freely throughout the territory of India and has also got the right to life and personal liberty. Petitioners contended that there still existed danger and threat to their lives, therefore, respondents have no right to withdraw the security guards. Learned counsel for the petitioners in support of their arguments also placed reliance upon the following cases:--

(i) Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others, ;

(ii) Sunil Batra v. Delhi Administration, AIR 1980 SC 1579;

(iii) Challa Ramkonda Reddy and Others Vs. State of Andhra Pradesh by District Collector, Kurnool, ;

(iv) Inder Puri General Store and Others Vs. Union of India (UOI) and Another, ;

(v) R. Gandhi v. Union of India AIR 1989 Mad 205.

6. None of the aforesaid cases deal with the question of providing security guards by the State. They, on the other hand, relate to the right of the prisoners and convicts and liability of the State in cases of communal riots only. It is, therefore, not necessary for this court to deal with the same separately in detail. Aforesaid decisions are not relevant for the purpose of present case.

7. Learned counsel also placed reliance on various orders passed by this court directing the State to provide security guard etc. from time to time. A reference in this regard may be made to the order dated 8-8-1991 passed by a Division Bench of this Court in Civil Misc. Writ Petition No. 206/91 (Zainutab din v. State of U.P.) whereby this Court directed the authorities concerned to dispose of the representation made by the petitioner by means of speaking order and till then

one armed guard, which was provided to him, was directed to remain with the petitioner. In the case of *Brijesh Deep Bhatt v. State of U.P.* (Civil Misc. Writ Petn. No. 1507-94) this Court passed similar order and further stayed withdrawal of the security guard till disposal of the representation. Similarly in the case of *Lalji Bharamlat v. State of U.P.* (Civil Misc. Writ Petn. No. Nil of 1993) a Division Bench of this Court vide order dated 19-4-1993 passed similar order as noted above. No decision of the Hon"ble Supreme Court of this court or any other High Court dealing with the question of providing security guards by the State or laying down the law in respect thereof, has been placed by the petitioners before this Court.

8. As it is apparent from the material on record of the above noted cases, the security guards are provided some time under the orders of the State Govt. under the order of its authorities or officers and some time under the orders of this court. The question is whether the State and its officers are bound to provide the security guard in the form of gunners, armed shadows and armed constables etc. whenever an application is made by a citizen, at the costs of the State Govt. or otherwise and whether this court can under Art. 226 of the Constitution of India direct the authorities concerned to provide security guard as and when it considers necessary.

9. I gave my serious consideration to the aforesaid questions and found that as a result of the liberal interpretation of the words "life" and "liberty" used in Art. 21 of the Constitution of India, the meanings of the said words have been expanded. A most remarkable feature of this expansion of Art. 21 is that many of the non-judicial Directive Principles embodied in Part IV of the Constitution have now been resurrected as enforceable fundamental rights by the magic wand of judicial activism, playing on the said Article, e.g., right to pollution-free water and air, right to a reasonable residence, right to food, clothing, decent environment etc. The Supreme Court in various cases has also imposed a positive obligation upon the State to take steps for ensuring to the individual a better enjoyment of his life and dignity, e.g., maintenance and improvement of public health, improvement of means of communication, rehabilitation of bonded labourers, providing human conditions in Prison and Protective Homes. A reference in this regard may be made to the following cases of the Supreme Court:--

- (i) *Vincent v. Union of India* AIR 1987 SC 990;
- (ii) *M.C. Mehta Vs. Union of India (UOI) and Others*, ;
- (iii) *Rural Litigation and Entitlement Kendra and Others Vs. State of Uttar Pradesh and Others*, ;
- (iv) *Kalidas v. State of J&K* ;
- (v) *State of Himachal Pradesh and Another Vs. Umed Ram Sharma and Others*, ;
- (vi) *Sher Singh and Others Vs. State of Punjab*, .

10. In view of the aforesaid decisions of the Apex Court in my opinion, in the freedom of free movement and right to life and liberty guaranteed to a citizen under Arts. 19(1)(d) and 21 of the Constitution of India, it is implicit that they should be free from fear and threat to life inasmuch as the life under fear and threat of death will be no life at all and in cases of imminent threat to the freedom of free movement or right to life and personal liberty, this court is not powerless, it can issue directions to the authorities concerned to immediately make arrangement of security of the lives of the citizens. The right to life means something more than survival or animal existence and it would include the right to live in peace with human dignity. A reference in this regard may be made to the decisions of the Supreme Court in *State of Maharashtra Vs. Chandrabhan Tale*, , and *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, . But the security guards are not symbol of status or fashion or they should be provided in the cases of extreme emergency. The facility of security guards normally should not be provided to history-sheeters, persons involved in cases under the National Security Act, Terrorist and Disruptive Activities (Prevention) Act, heinous offences like murders, dacoities etc. and other anti-social elements and criminals as it would be contradiction in terms for the State to prosecute the criminals and simultaneously to provide them the security guards at its own cost. However, in appropriate cases the security guards may be provided with the directions that the persons concerned shall reimburse/ bear the cost of the same.

11. For this Court, on the basis of the materials placed on the record by the petitioners, it is not possible to decide as to whether there exists or persists danger and threat to the lives and liberty of the petitioners. Petitioners in some cases have already presented their representations to the: authorities concerned and those who have not yet made their representations, may make their representations/within a period of two weeks from today for providing continuing the security guards at the cost of State or otherwise. The authorities concerned before whom the representations are pending Or will be filed in pursuance of this order, are directed to decide the said representations in the light of the directions and observations made above after conducting the necessary enquiry by means of speaking order. Till the representations are decided, petitioners shall be provided atleast one security guard each to protect their lives and liberty.

12. Before parting with this case, I would like to say that it is a matter of common knowledge, as has also been stated in some of the petitions, that whenever there is a change in the Government, one set of persons is deprived of facility of security guards and the said facility is provided to other Set of persons at the cost of the State Government. The security guards are provided in some cases wholly arbitrarily and they are also withdrawn in the same manner. Security guards are provided throughout the country and expenditure of them is normally borne by the States, which results in colossal loss to the public exchequer of the State. At present there is no statutory provision, regulation or rule regulating the security guards. It is, therefore, high time for the appropriate Government to enact law in respect of security guards providing for their

qualifications, procedure of recruitment, training, their duties and conduct, rules regulating the services and entitlement of person to apply for, the authority to grant and withdraw the same, failing which power of grant the security guards will continue to be abused and this will give rise to discontentment in the general public.

With these directions and observations these writ petitions are disposed of finally.

Let a copy of this judgment be sent to the Chief Secretary, State of U.P. for compliance.

13. Order accordingly.