

(2023) 09 GAU CK 0019

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4817 Of 2023

Sanjay Goswami

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 14-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 21, 226

Citation : (2023) 09 GAU CK 0019

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : P.K. Goswami, K. Goswami, A. Shandilya, A. Neog, D. Mazumdar, S. Sarma

Final Decision : Disposed Of

Judgement

1. Heard Mr. P.K. Goswami, learned senior counsel along with Mr. K Goswami, learned senior counsel assisted by Mr. A. Shandilya and Ms. A. Neog, learned counsel for the writ petitioner. Also heard Mr. D. Mazumdar, learned Additional Advocate General, Assam, assisted by Ms. S. Sarma, learned Government Advocate, Assam, appearing for the respondents.

2. The writ petitioner herein is a businessman by profession. In connection with his business activities, the petitioner is frequently required to travel to various remote areas of North Eastern Region (NER) including parts of the State of Arunachal Pradesh, which was earlier regarded as extremist infested area. As such, the petitioner used to be exposed to threat to his life. Taking note of such threat perception of the petitioner, he was earlier provided with the Personal Security Officer (PSO) by the State of Assam in the year 2007 which was continued from time to time. That apart, in view of the threat perception, the Government of India, through the Ministry of Home Affairs (MHA) had also issued a "gun license" to the petitioner on 27/05/2015 allowing him to carry a 9mm Pistol for his self protection. The said Pistol license had subsequently been extended by the MHA, making it valid till 05/06/2026. Notwithstanding the same,

on 20/07/2023, the PSO attached to the petitioner was abruptly withdrawn by the State without any prior intimation to the petitioner or assigning proper reason thereof.

3. According to the writ petitioner, the sudden withdrawal of the PSO has exposed him and his family members to serious risk of life, thus, infringing upon the right to life guaranteed to the petitioner under Article 21 of the Constitution of India. As such, the instant writ petition has been filed seeking a Writ of Mandamus inter-alia directing the State to restore the PSO to the petitioner until such time, the threat to his life subsides.

4. Taking note of the case of the petitioner, this Court had passed order dated 23/08/2023 requiring the Additional Advocate General (AAG), Assam to obtain instruction and file affidavit, so as to indicate the manner in which threat assessment in respect of the petitioner was made by the State Security Review Committee (SSRC) before withdrawing the PSO of the petitioner by fixing the matter on 01/09/2023. Accordingly, affidavit-in-opposition was filed on behalf of the respondent nos. 1, 2, 4,5 & 6 on 01/09/2023. However, when the matter was taken up on 01/09/2023, this Court had expressed dis-satisfaction with regard to the contents of the affidavit and, therefore, had issued a direction to the respondents to file a detailed affidavit within 12/09/2023 and also to produce the records pertaining to the decision making process, leading to the decision of the Protection Review Group (PRG) taken on 15/12/2021 as well as the decision of the SSRC, taken on 31/01/2022, leading to the withdrawal of the PSO of the petitioner on 20/07/2023.

5. In terms of the order dated 01/09/2023, the respondent no. 5 has filed another affidavit today. I have perused the same

6. Mr. Goswami, learned senior counsel appearing for the writ petitioner has assailed the withdrawal of the PSO of the petitioner, primarily on the following counts.

- Firstly, there are materials to show that as many as two components of the State security machinery, viz. the Superintendent of Police (SP) of the district as well as the Deputy Commissioner of Police (DCP) have clearly opined that the threat perception of the petitioner still persists and, therefore, his security may be continued. However, ignoring such inputs, the PRG as well as the SSRC had decided to withdraw the PSO of the petitioner without recording proper justification for doing so.
- Secondly, in view of the decision of the Supreme Court of India rendered in the case of State of West Bengal and others Vs. Biswanath Mitra reported in (2015) 14 SCC 599, even if the SSRC is of the view that there is no threat perception to the petitioner's life, yet, the petitioner would be entitled to police protection based on his own threat perception, at his own cost.
- Thirdly, since the MHA, Government of India has renewed the Pistol license

granted to the petitioner, the same is a clear indicator of the fact that threat perception of the petitioner still continues and, therefore, the said aspect ought to have been taken note of by the State Agencies before withdrawing the PsO.

7. Replying to the above arguments, Mr. D. Mazumdar, learned AAG, Assam, has argued that the decision of the Supreme Court rendered in the case of Biswanath Mitra (Supra) was based on a concession of the State and had been rendered in the peculiar facts and circumstances of the case. The said decision according to Mr. Mazumdar, does not lay down any principle of law of universal application. It is also the submission of Mr. Mazumdar that mere issuance of a gun license and / or renewal of the same by the Government of India, permitting the petitioner to carry a 9 mm pistol, cannot be treated as sufficient proof of present threat perception. However, on the query of the Court as to how the inputs received from the SP and the DCP regarding existence of threat perception and their recommendation to continue with the PSO allotted to the petitioner had been dealt with by the PRG as well as the SSRC, no convincing reply could be given by the learned AAG, Assam.

8. Mr. D. Mazumdar, learned Additional Advocate General, Assam, has further argued that be it in the representation submitted by the petitioner on 07/08/2023 or the statements made in the writ petition, the petitioner has completely failed to indicate any basis for concluding that the "threat perception" to the petitioner's life still exists, requiring the State to provide him with a PSO. Mr. Mazumdar submits that with the significant improvement in the law and order scenario in the State of Assam, the State has taken a conscious decision to withdraw PSOs wherever threat perception were absent and such decisions are based on proper security review carried out by the PRG as well as the SSRC, which are high level bodies consisting of competent civil and Police officials. Moreover, according to Mr. Mazumdar, the decisions are taken in strict compliance of the Standard Operating Procedure (SOP) notified by the Government of Assam, Political 'A' Department on 21/03/2022, so as to deal with the threat perception and security. Mr. Mazumdar submits that by following the aforesaid process, the PSO of as many as 410 protectees including the writ petitioner, have been withdrawn on the basis of the decision of the SSRC and, therefore, the action initiated by the State for withdrawing the PSO of the petitioner, cannot be termed as arbitrary and illegal warranting interference by this Court.

9. I have considered the submissions advanced by the learned counsel for both the parties and have gone through the materials available on record.

10. It is settled law that in matters of providing security, the Courts do not have the expertise to make threat assessment nor can the Court decide as to whether, a particular individual is required to be provided with security. Answers to such questions would always depend on proper assessment of threat perception made by the experts, who have the relevant inputs for arriving at a decision in such matters. Therefore, in matters of this nature, it is only the decision making process that would be amenable to judicial review. Upon examination of the

records produced by the State, if it is found that the decision to extend security or to withdraw the same, is based on proper threat assessment, by a competent body of experts and has been adopted in a reasonable and transparent manner, this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, would be loath in interfering with such decisions. In other words, it is always for the State to take a decision on the question of extending protection to the citizens and the decision of the State, if taken bona fide and on proper threat assessment, based on relevant intelligence inputs, must be respected.

11. In the present case, it is not in dispute that the petitioner was earlier provided with a PSO. The PSO was presumably allotted after making an assessment of the threat perception. There is also no dispute about the fact that the PSO provided to the petitioner way back in the year 2007 has been continued at the expenses of the State until 20/07/2023. The question is, have the respondents made a proper assessment of the threat perception before withdrawing the PSO?

12. From a careful reading to the two affidavits filed on behalf of the official respondents, what is apparent is that according to the SSRC, the law and order scenario of the State has improved substantially and, therefore, it was felt that there was no necessity to continue with the PSO earlier provided to the petitioner. According to affidavit filed by respondents today, it has been stated that there was no specific threat to the petitioner's life from any quarter including any individual group or militant out-fit and, therefore, taking note of the aforesaid circumstances, the PRG had made its recommendation, which was duly taken note of by the SSRC, leading to the withdrawal of the PSO. However, records produced by the learned AAG in "sealed cover" does not indicate any such satisfaction recorded by the PRG or SSRC.

13. What is significant to note herein is that in the affidavit dated 01/09/2023 filed on behalf of the respondent nos. 1, 2, 4,5 & 6, one document has been annexed as annexure 'A', which is an extract of the PRG and SSRC decision dated 21/01/2022 and 31/01/2022 respectively, pertaining to the writ petitioner. Perusal of the said document clearly goes to show that the SP of the district as well as the DCP had opined that the threat perception continues to be present for the petitioner and, therefore, the existing security may perhaps be continued. The materials produced by Mr. Mazumdar, does not indicate as to in what manner, such inputs received from the SP and the DCP was acted upon by the PRG as well as the SSRC before taking the decision to withdraw the petitioner's PSO. As a matter of fact, the records produced by learned Additional Advocate General does not throw any light on the said aspect of the matter.

14. It is also not apparent from the materials available on record as to why the decision of the PRG/SSRC dated 21/01/2022 and 31/01/2022 recommending withdrawal of PSO of the petitioner was finally acted upon only on 20/07/2023 i.e. almost 1 ½ years after the decision was taken. There is also no cogent explanation as to why, it took the authorities more than 1½ years to implement

the decision of the SSRC on withdrawal of the PSO of the petitioner. The aforesaid aspects of the matter assume special significance in view of the fact that as per the 'SOP' followed by the State, threat assessment is required to be made by the agencies (SSRC) every 6 (six) months.

15. After examining the records, it prima facie appears that before withdrawing the PSO from the petitioner, the PRG or the SSRC did not take into account the recommendation of the SP and DCP as well as the developments, if any, that might have taken place during the intervening period i.e. from 31/01/2022 to 20/07/2023, which would cover a period of more than the previous six months. Therefore, the decision making process in the present case, does not appear to be transparent enough and as per the 'SOP' followed by the State.

16. Since the assertion made by the petitioner pertaining to the element of threat to his life has a facet of Article 21 of the Constitution of India, the allegation made in the writ petition to the effect that the inputs of the SP and DCP have been erroneously ignored by the PRG and SSRC cannot be mechanically brushed aside by this Court, particularly, when the materials produced before the Court does not appear to be consistent with the procedure mandated by the SOP, notified by the Political 'A' Department, Assam, which is still holding the field.

17. For the reasons stated herein above, this Court is of the opinion that the petitioner has made out a good case for review of the decision to withdraw his PSO after making a fresh assessment of the threat perception.

18. As such, in order to enable the PRG as well as the SSRC to arrive at a just decision in the matter, the petitioner is granted a weeks' time, with effect from today, to submit a fresh representation before the concerned authority, bringing to their notice, all relevant facts and particulars, which according to him, forms a realistic basis of the present threat perception.

19. If such a representation is filed by the writ petitioner within one week from today, along with a certified copy of this order, the same be considered objectively by the PRG as well as the SSRC and thereafter, a fresh decision be taken on the question of withdrawal of PSO of the petitioner, upon carrying out a fresh security review, after dealing with the inputs of the concerned SP and DCP.

20. The exercise, as directed by this Court, be carried out and completed expeditiously, preferably within a period of 4 (four) weeks from the date of receipt of the representation to be submitted by the petitioner.

21. Whatever be the outcome of the process, the same be intimated to the petitioner in writing.

22. Until such time, the aforesaid exercise is carried out and completed, the PSO of the petitioner be restored. The cost of the PSO would, however, be borne by the writ petitioner. With the above observation, the writ petition stands disposed of.

The records produced by the learned AAG be returned back. There shall be no order as to costs.