
(1996) 01 MP CK 0100
In the Madhya Pradesh High Court
Case No : Writ Petition No. 384 of 1993

Shyambabu Verma

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 08-01-1996

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 19(5), 21, 8
Criminal Procedure Code, 1973 (CrPC) — Section 169
Penal Code, 1860 (IPC) — Section 412
Police Regulations — Regulation 236, 355, 356, 853, 855

Citation : (1996) CriLJ 2696 : (1996) ILR (MP) 76

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : K.M. Mishra, for the Appellant; Dudhawal Goat, for the Respondent

Judgement

T.S. Doabia, J.—The term "Liberty" as used in the Constitutional provisions connotes something more than mere freedom from physical restraints or the chains of a prison. Charles Warren & Louis D. Brandeis, while dealing with the concept of right to privacy though that law should provide both a criminal and private law remedy to protect man's "inviolable personality" against the intrusive behaviour of State. Once a civilization has made a distinction between the "outer" and the "inner" man, between the life of the soul and the life of the body, between the spiritual and the material, between the sacred and the profane, between the realm of God and the realm of Caesar, between Church and State, between rights inherent and inalienable and rights that are in the power of government to give and take away between public and private, between society and solitude, it becomes impossible to avoid the idea of privacy by whatever name it may be called the idea of a private space in which man may become and remain himself. See Privacy and the law. A philosophical prelude" by Milton R. Konvitz in 31 Law and Contemporary Problems (1966) p. 272, 273.

2. The Supreme Court of India took notice of what was said by the above authors in Gobind Vs. State of Madhya Pradesh and Another, and observed that there can

be no doubt that the makers of our Constitution wanted to ensure conditions favourable to the pursuits of happiness and realise the significance of man, spiritual nature of his feelings, and of his intellect and that only a part of the pain, pleasure satisfaction of life can be found in material things and therefore, they must be deemed to have conferred upon the individual as against the government a sphere where he should be left alone. Reference was made again to privacy, freedom and respect for persons by Benn, in a book J. Peennock & J. Chapman, Eds., *Privacy, Nomos*, XIII, 1,15-16, to the following excerpt:

The liberal individualist tradition has stressed, in particular, three personal ideals, to each of which corresponds a range of "private affairs". The first is the ideal of personal relations; the second, the Lockian ideal of the politically free man in a minimally regulated society, the third, the Kantian ideal of the morally autonomous man, acting on principles that he accepts as rational."

3. Coming to the facts of the case. The petitioner claims to be a businessman and an Income Tax assessee. He was involved in an offence u/s 412 of the Indian Penal Code but was acquitted. His grievance is that police is keeping surveillance over him and a history sheet of his is being maintained at police station Sabalgarh. This assertion that history sheet has been opened and this is of Category "B" has not been denied by the State. It is stated that even after order of acquittal was passed with regard to the case u/s 412 of the Indian Penal Code, the petitioner has not abandoned his Criminal traits and preponisities. The allegation that the petitioner is called to police station Sabalgarh repeatedly has however been denied. The State has ultimately made a prayer that the petition be dismissed.

4. The petitioner submits that action taken by the police is violative of Articles 19 and 21 of the Constitution of India.

5. Legal position be now noticed.

6. In *Munn v. Illions* (1876) 94 US 113 Field J., while dealing with the concept of Liberty" observed :

By the term liberty as used in the provision some thing more is meant than mere freedom from physical restraint or the bounds of a prison.

Earlier it was mentioned.

The provision equally prohibits the mutilation of the body or amputation of an arm or leg or the putting out of an eye or the destruction of an other organ of the body through which the soul communicates with the outer world.

The above observations were considered by the Supreme Court in the case reported as *Kharak Singh v. State of U. P.* 1963 SC 1295 : (1963 Cri LJ 1111). Kharak Singh was challenged in a dacoity case. He was released u/s 169 of the Code of Criminal Procedure Code, 1898. On the basis of the acquisition made against him police opened a history sheet in regard to him. This was done under

Chapter XII of L.J. P. Police Regulations. Regulation 236 provided as under:-

Without prejudice to the right of Superintendents of Police to put into practice any legal measures, such as shadowing in cities, by which they find they can keep in touch with suspects in particular localities or special circumstances, surveillance may be most practical purposes be defined as consisting of one or more of the following measures :

- (a) Secret picketing of the house or approaches to the house of suspects;
- (b) domiciliary visits at night;
- (c) through periodical inquiries by officers not below the rank of Sub-Inspector into repute, habits, associations, income, expenses and occupation;
- (d) the reporting by constables and chaukidars of movements and absence from home;
- (e) the verification of movements and absences by means of inquiry slips.
- (f) the collection and record on a history sheet of all information bearing on conduct.

7. The Supreme Court was of the view :

- i) secret picketing of the house of a suspect or keeping watch over his movements under police surveillance does not amount to deprivation of personal liberty;
- ii) same would be the position when a suspect is shadowed by the police and watch is kept over his activities;

However,

- iii) domiciliary visits to the house of a suspect at night involving the inclusion into the privacy of his home were held to amount to deprivation of his personal liberty as it is likely to disturb him in his sleep etc.

8. The matter was again considered by the Supreme Court in a case arising from the State of Madhya Pradesh. This is reported as *Gobind Vs. State of Madhya Pradesh and Another*, in this case history sheet was opened under paragraph/ Regulation 856 of Police Regulations. These regulations were held to have the force of law. In para 11 of the judgment Regulation 885 and 856 were held to have the force of law. Great stress was laid on the concept of dignity to live in privacy; It was observed that this includes right to protect personal intimacies of home, the family, marriage, mother-hood etc. etc. As a matter of fact the right to privacy was sought to be equated with freedom to live ones" life without governments" interference. Some of the observations made in *Govinds"* case (supra) are relevant and be noticed:

There can be no doubt that privacy-dignity claims deserve to be examined with

care and to be denied only when an important countervailing interest is shown to be superior. If the Court does find that a claimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling state interest test. Then the question would be whether a State interest is of such paramount importance as would justify an infringement of the right. Obviously, if the enforcement of morality were held to be a compelling as well as a permissible State interest, the characterization of a claimed right as a fundalless significance. The question whether enforcement of morality is a State interest sufficient to justify the infringement of a fundamental privacy right need not be considered for the purpose of this case and therefore we refuse to enter the controversial thicket whether enforcement of morality is a function of State.

Individual autonomy, perhaps the central concern of any system of limited government, is protected in part under our Constitution by explicit constitutional guarantees. "In the application of the Constitution our contemplation cannot only be of what has been but what may be". Time works changes and brings into existence new conditions. Subtler and far-reaching means of invading privacy will make it possible to be heard in the street what is whispered in the closet. Yet, too broad a definition of privacy raises serious questions about the propriety of judicial reliance on a right that is not explicit in the Constitution. Of course, privacy primarily concerns the individual. It therefore relates to and overlaps with the concept of liberty. The most serious advocate of privacy must confess that there are serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values.

Any right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child rearing. This catalogue approach to the question is obviously not as instructive as it does not give an analytical picture of the distinctive characteristics of the right of privacy. Perhaps, the only suggestion that can be offered as a unifying principle underlying the concept has been the assertion that a claimed right must be a fundamental right implicit in the concept of ordered liberty.

Rights and freedoms of citizens are set forth in the Constitution in order to guarantee that the individual, his personality and those things stamped with his personality shall be free from official interference except where a reasonable basis for intrusion exists. "Liberty against government" a phrase coined by Professor Corwin expresses this idea forcefully. In this sense, many of the fundamental rights of citizens can be described as contributing to the right to privacy.

There are two possible theories for protecting privacy of home. The first is that activities in the home harm others only to the extent that they cause offence resulting from the mere thought that individuals might be engaging in such activities and that such "harm" is not constitutionally protectible by the State. The second is that individuals need a place of sanctuary where they can be free from societal control. The importance of such a sanctuary is that individuals can

drop the mask, desist for a while from projecting on the world the image they want to be accepted as themselves. An image that may reflect the values of their peers rather than the realities of their natures; see 26 Stanford Law Rev. 1161 at 1187.

The Court however ultimately concluded :-

The right to privacy in any even, will necessarily have to go through a process of case-by-case development. Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one can characterize as a fundamental right, we do not think that the right is absolute.

Having reached this conclusion, we are satisfied that drastic inroads directly into the privacy and indirectly into the fundamental rights, of a citizen will be made if Regulations 855 and 856 were to be read widely. To interpret the rule in harmony with the Constitution is therefore necessary and canalisation of the powers vested in the policy by the two Regulations earlier read becomes necessary, if they are to be saved at all. Our founding fathers were thoroughly opposed to a Police Raj even as our history of the struggle for freedom has borne eloquent testimony to it. The relevant Articles of the Constitution we have adverted to earlier behove us therefore the narrow down the scope for play of the two Regulations. We proceed to give direction and restriction to the application of the said regulations with the caveat that if any action were taken beyond the boundaries so set. The citizen will be entitled to attach such action as unconstitutional and void.

Depending on the character and antecedents of the person subjected to surveillance as also the objects and the limitation under which surveillance is made, it cannot be said surveillance by domiciliary visits would always be unreasonable restriction upon the right of privacy. Assuming that the fundamental rights explicitly guaranteed to a citizen have penumbral zones and that the right to privacy is itself a fundamental right, that fundamental right must be subject to restriction on the basis of compelling public interest. As Regulation 356 has the force of law, it cannot be said that the fundamental right of the petitioner under Article 21 has been violated by the provisions contained in it; for, what is guaranteed under that article is that no person shall be deprived of his life or personal liberty except by the procedure established by "law". We think that the procedure is reasonable having regard to the provisions of Regulation 853(c) and 857. Even if we hold that Article 19(1)(d) guarantees to a citizen a right to privacy in his movement as an emanation from that Article and is itself a fundamental right, the question will arise whether Regulation 856 is a law imposing reasonable restriction in public interest on the freedom of movement falling within Article 19(5); or, even if it be assumed that Article 19(5) does not apply in terms, as the right to privacy of movement cannot be absolute. A law imposing reasonable restriction upon it for compelling interest of State

must be upheld as valid.

When there are two interpretations, one wide and unconstitutional, the other narrower but within constitutional bounds. This Court will read down the overflowing expressions to make them valid. So read, the two regulations are more restricted than counsel for the petitioner sought to impress upon us. Regulation 355 in our view, empowers surveillance only of persons against whom reasonable materials exist to induce the opinion that they show "a determination, to lead a life of crime" - crime in this context being confined to such as involve public peace or security only and if they are dangerous security risks. Mere convictions in criminal cases where nothing gravely imperils safety of society can be regarded as warranting surveillance under this Regulation. Similarly domiciliary visits and picketing by the police should be reduced to the clearest cases of danger to community security and not routine follow up at the end or at the whim of a police officer. In truth, legality apart, these regulations illaccord with the essence of personal freedoms and the State will do well to revise these old police regulations verging perilously near unconstitutionality.

9. It be again seen that Rule of Audi Alterum Partem is not attracted to such a case. Thus in *Malak Singh and Others Vs. State of P and H and Others*, it was observed that an entry in the surveillance registrar of a habitual offenders made on the basis of history sheet is confidential. It was held observance of the principles of natural justice, apart from not serving the ends of justice may lead to undesirable results of the source of information being disclosed. The rule audi alteratn partem" was held to be not attracted in such cases. One safeguard was indicated. It was observed that while it may not be necessary to supply the ground of belief that the person to be entered in the surveillance register is a habitual offender etc. to the persons concerned, it may in some cases- be necessary to satisfy the court that there are grounds to entertain such reasonable belief and that there is no illegal interference in the life of a citizen under the guise of surveillance.

10. From the above mentioned decisions it becomes apparent that in these matters:

- (i) principles of natural justice are not attracted;
- (ii) regulations permitting surveillance do interfere with the personal freedom and should be recorded to only where public peace or security is involved;
- (iii) mere convictions in criminal case where nothing gravely imperils safety of society cannot be regarded as warranting surveillance under these regulations.

Some of the ideals dealing with human rights would remain ideals only because the State in its endeavour to protect the fabric of social life has to resort to imposing of some restrictions and if these restriction"s are reasonable then no grievance can be made. The European Convention of Human Rights makes a brave attempt to being out this problem. Article 8 of the Convention which came

into force on 3rd September, 1953 and as noticed in "Privacy and Human Rights" Ed - A.H. Robotson. 176 be noticed :-

1. Every one has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a "democratic society in the interests of national security public safety or the economic well-being of the country for the prevention of dis-order of crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

11. In the present case a suggestion appears to have been made by the concerned police incharge to open up a surveillance sheet. This was submitted to the Deputy Superintendent of Police. He made a one line observation "submitted to S P. for perusal and necessary action". The Superintendent of Police appear to have put his signatures under these remarks. This happened on 2nd August, 1973. Twenty two years have lapsed. Even though the stand taken in the return is that petitioner is not being called to the police station and that history sheet was opened because the petitioner was still possessing criminal traits yet this aspect of the matter is not apparent from annexure R-I. The police authorities should have been more explicit and should have given reasons or some concrete instances. The fact that the petitioner has been acquitted should be now given due consideration. Annexure R-I would accordingly be not given effect to and the police authorities would reconsider the matter and act within the guidelines indicated by the Supreme Court in the cases of Kharak Singh and Govind (supra). The fact that the action of the police would have the effect of making a drastic inroad into the privacy of the petitioner cannot be ignored. As indicated by the Supreme Court the mere convictions without there being any evidence that the persons concerned has not abandoned criminal pursuits which are likely to imperil social relations or cause threat to public order is required to be taken note of.

12. This petition is disposed of accordingly.