
(1998) 03 AP CK 0085
In the Andhra Pradesh High Court
Case No : W.P.No. 25404 of 1997

Venkata Satyanarayana

APPELLANT

Vs

Govt. of A.P. and others

RESPONDENT

Date of Decision : 20-03-1998

Acts Referred:

Andhra Pradesh of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 10
Arms Act, 1959 — Section 27
Constitution of India, 1950 — Article 14, 226
Criminal Law (Amendment) Act, 1908 — Section 17(1)
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 302
Prevention of Damage to Public Property Act, 1984 — Section 3(1)

Citation : AIR 1998 AP 184 : (1998) 3 ALD 142 : (1998) 2 ALT 583 : (2000) 3 APLJ 263

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Mr. Ch. Srinivas, for the Appellant; Government Pleader for Home, for the Respondent

Judgement

1. The petitioner, as at present, is a Corporator of 32nd ward of Vijayawada Municipal Corporation, Vijayawada. He also claims to be an enthusiastic social worker. Though elected on behalf of the Telugu Desam Party (for short "TDP"), as a Corporator, has become a close associate to the local Congress M-L.A. It is alleged that his political rivals with a view to eliminate him from Vijayawada political scenario have got him implicated in false criminal cases which are triable at various places in various Courts at Chittoor, Gudivada and Nandigama. The cases, according to him, are foisted upon him. Many a time his political rivals alleged to have made attempts on his life, even in and around the Court premises, whenever he was appearing in the Court in connection with the criminal cases pending against him. On account of his popularity and image he had earned good name for himself within a short period of time and the same become eye-sore for his political rivals. According to him, the main reason to

take revenge against him by his political rivals is that he was elected as Corporator as a TDP nominee; but, subsequently joined in Congress party along with one Devineni Rajasekhar alias Nehru, M.L.A. of Kankipadu constituency, who is an affiliated Member of Congress (1) and who was the earlier front line leader of the TDP in Krishna District.

2. It is alleged that his political rivals are observing his movements and they may put an end to his life at any time. Even the local police are aware of the movements of his political rivals and warned the petitioner, on several occasions, to be very careful while moving with the public in public places and also while attending Courts and in discharge of his public duties.

3. Apprehending threat to his life, several representations are stated to have been made by the petitioner to the respondents to provide adequate security to protect his life from miscreants, political rivals and their associates. It is alleged that the respondents have not taken any action to provide an armed gun-man, nor have they given any reply to his representations for the simple reason that the petitioner earlier belonged to TDP, but joined Congress (I) party due to misunderstandings and internal disputes among the TDP leaders. It is under those circumstances, the petitioner invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking appropriate relief. The petitioner also prays for issuance of directions to the respondents herein, directing them to provide an armed gun-man to the petitioner to protect him.

4. The petitioner had also filed an additional affidavit inter alia stating that the respondents have provided gun-man to the ruling party leaders and Corporators, though there is no threat to their lives. The respondents have provided gun-man to P. Gowtham Reddy, Corporator of 27th division and belonging to CPI; Chennupati Gandhi, Corporator of 45th division; V. Dange Kumar, Corporator of 43rd division, A. Jaya Prakash, Ex.-MLA, and V. Malleshwara Rao, all belonging to TDP. In yet another additional affidavit, it is inter alia stated that the Commissioner of Police, Vijayawada City (for short "the Commissioner") provided armed gun-man to four more persons, who are all party workers and in his case the Commissioner deliberately avoiding to consider his case for providing armed gun-man to protect his life. Thus, the action of the third respondent, according to the petitioner, is, discriminatory. It is further alleged that the third respondent has chosen not to dispose of the representation filed by him and kept the same pending for a very long time.

5. The Commissioner of Police, Vijayawada City filed his counter-affidavit inter alia stating that the petitioner is a rowdy sheeter of Machavaram Police Station of Vijayawada city and involved in as many as sixteen crimes of cognizable and serious nature, including five murder cases. The petitioner is involved in sensational cases and those cases created fear psychosis, terror and panic in the minds of the public by taking law into his hands. It is stated that the petitioner is the main accused in Cr.No. 102/96 u/s 302 IPC of Nandigama Police Station, wherein the deceased, Gopala Reddy was brutally stabbed to death on the day of

repelling to Vijayawada Parliamentary Constituency i.e., on 30-4-1996. It is stated that the petitioner is also the main accused (AI) in Cr.No.152/92 under Sections 147, 307, 302 read with 149 IPC of Patamata Police Station Vijayawada, wherein the deceased, Gottam Venkateswara Reddy, along with one Koppula Sitaiah were brutally hacked to death with deadly weapons on 10-7-1992. In the counter affidavit, the list of cases, in which the petitioner directly involved as an accused and faced/facing trial is given :

- (i) Cr.No.159/89 u/s 302 IPC of L&O, Satyanarayanapuram P.S., Vijayawada City.
- (ii) Cr.No.275/89 u/s 302 IPC of L&O, Patamata Police-station, Vijayawada City.
- (iii) Cr.No.316/89 u/s 324 read with 34 IPC.
- (iv) Cr.No.317/89 u/s 323 IPC and Section 27 of Arms Act.
- (v) Cr.No.277(a)/90 u/s 143, 353 read with 149 IPC of L&O Machavaram P.S., Vijayawada City.
- (vi) Cr.No.278(a) u/s 147, 427, 341 IPC and Section 17(1) Criminal Law Amendment Act and Section 3(1) of P.D.P.P. Act of L&O, Machavaram PS., Vijayawada City.
- (vii) Cr.No.280/90 u/s 147, 341, 427 IPC and Section 17(1) of Criminal Law Amendment Act and Section 3(1) of P.D.P.P. Act of L&O, Machavaram P.S., Vijayawada City.
- (viii) Cr.No.279/90 u/s 147, 427, 341, IPC and Section 17(1) Criminal Law Amendment Act and Section 3(1) of P.D.P.P. Act of L&O, Machavaram PS., Vijayawada City.
- (ix) Cr.No.283/90 u/s 147, 148, 341, 427, 436 read with 149 IPC of L&O, Machavaram P.S., Vijayawada City.
- (x) Cr.No.152/92 u/s 148, 307, 302 read with 149 IPC of L&O, Patamata PS., Vijayawada City.
- (xi) Cr.No.42/94 u/s 332 IPC of L&O, Machavaram PS., Vijayawada City.
- (xii) Cr.No.161/95 u/s 147, 148, 324, 427 read with 149 IPC of L&O, Machavaram PS., Vijayawada City.
- (xiii) Cr.No.241/95 u/s 143, 353, 341, 506 read with 149 IPC of L&O, Suryaraopet P.S., Vijayawada City.
- (xiv) Cr. No.34/96 u/s 302 IPC of Bangarupalem P.S., Chittoor district.
- (xv) Cr. No.51/96 u/s 323, 448, 452, 506 r/w. 149 IPC of L&O, Suryaraopet P.S. Vijayawada City.
- (xvi) Cr.No. 102/96 u/s 302 IPC of Nandigama P.S., Krishna District.

6. It is also stated in the counter affidavit that the petitioner was detained on

17-3-1993 u/s 10 of A.P. Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short "the Act of 1986") and a rowdy sheet was opened against the petitioner and continued vide history sheet No.4/92 to keep a surveillance on his movements and the said rowdy sheet is renewed from time to time in Machavaram Police Station of Vijayawada City.

7. However, it is admitted, that the petitioner had given several representations to the Commissioner to provide him an armed gun-man. According to the Commissioner, the case of the petitioner cannot be favourably considered as he does not come under the category of persons to be eligible for protection. It is inter alia stated that the petitioner himself is harbouring many goondas and he is conducting private panchayats and if such person is provided with armed gun-man, there is every possibility that the petitioner will misuse the same. In nut-shell, the Commissioner states in the counter affidavit that the petitioner does not require any protection. In fact, the cases registered against the petitioner, according to the Commissioner, would show the main role played by him in planning, as well as finishing his rivals, for his selfish ends. According to the Commissioner, the petitioner became totally fearless of the law of the land and indulging himself in commission of violent activities in Vijayawada City disturbing the peace and public tranquility.

8. In the reply affidavit, the petitioner made an attempt to explain as to under what circumstances, he is implicated in the criminal cases. It is also stated as to how he is acquitted in some of the criminal cases; but admitted of his detention u/s 10 of the Act of 1986.

9. It is neither desirable, nor possible for this Court to express any opinion whatsoever on the question of the petitioner's involvement in various criminal cases. There is no need to make any comment whatsoever about the alleged involvement of the petitioner and merits of the accusations made against him, as any comment from this Court, at this stage, may cause avoidable prejudice to the petitioner, as well as the prosecution. The pendency of these cases is noted only for the purposes of disposal of this writ petition. The fact remains that the petitioner is an accused in many criminal cases and also a rowdy sheeted notwithstanding his assertion and claim of rendering social service. His changed loyalty from one political party to another political party is a matter of choice about which the Court need not express any opinion.

10. The only question that arises for consideration in this writ petition is whether this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India should compel the respondents to provide adequate security to protect the life and liberty to the petitioner ?

11. It is required to notice that the petitioner, even in his affidavit, does not specify any person or persons or identified group from whom he is facing threat to his life. Vague and indefinite allegations are made by the petitioner stating

that there is "tremendous threat by miscreants"; "his political opponents set their plan to terminate my life with the help of hired goondas"". He also states that "political rivals made an attempt on his life." There is no concrete instance where the petitioner came under any attack, inasmuch as there is no such complaint filed by him pinpointing as to the threat or attempt on his life by any identified person or persons. It is not possible for this Court to make an assessment of the threat perception to the life of the petitioner.

12. The Commissioner of Police, in his counter affidavit states that the petitioner himself has taken the law into his hands without any respect for the law of the land. The Commissioner relies upon the cases registered against the petitioner in support of his version that it is the petitioner who indulges in unlawful and criminal activities. I see no reason whatsoever to disbelieve the averments made by the Commissioner in his counter affidavit about the credentials of the petitioner. Of course, this would not mean expressing any opinion whatsoever about the merits of the prosecution cases pending against the petitioner in those cases. Mere rebuttance from the petitioner that the cases are foisted and he is falsely implicated in these cases is of no consequence and have no bearing on the disposal of this writ petition.

13. This Court has no independent mechanism or expertise to find out for itself as to whether there is any threat perception to the life of the petitioner. Even the petitioner did not specify from whom there is such threat to his life, liberty and property. I am of the considered opinion that the State cannot be burdened with the liability of providing armed escort/gun-man to such of those persons who indulge in factions and group rivalry, unless it is clearly established that there is direct threat perception to their life from known and identified persons or group of persons. Even then it would not be possible for the State machinery to provide adequate security to each and every individual who on their own conduct gets involved or implicated in criminal cases. It is true that the State is duty bound to protect the threatened group from such assaults. Failure to give adequate protection may well amount to failure to perform its constitutional as well as statutory obligations. It is true that the State must act impartially and carry out its legal obligations to safeguard the life, health and well-being of the people residing in the State without being inhibited by local politics. (See National Human Rights Commission Vs. State of Arunachal Pradesh and Another, .

14. I had an occasion to express my anxiety as to how almost every factionist approaching the Court and asking for protection from the opponent factionist and observed:

"Everyday the writ admission Courts are loaded with such type of cases. These are the persons against whom criminal cases are pending. It is alleged that they take the law into their own hands. These factionists apprehending danger from the other factionists, who are also indulging in similar criminal activities, rush to this Court and invoke the extraordinary jurisdiction of this Court for appropriate directions. The result is that almost every factionists is in the Court asking for

the protection from opponent faction group.""

That observation ultimately fell for consideration before a Division Bench of this Court in *G. Subas Reddy v. State of A.P.*, 1997 (1) ALD (CrL.) 19 and the Division Bench after elaborate consideration of the matter, speaking through the Hon'ble the Chief Justice, Sri P.S. Mishra, observed "We have no hesitation in concluding that there can be no pick and choose in providing security to any person and the only thing that will guide making such provision will be the perception of threat and the duty of the Government of the State to protect the life and properties...." and further held:

"Individual or individuals, who apprehend threat to peace and to his or their lives can approach the competent authority at the first instance at the district level and make application for deployment of special force for maintaining peace and for protection of his or their lives and liberty. On such application being made, the competent authority shall be duty bound to promptly make suitable orders without any delay. In case the application is rejected by the district authority, the applicant shall have the right to make application before the superior authority in the hierarchy as indicated above, the last being before the Government of the State. The applicant/ applicants for such security or deployment of Special Police force shall, however be responsible for the costs as envisaged under the Acts aforementioned and the Government shall have no authority at all to make any expense upon such special force from and out of the revenue of the State."

15. The learned Counsel for the petitioner, Sri E. Ella Reddy, relies upon the observation of the Division Bench that "there can be no pick and choose in providing security to any person" and submits that the very same respondents, the Commissioner has provided security to many municipal Corporators whose names are mentioned in the reply affidavit and the additional affidavit filed by the petitioner and refuse to provide the same relief to the petitioner and the action on the part of the Commissioner, therefore, is not only arbitrary, but discriminatory. In nut-shell, it is the submission of the learned Counsel for the petitioner that the Commissioner cannot have different standards depending upon his own sweet will. I am of the considered opinion, that the question is required to be looked at slightly from a different perception. It is not the question of discrimination in cases of this nature; but, it is the question of assessment of threat perception and vulnerability of the person claiming security cover. It may depend upon variety of factors and host of circumstances. Normally, the Court would go by the assessment of threat perception by the concerned authority, unless such assessment is proved to be a mala fide exercise of power. Such is not the case on hand.

16. The observations of the Division Bench are required to be understood in the background of the law declared by the Apex Court, which will be referred to in the subsequent paragraphs.

17. Even assuming that the Commissioner had chosen to provide security to the

persons, who are similarly situated like the petitioner, it is not the ground for extending the same facility to the petitioner. The validity of the order or action of the Commissioner in providing security to the named persons, does not arise for consideration in this writ petition, inasmuch as the same is not challenged. The benefit, if any, conferred upon the other persons wrongly, would not form a legal premise to ensure it to the petitioner or to repeat or perpetuate such wrong order. Such wrong orders, if known, could not be legalised. In my considered opinion, the judicial process cannot be abused to perpetuate such wrong doings or things. The right to equality guaranteed under Article 14 of the Constitution of India proceeds on the premise that the citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. If some persons derive benefit which is not permissible in law, similar persons cannot plead that they must be given the same benefit, Such orders passed by the administrative authorities cannot be treated as precedent. The order in favour of the other person granting security cover may be legal and valid or it may not be. That has to be investigated first. If the same is challenged before the authorities, the same cannot be directed to be followed in the cases of the persons claiming the relief-Law on this subject is succinctly stated by the Apex Court in Chandigarh Administration and another Vs. Jagjit Singh and another, .

" "We are of the opinion that the basis of the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner in the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law-indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law-but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act or order nor can such illegal order constitute the basis for a legitimate complaint of discrimination.

Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner, if it is found that the petitioner's case is similar to the other persons' case. But then why examine another persons' case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case, hi our considered opinion, such a course-barring exceptional situations-would neither be advisable nor desirable, hi other words, the High Court cannot ignore the law and well accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world."

18. In Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, , the Apex Court echoed the same principle.

19. Therefore, it is not possible to agree with the submission made by the, learned Counsel for the petitioner. The Court cannot visualise as to under what situation and circumstances, the third respondent, Commissioner of. Police, has chosen to pass orders directing security cover to some persons, whose names arc mentioned by the petitioner in the additional affidavit. It is not as if, the action or the order is under challenge. Therefore, the Court had no occasion to consider the validity and legality of such action and such action or orders cannot form basis for holding the present impugned action of the third respondent-Commissioner as discriminatory. Two wrongs cannot make one right. The extraordinary jurisdiction of this Court cannot be used for such purposes. It is settled law that the remedy under Article 226 of the Constitution of India is a discretionary one. Having regard to the facts and circumstances of the case, I am of the considered opinion that the case on hand is not one which requires exercise of its discretion by the Court in the matter. No other point is urged.

20. For the all aforesaid reasons, I do not find any merit in the writ petition. The writ petition fails and it is accordingly dismissed. No costs.