

(1)

WWW.LIVELAW.IN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.107/2020

Shri Jamal s/o Anwar Siddiqui,
Aged about 48 years, Occ.: Business,
R/o : Plot No.4, Waseem Palace,
Dattatraya Nagar, Ayodhya Nagar,
Nagpur.

..... PETITIONER

// VERSUS //

1. State of Maharashtra, Ministry of Home Affairs, Fort, Mumbai.
2. The Director General of Police, Town Hall Building, Ground Floor, Near Horiman Circle, Mumbai.
3. The Police Commissioner Police Sadar, Nagpur.
4. The Deputy Commissioner of Police Special Branch, Nagpur.

.... RESPONDENTS

Shri S. S. Sohoni, Advocate for petitioner.
Ms. T. H. Khan, APP for the respondents.

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

DATED : 05/02/2021

ORAL JUDGMENT : (PER:- SUNIL B. SHUKRE, J.)

- 1] Heard. **Rule.** Rule made returnable forthwith.
- 2] Heard finally by consent of the learned counsel appearing for the parties.

(2)

WWW.LIVELAW.IN

3] By this petition, the petitioner has prayed for issuance of writ of mandamus to the respondents to provide him or continue to provide him 'X' – category security. The petition is opposed by the respondents.

4] We may state here that in a democracy like India, having a written Constitution for the governance of the Country where rule of law pervades all through out, the State has been entrusted with the duty and responsibility to protect life and property of its citizen and this duty is and continues to be performed by the State through various laws it has enacted or may enact in future, taking of different measures and setting up various protection forces. There are police stations established all over. There is also established a Reserve Police Force and generally speaking, the police machinery also resorts to such steps as police patrolling, providing of temporary police force where the trouble is anticipated, providing of night guards and so on forth. Even, such steps as externing criminals from particular areas and initiating preventive detention action against the hardened criminals are also taken. These are all the steps and measures taken for ensuring safety of citizens of India and their property. Therefore, if any person is desirous of security over and above the ordinary ring of protection already

(3)

WWW.LIVELAW.IN

thrown around by the State which is seen in the enacted laws and various steps just pointed out, there must be some special reason or material to show that such additional and special security is indeed justified. After all, when any special or additional security has to be provided, the State does so by incurring huge expenditure of public money. Then, there are also dangers involved in providing of such special security. One of them could be of any possible misuse of the special security by the person to whom it is provided. This is the reason why there is a well established procedure which must be followed before any decision is taken for providing special or additional security to a person. Such special security would not come as a matter of right and matter of course, rather it would follow the special need of the person and peculiar urgency of the situation.

5] Special need of the person and peculiar urgency of the situation are the factors which cannot be decided by a person who is demanding a special security. These factors are required to be examined and dealt with appropriately in a dispassionate manner by the State by following procedure established by rules. The reason being that right to lead secured life is a right which extends to secure conditions of life as understood in the context of general measures of security

(4)

WWW.LIVELAW.IN

initiated by the State. So, the corresponding duty of the State is only up to the level of providing adequate measures of security in general. The right to lead a secured life would never include in it any right to lead a specially secured life, unless the special need is assessed and acknowledged by the State. Therefore, it is the assessment of the State alone, and not of an individual demanding special security, which is material. A person demanding special security, may, for his own reasons see that there is a threat to his life or property or both from the world at large and therefore may lead his life constantly under fear. But, such opinion of a person about danger to his own life or property, in a given case, may only be a figment of imagination or due to some peculiar psychology of that person. But, in reality, the agency entrusted with duty to protect a citizen, may find that the own threat perception of such a person is illusory or unrealistic or blown out of proportion. Therefore, the agency of the State which is under a duty to protect its citizen is required to discharge it's duty in such a case cautiously, carefully, diligently and in the best of interest of the person concerned and also the State. Such agency would examine the whole issue by making an inquiry into the matter, would collect inputs provided to it by various sources and then would take an

(5)

WWW.LIVELAW.IN

appropriate decision regarding how would it perceive the factor of threat to the person demanding security. Any decision taken by such agency, after making such an inquiry and which is based upon the material revealed in the inquiry, being of administrative nature, would not be liable to be substituted by a decision of the Court taking judicial review of the decision under Article 226 of the Constitution of India, unless, the decision taken is not based upon any material or is actuated by any malice or malafides or is the result of consideration of some extraneous material. If any judicial review of such a decision has to be taken it must be on the basis of the principle of Wednesbury unreasonableness so well entrenched in Indian jurisprudence. A useful reference in this regard may be made to the cases of *Associated Provincial Picture Houses Ltd., Vs. Wednesbury Corpn*, **ALL Criminal Report pages 682 H – 683 A** and *State of NCT of Delhi and another Vs. Sanjeev alias Bittoo*, **2005 SCC (Cri) 1025**.

6] According to the learned counsel for the petitioner, the petitioner is a National President of BJP Minority Morcha and by virtue of his occupying such a position, the petitioner remains under constant threat to his life and property. He submits that while other similarly situated persons have been

(6)

WWW.LIVELAW.IN

granted 'X' – security, the petitioner has been denied the same. He further submits that earlier 'X' – category security was provided to the petitioner, but that was during to the regime of the Government of another national party and in the interregnum another party's Government came into power and the 'X' – security granted to the petitioner was withdrawn. This is all disagreed too by the learned APP, who submits that withdrawal of 'X' – category security was never for any political reason but was only on account of the changed circumstances which reduced considerably the threat to the life and property of the petitioner as perceived by the Intelligence Agencies. She also submits that it is not the case that the petitioner has not been provided with any security. She points out that by providing one Gun-man for security of the petitioner with effect from 05.03.2020, the State has only performed its duty to protect life and property of its citizen in a diligent manner.

7] So far as, granting of 'X' – category security to the petitioner earlier is concerned, there is no dispute about it. It was granted sometime in the year 2017 and it came to be withdrawn on 13.12.2019. The reply filed on record by the State indicates that the withdrawal of 'X' – category security did not take place suddenly and without following any procedure. It

(7)

WWW.LIVELAW.IN

shows that the decision was taken by the Intelligence Committee in the confidential review it takes periodically of the security arrangement of different categories made for different important persons. It further shows that after collecting necessary inputs in the matter, the Intelligence Committee, which is in Marathi called 'पुनर्विलोकन समिती' took the review of the security arrangement and it was of the view that for the present there was no fresh or special threat to the petitioner and the circumstances had changed which indicated that continuation of 'X' -category security given to the petitioner was no longer required and therefore, the committee took a decision that 'X' category security given to the petitioner be withdrawn. Accordingly, it came to be withdrawn with effect from 13.12.2019. A copy of a communication dated 02.03.2020 addressed to the DCP, Special Branch Nagpur City by DCP (VIP) Security State Intelligence Bureau, State of Maharashtra, Mumbai informing about such withdrawal of 'X' – category security is annexed to the reply of the respondents. It stands in support of what is stated in the reply of the respondents. There is no reason for us to disbelieve what is stated in the said communication or the reply of respondents. There is also no doubt expressed by the petitioner about the correctness of the

WWW.LIVELAW.IN (8)

statements made in the reply and the said communication. So, what appears to us is that there was in existence material for Review Committee to consider and review its decision, which it did consider and accordingly reached its subjective satisfaction regarding withdrawal of 'X' category security.

8] According to Wednesbury principle of unreasonableness, whenever any subjective satisfaction is based upon material in existence and its appropriate consideration by the administrative Authority, review of the decision of the Authority by any Court is not permissible on the spacious ground that had such material been considered by the Court, the Court would have taken a different view. Therefore, we do not find that any challenge worth the name could be taken to the decision of the review committee to withdraw 'X' category security given to the petitioner. Then, it is not the case here that the State is being callous to the petitioner. It's an admitted fact that the petitioner has been granted extra personal security by providing him a Gun-man by the State. Such security arrangement, we must say, is also based upon perception of the threat objectively seen by the State and therefore, cannot be seen to be inadequate in the fact situation of this case.

9] At the cost of repetition, we would say it here, that

(9)

WWW.LIVELAW.IN

in such cases what matters is not the own perception of an individual about any threat to him, but it is the perception of the agency of the State entrusted with duty to protect citizens is what is important. Such agency is required to take into consideration several relevant factors, follow the requisite procedure and arrive at appropriate decision so that, the additional expenditure of public money that is involved in such cases is not incurred without any reason and that the additional security to be provided is also not misused in any manner by anybody including the protectee himself. Nevertheless, if the person desirous of any additional and special security is dissatisfied with decision of the State to not provide him any special or 'X' category security, such person can always opt for engaging private Security Guards for his own security at his own expenses.

10] In the result, we find that this petition is devoid of any merit. The Writ Petition stands dismissed.

Rule is discharged.

(AVINASH G. GHAROTE, J)

(SUNIL B. SHUKRE J.)

WWW.LIVELAW.IN

Sarkate