

Before Augustine George Masih & Vinod S. Bhardwaj, JJ.

JASKIRAT SINGH CHAHAL—Appellant

versus

STATE OF PUNJAB AND OTHERS—Respondents

LPA No.2165 of 2017

March 28, 2022

Constitution of India, 1950—Arts. 226 and 227—Letter Patents Appeal—Decorated police officer—Withdrawal of security cover—Order of Writ Court affirmed—Held, seeking a personal security officer is not a vested right of any person—Person seeking indulgence of Court has to make out a strong exception by demonstrating the apprehension to be real and genuine—There is no justification to extend a personal security cover at the state expense only as an act of patronage—LPA dismissed.

Held that, seeking a personal security officer is not a vested right of any person. A person beseeching indulgence of the Court has to make out a strong exception by demonstrating the apprehension to be real and genuine. The mere apprehension in the mind of an individual, not supported by any cogent, convincing and reliable material cannot form the basis for the Court to conclude that the assessment of the threat perception by the State is invalid or that it is based upon incorrect and subjective mis-appreciation of the material available with them. Besides, there is no incident in the recent past as may strengthen the argument of the appellant to impugn the input of the Intelligence Wing.

(Para 6)

Further held that, the gravity of threat has to be real and not just based upon perceptive apprehension. In the event the competent authority in the State Govt. is convinced that the threat has abated, there can be no justification to extend a personal security cover at the State's expense, only as an act of patronage or as an act aimed to create a coterie of obliged and loyal persons. Limited public resources cannot be deployed for display of eminence and as an attempt to bolster the ego of the recipient of such protection. The satisfaction of the competent authority cannot be ignored in the absence of any trustworthy, credible and reliable evidence. A Court does not stand as an expert to assess the correctness of the decision of the competent authority and to evaluate the threat, if any, faced by an individual. The

same has to be left to the competent authority and its assessment and discretion.

(Para 10)

Further held that, this Court, while exercising its jurisdiction under Article 226 of the Constitution of India, cannot substitute its decision for that of the competent authority pertaining to the threat apprehension entertained by the appellant. The facts that emanate from the record do not establish any real threat and it seems that the demand for security is more to display it as an authority of symbol and to flaunt his status as a VIP. This practice of creating a privileged class on the State's expense, by using the taxpayers' money has to be deprecated.

(Para 11)

M.L. Saggar, Senior Advocate with,
Jasleen Chahal, Advocate,
for the appellant.

Gaurav Garg Dhuriwala, Sr. D.A.G., Punjab.

VINOD S. BHARDWAJ , J.(Oral)

(1) This intra-court appeal has been filed by the appellant raising a challenge to the order dated 24.10.2017 passed by learned Single Judge of this Court in Civil Writ Petition No.7549 of 2017. The appellant had prayed for quashing of the order dated 04.04.2017 appended along with the writ petition as Annexure P-2, whereby the security provided to him had been withdrawn. The learned Single Judge, after considering the reply filed by the State of Punjab through AIG, Security and noticing the proceedings of the State Level Security Review Committee constituted to review the security provided to various individuals, observed that the Committee found no threat perception to the appellant and had decided to withdraw the security cover. It was also duly noticed that security provided to various officers had been withdrawn after review and it was not a case of malicious isolated instance of withdrawal of security pertaining to the appellant alone and also that there was no recent incident indicating that any threat existed even today.

(2) Learned Senior counsel appearing on behalf of the appellant has argued that the appellant is a decorated police officer, who had joined the Punjab Police in the year 1977 and was awarded with police medal for gallantry on 18.11.1987. The said award was conferred upon

the appellant for displaying valour and courage in apprehending a terrorist namely Gurminder Singh @ Nutty, who tried to escape with the service rifle of one Head Constable after hitting the police-party. Two Constables, who were subordinates to the appellant, got killed in the said incident whilst one ASI was seriously injured. He further submitted that the appellant was promoted to the rank of Inspector of Police on 21.06.1985 and thereafter, even in the year 1986, the appellant displayed exemplary courage in averting the communal riots between the Hindus on the one hand and Sikhs on the other where more than one thousand Sikhs, who were part of youth federation, formed an unlawful assembly armed with swords and other deadly weapons entered the city while curfew had been imposed. Learned counsel submitted that house of the appellant was set on fire in the year 1986 and that on account of recognition of exemplary courage, devotion to duty and fearless performance in discharge of his obligations, the appellant was provided security cover and was allowed to retain one Personal Security Officer post his retirement. The said PSO was withdrawn vide impugned order dated 04.04.2017 (Annexure P-2). The aforesaid aspects are alleged to have been ignored by the learned Single Judge while dismissing the writ petition.

(3) Responding to the arguments advanced by the learned counsel appearing on behalf of the appellant, learned State Counsel has drawn the attention of the Court to the findings recorded by the learned Single Judge and has submitted that the appellant has not been able to point out any error or illegality in the said order. He also submitted that the case of the appellant was considered even during the pendency of the appeal but was not found sustainable. He has made a reference to the additional affidavit of Paramdip Singh, PPS, AIG, Security, Punjab, Chandigarh dated 16.04.2018 and has drawn attention of this Court to the following extracts thereof:-

“That reply in the above cited CWP No.7549 of 2017, was accordingly filed on 08.05.2017, on behalf of the respondents. In pursuance of this reply, the petition was dismissed by the Hon'ble High Court vide its order dated 24.10.2017. Aggrieved by these orders the petitioner has again approached this Hon'ble court through the present LPA No.2165 of 2017, which is now pending consideration. Thereafter vide CM No.799 of 2018, the petitioner has placed on record a copy of a letter dated 23.01.2018, obtained by him from the Commissioner of Police,

Jalandhar, under the RTI Act 2005, wherein CP Jalandhar had recommended 01 PSO for security of the petitioner.

That now vide his letter dated 14.03.2018, CP Jalandhar, has reported that the analysis of threat perception in the instant case has been carried out afresh in accordance with the prescribed guidelines. A thorough analysis of threat perception as per the extant guidelines and of the work done by the petitioner as a police officer has revealed that at present the petitioner faces no specific or general threat from any quarter. Therefore, the CP Jalandhar has not recommended any personal security cover for the petitioner. Similarly, an assessment of threat in respect of the instant petition carried out by the Intelligence Wing, Punjab has also revealed that there are no specific threat inputs indicating any threat *to security of the petitioner from any terrorist/militant out fitsoperating in the country.*”

(4) He has thus argued that the request of the appellant having been re- considered and not found that the appellant faced any specific or general threat from any quarter, hence, the Commissioner of Police, Jalandhar did not recommend any personal security cover for the appellant. It was also pointed out that the assessment of threat with respect to the security of the appellant was also carried out by the Intelligence Wing which affirmed absence of any threat to the security of the appellant. He argued that there has been no incident of any nature whatsoever in the recent past as would support or supplement the apprehension of the appellant against threat to life and liberty of the appellant and other members of his family. The last incident referred to by the appellant in his petition itself relates to the year 1986. The very fact that there has been no untoward incident since then only corroborates the stand of the State.

(5) We have heard learned counsel for the respective parties and upon consideration of their rival submissions, we do not find ourselves in agreement with the learned counsel appearing on behalf of the appellant.

(6) Seeking a personal security officer is not a vested right of any person. A person beseeching indulgence of the Court has to make out a strong exception by demonstrating the apprehension to be real and genuine. The mere apprehension in the mind of an individual, not supported by any cogent, convincing and reliable material cannot form the basis for the Court to conclude that the assessment of the threat

perception by the State is invalid or that it is based upon incorrect and subjective mis-appreciation of the material available with them. Besides, there is no incident in the recent past as may strengthen the argument of the appellant to impugn the input of the Intelligence Wing.

(7) The Hon'ble Supreme Court, while dealing with the matter of *Ramveer Upadhyay* versus *R.M. Srivastava and others*¹ held as under:-

7. However, in our experience, we have hardly seen any security of 'Z' or 'Y' category provided to any ordinary citizen howsoever, grave the threat perception or imminent danger may be to the person concerned. The petitioner, however, has claimed it obviously as a 'privileged class' by virtue of being an ex-minister which at times, may be justified even to an ex-minister or any other dignitary, considering the nature and function of the duties which he had discharged, which could facilitate the assessment of his threat perception even after laying down the office. But what exactly is his threat perception and whether the same is grave in nature, obviously will have to be left to be decided by the authorities including the authorities of the State or the Centre which may include even the Intelligence Bureau or any other authority concerned which is entitled to assess the threat perception of an individual. But in so far as the Court of law is concerned, it would obviously be in a predicament to come to any conclusion as to whether the threat perception alleged by a person claiming security is grave or otherwise which would hold him entitled to the security of a greater degree, since this is clearly a question of factual nature to be dealt with by the authorities entrusted with the duty to provide security after assessing the need and genuineness of the threat to any individual.”

(8) While placing reliance on the aforesaid judgment of the Hon'ble Apex Court, a Division Bench of the Allahabad High Court in the matter of *Abhishek Tiwari* versus *State of U.P. and others* passed in Misc. Bench No.10867 of 2021, decided on 04.08.2021 has observed as under:-

“16. A large number of private persons are being provided

¹ 2013(7) Scale 564

personal security. Many would consider it a wastage of tax-payers' money. To a parliamentary question, Minister of State (Home) replied that security for the President, Vice-President and the Prime Minister was provided according to the 'Blue Book'. Though not stated in so many words, it was clear from the context that the security was given *ex-officio*, that is, by virtue of the offices they held. It was told that Union Ministers, State Chief Ministers and Judges of the Supreme Court and High Courts were provided positional/statutory security cover to facilitate impartial decision-making process. The security arrangements for other political personalities were made after careful assessment of the threats emanating from terrorists/militants/fundamentalists outfits and organized criminal gangs, and that the mechanics of security arrangements was prescribed in the 'Yellow Book'. The degree of threat varies from individual to individual, depending on factors such as the nature of activities, status, and likely gains for the terrorists, etc. Accordingly, categorized security cover (Z+, Z, Y & X) is provided to them on the basis of gravity of the threat. Thus, threat perception is assessed on the basis of threats emanating from various terrorists, militants, fundamentalists outfits and organized criminal gangs for some work done by the protectees in their public life and, in national interest.

17. A person or political personality cannot claim security on the ground that he faces threats from his enemies because of some private dispute with them. There could not be any dispute about security for the President, Vice-President and Prime Minister, or Union Ministers, State Chief Ministers and Judges of the Supreme Court and High Courts, because they represent the core functioning and authority of the Indian State. There would be other political personalities, who hold public office and might have real threat from the terrorists/militants/fundamentalists outfits and organized criminal gangs for the work done or being done in the interest of nation by such political personality. These persons, on the basis of real threat perception, can claim security at state expense and, if they were to be harmed by such elements, it would affect the prestige of the government and authority of the State and, it would

adversely create an impression in the minds of the people that if, the government cannot protect high dignitaries and, the people who work for nation and society, how would it ever protect the common men and, this would lead to the insecurity in the minds of the public in general and diminish the State Authority. It would also make an impact on the decision making process impartially or boldly in detriment to the public and national interest.

18. In a country governed by the rule of law and democratic polity, a class of privileged persons should not be created by the State. India got its written Constitution in 1950 and, as per the preamble, the goal of the Indian Democratic Republic is to secure justice to all citizens (socially and economically and politically) liberty of thought, expression etc. and equality of status and of opportunity. The State cannot be seen as creating a privileged class in the society as it would amount abdication of the very principle of justice and equality enshrined in the preamble of the Constitution. There may be cases where public interest demand to provide personal security but same should be done in a transparent and fair manner and, the State should be able to justify its decision if the same is challenged in the Court of law.

19. In the case of *M.A. Khan Chaman v. State of U.P.*, 2004 SCC Online All 373, it was said that the petitioner, M.A. Khan Chaman was not having a right to enjoy the privilege of security ad infinitum. The Court noted that on flimsily grounds people exercise undue influence and manage to secure gunners and security at State expenses and at taxpayers cost. In fact acquisition of a gunner has begun to be treated as a status symbol. This practice must be brought to an end. It has been further held that the security can be provided to an individual provided it is needed in fact and there is a threat perception to the life of the applicant or any of his family members.

20. Case of providing security should be decided objectively by the authority taking into account all relevant factors and security should not be provided merely to enhance the status of the applicant. The competent Authority would be required to review the threat perception

from time to time. Whether the applicant would be required to pay the expenses of the gunner or not would depend upon the recommendation of the Reviewing/Assessing Authority.

21. A person is entitled to get security as per the Government Order/policy if he comes within the parameters based upon the real threat perception.

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29. As a matter of principle, private individuals should not be given security at State cost unless there are compelling transparent reasons, which warrant such protection, especially if the threat is linked to some public or national service they have rendered and, the security should be granted to such persons until the threat abates. But, if the threat perception is not real, it would not be proper for the Government to grant security at the cost of taxpayers money and to create a privileged class. In a democratic country governed by rule of law and written Constitution providing security at State expense ought not to become an act of patronage to create a coterie of 'obliged' and 'loyal' persons. The limited public resources must be used carefully for welfare schemes and not in creating a privileged class. From a report of Bureau of Police Research and Development (BPR&D), police think tank of the Ministry of Home Affairs (MHA), more than 20,000 additional policemen than the sanctioned strength were deployed in VIP protection duty in the year 2019. As per the report, Data on Police Organizations, 2019, as many as 66,043 policemen were deployed to protect 19,467 Ministers, Members of Parliament, Judges, Bureaucrats and other personalities and, thus numberis growing up in every year.

30. In the case of *Rajinder Saini v. State of Punjab and others*, C.W.P. No.19453 of 2015 relying upon the judgment in the case of *Ramveer Upadhyay v. R.M. Srivastava and others* (supra), it was observed that the politicians and holders of party offices just to show their might were seeking security and, the same could not be provided merely on asking. If there is actual threatthen only concerned authority can consider the case and make recommendation to the Government at their own level for

providing security. The Court cannot determine as to whether the petitioner has any threat perception and required security urgently.

31. In the case of Randeep Singh Surjewala v. Union of India and others, CWP No.13266 of 2016 , the Punjab and Haryana High Court denied inclusion of Surjewala's name as a categorized protectee in the Central list in Delhi as there was no specific input regarding threat perception to him, either from any terrorist, militant, outfit or fundamentalist groups.”

(9) We find ourselves in respectful agreement with the principles enunciated in the aforesaid judgments by the Hon'ble Apex Court as also noticed by a Division Bench of the Allahabad High Court.

(10) The gravity of threat has to be real and not just based upon perceptive apprehension. In the event the competent authority in the State Govt. is convinced that the threat has abated, there can be no justification to extend a personal security cover at the State's expense, only as an act of patronage or as an act aimed to create a coterie of obliged and loyal persons. Limited public resources cannot be deployed for display of eminence and as an attempt to bolster the ego of the recipient of such protection. The satisfaction of the competent authority cannot be ignored in the absence of any trustworthy, credible and reliable evidence. A Court does not stand as an expert to assess the correctness of the decision of the competent authority and to evaluate the threat, if any, faced by an individual. The same has to be left to the competent authority and its assessment and discretion.

(11) This Court, while exercising its jurisdiction under Article 226 of the Constitution of India, cannot substitute its decision for that of the competent authority pertaining to the threat apprehension entertained by the appellant. The facts that emanate from the record do not establish any real threat and it seems that the demand for security is more to display it as an authority of symbol and to flaunt his status as a VIP. This practice of creating a privileged class on the State's expense, by using the taxpayers' money has to be deprecated.

(12) While recognizing the exemplary services rendered by the appellant at the time of unrest, it is held that the same alone cannot be the basis to claim a personal security cover as a matter of right, for perpetuity and despite no apprehension assessed by State on the basis

of its intelligence input.

(13) We find that there is no error in the order dated 24.10.2017 passed by the Single Judge and the same does not suffer from any mis-appreciation of fact or non-appreciation of law.

(14) The instant appeal is thus accordingly dismissed, being devoid of any merit.

Payel Mehta