

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).25237/2010

(From the judgement and order dated 21/08/2009 in CMWP No.15440/1998 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

ABHAY SINGH

Petitioner(s)

VERSUS

STATE OF UTTAR PRADESH & ORS.

Respondent(s)

(With appln(s) for permission to file additional documents and exemption from filing O.T. and correction of pleadings and permission to file additional affidavit and c/delay in filing affidavit and intervention and office report)

WITH SLP(C) NO. 23984 of 2010

(With appln.(s) for urging addl.grounds and permission to file additional affidavit and exemption from filing O.T. and with prayer for interim relief and office report)

Date: 01/05/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR JUSTICE KURIAN JOSEPH

For Petitioner(s) Mr.Harish N.Salve, Sr.Adv.
Ms.Christi Jain, Adv.
Mr.Anurag Gohil, Adv.
Mr.Sushil Kumar Jain, Adv.

For Respondent(s) Mr.Sidharth Luthra, ASG
For NCT of Delhi Mr.Brijender Chahar, Sr.Adv.
Ms.Sunita Sharma, Adv.
Ms.Rashmi Malhotra, Adv.
Ms.Supriya Juneja, Adv.
Mr. D.S. Mahra, Adv.

For MOH Ms.Indira Jaisingh, ASG
Mr.Aman Ahluwalia, Adv.
Mr.Farrukh Rasheed, Adv.
Ms.Supriya Jain, Adv.
Mr.B.K.Prasad, Adv.

Mr.P.N.Misra, Sr.Adv.
Mr.Manjit Singh, AAG
Mr.Tarjit Singh, Adv.
Mr.Kamal Mohan Gupta, Adv.

For State of Punjab Mr.Sidharth Luthra, ASG
Mr.Ajay Bansal, AAG
Mr.Kuldip Singh, Adv.
Mr.Parduman Singh, Adv.
Mr.Gaurav Yadav, Adv.
Mr.B.Chander, Adv.

For State of Uttarakhnad Mr.Rakesh Diwedi, Sr.Adv.
Mr.Abhishek Atrey, Adv.
Mr.Prateek Dwivedi, Adv.

For State of Raj. Mr.Jasbir Singh Malik, AAG
Mr.Varun Punia, Adv.
Ms.Pragati Neekhara, Adv.

For State of Mr.Narendra Hooda, Sr.AAG

Haryana Mr.Manjit Singh, AAG
Ms.Nupur Choudhary, Adv.

For State of Mah. Mr.Shankar Chillarge, AAG
Ms. Asha Gopalan Nair, Adv.

For State of U.P. Mr.Gaurav Bhatia, AAG
Mr.Anuvrat Sharma, Adv.
Mr.Pankaj Pandey, Adv.

For State of H.P. Mr.Suryanaryana Singh, AAG
Ms.Pragati Neekhara, Adv.

For State of T.N. Mr.Subramoniam Prasad, AAG
Mr.B.Balaji, Adv.
Mr.R.Rakesh Sharma, Adv.
Mr.T.Mouli Mahendran, Adv.

For State of Kerala Mr.Ramesh Babu M.R., Adv.
Mr.B.R.Mohan Kumar, Adv.

For State of Assam Mr.Navnit Kumar, Adv.

For State of Andhra Pradesh Mr.Koka Raghava Rao, Sr.Adv.
Mr.G.N.Reddy, Adv.
Mr.Debojit, Adv.

For State of Chhattisgarh Mr.C.D.Singh, Adv.

For State of J & K Mr.Sunil Fernandes, Adv.
Ms.Insha Mir, Adv.

For State of Arunachal Pradesh Mr.Anil Shrivastav, Adv.
Mr.Rituraj Biswas, Adv.

For State of Odisha Mr.Shibashish Misra, Adv.
Mr.Suvinay Dash, Adv.

For State of Manipur Mr.Khwairakpam Nobin Singh, Adv.

For State of W.B. Mr.Bikas Kar Gupta, Adv.
Mr.Avijit Bhattacharjee, Adv.

For UT of Puducherry Mr.V.G.Pragasam, Adv.
Mr.S.J.Aristotle, Adv.
Mrs.Prabu Ramasubramanian, Adv.

For State of M.P. Mr.Mishra Saurabh, Adv.
Mr. Gunnam Venkateswara Rao, Adv.

For RR No.6 Mr. Sunil Kumar Jain, Adv.
Mr.Sachin Sharma, Adv.
Ms. Anuradha Mutatkar, Adv.

For UT, Chandigarh Mr. Jatinder Kumar Bhatia, Adv.

For State of Gujarat Ms.Hemantika Wahi, Adv.

For State of Jharkhand Mr.Jayesh Gaurav, Adv.
Mr. Gopal Prasad, Adv.

For State of Mrs.K.Enatoli Sema, Adv.

Nagaland Mr.Amit Kumar Singh, Adv.

For State of Sikkim Mrs.Aruna Mathur, Adv.
Mr.Yusuf Khan, Adv.

For State of Goa Mr.Siddharth Bhatnagar, Adv.
Mr. T. Mahipal, Adv.

For State of Bihar Mr. Gopal Singh, Adv.
Mr.Manish Kumar, Adv.

For State of Tripura Mr. Gopal Singh, Adv.
Mr.Ritu Raj Biswas, Adv.

For State of Mr. V.N. Raghupathy, Adv.

Karnataka

For State of Mr.Ranjan Kumar Mukherjee, Adv.
Meghalaya Mr.S.C.Ghosh, Adv.
Mr.Tayenjam Momo Singh, Adv.

Mr. Balaji Srinivasan, Adv.

UPON hearing counsel the Court made the following
O R D E R

Notice in this petition filed against order dated 21.8.2009 passed by the Division Bench of the Allahabad High Court was issued on 25.8.2010.

On 23.9.2011, Shri Harish N. Salve, learned senior counsel made some submissions and then sought adjournment for the formulation of the questions which, according to him, are of great constitutional and public importance and need to be decided by the Court.

On 14.10.2011, the Court passed detailed order, the relevant portions of which are reproduced below:

"Although, the prayer made in this petition filed under Article 136 of the Constitution is for setting aside the order passed by the Division Bench of Allahabad High Court directing consideration of the case of respondent No. 6 for providing 'Z' category security to him and his family members, at the hearing Shri Harish N. Salve, Learned Senior counsel for the petitioner submitted that dehors the facts of the case, the Court should examine important issues affecting an important facet of the Constitutional democracy i.e. whether the country should have two categories of citizens, of which one enjoys all sorts of privileges including unwanted security at public expense and is also allowed to use different kinds of symbols which represented the authority of the State in pre-independence era and the fundamental rights to life and liberty of other category are not protected. Shri Salve suggested that the following questions may be considered by the Court:

1. Whether the permission to use signs and symbols of authority, such as beacons, insignia, and convoys/escorts by public servants or any person who holds any office under the States or the Union of India, or any other person, is contrary to Article 18 and 38 and the basic feature of republicanism enshrined in the Constitution?
2. Whether the State was and is under an affirmative obligation to ensure that the vision of the founding fathers to change the perception of the State and its functionaries from rulers to public servants who are to serve rather than govern the people, was implemented in letter and spirit?

3. Whether by virtue of Article 21 read with Article 14, State is under an obligation to afford the same degree of protection to the safety and security of every person irrespective of any office held by such person or status of such person or any other factor?
4. Whether the grant of protection [by way of escorts or otherwise], particularly at the expense of the State, on the basis of an office held by a person or any other factor [other than a perceived need to grant heightened protection on account of aggravated threat to the life of any person on account of his lawful occupation, assessed on an objective basis] is illegal, ultra vires and unconstitutional?
5. Whether the State is under an obligation to ensure that any heightened protection granted to any person, or any special security arrangements made for any person, holding public office, is done in a manner that does not violate the principle of republicanism and the provisions of Art. 18 and 21 of the Constitution?

Shri Pallav Shishodia, learned senior counsel appearing for respondent No.6 says that the questions proposed by the learned counsel appearing for the petitioner are of great public importance and he will have no objection if same are considered by the Court. He also suggested that the Court may suo motu order impleadment of all the States and Union Territories as parties so that they may also make appropriate submissions.

We have considered the submissions of the learned counsel and are prima facie satisfied first four of the five questions framed by Shri Salve would require detailed examination.

Let notice be issued to all the States and Union Territories through their Secretaries, Home Department so as to enable them to file their written response in the context of question No. 1 to 4 framed by learned senior counsel appearing for the petitioner. Notice is returnable in six weeks.

Keeping in view the importance of the questions framed hereinabove, we request the learned Solicitor General to assist the Court."

On 17.1.2013, the Court considered the prayer made in the application filed on behalf of the petitioner and passed the following order:

"Shri Harish Salve, learned senior counsel representing the petitioner in S.L.P.(C) No.25237 of 2010 place before the Court an application for direction in which it has been prayed that a direction may be issued to all the States and Union Territories to furnish information under the following headings:

(a) The Rules, Orders or Guidelines, if any, in the state which prescribe the policy for permitting Red Lights on vehicles to various persons in the state.

(b) The Rules, Orders or Guidelines, if any, in the state which prescribe the policy of the state for permitting security personnel to individuals.

(c) The Names and the designation of the persons to whom security personnel have been provided and the number of security persons provided to them.

(d) Total cost borne by the state for providing security in terms as aforesaid.

(e) Total number of security personnel in the state and the total number of such personnel who are engaged in (i) Maintaining Law and Order, (ii) Crime Prevention and investigation and (iii) Traffic Management.

Learned counsel for the States and Union Territories must ensure that affidavits of the responsible officers of the Home Department of their respective States and Union Territories are filed within three weeks from today. Any lapse in this regard will be viewed seriously.

For further consideration, list the cases on 07.02.2013."

On the next effective date of hearing, i.e., 14.2.2013, the Court took into consideration two notes made available by Shri Harish N. Salve, learned senior counsel and passed detailed order, the relevant portions of which are reproduced below:

"Before considering the issues raised in the 2nd note made available by Shri Salve, we deem it proper to issue the following directions:

1. All the State Governments and the Administration of Union Territories shall furnish the details of the total expenses incurred in providing security to public functionaries and private individuals other than holders of the constitutional office like the President, the Vice-President, the Prime Minister, the Speaker of the Lok Sabha, the Chairman of the Rajya Sabha and the Chief Justice of India and their counter parts in the States and Union Territories.

2. Total number of persons other than the dignitaries, to whom reference has been made in the preceding paragraph, to whom security has been provided at the State expense giving the details of number of persons of various cadres deputed for providing security to the various persons.

3. The details of the security provided to the children and other family members/relatives of the public functionaries within or outside the State/Union Territory.

4. The details of the persons who are facing criminal charges, charges of violating any provisions of law and to whom security has been provided at State expense.

5. The details of the private individuals to whom the security has been provided at the cost of public exchequer, whether in lieu of payment made by them or otherwise.

6. Each State Government/Union Territory shall provide details of the review undertaken of the security provided to public functionaries and private individuals.

7. All the States and Union Territories shall file copies of the Rules/Orders which authorises the police and other functionaries to close roads for movement of public functionaries or their visits.

8. The notifications issued by the Central Government, State Governments and the Union Territories authorising use of Sirens other than by the man in uniform and those engaged and providing medical facilities to the patients and victims of accidents."

When the case was taken up for hearing on 3.4.2013, Shri Harish N. Salve made submissions with reference to the following three questions:

"1. Whether the use of beacons red-light and sirens by persons other than high constitutional functionaries is lawful and constitutional?

2. Whether the provision of security to persons other than the constitutional functionaries without corresponding increase in sanctioned strength and without a specific assessment of threat is lawful and constitutional?

3. Whether the closure of roads for facilitating movement of VIPs is lawful and constitutional?"

Further arguments were heard on 4.4.2013 and certain directions were issued in the light of the provisions of the Motor Vehicles Act, 1988, the Central Motor Vehicles Rules, 1989 and corresponding provisions of the Rules framed by the States.

Today, Shri Harish N. Salve, learned senior counsel, pointed out that the States of Punjab and Haryana have not filed affidavits. Let the Home Secretaries of both the States appear in person on the next date of hearing and offer their explanation as to why the required affidavits were not filed within the time prescribed by the Court.

Shri Siddharth Luthra, learned Additional Solicitor General appearing for NCT of Delhi and other Union Territories placed before the Court xerox copies of Circulars dated 28.06.2001, 14.01.2002, 19/24.03.2008, 24.11.2008 and 11.03.2013 issued by the Ministry of Home Affairs on the subject of providing security to protectees during their journey outside their State/Union Territory and deployment of State police personnel in Delhi for providing security to some of those who are residing in Delhi. The same are taken on record.

Having perused the circulars, we direct the Government of NCT of Delhi and the officers of the Police Department to ensure that the instructions issued by the Ministry of Home Affairs are rigorously implemented in their letter and spirit. If any violation of the instructions is brought to the notice of the Court in future, serious view will be taken and the officers/officials responsible for lapses will be held accountable.

To facilitate proper implementation of the instructions issued by the Ministry of Home Affairs, we direct that the copies of this order be sent to the Chief Secretaries of all the States and the Home Secretaries of the Union Territories along with the copies of the circulars.

List the case on 09.07.2013.

On the next date of hearing, the Court will, in addition to the issue relating to use of beacons lights by persons other than who are entitled to do so in terms of the notifications issued by the competent authority, consider the issue of providing security to those who are facing criminal cases and private individuals. The Court shall also examine the

desirability of requiring the Central Government and the State Governments/Union Territories to put in place more effective mechanism for assessment of security threats to various individuals.

Within four weeks, The Chief Secretaries of all the States and Home Secretaries of the Union Territories should forward separate list of Central protectees and the protectees of the concerned State/Union Territory to the Secretary, Ministry of Home Affairs.

An affidavit of a senior officer of the Ministry of Home Affairs should be filed on or before 26.6.2013 incorporating the details of the information supplied by the Chief Secretaries of the States and Home Secretaries of the Union Territories.

Learned counsel representing the State of Uttar Pradesh should ensure that an affidavit is filed by Director General of Police along with the orders passed from January 2013 to June 2013 depicting assessment/reassessment of security threats to various individuals.

Copies of all the affidavits filed in compliance of this order shall be supplied to the learned Amicus at least 7 days prior to 7th of July, 2013.

Registry is directed to send copies of this order to the Chief Secretaries of all the States and Home Secretaries of Union Territories by fax.

The Court Masters should make available copies of this order to all the learned counsel.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master