

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.4693 OF 2012

ORDER:

Heard Mr.P.Sudhakara Reddy for petitioner and the Assistant Government Pleader (Home) for respondents 1 to 4.

The petitioner prays for Mandamus declaring the action of respondents in opening Rowdy Sheet No.170 against the petitioner as arbitrary, illegal and unconstitutional and direction to respondents to close Rowdy Sheet No.170 against the petitioner.

The petitioner claims to be an agriculturist and hails from a family with political background. The petitioner alleges to have had affiliation with one political party for more than three decades and later on due to changed circumstances, he changed the affiliation to another political party. On account of change of affiliation, it is alleged, the respondents have been en masse registering cases and opening rowdy sheets against the followers of a political party, including the petitioner. The petitioner refers to Cr.Nos.137 of 2011 and Cr.No.106 of 2011 According to petitioner, the opening of rowdy sheet is contrary to Standing Order No.601 and the principles laid down in B. SATYANARAYANA REDDY v. STATE OF ANDHRA PRADESH AND OTHERS¹, MOHAMMED QUADEER AND OTHERS v. COMMISSIONER OF POLICE, HYDERABAD AND ANOTHER², SUNKARA SATYANARAYANA v. STATE OF ANDHRA PRADESH³, GANESAN v. THE DISTRICT SUPERINTENDENT OF POLICE, VIRUDHUNAGAR DISTRICT, VIRUDHUNAGAR AND ANOTHER⁴. It is further contended that the

¹ 2004 (2) ALT (Cri.) 115 (D.B) (A.P)

² 1999 (3), ALD 60

³ 1999 (6) ALT 249

⁴ (2010) (6) CTC 507

retention of rowdy sheet is completely monotonous, for extraneous reasons and considerations. There is no objective consideration of retention of rowdy sheet and therefore, prays for setting aside the retention order passed in Rowdy Sheet No.170.

The 4th respondent filed counter affidavit and replied that the rowdy sheet against the petitioner has been opened having regard to the involvement of petitioner in the following crimes:

- i. Pulivendula P.S. Cr.No.20/94 u/s 448, 324 r/w 341 IPC (case ended vide CC.No.50/94 on 03.10.96 by Hon'ble JFCM, Pulivendula)
- ii. Pulivendula P.S. Cr.No.74/95 u/s 306 IPC (case ended vide SC.No.456/2006 by ASJ, Kadapa)
- iii. Pulivendula P.S. Cr.No.61/98 u/s 147, 148, 431, 436, 427, 451 r/w 149 IPC (case ended in acquittal vide S.C.No.141/2000 on 14.12.2001 by ASJ, Kadapa).
- iv. Pulivendula P.S. Cr.No.57/98 u/s 436, 427, 395 IPC (case ended vide SC.No.143/1999 on 11.04.2001 by ASJ, Kadapa)
- v. Pulivendula P.S. Cr.No.39/09 u/s 107 Cr.P.C (B/O before the Hon'ble Mandal Executive Magistrate, Pulivendula vide MC.No.18/09 dated 16.03.2009).
- vi. Pulivendula P.S. Cr.No.41/11 u/s 107 Cr.P.C (B/O before the Hon'ble Mandal Executive Magistrate, Pulivendula vide MC.No.10/11).
- vii. Pulivendula P.S Cr.No.137/2011 u/s.147, 148, 186, 188, 114, 353, 341, 342, 290, 427, 506, 440, 286, 283, 452, 125, 120(B) IPC r/w 149 IPC, Sec. 7(1) Criminal Law Amendment Act, 1932, Sec.3 of PDPP Act, 1984, Sec.125(1b)(a) Arms Act, 1959 (case is under investigation)
- viii. Lingala P.S.Cr.No.97/11 u/s 147, 353, 506 r/w 149 IPC, Sec.3 of Prevention to Damage to Public Property Act & Sec. 7(1) Criminal Law Amendment Act 1932 (pending trial vide CC.No.334/11, JFCM, Pulivendula)
- ix. Cr.No.17/12 u/s.110(e) Cr.P.C.,(it is pending trial before the Hon'ble Mandal Executive Magistrate, Pulivendula).

x. Cr.No.105/11 U/s 118 IPC case was charged on 10.01.2012 and C.C.No. is awaited”.

The 4th respondent further alleges that the petitioner is causing nuisance to the general public and due to fear, the petitioner has instilled in the public, no one is coming forward to file complaint against the objectionable activities of petitioner. The respondents with a view to watching petitioner's activities and movements, opened the rowdy sheet under challenge, the currency of rowdy sheet at the first instance was up to 31.12.2012. The 4th respondent further states that though a rowdy sheet is opened, the respondent has never harassed, threatened or interfered with the life and liberty of petitioner, much less called the petitioner to Police Station at any point of time. Therefore, respondents pray for dismissing the writ petition.

The 3rd respondent filed additional counter affidavit and has substantially reiterated the stand of 4th respondent. For brevity, I am not referring to the stand reiterated.

Now the point for consideration is whether the opening of rowdy sheet and/or retaining the rowdy sheet is legal, valid and tenable?

This Court in companion writ petition No.4676 of 2012 has considered the entire case law, on the opening of rowdy sheet, continuation and scope of judicial review. The rowdy sheet assailed in this writ petition is substantially challenged on the same grounds. For brevity, I am not referring to the citations and the conclusions recorded in writ petition No.4676 of 2012. The reasons stated herein

are supplemental to the reasons stated in writ petition No.4676 of 2012.

The rowdy sheet impugned in the writ petition was opened on 06.01.2012 and it was extended up to 31.12.2012. Therefore, the period for which the rowdy sheet was opened expired, but the rowdy sheet is retained and continued till 31.12.2017. Counsel for petitioner challenges the retention order by placing reliance on *MOHAMMED QUADEER's case (2 supra)*. The operative portion reads thus:

“15. It may be relevant to notice that A.P. Policed Standing Orders are not framed under any statute. They are not in the nature of Rules or Regulations. It is a compilation of various Governmental Orders right from the pre-independence days till recently. The compilation is published under the orders of the Government vide G.O. Ms. No.308, Home (Police-D) Department, dated 9-2-1960. The order of the Government, itself, declared that the A.P. Police Manual submitted by the Inspector General of Police does not supersede any statutory rule, service rules or other orders issued by the Government from time to time. It further declares that the Manual does not invest police officers with any powers of arrest, detention, investigation of crimes etc., not specifically conferred by the Code of Criminal Procedure or the Indian Penal Code or other Central or State Laws on the subject. The Manual merely contains the Governmental Orders issued from time to time depending upon the exigencies and the situation. May be the Police Officers being subordinate to the Government are bound by the same. The said Manual containing the Police Standing Orders is required to be so read so as to be in conformity with the Constitutional scheme and various statutes such as the Code of Criminal Procedure and the Indian Penal Code. Wherever necessary restricted meaning is required to be given and may be read down so as to save the same from the vice of un-constitutionality. Most of them may not stand the

scrutiny, if challenged. However, I do not propose to express any opinion on the constitutionality of any of the Standing Orders, as the same is not put in issue before me.”

“17. Can the retention of the rowdy sheets be considered as a routine matter ? Can it be retained in a casual and mechanical manner? Any intense application of mind by the concerned gazetted officer is required ?”

“20. Merits of each case may have to be examined. Upon such examination, the concerned officer has to reach a conclusion that it is inevitable to retain the rowdy sheet. Obviously such consideration of necessity to retain the rowdy sheet is with reference to the material available on record. It is not a matter of course. The record produced in this case would disclose a classic case of non application of mind. The officer concerned merely affixed his signature as against the request made by the Inspector of Police. The whole issue is treated as a matter of no consequence.”

“22. A reading of the Standing Order would show that the gazetted officer, after consideration must arrive at a reasonable conclusion as to the existence of circumstances warranting retention or renewal of the rowdy sheet. The reasons need not be disclosed to the concerned person. But, if questioned the authority concerned is required to atleast prove prima facie as to the necessity of continuing the rowdy sheet. The record shall contain the reasons and the conclusions. The conclusions must relate to the necessity of continuing the rowdy sheets. If the record does not disclose the reasons and ground, the order becomes challengeable on the ground of non application of mind or perversity on the ground that the opinion was formed on collateral grounds.”

As directed by this Court, the 4th respondent has made available the original record in Rowdy Sheet No.170.

I have perused the pleadings, taken note of the submissions of learned counsel and also perused the original record in Rowdy Sheet No.170.

The legality of retaining the rowdy sheet depends upon the mode and manner in which the inputs are prepared, presented by 4th respondent to 3rd respondent and thereafter what is the consideration and application of mind by 3rd respondent for ordering retention of rowdy sheet. As held by this Court in MOHAMMED QUADEER's case (2 *supra*), the Gazetted Officer i.e. 3rd respondent after consideration of the inputs must arrive at a reasonable conclusion as to the existence of circumstances warranting retention or renewal of the rowdy sheet. However, the reasons recorded by the 4th respondent and forwarded to 3rd respondent need not be disclosed to the petitioner. As the petitioner is questioning the legality of retention of rowdy sheet as per the principles laid down in MOHAMMED QUADEER's case (2 *supra*), the respondents are under obligation, at least, to prove *prima facie* the necessity to continue the rowdy sheet. The onus is discharged by placing before the Court the very record through which the retention of rowdy sheet is ordered. Therefore, the record shall contain the reasons and conclusions for ordering retention of rowdy sheet. Both the reasons and conclusions must relate to the necessity of continuing the rowdy sheet. The converse of it is if the record does not disclose reasons or there has been a monotonous recommendation and acceptance of 3rd respondent, the same does not satisfy the principles laid down in the decisions referred to above, thereby the right of petitioner under Article 21 of the

Constitution of India is affected. In the background of above discussion, let me examine how the retention order is passed by respondents 3 and 4 from 01.01.2012 till 31.12.2017. The original discloses the following entries.

The 4th respondent in 2012 recommends retaining rowdy sheet up to 31.12.2013 as hereunder:

“Sir

Submitted

This Rowdy 170 Komma Prasad Reddy @ Siva Reddy is present in the town. He is living by business. His movements are to be kept under the close watch. Hence, I request the Officer to further to retain the sheet till one year i.e., 31.12.2013.”

The 3rd respondent orders retention of rowdy sheet with the following endorsement:

“Retain the sheet till 31.12.2013.”

The 4th respondent in 31.12.2013 recommends retaining rowdy sheet up to 31.12.2014 as hereunder:

“Sir

Submitted

This Rowdy 170 K.Siva Prasad Reddy is young and active. His movements are to be watched closely. Hence I request the Officer issue orders to retain the sheet till to 31.12.2014.”

The 3rd respondent orders retention of rowdy sheet with the following endorsement:

“Retain the sheet till 31.12.2014.”

The 4th respondent again recommends retaining rowdy sheet up to 31.12.2015 as hereunder:

“Sir

Submitted

This Rowdy 170 K.Siva Prasad Reddy is young and active. His movements are to be watched closely. Hence I request the officer issue orders to retain the sheet till to 31.12.2015.”

The 3rd respondent orders retention of rowdy sheet with the following endorsement:

“Retain the sheet till 31.12.2015.”

The 4th respondent on 11.12.2015 recommends retaining of rowdy sheet till 31.12.2016 as hereunder”

“Sir,

Submitted

This Rowdy No.170 K.Siva Prasad Reddy is young and active person. His movements are to be watched closely. Hence I request the officer issue orders to retain the sheet till to 31.12.2016.”

The 3rd respondent orders retention of rowdy sheet with the following endorsement:

“Retain the Sheet till 31.12.2016”

The 4th respondent recommends retaining of rowdy sheet till 31.12.2017 as hereunder:

“Sir,

Submitted

This Rowdy No.170 K.Siva Prasad Reddy, s/o Lakshinarayana Reddy is young and active person. His movements are to be watched closely. Hence I request the officer issue orders to retain the sheet till to 31.12.2016.”

The 3rd respondent orders retention of rowdy sheet with the following endorsement:

“Retain the Sheet till 31.12.2017”

To the pointed query of this Court whether 3rd respondent accorded permission for retention of rowdy sheet after satisfying with the record that sufficient material or inputs is available for retention, the learned Assistant Government Pleader after perusing the original record submits that there is no order passed by the 3rd respondent authorizing retention of rowdy sheet up to

31.12.2012. Be that as it may, in 2012, the recommendations substantially in the same tone and tenor, as noted above, have been forwarded. The 3rd respondent routinely ordered retention of rowdy sheet of petitioner. To avoid repetition of very same details, the Court briefly remarks that the same consideration and acceptance are continuing up to 31.12.2017. Therefore, for all purposes, the retention of rowdy sheet against petitioner from 01.01.2012 till 31.12.2017 is not according to Standing Orders under which the rowdy sheet is opened and retained by the respondents. Further, verifying the past, retention orders undated recommendations were made to 3rd respondent and the 3rd respondent orders retention of rowdy sheet.

From the details borne out from the record, it is clear that there is complete non-application of mind for retaining the rowdy sheet against petitioner. Further, the requirement is that the inputs given by the subordinate of 3rd respondent relate to the tendency or nature of petitioner to involve in one or the other activities for which guidelines are provided under Standing Order No.601. The cases which are referred to at the inception of rowdy sheet are either bind over proceedings under Section 107 of Criminal Procedure Code or the cases which have been acquitted by the competent Court long ago.

After perusing the material available on record and keeping in view the principles laid down by this Court in the decisions referred to above, I am satisfied that the retention of rowdy sheet with the details referred to above is not sustained and

consequently, Rowdy Sheet No. 170, including the retention order, issued from time to time, is set aside.

The writ petition is ordered as indicated above. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

Date:16.03.2017

Lrkm

S.V.BHATT,J

