

HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.7168 OF 2013

ORDER:

Heard Mr.Taddi Nageswara Rao for petitioners and the Assistant Government Pleader (Home) for respondents 1 to 3.

The petitioners pray for Mandamus declaring the action of respondents in opening Rowdy Sheet Nos.23, 24 and 25 against the petitioners and continuing the same, as arbitrary, illegal, unconstitutional, and direction to respondents to close Rowdy Sheet Nos. 23, 24 and 25 against the petitioners.

As the cause of action is the same and the relief claimed is identical, petitioners joined together and filed the present writ petition.

The case of petitioners is that the petitioners are friends and classmates. The 1st petitioner alleges that he contested the election for Sarpanch of Budarayavalasa and elected by defeating the candidate supported by a political party. Smt.Bali Chinna wife of MPTC member by name Bali Bangaru Naidu filed a complaint before the police against petitioners with false allegations which was registered as Crime No.82/2009 on the file of 3rd respondent police station. Immediately, after registering Crime No.82/2009 against the petitioners, the police have opened the rowdy sheets against the petitioners. The petitioners were charged for offence under Sections 354, 323, 509 and 506 (2) r/w 34 IPC in Crime No.82/2009. After investigation, the police filed charge sheet and petitioners were tried in Sessions Case No.77 of 2010 on the file of

Assistant Sessions Judge, Parvathipuram, Vizianagaram, which was ended in acquittal.

The petitioners, in view of acquittal in Crime No.82/2009, made representations dated 20.08.2011, 10.12.2011 and 25.02.2013 to the respondents to close the rowdy sheets against the petitioners, but in vain.

According to petitioners, the opening of rowdy sheets 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 and GANESAN v. THE DISTRICT SUPERINTENDENT OF POLICE, VIRUDHUNAGAR DISTRICT, VIRUDHUNAGAR AND ANOTHER⁴. It is further contended that the retention of rowdy sheets is completely monotonous, for extraneous reasons and considerations. There is no objective consideration of retention of rowdy sheets and, therefore, pray for setting aside rowdy sheets Nos.23, 24 and 25 and retention.

The Sub-Inspector of Police, Budarayavalasa P.S. filed affidavit on behalf of respondents and replied that the rowdy sheets against the petitioners have been opened having regard to the involvement of petitioners in Crime No.82/2009 under Sections 354, 323 r/w.34 IPC. He alleges that the petitioners are involving in

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

group politics and provoking their retinue to make breach of peace in Budarayavalasa Village. Therefore, rowdy sheets have been continued till now.

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

This Court in 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 sheets assailed in this writ petition are 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 sheets impugned in the writ petition were opened in pursuance of proceeding C.No.04/HS/SDPO/BBL/09 dated 31.12.2009 and are continuing. Counsel for petitioners challenges the continuation of rowdy sheets against the petitioners 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 at least 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.”

I have perused the pleadings, taken note of the submissions of learned counsel and also perused the material available on record.

The legality of retaining the rowdy sheets depends upon the mode and manner in which the inputs are prepared, presented by 3rd respondent to 2nd respondent and thereafter what is the consideration and application of mind by 2nd respondent for ordering retention of rowdy sheets. As held by this Court in MOHAMMED QUADEER's case (2 *supra*), the Gazetted Officer i.e., 2nd 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, there is no material on record to show that reasons were recorded by the 3rd respondent and forwarded to 2nd respondent for continuation of rowdy sheets. As the petitioners are questioning the legality of retention of rowdy sheets 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 sheets. Therefore, there should be record containing the reasons and conclusions for ordering retention of rowdy sheets.

Both the reasons and conclusions must relate to the necessity of continuing the rowdy sheets. The converse of it is if the record does not disclose reasons or there has been a monotonous recommendation and acceptance of 2nd respondent, the same does not satisfy the principles laid down in the decisions referred to above, thereby the right of petitioners under Article 21 of the Constitution of India is affected.

To the pointed query of this Court whether 2nd respondent accorded permission for retention of rowdy sheets after satisfying with the record that sufficient material or inputs available for retention, the learned Assistant Government Pleader after perusing the record submits that there is no order passed by the 2nd respondent authorizing retention of rowdy sheets. Therefore, for all purposes, the retention of rowdy sheets against petitioners is not according to Standing Orders under which the rowdy sheets are opened and retained by the respondents.

From the details borne out from the record, it is clear that there is complete non-application of mind for retaining the rowdy sheets against petitioners. Further, the requirement is that the inputs given by the subordinate of 2nd respondent relate to the tendency or nature of petitioners to involve in one or the other activities for which guidelines are provided under Standing Order No.601. The case, which is referred to at the inception of rowdy sheets against the petitioners, is ended in acquittal 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 opening of rowdy sheets or continuation of rowdy sheets is not sustained and consequently, Rowdy Sheet Nos.23, 24 and 25 against the petitioners including the retention 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: 27.04.2017

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S.V.BHATT,J