

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 35 OF 2016
IN
WRIT PETITION NO. 2178 OF 2012**

The State of Maharashtra

....Applicant

Versus

Shri Tulsidas Nair

....Respondent
(Orig. Petitioner)

Ms. Sangeeta D. Shinde, APP for the applicant.
Mr. Tulsidas Nair, respondent present in person.

**CORAM : PRASANNA B. VARALE &
ANIL S. KILOR, JJ.**

DATE : 10th JANUARY, 2022.

P.C. :

1. This is an application filed at the instance of the State in the backdrop of the judgment and order of the Division Bench of this Court dated 10th July, 2013 in criminal writ petition No.2178 of 2012. A copy of the said judgment is placed on record at Exhibit -'A', page 8 of the application. The Division Bench was pleased to refer to the prayers made in the petition. It may not be out of place to state here that the petitioner – Shri Tulsidas Nair was prosecuting the petition as petitioner-in-person. In the detailed judgment and order, the Division Bench has assigned reasons for not allowing prayer clauses (a), (b) and (d) and the petition was partly allowed only insofar as prayer clause (c) is concerned. For

ready reference, we may refer to prayer clause (c) of the petition which reads thus:

“(c) This Hon’ble Court pleased to give specific direction for a special police protection to the petitioner in which no police men attached to Zone VIII Police Station.”

The Division Bench in the concluding part of the order was pleased to observe thus:

“9. For the reasons afore-stated, according to us, the petitioner is not entitled for the reliefs prayed for by the petitioner at prayer clauses (a),(b) and (d). We allow the petition in so far as the relief prayed for by the petitioner at prayer clause (c) to the petition and direct the police to ensure that the police protection which is provided to the petitioner is continued. If the police, for whatsoever reasons, seek to withdraw the police protection of the petitioner, prior permission of this court will be obtained before withdrawal of the police protection.

10. Accordingly, Rule is made absolute in terms of prayer clause (c) to the petition. This petition stands dismissed in so far as reliefs prayed for by the petitioner at prayer clauses (a), (b) and (d). No Costs.”

At the cost of repetition, we state that the petition was dismissed insofar as the reliefs claimed by the petitioner at prayer clauses (a), (b) and (d) and was partly allowed in terms of prayer clause (c).

2. In view of the liberty granted to the respondent – State, the present application is filed by the State. The principal prayer in the present application is prayer clause (a), which reads thus :

“(a) The Order dated 10.7.2013 be modified thereby withdrawing the police protection of the Respondent;”

3. In the application, reference is made to a list of cases against the respondent (original petitioner). There is also a reference made to Government Resolutions dated 12th May, 1997 and 3rd September, 2000. These Government Resolutions deals with the policy of the State Government to provide police protection to a citizen. It is stated in paragraph 4 of the application that as per the said Government Resolutions if a person has a criminal record, then, in those cases, police protection need not be granted as grant of police protection to such a person can be misused for his personal gains and for his criminal background. It is further stated that after it was revealed that the respondent has number of cases registered against him, the applicant thought it fit to withdraw the police protection granted to the respondent (original petitioner) in view of the judgment and order of the Division Bench dated 10th July, 2013. It is further stated that as per the procedure laid down in the Government Resolutions, the report was also submitted on 18th September, 2018 by Additional Commissioner of Police (Crime Branch, Mumbai), Deputy Commissioner of Police, Special Branch – I on 24th September, 2015 and Deputy Commissioner of Police, Zone-X on 31st September, 2015 and the authority thus took a stock of the situation and ascertained the factual aspects so as to consider whether there is any

threat perception to the respondent (original petitioner) and whether it is necessary to continue the police protection to the respondent (original petitioner) or to withdraw the said protection. It is stated that from all the three reports, it is revealed that there is no threat perception to the respondent (original petitioner) and his police protection needs to be withdrawn.

4. Post filing of the application, an additional affidavit-in-reply dated 7th December, 2021, is filed on behalf of the applicant -State through Shri R. M. Machinder, Police Inspector attached to Protection and Security Branch. In paragraph 5 of this affidavit, a reference is made to the offences registered at the instance of respondent (original petitioner) as well as other parties in tabular format. A specific statement is made in the affidavit that respondent (original petitioner) is availing the facility of police protection round the clock from 25th October, 2012 till today without any protection charges. Then, there is a reference made to the charge-sheet filed in one offence registered against the respondent (original petitioner). It is reiterated in the application that the police protection was granted to the petitioner at the time when he was contesting candidate to the election and at the relevant time, the superior officers were of the impression that there is threat perception and, accordingly, protection was granted to the respondent (original petitioner) without payment of any charge.

5. In view of the above referred fact though it is more than clear that the Division Bench while disposing of the writ petition granted liberty to the State to seek permission for withdrawal of police protection granted to the respondent (original petitioner) and, as such, the issue whether the respondent (original petitioner) needs police protection or the applicant – State can withdraw the police protection in view of the threat perception, is an issue only between the State and this Court. There is hardly any role which is to be played by the respondent (original petitioner) in this matter. It seems that on one date when the matter was listed before this Court, the respondent (original petitioner) was present before this Court and he has filed an affidavit-in-reply to the present application. The same is at page 17. The respondent (original petitioner) in his affidavit-in-reply has made personal allegations against the officers and prayed for dismissal of the application with cost. In the backdrop of this facts, reference needs to be made to the order passed by the Division Bench on 24th November, 2021, which is produced hereinbelow :

“ This application is filed by the State for withdrawing the police protection granted to the Respondent–original Petitioner on 10 July 2013.

2. The Respondent–original Petitioner is present in person. From the arguments which he has advanced before the Court, we find that he will be able to assist the Court better if he engages an advocate. We defer the hearing of this application by a period of two weeks. In the meantime, the Respondent-original Petitioner is at liberty to engage an advocate and if the Respondent–original Petitioner wants to appear in person he will have to take leave of the Committee constituted by this Court under the Rules. The Committee will not only examine whether the

Respondent-original Petitioner is familiar with the facts of the case but also the law concerning grant of police protection.

3. *If the Respondent–original Petitioner wants to file an additional affidavit after engaging an advocate to crystallize the points better, it is open for him to do so. Liberty to the State to file additional affidavit placing on record the latest policy regarding grant of police protection and to demonstrate how the original Petitioner's case falls within the ambit of said Policy.*

4. *Since the main Petition is disposed of and the issue is only regarding police protection to the Respondent–original Petitioner, presence of other Respondents in the Application is not necessary. The learned APP states that they would be deleted from array of the parties. Leave to amend for that purpose is granted.*

5. *Stand over to 8 December 2021."*

6. Today, the respondent (original petitioner) is present in this Court. When a specific query was put to him as to whether he has undergone the exercise as directed by this Court in the order dated 24th November, 2021, he replied in negative and submitted that he be permitted to present additional affidavit-in-reply. As this Court has formed SOP recently and considering the prevalent situation, the matters are taken by virtual hearing and as the respondent (original petitioner) is present in this Court, we gave an opportunity of hearing to him and he again stated that his affidavit-in-reply be perused. On perusal of the affidavit-in-reply, it reveals that the respondent (original petitioner) is raising allegations against private parties as well as respondent authorities.

7. Now coming back to the issue as to whether the applicant – State is justified in approaching this Court and seeking modification of the order dated 10th July, 2013, in view of the liberty granted by the Division Bench, it may be necessary for us to refer to the latest Government Resolution placed on record by the learned APP. The latest Government Resolution is dated 4th January, 2018 and the title of the resolutions reads **“Guidelines for providing protection by the police to persons facing threat to life.”** Perusal of the said Government Resolution shows that by the present Government Resolution, all the earlier circulars, resolutions including the resolutions referred to in the application dated 12th May, 1997 and 3rd September, 2000, are superseded. For ready reference, we may refer to that clause in the Government Resolution dated 4th January, 2018, which reads thus:

“The Government Circular dated 3rd January, 2000 and earlier all other circulars pertaining to the guidelines for providing protection by police to persons facing threat to their life are being superseded and new guidelines are being defined...”

The Government Resolution also refers to an order passed by this Court dated 20th September, 2017, in PIL No.77 of 2016. Then, it is stated that in view of the order of this Court, the issue of providing police protection was thoroughly considered with deliberation and discussion with all the stakeholders. It would be useful to refer to certain statement in the Government Resolution dated 4th January, 2018. It is stated that in an appropriate case, it will be the obligation of the State, in public interest,

to extend the police protection to a citizen whose life is under a threat but a person is not entitled to a police protection as a matter of right nor can it be granted as a matter of course. Clauses 3 and 5 of the Government Resolution are also very useful and the same are reproduced hereinbelow:

“3. While granting police protection in terms of these guidelines, social status of the persons to whom such protection is being granted, would be totally irrelevant. The only relevant factor, in this regard, would be the actual and factual threat to the life of the concerned person and the extent thereof. The concerned Superintendent of Police or the Commissioner of Police as the case may be, shall alone be the appropriate and/or competent authority to take a decision in this regard.

4. It is made clear that the decision, whether or not to grant such protection, the extent thereof, and the duration thereof shall be taken by the concerned Superintendent of Police or the Commissioner of Police as the case may be and the concerned person to whom the protection is to be granted, if any and if at all, will not be entitled to make any claim in that regard as of right.”

The Government Resolution also refers to three Committees viz. Committee at the level of Police Commissionerate Level, District Level Committee and then there is a Review Committee at the State Level. The constitution of these committees is as follows:

(A) Committee at the level of Police Commissionerate Level

1	Commissioner of Police/Joint Commissioner of Police	Chairman
2	Additional Commissioner of Police/Deputy Commissioner of Police (Special Branch)	Member Secretary
3	Joint/Additional Commissioner of Police (Crime)	Member
4	Deputy Commissioner of Police (Concerned Zone)	Member

(B) District Level Committee

1	Superintendent of Police	Chairman
2	Deputy Superintendent of Police (Head Quarters)	Member
3	Deputy Superintendent of Police or Police Inspector (concerned unit) Local Crime Branch	Member Secretary
4	Inspector of Police (District Special Branch)	Member

Review Committee

1	Director General of Police, Maharashtra State, Mumbai.	Chairman
2	Additional Director General of Police, (Law and Order), Maharashtra State, Mumbai	Member
3	Commissioner, State Intelligence Department, Maharashtra State, Mumbai.	Member Secretary
4	Special Inspector General of Police, (Concerned Zone)	Member
5	Concerned Commissioner of Police or Representative	Member
6	Special Inspector General of Police (VIP)	Member

Then, we may refer to clause 10, which reads thus :

“10. If police protection is granted to a person in execution of and/or in implementation of a specific order passed by any Court, including the Hon'ble High Court, even such cases shall be considered and the threat perceptions claimed by the person under protection shall be reviewed by the said committee independent of the directions of the Hon'ble Court in its every meeting. After such an exercise if the said committee forms an opinion that in view of changed circumstances the police protection so ordered by the Hon'ble court need not be continued, appropriate steps be immediately taken to bring the changed circumstances to the kind notice of the concerned Hon'ble Court with a specific request for reviewing and/or recalling of its order of ordering grant of police protection to such a person. In case if such a person is reported to have been misusing the police protection so granted to him or her, even such facts and circumstances may be documented from time to time and the same also be brought to the notice of the Hon'ble Court while seeking such a review and/or recalling of its earlier order.”

Then, there are specifications of the fees to be charged for grant of police protection and necessary reference is made in clauses 14 and 15, which are reproduced herein below:

"14. The protection fee shall be calculated in terms of the formula set out hereunder and shall be charged and recovered accordingly from the person to whom the police protection is so granted as setout hereunder. However, the protection fee shall not be charged to such person whose income is below Rs.50,000/- per month, in terms of his or her relevant Income tax returns. It is also made clear that the total protection fee shall not, in any case exceeds 15% of the gross income, in terms of his or her relevant Income tax returns, of such person to whom the police protection is so granted.

15. For the purpose of calculating the protection fee and for recovering the expenditure towards grant of protection, average pay of each police personnel provided for police protection, the cost may be worked out as per forumula given below :

$$A=M+(5/6-X/7xD)$$

Where, A = average pay

M = Minimum stage in the pay-scale

X = Increment period in the pay-scale

D = Difference in the Maximum and Minimum stage in the pay -scale.

The DA/HRA/CLA/Travelling Allowance should be added in the aforesaid amount to arrive at the figure of the total salary. Taking into consideration the expenditure incurred on the Training given to the concerned Police Staff/Officers and the incidental benefits available to them, 50% of the total salary should be added to the figure of the total salary and the total amount thus arrived at shall form the total monthly protection fee to be recovered from the protected person. It is clarified that to determine the salary of one day, a month shall be considered of 30 days.

It is further made clear that if in addition to the police personnel, if a police vehicle is also provided, expenditure incurred on the running as also maintenance of the vehicle and the salary of the driver, computed in the above terms should also be charged and recovered from such protected person.

Considering the fact that the Dearness Allowance is enhanced after every six months, the protection fee for each police personnel should be re-determined once in every year on 1st July by increasing the previous protection fees by 5%."

Clause 16 makes a reference to exemption of the fees and it reads thus:

"16. However, it is clarified that such fee shall not be charged to any Member of the Parliament or Member of the Legislative Assembly or Member of the Legislative Council for the protection provided to them in connection with any work undertaken by them towards discharge of their official duties. No fees shall be charged to the officers or staff in service of the Government or Semi-Government and/or Corporations of the State Government, if the police protection is provided to them in performance of their official duties. It is clarified that in case if police protection is granted to such officers or staff for any purpose other than such official work, appropriate amount towards the protection fees shall be recovered from them, in terms aforesaid."

The Government Resolution also take into consideration a situation wherein there is a need to provide protection to persons having criminal antecedents at their credit and clause which 17 deals with such cases is reproduced hereinbelow:

"17. Persons having criminal antecedents may also have threat to their life. However, more often than not, these threats are creations of their own illegal activities, if not misdeeds or misconducts. Upon grant of police protection, such persons are likely to misuse the police protection and/or utilize it to commit further offences. However, in special and exceptional circumstances or at a particular place or event, where there is instant and real threat to life of such persons and if such person files an application for grant of police protection, the concerned Commissioner of Police or the Superintendent of Police, as the case may be, at his/her discretion consider such application in its proper perspective and by taking into consideration all the relevant factors decide such application, depending upon the threat perception."

8. At the cost of repetition, we may state here that the respondent (original petitioner) was provided police protection in the form of two police constables at the time when he was contesting elections and this protection was made available to him from the year 2012 till the filing of the present application. For this entire period, the respondent (original petitioner) was not required to pay any fees or charges against the protection provided to him. In paragraph 9 of the affidavit-in-reply filed at the instance of Shri Rajendra Mahadeo Machinder, Police Inspector, attached to Protection and Security Branch, a reference is made to the submission before this Court by the respondent/original petitioner in paragraph 10 of his affidavit-in-reply dated 13th October, 2021 wherein he has stated that he was subjected to an attack on 21st February, 2021. The said paragraph 9 of the affidavit-in-reply filed at the instance of Rajendra Mahadeo Machinder, Police Inspector, reads thus:

"9. I further submit that in the paragraph 10 of the Affidavit orig. Petitioner mentioned attack on him on 21.02.2021 out side his residence at 11.30 p.m. I say that as far as this incident is concerned Mr. Tulsidas Nair submitted complaint to the Borivali Police Station on 23.02.2021, the then Investigating Officer called the complainant / Orig. Petitioner by writing two letters dated 06.03.2021 and 12.03.2021 for inquiry of the incident but he failed to attend the Borivali Police Station and failed to give any reason for doing so. Therefore, the record shows that the said complaint/application dated 23.02.2021 was filed in the record."

Another reason stated in the affidavit of Rajendra Mahadeo

Machinder, Police Inspector, for withdrawal of the police protection also needs consideration and the reason stated in paragraph 12 reads thus :

12. *I further say and submit that it is found that the orig.petitioner has been misbehaving, insulting, using filthy, abusive and rude language to the police personal who are their for protection. The orig. Petitioner is also asking police personal to do his personal work like bring liquor and chicken from shop, recharge of dish TV etc. if police personal refused to obey him, he insulted them and deliberately been removing the chairs of the police personals, turning off the lights and fans, and not allowing them to sit. Therefore, there is unwillingness amongst the Police Constables to be his protection officer. I crave leave to rely upon the copies of the station diary entries and report of the Additional Commissioner of Police, Special Branch, Mumbai as and when required by this Hon'ble Court."*

Though the respondent (original petitioner) in his affidavit denied these aspects, we see no reason not to rely upon the material available with the applicant in the form of station diary, entries and report to the Superior Officer like Additional Commissioner of Police, Special Branch, Mumbai.

9. Considering all the above referred aspects, we are of the opinion that there is a considerable merit in the submission of the applicant – State. The opinion formed by the applicant – State that there is no threat perception to the respondent (original petitioner) and, as such, there is no need to continue the police protection which is granted to the petitioner till date, is on justifiable material. Accordingly, we allow the application in terms of prayer clause (a) which is reproduced

hereinbelow :

“(a) The Order dated 10.7.2013 be modified
thereby withdrawing the police protection of the
Respondent;”

10. We further make it clear that, in case in future, the respondent (original petitioner) is having any reason for claiming the police protection, he may approach the competent authority by submitting appropriate application and the competent authority to consider the application on its own merits and, accordingly, pass an appropriate order.

11. With these observations, the criminal application is disposed of.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)