

**IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
(Lucknow Bench)**

MISC. SINGLE No. - 4531 of 2019

**Reserved on November 08, 2021
Delivered on November 26, 2021**

Krishna Dutt Sharma ...Petitioner

Through:- Mr. Anurag Srivastava, Advocate

v/s

State of U.P. and others ...Respondents

Through:- Mr. Manjeev Shukla, Additional Chief
Standing Counsel

**Coram: Hon'ble Mr. Justice Rajesh Bindal, Chief Justice
Hon'ble Mr. Justice Devendra Kumar Upadhyaya, Judge
Hon'ble Mrs. Justice Saroj Yadav, Judge**

ORDER

RAJESH BINDAL, C.J.

01. The petitioner has filed the present writ petition seeking the following reliefs:

“i) To issue order or direction thereby directing the opposite parties no. 3 to 5 to continue the police protection to the petitioner for the security of his life and property as has been provided earlier to the petitioner by the Principal Secretary, Home, U.P. Government

Lucknow till the disposal of the appeal filed by the petitioner before the opposite party no. 2;

ii) To issue order or direction thereby directing the opposite party no. 2 to dispose of the petitioner's appeal which is contained in Annexure-21 to the petition."

02. When the petition was taken up for hearing on February 15, 2019, the learned counsel for the petitioner had referred to judgment of this Court in **Zulfiqar Ahmad Bhuttoo Vs. State of U.P and others (Writ-C No. 52652 of 2016)** decided on 04.11.2016 in support of his argument that his appeal filed against order passed by the District Level Committee to the Divisional Level Committee be directed to be decided. The learned Single Judge, while referring to number of judgments of Hon'ble Supreme Court, was of the opinion that the judgment in **Zulfiqar Ahmad Bhuttoo Vs. State of U.P and others' case (supra)** requires re-consideration. The following questions were framed:

“(i) Whether in terms of the Government order dated 09.05.2014, a person aggrieved by the decision of the District Level Committee has an efficacious and alternative remedy to approach the Division Level Committee as constituted in terms of the Government order dated 09.05.2014?

(ii) Whether judgment of the Division Bench in Zulfiqar Ahmad Bhuttoo (supra) decided on 04.11.2016 can be recorded as laying down the correct principle of law as regards the Government order dated 09.05.2014?”

03. That is how the matter is listed before us.

04. The learned counsel for the petitioner submitted that when the prayer for grant of security on account of threat to his life

was rejected by the District Level Security Committee on December 14, 2018, against the aforesaid rejection of his prayer, he filed appeal before Divisional Level Security Committee. However, the same is not being decided.

05. It is claimed that petitioner is a social worker assisting weaker sections of the society and is also carrying on business in the name and style of M/s M.K. Enterprises. He also contested the assembly election in the year 2012 as an independent candidate from Lucknow West constituency. On account of continuous threats received by him, he moved application for grant of security. As the request was not being considered, the petitioner filed Writ Petition (M/B) No. 16850 of 2016 wherein direction was issued for consideration of his claim. However, the same having been rejected by District Level Security Committee, he preferred appeal before the Divisional Level Security Committee. However, the same is not being considered. In support of the argument that a direction deserves to be issued to the Divisional Level Security Committee for deciding the appeal pending before it, reliance was placed upon the order passed by this Court in **Zulfiqar Ahmad Bhuttoo's case (supra)**.

06. The primary argument raised by the learned counsel for the petitioner is that once there is a hierarchy of committees provided in the policy in terms of which threat perception to a person is to be assessed, the order passed by the authority at District Level shall certainly be appealable before the higher authorities at Divisional Level and thereafter at State Level. Hence, the order earlier passed by this Court in **Zulfiqar Ahmad Bhuttoo's case (supra)** does not require reconsideration and a direction be issued to the Divisional Level Security Committee to hear and decide the appeal filed by him.

07. On the other hand, learned counsel appearing for the State submitted that the order passed by this Court in **Zulfiqar Ahmad Bhutto's case (supra)** does not lay down good law. The policy has been framed by Government for examining threat perception to the person seeking security at the state expense. It provides authorities at different levels for consideration of request for providing the security for different periods, namely, if the security cover is to be provided for one month, the request is to be considered at District Level. Considering the need security cover can be extended twice for a period of one month each. In case in the opinion of District Level Security Committee, the need of security still continues even after expiry of the aforesaid period of three months, the matter shall be referred to the Divisional Level Security Committee which can extend the period of security cover for a further period of three months. In case, the security cover has to be provided beyond the aforesaid period of six months, the issue has to be considered by State Level Committee. Entire policy nowhere provides for an appeal from an order passed by District Level Security Committee to the Divisional Level Committee or to State Level Security Committee. Right to appeal is not inherent. It is a creation of the statute. Unless it is provided in the statute, no appeal would lie.

08. Heard learned counsel for the parties and perused the paper book.

09. The matter has been referred to Larger Bench for considering the following questions:

“(i) Whether in terms of the Government order dated 09.05.2014, a person aggrieved by the decision of the District Level Committee has an efficacious and alternative remedy to approach the Division Level

Committee as constituted in terms of the Government order dated 09.05.2014?

(ii) Whether judgment of the Division Bench in *Zulfiqar Ahmad Bhuttoo (supra)* decided on 04.11.2016 can be recorded as laying down the correct principle of law as regards the Government order dated 09.05.2014?”

10. Whether the order passed by this Court in **Zulfiqar Ahmad Bhuttoo's case (supra)** requires reconsideration is one of the prime issue. A perusal of the aforesaid order shows that the petitioner in that case approached this Court seeking quashing of an order/letter dated May 12, 2016 passed by District Level Security Committee rejecting his representation for providing security cover. One of the argument raised by learned counsel for the State was that the petitioner therein has two other forums for redressal of his grievance, i.e. Divisional Level Committee and State Level Committee. In turn, while recording the aforesaid argument, this Court directed that the petitioner, having efficacious and alternative remedy to approach Divisional Level Committee, should avail the said remedy. The relevant part of the order is extracted below:

“The State Government has issued a Government order dated 9th May, 2014 for providing security, which provides that actual threat perception should exist and that on a mere apprehension security could not be provided. Further, the background, antecedent, criminal history and misuse of security are also relevant considerations to be examined objectively while considering the application for grant of security cover and 3 tier system i.e. District level, Regional level and State level is provided for redressal of such dispute.

In view of above, we find that the petitioner has got efficacious and alternative remedy to approach Divisional Level Committee but instead of availing the said remedy the petitioner has again approached this Court by way of present writ petition. We accordingly **dismiss** the writ petition on the ground of alternative remedy to approach the Divisional Level Committee. ”

11. The question which arises and has been referred to be considered by Larger Bench is whether the petitioner has a right of appeal in terms of the policy framed for providing security cover to any person on account of threat perception. The relevant clauses of the policy dated May 9, 2014 are reproduced hereinbelow:

"विषय: विशिष्ट महानुभावों की सुरक्षा हेतु गनर, शैडो एवं गार्ड उपलब्ध कराये जाने के लिये प्रचलित नीति के स्थान पर नीति निर्धारित किये जाने के सम्बन्ध में।

महोदय,

उपर्युक्त विषय के सम्बन्ध में मुझे यह कहने का निर्देश हुआ है कि रिट याचिका संख्या 6509 (एमबी)/2013 (पीआईएल) डा० नूतन ठाकुर बनाम उ०प्र० राज्य व अन्य में मा० न्यायालय द्वारा पारित अन्तरिम आदेश दिनांक 02.12.2013 में मा० उच्च न्यायालय द्वारा व्यक्तियों को सुरक्षा प्रदान किये जाने के सम्बन्ध में कतिपय संवीक्षण करते हुए सुरक्षा सम्बन्धी नीति प्रतिपादित करने के आदेश पारित किये हैं। मा० उच्च न्यायालय द्वारा पारित आदेशों के परिप्रेक्ष्य में सम्यक विचारोपरान्त प्रदेश के महानुभावों को सुरक्षा प्रदान किये जाने हेतु वर्तमान में प्रचलित समस्त शासनादेशों एवं नियमों को अवक्रमित करते हुए महानुभावों को सुरक्षा प्रदान किये जाने हेतु निम्नलिखित नीति निर्धारित की जाती है:-

(1) सुरक्षा प्रदान किये जाने के सम्बन्ध में सभी आवेदक प्रपत्र-1 पर अपना प्रार्थना पत्र सम्बन्धित जिलाधिकारी/वरिष्ठ पुलिस अधीक्षक को प्रस्तुत करेंगे।

(2) सुरक्षा प्रदान किये जाने के सम्बन्ध में आवेदकों की जीवनभय आख्या प्रपत्र-2 के अनुसार जनपदीय/मण्डलीय सुरक्षा समिति शासन को उपलब्ध करायेगी।

(3) सुरक्षा हेतु आवेदन करने पर आवेदक के जीवनभय का सही आंकलन कर जिला मजिस्ट्रेट की अध्यक्षता में गठित जनपदीय सुरक्षा समिति द्वारा सुरक्षा व्यवस्था उपलब्ध कराये जाने के सम्बन्ध में निर्णय लिया जायेगा। जिला सुरक्षा समिति में जिलाधिकारी के अतिरिक्त वरिष्ठ पुलिस अधीक्षक /पुलिस अधीक्षक एवं स्थानीय अभिसूचना इकाई के प्रभारी, सदस्य होंगे। जीवनभय पर आधारित सुरक्षा का औचित्य पाये जाने पर आवेदक को एक माह के लिए सुरक्षा व्यवस्था उपलब्ध करायी जायेगी। जिसे आवश्यकता पड़ने पर एक-एक माह कर दो बार बढ़ाया जा सकेगा। अर्थात् कुल तीन माह तक सुरक्षा प्रदान की जा सकेगी।

(4) तीन माह से अधिक अवधि अर्थात् आगामी तीन माह के लिए सुरक्षा की आवश्यकता होने पर जनपदीय सुरक्षा समिति द्वारा संबंधित व्यक्ति के जीवनभय का पुनर्मूल्यांकन, भय के स्रोतों को चिन्हित कर, जीवनभय को समाप्त किये जाने के संबंध में जनपद स्तर से की गयी कार्यवाही एवं उसके उपरान्त विद्यमान जीवनभय को दृष्टिगत रखते हुए यथोचित प्रस्ताव अपनी स्पष्ट संस्तुति सहित मण्डलीय सुरक्षा समिति के समक्ष प्रस्तुत किया जायेगा। मण्डल स्तरीय सुरक्षा समिति का गठन निम्नवित होगा-

“मण्डल स्तरीय सुरक्षा समिति”

1-	मण्डलायुक्त	अध्यक्ष
2-	पुलिस उपमहानिरीक्षक, परिक्षेत्र	सदस्य
3-	पुलिस अधीक्षक, क्षेत्रीय/मण्डलाधिकारी विशेष शाखा, अभिसूचना विभाग	सदस्य

मण्डलीय सुरक्षा समिति, सम्पूर्ण तथ्यों का गहनता से आंकलन कर औचित्य पाये जाने पर संबंधित व्यक्ति को तीन माह तक सुरक्षा प्रदान कर सकेगी।

(5) जनपदीय/मण्डलीय सुरक्षा समिति द्वारा सुरक्षा दिये जाने हेतु अपने आदेश में निम्नलिखित बिन्दुओं का उल्लेख अवश्य किया जायेगा:-

- सुरक्षा कर्मियों की संख्या

- सुरक्षा प्रदत्त कराये जाने की अवधि
- सुरक्षा का व्ययभार

(6) जनपदीय सुरक्षा समिति द्वारा जिस जीवनभय के आधार पर प्रथम तीन माह हेतु सुरक्षा प्रदान की गयी है, उस जीवनभय को कम करने/अपास्त करने के लिए स्थानीय प्रशासन द्वारा प्रयास किया जायेगा।

(7) जनपद एवं मण्डल स्तर पर कुल छः माह की सुरक्षा अवधि समाप्त होने के 15 दिन पूर्व मण्डलीय सुरक्षा समिति द्वारा सम्बन्धित महानुभाव के जीवनभय का पुनर्मूल्यांकन किया जायेगा एवं जीवनभय विद्यमान होने की दशा में अपनी स्पष्ट संस्तुति सहित सुविचारित प्रस्ताव/जीवनभय आख्या शासन को विचारार्थ प्रस्तुत की जायेगी।

(8) मण्डलीय सुरक्षा समिति महानुभावों को सुरक्षा प्रदत्त कराये जाने हेतु जीवनभय आख्या, निर्धारित प्रारूप में शासन को उपलब्ध करायेगी जिस पर शासन स्तर पर निम्नवत गठित उच्च स्तरीय समिति द्वारा निर्णय लिया जायेगा:-

(अ)	प्रमुख सचिव, गृह	अध्यक्ष
(ब)	पुलिस महानिदेशक, उ०प्र०	सदस्य
(स)	अपर पुलिस महानिदेशक (सुरक्षा)	सदस्य

(9) प्रमुख सचिव गृह की अध्यक्षता में गठित उच्च स्तरीय समिति द्वारा मण्डल स्तरीय सुरक्षा समिति की आख्याओं का परीक्षण कर सुरक्षा दिये जाने के सम्बन्ध में निर्णय लिया जायेगा।

(10) उच्च स्तरीय समिति द्वारा मण्डलीय सुरक्षा समिति के प्रस्ताव / जीवनभय आख्या पर विचार करते हुए अधिकतम एक बार में 6 माह की अवधि तक सुरक्षा दिये जाने पर विचार किया जायेगा। शासन स्तर से 6 माह हेतु प्रदत्त सुरक्षा अवधि पूर्ण होने पर सम्बन्धित जिलों से महानुभावों की जीवनभय आख्या मण्डलीय सुरक्षा समिति के माध्यम से प्राप्त होने पर सुरक्षा अवधि बढ़ाये जाने का निर्णय लिया जायेगा। उच्च स्तरीय समिति द्वारा केवल उन आवेदकों को सुरक्षा देने पर विचार किया जायेगा जिनको जनपदीय व मण्डलीय स्तर पर 06 माह हेतु सुरक्षा दी जा चुकी है एवं सुरक्षा बनाये रखने हेतु मण्डलीय सुरक्षा समिति द्वारा संस्तुति की गयी हो।"

12. A perusal of various clauses of the aforesaid policy shows that any request for providing security on account of threat to life is to be considered by District Level Security Committee. It can grant security cover for a period of one month. This can be extended twice for a period of one month each. The maximum period for which the District Level Security Committee can provide security cover is three months. In case the security cover is to be provided for a period exceeding three months, the matter has to be referred to the Divisional Level Security Committee. In case the claim is found to be genuine, initially the security is to be provided for a period of three months. Fifteen days before expiry of period of six months, the threat perception to the applicant is to be assessed again by the State Level Committee on the basis of inputs received from various agencies/ authorities and at one time security cover shall be provided for a period of six months.

13. From the aforesaid clauses of the policy, it clearly emerges that the committees have been formed at different levels for providing security cover for different periods. The authorities/ committees have not been constituted in hierarchy to be appellate authority over the decision taken by lower authority. Neither we could find nor could learned counsel for the petitioner show any provision conferring right upon the petitioner to prefer an appeal against an order passed by lower level committee to a higher level committee.

14. The issue as to whether right of appeal is inherent or creation of statute is no more res integra. The issue has been resolved and set at rest by the Hon'ble Supreme Court in a catena of cases.

15. As long back as in 1973, Hon'ble the Supreme Court in **Akalu Ahir and others Vs. Ramdeo Ram AIR 1973 SC 2145** held:

“... it is necessary to bear in mind that an appeal is a creature of statute and there is no inherent right of appeal.”

16. In **Ganga Bai Vs. Vijay Kumar and others (1974) 2 SCC 393**, the Court in para-15 held:

“15. It is thus clear that the appeal filed by defendants 2 and 3 in the High Court was directed originally not against any part of the preliminary decree but against mere finding recorded by the trial court that the partition was not genuine. The main controversy before us centers round the question whether that appeal was maintainable on this question the position seems to us well-established. There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. ... A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute.” *(emphasis added)*

17. In **Shyam Kishore and others Vs. Municipal Corporation of Delhi AIR 1992 SC 2279** the Court referring to its earlier judgment in **Ganga Bai's case (supra)**, in para 28, observed as under:

“28. In **Ganga Bai v. Vijay Kumar, (1974) 3 SCR 883: (AIR 1974 SC 1126)** Chandrachud, J. (as His

Lordship then was) held that "there is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of a civil nature, but the right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law."

18. In **BGS SGS Soma JV Vs. NHPC Limited (2020) 4 SCC 234**, in para 15, it was observed as under:

"15. ... an appeal is a creature of statute, and must either be found within the four corners of the statute, or not be there be at all."

19. In **Manish Kumar Vs. Union of India and others (2021) 5 SCC 1** referring to its earlier decision in the Court said:

"386. In **Mardia Chemicals Ltd. and others Vs. Union of India and others (2004) 4 SCC 311** the validity of certain provisions of the SARFAESI Act, 2002, was questioned. ... this court also noted the distinction between a civil suit and an appeal ..., it is apposite that we notice the following:

"59. ... We may refer to a decision of this Court in **Ganga Bai v. Vijay Kumar (1974) 2 SCC 393** where in respect of original and appellate proceedings a distinction has been drawn as follows:

"15. ...There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of civil nature and unless the suit is barred by statute one may,

at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous to claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute.”

20. In view of the aforesaid authoritative enunciation of law by Hon’ble the Supreme Court that the appeal is not an inherent right rather it is a creature of statute, in our opinion there being no provision in the policy for appeal against the order passed by District Level Security Committee to any higher level committee, no appeal will be maintainable and no direction can be issued for decision of any such appeal filed by the petitioner.

21. The questions referred for decision to Larger Bench, thus, are answered:

Question (i) is answered in negative holding that there is no right of appeal to any person to approach the Divisional Level Committee from any order passed by the District Level Security Committee, rejecting his request for grant of security cover.

Question (ii) is also answered in negative holding that the order passed by this Court in **Zulfiqar Ahmad Bhutto's (supra)** does not lay down correct law and cannot be referred to as a precedent for seeking a

direction for decision of appeal with reference to the Government Order dated May 9, 2014.

22. So far as the merits of the controversy is concerned, the prayer made by the petitioner is that he may be provided security cover on account of alleged threat perception in his opinion. Once the competent authority in the Government has already examined the issue and found that there is no threat to the petitioner and no security is required to be given at State expenses, we do not find any reason to take a different view for the reason that this Court does not have any expertise to assess the threat perception to any person. Hence, even the relief prayed for on merits is also misconceived.

23. The petition is, accordingly, disposed of.

Lucknow
November 26, 2021
P. Sri.

(Rajesh Bindal)
Chief Justice

(Devendra Kumar Upadhyaya)
Judge

(Mrs. Justice Saroj Yadav)
Judge

Whether the order is speaking : Yes/No
Whether the order is reportable: ^vYes/No