* **THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on : 30th November, 2010
% Judgment Pronounced on : 16th December, 2010

\+ **LPA No. 293/2010**

Shri Ashwini Kr. Chopra ..... Appellant
Through: Mr. Chetan Sharma, Sr. Advocate with Mr.Kamal Nijhawan and Mr.Sumit Gaur, Advocates

versus

Union of India & Ors. ..... Respondents
Through: Mr.A.S. Chandhiok, ASG with Mr.Jatan Singh and Mr.Ritesh Kumar, Advocates

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

DIPAK MISRA, CJ

Calling in question the legal substantiality of the order dated 9th March, 2010 passed by the learned Single Judge in WP(C) No.11529/2009 the present intra-Court appeal has been preferred.

2. The appellant / petitioner (hereinafter referred to as 'the appellant') invoked the jurisdiction of this Court under Article 226 of the Constitution of India for issuance of a writ of mandamus to the respondents to withdraw the notices/orders passed by them downgrading his security cover from Z+ to Z and cancellation of the allotment of government accommodation at 34, Lodhi Estate, New Delhi. The facts which were put forth before the writ court are that appellant's father and grandfather were slain at the hands of Punjab extremists for their bold editorial policy against terrorism and

extremism. That apart, the grandfather of the appellant was a veteran freedom fighter who founded a newspaper publication company, namely, 'The Hind Samachar Limited', which immensely contributed towards the freedom struggle. The appellant is involved in writing editorials in the publication "Punjab Kesari" to propagate against terrorism and militant organisations and has been scrupulously carrying the said crusade. His family has been living in the fear of death and, therefore, the Government of India had provided to him and his family members the security cover of Z+ category. As set forth, on 12th January, 1998 on the recommendations of the Government of India, Ministry of Home Affairs, the Directorate of Estates allotted to the appellant Type VI bungalow at 34, Lodhi Estate, New Delhi in general pool accommodation. The allotment was initially for a period of one year and was to be renewed on receipt of intimation from the Ministry of Home Affairs.

3. It was urged in the writ petition that the Directorate of Estates, Ministry of Urban Development, Government of India served a notice on 5th May, 2000 on the appellant requiring him to vacate the government accommodation allotted to him, as a part of his Z+ security cover, from the receipt of the said notice on the ground that a decision has been taken to revoke the allotment. The said notices were impugned and were made subject matter of WP(Crl) 490/2000 and WP(C) 2375/2001 which related to cancellation of his allotment and withdrawal of the security cover. On 12th March, 2004, the appellant received a letter from the office of Ministry of Urban Development and Poverty Alleviation, Directorate of Estates

directing him to handover the vacant and peaceful possession of the premises as the period of retention allowed by the competent authority had expired on 31.10.2003. The said order came to be challenged in WP(C) No.4480/2004, which was disposed of on 31st August, 2004 after recording that the government had decided to extend the period by one year from 5th August, 2004 subject to approval of the competent authority. As set forth, in August, 2009 the allotment in favour of the appellant was cancelled. The said cancellation was called in question in a writ petition being WP(C) No.11529/2009 and during the pendency of the writ petition the petitioner's security cover was downgraded from Z+ to Z category. Before the learned Single Judge it was contended that downgrading of security cover ignores real and apparent threats to the life of the appellant and there can be revival of terrorism in Punjab and further the act of the respondents was violative of Article 21 of the Constitution. That apart, it was contended that the respondents have discriminated in not withdrawing the security cover from others but from the appellant alone.

4. The learned Single Judge called for the original file and noted that the said downgrading was made by the Security Categorization Committee in the meetings held on 16th July, 2009 and 21st July, 2009 under the Chairmanship of Union Home Secretary to consider the recommendation of Protection Review Group in the meetings held on 26th May, 2009 and 12th June, 2009. The meetings were attended by the representatives of Cabinet Secretariat, Information Bureau and Delhi Police and the committee reviewed the entire list of central protectees (threat based) and

the said reconsideration was made on the basis of guidelines / principles. The committee took note of the discrepancies as pointed out and orders have been passed after the approval of the competent authority. As far as the case of the appellant is concerned, the committee after reviewing the entire security arrangement (threat based) took a decision to downgrade the security to Z from the Z+ and NSG cover was withdrawn. The learned Single Judge took note of the fact that the appellant was given Z+ security, NSG cover and official government accommodation in 1998 which was enjoyed by him for last ten years and such protection and accommodation cannot continue for infinite period and the same can be reviewed periodically. The learned Single Judge has opined that grant of security in a particular category is within the domain of the concerned government agency. The learned Single Judge further took note of the fact that the appellant was not totally unprotected as he has been put in Z category and hence, there has been no violation of Article 21 of the Constitution. Being of this view, the learned Single Judge declined to interfere with the order impugned and dismissed the writ petition.

5. We have heard Mr.Chetan Sharma, learned senior counsel along with Mr.Kamal Nijhawan for the appellant and Mr.A.S.Chandhiok, learned Additional Solicitor General along with Mr.Jatan Singh for the respondents.

6. It is submitted by Mr.Sharma that the respondents have not kept in view the basic facet of Article 21 of the Constitution of India inasmuch as the life of the appellant would be in extreme jeopardy if the security cover

is downgraded. It is urged by him that the sacrosanctity attached to Article 21 of the Constitution of India cannot be annihilated by the arbitrary and fanciful act of the authority on the ground that a policy decision has been taken to review the security cover. The learned senior counsel would submit with immense vehemence that as other similarly situated persons have been extended the benefit of security cover, there is no justification to deprive the appellant of similar treatment and such an act clearly invites the frown of Article 14 of the Constitution. To bolster his submissions, he has drawn inspiration from the decision in **Maneka Gandhi v. Union of India**, AIR 1978 SC 597.

7. Mr.Chandhiok, learned Additional Solicitor General appearing for the respondents, per contra, submitted that the appellant has no legal right to claim security cover in a particular category solely because at one point of time the said cover was provided to him. It is his further submission that the upgradation or downgrading of the security cover is within the exclusive domain of the executive and the same cannot be the subject matter of judicial review unless the perversity is so writ large which prudence can never countenance. It is canvassed by him that the fear of life or danger to life which has been propounded by the appellant is a figment of his imagination and further the concerned departments after due scrutiny have taken note of all the aspects and arrived at a decision and the said decision making process cannot be said to be unreasonable and that apart this Court in such matters does not exercise appellate jurisdiction. It is his proponement that security arrangements were reviewed in

consultation with the central security agencies pertaining to the threat to the security of the appellant and his family members from any militant or terrorist outfit in the country and thereafter the security cover was changed and, therefore, the decision taken by the respondents cannot be flawed. He has drawn our attention to certain documents which have been brought on record to show that national security cover has been withdrawn from the Chairman, National Commission for Scheduled Castes and certain other persons and, hence, the grievance that has been agitated on the anvil of Article 14 has no legs to stand upon. Lastly, it is put forth by Mr.Chandhiok that the whole effort of the appellant is an ingenious one to retain the bungalow since an order of eviction has been passed against him and the retention of bungalow is inextricably connected with the change of category of security cover.

8. To appreciate the rival submissions raised at the bar, we have carefully scrutinized the order passed by the learned Single Judge and the material brought on record. On a studied scrutiny of the material, it is clear as noon day that an order of eviction was passed against the appellant and despite the same the appellant is occupying the same. It is not disputed at the bar that once the appellant's security cover is changed from Z+ to Z category, he cannot claim to retain the same or similar accommodation. It is also not disputed that he will be given an accommodation at a different place. Thus, the question that emerges is whether the action taken by the respondents in changing the category of the security cover warrants any kind of interference by this Court.

9. On a perusal of the counter affidavit and the order passed by the learned Single Judge, it is perceptible that the matter was reconsidered by the review committee regard being had to the period of grant of security and the other ground realities. The question that emanates for consideration is whether the same would come within the ambit and scope of judicial review in exercise of power under Article 226 of the Constitution of India. In this context, we may profitably refer to the decision in **State of U.P. and others v. Maharaja Dharmander Prasad Singh etc.**, AIR 1989 SC 997, wherein their Lordships have held thus:

> *"……Judicial review under Article 226 cannot be converted into an appeal. Judicial review is directed, not against the decision, but is confined to the examination of the decision-making process. In Chief Constable of the North Wales Police v. Evans (1982) 1 WLR 1155 refers to the merits-legality distinction in judicial review. Lord Hailsham said:*
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> > *"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the Court.*
>
> *Lord Brightman observed:*
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> > *"...Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made….."*
>
> *And held that it would be an error to think:*
>
> > *"...that the court sits in judgment not only on the correctness of the decision-making process but also on the correctness of the decision itself."*
>
> *When the issue raised in judicial review is whether a decision is vitiated by taking into account irrelevant, or*

neglecting to take into account of relevant, factors or is so manifestly unreasonable that no reasonable authority, entrusted with the power in question could reasonably have made such a decision, the judicial review of the decision-making process includes examination, as a matter of law, of the relevance of the factors. In the present case, it is, however, not necessary to go into the merits and relevance of the grounds having regard to the view we propose to take on the point on natural justice."

10. In **M.P. Oil Extraction and another v. K.N. Oil Industries and another,** (1997) 7 SCC 592, the Apex Court has held that the supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasized. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the rule of judiciary in outstepping its limit.

11. In **Ugar Sugar Works Ltd. v. Delhi Administration and others,** (2001) 3 SCC 635, their Lordships opined that the Courts in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc.

12. In **Indian Railway Construction Co. Ltd. v. Ajay Kumar, (2003) 4 SCC 579**, while dealing with the concept of discretion and exercise of power of judicial review, the Apex Court has stated thus –

"Discretion must be exercised reasonably. To arrive at a decision on "reasonableness" the court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of

the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the court to substitute its view."

13. In **State of U.P. and another v. Johri Mal, (2004) 4 SCC 714**, while dealing with the limited scope of judicial review, the Apex Court has laid down the following guidelines –

> *"The limited scope of judicial review, succinctly put, is:*
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> *(i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies.*
>
> *(ii) A petition for a judicial review would lie only on certain well-defined grounds.*
>
> *(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.*
>
> *(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a Court is limited to seeing that the Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.*
>
> *(v) The Courts cannot be called upon to undertake the government duties and functions. The court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies."*

14. In **State of NCT of Delhi and another v. Sanjeev alias Bittoo, (2005) 5 SCC 181**, it has been held that the power of judicial review can be exercised in respect to administrative action if the authority acts in total

disregard of norms and exercises power which is in excess or abusive of discretionary power. If irrelevant considerations are taken into account, the same would become amenable to judicial review.

15. In **Binny Ltd. and another v. V. Sadasivan and others, (2005) 6 SCC 657**, it has been held –

> *"A writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and it is available against a body or person performing a public law function and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions."*

16. On the anvil of aforesaid concept of judicial review the impugned order is to be tested. As the facts would demonstrate the appellant was given the security cover Z+. It was given some time in the year 1998. The matter was reviewed from time to time and thereafter taking stock of the factual situation, the appellant was put in Z category. The pregnability of the order is to be tested whether the discretion exercised by the administrative authority is absolutely perverse or is bereft of any consideration. The duty of the court while exercising power under Article 226 is also to see whether it can substitute the decision. It is also obligatory to see whether it suffers from any kind of unreasonableness or unfairness. Grant of security cover is within the executive domain. As is perceivable, the appellant was extended the benefit of said cover under certain prevailing circumstances. The authority granting the security cover

after considerable lapse of time studied the ground reality and have taken a decision that the appellant need not be put in Z+ category but can be brought to Z category. As the factual matrix would exposit it has not been done by total non-application of mind. It is not a case where a person has been given security cover one day and the same has been withdrawn arbitrarily after lapse of two weeks or three weeks. We have mentioned the time gap as the review has taken place after considerable length of time. The executive is in best know of when and what sort of security cover be granted to a particular person. No one can claim as a matter of legal right to be given a particular security cover. True it is, it is a part of good governance to maintain law and order, and an orderly society is the backbone of good governance. Rule of law prevails where the law and order situation is treated as the spine of administration. But when an individual requires a particular category of security, he cannot put the blame on the executive that the law and order is not maintained or his life is in danger. In this context we may refer with profit to the decision in **Bhim Singh v. Union of India and another**, 2000 (55) DRJ 57, it has been held thus –

> *"From the foregoing discussion, it is clear that the petitioner, who is only holder of "Z" category security cover, would not be entitled to government accommodation. This is especially so when even "Z+" category, cover holders are also being asked to vacate. Accordingly the challenge to the notice of termination on the ground of the petitioner continuing to hold "Z" security cover must fail and is rejected. <u>The ground of a particular category of security cover or its upgradation are matters essentially in the domain of the concerned government agencies and this is not a matter in which the court would</u>*

> *<u>interfere</u>. There is also no merit in the contention that the policy decision by the Central Government to delinked the provision of government accommodation with the security cover except in the matter of those entitled to S.P.G. Protection is violative of the fundamental rights of the petitioner. The respondents shall be free to proceed with the proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act 1971 and for eviction and to recover damages, if any, as per law. The amount paid by the petitioner in these proceedings would be subject to adjustment."*
>
> *(emphasis supplied)*

We agree with the view expressed in the said decision.

17. Learned counsel for the appellant has drawn inspiration from the decision **Maneka Gandhi** (supra) especially paragraphs 28, 57 and 59 of the said decision. We have carefully perused the said paragraphs and we find that their Lordships have given emphasis on the concept of natural justice, fair play in action, and the test to be adopted while judging an administrative action. That apart their Lordships have also dealt with the deprivation of personal liberty. In our considered opinion, the principles laid down therein really do not get attracted to the case at hand as providing a particular category of security cover or downgrading from that category does not attract the doctrine of audi alteram partem. The submission of Mr. Chetan Sharma, learned senior counsel for the appellant that the appellant should have been heard before his security cover was downgraded does not have any substance inasmuch as this is a matter of policy and when the executive, on a review after considerable length of period has done so, no fault can be found with. It cannot be said that the appellant has been visited with adverse consequences. On the contrary, we notice that the

grant of cover has inseparable nexus with the occupation of the bungalow. Despite the cancellation order passed by the authority to vacate the bungalow, the appellant has stood embedded not to vacate the bungalow. In this context, one is reminded of the same that once an inch is given to a person, he always harbours the notion that he has a right on the whole empire. The present case is one of this nature. Though an edifice has been sought to be built by taking recourse to right to life under Article 21 of the Constitution of India, yet the present factual scenario really does not come within the ambit and sweep of the facet of the said Article as the apprehension expressed by the appellant that his life is still in danger and he must be given a particular security cover and thereby he must be allowed to retain a particular bungalow or similar type of bungalow is not a matter of right and the right under Article 21 of the Constitution of India is not absolute. Thus, the said submission advanced by Mr. Sharma is bound to be repelled and we so do.

18. The next submission of Mr. Sharma is that similarly placed persons have been given the coverage but the appellant has not been given. In this regard, we may note with profit the view expressed by their Lordships in **Panchi Devi v. State of Rajasthan and other, (2009) 2 SCC 589** wherein it has been emphasized that Article 14 of the Constitution of India is a positive or affirmative concept. Equality cannot be claimed in illegality. To put it differently, nobody can put forth a stand and stance that he may be equally treated because an error or wrong has been committed by an authority and hence he should avail the benefit of the said wrong. That

apart, this Court in a case of this nature cannot enter into the said facet of equality as there may be situations where each case may have an individual characteristic which cannot become a matter of judicial review. The same has to be left to the executive.

19. In view of the aforesaid analysis, we do not perceive any error in the order of the learned Single Judge and accordingly the appeal stands dismissed with costs of Rs.50,000/- (fifty thousand only). Liberty is granted to the respondents to take appropriate steps to get the appellant evicted from the bungalow as the order of cancellation is absolutely invulnerable and that apart the appellant has remained obstinate to occupy the same. Proceedings, if any, pending under the Public Premises Act shall be concluded as expeditiously as possible but not later than three months from today.

CHIEF JUSTICE

MANMOHAN, J

December 16, 2010
nm/dk