

**Court No. - 1**

**Case :-** P.I.L. CIVIL No. - 6779 of 2017

**Petitioner :-** Gaurav Gupta

**Respondent :-** State Of U.P.Thru.Secy.Ministry Home & Ors.

**Counsel for Petitioner :-** Gaurav Gupta (Inperson)

**Counsel for Respondent :-** C.S.C.

**Hon'ble Amreshwar Pratap Sahi,J.**

**Hon'ble Sanjay Harkauli,J.**

Our scriptures recite:-

**“Yatra Naryantu Pujyante Tatra Ramyate Devtaa.”**

This writ petition in public interest has been brought forward highlighting the recent steps taken by the State Government by calling upon the police authorities to take appropriate steps of policing in order to prevent such crimes that outrage or insult the modesty of female citizens of this State. The petiti

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

State should not commit excesses so as to invade the private rights of couples or adults that are suspiciously viewed by the police to be indulging in any unauthorised or unlawful act by exhibiting knee-jerk reactions that may disturb the ordinary peace and harmony prevailing in the society. The petitioner also apprehends that the general atmosphere of the society is likely to be disturbed on account of the utilisation of the words “Anti Romeo Squad” and create a panic so as to prevent lawful youth couples also from exercising their right of freedom of movement and expression.

Shri Gaurav Gupta, the petitioner in person, contends that no action can be taken by the State in excess of authority so as to impinge the

fundamental rights guaranteed under the Constitution and invade the privacy of any individual or curtail liberty even if such an individual is in lawful assembly. The obstruction, if any caused if based on no reason would therefore be an excess of authority and an arbitrary exercise of police power which is impermissible under the Constitution. He submits that no guidelines have been framed in order to ensure the proper application of any such surveillance stated to be in public interest and therefore, there is every likelihood of excesses being committed including the nature of the excess as indicated in the writ petition in the name of moral policing. It is, therefore, the contention of the petitioner that the respondent – authorities including the police should be restrained from acting on such administrative instructions that may have been issued by the Police Department as they do not appear to be with any authority in law. The petitioner for this has relied on an alleged incident as stated in Para-14 to substantiate his submissions and to contend that such acts which are being attempted by the police to create a fearful atmosphere do not fall within the authority of lawful policing and can be termed as “Moral Policing.” The contention, therefore, is that if the law does not authorise such moral policing then in that event, the constitutional rights of the citizens of the State are being violated by such actions which are reportedly not supported in law. He, therefore, contends that any direction issued by the respondents that tend to violate such rights guaranteed under the

Constitution should be restrained by this Court under the exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

Learned Chief Standing Counsel Shri Mohd. Mansoor with the able assistance of the Senior Superintendent of Police, Lucknow Ms. Manzil Saini has urged that the directions issued by the Director General of Police are clearly intended to enforce the existing law as prescribed under the statute namely, the Indian Penal Code read with Criminal Procedure Code, the Police Act, the U.P. Police Regulations as well as such other laws that for the time being are in force. The submission of the learned C.S.C. is that there is a clear prescription of law and therefore, the action being authorised and backed by statutory provisions cannot be said to be either unlawful or beyond the purview of law. He, however, submits that such restrictions by way of a proper policing are clearly protected and guaranteed under the Constitution itself and any regulations made in order to prevent the happening of any offence or otherwise also to maintain law and order is clearly within the realm of the State Authority which cannot be said to be beyond the bounds of the Constitution. He, therefore, submits that the action taken by the Director General of Police in implementing any such policy which is supported by law cannot be said to be violating the fundamental rights of any of the citizens of the State unless it can be shown that any excesses have been committed by the police. He submits that there is no prohibitory law that is sought to be enforced that may be either not be prescribed or sustainable under the

Constitution. The activities of the police are clearly within the bounds and the guidelines that have been issued by the Director General of Police are sufficiently framed so as to protect the liberties of the citizens of the State without impinging on any of their fundamental rights. His contention, therefore, is that the allegation of invasion of privacy, the allegation of disturbing a lawful assembly or restricting the freedom of movement or expression is unfounded and cannot be a ground to maintain the writ petition. He also submits that the provisions and the various enactments protect such actions and not only this, the citizens of the State are equally duty bound to obey the law and also to support the law enforcing agencies in trying to prevent the commission of any offence or mis-happening that may result in the commission of any such offence.

We have considered the submissions raised and apart from this, we may extract the directives which have been issued resulting in the policing activities that have been made a matter of concern in this petition. To begin with Para – 2 of the directive contained in the communication of the Director General of Police dated 22.03.2017 is extracted hereinunder:-

मुख्यालय पुलिस महानिदेशक, उत्तर प्रदेश  
1, तिलक मार्ग लखनऊ

2- मैंने मौखिक एवं लिखित रूप से पूर्व में इस बात पर बल दिया है, कि सभी सार्वजनिक स्थलों जैसे- चौराहों, मार्केट्स, मॉल्स, पार्क एवं अन्य स्थान, जो सामान्य जन के प्रयोग हेतु है, उनको असामाजिक तत्वों से मुक्त कराया जाय। विशेषकर इन सार्वजनिक स्थानों को महिलाओं/बालिकाओं के लिए सुरक्षित किया जाना सर्वोच्च प्राथमिकता का विषय है। इस लक्ष्य की प्राप्ति के लिये विभिन्न जनपदों द्वारा **Anti Romeo Squads** बनाये गये हैं। वह यह सुनिश्चित

करेंगे कि इन **Squads** में उपलब्धता के अनुसार अधिक से अधिक संख्या में महिला कांस्टेबल की ड्यूटी सादे कपड़ों में लगायी जाय जो कि सही सूचना दे सकें चिन्हित शोहदों के विरुद्ध विधि के अन्तर्गत प्रभावी कार्यवाही की जाय। यह सुनिश्चित किया जाय कि कार्यवाही करते समय बाल कटवा देने, कालिख पुतवा देने, मुर्गा बना देने जैसी कार्यवाही न की जाय जिसका कोई विधिक आधार नहीं है। अगर कोई व्यक्ति बार-बार लड़कियों से छेड़-छाड़ जैसी हरकतें करता है तो उसको सामाजिक रूप से लज्जित करने के लिये कार्यवाही करने पर विचार किया जा सकता है। इस बात को भी स्पष्ट करना आवश्यक है कि **Anti Romeo Squads** केवल ऐसे व्यक्तियों के विरुद्ध कार्य करेगा जो .में ऐसे जोड़ो या व्यक्तियों के विरुद्ध कार्यवाही नहीं करेगा जो सामाजिक परंपराओं के दायरे में रहते हुये आपस में पार्क/मॉल/काफी हाउस/सिनेमाघर इत्यादि में मिल-जुल रहे हों।

The Director General of Police appears to have been informed about the alleged complaints of inconvenience being caused as a result whereof the second communication was issued on 25.03.2017 which is to the following effect extracted hereinunder:-

**मुख्यालय पुलिस महानिदेशक, उत्तर प्रदेश।**

संख्या: डीजी-आठ-81(अप0अभि0)/2017

दिनांक:लखनऊ:मार्च 25,2017

सेवा में,

**समस्त वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक,**

**उत्तर प्रदेश।**

कृपया इस मुख्यालय के समसंख्यक पत्र दिनांक 22.03.2017 का सन्दर्भ ग्रहण करने का कष्ट करें, जिसके माध्यम से मेरे द्वारा एन्टी रोमियो स्क्वायड के द्वारा सार्वजनिक स्थानों को महिलाओं एवं बालिकाओं के लिए सुरक्षित किये जाने हेतु निर्देशित किया गया था। उपरोक्त पत्र द्वारा यह भी निर्देशित किया गया था कि उपरोक्त अभियान सादे वस्त्रों में महिला पुलिसकर्मी द्वारा आपत्तिजनक हरकत करने वाले व्यक्तियों एवं ऐसे स्थानों को चिन्हित करने के बाद चलाया जाय। इसके साथ ही यह भी निर्देशित किया गया था कि एन्टी रोमियो स्क्वायड द्वारा ऐसे जोड़ों या व्यक्तियों के खिलाफ कार्यवाही नहीं करेगा जो सामाजिक परम्पराओं के दायरे में रहते हुए सार्वजनिक स्थानों पर मिल-जुल रहे हों।

इलेक्ट्रानिक/प्रिन्ट/सोशल मीडिया में प्रकाशित खबरों द्वारा यह संज्ञान में आ रहा है कि इस अभियान के नाम पर पुलिस टीमों द्वारा आम लोगों के साथ गैर विधिक कार्यवाही करते हुए असुविधा उत्पन्न की जा रही है। यह भी संज्ञान में आया है कि कुछ प्राइवेट व्यक्तियों एवं संगठनों द्वारा भी गैर विधिक रूप से इस अभियान को चलाये जाने का प्रयास किया जा रहा है।

इससे स्पष्ट प्रतीत होता है कि पूर्व में दिये गये निर्देशों का न तो वरिष्ठ अधिकारियों द्वारा संज्ञान लिया गया न ही अधीनस्थ अधिकारियों को समुचित ब्रीफिंग की गयी है। मा0 मुख्यमंत्री

जी द्वारा पुलिस कर्मियों द्वारा किये जा रहे इस प्रकार के व्यवहार के प्रति सख्त नाराजगी व्यक्त की गयी है।

अतः पुनः निर्देशित किया जाता है कि:-

1- किसी भी जनपद में अभियान चलाये जाने से पूर्व सार्वजनिक स्थानों पर (स्कूल, कालेज, बाजार, मॉल, पार्क, बस स्टैण्ड, रेलवे स्टेशन आदि) आपत्तिजनक हरकत करने वाले व्यक्तियों के सम्बन्ध में सादे वस्त्रों में महिला पुलिस कर्मियों द्वारा निगरानी कराने के उपरान्त ही कार्यवाही की जाय।

2- किसी भी सार्वजनिक स्थान पर बैठे हुए जोड़ों से अनायास आई0 कार्ड0 मॉगना, पूछताछ करना, तलाशी लेना, उठक बैठक करवाना, मुर्गा बनवाना जैसी कार्यवाही नहीं की जायेगी।

3- एन्टी रोमियों स्ववायड क्षेत्राधिकारी अपने निकट पर्यवेक्षण में ही करवायेगें एवं जनपद के अन्य वरिष्ठ अधिकारीगण समय-समय पर उपरोक्त कार्यवाही का अनुश्रवण करते रहेंगें।

4- प्रतिदिन अभियान हेतु निकलने से पूर्व एन्टी रोमियो स्ववायड की ब्रीफिंग वरिष्ठ अधिकारियों द्वारा की जायेगी।

5- अभियान में संलग्न टीमों द्वारा उपरोक्त कार्यवाही में प्राइवेट व्यक्तियों को शामिल नहीं किया जायेगा।

6- आपत्तिजनक गतिविधियों में लिप्त व्यक्तियों को कड़ी हिदायत देते हुए प्राथमिक रूप से उनके विरुद्ध सुधारात्मक कार्यवाही की जाय।

उपरोक्त निर्देशों का उल्लंघन करने पर सम्बन्धित थानाध्यक्ष/क्षेत्राधिकारी एवं वरिष्ठ अधिकारियों के सन्दर्भ में प्रतिकूल मन्तव्य अपनाया जायेगा।

(जावीद अहमद)  
पुलिस महानिदेशक,  
उत्तर प्रदेश।

The Senior Superintendent of Police, Lucknow in compliance of such directives having been issued has also issued an office order dated 25.03.2017 which is to the following effect:-

**आदेश  
(एन्टी रोमियों दल)**

इस कार्यालय के समसंख्यक आदेश दिनांक 21.03.2107 के माध्यम से "एन्टी रोमियो दल" का गठन किया गया था। कुछ पुलिस कर्मियों द्वारा अति उत्साह में अनावश्यक रूप से सार्वजनिक स्थानों पर बैठे बालिग पुरुष व महिलाओं से पूछताछ की जा रही है तथा उनके आई0 कार्ड0 चेक किये जा रहे हैं, जिससे वह असहज महसूस कर रहे हैं। मेरे द्वारा पूर्व में भी निर्देश दिये गये हैं कि किसी भी दशा में "Moral Policing" नहीं की जायेगी तथा सार्वजनिक स्थान पर बैठे पुरुष व महिला से अनावश्यक रूप से पूछताछ नहीं की जायेगी तथा उठक-बैठक, कान पकड़वाना व अशोभनीय भाषा का प्रयोग करना, नैतिकता का पाठ, उनकी वीडियों ग्राफी इत्यादि न की जाये, केवल ऐसे स्थान जहां पर असामाजिक तत्वों का जमावड़ा लगता हो तथा महिलाओं से छेड़खानी/छीटाकशी/चेन स्नेचिंग की नियत से अपराधियों का मूवमेन्ट रहता है, केवल ऐसे लोगों

की टोक-टाकी, पूछताछ की जाय। यदि एन्टी रोमियों दल में किसी भी कर्मों द्वारा अनावश्यक रूप से “**Moral Policing**” का कोई भी प्रकरण संज्ञान में आया या मीडिया के माध्यम से वायरल हुआ तो सम्बन्धित के विरुद्ध दण्डात्मक कार्यवाही की जायेगी।

पत्र संख्या: वाचक/एसएसपी-56(ए)/2017  
दिनांक: मार्च 25,2017

(मंजिल सैनी)  
वरिष्ठ पुलिस अधीक्षक,  
लखनऊ।

In order to understand the controversy the first distinction that needs to be resolved is the allegation of the petitioner about Moral Policing viz-a-viz, the activities of the police that have been made the basis for alleging the violation of fundamental rights of the citizens of this State. We may clarify that there is a clear distinction between morality and law. It is something different that law itself has a moral force, but at the same time the law as indicated by the legislature or by the executive which still holds the field is to be respected and has to be enforced by the executive as it exists. It has to be enforced in order to prevent the commission of any offence as well. This can be clearly inferred from the nature of the incidents that are likely to occur or do occur in the circumstances in which the present policing has begun, they are of the nature of offences as described in Sections – 294, 354A, B, C, & D as well as Section – 509 of the Indian Penal Code. The offences under the aforesaid sections are cognizable offences, and, as has been rightly pointed out by the learned Chief Standing Counsel, Section – 149 of the Criminal Procedure Code enjoins upon the police authorities to take all such action that may be required for the prevention of any such offence. Not only this, apart from the offences defined under the Indian Penal Code, the Police Act, 1861 read with U.P. Police Regulations also

authorise the patrolling and policing through methods as prescribed therein. Section – 12 of the Police Act, 1861 read with Section – 23 & Section - 34 clearly indicate the powers which are available with the police to formulate such schemes subject to the approval of the State Government in order to implement and enforce the laws as defined under the Penal Code and also under the Criminal Procedure Code by defining the manner in which it is to be executed and also prescribing the duties of the police officers. The Police Act, 1861 also prescribes the punishment for certain offences and the seventh explanation to Section – 34 of the 1861 Act also is an indicator in relation to such offences, the policing whereof is now being enforced under the directives of the Director General of Police.

The police is also authorised to patrol in plain clothes as per Regulation – 194 of Chapter – XVIII of the U.P. Police Regulations. The surveillance of suspects is also authorised in law under Regulation – 236 of the said regulations. Consequently, a conspectus of the aforesaid provisions leave no room for doubt that the police is armed with ample powers and conferred with sufficient lawful authority to remain vigilant and prevent the cause of any mis-happening. Shadow surveillance or open surveillance of a suspect is therefore permissible, subject to the fundamental rights guaranteed under the Constitution. The Hon'ble Supreme Court has time and again ruled that domiciliary visits cannot be attempted by the police as they, at times in the manner executed, violate fundamental rights but in the instant case such shadow



surveillance leading to any further action as prescribed is guarded and guided under the instructions issued by the Director General of Police as indicated hereinabove. The policing introduced through the squads are to prevent obscenity at public places and to affirmatively protect females from insult and indecency.

Consequently, we are unable to gather any lawful or otherwise constitutional defect in the attempt so made by the respondents in proceeding to form the squads for the purpose of such policing. It is something different that there may be a dispute with regard to the name of the squad or any objection relating thereto but we are not called upon to adjudicate on the said issue as it is always open to the State Government to rename the squad appropriately so as not to offend the feelings of any person.

Apart from this, Shri Gaurav Gupta has urged that the manner in which this policing is being done, for example taking of photographs through mobile phones and then making it viral on the social media offends the private rights of citizens male or female and this being not regulated, the same would amount to the invasion of the right of privacy of a citizen. We may observe that surveillance also may include at times the capturing of images, for example through CCTV Cameras or even mobile phones in order to track any unlawful activity. If the said tracking is with a lawful intention and for a lawful purpose then in that event it cannot be said that it has been done with the intention of trying to invade the privacy of a person so as to constitute an offence.

However, it is always open to a person who finds such invasion to be unlawful to lodge a complaint before the appropriate authority or appropriately bringing it to the notice of the appropriate Court about any such violation. The surveillance, therefore, by itself without any intent of unlawful purpose will automatically not turn to be an unlawful activity.

Shri Gaurav Gupta has then highlighted the inadequacy of the police force in the entire State so as to bring about a situation where the police in order to cover up its shortcomings and in an anxiety to give results may unlawfully indulge in such activities only for the show of authority and create panic.

In our considered opinion, the action of surveillance by the police may not have a direct nexus with inadequacy of forces so as to construe that the activity of policing as presently involved would itself become an unlawful activity. It is, of course, the duty of the State to provide adequate police force which is a different issue altogether and for which we hope and trust that that the State will take appropriate steps for filling of the vacancies of the officials in order to meet all such exigencies.

Having said so, we may also put on record that the State Government can still frame laws in case it finds that the provisions which do exist are inadequate to meet this situation keeping in view such laws which have been made in other States including the Tamil Nadu Prohibition of Harassment of Women Act, 1998 and the Goa (Rights of Citizens to

Time-Bound Delivery of Public Services) Act, 2013. Not only this, the framing of laws cannot alone bring about an end to this menace or problem that is being faced by the female population of the State. In our considered opinion, it is the duty of the every citizen as well as of the State to come to the aid of women keeping in view the provisions contained in Article - 51A (e)(j) of the Constitution of India which provides that it shall be the duty of every citizen to renounce practices derogatory to the dignity of the women. The action taken by the State Government can be a signal project informing the citizens of this State that the time has come when they also have to rise to the occasion to act in the aid of the Constitution by educating and informing their children to observe moral discipline. Consequently, we dispose off this writ petition with a direction to the respondents to ensure that the law is abided by in terms as prescribed and in terms of the guidelines that have been framed. It shall always be open to the respondent – State as well as the Director General of Police to take into account any such discrepancy or alleged excess that may be reported to the respondents in order to rectify the manner of policing in this context.

The writ petition is ***disposed off*** with the said directions.

We may put on record an appreciation for our law clerks Ms. Aditi Bhatt and Ms. Annapurna Trivedi who have assisted us in our research to enable us to dispose off the matter with promptness.

**Order Date :-** 30.3.2017

***N.Mohan***

