

(2018) 08 CHH CK 0016
In the Chhattisgarh High Court
Case No : Writ Petition Civil No. 838 of 2018

3762- Pravin Joshi Security Agency

APPELLANT

Vs

Director General Resettlement

RESPONDENT

Date of Decision : 07-08-2018

Acts Referred:

Private Security Agencies (Regulation) Act, 2005 — Section 4, 7(5), 8

Citation : (2018) 08 CHH CK 0016

Hon'ble Judges : AJAY KUMAR TRIPATHI, CJ; PRASHANT KUMAR MISHRA, J

Bench : Division Bench

Advocate : Chandresh Shrivastava, Vaibhav P. Shukla, Prasoon Agrawal, U. N. S. Deo, Kishore Bhadur

Final Decision : Dismissed

Judgement

1. Petitioner, a proprietorship firm, runs a security agency. They had a valid licence under the Private Security Agencies (Regulation) Act, 2005

(hereinafter referred to as the Act, 2005).

2. Since the petitioner is an ex army man, he is also empaneled with the Director General of Resettlement, which has its own advantages when it

comes down to award of contract in Public Sector undertaking, because sponsorships are provided by the Director General of Resettlement and based

on these sponsorships and successful bidding, contract is awarded for providing private security.

3. The petitioner was one of the sponsored agency and based on the sponsorship, they have been awarded contract for a period of 2 years by Power Grid Corporation of India Limited. The contract was to subsist till 14.01.2019.

4. The licence of the petitioner, obtained under the Act, expired on 28.08.2017. It is his case that he applied for renewal of the licence. There was

delay of almost 3 months in such renewal, which according to him was ultimately renewed but in the mean time because of the communication dated

24.10.2017, contained in Annexure-P/1 to the writ petition, the Power Grid Corporation terminated the contract and so the writ petition.

5. In terms of the guidelines issued by the Director General of Rehabilitation, empanelment of a security agency will be valid and subsist only till an

individual ex serviceman agency has attained the age of 60 years. Thereafter, the Director General of Rehabilitation will not sponsor such agencies for

any contract for Public Sector Undertaking. However, in the clause dealing with such disempanelment, it does envisage for a situation when a

subsisting contract is not co-terminus of an ex serviceman attaining 60 years of age. In such a situation, it allows the existing contracts to run its

course.

6. Argument on behalf of the counsel for the petitioner is that even if he had become 60 years of age but since the contract was still subsisting till

14.01.2019, the contract should not have been terminated and he should have been allowed to complete the period of contract keeping in mind that the

licence of the petitioner was renewed before the termination order came to be passed.

7. The argument made on behalf of the counsel for the petitioner was rather convincing, but a deeper examination reveals another facet as to the

factual position. We found after examining the so called renewed licence, which is at page 60 of the writ petition and is part of Annexure-P/7, that it is

a new licence which has been issued to the petitioner in exercise of power by the Licencing Authority under Section 7 (5) of the Act and this licence

is valid for a period of 5 years from the date of its issuance and the date of issuance recorded on the licence is 24.01.2018.

8. The story therefore that it was a case of renewal where the subsisting licence should be treated to be valid in view of its renewal, vanishes. The

licence in question is not a licence after renewal under Section 8 of the Act but a new licence altogether, which permits the petitioner to run the

private security agency in the State of Chhattisgarh for a period of 5 years.

9. If this be the fact, then the argument or the story that the petitioner had a subsisting valid licence, which came to be renewed by the Authority after

its expiry, cannot be accepted on the face of the licence, which has been brought

on record by the petitioner himself.

10. Since no person or agency can engage or provide private security guard without a licence, as provided under Section 4 of the Act, therefore the

subsisting contract cannot be allowed to operate overlooking the requirement of Section 4, which is a mandatory requirement.

11. The agreement or the contract can only subsist provided the agency had all the valid authorizations including a licence to carry on with his activity

under the Act. Since after expiry, there was no subsisting licence in his favour and such a licence, if at all issued, was a fresh licence and not a case

of renewal, therefore, the Public Sector Undertaking cannot be compelled to honor the contract when the person is in default himself.

12. In this case, two things stood in the way of continuation with the contract, one that the ex serviceman had attained the age of 60 years and another

that he did not have a valid licence after the expiry of the first and even if there was one, it was a fresh licence issued to him after more than a gap of

3 months if not more.

13. If in these circumstances, the respondent Public Sector Undertaking decided to terminate the contract or the Director General of Rehabilitation

informed the concerned Authorities of such developments, it cannot be said to be an arbitrary exercise of power or malafide exercise of power.

14. The writ petition therefore has no merit. It deserves to be and is hereby dismissed.