

(2009) 08 BOM CK 0128

In the Bombay High Court

Case No : Writ Petition No's. 1658 of 1999, 1804 and 8353 of 2007, 2316 of 2008

Alsecure and Protection Services (I) and Others

APPELLANT

Vs

State of Maharashtra and Another
 The Security
Association of India Vs Union of India (UOI) and Others

 Mumbai International Airport Pvt. Ltd. Vs The Security
Guards Board and Others
 K.E.M. Hospital Society Vs
Bhartiya Suraksha Rakshak and General Kamgar Union

RESPONDENT

Date of Decision : 14-08-2009

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 19(1), 21, 254

Factories Act, 1948 — Section 2

Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act,
1981 — Section 23, 6

Private Security Agencies (Regulation) Act, 2005 — Section 1, 1(3), 10, 11, 13

Citation : (2010) 1 ALLMR 292 : (2009) 111 BOMLR 4111

Hon'ble Judges : R.S. Mohite, J;D.K. Deshmukh, J

Bench : Division Bench

Advocate : C.U. Singh, instructed by R.D. Suvarna, in WP 1658/99, WP 64/04, WP 1804/07, WP 2636/05, WP 200/08, Bhaven Manek, instructed by Wadia Gandhi and Co. in WP 2316/08, Boski Sharma, instructed by Paras Kuhad and Associate in ASWP 9335/07, J.P. Cama, instructed by Sanjay Udeshi and Co. in ASWP 8353/07, K.K. Singhavi and Sushil Mahadeshwar, instructed by Ranjana Todankar, in WP 64/04, WP 200/08, WP 2316/08, ASWP 8353/07 and S.S. Pakle, in WP 1804/07, for the Appellant; C.U. Singh instructed by R.D. Suvarna, for Respondent Nos. 4 and 6 in WP 2316/08, Lata Desai, for Board, S.J. Saluja, AGP in WP 1658/99, WP 200/08, L.T. Satelkar, AGP for Respondent No. 2 in WP 1804/07, Milind More, AGP for Respondent No. 1 to 6 in WP 2636/05, Vinod Joshi, in WP 1804/07, G. Hariharan and M.S. Bhardwaj for Union of India in WP 2636/07, H.K. Vardhan and D.A. Dubey for Union of India in WP 2316/08, Nisha Walani, in ASWP 9335/07, K.K. Singhavi and Sushil Mahadeshwar, instructed by Ranjana Todankar, in WP 1804/07, WP 2636/07 and for Respondent No. 3 in ASWP 9335/07, V.A. Sonpal, AGP for ASWP 9335/07, ASWP 8553/07, V.P. Sawant, in ASWP 8353/07, M.S. Topkar, in ASWP 9335/07 and Abhay Kulkarni, in ASWP 9335/07, for the Respondent

Judgement

D.K. Deshmukh, J.—In this group of writ petitions mainly two reliefs are claimed. First relief that is claimed is that in view of the enactment and coming into force of the Private Security Agencies (Regulation) 2005 (herein after referred to as "Central Act"), which is the enactment enacted by the Parliament, Maharashtra Private Security Guards (Regulation of Employment & Welfare) Act, 1981 (herein after referred to as the "State Act") does not operate in relation to the private security agencies. The second main prayer is that in case it is held that the State Act continues to operate in relation to the private security agencies, then the State Government should be directed to pass orders on the proposal pending before it u/s 23 of the State Act for exemption from the provisions of the State Act immediately.

2. Writ Petition No. 1804 of 2007 has been filed by the Association of the Security agencies and also by 22 security agencies. According to averments in the petition the security agencies who are petitioners in this petition were carrying on business of security agencies even prior to the commencement of the State Act. According to averments in the petition, some of the Petitioners-agencies were granted exemption from the provisions of the State Act by making an order u/s 23 of the State Act. The Petitioners have also made grievance about the State Government not renewing the exemption order in their favour within time. The above referred two principles reliefs are claimed in this petition.

3. Writ Petition 200 of 2008 is filed by a Bank, which has engaged security guards through Respondents Nos. 7 & 8 security agencies. The Respondent No. 7-security agency is the Petitioner No. 8 in Writ Petition No. 1804 of 2007. It is claimed by the Petitioner that Respondents Nos. 7 & 8, security agencies, had in their favour an exemption order passed under the State Act in force when the Central Act came into force and therefore they are deemed to have licence under the Central Act till the application for licence under the Central Act is decided. The Petitioner, therefore, in this petition is claiming the same reliefs which are referred to above.

4. In Writ Petition No. 8353 of 2005 the Petitioner is the Public Trust, which runs a hospital. According to the Petitioner, the Respondent No. 3-security agency pursuant to an agreement dated 3-6-2004 was providing security guards to the Petitioner. According to the Petitioner, those guards were granted exemption from the provisions of the Act for the period from 12-10-2004 to 12-10-2007. It appears that some of the security guards whose names were mentioned in the exemption notification left the services of the Respondent No. 3, new guards joined. Application for recording this change in the exemption notification was made, but it was kept pending. It is claimed that now there is a fresh application with the Respondent No. 3 for the period from 1-4-2007 to 31-3-2010. It appears that as the Petitioner was not registered with the Board constituted under the State Act, and as the exemption order in favour of the Respondent No.

3 had come to an end, the Board sent its guards to be engaged by the Petitioner. But the Petitioner did not want to do it. It appears that when the premises of the Petitioner were inspected on 4-8-2007, it was found that 53 guards have been engaged, but only two guards were exempted earlier. It means that the Petitioner was engaging 51 guards who were unregistered guards and therefore, proceedings under the State Act and the Scheme framed thereunder has been initiated against the Petitioner. In this petition, it is claimed that in view of the commencement of the Central Act, the State Act does not operate in relation to the Private security guards agencies. It is also claimed that Section 23 of the State Act is invalid, because there is no time limit fixed for deciding the application for exemption filed under that Section.

5. Writ petition No. 9335 of 2007 is filed by a Bank. It had engaged the security guards from the Top Security Services Ltd. That security agency has not been joined as a party in this petition. However, it appears that it is Petitioner No. 8 in Writ Petition No. 1804 of 2007. The grievance of the Petitioner is that the security agency has applied for exemption u/s 23 of the State Act, but that application has not been decided and proceedings under the State Act and the scheme are taken against the Petitioner for engaging the guards from the security agency and not the Board, contrary to the provisions of the State Act. According to the Petitioner, in view of the Central Act, State Act does not operate in relation to the Petitioner and it is also prayed that even if the State Act operates, in view of the fact that the security agency has applied for exemption, action against it should not be taken till that application for exemption is decided.

The Respondents, however, claim that the Petitioner has suppressed material facts. The Respondents are relying on the order of this Court in Writ Petition No. 2254 of 2007 as also the judgment reported in 2007 (5) Bom. Cases Reporter, 405.

6. Writ Petition No. 2636 of 2007 is filed by a private security guards, 62 in numbers. They claimed that they have been working with the security agencies, whose names have been disclosed in a chart, Exh.A to the petition. They claimed that in view of the enactment of the Central Act, the State Act and the scheme does not apply in relation to the security agencies with whom they are working. They also claimed that the security agencies on their behalf have applications to the Government u/s 23 of the State Act for grant of exemption and those applications have not been decided by the State Government. None of the security agencies have been joined as parties to this petition.

7. Writ Petition No. 2316 OF 2008 is filed by the Mumbai International Airport Pvt. Ltd., which is the company formed for the purpose of construction, operation, development and management of the Chhatrapati Shivaji International Airport. According to the Petitioner, initially the Airport Authority of India had engaged guards which were supplied by the Board. After the management of the Airport was taken over by the Petitioner, those guards were working for the Petitioner and the Petitioner was remitting their wages to the Board through the

Airport Authority. The Petitioner also engaged some guards through the security agencies i.e. Respondents Nos. 4, 5 & 6 for certain works, like traffic and cargo management. According to the Petitioner, the Respondents Nos. 4, 5 & 6 have applied for exemption under the State Act, those applications are pending. The Petitioner had applied for its registration as a principal employer of the private security agencies. That application was, however, rejected by the Board by communication dated 9th March, 2007, observing that the Petitioner has been engaging the guards of the Board, which were assigned to the Airport Authority of India. It is also observed in that order that the Petitioner is the successor of the Airport Authority of India, therefore, it cannot be registered as a principal employer in relation to the exempted security agencies. The Petitioner in the petition, claims that in view of the Central Act, the State Act does not apply and therefore, action against the Petitioner under the State Act and the scheme framed thereunder cannot be taken. It is also the case of the Petitioner that the Petitioner is entitled to be registered under the 2002 Scheme as a principal employer engaging services of the security guards from the exempted agencies.

8. Writ Petition No. 64 OF 2004 is filed by the Security Agency challenging Clauses 13(i)(b) and 25(2) of the 2002 scheme framed under the State Act. The challenge is that these clauses in the scheme are contrary to the provisions of the State Act. The Petitioner also challenges conditions Nos. 5, 11, 17 & 18 specified in Schedule II to the Notification dated 16th July, 2003, which is the notification issued u/s 23 granting exemption to the Petitioner-security agency.

9. In this petition, levy of charge is also challenged. But on a motion made by the learned Counsel appearing for the Petitioners, we permitted the learned Counsel to delete the prayer challenging the levy of charge with liberty to file a fresh petition for that purpose.

10. The circumstances in which the State Act came to be enacted have been referred to by the Supreme Court in detail in paragraph 1 of judgment in the case of Security Guards Board for Greater Bombay and Thane Distt. Vs. Security and Personnel Service Pvt. Ltd. and Others, . The relevant portion of that paragraph reads as under:

It appears that there were serious complaints about the service conditions of about 70,000 persons working as Security Guards in various factories and establishments in Greater Bombay and Thane Industrial Complex, the majority of whom were employed through about 250 Security Agencies operating in those areas. The complaints related not merely to insufficient remuneration paid to them by the agencies, but also to insecurity of service and other forms of exploitation. There was a sample survey conducted by the Government of Maharashtra to ascertain the extent of exploitation and to secure information regarding the service conditions of the Security Guards. The sample survey revealed that most of the agencies were not registered under the Shops and Establishments Act. There was only one registered union but that union accounted for membership of 2200 only. It was found that most of the Security

Guards did not enjoy the benefit of any Provident Fund Scheme or any scheme of Gratuity. Most of them were not covered by the Employees' State Insurance Scheme and had no medical facilities. Leave facilities were inadequate. Rest intervals were not properly provided. Wages were low and only a few agencies paid overtime and bonus. Most of them did not also have either drinking water facility, canteen facility or transport facility. A very meagre percentage of Guards were provided with living quarters. It was recommended that it was absolutely necessary to prevent exploitation of the unprotected Security Guards and to provide them with better service conditions. Pursuant to the report of the committee which made the sample survey, the Government issued the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Ordinance. The ordinance was replaced by the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981.

Perusal of Section 1 of the State Act shows that it extends to the whole of the State of Maharashtra. But this Act is deemed to have come into force only in Greater Bombay and Thane District on 29-6-1981. Thus, on its enactment, the Act came into force only in Greater Bombay and Thane District of State of Maharashtra. (We have been informed that subsequently the Act has been extended to Pune District of the State of Maharashtra), However even today the Act does not operate in relation to the State of Maharashtra excluding Greater Bombay and Thane District and Pune District. On commencement of the Act in Greater Bombay and Thane District, number of petitions were filed in this Court challenging the validity of the State Act. The petitions were filed both by the Agencies and the Agents who were carrying on business of supplying the security guards on contract basis. These petitions were decided by the learned single Judge of this Court by his judgment in the case of Tradesvel Security Services Pvt. Ltd. Vs. State of Maharashtra, , Hereinafter referred to as the order of Sawant J.)Operative part of the order of Sawant J. reads as under:

In the result, (1) the provisions of Sub-section (4) of Section 3 of the Act are struck down insofar as they penalise the action taken by the principal employer or the Agency or the Agent to dismiss, discharge, retrench or otherwise terminate the appointment of the Security Guard prior to the coming into operation of the Scheme.

(2) It is declared that the provisions of Section 23 of the Act are to be so read as to extend the exemption to be granted to the Security Guards also to be Agencies and the principal employer with whom they are and will be employed.

(3) The rest of the provisions of the Act and of the Scheme are upheld as valid.

The petitioners therefore succeed only to the limited extent as stated in sub-paragraph (1) and (2) of para immediately preceding above. The Rule in each of the petitions is discharged subject to what is stated in sub-paragraphs (1) and (2) of para immediately preceding above. In the circumstances of the case there will be no order as to costs.

An appeal was filed against the judgment of Sawant J. before the Division Bench. The Division Bench, it appears, dismissed the Appeal. Against the judgment of the learned single Judge and the Judgment of the Division Bench in Appeal, a Petition for Special Leave to Appeal under Article 136 of the Constitution of India was filed before the Supreme Court. That Petition was dismissed by the Supreme Court by order dated 5-1-1983. It appears that while dismissing the SLP certain directions were given by the Supreme Court. However, those directions were subsequently withdrawn. In the judgment, Justice Sawant had held that it was competent for security agencies to seek an exemption from the operation of the provisions of the Act. As many as 139 security agencies applied to the Government u/s 23 of the Act for grant of exemption from the provisions of the Act.

11. These applications were first screened by the Advisory Committee who recommended that exemption might be granted to 21 agencies. The cases of four other agencies which were not recommended by the Advisory Committee were again investigated by the Labour Commissioner who recommended that these four agencies also might be granted exemption from the provisions of the Act. On June 28, 1984, the Government of Maharashtra finally rejected all the applications for exemption filed by the various security agencies thereupon filed writ petitions in this Court. The twenty five writ petitions filed by the twenty one agencies whose cases were recommended by the Labour Commissioner were admitted by this Court and the rest were dismissed in limine. The twenty-five writ petitions which were admitted were also finally dismissed on July 11, 1985 by a learned single Judge of this Court. On appeals preferred by the twenty-five security agencies, a Division Bench of this Court directed the State Government to consider afresh the applications for exemption. An objection raised on behalf of the Security Guard Board and the Government of Maharashtra that security agencies could not seek exemption u/s 23 of the Act was overruled. This Court took the view that the applications had been rejected as a result of the policy decision not to grant exemption to any security agency and that this was wrong. This Court held that each application for exemption had to be considered on its own merits and so disposed of. Hence, the direction to the Government to consider the applications afresh. The Board constituted u/s 6 of the State Act preferred twenty five appeals against the judgment of the Division Bench of this Court before the Supreme Court. The Supreme Court decided those appeals by its judgment in the case of The Security Guards for Gr.Bombay and Thane District, referred to above. The Supreme Court allowed the appeals and set aside the judgment of the Division Bench of this Court. So far as the provisions of Section 23 are concerned, the Supreme Court held that a security agency cannot seek an exemption in relation to itself, but an exemption can be sought by the security agency in relation to security guards, Class of security guards engaged through it by a principal employer. The observations found in paragraph 7 of that judgment, in our opinion, are relevant. They read as under:

...A close scrutiny of Section 23, particularly in the light of Section 1(4) read with

the definition of "Security Guard" , makes it clear that the exemption is not in respect of an agency or an agent or even a factory or establishment but in respect of all or any class or classes of Security Guards employed in any factory or establishment or in any class or classes of factories or establishments. In other words, the exemption is in regard to `Security Guards`, employed in any factory or establishment or in any class or classes of factories or establishments. The exemption may be in respect of all the Security Guards employed in a factory or establishment or in a class or classes of factories or establishments or in respect of a class or classes of Security Guards so employed. For example, all Security Guards employed in factory may be exempted or Security Guard of a particular grade or doing a particular type of work in factory may be exempted. Again all Security Guards employed in a class of factories, say textile mills may be exempted. All Security Guards in all textile mills doing a particular type of work or drawing a particular scale of pay may be exempted. The corelationship of the Security Guard or classes of Security Guards who may be exempted from the operation of the Act is to the factory or establishment or class or classes of factories or establishments in which they work and not with the agency or agent through and by whom they are employed. This analysis has however no bearing on the question of locus standi of the persons who may seek the intervention of the State Government by the issue of notifications for exemption. Obviously the Security Guards or classes of Security Guards employed in a factory or establishment may apply to the Government to exempt them from the operation of the Act. Similarly Security Guards or classes of Security Guards employed in classes of factories or establishments may apply to the Government to exempt them from the operation of the Act. Again a factory or an establishment or a class or classes of factories or establishment may apply to the Government to exempt Security Guards employed in their factories or establishments from the operation of the Act. Though agencies or agents do not enter the picture directly, since the very definition of Security Guards means persons engaged or to be engaged through an agency or agent, it must follow that where Security Guards have been engaged or are to be engaged through them in any factory or establishment or a class of factories or establishments, such agency or agent may also apply to the Government, not to exempt all Security Guards engaged or to be engaged through them but to exempt Security Guards engaged or to be engaged in a factory or establishment or a class of factory or establishments. The question is not one of locus standi at all but which or what class of Security Guards are to be exempted from the operation of the Act and the Scheme. Therefore, we are of the view that even an agency or agent may apply to the Government to grant exemption, but the exemption to be granted by the Government is not to be of any agency or agent but only of Security Guards employed in a factory or establishments or a class or classes of factory or establishments.

12. The State Act was amended by the Maharashtra Private Security Guards (Regulation of Employment and Welfare) (Amendment) Act, 1996. Writ petitions

were filed in this Court challenging validity of the Amendment Act. Those petitions were decided by the Division Bench of this Court by judgment in the case of Karantikari Suraksha Rakshak Sanghatana Vs. State of Maharashtra and Others, ; The Division Bench dismissed the petitions holding that the Amendment Act is valid. In so far as Amendment Act is concerned, it appears that its validity was challenged mainly on two grounds. Those grounds have been mentioned by the Division Bench in paragraph 2 of its judgment. Paragraph 2 reads as under:

2. The main submissions of the petitioners-Trade Unions to put in a nutshell are twofold. (i) The first submission is that under the Maharashtra Private Security Guards (Regulation of Employment and Welfare) (Amendment) Act, 1981 ("the said Act" for short), as it stood prior to this amendment and as it was interpreted by the Courts, the agencies or the contractors were not permitted to provide the Security Guards and that the employment of the Security Guards and that the employment of the Security Guards who were not the direct employees of the factories or establishments, had to be provided only by the Board constituted under the said Act. It is their contention that this amending Act brings back and permits the agencies or the contractors to provide the Security Guards. The amendment is sought to be challenged as being a retrograde piece of legislation and violative of Articles 14 and 21 of the Constitution of India apart from being contrary to the directive principles contained in Articles 38, 39, 41, 42, 43 and 46 of the Constitution of India.

(ii) It is their further contention that the amending Act is repugnant to the provisions contained in the Contract Labour (Regulation and Abolition) Act, 1970. This Act is an earlier law made by the Parliament and it occupies the same field and since no assent of the President of India has been obtained to this amending Act, the same be declared as unconstitutional on the touchstone of Article 254(2) of the Constitution of India.

So far as first challenge is concerned, observations of the Division Bench in paragraphs 37, 38 and 39 of its judgment are relevant. They read as under:

37. We have noted the objections to the amendments and the explanation given by the State. The principal grievance with respect to the amending Act has been that according to the petitioners it permits the Security Agencies to provide the Security Guards and that it was not permissible prior to the amendment. As pointed out above, it is undoubtedly true that the learned Single Judge did take the view that the Security Agencies could exist only when the Act came into force and after its coming into force they had no place. He did take the view that after the Act coming into force, there will be only direct employees of the principal employer or there will be Security Guards provided by the Board. This interpretation of the learned Single Judge does not appear to have been approved by the Apex Court in the Security Guards Board" s case (supra) though the judgment as such was not interfered. The Apex Court had in terms held that for those Security Guards who were in the receipt of the better service conditions on an overall basis it was permissible for the guards to seek exemption and it

was also permissible for the Agencies to apply on their behalf. It obviously meant that the Agencies had a place under the Act.

38. As noted above, the intention in bringing about the amending Act was to remove the ambiguities. That is stated in the Statement of objects and reasons of the amending Act. Now the question is does the amending Act bring about a departure from the original Act which can be called to be a substantial one and can it be said that thereby any element of unreasonableness or unequal treatment is introduced between those who are similarly situated so as to invoke Article 14 of the Constitution of India. As seen earlier, the concept of agency, employer, principal employer and the security guard were already there under the unamended Act. The agencies which were held to have a place under the judgment of the Apex Court, had the role to engage the Security Guards for the principal employer and in fact the definition of employer as against the principal employer required a clarification. This is clear from the problem which the learned Single Judge faced when it came to the question as to who was the employer of the Security Guards. He posed the question to himself that assuming that there are some service conditions which are not provided under the Act, is there no employer against whom the Security Guards can proceed. At the end of page 709 of the above Report, he held that in the instant case there was no need to identify an employer, but if one was required, the employer will be the principal employer. This will be so, held the Judge even if he did not either recruit or punish the Security Guards. This position created an incongruous situation which is now resolved by the amendment.

39. As stated earlier, the objections arose from the impression of the petitioners that the agencies had no place prior to these amendments. That view taken by the learned Single Judge is not maintained by the Apex Court as noted above. Once it was held that the agencies had a place, the unamended Act required clarification. The relationship between the agencies and the principal employers had to be made explicit. It is for this purpose that the amendments have been introduced to the definitions of agencies, principal employers and employees and security guards or private security guards. The amendment to Section 23 is also on the same line, though now the duplication of the scrutiny prior to the exemption is removed. The amendments to Sections 19, 20 and 21 are also essentially for the protection of the security guards engaged for the principal employers and the burden under the welfare enactments is placed on them.

The Division Bench thus noted that the purpose of bringing in the Amendment Act was to remove the ambiguities and there is no departure made from the scheme of the original Act by the Amendment Act. The Division Bench observed that the first challenge to the amendment Act was raised because of the misconception of the Petitioners that the security agencies had no place under the Act before the amendment. The Division Bench noted that as a result of the Supreme Court's judgment in the case of The Security Guards Boards for Gr. Bombay and Thane Dist, referred to above, even security agencies had locus to

apply for exemption in relation to a class of security guards engaged through it by a class of factory or establishment.

13. In this background the Central Act was enacted and it came into force from 15-3-2006. Perusal of the preamble of the Central Act shows that the Act has been enacted to provide for the regulation of private security agencies and for matters connected therewith or incidental thereto. Section 3 of that Act empowers the State Government to designate, by notification, an officer not below the rank of a Joint Secretary for the purpose of the Act. Section 4 of the Act lays down that no person shall carry on or commence the business of private security agency unless he holds a licence issued under the Act. Section 6 lays down what are the disqualification for not being eligible for licence. Section 7 deals with the procedure for grant of licence. Section 8 deals with renewal thereof. Section 9 of the Act enjoins the private security agency to commence its activities within six months of obtaining the licence. Section 9 also obliges the agency to engage a supervisors within sixty days of obtaining the licence. Section 10 deals with eligibility of a person to be security guards. Section 11 deals with the condition of licence. Section 13 deals with the procedure for cancellation and suspension of a licence. Section 14 provides for appeal against the order refusing to issue licence, renew licence, suspension of licence or cancellation of licence. Sections 15 - 18 deal with procedure in relation to the security agency. Section 19 empowers the State Government to delegate its power under the Act. Section 20 deals with punishment for contravention of certain provisions of the Act. Section 24 authorises the Central Government to frame model rules to be adopted by the State Act. Section 25 confers rule making authority on the State Government. The main contention of the Petitioners is that the Central Act and the State Act are operating in the same field and because there is repugnancy in the provisions of the State Act and the Central Act, the State Act does not operate in relation to the security agencies. Therefore, it becomes necessary to examine the scheme of the State Act. Before the State Act was enacted the Governor of the State of Maharashtra had promulgated the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Ordinance, 1981 on 29th June, 1981. That Ordinance was replaced by the State Act. There was a statement of Objects and Reasons accompanying the Ordinance. There is no statement of object and reasons freshly given while replacing the Ordinance by the said Act. Hence the statement of the objects and reasons which accompanied the Ordinance would form the statement of objects and reasons of the said Act as well. The said statement says that it was represented to the Government that there were about 70,000 persons working as Security Guards in various factories and establishments in Greater Bombay and in Thane Industrial Complex. Majority of them were provided by about 250 flourishing agencies operating in the said areas. However, the service conditions of the Security Guards were not satisfactory. Their services depended merely on the whim and sweet will of the agencies supplying them and they were being exploited and even removed arbitrarily from service on flimsy grounds. In

many cases, the security guards received a small portion of the amounts recovered by the agencies from the employers and the balance was pocketed by them. The Government had recently conducted a survey (to which I have already made a reference earlier) and the findings of the survey confirmed that there was a substantial truth in what was represented to the Government. The Government also noticed that the Security Guards were required to do not only the usual patrolling and watch and ward work but occasionally they were compelled to fight situations like thefts, assaults and fire. It was also noticed by Government that under the present system they were not entitled to any protection of the Labour Laws available to the other workers. In order therefore to ensure that the Security Guards in factories and establishments were not exploited and to make better provisions for their terms and conditions of employment and welfare, a separate representative Board was considered necessary by enacting a special law for the purpose on the lines of the Mathadi Act. This would also make it possible in due course to make recruitment of the Security Guards through the Board only. The preamble of the Act reiterates the broad features of the said statement of objects and reasons accompanying the Ordinance and states that the Act was being placed on the statute book for regulating the employment of private security guards employed in factories and establishments in the State of Maharashtra and for making better provisions for their terms and conditions of employment and welfare, through the establishment of a Board therefore ,and for matters connected therewith. By Section 1 of the Act, the Act is made applicable to the whole of the State. However, it is also provided that whereas it will come into force in Greater Bombay and Thane District on June 29, 1981, its application to the other areas of the State will depend upon the notifications that may be issued from time to time in that behalf and that different dates may be appointed for different areas and for different provisions of the Act to come into force. Sub-s. (4) of Section 1 then makes it clear that the Act applies to persons who work as Security Guards in any factory or establishment but, who are not direct or regular employees of the factory or the establishment, as the case may be. The expressions "factory" and "establishment" are defined along with other expressions in Section 2 of the Act. What is however important to note is the fact that the Act does not apply to security guards or persons who are doing security work as direct employees in such factory or establishment. In other words it applies to security guards engaged through agents or agencies only. Section 2 defines the various expressions relevant for the Act. Sub-section (1) of Section 2 defines agency or agent in relation to a security guard and states that an individual or a body of individuals or a body Corporate who undertakes to execute any security work or watch and ward work for any factory or establishment by engaging such security guard on hire or otherwise, or who supplies such security guards either in groups or as individual, would for the purposes of the Act mean agency or agent and would include a sub-agency or a sub-agent of such agency or agent. Sub-section (3) of Section 2 defines employer to mean the principal employer when the security guard is engaged by or through an agency or agent and when he is not

so engaged, the person who has ultimate control over the affairs of the factory or establishment and includes any other person to whom the affairs of the factory or establishment are entrusted whether such person is called an agent, manager or by any other name. Sub-section (4) defines establishment to mean an establishment as defined in Clause (8) of Section 2 of the Bombay Shops and Establishments Act, and Sub-section (5) defines factory to mean a factory as defined in Clause (m) of Section 2 of the Factories Act, 1948. Sub-section (8) defines principal employer to mean an employer who has engaged Security Guards through an agency or agent. Sub-section (1) defines Security Guard or private Security Guard to mean a person who is engaged or is to be engaged through any agency or an agent, whether for wages or not, to do security work or watch and ward work in any factory or establishment and, includes any person, not employed by any employer or agency or agent, but working with the permission of, or under an agreement with, the employer or agency or agent. This definition excludes the member of any employer's family or any person who is a direct or regular employee of the principal employer. The latter part of the definition is consistent with the provisions of Subsection(4) of Section 1 referred to earlier and makes it once more clear that the Act does not apply to a security guard directly employed by the principal employer. We have then the definition of wages in Sub-section (11) which is not material for our purpose.

Section 3 of the Act then gives powers to the State Government to make a Scheme or Schemes for ensuring an adequate supply and full and proper utilisation of the Security Guards in factories and establishments, and generally for making better provisions for the terms and conditions of employment of the Security Guards, to provide for the registration of employers engaging them as well as of the Security Guards and for making a provision for the welfare of the Security Guards. The Scheme to be made by the State Government under the said section is in particular to provide for matters which are mentioned in Clauses (a) to (n) of Subsection (2) of the said Section.

By Sub-section (3) of the said Section 3, power is given to the State Government to provide for punishments and penalties for contravening any of the provisions of the Scheme or Schemes to be made. Then comes Subsection CO of the said Section 3, which makes a provision for a transitory period and bar dismissal, discharge, retrenchment or any other form of termination of employment of the security guards by any principal employer, agency or agent on and from June 29, 1981 which is the date of the Ordinance, merely because the employer was liable to register himself under the scheme framed under that section or merely because some other liability was likely to be cast on him under such scheme or because the Security guard employed was liable to be registered under the Scheme. The bar operates from June 29, 1981 till the date the whole of the scheme framed under the section was applied to such employer and the Security Guard or for a period of one year from June 29, 1981 whichever is earlier. The dismissal, discharge, retrenchment or other termination of the appointment by way of penalty imposed for disciplinary action is however not within the purview

of the said bar.

Section 4 gives power to the State Government to prepare one or more schemes for Security Guards or a class of Security Guards in one or more areas specified in the notification, and in like manner add to, amend or vary any Scheme or substitute another scheme for the Scheme already made.

Section 5 provides the machinery for resolving the dispute with regard to the application of any scheme to any class of Security Guards or employers and provides that such a dispute shall be referred to the State Government and the decision of the State Government which shall be taken by it after consulting the Advisory Committee constituted u/s 15, shall be final.

Section 6 gives power to the State Government to constitute a Board for any Security Guards in any area and permits the establishment of one or more Boards for one or more classes of Security Guards or for one or more areas. The Board so constituted is to be a body corporate with all the trappings thereof. The Board is to consist of members nominated by the State Government from time to time. The nominees are to represent the employers, the Security Guards and the State Government. The members representing the employers and the security guards are to be equal in number and the members representing the State Government are not to exceed one- third of the total number of members representing both the employers and the Security Guards. The Chairman of the Board is to be from one of the members nominated to represent the State Government and has to be nominated as such by the State Government. The term of office of the members is to be prescribed by the State Government and the meetings of the Board and the procedure to be followed by the Board is to be regulated by the Board itself subject to the approval of the State Government.

Section 7 provides for an eventuality when the employers and the Security Guards refuse to recommend persons for representing them on the Board or for any other reason it is not possible to constitute a Board, and provides that in such an eventuality the State Government may appoint a suitable person to hold office until a Board is duly constituted as per the provisions of Section 6 of the said Act.

Section 8 states the powers and duties of the Board and states that it shall exercise such powers and discharge such duties and functions as may be conferred on it by the Scheme. It also gives power to the Board to take such measures as it may deem fit for administering the Scheme. It then provides that the Board shall submit a report to the State Government every year after the 1st day of April, and not later than 31st October, on the working of the scheme during the preceding year ending on the 31st day of March of that year. The report is to be laid before each House of the Legislature. The Board is to be bound by such directions that the State Government may, for reasons to be stated in writing, give to it, from time to time for exercising the powers and for the performance and discharge of its duties and functions.

Section 14 of the Act gives power to the Board or such Officer as it may specify to determine any sum due from any employer or Security Guard and for that purpose to conduct such inquiry as may be deemed necessary. Sub-section (3) thereof states that no such order determining the sum shall be made without giving a reasonable opportunity to the employer or Security Guard as the case may be. The order made determining the said sum is to be final and not to be questioned in any Court.

Section 15 provides for constitution of an Advisory Committee by the State Government to advise the Government upon such matters arising out of the administration of the Act or any Scheme made under it or relating to the application of the provisions of the Act to any particular class of Security Guards or employers, as the Advisory Committee may itself consider to be necessary or the State Government may refer to it for advice. The Advisory Committee is to include an equal number of members representing the employers, the Security Guards, the Legislature of the State and the State Government. The representatives of the State Government however are not to exceed one-fourth of the total number of members. The Chairman of the Advisory Committee is to be one of the members representing the State Government and nominated as such.

Section 16 provides for the appointment of Inspectors and the duties of such Inspectors are to assist the enforcement of the provisions of the Act and the scheme.

Section 17 provides that no Court will take cognizance of any offence made punishable by a Scheme or of any abatement thereof, except on a complaint in writing by an Inspector or by a person specially authorised in that behalf by the Board or the State Government.

Section 18 bars a child i.e. a person who has not completed 14 years from working as a Security Guard.

We have then the provisions of Sections 19 and 20 which have a direct bearing on the contentions advanced on behalf of the petitioners. Section 19 provides that the provisions of the Workmen's Compensation Act, 1923, and the rules made thereunder, shall mutatis mutandis, apply to the registered Security Guards employed in any factory or establishment; and for that purpose the Security Guards shall be deemed to be "workmen" within the meaning of that Act. It also states that in relation to such Security Guards, the employer shall mean where a Board makes payment of wages to any such Security Guards, the Board, and in any other case, the employer as defined in this Act. This will mean the principal employer who has engaged the Security Guards and who has an ultimate control over the affairs of the factory or establishment, or where the affairs of such factory or establishment are entrusted to any other person, such person whether called an agent, manager or otherwise. Similarly, Section 20 states that notwithstanding anything contained in the Payment of Wages Act,

1936, the State Government may by notification direct that all or any of the provisions of that Act and the rules made thereunder shall apply to all or any class of registered Security Guards employed in any factory or establishment, with the modification that, in relation to registered Security Guards, an employer shall mean, where a Board makes payment of wages to such Guards, the Board, and in any other case, the employer as defined under Sub-section (3) of Section 2 of the Act. The import of the provisions of Sections 19 and 20 is that except for the purposes of the said two Acts viz. the Workmen's Compensation Act, 1923 and the Payment of Wages Act, 1936, neither the Board nor the employer as defined under Subsection (3) of Section 2 of the said Act is to be looked upon as an employer notwithstanding the fact that the wages are paid by the Board or by such employer as the case may be. What is further, were it not for the provisions of Section 19 and the notification issued u/s 20, the provisions of the Workmen's Compensation Act, 1923 and those of the Payment of Wages Act, 1936, as the case may be, would not be applicable to the Security Guards covered by the said Act.

Section 21 makes a similar provision with regard to the applicability of the Maternity Benefit Act, as Section 20 makes, with reference to the applicability of the Payment of Wages Act, 1936. Here again, the Board and the employer as defined in the said Act can be looked upon as an employer in relation to the Security Guards only by virtue of the notification issued u/s 21 of the said Act for the purposes of the Maternity Benefit Act and not otherwise.

Section 22 saves generally the rights and privileges which any registered Security Guard employed in any factory or establishment is entitled to, on the date the said Act came into force and which rights or privileges were available to such Security Guards under any other law, contract, custom or usage applicable to such Security Guards, if such rights or privileges are more favourable to them than those to which they would be entitled to under the said Act. This provision in the context can only mean that if the Security Guard employed with any agency or agent was entitled to higher benefits from such agent or agency, he would continue to be given the same benefits wherever he may be assigned by the Board hereafter.

Section 23 then provides for exemption from the operation of all or any of the provisions of the said Act or any Scheme made thereunder. It is intended to be the usual exemption provision. However, the language of the said section is so cast that it is not capable of being applied to any class whatsoever as will be shown at the relevant time. For the present it will suffice to note that the exemption, under this section is to be given only to the Security Guards of all or any of the classes employed in any factory or establishment or in any class or classes of factories or establishments. The exemption further is to be given only if the Security Guards concerned are in the enjoyment of benefits, which are on the whole not less favourable to them than the benefits provided by or under the said Act or under any Scheme made thereunder.

Section 24 then gives power to the State Government to make an inquiry into the working of the Board or the Scheme made under the said Act and submit its report to the State Government in that behalf.

Section 25 provides for supersession of the Board. Section 26 declares that any contract or agreement, whether made before or after the commencement of the said Act, whereby a registered Security Guard relinquishes any right, privilege or concession conferred or accruing to him under the Act or the Scheme, shall be void and of no effect, if it purports to deprive him of any such right or privilege or concession. It is difficult to understand the provisions of this section as will be shown hereafter.

Section 27 provides for the quantum of penalty for the offence under the said Act. Section 28 gives protection to the State Government or the Board or its Chairman or other Officers from any legal proceedings. Section 29 gives power to the State Government to make rules under the said Act and Section 30 provides that the scheme and the rules made under the said Act shall be placed before the Houses of the Legislature. These are all the material provisions of the said Act which are necessary to be considered.

14. Under the State Act initially the scheme was framed in 1981. But that scheme is no longer in force. Presently, the scheme that is in force is called the Private Security Guards (Regulation of Employment and Welfare) Scheme, 2002. (Hereinafter referred to as 2002 Scheme.)

15. The scheme has come into force from 12-11-2002. The provisions of the Scheme which are relevant for the present purpose are Sub-clause (2) of Clause 2, which lays down that the scheme shall apply to the security guards of the Board and the security guards in the employment of agency deployed in any factory or establishment of a registered principal employers. Clause 3 defines various terms. Clause 5 enumerates the functions of the Board constituted u/s 6 of the Act. Clause 10 deals with the registers that are to be maintained by the Board. It contemplates that the Board shall maintain following registers; (1) Register of principal employers; (2) Register of registered employer agency; (3) Register of Security Guards; Clause 13 deals with the registration of principal employer. Clause 14 deals with the registration of existing and new security guards. Clause 16 lays down that before registration of any security guard, a medical examination for finding out the physical fitness of the workman has to be done. Clause 22 deals with payment of disappointment money to every security guard, who presents himself for work, but cannot be given work on that date. Clause 24 lays down the obligation of the registered Security Guards of the Board. Clause 25 lays down obligations of the registered principal employers. Clause 26 lays down obligations of the employer agencies. Clause 27 lays down obligations of the principal employer. Clause 28 lays down that a registered principal employer can engage security guards either registered with the Board or security guards of the employer agency registered with the Board or he may employ security guards directly who will be his employee. Clause 30 deals with

the wages and allowances and other conditions of service of the security guards of the Board. Clause 31 deals with disbursement of wages and other allowances to registered security guards of the Board. Clause 32 deals with disciplinary procedure for the registered guards of the Board. Clause 33 deals with termination of employment of the registered security guards of the Board. Clauses 35 & 36 provides for Appellate Forum, whereas Clause 37 deals with the revisional jurisdiction of the Chairman. Clause 41 provides for the Board to frame and operate rules providing for Contributory Provident Funds, for registered Security Guards of the Board and Clause 42 lays down the penalty whoever contravenes the provisions of the Scheme.

16. On behalf of the Petitioners it was submitted that the Central Act is enacted under the same legislative entry in List III of the Seventh Schedule to the Constitution of India as the State Act, and substantially covers the same field as the State Act. Since it is apparent that Parliament has sought to cover the field relating to employment and deployment of private security guards by private security agencies, and to regulate the recruitment and conditions of service or employment of private security guards employed by agencies, the Central Act prevails over the State Act insofar as agency guards are concerned. Consequently, the State Act after 2005 applies only to guards deployed by the Board, and has to give way to the Central Act under Article 254 insofar as guards employed by private security agencies and deployed to principal employers are concerned.

17. The learned Counsel further submitted that, in the alternative, the Central Act contains provisions which are clearly in conflict with, and effectively clash with, certain provisions of the State Act. In view of the said clash between the provisions, the two Acts cannot stand together insofar as private security guards employed by private security agencies are concerned, and the State Act therefore has to give way under Article 254(2) of the Constitution of India. 18. The learned Counsel for the Petitioners further submitted that the argument that the State Act prohibits or abolishes the agency or agent or middleman is clearly untenable in view of the enactment of the Central Act. While it may be permissible to regulate private security agencies on aspects which are not covered by the Central Act, it is clearly not permissible to ban or prohibit a private security agency which complies with the requirements of the Central Act and is licensed thereunder, from functioning and supplying guards to factories or establishments, as such ban or prohibition will bring the State Act into direct conflict with the Central Act. The only way to interpret the State Act, and particularly Section 23 thereof, which will save the constitutionality of the State Act, is to read it down and treat it as a purely regulatory provision for safeguarding those service conditions of private security guards which are not governed or regulated by the Central Act.

19. In any event, and without prejudice to the foregoing submissions, even if there is no repugnancy or conflict between the Central and State Acts and both

operate within their own spheres without attracting Article 254, the State Act has to be read and construed in its amended form along with the Scheme framed in 2002 u/s 3 of the State Act. The State Act is operated only through the Scheme, and therefore the Scheme forms an integral part of the Act, and is not a mere subordinate legislation in the traditional sense of the words. The Scheme, which has not been challenged, expressly allows principal employers and guards the free choice of employment and deployment, and this free choice available to principal employers and guards cannot be curtailed or restricted by relying upon an earlier interpretation in 1982 or 1987 (by Hon''ble Justice P.B. Sawant or by the Hon''ble Supreme Court in 1987) when they were construing an earlier and unamended version of the State Act read with an altogether different Scheme of 1981. Clause 28 of the 2002 Scheme, which has not been challenged by anyone, expressly preserves this free choice, which cannot and should not be whittled down.

20. In the submission of the learned Counsel for the Petitioners, therefore, in light of the above, the provisions of Clauses 13(1)(b) and 26(4) and any other provisions of the 2002 Scheme which seek to create a monopoly in favour of the Board on the basis of historical registration of a principal employer with the Board, or which seek to prohibit a private security guard from seeking employment with any agency of his/her choice or deployment with any principal employer of his/her choice, or which restricts the right of the principal employer to choose guards from any legitimate source including an exempted agency, are ultra vires the provisions of the Act as amended in 1996, as well as the provisions of Articles 14 and 19(1)(g) of the Constitution of India. The same is true of any corresponding condition which is imposed by the Government as a condition of exemption u/s 23. Creation of such a "Lakshman Rekha" to protect the Board from fair and open competition is wholly abhorrent to the principles on which Articles 14 and 19 of the Constitution are based.

21. The learned Counsel further submitted that any interpretation of the Maharashtra Act which seeks to prohibit or abolish agencies or agents, or to hold that agencies or agents have no right to seek exemption u/s 23, will result in a direct and irreconcilable conflict with the provisions of Central Act, which, being a later Act of Parliament, will then prevail over the Act. It is well settled that Courts should adopt an interpretation which sustains the constitutionality of provisions, and avoid an interpretation which would bring the provisions in conflict with other laws which might prevail over them.

22. On the other hand, on behalf of the trade-union and the Board it was submitted that the contention of the Petitioners that the State Act stands impliedly repealed by enactment of the Central Act is completely misconceived because both the Acts viz, the State Act and the Central Act operate in different fields. The Security Guards Act is enacted for regulating the employment of Private Security Guards employed in factories and establishments in the State of Maharashtra and for making better provisions for their terms and conditions of

employment and welfare, through the establishment of a Board therefore and for matters connected therewith, whereas the Central Act has been enacted for regulating the business of Private Security Agencies. The State Act has been enacted by the State Legislature under Entry 24 of the Concurrent List i.e. Welfare of labour including conditions of work, provident funds, employers' liability, workmen compensation, invalidity and old age pension and maternity benefits, whereas the Central Act has been enacted under Entry 97 viz, residuary entry, List-1 by the Parliament. Both the Acts, therefore, operate in different fields and there is no inconsistency whatsoever in these two Acts. It was contended by the Petitioners that under Sub-section (1) of Section 9 of the Central Act every private security agency shall, within 6 months of obtaining the licence, commence its activities and since the Security guards Act prohibits agency from carrying on the business of supplying guards to the principal employers, there is inconsistency between the Central Act and the Security Guards Act and, therefore, the Central Act would prevail over the Security Guards Act. This contention is untenable, firstly because commencing of activity does not mean actual supply of guards to principal employers and secondly, it is implicit that the concerned Private Security Agencies will commence their activity subject to the law of the land i.e. Subject to the provisions of the Security Guards Act. Sub-section (1) of Section 9 of the Central Act does not give licence to a Private Security Agency to carry on business of supplying Security Guards in the State of Maharashtra without following provisions of the Security Guards Act. The submission, therefore, that the Security Guards Act stands repealed by the Central Act is devoid of any merit. This very point has been decided by a Division Bench of this Hon'ble Court (R.M. Lodha & Smt. Nishita Mhatre, JJ.) in Writ Petition No. 2773 of 2006 dated 12th January, 2007 in the case of National Textile Corporation (South Maharashtra) Ltd. and Anr. v. The Secretary, Security Guards Board for Brihan Mumbai and Thane Districts and Ors.

23. The learned Counsel next contended that the contention that Section 23 of the Security Guards Act allows all the Security Guards employed by the agency and deployed with various principal employers to seek exemption under that section is totally misconceived for the following reasons:

(a) The Security Guards Act is essentially enacted to do away with the evil of the middle man trafficking in human labour. To achieve this aim, the State Legislation is enacted to bring about total stoppage of the Agencies' business. 24. An analysis of Section 23 of the Security Guards Act makes it clear that exemption can be granted to a class or classes of Security Guards, employed by agencies and deployed with the principal employer and who are in the enjoyment of benefits which are on the whole not less favourable to such security Guards than the benefits provided by or under this Act or any Scheme made thereunder. Thus, to seek the benefit of Section 23, three conditions are necessary. Firstly, the class or classes of Security Guards should be employed by the agency or agent. Secondly, those Guards must be deployed by the concerned agency in a factory or establishment or in any class or classes of factories or establishments

and thirdly, in the opinion of the State Government, all such Security Guards or such class or classes of Security Guards are in the enjoyment of benefits which are on the whole not less favourable to such Security Guards than the benefits provided by or under this Act or any Scheme made thereunder. The concerned Security Guards must, at the time of seeking exemption, be in the enjoyment of benefits which are on the whole not less favourable to such Security Guards than the benefits provided by or under the Security Guards Act or any Scheme made thereunder. Now, since after the enactment of the Security Guards Act, the principal employer was prohibited from taking private Security Guards from Security Agencies, the exemption could be asked only in respect of private Security Guards who, on the date of commencement of the Act in that particular region, were employed by the agency and deployed by the said agency in any factory or establishment and in the opinion of the State Government those Security Guards were in the enjoyment of benefits which were on the whole not less favourable to such Security Guards than the benefits provided by or under this Act or any Scheme made thereunder. Thus, it was only a one time exercise for seeking exemption for private Security Guards who were employed by the agency and deployed by that agency in factory or establishment. That exercise could be repeated as and when the provisions of the Security Guards Act are made applicable to different areas of the State on different dates as provided under Sub-section (3) of Section 1 of the Security Guards Act.

25. It is clear that this group of petitions have been filed after the enactment of the Central Act to claim that in view of the enactment of the Central Act, the State Act has lost its efficacy in relation to the security agencies. Perusal of the preamble of the State Act shows; that the purpose; for which that Act has been enacted is - regulating the employment of security guards employed in factory and establishment in the State of Maharashtra and for making better provisions for their terms and conditions of employment and welfare through the establishment of a board there for. It is thus clear that the State Act is a labour Legislation enacted by the State Legislature for making better provisions for the terms and conditions of employment of the private security guards and their welfare. The Legislation, therefore, is referable to Entry 24 in List III (Concurrent List) in the Seventh Schedule of the Constitution of India. The entry reads as under:

24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

We have, thus, no doubt, in our mind that the State Act is a Labour Legislation, which the State Government is competent to enact because of Entry 24 found in List III of Seventh Schedule of Constitution. So far as the Central Act is concerned, its preamble shows that the Act has been enacted by the Parliament - for the regulation of the Private Security Agencies and for matters connected therewith and incidental thereto. The subject matter of the State Act is private

security guards who may be engaged by the principal employer either through the Board or through the security agencies. The subject matter of the Central Legislation is not the private security guards, but private security agencies. Thus, the subject of two Legislations is different. Perusal of the Central Act shows that it makes an endeavour to regulate the establishment and working of private security agencies. Section 4 lays down that no person shall carry on and commence the business of security agency unless he holds a licence issued under this Act. Section 5 of the Central Act lays down as to who are eligible for licence. From the scheme of the Central Act, it is thus clear that it regulates the business of private security agencies by making it obligatory on them to secure licence under the Central Act before commencing their business. The provisions found in the Central Act dealing with the eligibility of the security guards are incidental to the subject of legislation namely business of private security agency. The condition of service and welfare of the security guards is not the subject matter of Legislation in the Central Act. In list I or List III of the Seventh Schedule there does not appear to be any entry in relation to the regulation of business of security agency. Therefore, the Central Legislation may be relatable to residuary Entry 97 In List I. Perusal of the provisions of the State Act shows that it does not make any attempt to regulate the business of private security agency. In fact in the scheme of the State Act a private security agency can carry on its business only after securing exemption for the guards engaged by it from the provisions of the Act in terms of Section 23 of the Act. Perusal of the provisions of Section 23 shows that the most important aspect to be considered by the State Government before granting exemption under the provisions of Section 23 is whether the security guards employed by the private security agency are in the enjoyment of benefits which are on the whole not less favourable to such Security Guards than the benefits provided by or under the Act. It is, thus, clear that the concern of the State Act is the welfare of the security guards and their conditions of service and the benefits that are received by them and not the business of the the security agency. Whereas, the whole emphasis of the Central Act is regulating the business of the security agencies. Two Acts, therefore, have been enacted by the two different Legislatures for entirely different purposes. Relying on the provisions of Article 254 of the Constitution of India, it was claimed that the provisions of the State Act, which do not permit a private security agency to carry on its business without obtaining exemption from the State Government under the State Act and the provision in the scheme which requires registration of the private security agencies who have been exempted under the provisions of Section 23 of the State Act with the Board are repugnant to the provisions of the Central Act and therefore, in view of the provisions of Article 254 of the Constitution, provisions of Section 23 are void. It was contended that after obtaining licence under the Central Act, the security agency becomes entitled to commence its business. It was contended that Sub-section 1 of Section 9 obliges the security agency to commence its business within a period of six months from obtaining the licence and if it does not commence its business within six months, it is deemed to have committed breach of the provisions of the Act and

therefore, may become liable for prosecution under the Central Act. Because of the provisions of the State Act, the private security agency cannot commence its business without obtaining exemption from the provisions of the State Act and therefore, it was contended that the provisions of the State Act are repugnant to the provisions of the Central Act. In our opinion, the submission is fallacious. Firstly, Sub-section 1 of Section 9 of the Central Act requires a security agency to commence its "activities" and not business. within a period of six months of its obtaining a licence. A comparison of the language used in Section 4 and Section 9 of the Central Act makes the position clear. There is a prohibition imposed by Section 4 on commencement of business of private security agency without obtaining a licence. Sub-section 1 of Section 9 obliges the security agency to commence its activities and not necessarily the business within a period of six months. Therefore, it is possible to say that if a security agency after obtaining a licence under the Central Act applies for exemption in relation to the guards engaged by it u/s 23 of the State Act after entering into necessary agreement with the principal employer and the security guards, it may amount to commencing activities within a period of six months. Therefore, really speaking there is no inconsistency or repugnancy between the provisions of the State Act and the Central Act in this regard. Secondly, it is to be seen that the State Act operates only in relation to the factory and establishment. The term "factory and establishment" has been defined in the State Act. - Establishment. means an establishment as defined in Clause (8) of Section 2 of the Bombay Shops and Establishments Act, 1948 and "factory" means a factory as defined in Clause (m) of Section 2 of the Factories Act, 1948. Thus, a security agency after obtaining licence under the Central Act without obtaining any exemption under the State Act can actually commence its business in relation to entities which are not establishments or factories. Thirdly, the State Act does not operate in the whole of the State of Maharashtra. So far as it has come into force only in Gr. Bombay, Thane District and in Pune district of the State of Maharashtra. It means that a security agency which has obtained a licence under the Central Act can commence its business even in relation to the factory and establishment in the State of Maharashtra excluding Gr. Bombay, Thane and Pune Districts. In our opinion, therefore, the submission that there is any repugnancy in the provisions of the Central Act and the State Act has no substance. It can be taken as a settled law, as a result of series of decisions of the Supreme Court, that the question whether the Legislature has kept itself within the jurisdiction assigned to it or has encroached upon the forbidden field is determined by two natures and characters or plinth and substance of the Legislation. If the plinth and substance of the Legislation is covered by an entry within the permitted jurisdiction of the Legislature, any incidental encroachment in the rival field is to be disregarded. If the two Legislations operate in different fields, there can be no question of their being any repugnancy. As we find that two Legislations in question, one made by the Parliament and other by the State Legislature, operate in different fields, the purpose of both Legislations is totally different. In our opinion, there is no question of there being any repugnancy. It is clear from

the Central Act that it was not the intention of the Parliament that the Central Act would be exhaustive Legislation in relation to the security agencies and covered all aspects of the security agency including the welfare of the security guards, the manner of their recruitment, their pay and other benefits. In our opinion, therefore, as the State Legislature had power to enact labour Legislation, there is no question of there being any conflict with the two enactments.

26. The Division Bench of this Court by its order in Writ Petition No. 2773 of 2006 dated 12-1-2007 in the case of National Textile Corporation v. The Secretary, Security Guards Board for Brihan Mumbai and Thane Districts and Ors., has already taken a view that there is no repugnancy between the provisions of the Central Act and the State Act. We are in respectful agreement with the view taken by the Division Bench in that judgment and we see no reason to take any different view.

27. It was submitted that because the State Government does not make any order on the applications made before the State Government u/s 23 for exemption, and keeps those applications pending for a very long time, the private security agencies which have obtained licence under the Central Act cannot commence their business in relation to the establishments and factories in the area to which the State Act applies. So far as this aspect of the matter is concerned, a statement has been made before us on behalf of the State Government that in case applications u/s 23 are made in accordance with law to the State Government, with advance copy submitted to the Board, the State Government will scrutinise those applications and make orders thereon in accordance with law within a period of six weeks from the date of receiving the applications. We accept this statement. In our opinion, in view of this statement, grievance of the Petitioners in that regard does not survive. There was some debate before us on the basis of interpretation placed on the provisions of Section 23 as to whether the security agencies which were not in the business on the date of the commencement of the State Act can make an application for exemption or not? But we do not propose to decide that question in these petitions. Because, we do not have any orders before us made by the State Government declining to grant exemption to any agency on that ground. That question can be decided as and when a challenge is raised before the Court to an order granting exemption u/s 23 or declining to grant exemption u/s 23.

28. It was contended before us that if the submission made on behalf of the Board and the Trade-union that an application for exemption can be made only by the security agencies which were in business on the date of the commencement of the State Act in the particular region is accepted, then, even after obtaining licence under the Central Act, new security agencies will not be able to commence their business in the area where the State Act applies and therefore, there will be conflict between the provisions of Central Act and the State Act. In our opinion, this submission is also incapable of being accepted. All that the Central Act does is on obtaining a licence, it permits a security agency to

carry on its business. If due to peculiar situation existing in a particular area of a particular State, such a security agency cannot commence its business only in a particular field, then will not amount to repugnancy between the provisions of the Central Act and the State Act. All that the Central Act does is that it gives licence to carry on a business. It does not cast obligation on the security agency to carry on its business in all parts of the country and in relation to all types of establishments, units, entities and factories. In our opinion, even if it is assumed that the new security agencies even after obtaining licence under the Central Act cannot do their business in Gr.Bombay and Thane and Pune Districts of the State of Maharashtra, in relation to the factories and establishments because of the provisions of the State Act, then also there will be no repugnancy between the provisions of the State Act and the Central Act. Because that situation will be brought about by the State Enactment made for the welfare of the labour i.e. Private security guards deployed in the factories and establishments in those areas because of the peculiar circumstances existing in those areas in the State and the State Legislature having legislative competence to do that. In our opinion, therefore, the submission has no substance.

29. Before us a statement was made in clear terms on behalf of the State Government that the security agencies who desire to get exemption from the provisions of the State Act can make an application to the State Government in accordance with law seeking exemption and the applications will be decided by the State Government within the time mentioned above, in accordance with law. In our opinion, this statement which has been accepted by us is enough and no directions in that regard, therefore, are necessary. It goes without saying that in case the exemptions are declined, the security agencies will be free to challenge such orders in accordance with law. On the contrary, if exemptions are granted and if the Board and the Trade-union are of the opinion that the exemptions are wrongly granted, they will also be entitled to challenge the same in accordance with law. We are making it clear that we are not expressing any final opinion in that regard in this judgment.

30. A statement was made before us that because of the provisions of the scheme, if security guards are provided to establishments or factory through the Board, then that establishment or factory cannot have private security guards from security agency and therefore, the provisions in the scheme are contrary to the provisions of the Act and the scheme of the Act. It was also submitted that the provisions of the Scheme which require even the exempted security guards to be registered with the Board, and the security agencies and the principal employer of the exempted security guards also to be resitered with the Board, are contrary to the provisions of the Act. In our opinion, this submission also does not have any substance. Because preamble of the State Act itself shows that purpose of inaction of the State Act is for making better provision in relation to the employment of the private security guards through the Board. Therefore, the scheme of the Act is to protect the conditions of services of the private security guards through the establishment of a Board. Therefore, the provisions

of the scheme conferring powers on the Board in that regard and corresponding obligations on the principal employer and the security agencies, in our opinion, are in consonance with the provisions of the Act.

31. In our opinion, therefore, in these petitions no relief can be granted to the Petitioners, save and except, directing the State Government to make orders on the application for exemption or application for renewal of exemption that have been filed before it by the Petitioners in accordance with the statement made by it before us, which we have accepted. Petitions are disposed of. No order as to costs.

At the request of the learned Counsel appearing for the Petitioners, it is directed that in case there are any interim orders presently operating they are continued to operate for a period of eight weeks from today.