

**(2014) 12 KL CK 0131**

**In the High Court Of Kerala**

**Case No :** Writ Petition (Civil) No. 28929 of 2013

E. Prakasan

APPELLANT

Vs

The Commandant, Defence Security Corps

RESPONDENT

---

**Date of Decision :** 04-12-2014

**Acts Referred:**

**Citation :** (2014) 12 KL CK 0131

**Hon'ble Judges :** A.K. Jayasankaran Nambiar, J

**Bench :** Single Bench

**Advocate :** V.R. Kesava Kaimal and C.S. Rajani, Advocate for the Appellant; P. Parameswaran Nair, ASG. and N. Nagaresh, Assistant Solicitor General, Advocate for the Respondent

---

## **Judgement**

A.K. Jayasankaran Nambiar, J.—The petitioner is a an ex-serviceman, who had applied to the respondents for permission to run a cloth shop within the Cantonment area in Kannur. The request of the petitioner was based on Exts. P2 to P4 letters, issued at the instance of the office of the Quarter Master General in the Army Headquarters, which directed the various Command Officers to follow certain guidelines while allotting regimental shops by giving preference to war-widows and ex-servicemen. A perusal of the said instructions would indicate that the intention was to try and give some preference to ex-servicemen and war-widows while awarding contracts for running of various shops such as cloth shops, meat shops, canteen and refreshment shops, vegetable shops, general provision shops etc., within the Cantonments. The instructions also show that the units/formations had to communicate the details of existing business units, or new proposed units, to the Director General of Resettlement so as to enable him to sponsor the names of suitable disabled soldiers, war-widows, orphans and other ex-serviceman who would be interested in self employment through these avenues provided by the said instructions. The request of the petitioner was acceded to by the respondents, and by Exts. P6, P7 and P8 contracts that were awarded to him, he was given the right to run a tailoring shop, without the right to purchase cloth on his own, for a period of almost three years. The last of the

formal contracts entered into with the petitioner was Ext. P8, the validity of which expired on 31st August, 2012. The facts in the writ petition would disclose that there were issues that cropped up between the petitioner and the respondents, with regard to the manner in which the petitioner was performing his obligations under the contract. Under those circumstances, consequent to the expiry of the period of Ext. P8 agreement on 31.08.2012, the respondents chose not to renew the said contract with the petitioner. On representations being made by the petitioner however, he was allowed to continue on a temporary basis with the conduct of a tailoring shop, but one that was situated outside the DSC Centre though within the cantonment area. This arrangement was made through Ext. P13 communication dated 12.04.2013 and continues to be in force. The cause of action for filing the writ petition was the apprehension, by the petitioner, that even the said arrangement with the petitioner would be terminated. Further, the petitioner also came to know that the respondents had since awarded the contract, to run the tailoring shop within the DSC Centre, to the 3rd respondent who was a civilian, without inviting any Notification prior to the award of the said contract. Thus, in the writ petition, while the petitioner seeks a direction to the respondents not to initiate any coercive steps against him for termination of the existing arrangement with him, there is also a prayer for a direction to the respondents to revoke the contract awarded to the 3rd respondent and to reinstate the petitioner in the place of the 3rd respondent, in the shop within the DSC Centre.

2. A counter affidavit has been filed on behalf of respondents 1 and 2 wherein the sequence of events leading to the expiry of the validity of Ext. P8 contract, and the issuance of Ext. P13 order appointing the petitioner on temporary basis, is narrated. It is pointed out that the action against the petitioner was necessitated only on account of the unsatisfactory performance by the petitioner of his obligations under the contract, and on account of the difficulties that were faced by the respondents consequent to the officers and Jawans not getting their uniforms stitched according to the measurements that were taken. As regards the award of the contract to the 3rd respondent, it is stated that the awarding of the contract to the 3rd respondent was necessitated on account of vacating of the premises by the petitioner, and in a situation where there was an urgent need for the services of a tailor to cater to the requirements of the officers and the Jawans. The said reason is projected as a justification for appointing the 3rd respondent, initially on temporary basis, as also for entering into a yearly contract with the 3rd respondent for the said services. Ext. R1(1) is the agreement entered into between the 1st respondent and the 3rd respondent for running the tailoring shop in the DSC Centre, Kannur and a perusal of the same shows the agreement to be valid for a period of one year from 3rd August, 2013 to 2nd August, 2014. It is stated that, thereafter, the contract with the 3rd respondent has not been formally renewed and he is permitted to continue on a temporary arrangement, in view of the interim order passed by this Court on 03.09.2014, which clarifies that the renewal of the contract, if any done by the

respondents 1 and 2 during the pendency of the writ petition, shall be subject to the final outcome of the writ petition.

3. I have heard Sri. V.R.K. Kaimal, the learned counsel appearing on behalf of the petitioner and Sri. N. Nagaresh, the learned Assistant Solicitor General, appearing on behalf of respondents 1 and 2. There is no appearance on behalf of the 3rd respondent despite notice.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I note that this is a case where the 1st and 2nd respondents had initially awarded the contract, for running the tailoring shop within the DSC Centre, to the petitioner as evidenced by Exts. P6, P7 and P8 agreements. Thereafter, pursuant to a dissatisfaction, expressed by the 1st and 2nd respondents, with regard to the performance by the petitioner of his obligations under the agreement, the 1st and 2nd respondents chose not to renew the contract with the petitioner. By Ext. P13 order, however, he was permitted to continue on a temporary basis and render tailoring services from premises that were situated outside the DSC Centre, though within the cantonment area. The 1st and 2nd respondents, thereafter, proceeded to fill the vacancy arising out of the termination of the contract with the petitioner, by temporarily appointing the 3rd respondent to run the tailoring shop within the DSC Centre. What was begun as a temporary arrangement, however, was later regularised by entering into Ext. R1(1) agreement with the 3rd respondent. It is not in dispute that as of today, the petitioner continues to function on the basis of the temporary arrangement pursuant to Ext. P13, from the premises outside the DSC Centre and, as far as the 3rd respondent is concerned, he continues to function on a temporary basis from the premises within the DSC Centre, despite the expiry of the period mentioned in Ext. R1(1) agreement. On a consideration of the contentions in the writ petition with regard to the legality of the action initiated against the petitioner by the 1st and 2nd respondents, I find that the petitioner has not made out a case warranting the issuance of any direction to the 1st and 2nd respondents, to continue the arrangement that existed between them vide Ext. P8 agreement. Insofar as there was no premature termination of the said agreement, the petitioner has no cause for complaint. Any subsequent right that accrued to the petitioner could only be a right for consideration for the award of the contract and nothing more. Further, by virtue of Ext. P13 order, the petitioner is stated to be continuing on a temporary arrangement, and functioning from the premises outside the DSC Centre. Under the said circumstances, I am not inclined to grant the prayer in the writ petition, seeking a direction to the respondents not to initiate any coercive steps against the petitioner for terminating the arrangement with him, since there is nothing in the writ petition to suggest that the 1st and 2nd respondents are proposing any such action at present. As regards the award of the contract to the 3rd respondent, however, I note that although the 1st and 2nd respondents had resorted to a temporary arrangement, in the wake of the expiry of the contract with the petitioner, to appoint the 3rd respondent for running the tailoring shop within the

DSC Centre, a regular contract for running the tailoring shop within the DSC Centre could be entered into only after following a fair procedure for award of the contract that took into account the mandate in Exts. P2 to P4 guidelines. I am of the view that it was not open to the 1st and 2nd respondents to pick and choose any person of their choice for the award of the contract, de hors their obligation to consider the case of war widows, orphans, disabled soldiers and other ex-servicemen who would be interested in self employment as indicated in the said instruction/guideline. That apart, it was also incumbent upon the 1st and 2nd respondents to give sufficient publicity to their proposal, with regard to the award of the contract in respect of shops within the cantonment area, so that even those persons who stood to benefit from Exts P2 to P4 guidelines, could respond to the notification calling for applications. Such a procedure would accord with the concept of fairness, and also rule out the possibility of any arbitrariness in the awarding of the contract by the 1st and 2nd respondents. In this view of the matter, while I do not deem it necessary to quash Ext. R1(1) contract awarded in favour of the 3rd respondent on account of the period of the said contract having expired, I make it clear that if and when the 1st and 2nd respondents choose to enter into a formal contract with another person for running the tailoring shop in the DSC Centre, they would necessarily have to follow the procedure indicated in this judgment, by bringing their proposals to the notice of all concerned and in particular, the category of persons that have been specified in Exts. P2 to P4 guidelines.

With these findings, the writ petition is disposed.