
(2009) 03 PAT CK 0025
In the Patna High Court

Ex-Armymen's Protection Services Private Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-03-2009

Acts Referred:

Citation : (2009) 03 PAT CK 0025

Judgement

Navaniti Prasad Singh, J.—As this case was projected by the respondents requiring urgent hearing as a matter of "National Security", the matter was taken up for final disposal at this stage itself. This Court also gave it undue precedents as it involved national security. The facts are thus:

2. Part XI of the Aircraft Rules, 1937 provides for licensing of aerodromes. Rule 79 lays down qualification of licensee to be a citizen of India or a Company or a Body Corporate, the Central Government or the State Government or the Company or security formed by them or a society. Rule 92 of the Rules is relevant for the purpose and is quoted hereunder:

92. Ground Handling Services.--The licensee shall, while providing ground handling service by itself, ensure a competitive environment by allowing the airline operator at the airport to engage, without any restriction, any of the ground handling service provider who is permitted by the Central Government to provide such service:

Provided that such ground handling service provider shall be subject to the security clearance of the Central Government.

3. As would be seen from Rule 92, the licensee (aerodrome licensee) are permitted to engage for ground handling services any person or service provider without any restriction. This is however, subject to per-mission being granted by the Central Government and subject to security clearance of the Central Government. In, pursuant to the power to grant security clearance for purposes of appointment, inter alia, of ground handling agents at the airport under the Ministry of Civil Aviation, Government of India, a Bureau of Civil Aviation Security

was created. The said Bureau issued Circular No. 4 of 2007 in which it was categorically provided that no ground handling agency should be allowed to work at any airport unless prior security clearance is obtained from the Bureau. There appears to be a regulation, also framed being Ground Handling Regulations, 2000 in which the terms and conditions and eligibility, criteria for ground handling agencies have been specified. It has been specifically provided in the said circular that aircraft operators would only be permitted to enter into contracts for ground handling with such agencies only after prior security clearance to these entities are given by the Bureau and approval from the Airport Authority of India. Thus, it would be seen that the Act, the Rules, Regulations, all emphasis on the importance of security clearance, the object of which cannot be doubted nor debated. Airports are inherently sensitive area and security therein is a matter of national security. Thus seen, it would be clear that the entire business of ground handling agents/agencies is solely dependant on security clearance by the Central Government. How and what are the parameter of security clearance is neither available to this Court nor this Court can go into those considerations as the power is apparently vested in a Special Cell created for the purpose and supposedly manned by responsible officer who know their duty well.

4. The petitioner-Company, which is of Patna, intended to act as ground handling agency at various airports for various aircraft operators. It, accordingly, approached the Bureau of Civil Aviation Security for security clearance and the Bureau, by its communication dated 17-4-2007 (Annexure-2), granted, after thorough background check, security clearance valid for a period of five years from the date of the said letter at the end of which fresh approval from the Bureau was mandatory required. It appears, thereafter on basis of said security clearance, the petitioner was engaged by Jet Airways to be their ground handling agents at different airports in the country. As a consequence of the aforesaid contract, the petitioner developed a huge chain of employment and infrastructure all over the country. Everything was alright but then suddenly on 27th of November 2008, the Assistant Commissioner of Security, Civil Aviation communicated to all the Regional Director that as per decision of the competent authority, the security clearance granted to the petitioner-Company was being withdrawn on grounds of safeguarding of civil aviation operation and national interest. All authorities concerned were directed to make necessary alternative arrangement and discontinue the services rendered by the petitioner and immediately report to the Bureau. The necessary result followed. The countrywide business of the petitioner came to a complete standstill, waiting only till finally terminated for good. Thus, the effect was that the very business for which the Company was formed stood totally withdrawn from it resulting virtually death and deprivation of its right to business in totality, this is what brought the petitioner to this Court and the writ application was, accordingly, filed. It was adjourned on several dates to enable the security conscious Bureau to file counter-affidavit immediately. That itself took sometime and ultimately

persuaded the Court to grant an interim order staying the impugned order. Even thereafter counter affidavit was not forthcoming. Ultimately after almost three months, counter-affidavit was filed. What was stated in the counter-affidavit was merely that for reasons of national security, which could not be disclosed, the security clearance, which was granted after thorough investigation for a period of five years, was being withdrawn. It was not disputed that before withdrawing the security clearance which had the effect of causing the death of the organization itself, neither any proceedings were initiated nor any show cause was issued nor was any disclosure made as to the grounds on which such a drastic action was proposed and taken. All that was said that in matter of national security, no notice or hearing whatsoever was at all required nor were the respondents required or obliged in law to disclose the reasons for their action. However, in view of observations of the Division Bench of the Bombay High Court in the similar matter as pleaded by the respondents themselves, they were ready to disclose the reason in sealed envelope to the Court. What happened then is recorded in order dated 19-3-2008 of this Court in these proceedings. The so-called top secret document, which was not to be disclosed to public in national security, when produced in a sealed envelope, was a one page letter which mentioned nothing except that there was an adverse IB report. This Court wondered what was so secret about this one page secret communication and what was the harm caused to national security if this was divulged and made a part of the records. In the opinion of this Court, it was only an attempt to put up a facade of high profile national security edifice from within. Then in view of the judgment of the Bombay High Court, as relied on by the respondents themselves, this Court asked for the detailed reports to be furnished today under sealed cover. Very fairly, the respondents first in the sealed cover furnished the reports of IB to the Court in sealed cover which the Court has perused and returned to the respondents directly. All that the Court can record is that all the material whatsoever has been discussed is an apology for an excuse of national security. If on those grounds, such a drastic action is permitted to be taken then not a single citizen would ever enjoy the fruits of Article 19 or for that matter part-III of the Constitution of India for we are not living in a police State, we are in a democratic country governed by Constitution. Unfortunately when it comes to national security, this Court cannot say anything more in view of the order that is being passed.

5. It is too late in the day to urge that in India, which is governed by the Constitution and rule of law established therein, any person can be permanently debarred from business without being granted an opportunity to defend himself merely by an executive fiat for if that were so then we could not call our Country a democratic country. It would be an authoritarian dictatorship which we do not profess we are. In a civilised democratic country, the right of hearing, either pre-decisional or post-decisional, is a must. No one can be condemned unheard or without being granted opportunity of hearing more so on any ipse dicta of any agency of the Government and that too without disclosure of grounds for the

action. The fundamental rights or the rights in Part-III of the Constitution are the essence of the Constitution in absence whereof the Society itself would be dead wood and, thus, the Courts have zealously protected rights of individuals in that regard but that should not be mistaken to mean that the rights of individual are above the national interest. Neither of them is supreme. They have to be balanced. It is in this context that I have mentioned about pre or post-decisional hearing. If the matter is urgent enough warranting an immediate action then no pre-decisional hearing may be granted but nevertheless a post-decisional hearing has to follow though as held by the Apex Court the tendency of the authorities to reaffirm their order after post decisional hearing is writ large however erroneous the initial order may have been. Reference may be made to the case of K.I. Shephard and Others Vs. Union of India (UOI) and Others, wherein in paragraph 16, the Apex Court has held thus:

16. ...It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.

6. In the present case, all that this Court can now observe is that the materials, as disclosed, do not warrant or did not warrant such an action without hearing. Heaven was not going to fall even if any of the material therein was correct and disclosed. Uncorroborated reports, which were in the nature of hearsay, can never form ground for such a drastic action.

7. At this stage, I may usefully refer to the Division Bench judgment of the Bombay High Court in the case of Akbar Travels of India Private Limited v. Union of India, being Writ Petition (LODG) No. 420 of 2009 which was disposed of on the 12th of March. 2009. The judgment was relied upon by the respondents and made available to the Court by them. In that case also, a similar action was taken to withdraw security clearance of a ground handling agency. That Court also asked for disclosure of reasons and then held that the order withdrawing security clearance was an order which affected the rights of party and having been found to be issued in violation of principles of natural justice, it could not be sustained. The Court, therefore, issued directions to the respondents to grant a post-decisional hearing disclosing gist of accusations. While refraining from directing the respondents to disclose all the materials as shown to the Court, they, however, directed the respondents to disclose the petitioner the gist or the conclusion of the report during the course of hearing with liberty to the petitioner to offer explanation. Thus, my understanding of the judgment aforesaid is that notwithstanding the plea of "National Security", as raised by the respondents, the Court was not impressed in denying total opportunity of hearing to the petitioner. As already noted above, all the materials that is available in the files or in the orders shown to the Court in fact did not justify an emergent action. As, such, the action was taken apparently in hot haste. Merely because they had the right to take an action, they took an action. That has to be deprecated. The respondents, in the facts and circumstances of the case, were obliged to grant

pre-decisional hearing to the petitioner but not having done so, a post-decisional hearing is a must. Hearing cannot be dispensed with but granting a hearing without disclosure of grounds would be an empty formality. Respondents would be bound to disclose the grounds which persuaded them to hold that activities of the petitioner would be a national security threat at the airports. To put it in other words, merely because a person misbehaves or a person acquires business to the detriment of other business persons or has friends in high places, cannot be held to be a threat to national security but to be in a position to judge this, a disclosure of this ground is necessary otherwise anything and everything could be made into threat to "National Security" and citizens deprive of their rights. The Court is apprehensive of the ramifications of the actions that may take place if such an authoritarian right to withdraw security clearance at the drop of the hat is permitted in such a mindless manner. Article 19 of the Constitution is not a dead letter or dependent on subjective satisfaction of an officer rather than objective satisfaction. It is only in this way, abuse of such vital power can be prevented.

8. Thus, I direct disclosure of the materials with a caveat. Petitioner would not be entitled to question as to the source of the Information they have gathered. The petitioner would be heard and granted opportunity to rebut. This exercise, respondents must complete within a period of one month from today and communicate their decision to the petitioner within the said time.

9. If no adverse decision is communicated to the petitioner by the 25th of April, 2009, the order impugned, as contained in Annexure-1 being order dated 27-11-2008 of the Bureau of Civil Aviation Security, would cease to operate.

10. Till such time, a decision is taken and communicated to the petitioner, the interim orders passed earlier on 3-2-2009 and 9-2-2009 shall continue to Operate.

11. With these observations and directions, the writ application stands disposed of.