

(1997) 05 BOM CK 0024

In the Bombay High Court

Case No : Writ Petition No. 2887 of 1988

Krantikari Surakseva Rakshak Sanghatana

APPELLANT

Vs

The Security Guards Board for Gr. Bombay and Thane

RESPONDENT

Date of Decision : 06-05-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act,
1981 — Section 19, 20, 21, 22, 23

Citation : (1997) 3 ALLMR 247 : (1997) 4 BomCR 522

Hon'ble Judges : Y.S. Jahagirdar, J;V.P. Tipnis, J

Bench : Division Bench

Advocate : K.K. Singhavi and Sanjay Singhavi, for the Appellant; Lata Desai, for respondent No. 1, P. Ramkrishnan and P.K. Rele, for the Respondent

Judgement

Y.S. Jahagirdar, J.—This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner - Trade Union on behalf of its 4 members viz. S/ Shri A.B. Jadhav, D.L. Mahanty, N.G. Dhumak, who had been working as Security Guards with respondent No. 2 and Shri M.M. Kamble who had been working as Security Guard with respondent No. 3 Though the petitioner seeks general declaratory reliefs, Mr. Singhavi, learned Counsel appearing on behalf of the petitioner, restricted the same to four employees as mentioned hereinabove.

2. So far as S/Shri A.B. Jadhav, D.L. Mahanty and M.G. Dhumak are concerned, their services were allotted to respondent No. 2 - Tata Electric Companies Unit 6. On a complaint dated 4th of July 1988 from respondent No. 2 that S/Shri Jadhav and Mahanty did not wait for their reliever, their services were withdrawn by the Board treating the said act as misconduct. The withdrawal is alleged to be immediately after 4th of July 1988 though the exact date is not available on record. Shri Jadhav has since 24th of November 1988 been re-allotted to Maharashtra State Co-operative Bank and Shri Mahanty has been re-allotted to Asia Flavour and Flagrances with effect from 5th of July 1988.

3. So far as Shri M.G. Dhumak is concerned, there was a complaint that he was found sleeping on duty on 3rd of July 1988. On this complaint, his services were also withdrawn some-time from 4th of July 1988. Shri Dhumak has since been re-allotted to Bombay Municipal Corporation from 17th of February, 1989.

4. So far as Shri M.M. Kamble is concerned, he was working as Security Guard with respondent No. 3 - Hindustan Petroleum Corporation Ltd. and has been withdrawn by the Board on a complaint of misconduct on 1st of July 1988. We have been told on behalf of the Board that Shri Kamble thereafter has not reported back to the Board. None of the parties before us are aware as to whether Shri Kamble has since then taken any employment on his own. Since he did not report back to the Board, the question of his re-allotment to any other establishment did not arise.

5. It has been contended on behalf of the petitioner that the Security Guard once allotted to particular establishment or employer, cannot be withdrawn by the Board and the fair reading of the Maharashtra Private Security Guards (Regulation of Employment & Welfare) Scheme, 1981 (hereinafter, for the same of brevity, referred to as the said "Scheme 1981") would indicate that it is a one time exercise and the Board has no power to withdraw the Guard once allotted to an establishment. It was also submitted that such withdrawal of Security Guard, if held permissible, has to be after following the procedure under Clause 31 of the said Scheme 1981, and more so, if the withdrawal is on a complaint. It was emphasized that the Board was under no obligation to oblige the principal employer by forthwith withdrawing the services of Security Guard which are allotted to such establishment merely on a complaint from the said establishment. It is, therefore, argued on behalf of the petitioner that if the services of Security Guard are withdrawn on a complaint by the establishment of the registered principal employer, then such withdrawal can only be after following the procedure under Clause 31 pertaining to the disciplinary action and not otherwise and if withdrawal is without following the said procedure, then it amounts to termination or retrenchment of services entitling the Security Guard to claim the reliefs of reinstatement with back wages. To emphasize the point that the principal employer is the establishment and the said establishment is liable to be proceeded against for the purpose of reliefs of reinstatement and back wages, Mr. Singhavi has placed reliance on the following decisions of the Apex Court.

(1) Vizagapatam Dock Labour Board Vs. Stevedores Association, Vishakhapatnam and Others,

(2) Security Guards Board for Greater Bombay and Thane Distt. Vs. Security and Personnel Service Pvt. Ltd. and Others, .

Mr. Singhavi has specifically relied upon Para 11 of the judgment reported in Security Guards Board for Greater Bombay and Thane Distt. Vs. Security and Personnel Service Pvt. Ltd. and Others, . It was argued that with the intention of

protecting basic service conditions of the Security Guards that the Act i.e. Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981, (for short the said "Act, 1981") was enacted and, therefore, it was necessary that the establishment to whom the services of Security Guard are allotted should be styled as principal employer for the purpose of granting the relief of reinstatement.

6. Reliance was also placed on the decision of *Kirloskar Oil Engines v. Hanumant Laxman Bibave*, reported in 1963 1 L.J.J. 124 to emphasize that even under the general law governing the relationship of master and servant and employer and employee, not following the procedure for terminating the services must result in the relief being granted in favour of the employee.

7. The judgments delivered by two learned Single Judges of this Court in the matter of *M/s. Tradesvel Security Services Pvt. Ltd. v. State of Maharashtra*, reported in 1984 Bombay Law Report page 608 and in the matter of *Krantikari Suraksha Rakshak Sanghatana, Thane v. A.L. Alaspurkar & others*, reported in (1996) 2 C.L.R 76 have also been brought to our notice.

8. It was, therefore, submitted on behalf of the petitioner that the Board has no power to withdraw the Security Guard once allotted and if the Guard is to be withdrawn, it can only be done by following the procedure under Clause 31 of the Scheme, failing which the said action would amount to either illegal termination or retrenchment and the principal employer then would be liable to face the consequences thereof.

9. Mr. Ramaswami and Mr. P.K. Rele, learned Counsel appearing on behalf of respondent Nos. 2 and 3 respectively, in reply to the contentions raised on behalf of the petitioner, argued that under no circumstances the establishment to whom the services of the Security Guard are allotted by the Board could be styled as the employer for the purpose of the said Act and no liability of payment and/or reinstatement could be foisted on the said establishment since they have absolutely no control over the said Security Guard except to indicate to the said Guard where and in what manner he has to function and discharge his duties. It was pointed out that various clauses of the Scheme, if analysed, would clearly indicate that it is the Board which is fully in control of fixing of service conditions, supervision, appointment, payment of monetary dues and most importantly, control pertaining to the disciplinary action and if this be so, the establishment of the principal employer cannot be considered as an employer for the purpose of granting any relief for reinstatement or back wages. The learned Counsel also relied upon the decision of *Krantikari Suraksha Rakshak* (supra) to emphasize that the establishment to whom the services of the Security Guard have been allotted, cannot be held as employer for the purpose of extending benefits of reinstatement, etc. Both the learned Counsel also placed heavy reliance on an unreported judgment of the Division Bench of this Court in *Suraksha Rakshak and General Kamgar Union v. M.S.S.I.D.C. & others*, (Writ Petition No. 2671 of 1992) wherein this Court, after considering the decision in the matter of

Vishakapatnam Dock Labour Board (supra), held that the Scheme which was under consideration in the matter of Vishakapatnam Dock Labour Board (supra) is essentially, on both vital aspect, different than the Scheme under the Maharashtra Private Security Guards Act. Both the learned Counsel, therefore, submitted that since the establishments were styled as "principal employer", they have no control whatsoever as would normally be enjoyed by an employer over the Security Guards allotted to them by the Board and once it is settled in the case of Suraksha Rakshak & General Kamgar Union (supra), there was nothing in the Scheme to indicate that allotment once made was irrevocable and cannot be charged by the Board. It is unjustified to foist any liability of payment of wages or reinstatement on the principal employer. If the principal employer has any grievance or dissatisfaction about the services rendered by the Security Guards as allotted to them then all that the establishment can do is to make a complaint to the Board and the Board then has absolute power either to overrule the complaint and continue the same Guard or to accept the objection and substitute the Guard with another Security Guard of Boards choice. Thus, both the learned Counsel submit that the most important and necessary ingredient of establishing the employer - employee relationship namely disciplinary control and power is wanting between principal employer i.e. the establishment and the Security Guard as allotted by the Board and, therefore, they cannot be styled as employer for the purpose of granting reinstatement.

10. On behalf of the Board Mrs. Desai has argued that once the power to allot a Security Guard is with the Board, the said power must have a necessary incidence of power to withdraw as well and the Scheme, as contemplated under Clauses 6, 8, 9, 25, 26 and 27 would definitely indicate the Board's implicit power to withdraw a Security Guard once allotted to any establishment. She contended that such withdrawal with necessary entitlement of being re-allotted to another establishment does not amount to either termination or retrenchment. Clause 32 which is emphasised by the petitioner contemplates "termination" thereby a Guard necessarily ceases to be in the pool and also senses to be available for re-allotment. If on withdrawal from one establishment, a Security Guard is to be re-allotted to another establishment then it can never amount to either retrenchment or termination. In any event, all that the Board has done was to maintain a pool of registered Security Guard and on requisition from a particular establishment, the services of the Guard as are available in the pool are lent to such establishment. The Board, therefore, only acts as an agency to regulate and safeguard the service conditions of Security Guards.

11. In the matter of Security Guards Board, Bombay & Thane (supra) while considering the effect of section 32 and section 23 of the said Act, it has been observed by the Supreme Court that the rights or privileges of any registered Security Guard should not be altered to his detriment. It has been further observed :

"One of the submissions of the learned Counsel was that if section 23 was read in

the light of section 22 it would follow that an agency could ask for exemption from the operation of the Act of all Security Guards employed through them. We do not see how that follows. All that section 22 provides in effect is that the rights or privileges of any registered Security Guard shall not be altered to his detriment. It only means that if either to as an employee of the agency, the terms and conditions of his services were more attractive on the whole than the terms and conditions of service offered by the Act and the Scheme under the factory or establishment, the original terms and conditions of service will be preserved and become applicable to their service under the factory or establishment. It was submitted by the learned Counsel that the Act and the Scheme did not provide for termination of the contract of employment between the agency and the Security Guard or for the transfer of the services of the Security Guards from the employment of the Agency to that of the factory or establishment. We do not agree with the submission. By necessary implication, the services of Security Guards will stand transferred on allotment to the service of the factory or establishment on allotment to it by the Board. It is in that fashion, among other things, that security of service is secured to the Security Guards."

Mr. Singhavi has also placed reliance on para 11 and the statement which has been made order of the Court in the said judgment. In the context of the controversy involved in the facts of the case, we have to appreciate the said statement. The said statement which was made order of the Court runs as follows :-

"We are assured by Shri K.K. Singhavi, learned Counsel for the Board that every individual registered Security Guard who was previously working in a factory or establishment will be allotted to the same factory or establishment and if the total package of the terms and conditions of his service were better than the terms and conditions of service offered by the Board such person would be employed on the previous terms and conditions of service. The assurance of Shri Singhavi is made part of our order ."

Thus, the condition of service including the wage structure as was available to Security Guard on the date when the Scheme came into force was protected by the order of the Supreme Court. It, therefore, follows that if such Security Guard was to be offered to any other establishment by the Board, it could not be on service conditions which are detrimental or less beneficial to such a Guard as with the previous employer. The intention is obvious that the Scheme which is essentially for the purpose of providing better terms and conditions of employment to Security Guards cannot eventually work to their detriment.

12. It is also clear that under the provisions of the said Act and the Scheme, it is not incumbent to generally pin-point an employer for Security Guard. However, finding out the employer would become relevant only in the context of an injury to his rights as alleged by the Security Guard and the reliefs or remedy claimed by him for redressal of such injury. The learned Single Judge of this Court in the

matter of M/s.Tradesvel Security Services Pvt. Ltd. (supra) has observed as follows :-

"There is no doubt that independently of sections 19, 20 and 21 of the Act, there is no provision whereby either the principal employer or the Board is named the employer of the Security Guards. But the contention proceeds on the assumption that there is a need to name an employer in the present case and without him, the Security Guard will be in the wilderness, so to say. This assumption itself is wrong."

The Scheme also puts an embargo on the Board's power that the services of the Guard shall not be lent on conditions less beneficial and detrimental to him than the one enjoyed by him when the Act came into force. Once these two things are achieved, the need to identify the employer becomes academic.

13. Learned Single Judge (B.N. Srikrishna, J.) in the case of Krantikari Suraksha Rakshak Sanghatana, Thane (supra) has also observed :-

"In my considered view, there can be several situations not provided by the Security Guards Act and the Security Guards Scheme, wherein it would be necessary to identify the employer so that the Security Guards may have a remedy against him. The case on hand is one such instance."

We are in complete agreement with the observation made by the learned Single Judge of this Court in Krantikari Suraksha Rakshak's case (supra).

14. We also feel persuaded to take the same view inasmuch as it would be advancing the basic intention of framing the Scheme so as to provide security of service conditions of employment, A Security Guard cannot be left in the wilderness to find out his employer if he intends to remedy a wrong done to him. If such wrong creates a situation which will affect his basic conditions and the wage structure as protected by the said Act, a person responsible for the same, could be styled as an employer and if the test of master and servant relationship is applied for the purpose of remedying the wrong done to such a Security Guard, a person who is responsible and liable under the scheme to remedy such wrong, could be said to be the principal employer for that specific and limited purpose. Thus, as pointed out earlier, it is always open to find out the employer of a particular Security Guard in the context of injury alleged by him and the necessary consequential reliefs claimed by him.

15. Reliance placed on the decision of Vishakapatnam Dock Labour Board (supra) for the proposition that the principal employer automatically becomes employer for all purposes is also incorrect inasmuch as there is a vital difference between the Scheme which was under consideration in Vishakapatnam Dock Labour Board's case (supra) and the present Scheme, as observed by the learned Single Judge of this Court in Krantikari Surksha Rakshak Sanghatana (supra) and also by the Division Bench in Suraksha Rakshak & General Kamgar Union (supra). We are not persuaded to take a different view than the one expressed in these two

judgments. The basic Scheme under consideration being different, the ratio laid down in the case of Dock Labour Board (*supra*) will not be applicable to the facts of the present case.

16. The second argument that the Board has no power of withdrawing a Security Guard once allotted is also devoid of any merit. If the power to withdraw and re-allot is not with the Board then formation of a pool for the Security Guards would be rendered meaningless. Taking into consideration the provisions of the Act and the entire Scheme as framed under the Act, it indicates that if the Board has power to allot a Security Guard available in a pool, it will have to be held that the Board has a power to withdraw a Security Guard from one establishment and allot him to another establishment. We are of the opinion that considering the Act and the Scheme and for proper and smooth functioning of the said Scheme, it will have to be held that the Board has power to withdraw a Security Guard from one establishment and to re-allot him to another establishment and we must mention at this stage that Shri Mahanty who was withdrawn on 4th of July 1988 was immediately re-allotted on 5th of July 1988. Thus, we conclude that the power of allotment, as available with the Board, carries with it the necessary incidence of power of withdrawal and re-allotment from the pool.

17. In fact, the same issue was agitated before the Division Bench of this Court in *Suraksha Rakshak and General Kamgar Union* (*supra*) and the Division Bench while dealing with the argument that under the Scheme once the Security Guard is allotted by the Board to a registered employer, the Security Guard becomes permanent allottee and the Board has no power to withdraw an allotment or give a fresh allotment with any other registered employer, and after considering the Act and the Scheme, has held that the Board has power to withdraw an allotment of a Security Guard given to a registered employer and re-allot the Guard to another registered employer. The requirements of a registered employer may vary from time to time and the Board is entitled to adjust the allotment from time to time. The Division Bench in paragraph 6 of its judgment has also observed as follows :-

"The Scheme, therefore, must be looked at as a whole and proper implementation of the Scheme requires that the Board has the power to allot security guards to such registered employer as it thinks suitable. There is nothing in the Scheme to indicate that the allotment once made is irrevocable or cannot be changed."

Thus, in our opinion, the issue has been conclusively answered by the Division Bench in the case of *Suraksha Rakshak and General Kamgar Union* (*supra*) and needs no further elaboration.

18. Mr. Singhavi also submitted that powers of withdrawal are arbitrarily exercised by the Board. Clause 31 of the Scheme contemplates a disciplinary action and Clause 32 speaks about termination of employment. Though the power of Board to withdraw and re-allot has to be accepted, it is also necessary

to emphasise that such power should not be exercised by the Board without a valid reason for the same. For instance, a Security Guard himself desires to be allotted to a particular establishment and the Board then honours such request and withdraws and re-allots to another establishment or requirements of a particular number of Security Guards of establishment is reduced, making certain Security Guards as unnecessary and superfluous and exceeding necessary requirements or a particular establishment requires a Security Guard who has achieved expertise in a particular field of security viz. Chemical or Hazardous industry, etc. and such Guards are already employed in a particular factory where such expertise is not required, it would be within the discretion of the Board to withdraw such Security Guard and re-allot him to factory where the expertise and special knowledge of such Security Guard would be helpful. A situation may arise when administrative exigencies may necessitate the reshuffling of the Guards. Such reshuffling on administrative exigencies may entail withdrawal of a Guard from one establishment and allot him to another. The Board should take care that such reshuffling of Guards should not be as far as possible against the desire and wishes of the said Security Guards and more so, should endeavour to see that such reshuffling is with mutual consent of the concerned Security Guards. Withdrawal on administrative exigencies should also be only when re-allotment within reasonable period to such Guard is possible. This ensures that the Guard once withdrawn is not left in suspended animation awaiting to be re-allotted to other establishment.

19. In the facts of the present case, we find that all the four Security Guards have been withdrawn on a mere complaint by the principal employer of their misconduct. Withdrawal of a Guard on a complaint by principal employer would certainly attract the safeguards given to such Security Guard under Clause 31. The said Clause 31 reads as follows:-

"Disciplinary procedure.---

(1)(i) On receipt of the information, whether on a complaint or otherwise, that a registered employer has failed to carry out the provisions of the Scheme the Personal Officer shall investigate the matter and on being satisfied in that behalf give him a warning in writing, or

(ii) Where in his opinion, a higher penalty is merited, the Personnel Officer shall report the case to the Chairman who may then cause such further investigation to be made as he may deem fit and censure the employer and record the censure in his record sheet.

(2) A registered Security Guard in the pool who fails to comply with any of the provisions of this Scheme or commits any act of indiscipline or misconduct may be reported in writing to the Personal Officer who may after investigating the matter give him a warning in writing.

(3) Where in the opinion of the Personal Officer, a higher punishment than that provided in sub-clause (2) is merited he shall report the case to the Chairman.

(4) On receipt of the written report from the Personal Officer under sub-clause (3) or from employer or any other person that a registered Security Guard in the pool has failed to comply with any of the provisions of this Scheme or has committed an act of indiscipline or misconduct or has been inefficient in any other manner, the Chairman may make or cause to be made such further investigation as he may deem fit and thereafter take any of the following steps as regards the Security Guard concerned, that is to say, he may impose any of the following penalties ---

(a) give him a warning in writing;

(b) suspend him for a period not exceeding four days;

(c) terminate his services after giving one months notice or one months wages inclusive of dearness allowance in lieu thereof; or

(d) dismiss him.

(5) Before any action is taken under this clause the person concerned shall be given an opportunity to show cause why the proposed action should not be taken against him.

(6) During the pendency of investigations under sub-clauses (2) and (4) above, the Security Guard concerned may be suspended by the Chairman."

If, therefore, the Board intends to withdraw the Security Guard on a complaint indicating indiscipline or misconduct, such withdrawal should only be in consonance with the procedure as laid down in Clause 31. This would also be in fairness and also following the rules of natural justice that the Security Guard who is being withdrawn on a complaint of indiscipline, misconduct, etc. should get an opportunity of explaining the same before the Officer of the Board. This, however, should be followed if the Security Guard who is withdrawn from one establishment, insists upon the same. We are not suggesting even remotely that moment the complaint or information about the alleged indiscipline or misconduct is received, the Security Guard should be placed under suspension or inquiry proceedings should be started. If a Security Guard is willing to be re-allotted to any other establishment under the Scheme then the Board may not proceed with the inquiry as contemplated under Clause 31. However, on being made aware of complaint of indiscipline or misconduct, etc. the Security Guard controverts the same and insists upon holding an inquiry, the Board shall not withdraw the services of the said Security Guard without following the procedure of inquiry as contemplated under Clause 31. After inquiry if it is found that the complaint had no substance then obviously all consequential reliefs have to be directed against the principal employer on whose complaint the inquiry was initiated and then for the said purpose the principal employer will have to be styled as employer. This, according to us, should be a reasonable interpretation that may be put to Clauses of the Scheme affording security of services and benefits to a Security Guard.

20. Coming to the facts of the present case, we find that both the parties would be put to severe prejudice and harm if direction to hold inquiry is given at this stage. Firstly, the incident alleged is of 1988 and it would be flogging a dead horse and resurrecting the events which have happened almost of a 9 years back. Secondly, out of the 4 Security Guards, Shri Kamble has not even bothered to report back to the Board and none of the parties know his whereabouts. Shri Mahanty had been re-allotted immediately after his withdrawal. Undoubtedly, some hardship was faced by Shri Jadhav and Shri Dhumak. However, although there is some delay, both of them have got employment after withdrawal and they are gainfully working thereafter. To disturb the settled position in their life as also to compel respondent Nos. 2 and 3 to adduce evidence and produce records after 9 years of the event would serve no purpose. None of these aggrieved Security Guards are even parties to the petition. The Union has filed the petition on their behalf and we feel that in the facts and circumstances of the case declining to order an inquiry under Clause 31, would be just and fair.

21. In the light of the conclusions we have reached, we direct the Board that if hereafter the Board is inclined to withdraw the services of the Security Guard on a complaint of misconduct or indiscipline then the Board must follow the procedure as laid down in Clause 31 except however, where the Security Guard does not insist and accepts the re-allotment or for any of the reasons as indicated in our judgment.

22. In the result, the petition stands disposed of in terms of the directions given in paragraphs 18, 19, 20 and 21 hereinabove. Rule made absolute in the aforesaid terms.

23. Looking to the facts of the case, however, there shall be no order as to costs.