

(2003) 09 BOM CK 0026

In the Bombay High Court

Case No : Writ Petition No. 2720 of 2002

Maharashtra Suraksha Rakshak Aghadi

APPELLANT

Vs

Security Guards Board for Greater Bombay and Thane
District and Another

RESPONDENT

Date of Decision : 24-09-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act,
1981 — Section 8(4)

Citation : (2003) 4 ALLMR 817 : (2004) 1 BomCR 529

Hon'ble Judges : V.G. Palshikar, J;Mhatre Nishita, J

Bench : Division Bench

Advocate : K.K. Singhvi and Susheel Mahadeshwar, for the Appellant; C.J. Sawant and Lata Desai for respondent No. 1. and P.M. Mokashi, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Palshikar, J.—This petition is filed by Maharashtra Suraksha Rakshak Aghadi i.e. Union of Security Guards against the Security Guards Board for Greater Bombay and Thane District, established under the provisions of Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 and scheme framed thereunder.

2. By this petition, the petitioner has challenged on behalf of its members the action of the respondent in not registering the members of the petitioner union as Security Guards. Rule was granted and a detailed reply has been filed by the concerned respondents.

3. Facts necessary for proper adjudication of this petition, stated briefly are that the members of the petitioner union were employed as Security Guards in certain establishment which enjoyed exemption under the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 (hereinafter referred

to as the Act) from employing Security Guards only through the agency of the respondent No. 1 Board. This exemption after sometime was withdrawn by the Government of Maharashtra, as a result of which it became necessary for the establishment/employers to recruit security guards only via the Security Guards Board established under the Act.

4. The provisions of the Act also require registration of the establishment seeking employment as security guards with employers duly registered under the Act. It is therefore necessary for a security guard whether already in the employment or otherwise to seek registration under the provisions of the Act.

5. Taking into consideration the fact that the exemption, enjoyed by the employers of the members of the petitioner union was withdrawn, applications were sought from the Board for seeking registration of the members under the provisions of the Act. However for reasons not germane to the present petition, the request was rejected, which resulted in filing of certain writ petitions, as a consequence of which, directions were issued from time to time, directing the respondent No. 1 herein, to give application forms to the members of the petitioner union, take them duly filled, scrutinise and register them as per the provisions of the Act and the scheme thereunder.

6. On issuance of such mandamus, application forms were given to the members of petitioner union and they submitted them to the respondent No. 1 duly filled. Applications were scrutinised and the applicants were medically examined. Those who were found fit were registered and those who were not so found were not registered. The refusal on the part of the Board to do so, is impugned in this petition and is sought to be quashed by appropriate writ, order or direction. The contention of the petitioner union is that in view of the past orders made by various courts and declarations made by respondent Board, the Board was found to register the member of the petitioner union, irrespective of their physical standard, because of the statement made before the Supreme Court of India on behalf of the Board at the time when the Security Guards Board's case was decided in 1987.

7. In reply the Board has defended this action and has contended that the Board has not acted in any manner illegal or improper. Applications of the petitioner union members were entertained, they were medically examined and those who were found not coming upto the standard required by the Board, were rejected. The Government Resolution dated 9th May, 2002 was pleaded in defence. By this resolution the Government directed the Board to do recruitment or registration of security guards by adhering to certain physical standard mentioned in that resolution.

8. As a consequence of this pleading the petitioner therefore impugned this resolution dated 9th May, 2002 as void being violative of the provisions of the scheme framed under the Act. The contention of the learned Counsel Shri K.K. Singhvi, is now appearing for the union of security guards, was that the

supervisory power given to the Government of Maharashtra under the dominion of section 8 Clause 4 of the Act is for the purpose of enhancing the scheme and provisions of the Act and cannot be used in derogation of the provisions of the Act and the scheme. According to the learned Counsel, requiring fulfilment of certain physical standard for the post of security guards is derogative to the provisions of the scheme and the Act and therefore the notification is liable to be quashed. In the alternative the submission of the learned Counsel is that even if the circular can issue and the resolution is valid, it cannot prevent registration to the members of the petitioner union because that was the understanding given to the Supreme Court of India by the Counsel appearing on behalf of the Board, who incidentally was Shri K.K. Singhvi who now appears for the petitioner and against the Board.

9. Dealing with the contentions raised by one of the parties before the Supreme Court of India, in the matter of Security Guards Board for Greater Bombay and Thane District v. Security and Personal Service Private Limited and others, decided by the Supreme Court of India by a decision reported in Security Guards Board for Greater Bombay and Thane Distt. Vs. Security and Personnel Service Pvt. Ltd. and Others, , a contention was raised on behalf of the security guards that the scheme as it stands does not offer any continuity or guarantee of employment to those who are already working in the employment having been engaged through the agency. It may be noted that the present union and its members who are similarly situated, and by dealing with this submission made on behalf of the security guards, the Supreme Court noted the assurance given by Shri K.K. Singhvi the learned Counsel appearing for the Board before the Supreme Court. It would be necessary to note verbatim what has been observed by the Supreme Court of India, which reads thus:

"On behalf of some of the security guards a writ petition was filed in the Bombay High Court and it has been withdrawn to this Court to be disposed of along with the appeals. One of the contentions raised in the writ petition filed by the workmen is that the scheme does not offer any continuity or guarantee of employment to those who are already working in factories or establishments having been engaged through agencies. We are assured by Shri K.K. Singhvi 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 Singhvi is made part of our order."

10. It will be seen therefore from the above quotation that Shri K.K. Singhvi the learned Counsel appearing for the Board then, and appearing against the Board now has assured the Supreme Court of India that registered security guards who were previously working in a factory or establishment will be allotted to the same factory or establishment or the same terms and conditions of services and that

assurance of Shri K.K. Singhvi given on behalf of the Board was made part of the order. The contention raised by K.K. Singhvi now appearing for the security guard is that the members of the petitioner union were previously working on an establishment and therefore they are liable to be registered and offered the same employment on the same terms and conditions as existed when the conditions or exemptions granted to those employers was withdrawn.

11. The submission in a nutshell is that the petitioner union members are liable to be registered and offered for employment in the same establishment where they are now working because of the undertaking given by Shri K.K. Singhvi then standing for the Board. We are unable to accept this contention for the simple reason that the undertaking given by Shri K.K. Singhvi for the board was that "every individual registered security guards who was previously working in a factory or establishment will be allotted to the same factory or establishment". The present members of the union for whom the prayer is made following this undertaking that they should be registered and employed or deployed to the same establishment, as they were previously working with those establishment. It will be seen that what was undertaken by the Board was deployment of the employees previously employed for certain establishment on certain conditions. But the basic requirement was that they are registered guards under the provisions of the Act. The present petitioners were working as security guards on the establishment which enjoyed exemption under the provisions of the Act for a particular period during which they were working. When this exemption was withdrawn, the establishment as also the security guards were required to be registered under the Act and therefore they applied for such registration. Refusal to do so was challenged before this Court and this Court mandated that they are liable to be registered if they fulfil the conditions of the Act and the scheme. This being the factual position. It is a total erroneous claim on behalf of the security guards by Shri K.K. Singhvi that they are covered by the undertaking given in the above quoted Supreme Court judgment. The undertaking pertains to registered security guards. It therefore cannot be applied ipso facto to persons seeking registration as security guards. There is therefore no substance in the submission made by Shri K.K. Singhvi now appearing for the security guards that they are liable to be registered with the Board even though they do not fulfil the requirements of minimum physical standard.

12. It was the contention of the learned Counsel appearing on behalf of the petitioner that the Government Resolution dated 9th May, 2002 requiring maintenance of certain physical standard is itself void being ultra vires to the powers of section 8(4) of the Act. This argument is only to be noted for being rejected. The scheme is the creation of the Act. The act gives power to issue directions for enhancement, implementation etc. of the provisions of the Act and the scheme then framed gives certain powers to the Board established thereunder. Merely because certain powers are vested to the Board by the scheme created under the Act, it cannot be said that the directions cannot issue by the State u/s 8(4) to the Board created by the scheme. There is no manner of

doubt that provisions of section 8(4) of the Act are wide enough to exercise certain powers. What has been done by the Government Resolution dated 9-5-2002 is directing the Board to implement the physical standard mentioned therein. It cannot therefore be said that this Resolution is in any manner illegal.

13. It will be noticed that the members of the petitioner union were given the application forms which they filled in and were accepted and the members were examined medically and only those who were found unfit were not registered. Shri K.K. Singhvi contended very forcefully that this action of not registering the petition union members, is violative of Articles 14 and 21 of the Constitution of India. Article 14 talks of equality before law. The law as embodied in the judgment of the Supreme Court in Security Guards Board for Greater Bombay and Thane Distt. Vs. Security and Personnel Service Pvt. Ltd. and Others, and stating the assurance given by Shri K.K. Singhvi before the Court that every individual registered security guard who was previously working in a factory or establishment and if the total package of the terms and conditions of his service were fulfilled shall be deployed to that establishment on certain terms mentioned in the undertaking. Protection of law shall equally be available to all who essentially are the registered security guards. The members of the petitioner union are the persons seeking such registration. They cannot claim, therefore, equal treatment with those who are already registered. The argument is fallacious and therefore rejected. It is no doubt true that the Article 21 as now stands interpreted by the Supreme Court of India has wide connotations but that does not mean that the employment must be given to a person who does not fulfil the minimum physical requirement to the post of security guards. It does not mean that even if a person is crippled and extremely weak, must be granted registration under the Act because it is not so granted, his right under Article 21 would be violative. This argument also is liable to be rejected as baseless and fallacious.

14. It is not in dispute in the present case that the members of the petitioner union were individually informed of the fact that they are not being registered because of their physical infirmities. The scheme in Clause 17 specifically provides a remedy against such rejection. Clause 17 of the scheme reads thus:

"Medical examination.-(1) If the Board considers it to be not necessary so to do, it may require a new Security Guard before registration to undergo, free of charge a medical examination for physical fitness by a Medical Officer nominated by the Chairman for this purpose. A Security Guard found medically unfit by Medical Officer may apply in writing to the Chairman and simultaneously deposit with him such fees as may be specified in this behalf for examination by a Medical Board. On receipt of such a request the Chairman shall set up a Medical Board. The decision of the Medical Board shall be final and a Security Guard who is medically unfit shall not be entitled to registration.

(2) If the Chairman deems it necessary to do so, he may require a Security Guard to undergo free of charge, a medical examination by a Medical Board to be

constituted by the Chairman. The decision of the Medical Board shall be final and if a Security Guard is found permanently unfit by a Medical Board the Chairman shall terminate his services forthwith."

15. It will be seen therefore that a representation/appeal can be made by an aggrieved applicant to the Board, requiring it to constitute a fresh medical board to verify the complaints and re-examination of the findings of the Medical Officer on the basis of which registration is being refused. None of the members of the petitioner has availed of this remedy. If there has been an error there was a remedy to correct the error. If it was found to be erroneous the remedy is not resorted to. Argument is made before this Court repeatedly and in our opinion unnecessarily referring to Articles 14, 16 and 21 of the Constitution along with certain directive principles mentioned therein for a change. The members of the petitioner union in this case have no right to claim any directions from this Court when they have simple and equally efficacious remedy of seeking cancellation of the findings of the medical officer by approaching the Board for appointment of an independent medical Board before which they could prove that the findings are wrong and claim the registration as a matter of right. They instead of doing so, prayed before this Court that the writ jurisdiction of this Court is wide enough to record evidence and that this exercise should be undertaken by the Court to protect the right under Article 21 enjoyed by the members of the petitioner union. The powers of this Court are undisputed. Original Side Rules of this Court also provide for recording of evidence in exceptional cases put not to exercise those power in a case where efficacious statutory remedy was available and now a claim is made before this Court that this Court should examine either by itself or by commission through a doctor the physical correctness of the findings given by the medical board. To do so in our opinion would be a gross abuse of the process of law and powers vested in this Court under Article 226 and also Original Side Rules framed. Such powers cannot be exercised and should not be exercised in favour of persons who deliberately ignore the statutory remedy and come before this Court to claim examination either by this Court or by Commission. It can always be better done by medical board established under Clause 17. There is therefore no substance in the submission made by Shri K.K. Singhvi. We rejected it as such.

16. No other submission was made. Hence the petition is devoid of any merit and is therefore dismissed with cost, which are quantified as Rs. 3000/- to be paid by the petitioner union in two sets. We however feel it necessary to observe that it may even now be possible for the individual members of the petitioner union to take recourse of Clause 17 of the scheme framed under the Act and the members would be at liberty to take such recourse. The petition thus fails and is dismissed with costs as quantified above.

17. The learned Counsel for the petitioner prays for continuance of interim order of injunction. We see no reason to continue that order as we had already held that the petitioner has no right to claim such relief. Hence rejected.

18. The parties to act on the authenticated copy of this order.