
(2007) 06 BOM CK 0136

In the Bombay High Court

Case No : Writ Petition No's. 563, 585, 590 and 715 of 2007

Maharashtra Suraksha Rakshak Aghadi

APPELLANT

Vs

The Security Guards Board for Gr. Bombay and Others

RESPONDENT

Date of Decision : 21-06-2007

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 12(2)
Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act,
1981 — Section 2(8), 23, 8(4)

Citation : (2007) 5 BomCR 405 : (2007) 109 BOMLR 1381

Hon'ble Judges : Swatanter Kumar, C.J.; S.C. Dharmadhikari, J

Bench : Division Bench

Advocate : K.K. Singhvi, instructed by Ranjana Todankar, in Writ Petition No. 563 of 2007, Susheel Mahadeshwar, instructed by Ranjana Todankar, in Writ Petition No. 590 of 2007, K.P. Anilkumar, in Writ Petition L No. 872 of 2007 and Ranjana Todankar, in Writ Petition Nos. 585 and 715 of 2007, for the Appellant; M.S. Topkar, in Writ Petition No. 563 of 2007, Kunal Vajani, instructed by Wadia Gandhi and Co. for Respondent No. 2 in Writ Petition No. 563 of 2007, Lata Desai, in Writ Petition Nos. 585 and 590 of 2007 and Respondent No. 2 in Writ Petition (L) No. 872 of 2007, C.U. Singh and Ankit Mehta, instructed by Manish Mehta and Company for Respondent No. 2 in Writ Petition No. 585 of 2007, R.S. Pai, instructed by Sanjay Udeshi and Co. for Respondent No. 2 in Writ Petition No. 590 of 2007, Lata Desai, instructed by Pillai Divekar, in Writ Petition No. 715 of 2007, J.P. Cama, instructed by K.D. Abhichandani, in Writ Petition No. 715 of 2007, A.S. Dhutia, instructed by Sanjay Udeshi and Co. for Respondent No. 3 in Writ Petition No. 715 of 2007 and Usha Srivastava, instructed by Consulta Juris for Respondent No. 3 in Writ Petition (L) No. 872 of 2007, for the Respondent

Judgement

Swatanter Kumar, C.J.—By this common judgment we will dispose of the above five petitions, as they base identical question of law on somewhat similar facts. It is not necessary for us to deal with the facts of each case in greater detail. It will be suffice to refer to the facts of Writ Petition No. 585 of 2007.

2. The petitioner is a union registered under the Trade Unions Act, 1926, hereinafter referred to as the "Unions Act". The security guards mentioned in

Exhibit A to the petition are the members of the petitioner union. They are employed for watch and ward duty in the establishment of respondent No. 2, through its contractor respondent No. 3. The attendance muster in respect of the security guards for the month of October 2006 are being maintained and have annexed to this petition as Exhibits B, B1, and B2. In terms of the provisions of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981, hereinafter referred to as "the Act", respondent No. 2 is the principal employer within the meaning of Section 2(8) of the Act and respondent No. 3 is a private contractor engaged in the business of supplying security guards to various establishments. Some of the security guards, details of which are provided in Exhibit A to the petition, are stated to be not exempted from the provisions of the Act and the provisions of the Private Security Guards (Regulation of Employment and Welfare) Scheme, 2005, hereinafter referred to as the "Scheme". In terms of the Scheme, a principal employer may engage security guards registered with the Security Guards Board and allotted to the principal employer by the Board. The security guards, who have been granted exemption by the Government from the provisions of the Scheme or the Act and are engaged by a principal employer and the security guards, who are directly employed by the principal employer. Respondent No. 2 has engaged security guards who are not exempted under the provisions of the Scheme, which is an illegal act.

3. According to the petitioners the State in exercise of its powers u/s 8(4) of the Act had issued directions on 19th June 2006 with respect to the registration of the security guards with the Board. These directions, inter alia, provide that in the cases where the principal employer engages security guards, who are not granted exemption by the Government, the principal employer ought to be registered with the Board and the security guards concerned should also be registered with the Board and allotted to that establishment. On 24th January, 2007 the petitioner forwarded an application of individual security guards for their registration with the Board and in view of the Government Resolution of 19th January 2006, requested the Board to register the security guards with the Board and to allot them to Respondent No. 2 establishment. In spite of the said application the Board had not taken any action. The petitioner 5 while relying upon the judgment of this Court in the case of *Tradesvel Security Guards v. State of Maharashtra* reported in 1982 B.L.R. 602 argued that the object of the Act is to eliminate the contractor and to stop the exploitation of the security guards by the contractor and to ensure them regular employment and better service conditions. This object has been squarely defeated, according to the petitioner, by the inaction on the part of the Board, permitting continuation of the employment of the workers supplied by respondent No. 2 in terms of Exhibit A to the petition. It is also pointed out that the security guard is paid wages at the rate of Rs. 3900/- per month and no over time is paid to these workers. Petitioner also emphasised that the Board ought to have taken penal action against respondent No. 2 for illegally engaging security guards through private

contractor in terms of Clause 42 of the Scheme, which they have failed to take. Reliance was also placed upon an order passed by this Court in the case of Maharashtra Suraksha Rakshak Aghadi v. The Security Guards Board for Greater Bombay and Thane District and Ors. Writ Petition No. 1892 of 2004 decided on 19th July, 2004 wherein certain directions were issued in somewhat similar matters.

Separate replies have been filed on behalf of respondent Nos. 1 and 2. In the reply affidavit filed on behalf of respondent No. 2, it is averred that a careful reading of the Government Resolution dated 19th June 2006, clearly indicates that it applies to only those establishments, which had appointed security guards from the private security guards agency, without obtaining exemption from the Government. The petitioners are stated to be the employees of respondent No. 3, a private security guard agency and were engaged by respondent No. 2 establishment at the time when respondent No. 2 was duly exempted under the provisions of the Act and the Scheme. It is stated that there is no right in favour of the petitioners that can justify issuance of mandamus in their favour. Respondent No. 3 security guard agency is stated to be duly exempted under the provisions of Section 23 of the Act and in any case the aforesaid Government Resolution is not applicable to respondent No. 2. The petition merits dismissal. In paragraph 3 of the reply affidavit it is stated as under:

Accordingly, respondent No. 2 has discontinued the contract with respondent No. 3 and has duly engaged and employed security guards as direct employees on its own muster rolls, and is paying the said directly employed security guards almost double the wages fixed by the Board for private security guards engaged through private agencies and/or through the Board. Hence, since the respondent No. 2 no longer engages private security guards as defined in the Act, nothing in the Act or Scheme any longer applies to the company, and it is no longer a principal employer covered by the Act or Scheme. I say that our directly employed guards are in receipt of wages and benefits which are far in excess of what is paid by the Board to its own guards. I therefore submit that the petition deserves to be summarily dismissed.

4. While relying upon the judgment of the Supreme Court in the case of Security Guards Board for Greater Bombay and Thane Distt. Vs. Security and Personnel Service Pvt. Ltd. and Others, it is also argued that the Supreme Court having held that Section 23 of the Act, as it then stood, it was the security guard alone who could apply for exemption from the provisions of the Act, and such exemption could be given in relation to a particular principal employer alone. Referring to the Scheme, a new scheme was promulgated after withdrawal of the earlier scheme and in pursuance thereto, respondent No. 3 was validly and properly exempted in accordance with the provisions of Section 23 of the Act, vide notification dated 15th July 2003. The said exemption is for a period of 3 years and expired on 14th July 2006. As the security guards of respondent No. 3 agency were not as per the needs of respondent No. 2 establishment, vide letter

dated 13th March 2007 terminated the agreement dated 1st October 2005 in terms of Clause 21 of the said agreement and, thereafter respondent No. 2 negotiated and appointed security guards and appointment letters dated 12th March 2007 issued to the newly appointed guards, after completion of training, were given effect to and the guards were paid Rs. 8720/- and are entitled to other benefits. In these circumstances, according to this respondent, there is no occasion for granting any relief.

5. The Security Guards Board for Greater Mumbai and Thane Districts-respondent No. 1 herein, took up a plea that on 8th February 2007, the Board had deputed its Inspectors to go to the establishment of respondent No. 2 company and the Inspectors found that respondent company was engaging 19 security guards through respondent No. 3 agency. Since respondent No. 2 was not covered under any notification of exemption and were not engaging any exempted security guards. The said Inspectors' remarks were recorded and respondent No. 2 was warned that in the event they failed to get registered within 7 days, they would be liable for penal action. In fact the Board is stated to have initiated action prior to the filing of the petition. In relation to the petitioners, it is averred that for the first time, the petitioner vide letter dated 24th February 2007 Exhibit D forwarded an application for registration, without waiting and before the application could be processed, appropriate orders could be passed, present petition has been filed in undue haste and they questioned the maintainability of this petition. It is the specific case of the Board that it is obligatory on respondent No. 2 to get registered with the Board.

6. A Division Bench of this Court in the case of Santosh Satya Vijay Gosavi and Ors. v. State of Maharashtra and Ors. Writ Petition No. 1936 of 2005 along with companion petitions, decided on 16th January 2007, after discussing the merits of those cases directed the Board for considering the applications for registration of the petitioners in those cases and pass orders. It also granted liberty to the parties to file applications before the Board.

7. Writ petition No. 715 of 2007 has been filed by a Trade Union registered under the Trade Unions Act, 1926 and its members, who are security guards, have been listed in Exhibit A to the petition. According to them, they are employed as security guards for ward and watch duty in the establishment of respondent No. 2 M/s Unique Estate Development Co. Ltd through respondent No. 3 M/s Hunter Security Forces. They all are holders of muster cards right from the month of January 2007. Respondent No. 2 is the principal employer of the security guards, while respondent No. 3 is a private contractor engaged in the business of supplying security guards to various establishments. It is the case of the petitioner that under the provisions of the Scheme of 2002, every principal employer is required to be registered with the Security Guards Board. Further the scheme provides that a principal employer has to be registered and can engage in any of the following categories:

i) Security Guards registered with the Security Guards Board and allotted to the

principal employer by the Board;

ii) Security Guards who have been granted exemption by the Government from the provisions of the Security Guards Scheme, 2002 and are engaged by the principal employer through an employer agency/contractor.

iii) Security Guards who are directly employed by the principal employer.

8. It is further the case of the petitioner that the security guards listed in Exhibit A are not exempted from the operation of the Scheme and the Government has also issued directions on 19th June 2006 with respect to the registration of security guards with the Board. These directions inter alia provide that in case where the principal employer engages security guards, who are not granted exemption by the Government, the principal employer ought to be registered with the Board and the security guards concerned ought also to be registered with the Board and allotted to the same establishment. Vide their letter dated 31st January 2007 the Union informed the Board that respondent No. 2 company was illegally engaging security guards through respondent No. 3 and requested them to inspect the premises of the establishment and take action in accordance with law. Despite this, the grievance of the petitioner is that no action was taken. Further the grievance of the petitioner is that the security guards enlisted in Exhibit A to the petition are receiving benefits which are far lower than the benefits drawn by the security guards registered with the Board and as such they are being treated discriminately and unfairly. While referring to the various judgments of the court it was also contended that penal action against the said respondent No. 2 particularly should be taken in terms of Clause 42 of the Scheme. Apprehending likelihood of termination of their services by respondent No. 2 the petitioner has filed this petition with a prayer that the Board should be directed to register the security guards enlisted in Exh A and respondent No. 2 should also get itself registered with the Board and their services should not be terminated in the meanwhile and penal action be also taken against them.

9. To oppose this prayer, separate replies were filed on behalf of respondent Nos. 2 and 3. Both these respondents opted to vaguely deny the averments made in the writ petition. Respondent No. 3 stated that there is no relationship of master and servant between the said respondent and the persons enlisted in Exhibit A. It is averred that they are the employees of M/s Ayush Enterprises and they are not supplying any security guards to respondent No. 2. M/s Ayush Enterprises is supplying casual labour for the purpose of car attendants escalator attendants and not for security guards as stated by the petitioner. M/s Ayush Enterprises is having licence u/s 12(2) of the Contract Labour (Regulation and Abolition) Act, 1970 for supply of workers to respondent No. 2. It is stated that provident fund and Employees State Insurance Corporation's contribution in respect of the persons named in Exhibit A to the petition have been deducted and deposited by M/s Ayush Enterprises with the authorities appointed under the Act. It is also stated that respondent No. 2 has been deducting TDS in respect of the persons employed by M/s Ayush Enterprises, which include persons mentioned in Exhibit

A. It is averred in the reply that petition is misconceived and is not maintainable and as such should be dismissed.

10. Respondent No. 2, while supporting the averments of respondent No. 3, has stated that M/s Ayush Enterprises is a sister concern of respondent No. 3 and was engaged for supply of casual labour for the purpose of car attendants, escalator attendants etc. and the persons specified in Exhibit A were supplied by them. Vide letter dated 17th February 2007, respondent No. 2 informed that the said persons, on whose behalf petition is filed, were temporarily deployed by it at infinity mall and have ceased to do any work at infinity mall as stated. It is denied that they were being employed for the purpose of security guards. It is also averred that Private Security Agencies (Regulations) Act, 2005 has been brought into force by a Notification dated 14th March 2006 with effect from 15th March 2006 that being a Central Act covers the field and the State Act has no validity.

11. The Act of 1981 imposes various obligations upon the Board constituted under the provisions of the Act for registration of the employers and/or individual security guards in accordance with the Regulations and the Scheme formulated by the authorities concerned. Various disputes have been raised in these writ petitions including that the writ petitions are premature in as much as the members of the petitioners had not filed any applications before the Board for their registration in accordance with law. The employers, that is the 15 other private respondents, have still raised various disputes that they have not employed security guards and the persons employed by them are primarily carrying on the work like attendants or persons employed for duties unconnected with the functions to be performed by a security guard. All these disputes can be resolved by determination of factual controversies and keeping in mind what is the actual situation on site where the office and/or factories of the private respondents are situated. These controversies can hardly be resolved by the Court in exercise of its powers under Article 226 of the Constitution of India.

12. Thus, in view of the above discussion, while disposing of these writ petitions we consider it appropriate to issue the following directions for strict adherence by the concerned parties/authorities.

(i) All the security guards, petitioners in all the petitions or the members of the Sangh or the Unions through whom the present petitions have been filed and who have not already filed applications for their registration with the respondent-Board may file such applications within four weeks from today.

(ii) All the pending applications for registration as security guards filed by the individuals as well as the applications received by the Board under Clause (i) shall be dealt with and disposed of by the Board in accordance with the Regulations and policies framed by the Board within six weeks thereafter. Orders so passed by the Board shall be notified, besides copies thereof being sent to the Union or individual workmen who have filed these petitions.

(iii) The employer of members of these petitioners and/or even other employers desirous of getting registered with the respondent-Board for providing of security personnel would be also at liberty to move such applications within four weeks from today and the same shall be considered and disposed of by the Board in accordance with law within six weeks thereafter.

(iv) The Board, through its Officers/Officials, shall duly verify the stand of the private employers that the workmen/security guards are not employed and/or whether the workmen/security guards employed by them are or not performing the duties of a security guard and shall prepare an inspection report after site visits. Such report would be considered by the authorities concerned for passing an appropriate order.

(v) The individual security guards who are then registered by the Board shall be allocated to such concerns/establishments which are desirous of deploying security guards and/or those security guards who are in employment and are then registered shall be granted all the benefits in terms of the Regulations upon the direction of the Board.

(vi) After completion of the above exercise, the Board shall consider and initiate penal action against the private respondent-employers in accordance with the provisions of Clause 42 of the Security Guards Scheme, 2005, and the relevant clause on the date of passing of this order.

(vii) Wherever private respondent-employers are required to apply for registration with the respondent-Board, they shall apply, even if, according to them, the members of 18 the petitioners are not employed strictly as security guards and are employed as attendants or car cleaners, etc. This scheme shall be duly considered by the Board and decided in accordance with law. We also make it clear that while allotting the services of the security guards, the Board will keep in mind the fact that where were they employed at the time or prior to the institution of these writ petitions.

(viii) The process of registration in either case shall be subject to the satisfaction of the eligibility criteria in relation to various factors which are specified under the Regulations or the Security Guards Scheme framed in 2005.

13. All the writ petitions are accordingly disposed of, while leaving the parties to bear their own costs, with a further mandate that all the respondents shall ensure compliance of the above directions within the time frame stated in the order.