

(2017) 11 DEL CK 0519

In the Delhi High Court

Case No : Civil Writ Petition No. 6861 Of 2013

Meghdoot Security Services

APPELLANT

Vs

Director General Of Resettlement

RESPONDENT

Date of Decision : 13-11-2017

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2017) 11 DEL CK 0519

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : R.V. Kameshwaran, Lilly Thomas, S.D. Windlesh

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J

1. The petitioner has filed the present petition impugning the action of the respondent (hereafter "DGR") in dis-empanelling the petitioner for

further sponsorship as a security agency for providing services to Public Sector Undertakings and Government Establishments. The principal

controversy to be addressed in the present petition is whether the impugned action of DGR is arbitrary, unreasonable and in violation of Article 14 of

the Constitution of India.

2. The Central Government had formulated a policy, whereby the Public Sector Undertakings or State Owned Establishments were encouraged to

engage security agencies sponsored by the DGR. This policy was formulated to rehabilitate ex-servicemen. The ex-servicemen who are interested in

providing security services are empanelled by the DGR and such empanelled agencies are sponsored for providing security services to certain

establishments. In order to provide for an equitable participation, sponsorship is limited to the number of security guards as specified in the policy.

3. The petitioner is a sole proprietorship concern of Col. T.K. Banerjee who retired from the Indian Army. Col. Banerjee applied for empanelment

with the DGR after his retirement from services, his application was accepted and he (the petitioner) was empanelled as a security agency with effect

from 10.04.2008. This was communicated to the petitioner by a letter dated 17.04.2008.

4. In terms of the policy, as then existing, an empanelled ex-servicemen would be entitled to a sponsorship of 300 guards. The empanelled agency was

not entitled to provide security services to Government and other public undertakings except as sponsored by DGR. However, the empanelled agency

was free to offer the services to private sector and other non-government establishments. This was also expressly communicated to the petitioner by

the empanelment letter dated 17.04.2008, wherein it was, inter alia, stated as under:-

“5. This acknowledgement does not entitle you to seek any security contract from any Central Government Public Sector Undertakings on your

own. The sponsorship letter, issued by DGR, is mandatory for all security contracts with relevant Government/Public Undertakings. However you are

free to offer your services to private sector, corporate houses, residential areas etc.”

5. The petitioner states that during the period 2008 to 2010, the petitioner was granted sponsorship for providing services to various Public Sector

Undertakings to the cumulative strength of 117 security guards. It is one of the petitioner’s grievances that he was not granted sponsorship to the full

extent (300 security guards) as per the then prevalent policy.

6. The Central Government issued an Office Memorandum dated 29.09.2011 for the purposes of streamlining the sponsorship of security agencies. In

terms of the said OM, the DGR issued guidelines specifying the documents required to be submitted alongwith the application for empanelment as

security agencies.

7. The DGR had also published “instructions for functioning of DGR empanelled ex-servicemen security, safety and fire protection management

agencies”. In terms of the said instructions, all empanelled agencies were

required to submit documents and returns periodically. The said returns also included returns as to the strength of the guards in the specified format as provided in Appendix N-2 to the Instructions (hereafter "N2 returns"). The Instructions also specified that failure to submit reports/returns as required would result in withdrawal / withholding of sponsorship.

Clause (b) of paragraph 48 of the said Instructions is relevant and is quoted below:-

"48. Sponsorship/Re-sponsorship will be withdrawn/withheld in case the following report/returns are not forwarded by due date to this Directorate:-

(a) xxxx xxxx xxxx

(b) By Security Agency

(i) Date of commencement of contract - On occurrence as per including number of guards period of Appendix "N" & "N1" contract and

wages agreed upon

(ii) Balance sheet of Company as on 31 Mar, every year. - Yearly on 30th June.

(iii) Strength return of number of guards as per Appendix "N2" - To be submitted as on the last day of the period 01 Jan - 30 Jun and 01 Jul-31

Dec every year.

(iv) Bank Account Certificate. On materialisation of first contract the proprietor/director will render a certificate duly authenticated by the

concerned branch manager of the concerned bank giving details of the account of the security agency and person operating the said account duly

countersigned by the bank manager and the principal employer.

(v) Due date of expiry of contract - 3 Months prior.

(vi) Termination of contract - On termination. The-certificate to be counter signed by the employer.

(vii) The outcome of all offers of sponsorship is to be intimated to DGR as per format given in appendix "N2". This is necessary for keeping

records updated at DGR and for subsequent sponsorship. It is important that the Employer forwards details of the ESM Security Company given a

contract out of the agencies sponsored by DGR. It is mandatory for these security agencies sponsored by the DGR but were not given the contract by

an employer to have it endorsed on their sponsorship letter that contract has not been awarded and reasons for the same. This will form the basis for

further sponsorship to the Security Agencies that were not awarded the contract.

(vii) Failure to forward reports and returns will lead to disempanelment of agencies.â??

8. Apparently, the petitioner failed to submit the N2 returns and, therefore, was issued a show cause notice dated 09.02.2012 calling upon the

petitioner to show cause as to why the petitioner should not be dis-empanelled in terms of paragraph 48(b)(iii) and (vii) of the aforesaid Instructions. It

appears that thereafter the petitioner submitted its N2 returns as of 31.12.2011. However, the same did not reflect the complete strength deployed and

the petitioner was issued another show cause notice dated 16.04.2012. Thereafter, the petitioner sent a letter dated 30.04.2012 expressing the

hardships faced by the petitioner and further requesting for release of sponsorship.

9. Form AS-26 (indicating the collection of income tax including tax deducted at source) submitted by the petitioner indicated that he had received

certain income from HPCL Vizag. According to the DGR, this did not conform to the N2 returns submitted by the petitioner and the petitioner was

called upon to submit his comments in regard thereto.

10. The petitioner responded to the DGR and explained that HPCL Vishakhapatnam had approached three security agencies, including the petitioner,

for providing three supervisors and 20 security guards for their plant expansion for a period of eight months, and the said contract was taken up by the

petitioner as a goodwill gesture.

11. The explanation submitted by the petitioner was not accepted, and by a letter dated 08.11.2012 (impugned herein), the DGR communicated its

decision to continue placing petitioner in the category of non-operational, dis-empanelled agencies.

12. Mr R.V. Kameshwaran, learned counsel appearing for the petitioner had submitted that admittedly the DGR had not sponsored the petitioner

during the period September 2011 to May 2012 and this had placed the petitioner in great hardship and, therefore, the petitioner could not be faulted

for accepting the contract to provide services to HPCL Vizag. He submitted that the scheme for sponsorship was a welfare scheme and the petitioner

could not be denied the benefits of the same. He further submitted that the contract in question with HPCL was only for a period of eight months and,

thus, was not required to be reflected in the return filed with the DGR.

13. Mr S.D. Windlesh, learned counsel appearing for the respondent countered the submissions made on behalf of the petitioner. He submitted that the

petitioner had failed to submit Form AS-26 as well as the N2 returns in the prescribed format for the period ending 30.06.2011 and 31.12.2011. He

contended that Form N-2, which was submitted subsequently, did not provide the complete details of the security guards deployed with HPCL

Vishakhapatnam and, therefore, the petitioner had deliberately attempted to conceal the contract with HPCL in order to secure further sponsorship.

Mr Windlesh contended that the purpose of requiring the empanelled agencies to submit returns was to equitably distribute the sponsorship amongst all

empanelled agencies. He submitted that concealment of the security guards deployed pursuant to contract with HPCL was plainly intended to secure

a larger share of sponsorship and, thus, the decision for DGR to dis-empanel the petitioner agency could not be faulted.

14. It is not disputed that the petitioner had failed to submit Form AS-26 and N-2 returns as required and, therefore, in terms of paragraph 48(b) (iii)

and (vii), the petitioner's sponsorship for providing security services was liable to be withdrawn. The DGR had also issued a show cause notice to

the aforesaid effect. The petitioner had, in response to the show cause notice, submitted Form AS-26 as well as the N2 return. Concededly, Form N-2

submitted by the petitioner did not disclose that the petitioner had entered into a contract with HPCL Vizag, inasmuch as, it did not reflect the guards

deployed pursuant to the said contract.

15. Insofar as non-submission of Form AS-26 and the return as per Appendix N-2 is concerned, the petitioner was called upon to do so by 16.02.2012

by a show cause notice dated 09.02.2012. Since the petitioner did not submit the said forms at the material time, a show cause notice was also issued.

However, the petitioner replied to the show cause notice and submitted Form AS-26 as well as the return under N-2. Admittedly, no action for non-

submission of the documents was taken at the material time and the said issue no longer survives. The respondent has also submitted that the show

cause notice issued for non-submission of the requisite forms/returns is not the reason why the petitioner was dis-empanelled. Thus, the only issue to

be examined is whether the impugned action for dis-empanelling the petitioner

was warranted on the ground that the petitioner had submitted inaccurate N2 returns and had participated in a tender in violation of the policy.

16. Concededly, the petitioner had not disclosed the security guards deployed pursuant to the contract entered into with HPCL, Vishakhapatnam. The only explanation provided by the petitioner in the writ petition is that the contract with HPCL was an ad-hoc engagement for a period of eight months, whereas as per the guidelines, the contract for security guards was to be for a period of two years and, therefore, contract with HPCL was not required to be disclosed in the N2 returns. Although, the said explanation is included as one of the grounds -ground E- in the writ petition, no submissions in this regard were advanced by the learned counsel for the petitioner. It is also relevant to mention that no such ground was also taken by the petitioner in response to a letter dated 11.07.2012 to the show cause notice issued by the DGR in this regard. Thus, plainly the said contention is an afterthought and has rightly not been pressed by Mr Kameshwaran.

17. This Court also does not find any merit in the said explanation as paragraph 20(e) of the Instructions merely specifies the period of sponsorship, and does not in any manner exempt an empanelled agency from disclosing the strength of the guards deployed.

18. The only question that remains to be addressed is regarding the act of the petitioner taking up the contract with HPCL without DGR's sponsorship. In the response to the show cause notice, the petitioner had claimed that the contract with HPCL was entered as a gesture of goodwill and based on the sponsorship letter dated 30.07.2010. Both the aforesaid explanations were rejected by the DGR; the sponsorship letter dated 30.07.2010 was valid only for a period of 90 days and admittedly, the petitioner had entered into a contract with HPCL Vizag on 09.06.2011, much after the validity of the sponsorship letter had expired. This Court does not find any infirmity with the said view. The petitioner's contention that the contract was entered into as a goodwill gesture is also unmerited. First of all, it was not open for the petitioner to enter into the contract with HPCL on its own without sponsorship from the DGR. This restriction is expressly provided in the Instructions as well as in the empanelment letter dated 17.04.2010. Thus, the decision of the DGR rejecting the petitioner's explanations cannot be faulted.

19. More importantly, there is no credible explanation why the petitioner had not disclosed the strength of guards in the N2 returns. Thus, the conclusion that the petitioner had wilfully attempted to conceal the deployment of guards with HPCL, in order to secure a larger share of sponsorship, cannot be faulted.

20. At this stage, it is also relevant to refer to paragraph 37 of the Instructions which provides for dis-empanelment of agencies in certain circumstances. Paragraph 37 of the Instructions is set out below:-

37. Agencies will be removed from the panel of DGR under the following conditions: -

(a) Once the agency has achieved the quota of guards/has completed four years of contracts or if the director attains the age of 60 years whichever is

earlier. In any case sponsorship/responsorship will not be done beyond 60 years of age. In case of ESM Pvt Ltd Company, the age of eldest director will be considered.

(b) Violation of individual declaration by the applicant, giving any false declaration or non-adherence to DGR guidelines.

(c) Repeatedly not responding (maximum two reminders) to correspondence or defaulting in submitting the required information/Reports and Returns to

the DGR for a year. Return of two sponsorship letters/not responding to Principal Employer on two consecutive sponsorships/on being summoned.

(d) Violation of clauses of MOU given at Appendix B and incorporated at the time of forming the company.

(e) Non-employment of a minimum of 90 percent ESM. Non-employment of 100 percent ESM in case of ESM Corporations.

(f) Any incidents of malpractice including sub-letting of agency or the contract to another person or agency.

(g) Violation of any provision of these instructions, especially those related to wages. Any agency which under-quotes the wages including allowances

or the service charges while submitting the tender, or does not pay wages to the guards as per the wage structure will be liable for

disempanelment. On committing of any offence such as quoting incorrect wages at tendering process when proved will automatically render an

agency's sponsorship to be suspended upto six months from the date of issuance of show cause notice.

(h) If a proprietor has got empanelled for an individual proprietorship agency and has without the knowledge of the DGR joined another private DGR

empanelled private limited company, such agencies both individual & The Pvt. Ltd. Company will be disempanelled.

(i) Any officer is entitled to only one benefit through the DGR.â??

21. In terms of paragraph 37(b), giving any false declaration and non-adherence to DGR guidelines would invite an action for dis-empanelment. In the

circumstances, this Court finds no reason to interfere with the decision of the DGR to dis-empanel the petitioner.

22. The petition is, accordingly, dismissed.