
(2021) 03 JH CK 0101
In the Jharkhand High Court
Case No : L.P.A. No. 199 of 2020

M/s Mohan Kumar

APPELLANT

Vs

Union of India And Ors

RESPONDENT

Date of Decision : 10-03-2021

Acts Referred:

Aircraft (Security) Rules, 2011 — Rule 2(1)(c), 18, 18(9)

Citation : (2021) 03 JH CK 0101

Hon'ble Judges : Aparesh Kumar Singh, J;Anubha Rawat Choudhary, J

Bench : Division Bench

Advocate : Sumeet Gadodia, Prashant Vidyarthi

Final Decision : Dismissed

Judgement

1. Heard learned counsel Mr. Sumeet Gadodia for the appellant and Mr. Prashant Vidyarthi for the respondent.

2. The appeal is directed against the judgment dated 13.02.2020 passed by the learned Single Judge in W.P.(C) No. 6904 of 2019 whereby the writ application filed by the appellant was dismissed. Learned Writ Court did not find any infirmity in the order dated 31.10.2019 passed by the Respondent no.2- Secretary to the Government of India, Ministry of Civil Aviation, New Delhi cum appellate authority as well as the order dated 23.07.2019 whereby the application of the petitioner/ appellant herein for security clearance was rejected by the respondent no. 3.

3. The matter was taken up before this Court on 03.02.2021 on the prayer made by the appellant through I.A. No. 3504 of 2020. Appellant pleaded that this Court may call for the adverse report from the Central Security Agency (M.H.A.) for its perusal in sealed cover even though petitioner cannot insist upon it to be supplied to him. Upon consideration of the submissions of learned counsel for the parties and the material facts borne from record, this Court directed the respondents to produce the adverse report to be submitted by the Central

Security Agency (M.H.A.) in sealed cover for consideration and perusal of the Court. For better appreciation, the relevant extracts of the order dated 03.02.2021 is reproduced hereunder:-

2. By referring to the appellate order Annexure- 14/1, learned counsel for the appellant Mr. Sumeet Gadodia submits that the application for security clearance has been denied in the light of adverse input from Central Security Agency, Ministry of Home Affairs which indicates that two of its partners had indirect links with banned organization. Learned counsel for the appellant has referred to the averments made in the memo of appeal especially at para 7 to 10 and the table thereunder that appellant partnership firm has been providing auxiliary services for the last 14 years to Airport Authority of India without any complaint. Appellant was having five subsisting contracts with the Airport Authority of India concerning the Airports at Ranchi, Surat, Imphal, Khajuraho and Aurangabad. Under the Aircraft Act, 1934 Aircraft (Security) Rules, 2011 have been promulgated which make provision of issuance of aerodrome entry permit to such persons who are performing regular duty at the airport. Appellant had applied for security clearance through e-sahaj on- line portal for facilitating the works undertaken by the appellant through its employees in different airports. According to the appellant, the partnership firm comprised two more partners in respect of whom character certificate has also been issued by the Senior Superintendent of Police, Ranchi after due verification of the antecedents.

3. It is further submitted that there are no criminal cases instituted against any of the partners or its employees in connection with any offensive activity and that too relating to links with any banned organization as alleged. However, because of rejection of security clearance on those grounds, all the subsisting contracts at different airports with the civil aviation authority have been terminated. It amounts to blacklisting the appellant firm in perpetuity without proper opportunity to show- cause against the adverse report.

4. Learned counsel for the appellant submits that learned Single Judge took into consideration the decisions rendered by the apex court in the case of "Ex-Armymen's Protection Services (P) Ltd. Vs. Union of India" reported in (2014) 5 SCC 409 para 11 to 17 and that of "Digi Cable Network (India) (P) Ltd. Vs. Union of India" reported in (2019) 4 SCC 451, but without any materials produced by the respondents regarding the adverse report against the petitioner, it simply observed that it had no reason to disbelieve the report submitted by the Central Security Agency based on its own expertise. Learned counsel submits that even though in cases of national security, the party cannot insist for strict observance of the principles of natural justice but it is open to the court to satisfy itself whether there were justifiable facts involving interests of national security. The court is entitled to call for the files in order to satisfy itself, though the court shall not disclose the reasons to the affected party, if the matter involves national security. The appellant being aggrieved has, therefore, come in appeal.

5. Learned counsel for the appellant submits that this Court may call for the

adverse report of the Central Security Agency for its perusal in sealed cover even though petitioner cannot insist upon it to be supplied to him. A prayer to that effect has also been made through I.A. No. 3504 of 2020.

6. Learned counsel for the respondents Mr. Prashant Vidyarthi submits that there are valid reasons for refusing security clearance to the petitioner firm on account of adverse report submitted by the Central Security Agency (M.H.A.) as has been referred in the appellate order dated 31.10.2019. The learned writ court, therefore, did not interfere in the order of the appellate authority as there were no grounds to disbelieve the report of the Central Security Agency. He has also referred to the provisions of Aircraft (Security) Rules, 2011 specifically Rule 2(1) (c) defining "aerodrome entry permit" and Rule 18 under Part III "Aerodrome Access Control" which prescribes conditions for grant of entry into aerodrome. He submits that under Rule 18(9) admission to any person in the aerodrome can be refused in the interest of security. However, in the light of the ratio rendered by the apex court in the 3 case of Ex-Armymen's Protection Services (P) Ltd. (Supra), he is not in a position to dispute the legal proposition that in such a case where the principles of natural justice are read as statutorily excluded on grounds of national security, it is open to the court to satisfy by calling for the files to see whether it involves the interest of national security.

7. We have considered the submissions of the learned counsel for the parties in the light of the prayer made in I.A. No. 3504 of 2020. As per the provisions of the Aircraft (Security) Rules, 2011 framed under the Aircraft Act, 1934, the civil aviation authority has the right to control access to the aerodrome of any person. Aerodrome entry permit may be issued upon due verification as per the provisions contained under Rule 18 and it can be denied if it is necessary or expedient to do so in the interest of security. The denial can be on the basis of adverse report involving national security. The affected party may be denied such report as it may involve issues of national security. However, whether the report involves issues of national security or not, is something which the court can always ask for to be satisfied. In such circumstances, since such an adverse report has had the effect of termination of the contract of the appellant firm not only at Ranchi, but at four other airports, we deem it proper to direct the respondents to produce the adverse report submitted by the Central Security Agency (M.H.A.) in sealed cover for perusal and consideration of the court. The report shall be submitted before the learned Registrar General in sealed cover by the respondents on 01.03.2021 so that it can be placed before the Court."

4. Today when the matter has been taken up, the sealed envelope has been opened. We have perused the report. On perusal thereof, we are satisfied with the grounds of rejection taken by the respondents on the application of the petitioner for security clearance. Since the issue is sensitive and concerns national security as well, we do not intend to dilate further on the matter. The order of rejection of security clearance passed by respondent no.3 as upheld by the respondent no.2 i.e., Secretary to the Government of India, Ministry of Civil

Aviation, New Delhi cum appellate authority as upheld by the learned Single Judge does not require any interference.

5. Learned counsel for the appellant has placed reliance upon the decision of the Apex Court in the case Digi Cable Network (India) Private Limited Vrs. Union of India & others reported in (2019) 4 SCC 451 and in particular para 19 thereof and has prayed that appellant may also be allowed liberty to apply for grant of fresh permission in accordance with law.

In the case of Digi Cable Network (supra), the Apex Court had relied on the case of Ex-Army's Protection Services (P) Ltd. V. Union of India reported in (2014) 5 SCC 409 and reiterated the principle of law at para 16 and 17. The opinion of the Apex Court as contained in para 15 to 19 in the case Digi Cable Network (supra) is quoted here under:-

"15. In somewhat similar circumstances, this Court while repelling this submission laid down the following principles of law in Ex-Army's Protection Services (P) Ltd. v. Union of India in paras 16 and 17 which read as under: (SCC p. 416) "16. What is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of the State or not. It should be left to the executive. To quote Lord Hoffman in Secy. of State for Home Deptt. v. Rehman: (AC p. 192C) '50. ... [in the matter] of national security is not a question of law. It is a matter of judgment and policy. Under the Constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interests of national security are not a matter for judicial decision. They are entrusted to the executive.'

17. Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases, it is the duty of the court to read into and provide for statutory exclusion, if not expressly provided in the rules governing the field. Depending on the facts of the particular case, it will however be open to the court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Once the State is of the stand that the issue involves national security, the court shall not disclose the reasons to the affected party."

16. Having perused the note filed by the Union of India, which resulted in cancellation of permission, we are of the considered opinion that in the facts of this case, the appellant was not entitled to claim any prior notice before passing of the cancellation order in question.

17. In other words, we are of the view that the principles of natural justice were not violated in this case in the light of the law laid down by this Court in Ex-Army's Protection Services (P) Ltd. inasmuch as the appellant was not entitled to claim any prior notice before cancellation of permission.

18. In view of the foregoing discussion, the appeal is found to be devoid of any merit. It is accordingly dismissed.

19. However, the appellant would be at liberty to apply for grant of fresh permission in accordance with law."

6. The Apex Court has, having regard to the principles laid down in the matters concerning national security, held that strict observance of the principles of natural justice cannot be insisted upon. The same is the position in the instant case. We, therefore, do not wish to make any further observation in this regard. Accordingly, the instant appeal is dismissed.

7. The report submitted by the respondent Central Security Agency (M.H.A.) is again put in the sealed cover. It shall be returned by the learned Registrar General forthwith to the concerned officer of the Department i.e., Mr. Kamlesh Kumar, Deputy Aviation Security Officer, Bureau of Civil Aviation, Ranchi.