
(2019) 05 CAL CK 0051
In the Calcutta High Court

Case No : Writ Petitions (WP) No. 26341 (W) Of 2018, CAN 2983, 4810 Of 2019

Netai Chandra Saha & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 20-05-2019

Acts Referred:

Citation : (2019) 05 CAL CK 0051

Hon'ble Judges : Samapti Chatterjee, J

Bench : Single Bench

Advocate : Netai Chandra, Mahendra Singh, P.A. Asilkanta Khuntia, Sayantani Saha

Judgement

Mr. Mahendra Singh, Sr. Manager-Legal, HPCL appears (in person) and submits that by virtue of the office memorandum dated 13th September, 2018 issued by the Deputy Director, Ministry of Industries and Heavy Industries and Public Enterprises, Department of Public Enterprises, Government of India, earlier guidelines of 1994 and all subsequent guidelines have lost its force. In support of his contention, Mr. Singh draws the Court's attention at paragraphs 2 and 3 of the said office memorandum dated 13th September, 2018. Paragraphs 2 and 3 are quoted below :-

"2. It is proposed to merge the provisions of the main guidelines of 1994 and its amendments issued from time to time into one comprehensive guideline as follows:

(i) In order to prevent exploitation of Ex-servicemen (ESM) and to effectively implement their rehabilitation process, the Directorate General of Resettlement (DGR) has evolved a scheme whereby retired services officers and State Ex-servicemen Security Corporation desirous of obtaining contracts from CPSEs to provide manpower for security are empaneled. In this system, DGR provides a panel of qualified Ex-servicemen Security Agencies and State ESM Security Corporations functioning under the directives of Ministry of Defence.

(ii) All administrative Ministries / Departments are requested to issue necessary instructions to the CPSEs under their administrative control requiring manpower for security services, to obtain a panel of qualified Ex-Servicemen Security Service Providers only from the Directorate General of Resettlement (DGR), West Block-IV, R.K. Puram, New Delhi without going to open tendering process.

(iii) However, to ensure that CPSEs get more cost effective and efficient security agencies, DGR will sponsor more than one security agency so that the CPSE concerned would have a choice in choosing a suitable outfit keeping in view their specific requirements.

(iv) The service charges chargeable by security agency will be negotiable between the CPSE and the agency concerned subject to guidelines issue vide MoD OM No. 28(3)/2012-D (Res-1) dated 09.07.2012 and amendments made therein from time to time.

(v) Ministry of Defence, Department of Ex-Servicemen Welfare is the nodal Ministry/ Dept. for issuance of comprehensive guidelines on the subject matter.

3. These guidelines supersede all earlier guidelines issued by DPE in this regard. All administrative Ministries / Departments are requested to kindly issue necessary instruction to the CPSEs accordingly."

Mr. Singh also emphasizes his argument on the issue that as per the existing guidelines at least 90 per cent ESM would be employed by the individual ESM and 100 per cent by the State ESM Corporation. Therefore, pursuant to the said clarification regarding ESM criteria issued by the Joint Director of Resettlement. The contractor is under obligation to take 90 per cent from the ESM and only 10 per cent from the civilians. Since the present contractor is having 100 per cent civilian workers, therefore, the present contractor has been black listed by the Director General of Resettlement.

Mr. Singh further contends that though this authority is sympathetic upon the petitioner but its hands are also tied pursuant to the Government orders. Therefore, in conclusion, Mr. Singh submits that Court should vacate the interim order passed on 30.04.2019.

This submission of Mr. Singh is vehemently opposed by Mr. Netai Chandra Saha, who is appearing in person as the petitioner.

Mr. Saha submits that this guideline was already in force from 1994. In spite of that guideline, the petitioners are/were accommodated by the contractors as well as the management also. Therefore, at this stage the management cannot take this plea that their hands are tied and they cannot go beyond the guidelines.

Considering the submissions as advanced by Mr. Saha and Mr. Singh and after perusing the record, in my considered view, interim order already passed should be vacated with the rider that the petitioners' claim will abide by the result of the writ petition.

Resultantly, interim order already passed is vacated with the rider that the petitioners' claim will abide by the result of the writ petition.

Accordingly, the applications, being CAN 2983 of 2019 and CAN 4810 of 2019, are also disposed of.

Let the main writ petition appear on 19th June, 2019 at 2 p.m. for further hearing.