

(2012) 07 BOM CK 0050
In the Bombay High Court
Case No : Writ Petition No. 5671 of 2011

Sadashiv

APPELLANT

Vs

M/s. Pro-Interactive Services (I) (P) Ltd. and Others

RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:

Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act,
1981 — Section 15, 17, 5

Citation : (2012) 6 ALLMR 620

Hon'ble Judges : Vasanti A. Naik, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : V.R. Thakur, for the Appellant; A. Joshi, Advocate for Respondent No. 1, Shri M.R. Pillai, Advocate for Respondent No. 2 and Shri M.V. Mohokar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Vasanti A. Naik, J.—Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned Counsel for the parties. The issue involved in this petition is as to who should decide the dispute in regard to the applicability of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981. According to the petitioners, the respondent no. 2 Board constituted under the Act of 1981 does not have jurisdiction to decide the question and the State Government has jurisdiction to decide the same in view of the provisions of Sections 5 and 15 of the Act of 1981.

2. The petitioner no. 2 Bank had set up 33 A.T.Ms, and had also engaged certain persons for house keeping and care taking of the A.T.Ms. An inspection was conducted by the Inspector of the respondent no. 2 Board on 4/10/2010 and it was found by the respondent no. 2 Board that certain Security Guards were engaged at the locations where the A.T.Ms. were set up. The persons engaged by the petitioner Bank informed the Inspector that they were engaged as Security Guards. A show cause notice was issued to the petitioners asking them why

action under the provisions of the Act of 1981 should not be initiated against them for non-compliance of the provisions of the Act of 1981. The petitioners replied to the show cause notice and stated that the Act of 1981 would not be applicable to the petitioner Bank as the petitioner Bank has not engaged the Security Guards at the sites where the A.T.Ms. were set up and the persons were employed for the purpose of house keeping. A notice of hearing was served on the petitioners after the time stipulated in the notice and hence, the petitioners were not heard before the impugned order holding that the Act of 1981 was applicable to the petitioner establishment was passed on 11/8/2011.

3. It is canvassed by Shri Thakur, the learned Counsel for the petitioners, by taking this Court through the provisions of Sections 5 and 15 of the Act of 1981 that the respondent no. 2 Board did not have jurisdiction to decide the question of applicability of the provisions of the Act of 1981 to the petitioner establishment and it was only the State Government, which could have decided the question. The learned Counsel for the petitioners submits that when a question arises whether any scheme applies to any class of Security Guards or the principal employer like the petitioner Bank, the matter needs to be referred to the State Government and the State Government would take a decision on the question after consultation with the Advisory Board constituted u/s 15 of the Act of 1981. The learned Counsel further submits that the impugned orders are liable to be set aside as they suffer from a jurisdictional error. It is contended that it was necessary either for the respondent no. 2 Board or the principal employer to refer the dispute in regard to the question of applicability of the Act of 1981 to the State Government.

4. Shri Thakur, the learned Counsel for the petitioners, states that the petitioners would refer the dispute to the State Government u/s 5 of the Act of 1981 within a period of six weeks and the State Government may be directed to decide the same.

5. Shri Pillai, the learned Counsel for the respondent no. 2 Board, fairly states that a combined reading of Sections 5 and 15 of the Act of 1981 shows that the State Government is competent to decide the question in regard to the applicability of the provisions of the Act of 1981 to any class of Security Guards or the principal employers. The learned Counsel for the respondent no. 2 Board admits that there is no other provision in the Act of 1981 or the Rules framed thereunder empowering the respondent no. 2 Board to decide the issue in regard to the applicability of the provisions of the Act of 1981 to the principal employer. It is, however, submitted that since the respondent no. 2 Board found that several Security Guards were working with the petitioner establishment and since the provisions of the Act of 1981 were not followed by the petitioners, the question was decided by the impugned orders.

6. Shri Mohokar, the learned Counsel for the respondent no. 3, submits that the petitioners may be directed to refer the question as aforesaid to the State Government under the provisions of Section 5 of the Act of 1981 and the State

Government may be directed to decide the issue as early as possible.

7. Smt. Joshi, the learned Counsel for the respondent no. 1, supports the case of the petitioners and submits that the respondent no. 2 Board was not empowered to decide the issue of the applicability of the provisions of the Act of 1981 to the petitioner Bank.

8. On hearing the learned Counsel for the parties and on perusal of the provisions of the Act of 1981, it is clear that the Board constituted under the Act of 1981 is not empowered to decide the question whether the Act of 1981 or the scheme framed thereunder applies to any class of Security Guards or the principal employers like the petitioner Bank. Under the provisions of Section 5 of the Act of 1981, when a question in regard to applicability of the Act and the scheme to any class of Security Guards or principal employers arises, the matter is required to be referred to the State Government and the decision of the State Government in consultation with the Advisory Committee constituted u/s 15 of the Act of 1981 shall be final. There is no other provision in the Act of 1981 or the Rules framed thereunder, at least none of the Counsel have pointed out one, which empowers the respondent no. 2 Board to decide the issue of the applicability of the Act of 1981 to a principal employer. It is clear from a reading of the provisions of the Act of 1981 and the Rules framed thereunder that the impugned orders passed by the respondent no. 2 Board, holding that the Act of 1981 is applicable to the petitioner Bank suffer from a jurisdictional error and are liable to be set aside.

9. For the reasons aforesaid, the writ petition is allowed. The impugned orders are quashed and set aside. The State Government is directed to decide the dispute, which may be filed by the petitioners within a period of six weeks, as early as possible and within a period of three months from the date of receipt of the same. The State Government should also hear the respondent no. 3 Union before taking a decision on the dispute. The respondent no. 2 Board shall not pursue the criminal proceedings initiated by it against the petitioners u/s 17 of the Act of 1981 till the said question is decided by the State Government. Rule is made absolute in the aforesaid terms.

No order as to costs.