

(2013) 03 BOM CK 0218

In the Bombay High Court

Case No : C.A.J. Criminal Application No. 1334 of 2011

Shrinidhi P. Apsingekar

APPELLANT

Vs

Syndicate Bank and Others

RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Citation : (2013) 139 FLR 498

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : Lata Desai instructed by Dr. Pallavi Divekar, for the Appellant; R.V. Newton, APP. for the State, R.S. Pai a/w Aniruddha Lad, Ms. Priyanka B. and P. Gaikwad instructed by Benny Joseph, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Chavan, J.—Heard the learned Counsel for the respective parties. This is an application for leave to file an appeal against judgment of acquittal of respondent Nos. 1 to 4 for the offence punishable u/s 3(3) of the Maharashtra Private Security Guards (Regulation of Employment & Welfare) Act, 1981 read with Clauses 25(2) and 42 of the Private Security Guards (Regulation of Employment & Welfare) Scheme, 2002.

The application along with appeal was taken up for final hearing, since it involves question of law. The record and proceedings have been called and with the help of both the learned Counsel I have gone through the evidence on record.

Facts which are material for deciding these proceedings are as under:--

Syndicate Bank, which is a Nationalized Bank, has a branch at P.M. Road, Fort, Mumbai. There was a factory by name Ahmed Woolen Mills, Ambarnath, Mumbai. This was taken over by the Government and Syndicate Bank's branch at P.M. Road, Fort, Mumbai was appointed as an agent for running the said factory. This P.M. Road branch, Fort, Mumbai of Syndicate Bank had applied for registration as principal employer with the Security Guards Board as is required under Clause 13

of the Scheme (corresponding to Clause 14 of the Scheme which was in force at that time). This application was filed on 19th January, 1986 and Registration No. 595 seems to have been allotted on 25th February, 1986. There is no dispute that about 18 security personnel have been deployed by getting their services from M/s. P.P. Patel & Company, presumably an employer agent, in the scheme for providing securities to Ahmed Woolen Mills, Ambarnath, Mumbai. There is no dispute that P.M. Road branch, Fort, Mumbai of Syndicate Bank did not have any security guards provided by any employer agency in accordance with the scheme. It had its own security arrangement with private agency and did not engage security guards in accordance with the scheme. There are two other Zonal Offices of Syndicate Bank at Maker Towers "E" & "F" Wings, Cuffe Parade, Mumbai-400 005. These offices also engaged security guards privately and not by following the procedure prescribed in the scheme.

2. An inspection was carried out by the complainant Shri S.P. Apsingekar, Inspector employed by the Board at these offices were of the Bank on 25th & 26th May, 2004. He found certain guards working at these offices were deployed by M/s. Twin City Enterprises Security and M/s. Bhoparal Marshal Security Pvt. Ltd. He also found that the conditions of the services of the guards employed at P.M. Road branch, Fort, Mumbai were not as good as of the guards employed by the Zonal offices. The complainant claims to have issued a show cause notice to the respective branches including P.M. Road branch, Fort, Mumbai for committing breach of the Scheme by not engaging security guards allotted by the Board or Agency registered with the Board. It appears that the complainant also provided some guards to the accused - Bank but the accused - Bank refused to employ them.

3. Eventually the complainant filed a complaint before the learned Additional Chief Metropolitan Magistrate, 16th Court, Ballard Pier, Mumbai on 18th January, 2005 against the Zonal office, Syndicate Bank at Maker Towers "E" & "F" Wings, Cuffe Parade, Mumbai - 400 005 and its Chief Managing Director Mr. Michael Bastian, General Manager - Mr. S.P. Malhotra & Mr. A.S. Malya -Chief Manager, since they are alleged to be the persons in charge affairs of the Bank.

4. The accused were summoned. They pleaded not guilty to the charges leveled and therefore, they were put on trial at which the complainant was the only witness, who was examined. The defence of the accused was that the Bank was not at all registered as Principal employer and Registration No. 595 was obtained only for the purpose of providing security to the Ahmed Woolen Mills, Ambarnath, Mumbai as an agent of Government of India. They, therefore, submitted that there was no question of any breach of the provisions of the Scheme, particularly, Clause 25(2) of the Scheme requiring registered principal employer to employ only security guards who have been allotted by the Board. The learned Magistrate upheld this defence and therefore, the Board has preferred this appeal.

5. The learned Counsel for the applicant- appellant first submitted that the

application for registration does not show that Syndicate Bank, P.M. Road branch, Fort, Mumbai had sought registration only for providing security to Ahmed Woolen Mills, Ambernath, Mumbai as an agent of the Government of India. According to the learned Counsel for the applicant, the application for registration would show that the Syndicate Bank as an establishment had sought registration and therefore. Syndicate Bank, P.M. Road branch, Fort, Mumbai which is situated within the area of operation of the Board would be covered by the Scheme and the Bank would be obliged to engage security guards only from the agencies registered or as provided by the Secretary of the Board. She submitted that by Notification dated 24th July, 2003, in fact, name of the Syndicate Bank had been included in Schedule - I of the establishments which were possibly exempted from operation of the scheme. She pointed out that that this entry in respect of Syndicate Bank was deleted by Notification dated 4th March, 2004 which is at Exhibit 24. Therefore, according to her, on the date of inspection i.e. 25th May, 2004, Syndicate Bank did not have any exemption from operation of the Scheme and therefore, was obliged to follow the Scheme, including the obligation to engage security guards provided by the Secretary.

6. Though, there is some dispute as to whether the office of the Bank concerned had engaged armed guards or not, for the sake of argument, it may be taken that no armed guards were actually employed by the Bank and therefore, there is no question of the Bank being in a position to claim any exemption on the ground that it engaged only armed guards, which the Secretary could not have provided.

7. On these admitted facts, it has to be found out whether Registration No. 595, in fact, covered all the offices of the Syndicate Bank obligating each of these offices to engage security guards provided by the Secretary of the Board. The learned Counsel for the applicant pointed out that the argument that each establishment was independent and was required to independently apply for registration had not found favour with the authorities including the Division Bench of this Court. She submitted that the Government had, in fact, modified the Scheme and had added an explanation in Clause 14 which now corresponds to the then Clause 13. That explanation reads as under:--

Explanation.--For the purpose of this sub-clause, registration of a principal employer means registration of a specific establishment of the principal employer with respect to a specific area, specified in the registration form, and shall not include any other branches or ancillary establishments of the principal employer unless, they are specifically mentioned by the principal employer at the time of registration with the board.

Various particulars of the Scheme, possibly including this explanation, were found by the Maharashtra Suraksha Rakshak Aghadi to be objectionable and therefore, they filed writ petition before this Court. This came to be decided by the Division Bench of this Court by judgment in Maharashtra Suraksha Rakshak Aghadi and Another Vs. State of Maharashtra and Another, The learned Counsel

for the applicant submitted that as observed by the Court in para 17 of the judgment, the provisions contained in the Amended Scheme, whereby the explanation was inserted in Clause 14, was agreed to be deleted while issuing Notification, and the Advocate General made a statement to that effect in the Court. Therefore, according to her, the concept of having a separate registration for every establishment was not approved by this Court and therefore, there is no substance in the arguments of the learned Counsel for the respondent that Registration No. 595 was establishment specific for Ahmed Woolen Mills, Ambarnath, Mumbai only.

8. The learned Counsel for the respondent, on the other hand, submitted by referring to para 12 of the judgment that amendments in the Scheme may pertain to something else and not registration of principal employer. In para 12 of the Judgment, there is a reference to Clause 14(2) which is about registration of employer agency. However, after going through the judgment I do not find that explanation pertains to anything else than registration of principal employer. This, however, it does not mean that Advocate General's conceding to deletion of this explanation and the Court's accepting this statement should result in an inference that a specific establishment is not required to be registered for the purpose of the Scheme under the Act.

9. The learned Counsel for the respondent submitted that the principal employer has been defined in Clause 8 of section 2 of the Act as under:--

"principal employer" in relation to any class or classes of Security Guards deployed in a factory or establishment by the agency or agent or Board, means the person who has ultimate control over the affairs of the factory or establishment and includes any other person to whom the affairs of such factory or establishment are entrusted whether such person is called Authorized Representative, Manager or by any other name prevailing in the factory or establishment.

Clause 4 of section 2 defines "establishment" to mean an establishment as defined in clause (8) of section 2 of the Bombay Shops and Establishments Act, 1948. This Clause 2(8) of Bombay Shops and Establishments Act, 1948 reads as under:--

"Establishment" means a shop, commercial establishment, residential hotel, restaurant, eating house, theatre, or other place of public amusement or entertainment to which this Act applies and includes such other establishment as the (State) Government may, by notification in the Official Gazette, declare to be an establishment for the purposes of this Act.

Since there is also a reference to commercial establishment, in this definition, it would be useful to reproduce for ready reference definition of commercial establishment contained in the Bombay Shops and Establishment Act, 1948.

"Commercial establishment" means an establishment which carries on, any

business, trade or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession (and includes establishment of any legal practitioner, medical practitioner, architect, engineer, accountant, tax consultant or any other technical or professional consultant and also includes) a society registered under the Societies Registration Act, 1866 (XXI of 1860), and a charitable or other trust, whether registered or not, which carries on (whether for purposes of gain or not) any business, trade or profession or work in connection with or incidental or ancillary thereto but does not include a factory, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment.

Syndicate Bank is obviously commercial establishment. The learned Counsel for the respondent submitted that in view of the definition of the "establishment" as contained in the Bombay Shops and Establishment Act, 1948, it would not be permissible to hold that all the branches of the Syndicate Bank are, in fact, one establishment. Every branch is a separate establishment and therefore, while reading the definition of "principal employer" in Clause 8 of the Act, it has to be read to mean that "principal employer" in relation to the establishment.

Therefore, Registration No. 595 obtained by P.M. Road branch, Fort, Mumbai of Syndicate Bank for the purpose of Ahmed Woolen Mills, Ambarnath, Mumbai would not cover the establishment of the Bank in its Zonal office at Maker Towers "E" & "F" Wings, Cuffe Parade, Mumbai - 400 005 who have been prosecuted. It is not necessary to go into the question whether P.M. Road branch, Fort, Mumbai of Syndicate Bank itself was registered as principal employer or not because P.M. Road branch, Fort, Mumbai of Syndicate Bank has not been prosecuted for the offence. The complaint is against Zonal office. It is also not necessary to go into the question whether registration by P.M. Road branch, Fort, Mumbai of Syndicate Bank was an agent for the Central Government which had taken over Ahmed Woolen Mills, Ambarnath, Mumbai and therefore, was providing security guards who were already providing security to Ahmed Woolen Mills, Ambarnath, Mumbai before its being entrusted to the P.M. Road branch, Fort, Mumbai of Syndicate Bank. The learned Counsel for the applicant pointed out that though accused No. 1 in the complaint shown as Syndicate Bank, Zonal office, in the body of the complaint it has been mentioned that establishment of accused No. 1 situated at Maker Towers "E" & "F" Wings, Cuffe Parade, Mumbai - 400 005 and also at P.M. Road branch, Fort, Mumbai. This in consonance with the stand taken by the Board that all the establishments named or not named are covered by the Scheme. However, as held by me in the preceding paragraphs, the definition of principal employer is in relation to the "establishment" and "establishment" has been defined as "establishment" under the Bombay Shops and Establishment Act, 1948 which may not cover the entire Bank. It refers to each "establishment" as a separate unit and therefore, there is no question of the accused persons being held to have been registered as principal employer at Registration No. 595 and having failed to employ security guards provided by the Secretary, under the Scheme.

In view of this, it cannot be said that view taken by the learned Additional Chief Metropolitan Magistrate was improbable or perverse. Since view taken by the learned Additional Chief Metropolitan Magistrate cannot be said to be improbable or perverse, in view of the observations of the Division Bench of the Supreme Court in Rohtash Vs. State of Haryana, no case for interfering with the judgment is made out.

Criminal Application stands dismissed.