

Security Guards Board For Greater Bombay and Thane Distt

Vs.

Security & Personnel Service Pvt. Ltd. and Others

Civil Appeal Nos. 1926-50 of 1986

(V. Khalid, O. Chinnappa Reddy JJ)

28.04.1987

JUDGMENT

CHINNAPPA REDDY, J. -

1. It appears that there were serious complaints about the service conditions of about 70,000 persons working as Security Guards in various factories and establishments in Greater Bombay and Thane Industrial Complex, the majority of whom were employed through about 250 Security Agencies operating in those areas. The complaints related not merely to insufficient remuneration paid to them by the agencies, but also to insecurity of service and other forms of exploitation. There was a sample survey conducted by the Government of Maharashtra to ascertain the extent of exploitation and to secure information regarding the service conditions of the Security Guards. The sample survey revealed that most of the agencies were not registered under the Shops and Establishments Act. There was only one registered union but that union accounted for membership of 2200 only. It was found that most of the Security Guards did not enjoy the benefit of any provident fund scheme or any scheme of gratuity. Most of them were not covered by the Employees' State Insurance Scheme and had no medical facilities. Leave facilities were inadequate. Rest intervals were not properly provided. Wages were low and only a few agencies paid overtime and bonus. Most of them did not also have either drinking water facility, canteen facility or transport facility. A very meager percentage of guards were provided with living quarters. It was recommended that it was absolutely necessary to prevent exploitation of the unprotected Security Guards and to provide them with better service conditions. Pursuant to the report of the committee which made the sample survey, the government issued the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Ordinance. The Ordinance was replaced by the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981. The vires of the Act were challenged in various writ petitions filed in the High Court of Bombay by Security Agencies. They were dismissed by the High Court and a petition for special leave to appeal under Article 136 of the Constitution was dismissed by the Supreme Court on January 5, 1983. While dismissing the special leave petitions, the Supreme Court gave the following directions :

It appears that some of the petitioners have applied to the State Government to accord exemption to them from the operation of the provisions of the Private Security Guards (Regulation of Employment and Welfare) Scheme, 1981 and those applications are under the consideration of the State Government. We, therefore, direct that the above scheme shall not be enforced as against the petitioners herein till the end of January 1983. The State Government should dispose all applications made by the petitioners before January 31, 1983.

This order was subsequently modified in the following manner :

The order dated January 5, 1983 is modified by deleting the entire portion of the order following upon the words "these special leave petitions are dismissed". The scheme will be brought into force forthwith.

2. In the judgment of the learned Single Judge who dismissed the writ petitions initially, the learned Judge had held that it was competent for security agencies to seek exemption from the operation of the provisions of the Act. As many as 139 security agencies applied to the government under Section 23 of the Act for grant of exemption from the provisions of the Act. These applications were first screened by the Advisory Committee who recommended that exemption might be granted to 21 agencies. The cases of 4 other agencies which were not recommended by the Advisory Committee were again investigated by the Labour Commissioner who recommended that these four agencies also might be granted exemption from the provisions of the Act. On June 28, 1984, the Government of Maharashtra finally rejected all the applications for exemption filed by the various security agencies. Several security agencies thereupon filed writ petitions in the High Court of Bombay. The 25 writ petitions filed by the 21 agencies whose cases were recommended by the Advisory Committee and the 4 agencies whose cases were recommended by the Labour Commissioner were admitted by the High Court and the rest were dismissed in limine. The 25 writ petitions which were admitted were also finally dismissed on July 11, 1985 by a learned Single Judge. On appeals preferred by the 25 security agencies, a Division Bench of the Bombay High Court directed the State Government to consider afresh the applications for exemption. An objection raised on behalf of the Security Guard Board and the Government of Maharashtra that security agencies could not seek exemption under Section 23 of the Act was overruled. The Bombay High Court took the view that the applications had been rejected as a result of the policy decision not to grant exemption to any security agency and that this was wrong. The High Court held that each application for exemption had to be considered on its own merits and so disposed of. Hence the direction to the government to consider the applications afresh.

3. The Security Guard Board constituted under Section 6 of the Act has preferred these 25 appeals against the judgment of the Bombay High Court.

4. Shri K. K. Singhvi, learned counsel for the appellant, the Security Guard Board for Greater Bombay and Thane District, argued that Section 23 of the Act did not contemplate the grant of exemption in favour of a security agency and therefore, the applications for exemption were liable to be rejected on that ground alone. He further submitted that the High Court was wrong in holding that the applications had been rejected on the basis of any policy decision. They were rejected after consideration of all the applications on merits. If there was a policy decision such a decision was arrived at on a consideration of all the applications for exemption and it was that none of the applications deserved to be allowed. Shri Soli J. Sorabjee and other learned counsel, who followed him, argued that the Act did not contemplate that abolition of the agency system as such and it was only meant to regulate and provide better conditions of service for Security Guards. Wherever the conditions of service were better than those proposed under the scheme, the government was under a duty to grant the necessary exemption so that the employees may have the benefit of the advantageous conditions of service. According to them, this result flowed from a perusal of the Act, in particular Sections 22 and 23. It was also urged that the High Court was right in its conclusion that the applications for exemption had been rejected on merits but because of a policy decision.

5. We may now proceed to consider the rival submissions with reference to the provisions of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981. The preamble to the Ordinance which preceded the Act recited,

... and whereas the Government of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action to make a law for regulating the employment of Private Security Guards employed in factories and establishments in the State of Maharashtra and for making better provision for their terms and conditions of employment and welfare, through the establishment of a Board therefor, and for matters connected therewith

The long title of the Act is :

An Act for regulating the employment of private Security Guards employed in factories and establishments in the State of Maharashtra and for making better provisions for their terms and conditions of employment and welfare, through the establishment of a Board therefor, and matters connected therewith.

Section 1(4) makes the Act applicable, "to persons who work as Security Guards in any factory or establishment, but who are not direct and regular employees of the factory or the establishment as the case may be". Sections 2(1), 3, 4, 5, 8, and 10 define the expressions "agency", "employer", "establishment", "factory", "principal employer" and "Security Guard" as follows :

"agency" or "agent" in relation to a Security Guard, means an individual or body of individuals or a body corporate, who undertakes to execute any security work or watch and ward work for any factory or establishment by engaging such Security Guard on hire or otherwise, or who supplies such Security Guards either in groups or as an individual, and includes a sub-agency or a sub-agent;

"employer", in relation to a Security Guard engaged by or through an agency or agent, means the principal employer, and in relation to any other Security Guard, 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 an agent, manager or by any other name prevailing in the factory or establishment;

"establishment" means an establishment as defined in clause (8) of Section 2 of the Bombay Shops and Establishments Act, 1948;

"factory" means a factory as defined in clause (m) of Section 2 of the Factories Act, 1948;

"principal employer" means an employer who has engaged Security Guards through an agency or agent;

"Security Guard" or "private Security Guard" means a person who is engaged or is to be engaged through any agency or an agent, whether for wages or not, to do security work or watch and ward work in any factory or establishment and, includes any person, not employed by any employer or agency or agent, but working with the permission of, or under an agreement with, the employer or agency or agent, but does not include the members of any employer's family or any person who is a direct

and regular employee of the principal employer;

Section 3 empowers the State Government for the purposes of ensuring an adequate supply and full and proper utilisation of Security Guards in factories and establishments and generally for making better provisions in the terms and conditions of employment of such workers, to make one or more schemes to provide for the registration of employers and Security Guards in any factory or establishment and to provide for the terms and conditions of employment of registered Security Guards and to make provisions for the general welfare of such Security Guards. The matters in regard to which provisions may be made in the scheme are also set out in Section 3(2)(a) to (n). We may mention that clause (d) of Section 3(2) in particular relates to terms and conditions of employment, including the rates of wages, hours of works, maternity benefit, overtime payment, leave with wages, provision for gratuity and conditions as to weekly and other holidays and pay in respect thereof. We should also mention here that Section 3(2)(g) provides that the scheme may prohibit, restrict or otherwise control the employment of Security Guards to whom the scheme does not apply and the employment of Security Guards by employers to whom the scheme does not apply. Section 3(3) provides that the scheme may further provide for the punishment of a contravention of any provision of the scheme with imprisonment or with fine. Section 4 prescribes the procedure for making, varying or revoking a scheme. Section 6 provides for the constitution of a Board for the Security Guards in any area. Section 8 prescribes the powers and duties of the Board. Section 15 provides for the constitution of an Advisory Committee. Sections 19, 20 and 21 provide for the application of Workmen's Compensation Act, Payment of Wages Act and Maternity Benefit Act to Security Guards. Sections 22 and 23 are important. Section 22 provides for the preservation of existing rights and privileges if they are more favourable and Section 23 provides for exemptions from the provisions of the Act. These provisions are important for our present purpose. They are as follows :

22. Nothing contained in this Act shall affect any rights or privileges, which may registered Security Guard employed in any factory or establishment is entitled to, on the date on which this Act comes into force, under any other law, contract, custom or usage applicable to such Security Guard, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act and the Scheme :

Provided that, such Security Guard shall not be entitled to receive any corresponding benefit under the provisions of this Act and the Scheme.

23. The State Government may, after consulting the Advisory Committee, by notification in the official Gazette, and subject to such conditions and for such period as may be specified in the notification, exempt, from the operation of all or any of the provisions of this Act or any Scheme made thereunder, all or any class or classes of Security Guards employed in any factory or establishment or in any class or classes of factories or establishment, if in the opinion of the State Government, all such Security Guards or such class or classes of Security Guards are in the enjoyment of benefits, which are on the whole not less favourable to such Security Guards than the benefits provided by or under this Act or any Scheme made thereunder :

Provided that, before any such notification is issued, the State Government shall publish a notice of its intention to issue such notification, and invite objections and suggestions in respect thereto and no such notification shall be issued until the objections and suggestions have been considered and a period of one month has elapsed from the date of first publication of the notice in the official Gazette :

Provided farther that, the State Government may, by notification in the official Gazette, at any time, for reasons to be specified rescind the aforesaid notification.

6. Pursuant to the powers conferred by Section 4 of the Act, the Government of Maharashtra after consulting the Advisory Committee made the Private Security Guards (Regulation of Employment and Welfare) Scheme, 1981. Paragraph 11 of the Scheme requires the Board to maintain (1) a register of employers and (2) a Pool Register which shall be a register of Security Guards. Paragraph 12 empowers the Board to arrange for the classification of Security Guards in suitable categories as may be determined by it from time to time. Paragraph 14 requires 'every employer who has engaged private Security Guards on the appointed day or at any time thereafter' to 'get himself registered with the Board' by applying in the prescribed form. The employer of an establishment coming into existence after the commencement of the Scheme is required to apply for registration simultaneously with the commencement of its business. Paragraph 15 requires 'any Security Guard who was working on the appointed day or at any time thereafter in the employment in the area to which the Scheme applies' to 'apply to the Board' in the prescribed form. Paragraph 25 provides that every registered Security Guard shall be deemed to have accepted the obligation of the Scheme. A registered Security Guard in the pool who is available for work is required not to engage himself for employment under any registered employer unless he is allotted to that employer by the Secretary of the Board. A registered Security Guard in the pool who is available for work is further required to carry out directions of the Board and to accept employment under any registered employer for which he is considered suitable by the Board. Paragraph 26 provides that every registered employer shall accept the obligations of the Scheme. A registered employer is required not to employ a Security Guard other than a Security Guard who has been allotted to him by the Secretary. A registered employer is however at liberty to employ Security Guard directly. A registered employer is required to disburse to the Security Guard the wages and other allowances directly, if so directed by the Board and send to the Board a statement of such payment within the prescribed time. Paragraph 27 prohibits the employment by a registered employer of a Security Guard unless the Security Guard is a registered Security Guard or a directly employed Security Guard. Paragraph 29 makes detailed provision for wages, allowances and other conditions of service of Security Guards. Paragraph 30 provides for the disbursement of wages and other allowances to the Security Guards. Paragraph 31 provides for disciplinary procedure. Paragraph 32 prohibits the termination of employment of registered Security Guard except in accordance with the provisions of the Scheme. Paragraph 33 and paragraph 34 provide for appeals and termination. Paragraph 35 provides for revision. Paragraph 37 provides for the cost of operating the Scheme and makes provision for amenities and benefits to the registered Security Guards.

7. It is obvious from Section 1(4) and the very definition of 'Security Guard' that the Act and, therefore, the Scheme are not applicable to persons who are direct and regular employees of a factory or establishment but are applicable only to persons working in any factory or establishment who are engaged or are to be engaged through an agency or agent and to persons who though not employed by the employer or agency or agent are working with their permission or under an agreement with them. Section 23, we have seen, provides for exemption from the operation of all or any of the provisions of the Act or any scheme made thereunder of "all or any class or classes of Security Guards employed in any factory or establishment or in any class or classes of factories or establishments". The basic condition to be satisfied is that the State Government should be of the opinion that "all such Security Guards or such class or classes of Security Guards are in the enjoyment of benefits, which are on the whole not less favourable to such Security Guards than the benefits provided by or under this Act or any Scheme made thereunder". A close scrutiny of Section 23, particularly in the light of Section 1(4) read with the definition of 'Security Guard', makes it

clear that the exemption is not in respect of an agency or an agent or even a factory or establishment but in respect of all or any class or classes of Security Guards employed in any factory or establishment or in any class or classes of factories or establishments. In other words, the exemption is in regard to 'Security Guards', employed in any factory or establishment or in any class or classes of factories or establishments. The exemption may be in respect of all the Security Guards employed in a factory or establishment or in a class or classes of factories or establishments or in respect of a class or classes of Security guards so employed. For example, all Security Guards of a particular grade or doing a particular type of work in a factory may be exempted. Again all Security Guards employed in a class of factories, say textile mills, may be exempted. All Security Guards in all textile mills doing a particular type of work or drawing a particular scale of pay may be exempted. The co-relationship of the Security Guards or classes of Security Guards who may be exempted from the operation of the Act is to the factory or establishment or class or classes of factories or establishments in which they are employed. This analysis has however no bearing on the question of locus standi of the persons who may seek the intervention of the State Government by the issue of notifications for exemption. Obviously the Security Guards or classes of Security Guards employed in a factory or establishment may apply to the government to exempt them from the operation of the Act. Similarly Security Guards or classes of Security Guards employed in classes of factories or establishments may apply to the government to exempt them from the operation of the Act. Again a factory or an establishment or a class or classes of factories or establishments may apply to the government to exempt Security Guards employed in their factories or establishments from the operation of the Act. Though agencies or agents do not enter the picture directly, since the very definition of Security Guards means persons engaged or to be engaged through an agency or agent, it must follow that where Security Guards have been engaged or are to be engaged through them in any factory or establishment or a class of factories or establishments, such agency or agent may also apply to the government, not to exempt all Security Guards engaged or to be engaged through them but to exempt Security Guards engaged or to be engaged in a factory or establishment or a class of factory or establishments. The question is not one of locus standi at all but which or what class of Security Guards are to be exempted from the operation of the Act and the Scheme. Therefore, we are of the view that even an agency or agent may apply to the government to grant exemption, but the exemption to be granted by the government is not to be of any agency or agent but only of Security Guards employed in a factory or establishment or a class or classes of factory or establishments.

8. One of the submissions of the learned counsel was that if Section 23 was read in the light of Section 22 it would follow that an agency could ask for exemption from the operation of the Act of all Security Guards employed through them. We do not see how that follows. All that Section 22 provides in effect is that the rights or privileges of any registered Security Guards shall not be altered to his detriment. It only means that if hitherto as an employee of the agency, the terms and conditions of his service were more attractive on the whole than the terms and conditions of service offered by the Act and the Scheme under the factory or establishment, the original terms and conditions of service will be preserved and become applicable to their service under the factory or establishment. It was submitted by the learned counsel that the Act and the Scheme did not provide for termination of the contract of employment between the agency and the security Guard or for the transfer of the services of the Security Guards will stand transferred to the service of the factory or establishment on allotment to it by the Board. It is in that fashion, among other things, that security of service is secured to the Security Guards.

9. The High Court appeared to think that all the applications were rejected on the ground that a policy decision had been taken not to grant exemption in any case. The High Court relied on the

affidavit of Shri Rajadhyaksha. It was stated in the affidavit of Shri Rajadhyaksha that the opinion of the Advisory Committee was sought on the applications of 21 applicants. Later the cases of 4 other applicants were recommended by the Labour Commissioner. After referring to these circumstances, Shri Rajadhyaksha stated in the affidavit :

I say that after the receipt of the recommendations from the Advisory Committee by the Department of Industries, Energy and Labour, all the papers were submitted to the Chief Minister through the Minister for Labour and the Minister of State for Labour to consider whether to publish the notice of the government's intention to issue such notification and invite objection and suggestion in respect thereto. I say that after considering all the pros and cons of the problem, the Hon'ble the Chief Minister, in consultation with the Hon'ble Minister for Labour and the Hon'ble Minister of State for Labour took the decision that none of the agencies who had applied for exemption should be granted exemption under Section 23 of the said Act because granting of such exemption will not be in the interest of the Security Guards employed with the agencies.

Later again Shri Rajadhyaksha stated :

I say that simply because the Advisory Committee had recommended the case for exemption, it was not obligatory on the State Government to publish a notice of its intention to issue notification for exemption as alleged therein. I say that it was for the government to consider the entire matter and to decide whether such a notification should be issued or not and if as a matter of policy and after going through the entire case the government decided not to grant exemption no exception can be taken to the decision of the State Government.

We do not read the affidavit of Shri Rajadhyaksha to say that there was a predetermined policy decision pursuant to which all the applications for exemption were rejected without any consideration on the merits of each case were fully considered and the applications were rejected because it was their policy not to grant exemption if it was not in the interest of the Security Guards. A complaint was made that the government did not state its reasons for rejecting the applications for exemption. We do not think that in cases of this nature where exemptions are sought from the operation of the Act, it is necessary for the government to state its reasons. Of course, if there is charge of mala fides or arbitrariness, the court may look into it to discover if there are any mala fides or if the refusal of the government was arbitrary. We do not think that the orders refusing to grant exemptions in the present cases call for any interference on the sole ground of failure to state reasons.

10. In the result all the appeals are allowed and the writ petitions filed in the High Court are dismissed. Civil Writ Petition No. 12319 of 1985 filed by one of the agencies in this Court is also dismissed. The state of Maharashtra has also filed a special leave petition against the judgment of the Bombay High Court. It is disposed of on the same lines as the civil appeals.

11. On behalf of some of the Security Guards a writ petition was filed in Bombay High Court and it has been withdrawn to this Court to be disposed of along with the appeals. One of the contentions raised in the writ petition filed by the workmen is that the Scheme does not offer any continuity or guarantee of employment to those who are already working in factories or establishments having been engaged through agencies. We are assured by Shri K. K. Singhvi, learned counsel for the

Board that every individual registered Security Guard who was previously working in a factory or establishment will be allotted to the same factory or establishment and if the total package of the terms and conditions of his service were better than the terms and conditions of service offered by the Board such person would be employed on the previous terms and conditions of service. The assurance of Shri Singhvi is made part of our order. The learned counsel for the workmen also urged that there was an insistence upon payment of 'capitation fee' and sponsoring by a union before a Security Guard was registered under the Scheme. This of course is not permissible under the Act or the Scheme and whatever has been so insisting will desist from doing so.

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