SUPREME COURT OF INDIA

Krantikari Suraksha Rakshak Sanghatana

Vs

Bharat Sanchar Nigam Ltd.

Civil Appeal Nos. 4473-4474 of 2002

(Dr. Arijit Pasayat, Lokeshwar Singh Panta and P. Sathasivam)

25/08/2008

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted in SLP (C) No.13553/2007.

2. In these appeals challenge is to the judgment of the Bombay High Court dismissing a batch of writ petitions filed by the appellants who are trade unions in the writ petitions. The principal contention was that once Security Guard Board constituted under the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 (in short the `Act') allots guards to a principal employer, it looses the power to recall, re-allot or transfer such guard as the guard so allotted becomes an employee of the principal employer. By the impugned judgment the High Court held that the main contentions advanced by the Unions were covered by a series of judgments of earlier Division Benches as well as of learned Single Judges of the High Court which were binding upon it. Nevertheless, the Division Bench also examined the acceptability of contentions advanced and ultimately held that the contentions were without substance.

3. Stand of the appellants in short is as follows: Under the Act and the Scheme framed thereunder the security guards, on allotment by the Board to an employer/principal employer, become the employees of that Principal Employer.

The exploitation of around 70,000 private security guards employed through agencies in Maharashtra was extreme and notorious. It has been set out in detail by His Lordship Justice P.B. Sawant, as His Lordship then was, in the case of M/s. Tradesvel Security Services Pvt. Ltd. Vs. State of Maharashtra (84 BLR 604). It was to ensure that such exploitation could no longer take place that the Board was set up by the State Government and given certain supervisory powers. The Board is thus nothing but a statutory recruitment/allotment body invested with certain powers to oversee the master-servant relationship which exists between the guards and registered employers to whom they are allotted, in the context of the historical gross exploitation of this section of the workers in the state. The mere fact that such powers are given to a Board by statute does not mean that the master servant relationship does not exist between the guards and registered employers to whom they are allotted. It is always open for this relationship to be regulated by statute.

It is an anathema to Indian industrial law that a servant cannot have a master. Thus, an employer for the registered guards has to be identified. The Board cannot be held to be their employer, and it is not its case that it is the employer.

4. Strong reliance is placed on a decision of this Court in Vizagapatnam Dock Labour Board v. Stevedores Assn. Vizagapatnam and Ors.(1970 (2) SCR 303). This Court held that the registered employer to whom the labour force is allotted by the board is the employer whose work of loading and unloading of ships is done by the dock workers allotted to them.

5. It is pointed out that this conclusion was arrived at despite the circumstances that on recruitment and registration of the dock labour force, fixation of wages and D.A., payment of workmen's compensation, taking of disciplinary action, prohibition of employment of workmen who were not registered with the board, categorization and fixation including increase or decrease in the number of dock workers and transfer and promotion of dock workers were done by the board. Reliance has also been made on several judgments of learned Single Judge of the Bombay High Court.

6. It is pointed out by the respondents that the entire batch of writ petitions before the High Court to which these appeals relate are concerned with Security Guards supplied by the statutory board to principal employers and have nothing to do with private security agencies or agency guards. All the principal employers involved in these appeals had at the concerned time been using Board guards i.e. those recruited and selected by the Board post 1987 to various principal employers.

7. Under Clause 3 of Section 2 of the original Act "employer" means the person who has ultimate control over the affairs of the factory or establishment where the security guard is employed.

Under the said Act, as amended, with effect from 29th April, 1996:-

(i) Clause 3 of section 2 provides that employer in relation to security guards in the direct employment of an agency or agent and deployed in a factory or establishment through such agency or agent means such agency or agent.

ii) Clause 8 of section 2 states that `Principal employer' in relation to any security guard deployed in a factory or establishment by an agency or agent or board means the person who has ultimate control over the affairs of the factory or establishment.

8. Thus, under the original Act as well as under the amended Act the person who has ultimate control over the affairs of the factory or establishment where the security guard is deployed is his employer.

9. As per Clause 26(4) of the unamended Scheme (and Clause 24 (4) of the amended scheme), the security guard must work under the supervision, control and direction of the person who has ultimate control over the affairs of the factory/establishment where he is deployed. Therefore, under the tests laid down by this Court for establishing the master-servant relationship as in the case of Dharangadhara Chemical Works Ltd. v. State of Saurashtra (1957 SCR 152), Mangalore GaneshBeedi Works etc. v. Union of India etc. (AIR 1974 SC 1832), Silver Jubilee Tailoring House and Ors. v. Chief Inspector of Shops and Establishments and Anr. (1974 (3) SCC 498), Hussainbhai, Calicut v. The Alath Factory Thezhilali Union, Kozhikode and Ors. (1978 (4) SCC 257) and Indian Petrochemicals Corporation Ltd. and Anr. v. Shramik Sena and Ors. (1999 (6) SCC 439) the person who has ultimate control over the affairs of the factory or establishment where the security guard is deployed, is the employer of the guard.

10. Sections 19, 20 and 21 of the Act, specifically state that for the purpose of the Act mentioned therein the employer is the person who has control over the factory or establishment where the security guard is employed, since admittedly, wages are paid by that person though it may be at times through the medium of the Board for convenience.

11. With reference to Section 1(4) of the Act it is pointed out by the respondent that it applies to persons who worked as security guards in any factory or establishment but who are not direct and regular employees of the factory or establishment as the case may be. Reference is also made to Section 2 (1) stating that in this Act unless the context otherwise requires `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 of the Board.

12. Section 2(10) defines a `Security Guard'. It is pointed out that though there is no dispute that the respondent in each case is the principle employer but the prayer made in the writ petitions cannot be accepted in view of what is stated in Section 1(4). Section 2(3) defines the `employer'. It is also submitted that earlier also similar petition had been filed and notwithstanding adverse adjudication, the Unions are still persisting in pursuing the claims which had already been rejected.

13. Learned counsel for respondents in Civil Appeal No.4477 of 2002 has submitted as follows:

(a) The Maharashtra Private Security Guards Act and Scheme framed thereunder constitute a complete and self-contained code;

(b) Security Guards who seek registration with the statutory Board and are allotted to different principal employers by the Board continue to be members of the "Pool" as defined in Clauses 4(f) and 4(g) of the 1981 Scheme which is defined as the "Board Pool" in Clause 3 (c) of the 2002 Scheme and consequently continue to be subject to common seniority maintained by the Board (Clause 16 of 1981 Scheme) and Clause 15 of 2002 Scheme transfers by the Board, disciplinary action including termination by the Board (Clause 31 of 1981 Scheme) and Clause 32 of 2002 Scheme.

(c) The power to recruit, selects, appoint, allot, promote, transfer, take disciplinary action, and terminate employment of a registered security guard in the "Pool" or "Board Pool" is vested exclusively in the statutory Board.

(d) The principal employer has no power whatsoever except to issue routine directions in the course of day to day security work. Even Security Supervisors and Security Officers are supplied/allotted by the Board, and these Supervisors and Officers function under the control of statutory Inspectors appointed by the Board;

(e) The Appellant's argument that a security guard allotted to a principal employer becomes the employee of that principal employer, and equally the argument that the Board's power to allot is a one-time power which gets exhausted once allotment is made, is completely misconceived and ignores virtually all the provisions of the Act and Scheme;

(f) Among other things, this argument ignores Section 1 (4) of the Act, which specifies that the Act applies only to those security guards "who are not direct and regular employees of the factory or establishment, as the case may be". If the Appellant's argument is accepted, the guards upon allotment will become direct and regular employees of the principal employer, and thereby will go out of the purview of the Act and Scheme, thus losing the entire protection of the statutory provisions. It also ignores the provisions of the Scheme, which apply only to guards who are in the "Pool" or are "Pool Security Guards" (under the 1981 Scheme) and are in the "Board Pool" (under the 2002 Scheme). If guards were to become employees of the principal employer upon allotment, the entire Scheme would cease to apply to them instantly upon being allotted to a particular employer;

(g) If the Appellant's arguments are accepted, it would mean that the entire Scheme would become nugatory and redundant. It is important to note that the 1981 Scheme applied only to guards recruited, appointed and allotted by the Board (the 2002 Scheme also applies in addition to guards employed by private security agencies, with which these appeals are not concerned. Insofar as the Board's guards are concerned, the entire provisions of the Scheme are dependent upon their continuing to be controlled by the Board after allotment. The Appellants' argument would completely defeat these provisions and render the entire Scheme into a dead letter.

(h) In any event, all these arguments have time and again been considered and rejected by the Bombay High Court, and applying the principle of stare decisis, the Judgments of the High Court which have held the field for the past 25 years ought to be upheld and affirmed.

(i) Without prejudice to the above, in any case the present appellants are barred by res judicata, or principles analogous thereto, from raising such arguments, as the very same submissions have time and again been rejected by the Bombay High Court in proceedings filed by the appellant Union, and the said Judgments having gone unchallenged by the present appellant, they have become final and binding against the Krantikari Suraksha Rakshak Sanghathan.

14. It is pointed out that only four grounds were urged by the High Court and each one of them has been dealt with. It is also pointed out that Sections 19, 20 and 21 specifically provide for application of certain Act to the Security Guards. These are Workmen's Compensation Act, Payment of Wages Act and Maternity Benefits Act which shows what for these specific statutes are. No further Statute dealing with employer and employee relationship and their rights thereunder is made applicable or available to the Security Guards. In other words, the provisions of the Act make it

clear that it is only these statutes which have been specifically made applicable to the Security Guard and accordingly, other statutes are clearly excluded.

15. Reference is also made to Schemes of 1981 and 2002.

16. On consideration of rival submissions one thing is crystal clear that the appellants based their case on the decision in Vizagapatnam Dock Labour's case (supra). The respondents on the other hand relied on several earlier judgments of the Bombay High Court, a few of which were deciding petitions filed by some of the appellant's Union, and in Writ Petition No.2671 of 1992 the claim of direct employment with the principal employer by allotment by the Board was agitated and was rejected by a Division Bench consisting of Hon'ble Mrs. Justice Sujata Manohar and Hon'ble Mr. Justice S.H. Kapadia. The Bench inter-alia observed as follows:

"7. The petitioners had relied upon a decision of the Supreme Court in the case of Dock Labour Board v. Stevactoras Assoco reported in AIR 1970 SC page 1826 at page 1632. The Supreme Court while considering the Scheme framed under the Dock Workers (Regulation of Employment) Act, 1948 had discussed the position of the Dock Labour Board under the Scheme. The Supreme Court observed in this connection that the purport of the Scheme was that the entire body of workers should be under the control and the entire body of workers should be under the control and supervision of the Board. But the Board cannot be considered to be the employer of the Dock Labour Workmen. After discussing the various provisions of that Scheme, the Supreme Court said that the registered employer to whom the labour force is allotted by the board is the employer whose work of loading or unloading of ships is done by the workers allotted to them. The Supreme Court was not concerned in that case with the question whether the Board had the power to allot labourers to another registered employer or not. The mere fact, therefore, that the certain purposes the employees is considered as an employees of the registered employer under the Dock Labour Scheme is not of any assistant to the petitioners in the present petition. In fact, it was pointed out by Mr. Devitre, Ld. Counsel for the 1st respondents that under sections 19, 20 and 21 of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1951, the Board shall be deemed to be the employer of registered security guards for certain purposes as set out in these sections. Therefore, the above decision of the Supreme Court does not assist the petitioners in the present case.

8. The Secretary of the 2nd respondent's Board has set out in his affidavit that the security guards who were working with the Ist respondents at Sewri and Wadala Units had become, by reason of their length of posting familiar with the employees and outside parties like suppliers and transporters. It was, therefore, felt necessary for better security, that the security guards should be rotated by the Board sending a fresh allotment. The 2nd respondent Board therefore agreed to rotate the security guards batchwise. It accordingly transferred five security guards working in the Wadala Unit to other establishments in the year 1992. No dispute was raised at that stage. The petitioners have filed this petition now on an apprehension that they may all be allotted to other employers. No

orders, however, of a fresh allotment have been issued as far as the petitioners are concerned, except for the five employees who were sent to other establishments in 1992.

9. It is also necessary to note that the service conditions of the petitioners are not going to be adversely affected even if they are allotted to other registered employers. The 2nd respondent has stated that if the petitioners or any of them are withdrawn from the Ist respondent such a withdrawal will be concomitant with their allotment to another registered employer. In these circumstances we also do not see any prejudice to the petitioners who also do not see any prejudice to the 4th petitioner who are fully protected under the said Scheme."

17. It is clear that virtually all the arguments which are now being advanced were also advanced earlier and each one was specifically dealt with and rejected. It was held that Vizagapatnam Dock Labour's case (supra) was clearly distinguished and had no application. Earlier to that Justice P.B. Sawant (as he then was) by judgment dated 2.11.1982 dealt with the matter at great length. By the said judgment, the Hon'ble Judge upheld the constitutional validity of the Act and the Scheme and it was held that (a) the Act was a complete and self contained code; (b) the Board had all necessary powers under the Act to regulate all aspects of employment and all service conditions of private Security Guards;

(c) There was no need under the Act and the Scheme to identify the employer of Security Guards as all conditions of their employment were governed by the Act; and (d) if at all there was any conditions of service which are not regulated or covered by the Act and the Scheme then for such conditions only the principal employer would be treated as the employer of the Security Guard.

18. The judgment in Vizagapatnam Dock Labour's case (supra) was distinguished and it was held that the Dock Labour Act and the scheme thereunder were different from the Act and Scheme. It appears that the appellant- Krantikari Suraksha Rakshak Sanghatana made another attempt to raise the same issues. They were negatived by Justice B.N. Srikrishna as he then was. The learned Judge expressly followed the judgment of Justice P.B. Sawant holding that there was no need to identify the employer as it was complete and self-contained code. It was however held that if there were any aspects not covered by the Act, such as `unfair labour practice" which was not involved the principal employer would be treated for the limited purpose be identified as the employer. It was inter alia observed as follows:

22. "Mr. Singhvi submitted that he was really not interested in urging that the Security Guards Board was the employer of the Security Guards under the Security Guards Act and the Security Guards Scheme. He was at pains to contend that under the terms of the Security Guards Scheme, a registered employer would become the employer of the Security Guard from the moment the Security Guard was allotted to the registered employer. Before dealing with this contention, I might dispose of the subsidiary contention of Mr. Singhvi which appears to be no longer tenable. Mr.

Singhvi contended that though Clause 16 of the Security Guards Scheme bears the heading "Promotion and transfer of Security Guards", there is no provision whatsoever contained in the entire Clause 16 with regard to transfer of Security Guards. Hence, the Security Guards Board has no power to transfer a Security Guard from one establishment to another, in the submission of Mr. Singhvi. He contends that the power of allotment of Security Guards to the industrial establishment of the registered employer possessed by the Security Guards Board is exhausted upon one time exercise thereof. Once the Security Guard is allotted to a registered employer, the power is exhausted and there is no further power in the Board directly or by implication, under the Security Guards Scheme, to withdraw the Security Guard and to re-allot him to another registered establishment. Though prima facie attractive this contention is not sound in my view, apart from being no longer res integra.

23. The Division Bench of this Court in Suraksha Rakshak and General Kamgar Union v. M.S.S.I.D.C. and Ors. (Writ Petition No.2671 of 1992 dated 23rd March, 1993 per Smt. Sujarat Manohar and S.H. Kapadia, JJ) has considered and rejected this contention. The Division Bench pointed out that direct employment and coverage under the Act are anathema to each other. In view of the specific provisions in the Security Guards Act under Section 1(4), the Act would apply to persons who work as Security Guards engaged in any factory or establishment, but are not direct and regular employees of the industrial establishment. Secondly upon examination of the provisions of the Scheme the Division Bench took the view that the Security Guards Board has the additional power to allot registered Security Guards to any registered employer and also terminate the employment and these powers would include the power to withdraw allotment to a given registered employer and re-allot the guard to another registered employer. The requirement of a registered employer may vary from time to time and commensurately the Board is entitled to adjust the allotment from time to time. The Division Bench also pointed out that both the power of allotment as well as the power of termination are with the Board and a proper implementation of the scheme requires that the Board to possess the power to allot Security Guards to such registered employer as it thinks fit and there is nothing in the scheme to indicate that the allotment once made is irrevocable or cannot be changed. The fact that when a Security Guard is on leave the Board has the power to allot another Security Guard also indicates that the allotment of Security Guards is entirely under the control of the Board and the Security Guard cannot claim a right of permanent allotment to any particular registered employer. In my view looking to the observations and the findings made by the Division Bench (supra) the contention of Mr. Singhvi cannot be accepted. Under Clause 26(8) of the Security Guards Scheme where an employer makes persistent default of payments of wages and allowances and levy to the Board, the Board has the right to suspend supply of the Security Guards. The existence of such a power of suspension of supply of registered Security Guards is a registered employer spells out the existence of the power of withdrawal of the Security Guards.

24. Mr. Singhvi then contended that the historical background of the legislation shows that the Security Guards Act was intended to abolish the agents or middlemen, to abolish the practice of hire and fire and to provide better and more secure employment to Security Guards. According to him, this can only be ensured if the principal employer is held to be the employer of the Security Guards. It is difficult to accept the contention as urged by the learned counsel. It may be possible upon analysis of the detailed provisions of the Security Guards Scheme, to postulate that for certain

purposes the registered employer may be held to be the employer of the registered Security Guards, but it is not possible to accept the contention that upon allotment of a Security Guard to a registered employer, the registered employer should be held to be the employer of the Security Guard for all purposes.

In para 55 it was inter-alia observed as follows:

"(a) Writ Petition No.45 of 1991

The findings of the Third Labour Court, Thane, dated 13th July, 1990 and of the Industrial Court in its order dated 4th December, 1990 taking the view that a complaint under the Maharashtra Recognition of trade unions and Prevention of Unfair Labour Practices Act, 1971 against the registered employer under the provisions of the Security Guards Act, 1981 and the Security Guards Scheme, 1981 is not maintainable is hereby quashed and set aside. It is held that such a complaint on behalf of the Security Guards would be maintainable against the registered employer under the Security Guards Scheme, 1981.

On the merits of the complaint, however, it appears that the only grievance made was that the Board had no power to redeploy a Security Guard from the establishment of the Second respondent Employer's establishment to any establishment. The act of the Board in withdrawing the Security Guards from the establishment of the Second Respondent Employer and posting them elsewhere was alleged to be an unfair labour practice and relief was claimed there against. On merits, I do not see how any relief could have been granted. Following the Division Bench judgment of our High Court, I am of the view that the Board has full power to withdraw a Security Guard from the establishment and post him to any establishment of another registered employer. Since there was no other relief prayed for in the complaint the finding of the Courts below that the complaint was liable to be dismissed even on merits is correct and liable to be upheld. Hence, there is no need to remand the complaint for retrial. In the result, Writ Petition No.45 of 1991 is hereby dismissed. Rule discharged with no order as to costs.

(b) Writ Petition No.1409 of 1993.

The order of the Industrial Court dated 16th December, 1992 in Complaint (DLP) No.342 of 1992 holding that the complaint was not maintainable and that it had no jurisdiction to entertain the complaint is hereby quashed and set aside. It is held that the complaint is maintainable and that the Industrial Court has jurisdiction to try the complaint. On merits, the learned Judge of the Industrial Court has held that no unfair labour practice under Item No.1 (a) of Schedule II of item Nos. 5, 6 and 9 of Schedule IV of the ULP Act had been proved and dismissed the complaint. Even the

findings appear to be correct. The petitioner Union had taken the stand that it did not desire to lead any evidence in the complaint, though the allegations had been denied by the employers. Consequently, even though I have held that the complaint is maintainable there being no evidence of unfair labour practice, the complaint must fail on merits. Though Mr. Singhvi vehemently argued that I may consider remanding the complaint for re-trial after giving opportunity to the petitioner Union to lead evidence on merits, I decline to do so. In the circumstances, it is not possible to accede to the request of the learned Advocate. This petition also fails on merits. Hence, this writ petition is dismissed and the rule is discharged with no order as to costs.

Writ Petition No.3862 of 1993-

In this case also the Security Guards were withdrawn from one establishment of the second respondent Employer and re-allotted to another establishment. This act of the Board was alleged to be an unfair labour practice on the part of the registered employer and the Board. It was also contended in the complaint that the Board had no power whatsoever to withdraw the Security Guards once allotted. Following the view of the Division Bench of our High Court, I am of the view that the Board has such power. The complaint in this writ petition must therefore fail on merits and remand would serve no purpose. Consequently, this petition is also dismissed and the rule is discharged with no order as to costs."

19. In this case also Vizagapatnam Dock Labour's case (supra) was relied upon by the Union. But the High Court held that it was rendered in respect of a different Act and Scheme. This judgment was also not challenged by the appellant-Union.

20. It is interesting to note that another Writ Petition No.3887/1988 was filed before the Division Bench which was decided on 6.5.1997 and the judgment in W.P. 2671 of 1992 was followed and it was held that the power of allotment included within it the power to recall, re-allot and transfer and that under the entire Act and Scheme would be defeated if the argument of direct employment was to be accepted. The conclusions arrived at are as follows:

"16. The second argument that the Board has no power of withdrawing a Security Guard once allotted is also devoid of any merit. If the power to withdraw and re--allot is not with the Board then formation of pool for the Security Guards would be rendered meaningless. Taking into consideration the provisions of the Act and the entire Scheme as framed under the Act, it indicates that if the Board has power to allot a Security Guard available in a pool, it will have to be held that the Board has a power to withdraw a Security Guard from one establishment and allot him to another establishment. We are of the opinion that considering the Act and the Scheme and to proper and smooth functioning of the said scheme, it will have to be held that the Board has power to withdraw a Security Guard from one establishment and to re-allot him to another establishment and we must mention at this stage that Shri Mahanty who was withdrawn on 4th of July 1988 was

immediately re-allotted on 5th of July, 1988. Thus we conclude that the power of allotment as available with the Board carries with it the necessary incidence of power of withdrawal and re-allotment from the pool.

17. In fact, the same issue was agitated before the Division Bench of this Court in Suraksha Rakshak and General Kamgar Union (supra) and the Division Bench while dealing with the argument that under the Scheme once the Security Guard is allotted by the Board to a registered employer, the Security Guard becomes permanent allottee and the Board has no power to withdraw an allotment or give a fresh allotment with any other registered employer, and after considering the Act and the Scheme, has held that the Board has power to withdraw an allotment of a Security Guard given to a registered employer and re-allot the Guard to another registered employer. The requirements of a registered employer may vary from time to time and the Board is entitled to adjust the allotment from time to time. The Division Bench in paragraph 6 of its judgment has also observed as follows:

"The Scheme, therefore, must be looked at as a whole and proper implementation of the Scheme requires that the Board has the power to allot security guards to such registered employer as it thinks suitable. There is nothing in the Scheme to indicate that the allotment once made is irrevocable or cannot be changed".

Thus, in our opinion, the issue has been conclusively answered by the Division Bench in the case of Suraksha Rakshak and General Kamgar Union (supra) and needs no further elaboration."

21. Here again, reference was made to Vizagapatnam Dock Labour's case (supra) and held that there was conceptual difference between the Act and the Scheme involved in that case and the case at hand.

22. As noted above, four Writ Petitions had been filed primarily on four grounds. The High Court by the judgment after referring to the earlier judgments held that the power of allotment clearly included within its power to recall, re-allot and transfer of Security Guards. In this context, reference was made to Section 1(4) of the Act to which earlier also reference had been made by the Division Bench in noting that its application was excluded in respect of direct employees and therefore the argument of direct employment if accepted would deprive the Security Guards of the protection under the Act. Second ground related to the stand that on allotment Security Guard becomes a direct employee of the principal employer. Here again, after referring to the judgment of Justice P.B. Sawant and a decision of this Court in Security Guards Board v. State of Maharashtra (1987 (3) SCC 413) it was held that the provisions for seniority, promotion and transfer in Clause 16 of 1981 Scheme would be rendered ineffective and would cause great harm to guards if they were denied the benefits of common pool seniority and promotion merely because of a fortuitous allotment in the particular principal employer. The other two grounds related to Contract Labour

(Regulation and Abolition) Act, 1970 (in short Contract Labour Act') and the rules framed thereunder.

23. The High Court referred to an earlier petition filed by the same appellant namely, Krantikari Suraksha Rakshak Sangathana v. S.V. Naik (1993 (1) CLR 1003) and held that the Act was a self contained and complete code and unreported judgment of Justice P.B. Sawant as he then was and Justice M.P. Kania dated 15.1.1988 in Writ Petition No.1172 of 1987 held that the Act is a special statute which not only prevails over the Contract Labour Act but further that the Act also prevails because of Article 254 (2) of the Constitution.

24. Apart from the fact that in several earlier petitions the appellant- Union had unsuccessfully come up with very same pleas and the orders had attained finality. Issue cannot be permitted to be indirectly raised in the manner done. The Act and the schemes make it clear that they apply only to security guards who are "Pool Security Guards". As stated earlier the Act and the Scheme clearly constitute a complete and self contained code which covers private Security Guards. Section 1(4) of the Act and various provisions of 1981 and 2002 Schemes make it clear that the arguments that the guard once allotted with the principal employer he becomes the direct and regular employee of the principal employer is without any substance. As rightly noted by the High Court the provisions of the Act and the statute make it clear that the Board's power of allotment carries with it the implicit and inherent power to recall, re-allot and transfer a guard from one principal employer to another. It needs no emphasis that the power to appoint carried with it the inherent power to terminate. Therefore, the power to allot necessarily carries with it the inherent power to re-allot or cancel the allotment. It is also seen that both under the 1981 and 2002 Schemes certain clauses provide for transfer of guards. It is also significant that under both the Schemes there is provision for continued supervision, control, disciplinary powers and powers of termination vested in the Board.

25. As has been rightly contended by learned counsel for the respondents, Sections 19, 20 and 21 of the Act specifically provide for application of certain Act to Security Guards. In other words, these specific statutes have application. Other statutes are dealing with employer and employee relationship and the rights thereunder which are made applicable to Security Guards. To put it differently, only the statutes clearly indicated are applicable to Security Guards. Other statutes are clearly excluded.

26. Looked at from any angle, the appeals are without merit, deserve dismissal which we direct. No costs.