

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 7th May, 2015

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LPA 669/2014

LT.COL. H. K. BASOYA (RETD.) & ANR Appellants

Through: Mr. T.K. Joseph, Adv.

Versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Ankur Chibber, Adv.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra-court appeal impugns the judgment dated 22nd September, 2014 of the learned Single Judge of dismissal of W.P.(C) No.4399/2014 filed by the two appellants. The appeal came up first on 29th September, 2014 when after hearing the counsel for the appellants for some time, an opportunity was given to him to submit a detailed note with respect to the submissions being made. A note was so submitted. The counsel for the appellants was further heard on 11th November, 2014 when the counsel for the respondents also appeared and with consent, arguments were heard finally and judgment reserved.

2. The writ petition from which this appeal arises was filed pleading:

- (i) that the two appellants i.e. Lt. Col. H.K. Basoya (Retd.) and Col. Amitabh Amit (Retd.) on their respective retirement from the Armed Forces (the date of retirement is not given) empanelled themselves on 9th October, 2009 (this date is also from the synopsis and list of dates and not given in the appeal / petition) as individual proprietorship security agencies with the respondent No.2 Director General Resettlement (DGR), Department of Ex-Serviceman, Ministry of Defence, in accordance with the then prevalent policy, to self-employ themselves in the name and style of Shakti Security and FM Services and Arrow Manpower Solution respectively;
- (ii) that on 9th February, 2010, the two appellants merged their respective enterprises to form a private limited company in the name and style of Siona Security & Management Services Pvt. Ltd. with both of them as Directors and an Empanelment Certificate dated 12th February, 2010 was issued by the respondent No.2 DGR to them and which certificate was valid from 12th

February, 2010 to 11th February, 2014 (or 65 years of age of the youngest Director or cancellation of empanelment whichever is earlier) and Clause 7 whereof is as under:

“7. The above mentioned security company is not to exceed quota of 300 guards per ESM Director (cumulatively during his entire empanelment, re-empanelment and renewal period).”

- (iii) that the respondent No.2 DGR vide OM dated 9th July, 2012 effected many drastic changes in the sponsorship norms and which was challenged in civil writ petitions before this Court and which writ petitions were disposed of on the assurance of the respondent No.2 DGR that it was in the process of amending the OM dated 9th July, 2012;
- (iv) that the OM dated 9th July, 2012 though was amended vide OM dated 16th January, 2013 but certain grievances of the appellants still remained and qua which a representation dated 14th October, 2013 was made by the appellants;
- (v) that upon the aforesaid representation remaining unaddressed, W.P.(C) No.2983/2014 was filed by the appellants and which was

disposed of with the direction to the respondents to dispose of the representation within a certain time;

- (vi) that the respondents vide letter dated 10th June, 2014 rejected the representation, without addressing the issues raised therein and by merely observing that the policy decision contained in the OM dated 9th July, 2012 as amended on 16th January, 2013 had been taken after much deliberation and after considering the views of various stake holders and since the new policy was issued only in January, 2013, the suggestions of the appellants will be considered as and when it was decided to modify the guidelines in future;

The writ petition was filed, seeking a direction to the respondents to grant sponsorship of security services to the appellants in terms of revised entitlements set out for ex-servicemen who got empanelled post 9th July, 2012 and a direction to remove the discriminatory clause at para No.4 of the OM dated 9th July, 2012 as amended vide OM dated 16th January, 2013.

3. The respondents contested the writ petition by filing a counter affidavit and to which a rejoinder was filed by the appellants.

4. The learned Single Judge has vide the impugned judgment dated 22nd September, 2014 dismissed the writ petition, finding / observing / holding:

- (a) that the principal grievance of the appellants was that the persons empanelled after 9th July, 2012 would be given a higher quota of guards vis-à-vis the appellants who were empanelled prior to 9th July, 2012;
- (b) that this according to the appellants was discriminatory and violative of Article 14 of the Constitution of India;
- (c) that according to the appellants cut-off date of 9th July, 2012 is arbitrary and discriminatory inasmuch as the revised policy is more beneficial and the appellants who were empanelled prior to 9th July, 2012 are denied its benefit;
- (d) that the aforesaid contentions of the appellants were without merit inasmuch as the appellant continued to have the benefits available to them under the policy as in force at the time of their empanelment and merely because a different scheme / policy that is perceived to be more beneficial is available to persons empanelled after 9th July, 2012, would not justify allegations of

hostile discrimination inasmuch as Article 14 forbids class legislation but does not forbid reasonable classification;

- (e) that the revised policy has been put in place prospectively and the appellants who had availed benefit under the earlier policy cannot claim to be at par with persons who have empanelled subsequent to 9th July, 2012;
- (f) that the ex-servicemen who had agreed to be empanelled under a particular scheme and had partially availed of the same, cannot seek parity with those to be empanelled under the revised policy.

5. The contention of the counsel for the appellants before us was that while under the policy applicable to those empanelled prior to 9th July, 2012, sponsorship was of 75 guards per ex-serviceman (ESM) every year subject to a cumulative total of 300 whereafter it ceased and in the case of security agencies run as a private limited company, sponsorship of 75 guards per ESM Director every year subject to cumulative total of 300 guards whereafter sponsorship ceased, under the policy applicable to those empanelled after 9th July, 2012 sponsorship was of 70 guards per year and the restriction on cumulative / total sponsorship stands removed and the private limited company format of running

security agency has been removed. The counsel for the appellants argued that thus while a ESM empanelled before 9th July, 2012 could have sponsorship of 75 guards per year for maximum of four years only, an ESM empanelled post 9th July, 2012, if retired at the age of 30 years, without any cumulative limit on sponsorship and with only limit of 60 years of age, could have a sponsorship for the entire remaining 30 years till attaining the age of 60 years i.e. of $70 \times 30 = 2100$ guards. It was thus argued that the limit of 300 guards on cumulative sponsorship applicable to the appellants be also removed. It was yet further contended that the learned Single Judge failed to notice that the cut-off date of 9th July, 2012 was for empanelment and not the date of retirement and it was thus possible that two ESMs, both retired on the same day, with one choosing to empanel immediately before 9th July, 2012 and the other choosing to empanel after 9th July, 2012, would be treated differently.

6. Though the appellants in the note handed over have also highlighted several other changes in the policy but having confined the oral arguments to the aforesaid aspect, we are not dealing with the other changes in the policy mentioned in the said note.

7. The appellants in the writ petition from which this appeal arises, in para 3(a) and (b) have pleaded that

“a. armed forces personnel are kept away and isolated from mainstream civil society during their service period because of which they tend to face serious difficulties after retirement, particularly so due to early ages of their retirement. It is to reduce such difficulties in integration back with the civil stream that Respondent No.2 has been created, specifically to provide opportunities to the ex-servicemen to ameliorate such difficulties faced by them.

b. as per policy formulated by the Central Government, issued by the Department of Public Enterprises, public sector undertakings and other agencies of the State are obliged to employ security agencies sponsored only by the Respondent No.2 DGR; to provide the ESMs who have to retire at early ages with a livelihood opportunity”.

8. A perusal of the “Instructions for Functioning of DGR Empanelled EX-servicemen Security Safety and Fire Protection Management Agencies” issued by the respondent No.2 DGR also shows that the aim thereof is to “provide” equal opportunity to ESMs retiring each year and registering with the DGR.....” subject to the ESM “not having availed of any employment / self-employment opportunities through DGR” and the ESM “should not be

employed elsewhere”. Clause 26, 37(a) and (j) and 38 of the said policy is as under:

“RE-SPONSORSHIP

26. *An agency is initially sponsored to the Principal Employer for a period of one or two years. On the recommendation of the Principal Employer the same agency may be re-sponsored as per norms laid down of quota of guards and age limit. It is also mandatory that there is no complaint outstanding against the agency and that it has been sending reports and returns as specified in these instructions. However, no agency will be sponsored for at a location beyond four years. It is expected that within this period the ESM Security Agency would have established itself and expanded its operation as a security service provider into the civil business and industry. This is also to provide an opportunity to newly retired ESM to avail of such opportunities.”*

DISEMPANELMENT

37. *Agencies will be removed from the panel of DGR under the following conditions:-*

(a) *Once the agency has achieved the quota of guards / has completed four years of contracts or if the director attains the age of 60 years whichever is earlier. In any case sponsorship / responsorship will not be done beyond 60 years of age. In case of ESM Pvt. Ltd. Company, the age of eldest director will be considered.*

(j) *Any officer is entitled to only one benefit through the DGR.*

38. *The decision of the DGR in this regard will be final and binding.*”

9. The office memorandum dated 9th July, 2012 is titled “Guidelines for Functioning of DGR Empanelled Ex-servicemen for Security Services” and Clause 2 thereof *inter alia* states “In order that larger number of individual ESMs can avail sponsorships from DGR and also ensure reasonable income to the ESMs, provisions are made to make the process of sponsorships for security agencies more transparent through.....” and amends the guidelines in supersession of the earlier orders / instructions. Under the same, only the individual ESM security agency and State Government owned ESM corporations are eligible for empanelment and private limited companies, even if with ESMs only as Directors, are not eligible for empanelment. However, in Clause 4 thereof existing private limited companies, as the company formed by the appellants herein, already operating security services have been permitted to continue to function till they complete their quota of guards years, subject to age bar criteria, without being permitted to add new Directors. The said Clause 4 was amended vide OM dated 16th January, 2013 as under:

“All individual security agencies and Private Limited Companies empanelled prior to 9th July, 2012 will be governed by the old guidelines on security agencies in respect of age and cumulative quota of guards

without being permitted to add new Directors. Thus security agencies empanelled prior to 9th July, 2012 will be governed by the old rule of 63 years of age / cumulative quota of 300 guards whichever is earlier.”

10. Though the OM dated 9th July, 2012 as amended by OM dated 16th January, 2013 does not provide any ceiling on the number of guards to be sponsored and only provides that the quota for each sponsored ESM will be upto 70 guards per year but thereunder also, the sponsorship is to be valid for two years and extendable upto the age of 60 years. Thus while under the old policy, the ESM after availing the sponsorship of 75 guards per year for four years i.e. of 300 guards could not have obtained further sponsorship even if below 63 years of age which was the age thereunder, under the new policy sponsorship of the ESM of 70 years per year is extendable till the ESM attains the age of 60 years and which may result in ESM having more than 300 sponsors in all. Nevertheless, Clauses 15(a), (b) and (d) of the OM dated 9th July, 2012 provide as under:

“15. **Quota of Guards**

(a) *Individual ESMs: The quota for each sponsored ESM will be upto 70 guards year. The sponsorship will be valid for 2 years and extendable up to the age of 60 years. The sponsorship will clearly indicate the date up to which the sponsorship is valid. However, actual sponsorship will depend on demand and there will be no*

guarantee in this regard. The above figure is the upper limit for the present, which may be amended based on demand, etc.

(b) The empanelment will be renewed every 3 years.

(d) The CPSUs will seek fresh sponsorship / re-sponsorship from DGR, 3 months prior to this date. It will issue a satisfactory performance report, if seeking re-sponsorship. For existing private limited security agencies, the date upto which such sponsorship is valid will be clearly indicated and allowed to complete this term. The CPSUs will be informed by DGR in this regard. However no additional director will be permitted.

(One Guard Year is defined as One Security Guard employed for 12 months).”

And Clauses 19 and 20 thereof are as under:

“19. Sponsorship / Re-sponsorship

All sponsorships / re-sponsorships will be done in cyclic order of seniority of registration for a period of two years extendable by two years at a time, available quota of guards and subject to satisfactory performance report received from the concerned Principal Employer. All sponsorships / re-sponsorships will be done / by duly constituted Board of Officers (BOO) in accordance with the guidelines. All new sponsorship / re-sponsorship will be in individual names of ESMs / ESM Corporations.

20. *The sponsoring letter / re-sponsoring letter should clearly indicate the date in bold letters up to which the sponsorship will be valid.”*

11. What we understand from the pleadings of the appellants in the writ petition as well as the “Instructions for Functioning of DGR Empanelled EX-servicemen Security, Safety and Fire Protection Management Agencies” and the OM dated 9th July, 2012 is that the whole purpose of requiring the public sector undertakings / enterprises to take security cover from security agencies sponsored by the respondent No.2 DGR and of under the old policy limiting the total number of sponsorships to which each ESM was entitled, was to initiate the ESM into the business of security agency and to provide him a readymade clientele immediately on commencement of such business rather than going and looking for business; since the requirement of security services of public sector undertakings / enterprises was limited and the number of ESMs self-employing themselves in the said business was much more, the business of providing security to the public sector undertakings / enterprises was sought to be equitably distributed amongst all ESMs. It cannot be lost sight of that while the requirement of the public sector undertakings / enterprise of security cover was / is not likely to increase year after year, the servicemen were to retire year after year. If the ESMs empanelled first with the respondent No.2 DGR were to have unlimited sponsorships for providing security covers to public sector undertakings / enterprises, the same would have resulted in no such business

being available for ESMs subsequently empanelling with the respondent No.2 DGR and in whose resettlement into civil life, the respondent No.2 DGR would have been unable to contribute. This was / is the rational of limiting the number of sponsorships.

12. Though the OM dated 9th July, 2012 as amended vide OM dated 16th January, 2013 has done away with such limits but the Clauses thereof reproduced herein-above show that the concept of equitable distribution of the business of providing security cover to the public sector undertakings / enterprises is very much contained therein also. It is for this reason, though not clearly spelled out, that the respondents in their letter dated 10th June, 2014 of rejection of the representation of the appellants have stated that the amended guidelines being new, the working thereof will be studied and suitable amendments made. It is also not as if under the new policy, the ESM shall be *ipso facto* entitled to the sponsorship of 70 guards per year till attaining the age of 60 years. The sponsorships thereunder also are valid for two years only and extendable thereafter depending upon the demand to be adjudged at the time re-sponsorship is sought.

13. We therefore do not find the policy to have changed in the respect challenged by the appellants. Rather, it appears to us that the appellants who had opted to self-employ themselves in the business of security agency with the knowledge that they will have sponsorship of 300 security guards each i.e. for four years only were expected to have in the said period of four years re-settled themselves in the civil society and cannot now be heard to complain.

14. It is for the aforesaid reasons, we agree with the view taken in law by the learned Single Judge though without giving the factual backdrop. Rather the scenario which we have observed above also gives the factual backdrop for the reason in law, of those empanelled prior to 9th July, 2012 forming different class than those empanelled thereafter, given by the learned Single Judge.

15. There is however some merit in the contention of the counsel for the appellants of making the cut off date relatable to empanelment being likely to cause discrimination between two ESMs retired on the same date but empanelled before and after 9th July, 2012. However that is not the case of the appellants before us. The appellants as aforesaid have not even chosen to plead their date of retirement. Thus we refuse to go into the said challenge, it being

the settled principle (see our judgment dated 1st May, 2015 in LPA No.551/2013 titled *Guru Gobind Singh Indraprastha University Vs. Dr. Smit Rajput*) that in constitutional matters, the Court will decide to the extent they are called upon to and no more.

16. We therefore do not find any merit in the appeal which is dismissed. We however refrain from imposing any costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

MAY 07, 2015

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