

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

% Judgement delivered on: 30.04.2015

+ **WP(C) 205/2014**

M/S APPACHES SECURITY & ALLIED SERVICES
PRIVATE LTD.

..... Petitioner

Versus

GOVERNMENT OF NCT OF DELHI & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Lt. Col. Naveen Kumar Anand, Director of petitioner company.

For the Respondents: Ms Zubeda Begum, Standing Counsel with Ms Sana Ansari, Adv.
for R-1.

Mr Ujjawal K. Jha, Advocate for R-2.

Mr Amitesh C. Mishra & Ms Vishakha Poonia, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. In a prolix paper book, running into 487 pages, the moot point which the petitioner has raised is that the contract awarded to respondent no.3 vide letter dated 28.11.2013 by respondent no.2, ought to be quashed in view of the fact that it does not possess a license under Section 4 of Private Security Agencies (Regulation) Act, 2005 (in short the Act).

2. Before I proceed further, it may be important to note that the petitioner is perhaps aggrieved by the fact that its contract with respondent no.2 got terminated, in view of respondent no.2, deciding to enter into a contract with respondent no.3.

2.1 In this context, it would be pertinent to note that the petitioner was awarded a contract by respondent no.2 on 16.05.2010, which, to begin with,

had a tenure of two years, and was, thereafter, by mutual agreement, extended for a further period of two years, with short extensions of three to four months, accorded from time to time.

2.2 Resultantly, the contract executed between petitioner and respondent no.2, which was, otherwise, to end on 15.05.2012, continued till 04.01.2014.

2.3 Evidently, on 01.01.2014, the petitioner was made aware by respondent no.2, that they intended to engage respondent no.3, with effect from 05.01.2014. The decision in this behalf was taken by respondent no.2 on 27.11.2013, when a letter of intent was issued to respondent no.3. The letter of intent was followed by respondent no.3, with a communication dated 28.11.2013, whereby respondent no.2 called upon respondent no.3 to deploy security personnel in the morning shift of 05.01.2014.

2.4 Being aggrieved, the petitioner assailed the letter dated 28.11.2013, which is also a subject matter of challenge in the instant writ petition. The earlier challenge, which was also by way of a writ petition, did not fructify, as the said writ petition was dismissed as withdrawn, on 03.01.2014, with the liberty to file a “Public Interest Litigation”, in accordance with law. This writ petition was numbered as : WP(C) 29/2014.

2.5 Immediately thereafter, within a matter of days, the petitioner filed the instant writ petition, once again, under Article 226 of the Constitution to assail, as indicated above, the very same letter, i.e., letter dated 28.11.2013. This time around in paragraph 10 of the instant petition an averment is made to the effect that the petitioner had no personal interest in the litigation, and that, it was not guided by self-gain. Assertions are thus made in consonance with Rule 9 (i) of the Delhi High Court (Public Interest Litigation) Rules, 2010.

2.6 It is in the background of these assertions, that I had asked Col. Anand, who in his capacity as director represents the petitioner, as to whether there was any public interest element in the matter. Col. Anand contended that since, the decision impugned impacted the petitioner, there was to that extent a private interest obtaining in the matter. Based on this assertion, I decided to hear the matter.

2.7 However, I must state at the very outset, that I am of the view that the petitioner being a third party to the contract obtaining between respondent no. 2 and 3, cannot challenge the arrangement obtaining between them.

2.8 Having said so, I decided to examine the contention of the petitioner, which is pivoted on the argument that respondent no.2 could not have awarded a contract in favour of respondent no.3 which, required provisioning of security services, in view of the fact that it did not possess a license under the 2005 Act.

2.9 In support of this submission, Col Anand indicated that respondent no.3 had applied to respondent no.1, i.e., Govt. of NCT of Delhi, for a license under the 2005 Act, which was declined, based on the refusal of the relevant licensing authority [i.e., Addl. Commissioner of Police (Licensing), Delhi], to issue a No-Objection Certificate (NOC) for running a private security agency.

3. It was thus, Col. Anand's submission that respondent no.3, despite being aware that it required a license under the 2005 Act, had proceeded to obtain a contract for providing security services to respondent no.2.

3.1 Apart from the above, Col. Anand, stated that respondent no.3, company was operating its business in a manner which was ultra vires, the provisions of its own Memorandum of Association (in short MOA). In this context, Col. Anand submitted that respondent no.3, contrary to the terms of

the MOA, which professed, *inter alia*, that its object was to rehabilitate ex-servicemen, had employed security personnel on contractual basis. Based on this assertion, Col. Anand sought to question the contract awarded to respondent no.3.

4. On the other hand, learned counsel for respondent no.3, contended that the said respondent was a government company, incorporated under the Companies Act, 1956, and that being so, it did not fall within the purview of the 2005 Act. For this purpose, learned counsel relied upon the provisions of Section 2(g) of the 2005 Act, which defined “Private Security Agency”. It was thus contended, that the term ‘government agency’ would include a government company. The learned counsel, in support of his submission, relied upon the meaning of the expression ‘**federal agency**’, obtaining in the 7th edition of the Black’s Law Dictionary; the relevant extract of which reads as follows: “A *department or other instrumentality of the executive branch of the federal government, including a government corporation and the government printing office...*”

4.1 Reliance was also placed by the learned counsel on the judgement of the Supreme Court, in the case of ***Ramana Dayaram Shetty vs International Airport Authority of India & Ors. (1979) 3 SCC 489***, to buttress his submission that a government company, such as respondent no.3, in which 100% shares are held by the State Government of Maharashtra, would be an instrumentality and / or an agency of the State.

4.2 The argument being, that if respondent no.3 was an agency of the State, then the 2005 Act did not apply to it.

5. Ms Zubeda Begum, learned counsel for respondent no.1, relied upon her additional affidavit dated 15.12.2014, to contend that security provided by a government company is not regulated by the 2005 Act. Learned

counsel submitted that it is for this reason that no exemption was required; since, in any event respondent no.3 did not fall within the purview of the said Act. An argument was also raised that under the provisions of Section 21(b) of the Indian Penal Code, 1860 (IPC), the employees of a government company fell within the ambit of meaning of expression 'public servant'. It was contended that, therefore, the services provided by respondent no.3 would not fall within the definition of the expression 'private security', as provided in Section 2(f) of the 2005 Act.

6. I have heard Col. Anand, director of the petitioner and learned counsels for the respondents. What falls for consideration is whether or not respondent no.3 is covered by the provisions of 2005 Act.

6.1 The statement of objects and reasons of the 2005 Act, broadly, records that due to increase in the number of business establishment, and heightened demand for security, there had been a proliferation of private security agencies, which required regulation.

6.2 The statement of objects and reasons also takes note of the fact that private multi-national security agencies, have established their branches in the country, and that, unless they are properly regulated, there would be serious security implications. Therefore, to regulate private security agencies, and to provide for other matters connected therewith or incidental thereto, the Parliament had decided to promulgate the 2005 Act.

6.3 It would not be out of place to mention that while enacting the 2005 Act, the Parliament was also conscious of the fact that private security agencies could impinge upon national interest, and also, encroach upon the duties, otherwise, cast on the police. It is with this object and purpose that 2005 Act got enacted.

7. It is in the background of the aforesaid preface, one would have to

examine the requirement of obtaining a license under Section 4 of the 2005 Act. For this purpose, I intend to extract the relevant provisions of Section 4.

“....4. Person or Private Security Agency not to engage or provide private security guard without licence – No person shall carry on or commence the business of private security agency, unless he holds a licence issued under this Act:

Provided that the person carrying on the business of private security agency, immediately before the commencement of this Act, may continue to do so for a period of one year from the date of such commencement and if he has made an application for such licence within the said period of one year, till the disposal of such application:

Provided further that no private security agency shall provide private security abroad without obtaining permission of the Controlling Authority, which shall consult the Central Government before according such permission.....”

7.1 The first part of Section 4 would show that no person can commence or carry on a business of private security agency unless he holds a license issued under Section 4 of the 2005 Act. The expression ‘private security agency’ has been defined in Section 2(g), while the expression ‘private security’ has been defined in Section 2(f). Once again, for the sake of convenience, the said sections are extracted hereinafter.

“2.. Definitions - In this Act, unless the context otherwise requires -

- (a). x x x x x
- (b). x x x x x
- (c). x x x x x
- (d). x x x x x
- (e). x x x x x

(f) “Private security” means security provided by a person, other than a public servant, to protect or guard any person or property or both and includes provision of armoured car service;

(g) “Private security agency” means a person or body of persons other than a government agency, department or organisation engaged in the business of providing private security services including training to private security guards or their supervisor or providing private security guards to any industrial or business undertaking or a company or any other person or property...”

(emphasis is mine)

7.2 A bare perusal of Section 2(g) would show that the expression ‘private security agency’ includes every other person or entity other than a government agency, a government department or a government organization, which is engaged in the business of providing private security services.

7.3 Admittedly, respondent no.3 is a company fully owned by the State Government of Maharashtra. Therefore, the issue which arises for consideration is : would such an entity fall within the meaning of any of the three expression used hereinabove. According to me, the three expressions exhaust the panoply of various kinds of government entities, which may exist in law. A government may decide to carry on its business either via various departments, agencies or ministries, which are not juridical entities by themselves, and, are thus, represented by the Union of India, i.e., the Central Government or, the State Government. The government may also carry on its business via government companies or corporations.

7.4 There are in law two kinds of corporations, one which owes its creation to a legislative act and the other which though not created by an act, is incorporated and regulated by a statute. The classic example of the

latter is a company incorporated under the Companies Act.

7.5 The distinction between the two was brought out by the Supreme Court in the case of *S.S. Dhanoa Vs. Municipal Corporation, Delhi, (1981) 3 SCC 431*. The observations made in paragraphs 8 and 10 being apposite are extracted hereinbelow :-

“..8. A corporation is an artificial being created by law having a legal entity entirely separate and distinct from the individuals who compose it with the capacity of continuous existence and succession, notwithstanding changes in its membership. In addition, it possesses the capacity as such legal entity of taking, holding and conveying property, entering into contracts, suing and being sued, and exercising such other powers and privileges as may be conferred on it by the law of its creation just as a natural person may. The following definition of corporation was given by Chief Justice Marshall in the celebrated Dartmouth College case :

A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only these properties which the charter of its creation, confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality; proper ties, by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs, and to hold property, without the perplexing intricacies, the hazardous and endless necessity, of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in A succession, with these qualities and capacities, that corporations were invented, and are in use. By these means, a perpetual succession of individuals are capable of

acting for the promotion of the particular object, like one immortal being.

The term 'corporation' is, therefore, wide enough to include private corporations...

..10. There is a distinction between a corporation established by or under an Act and a body incorporated under an Act. The distinction was brought out by this Court in Sukhdev Singh & ors. v. Bhagatram Sardar Singh Raghuvanshi & ors. It was observed:

A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act.

There is thus a well-marked distinction between a body created by a statute and a body which, after coming into existence, is governed in accordance with the provisions of a statute....”

7.6 The term organisation on the other hand is wide and includes both a statutory and a private corporation, such as, a company. The term ‘organization’ has been defined in Black’s Law Dictionary as follows: “As term is used in commercial law, includes a corporation, government or governmental sub-division or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity”.

(emphasis is mine)

7.7 Therefore, whether, an entity is a corporation or a government company, in my view, would fall within the ambit of the word ‘organization’, given the setting in which the word occurs in Section 2(g) and the purpose and objects of the 2005 Act.

7.8 Clearly, a government company would fall within the definition of the word ‘organization’. If that be so, the provisions of Section 4 of the 2005 Act, in my view, clearly do not apply to a government company.

7.9 Therefore, the submission of Col. Anand, that respondent no.3 could not have entered into a contract for providing security services, as it was in breach of the provisions of Section 4 of the 2005 Act, is clearly untenable.

8. As the 2005 Act stands today, a government company, which is in the nature of a government organization, need not apply for a license under the 2005 Act. Therefore, the stand of Government of NCT of Delhi (i.e., respondent no.1), in this behalf, is in consonance with the provisions of the Act. The fact that respondent no.3's application for grant of license was rejected on an earlier occasion, by respondent no.1, would not have any bearing on the issue, at hand, as that, was an action, taken by respondent no.1, in ignorance perhaps of the provisions of the 2005 Act. This error, respondent no.1, appears to have corrected by placing on record an additional affidavit dated 15.12.2104.

8.1 As a matter of fact, respondent no.1 has gone as far as to say that the personnel employed by respondent no.3 company would fall within the definition of Section 21, clause (b) of the IPC. The said provision reads as follows:

“..21. “Public Servant”- The words “public servant” denote a person falling under any of the descriptions hereinafter following; namely :-

2[***]

x x x x x

x x x x x

x x x x x

x x x x x

Twelfth – Every person -

(a). x x x x x

(b) In the service or pay of a local authority, a corporation established by or under a Central, provincial or State Act or a Government Company as defined in section 617 of the Companies Act, 1956 (1 of 1956)..."

8.2 Quite, clearly this may be relevant for the purpose of prosecution, if any launched qua the personnel engaged by respondent no.3, under the IPC. The said Section, however, in my view, will not assist, one way or the other, with respect to the applicability of the provisions of 2005 Act. It is quite possible that the personnel engaged by respondent no.3 may be 'public servants', for purposes of one statute, while at the same time they may not have the status of a government employee qua other purposes or statutes. Nevertheless this aspect does not whittle down the stand of respondent no.1 that it does not fall within the ambit of the 2005 Act.

9. This brings me to the last submission of Mr Anand, which is, that respondent no.3 was carrying of its business beyond the mandate of the MOA by having engaged contractual employees to provide security services.

9.1 This argument of Col. Anand is flawed for two reasons. The said averment was taken for the first time by the petitioner in the rejoinder. Resultantly, no opportunity was available to respondent no.3 to respond to his assertion. The factual basis of this assertion, in a sense, remains indeterminate. In my view, this is neither the scope nor ambit of the present petition.

9.2 Second, the grievance, if any, with regard to the same, can only be that of the shareholder of respondent no.3, i.e., the State Government of Maharashtra, or respondent no.2, in the instant case. This is an aspect which, perhaps, the Registrar of Companies could raise with respondent no.3. Registrar of Companies is not a party to the present proceedings. Therefore, this submission cannot be entertained.

10. For the reasons given hereinabove, I find no merit in the petition. The petition is, accordingly, dismissed.

11. Parties are, however, left to bear their own costs.

RAJIV SHAKDHER, J

APRIL 30, 2015

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