

CWP No.2492 of 2014

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.2492 of 2014
Date of decision: 10.03.2016

Sandeep

....Petitioner

Versus

Union of India and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?
- 2) To be referred to the Reporters or not ?
- 3) Whether the judgment should be reported in the Digest ?

Present: - Mr. Pardeep Rajput, Advocate, for
Mr. Vipul Aggarwal, Advocate, for the petitioner.
Mr. Vivek Singla, Advocate, for UOI.

PARAMJEET SINGH DHALIWAL, J. (ORAL)

Instant writ petition under Articles 226/227 of the Constitution of India has been filed for quashing the order dated 17.09.2013 (Annexure P-11) passed by Deputy Commissioner of Security whereby security clearance has been denied to the petitioner's firm in spite of the fact that verification report dated 16.06.2013 (Annexure P-9) has been submitted by Senior Superintendent of Police (Rural), Amritsar and letter dated 07.10.2013 has also been issued.

Brief facts of the case are that petitioner's firm under the name and style of M/s Mohinder Pal & Yusuf is in the business of loading and unloading of the cargo and other material in the aircraft area of the Amrtisar Airport where international flights are also landing. The

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handling of the cargo allegedly is being done by the petitioner's firm since 2003. Reference to the profile of the firm has been in Annexures P-1 (Colly) and P-2 (Colly) in the writ petition. Vide order dated 17.09.2013 the Bureau of Civil Aviation Security (Ministry of Civil Aviation), Government of India, has denied clearance to the petitioner's firm. Hence, this writ petition.

I have heard learned counsel for the parties and perused the record.

The ground handling services are subject to security concern from the Central Government agencies specifically Intelligence Bureau and other related agencies. Section 5 of the Aircraft Act, 1934 empowers the Government to make rules providing for licensing, inspection and regulation of aerodromes and, thus Aircraft Rules, 1937 have been framed.

Rule 92 of the Aircraft Rules, 1937 reads as under: -

“92. Ground Handling Services - The licensee shall, while providing ground handling service by itself, ensure a competitive environment by allowing the airline operator at the airport to engage, without any restriction, any of the ground handling service provider who is permitted by the Central Government to provide such service: Provided that such ground handling service provider shall be subject to the security clearance of the Central Government.”

For processing the security clearance, the Central Government created a Bureau of Civil Aviation Security (hereinafter referred to as BCAS). In circular No.4 of 2007 dated 19.02.2007 issued by BCAS, it

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is specifically mentioned that no ground handling agency shall be allowed to work in any airport without prior security clearance obtained from BCAS. The petitioner is a company, which has allegedly been granted security clearance for certain period but during the investigation some facts have come to the fore which are not in the interest of the country and cannot be disclosed in this Court.

Mr. Rajesh Chaudhary, DSP, Intelligence Bureau, has produced a sealed envelop containing secret information collected by the Intelligence Bureau. I have gone through the report in my chamber after opening the seal of the envelop in the presence of Mr. Rajesh Chaudhary. The contents of the report are not required to be referred in this order to avoid any kind of security threat to the country. However, it would be appropriate to notice that the clearance by the company has been taken on the basis of old police clearance reports and there are allegations against some of the persons against whom FIRs etc. are pending. Though the report of Senior Superintendent of Police (Rural), Amritsar is in favour of the petitioner but the fact remains that Intelligence Bureau report is against the petitioner's firm/company. Otherwise also, as per Rule 92, referred in foregoing paragraph, security clearance from Central Government is necessity. Intelligence Bureau is Central Government agency, its report is relevant in view of Rule 92.

This Court has to rely upon the report of Intelligence Bureau which is confidential in nature, even the principles of natural justice will not apply in such cases as the security of the country is involved.

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National security is above the interests of individuals.

Learned counsel for the petitioner contended that there is no FIR against the company.

Perusal of report shows that some of the labourers are indulging in some illegal activities, including theft etc. and having some tips from passengers, which may be a risk for the airport as well as the country.

The Hon'ble Supreme Court in ***Ex. Armymens Protection Services P. Ltd. v. Union of India and others***, 2014(5) SCC 409 has held as under: -

“16. What is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of State or not. It should be left to the Executive. To quote Lord Hoffman in Secretary of State for the Home Department v. Rehman, 2003(1) AC 153:

“... in the matter of national security is not a question of law. It is a matter of judgment and policy. Under the Constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interest of national security are not a matter for judicial decision. They are entrusted to the executive.”

17. Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases it is the duty of the Court to read into and provide for statutory exclusion, if not expressly provided in the rules governing the field. Depending on the facts of the

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particular case, it will however be open to the court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Once the State is of the stand that the issue involves national security, the court shall not disclose the reasons to the affected party.”

In view of above, present writ petition is dismissed.

After perusal, the report has been returned to Mr. Rajesh Chadhary, DSP, in a sealed envelop under the seal of the Registry of this Court.

(Paramjeet Singh Dhaliwal)
Judge

March 10, 2016
R.S.