

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

**Regular Second Appeal No.2775 of 2016 (O&M)
Date of Decision: 05.09.2016**

M/s Rites Limiteds

.....Appellant

Vs

Lt. Col. J. Gahlot

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. G.S. Chaturvedi, Advocate and
Mr. Amit Kashyap, Advocate
for the appellant.

Mr. Piyush Kant Jain, Advocate and
Mr. Suresh Kumar Yadav, Advocate
for the respondent/caveator.

RAJ MOHAN SINGH, J.

[1]. Defendant is in Regular Second Appeal against the judgment and decree dated 22.01.2016 passed by Additional District Judge, Gurgaon vide which judgment and decree dated 25.01.2013 passed by Additional Civil Judge (Sr. Divn.) Gurgaon was upheld and appeal was dismissed.

[2]. Brief facts as gathered from the record are that the plaintiff filed a suit for recovery on the ground that plaintiff was engaged in providing security services. Defendant invited offers for providing security services at ROC Gurgaon and at Asiad

Games Village, New Delhi for the period commencing from November 2005 to October 2006. Plaintiff offered to provide services and after being satisfied with regard to competence and capability of the plaintiff, defendant accepted the offer dated 07.09.2005 for providing security services. Letter of award dated 28.10.2005 was dispatched as a token of confirmation of award of work in favour of the plaintiff. The terms and conditions were incorporated in the letter dated 28.10.2005. Plaintiff was regularly submitting his bills in respect of work done with reference to the amount outstanding and payable by the defendant.

[3]. Plaintiff alleged that despite the work being duly executed by him, defendant proceeded to withhold the substantial part of the payment in an arbitrary manner. Plaintiff claimed that a sum of Rs.7,63,126/- was outstanding and payable by the defendants towards services rendered by him. A total amount of Rs.2,29,822/- was the accrued interest @ 18% per annum till 15.10.2007. In this manner a total amount of Rs.9,92,948/- was claimed to be outstanding towards the defendant. Plaintiff also alleged that the defendant was satisfied with the services of the plaintiff and the term of the contract was extended by one month pursuant to the expiry of contract on 30.06.2010. The extended period was allotted to the plaintiff

w.e.f. 01.11.2006 to 30.11.2006. Plaintiff issued a legal notice dated 10.09.2007 whereby defendant was called upon to make good the payment of outstanding amount within stipulated period. With this background the suit was filed before the trial Court.

[4]. In the written statement, defendant contested the claim of the plaintiff on number of counts. The terms and conditions of letter dated 28.10.2005 were denied. It was submitted that rights and obligations of the plaintiff were governed by terms and conditions including Directorate General of Resettlement guidelines (hereinafter to be referred as 'the DGR') contained in letter dated 28.10.2005 and were also governed by Indian Contract Act, Labour Laws/Acts and other miscellaneous laws which were in force at the relevant time. The outstanding amount was denied. It was also denied that any amount accrued on account of interest. The extension of tenure was admitted in the context of processing of bills in the month of September 2006 were going on and it was on the request of the plaintiff, contract was extended for one month so that all the bills were cleared as per instructions of DGR. It was asserted that plaintiff grossly violated the terms and conditions dated 28.10.2005 and raised false bills.

[5]. After completion of pleading, following issues were framed by the trial Court:-

- “1. *Whether the plaintiff is entitled to recover of Rs.7,63,126/- along with interest @ 18% per annum on the ground as alleged? OPP*
2. *Whether the suit is not maintainable in the present form? OPD*
3. *Whether the plaintiff is estopped from filing the present suit by his own act, conduct? OPD*
4. *Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD*
5. *Whether the suit is within limitation? OPD*
6. *Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD*
7. *Whether the plaintiff has not come to the court with clean hands? OPD*
8. *Relief.”*

[6]. Both the parties led their respective evidence on the aforesaid issues. After appreciation of the evidence trial Court decreed the suit vide judgment and decree dated 25.01.2013 and a decree for recovery of Rs.7,63,126/- was passed along with *pendente lite* and future interest @ 8% per annum from the

date when the amount became due till decretal amount was paid by the defendant.

[7]. Having dissatisfied with the judgment and decree of the trial Court, the defendant preferred first appeal before the lower Appellate Court, which was dismissed by the Additional District Judge, Gurgaon vide judgment and decree dated 22.01.2016. That is, how, the present appeal came to be filed.

[8]. I have considered the submissions on both sides and have also perused the record.

[9]. The following substantial questions of law in para 5 of the grounds of appeal have been framed by the learned counsel for the appellant:-

“(I) Whether the findings of Ld. Trial Court and First Appellate Court are not erroneous in ignoring the settled terms and conditions between the parties as per letter of assignment of work dated 28.10.2005?”

“(II) Whether the findings of Ld. Appellate Court that the Respondent had engaged the guards on 12 hourly basis rather than 08 hourly basis is not erroneous in view of the fact that there is not even an averment in the plaint or in the evidence by the Respondent to that effect and moreover, the personnel required for guarding

the Public Property are required to be alert, for which, purpose, the number of hours and number of guards was specifically mentioned in the Letter of Engagement?

- (III) *Whether the findings of Ld. Trial Court and First Appellate Court are not erroneous in ignoring the fact that the entitlement to claim the amount for rendering security service has to be in accordance with terms and conditions settled between the parties?*
- (IV) *Whether the findings of Ld. Trial Court and First Appellate Court are not erroneous in ignoring the fact that as per the DGR guidelines, it was incumbent on the security agency to obtain the labour licence and in view of this, since the specific requirement of the Appellant in terms of letter dated 28.10.2005 was for more than 19 security guards and supervisors, the Respondent should have obtained the said licence before starting the work?*
- (V) *Whether the finding of Ld. First Appellate Court is erroneous in not appreciating that the Respondent issued letters in quick succession to the Appellant for obtaining the labour licence only in the month of August, 2006, i.e. after a period of almost nine months of starting the work and whether the finding is erroneous*

in view of the fact that neither the letter dated 19.12.2005 was placed on record during evidence by Respondent nor the same was received by the Appellant?

(VI) *Whether the findings of Ld. Trial Court and First Appellate Court are not erroneous in not appreciating that a long gap of seven months between the so called letter 19.12.2005 to August, 2006 is sufficient to doubt the concocted story of the Respondent of having given the request on 19.12.2005, which is made out from the total silence of the Respondent for a period of seven months?*

(VII) *Whether the findings of Ld. Trial Court and First Appellate Court are not erroneous in not appreciating the fact that the Appellant issued the certificate required for obtaining Labour Licence promptly on 06.09.2006 after the request of the Respondent in August, 2006?*

(VIII) *Whether the findings of Ld. Trial Court and First Appellate Court are not erroneous in ignoring that no bills or any material was placed on the record by the Respondent so as to claim the suit amount and when only one calculation in the form of annexure has been placed and on that basis, the suit of the Respondent has been decreed?*

(IX) *Whether the findings of Ld. Trial Court and*

First Appellate Court are not erroneous in ignoring settled position of law that the party has to stand on its own leg and cannot take the benefit of the weakness of the Opposite Party and in such circumstances, the Respondent was required to prove the due amount against the Appellant?

(X) *Whether the findings of Ld. Trial Court and First Appellate Court are not erroneous in placing unnecessary emphasis on the extension of the contract of the Respondent and for awarding contract for SCOPE Minar when as per the admitted case, the security agency duly sponsored by DGR could only be engaged by the Appellant, which is a time consuming process.”*

[10]. Learned counsel for the appellant vehemently contended that as per offer of acceptance dated 07.09.2005 for provision of security services, terms and conditions were to the effect that number of security guards to the tune of 18 were to be provided at ROC Gurgaon, 6 security guards i.e. 3 each at the Office-cum-residence of Directors and 3 Supervisors were to be deputed at ROC Gurgaon. The number of security guards could have varied as per requirement from time to time. The wages @ Rs.5,932/- p.m. per security guard and Rs.7,788/- p.m. per Supervisor for Gurgaon and Rs.7,945/- p.m. for

security guard in Delhi were fixed and the same were to be paid as per DGR guidelines. No other payment on any account was to be paid by the defendant. The security guards were to be deployed on eight hourly shifts so as to provide round the clock service (seven days a week) on all days including national holidays. The security staff was to remain available on all the days of month (seven days a week) without any extra payment. The contract was liable to terminated in case the security staff was not found punctual, obedient or sincere in their duties or their services were found unsatisfactory and the matter was to be referred to DGR and DPE for necessary action. The plaintiff was responsible for security lapse and was responsible for security of the defendant's office and all articles of the office against theft and pilferage during the contract period. The contract was liable to be terminated on one month notice in case services were found unsatisfactory and in violation of any DGR guidelines or for any other valid reasons.

[11]. Further, the Agency was not empowered to deploy more than 19 guards in the absence of Form V for applying for labour licence. In the absence of this document the plaintiff was not empowered to employ more than 19 guards. In reference to letter dated 19.12.2005, plaintiff issued a letter dated 09.08.2006 to the defendant on the aforesaid subject matter

that despite communication the defendant has not issued Form V for applying for labour licence. Issuance of Form V was requested in order to enable the Agency to apply for required licence in order to employ extra guards. In reply to aforesaid letter dated 09.08.2006, defendant quoted that the procurement of labour licence from the Labour Department was to be obtained by the plaintiff himself before commencement of work. It was the responsibility of the contractor. In reference to that communication received by the plaintiff pursuant to the letter dated 21.08.2006 issued by the defendant, the plaintiff intimated the defendant vide letter dated 30.08.2006 that plaintiff was registered with the Labour Department and on scrutiny of his credentials, the contract was awarded to him by the defendant. During currency of the contract, Agency has to work under the direction of officer designated by the principal employer. Since the defendant never asked the plaintiff to produce a labour licence, rather plaintiff asked the defendant to issue Form V without which plaintiff could not possibly apply for labour licence. Letter was handed over to the defendant on 19.12.2005 and defendant assured to consider the same. In this communication, number of events were communicated to the defendant to show that the plaintiff had made sincere request to the defendant to do the needful in the context of issuing Form V

so as to enable him to apply for a labour licence. Vide letter dated 03.09.2006 issue of Form V was enclosed while drawing the attention to the letters dated 19.12.2005, 09.08.2006 and 30.08.2006 issued by the plaintiff. It was requested that the enclosed Form V be signed and returned to the plaintiff.

[12]. Defendant issued a letter dated 23.08.2006 to the plaintiff, which was replied by the plaintiff on 05.09.2006 by conveying that the antecedents of his Agency were duly verified by the defendant on 28.10.2005 and contract was awarded w.e.f. 01.11.2005. The contract was for providing security at nine points with 18 security guards and 3 Supervisors. Plaintiff did his best and arranged to occupy all posts with lesser security guards round the clock as little time for recruitment and training was available because of short notice. The contract was within the ambit of law that is the Contract Labour (Regulation and Abolition) Act, 1970 and The Contract Labour (Regulation and Abolition) Central Rules, 1971. According to Rules 21(1) and (2) of this Act, every application by the contractor for grant of a licence shall be made in triplicate in Form IV, to the licensing officer of the area in which the establishment in relation to which, he is the contractor, is located. Every application for grant of a licence shall be accompanied by a certificate issued by the principal employer in Form V, to the

effect that the applicant has been employed by him as a contractor in relation to his establishment and that he undertakes to be bound by all the provisions of the Act and the Rules made thereunder in so far as the provisions are applicable to him as principal employer in respect of the employment of contract labour by the applicant.

[13]. Perusal of the aforesaid mandatory provisions revealed that the application was to be moved by the contractor which was to be accompanied by a certificate issued by the principal employer in Form V. For want of necessary certificate at the instance of the defendant on Form V, licence could not be obtained for employing more than 19 guards. In that scenario, keeping in view the requirement of security, plaintiff instead of eight hours duty schedule, deputed the security guards for twelve hours duty in order to mend the requirement of the defendant for providing security round the clock. In this way, instead of eight hourly shift, twelve hourly shift was made and one security guards had to do the work of 1½ security guards. In this way the requirement of the defendant was not hampered in terms of security. The work was done to the satisfaction of requirement of the defendant, rather extension was provided by the defendant and 19 guards did the work of 27 guards by way of deployment on twelve hourly shifts so as to provide round the

clock security service on all working days including national holidays. Upto the month of July 2006, emoluments as against the extra security guards stood paid as per Ex.P-2 on record.

[14]. Perusal of Ex.P-27 transpired that Joint Director for DGR had reported to the defendant that defendant did not have the authority to issue Form V to the plaintiff at the time of awarding the contract and due to this reason the defendant assured to the plaintiff that the document will be issued in due course. The contention of the plaintiff appeared to be logically sound. No complaints were made by the defendant. Bills were duly verified and passed as correct treating the strength employed by the plaintiff to be the full strength of security guards. This was obviously with reference to the available security guards on twelve hourly shifts instead of eight hourly shifts. Required duty was performed by the number of security guards employed by the plaintiff and no complaint was made whatsoever by the defendant and payments were duly released upto the month of July 2006. The services provided by the plaintiff were to be considered to be good service.

[15]. Recital of Ex.P-27 issued by the Joint Director (Emp) for DGR to the defendant showed the following contents:-

“2. *The case has been examined in greater detail.*

The following points are made:-

(a) RITES did not have the authority to issue a Form V to M/s Truguard Security Services at the time of awarding the contract/work order on 28 Oct. 2005. Hence the contention of the agency that the AGM (A/ES) assured that the document will be issued in due course appears to be correct.

(b) It is apparent that officers of RITES Ltd., have monitored the functioning of M/s Truguard Security Services from Nov '05 to 27 July '06. No complaints have been made and their bills have been verified and passed as correct. This implies that M/s Truguard Security Services had the full complement of guards but could not deploy them due to non-availability of mandatory documents from your organization. Their records of PF and ESI also been this out.

(c) Since there were no complaints from your organization, it appears that the services provided by M/s Truguard Security Services were good and acceptable to RITES Ltd.

(d) Even after diligent monitoring of services by the agency from 28 Jul '06 onwards, at no stage were M/s Truguard Security Services warned not to employ guards without weekly off. It is much later, at

the time of delayed consideration of bills that faults are being found against the agency for overtime deployment of guards. At this stage it does not appear either reasonable or logical to deduct huge amounts citing labour laws when RITES Ltd. themselves have not adhered to the same by continuing to permit the agency to default on a daily basis. Objections should have been raised immediately and the agency warned. Failing compliance, this Headquarter should have been apprised and action should have been taken to terminate the contract. In fact, it is pertinent to note that when the agency requested that the contract be terminated your offers had objections to the same.

3. *In view of above it is felt that the penalties/recoveries imposed by RITES Ltd. on M/s Truguard Security Services merit reconsideration. M/s Truguard Security Services have made payments to guards at a certain scale apparently in the knowledge of the concerned RITES officials and have made all mandatory govt. deposits. Proof for this has been submitted to you. Since, the payments have already been made and cannot be retracted at this stage, it is recommended that the agency be paid its dues as projected by them.”*

[16]. Apparently when the plaintiff Agency requested for termination of contact, then the officers objected to it and it was

recommended in the letter that the agency should be paid the dues. When the office of DGR itself stated that the Agency be paid dues and the services provided by the Agency was good, the objections raised by the defendant was of no consequence. The stress for reference to Arbitration was also of no consequence as defendant opt to file copy of agreement, if any, along with the written statement. Reference was rightly declined by the Court below. The tenure of contract was extended to one month because of alleged plea of the defendant that the processing of bill of the month of September 2006 took time. The stand in itself was contradictory as on the one hand, the defendant wanted to show that bills were being prepared for making the payment and on the other hand they avoided the payment of bills.

[17]. Contention of the defendant that as per attendance register, which was taken in possession during surprise check showed less number of security guards deployed by the plaintiff and those were not in consonance with the requirement of the contract dated 07.06.2006. The register was a mark document i.e. mark 'Z' on the file and the same was not proved in terms of law, nor the same was admitted by the plaintiff. The register was not exhibited in evidence, nor the execution of which was proved. The document was totally inadmissible in evidence and

it could not be taken cognizance. The account produced by the plaintiff were not denied by the witness except vague reply. The cross-examination of PW-2 specifically highlighted that the relevant record was submitted to the defendant. No evidence was produced by the defendant to show that the bills were not proper. Even DW-1 V.S. Kalra stated in his cross-examination that he has not gone through the account produced by the plaintiff. In the absence of any rebuttal to the calculations made by the plaintiff which amounted to acceptance by the defendant in view of vague assertion made by the DW-1 V.S. Kalra in his cross-examination.

[18]. The detail of the account due was given in Ex.P-2 and was also annexed with the legal notice served upon the defendant. The calculations were not disputed by the defendant, nor any reply to legal notice was given. There was no dispute with regard to the number of security guards employed by the plaintiff. The only issue was that the plaintiff got extracted duty hours from the security guards on twelve hourly shifts instead of eight hourly shifts and the additional amount of duty extracted was required to be met towards additional deployment for the benefit of those security guards, who worked as per requirement of the defendant in terms of security. Plaintiff could not deploy more security guards because of fault of the defendant in not

issuing Form V for the purposes of obtaining labour licence. Defendant did not issue Form V in time and, therefore, licence from the Labour Department could not be obtained. Even if, the plea was raised in the replication that was a part of pleading. Plaintiff had to deploy security guards on twelve hourly shifts instead of eight hourly shifts and paid them the dues for twelve hours duty. For the payment upto the month of July 2006, no objection was raised, nor any complaint was moved by the defendant. Emoluments were paid as per the working strength on twelve hourly shifts. Plaintiff had been requesting for Form V from 19.12.2005 onwards as per the communication available on record. There was no occasion to have licence at the time of commencement of agreement because it was specific to the institution and was to be granted only after issuance of document by the defendant and by the concerned department on providing certificate by defendant. The services provided by the plaintiff were not considered to be poor by the defendant, otherwise they could have terminated the contract, but instead of doing it, defendant rather extended the contract by one month. Plaintiff was also granted additional contract for security of office of defendant situated at Scope Minor, Laxmi Nagar, New Delhi. The attendance register mark 'Z' was never proved by the defendant in accordance with law.

[19]. As per tender/Contract plaintiff was to provide 24 security guards and 3 Supervisors. These security guards were to be deployed on eight hourly shifts so as provide round the clock services (seven days in a week) on all days including national holidays. In the letter Ex.D-11 issued by the defendant to DGR, referring to the minutes, it could not be found that the security was not being provided by the plaintiff in adequate number, but the security guards were deployed in two shifts on twelve hourly shifts basis instead of three shifts of eight hourly shift basis. Therefore, instead of 24 security guards, 16 security guards were deployed along with 3 Supervisors and this 19 security officials performed the work of required number of security guards on twelve hourly basis in two shifts. The letters Exs.P-13, P-15 and P-17 contained specific narration that the writing was given for the first time on 19.12.2005 and was personally handed over to the defendant. Defendant did not complied with the requirement in facilitating the plaintiff to obtain labour licence, therefore, no fault could be attributed to the plaintiff on that count. The extension provided by the appellant in the contract was indicative of the fact that work of the plaintiff was never considered to be poor, rather the request for termination of contract was at the instance of plaintiff, the same was not cancelled. Even after issuance of letter dated

29.03.2006 Ex.P-6 and finding the security to be less, the plaintiff was granted additional contract for security of office situated at Scope Minor, Laxmi Nagar, New Delhi on 20.04.2006. DW-1 V.S. Kalra admitted in this cross-examination that he was also instrumental in awarding the contract and the services provided by the plaintiff were satisfactory and contract at Delhi was given to the plaintiff. The matter was examined by the DGR in entirety vide Ex.P-27, contents of which have already been reproduced in the earlier part of the judgment.

[20]. In the light of aforesaid facts and evidence on record, the question of law as incorporated by learned counsel for the appellant have their complete answer in the aforesaid discussion of facts with reference to evidence. Question No.5(i) to 5(iii) are pure questions of fact and have been elaborately appreciated by the Courts below and need no discussion being no questions of law much less substantial questions of law. Question No.5(iv) relates to DGR guidelines and alleged non-observance of the same. DGR itself vide Ex.P-27 have assessed the culpable attitude of the defendant and has recommended the course of action which should have been adhered to by the defendant. The appreciation has been rightly done by the Courts below on that score also. The appreciation of evidence done by the Courts below cannot be re-appreciated

to answer question No.5(v) to 5(ix) as framed by the appellant. Once the work of the plaintiff was found to be satisfactory as noticed in earlier part of the judgment, no complaint was ever made against the conduct of the plaintiff and attendance register was not proved in accordance with law. Above all, even after alleged lapse as claimed by the defendant/appellant the plaintiff was further awarded a contract for security of office situated at Scope Minor, Laxmi Nagar, New Delhi indicated the stand taken by the defendant/appellant was wholly imaginary so as to disentitle the plaintiff from claiming the amount in question. The question No.5(x) does not hold good in the light of appreciation of evidence done by the Courts below.

[21]. Having considered the controversy in the light of materials on record, this Court does not subscribe for any interference in concurrent findings recorded by both the Courts below. Therefore, this appeal is found to be totally devoid of merits and the same is accordingly dismissed.

September 05, 2016

Atik

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No