

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 4246 OF 2014****WITH****CIVIL APPLICATION NO. 2562 OF 2017****IN****WRIT PETITION NO. 4246 OF 2014**

Sugriv Rambabu Singh Chauhan,
Proprietor of
M/s. Shivam Enterprises Security
Services,
having his office at B/85/87,
Patankar Building, Near NKGSB
Bank, Opp. Swastik Tower,
Nalasopara (West),
Dist. Thane.

....Petitioner/
Applicant.

Vs.

- 1 The State of Maharashtra
Through the Public Prosecutor,
High Court (A.S.),
Bombay.
- 2 The Home Secretary,
Maharashtra State,
Mantralaya,
Mumbai.
- 3 Director General of Police,
Maharashtra State,
Old Council Hall, S.B. Marg,
Opposite Regal Cinema,
Colaba .

Mumbai-400 039.

- 4 Principal Secretary (Home),
Maharashtra State,
Mantralaya,
Mumbai.
- 5 The Controlling Authority &
The Inspector General of Police,
(Konkan Range) Konkan
Bhavan, Navi Mumbai.
Maharashtra.
- 6 The Addl. Chief Secretary,
(Appeal & Security),
Maharashtra Government,
Mantralaya, Mumbai.

....Respondents.

Mr. Joel J. Carlos a/w Yashwant Dhanegave for the Petitioner/
Applicant.

Mr. S.B. Kalel, AGP for Respondent Nos. 1 to 6.

**CORAM : ANOOP V. MOHTA AND
MANISH PITALE, JJ.
DATE : 8 NOVEMBER 2017.**

ORAL JUDGMENT (PER ANOOP V. MOHTA, J.):

Taken out from the final hearing board.

Heard finally, by consent of the parties.

2 The Petitioner, a private security agency, registered under
the Shops and Establishment Act, 1948 having license as

contemplated under the Private Security Agencies (Regulation) Act 2005, (*“the PSA Act”*) has invoked Article 226 of the Constitution of India and thereby challenged impugned order dated 21 September 2013 passed by Respondent No.5-the Controlling Authority and the Inspector General of Police and order dated 22 January 2014 passed by Respondent No.6-the Additional Chief Secretary, whereby the license to run the Private Security Agency (*“Agency”*) was cancelled and confirmed by the Appellate Authority.

3 On 6 July 2009, a license was granted to the Petitioner to carry on the business of the Private Security Agency. On 21 December 2012, a show cause issued to the Petitioner for violation of Section 13 of the PSA Act, as two security guards had used licenses issued for the personal security to secure the job with the Petitioner. On 9 January 2013, the Petitioner replied to the show cause notice by denying the contents and stating that the Petitioner was not aware of violation and had employed them with bonafide beliefs and would not even engage such armed guards in future. However, on 1 June 2013, the license of the Petitioner was cancelled by the Respondent. On 12 August 2013, order dated 1 June 2013, cancelling the license set aside and

matter remanded for opportunity of hearing on merits. On 21 September 2013, the license of the Petitioner was again cancelled by the Controlling Authorities-Respondent No.5. On 22 January 2014, the Appellate Authority confirmed the order passed by the Controlling Authorities.

4 The contesting Respondents resisted the prayer by filing the reply. The Petitioner filed the rejoinder and reiterated their case. The reason for cancellation of the license reflected as under-

“8. It is submitted that The Arms Act 1959, Arms Rules 1962, the Private Security Agencies (Regulation) Act 2005 and Maharashtra Security Agencies (Regulation) Rules 2007 does not permit “Change of Use” of weapon to any person. The licenses issued to the above persons were for self protection within their concerned states and then the said licenses were converted into All India Permit license. Subsequently, these persons used the licenses to secure the job in security agency in Maharashtra.

9. I say that there is nothing on record to show that the security guards employed by the Petitioner have any threats to their life in State of Maharashtra. Thus the purpose for which license was obtained by them from other states does not serve the purpose in the State of Maharashtra and thereby the security guards employed by the Petitioner have misused the license obtained by them for self-protection by using the said license for the purpose of securing jobs and financial gains.

10. I say that with a view to curb illegal practice in which the Petitioner and others are involved in employing security guards with Arm license for self-protection, the State Government had decided to initiate legal action against such security agencies and had instructed the office of the Director General of Police. In view of directions from State Government, the office of the Director General of Police issued directions to all concerned Licensing/Controlling Authorities under the act to initiate action against such persons who have violated the conditions of The Private Security Agencies (Regulation) Act, 2005.”

5 The learned counsel appearing for the respective parties have read and referred the PSA Act and the Rules and the relevant forms, so prescribed which are required to be submitted by the agency while appointing the Security Guard (“*the Guard*”). The Petitioner had provided all the details of those two guards. There was no suppression of facts about the licenses.

6 We have noted, and as nothing is pointed out that the Petitioner agency is not permitted to appoint any guard with arms license which was granted by the Authorities of the other State for personal use. The provisions of the PSA Act, as well as, the Rules are silent on this point so also the prescribed conditions of license granted

to the Petitioner. We have noted that the Petitioner, in fact, while submitting the verification form provided these licenses granted to the said two guards. The statement is made that the Petitioner, immediately after receipt of the notice, removed those guards, who were employed and deployed for the bank services. It is made clear that, we are not concerned with the grant of licenses and/or effect of use and misuse of those armed licenses by the guards. Therefore, in the present facts and circumstances of the case, the action of the Respondents of cancellation of agency licenses of the Petitioner is unsustainable, unjust and impermissible.

7 Even after going through the reasons given by all the Authorities, we see there is no justification for cancellation of the agency license of the Petitioner only because the stated employment of two guards, who possesses the armed licenses from other State. This is for the main reason that the license conditions, as well as, the provisions of PSA Act and the Rules so read and referred by the parties, nowhere put such condition and/or debarred the appointment of such guards. Even, assumed for a moment, if the agency ought not to have appointed such guards, still we see no reason for the

Respondents to cancel the license of the Petitioner, specifically when the Petitioner immediately after the intimation/notice had dismissed their services. Those guards sought appointment based upon the said weapons licenses for commercial purposes and the Petitioner agency, as stated, took advantage of the guards weapons license, for its livelihood, in our view, is unsustainable contention. Those guards misused the licenses. The Petitioner, in no way, can be stated to have misused, change of use of the armed licenses. Therefore, the initiation of the action by the Respondents against the Petitioner agency and specifically of this nature of cancellation of the license granted since 2009, is unreasonable, unacceptable and violates the provisions of the PSA Act and Regulations.

8 The learned counsel appearing for the Petitioner, on instructions, submitted that the Petitioner is not pressing the challenge of circular dated 1 December 2012. Considering the averments so made and the reply so filed along with the documents, we see no reason to deal with the circular, as we are inclined to dispose of the present Writ Petition for the reasons so recorded above.

9 The learned counsel appearing for the Petitioner has also pointed out that the Petitioner has already averred and made the statement before the Authority that hereinafter, the agency will not engage any such armed guards, unless permitted under the law, if any. Therefore, taking overall view of the matter, we are inclined to allow the Petition to the extent of setting aside impugned orders dated 21 September 2013 passed by Respondent No.5 and order dated 22 January 2014 passed by the Appellate Authority-Respondent No.6 and all actions arising out of the same.

10 Resultantly the following order-

ORDER

- a) Impugned order dated 21 September 2013 passed by Respondent No.5- the Controlling Authority and Inspector General of Police and Order dated 22 January 2014 passed by Respondent No.6-the Additional Chief Secretary are quashed and set aside.
- b) Writ Petition is allowed to the above extent.
- c) The Petitioner is permitted to apply again, if

required, before the concerned Respondents and the Respondents to deal with the same in accordance with law, as early as possible and restore the license.

d) Rule made absolute accordingly. No costs.

11 In view of the disposal of the Writ Petition itself, nothing survives in the Civil Application and the same is also disposed of.

(MANISH PITALE, J.)

(ANOOP V. MOHTA, J.)