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

+ **W.P.(C) 2369/2017**

MAJOR GENERAL VN PRASAD (RETD.) Petitioner

Through: Mr Major K. Ramesh with Ms
Archana Ramesh, Advocates.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr Abhay Prakash Sahay, CGSC for
R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **10.07.2017**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, challenging the guidelines (hereafter 'the Guidelines') on formation and running of companies promoted by ex-servicemen (hereafter 'ESM Companies') for transportation of coal as being contrary to and *ultra vires* Article 19 of the Constitution of India.

2. The petitioner's grievance essentially relates to the condition that proscribes ex-servicemen, who have availed sponsorship under the re-settlement scheme, from pursuing any other vocation.

3. Briefly stated, the relevant facts necessary to address the controversy involved in this petition are as follows:-

3.1 The petitioner was commissioned in the Indian Army on 10.06.1978 and retired on 31.03.2014. The petitioner was desirous of being gainfully

employed after his retirement and thus registered himself with the Director General Resettlement, Ministry of Defence (hereafter 'DGR').

3.2 In order to provide employment to ex-servicemen, DGR has floated various schemes including the scheme for sponsoring of ex-servicemen for work of loading/unloading and transportation of coal for Coal India Limited (CIL) and its subsidiaries. The said scheme for sponsoring ex-servicemen for coal transportation companies was formulated by the Ministry of Defence and the erstwhile Ministry of Energy. In terms of the said scheme, the work of coal loading and transportation is provided to ESM Companies formed with the said object. Five ex-servicemen are grouped together to promote and act as directors of an ESM Company, which is thereafter sponsored to take up the work of coal transportation. By virtue of the Memorandum of Understanding (MoU) with CIL, such work is awarded by them to the sponsored ESM Companies. The said scheme has been chalked out for resettlement of ex-servicemen, post their retirement from the Indian Armed Forces.

3.3 On 13.10.2015, the DGR issued a letter informing various ex-servicemen including the petitioner that they are likely to be sponsored as directors of ESM Companies and called upon the said persons for forwarding their willingness to be a director of an ESM Company formed with the object of carrying on the business of coal transportation. The petitioner indicated his willingness for being a director of an ESM Company and submitted the necessary documents as required by the DGR. The petitioner also forwarded an affidavit dated 30.10.2015.

3.4 The documents submitted by the petitioner were scrutinized and the petitioner was found eligible. Thereafter, the petitioner and four other ex-officers of the Indian Armed Forces formed an ESM Company, namely, Trispace Logistics Private Limited (hereafter 'Trispace'), which was duly registered under the Companies Act, 2013.

3.5 The relevant documents pertaining to incorporation of Trispace including Certificate of Incorporation, Memorandum of Association and Articles of Association were forwarded by the promoters of Trispace to DGR on 15.03.2016. Thereafter, the petitioner and the other promoters of Trispace furnished an undertaking dated 06.04.2016 reiterating their commitment to abide by the Guidelines issued by DGR and also the Memorandum of Understanding (MoU) signed between DGR and CIL.

3.6 By letter dated 11.04.2016, the DGR sponsored Trispace to undertake coal loading, unloading and transportation work of Mahanadi Coalfields Limited (hereafter 'MCL') at Hingula Area for a period of five years. On the same date, the DGR also attached certain other ex-servicemen with Trispace.

3.7 In terms of the Guidelines – and also the affidavits submitted - the petitioner and other promoters of Trispace were required to submit Form 26AS (statement of tax deducted at source) to the office of the DGR. The said form would confirm whether the petitioner and the other promoters of Trispace (ex-servicemen) had any other source of income or were pursuing any other employment contrary to their given undertaking and the Guidelines.

3.8 The petitioner failed to provide the Form 26AS and therefore was issued a show cause notice dated 17.10.2016, which is also impugned by the petitioner in the present petition.

4. The petitioner claims that certain paragraphs in the Guidelines - Para 2, sub-paras (a)(iii) and (iv); para 20, sub-para (c); para 21, sub-para (a); para 22, sub-paras (a), (b) and (g) - are violative of Article 19 (1)(g) of the Constitution of India. According to the petitioner, the restrictions contained in the Guidelines, which prohibits the petitioner from carrying on any other employment or from pursuing any other vocation while associated with Trispace as a director, is unreasonable and violative of Article 19(1)(g) of the Constitution of India.

5. The learned counsel appearing for the petitioner earnestly contended that (i) the role of DGR was to assist ex-servicemen in availing resettlement opportunities and the ex-servicemen could not be restrained from carrying on other vocations to earn their livelihood; (ii) Trispace was an independent company and the work awarded by MCL to Trispace was strictly a matter between the two companies and it was not open to DGR to impose any restriction; (iii) the petitioner was no longer an army officer and was not subject to the Army Act, 1950 and the rules made thereunder; (iv) the petitioner and other promoters (ex-servicemen) had invested their funds in the formation of Trispace, without any grant from the government; (v) DGR has no locus to lay down the Guidelines; and (vi) the Guidelines inasmuch as they impose restrictions on the petitioner/directors carrying on other business, is violative of fundamental rights.

6. The contentions advanced on behalf of the petitioner are wholly bereft of any merits. The principal objective of the scheme entailing promotion of ESM Companies by ex-servicemen to carry on the work of loading, unloading and transportation of coal is to provide employment opportunities to ex-servicemen. CIL and its subsidiaries had agreed to provide work to such companies pursuant to the MoU with DGR. Accordingly, the DGR had issued the Guidelines for formation of ESM Companies. The Guidelines clearly indicate the eligibility criteria for various categories of ex-servicemen to be associated with such ESM Companies. The Guidelines also specifically provided for formation of ESM Companies. It is relevant to note that such ESM Companies were to be incorporated only after the DGR had selected eligible retired officers as per their seniority, who were willing to undertake the work of coal transportation after completion of the necessary documentation.

7. The relevant extracts of the Guidelines relating to the eligibility of ex-servicemen and formation of an ESM Company are set out below:-

"2- **Eligibility:** The eligibility criteria for various categories of the ex-Servicemen (ESM) associated with the Coal Transport Companies are as under:-

(a) **Directors of the ESM Coal Transport Company :**

(i) For becoming Directors of the ESM Company, unemployed retired commissioned Officers below 60 years of age (Brig and below) and 62 years of age (General Officers) from the three services are eligible to get their names registered for ESM Coal Transport Company Scheme. No Director is to be above 60/62 years at the time of sponsorship.

(ii) The retired officer is eligible to be director of only one ESM Coal Transport Company.

(iii) At the time of sponsorship of the ESM Company and there after all through the tenure as Director of the company the Director is not to be employed/self employed or hold any position of profit in any institution other than that of the ESM Company.

(iv) The officer should have registered for the scheme with DGR within five years of release/retirement. The common registration form, including for the Coal Loading and Transport Scheme is attached as **Appendix 'B'**.

(v) To ensure complete transparency and avoid undesirable influence in implementation of the Scheme, it has been decided that no ex-officer/official of DGR shall be permitted to avail of Coal Loading and Transportation Scheme.

(b) **ESM Tipper Owners**

(i) ESM should not be above the age of 60 years at the time of **attachment in any ESM(O) Company.**

(ii) Only one tipper can be attached by an ESM.

(c) **Beneficiaries under Tipper Attachment Scheme:**

Refer SOP for tipper attachment scheme for widows, dependants and disabled ex-servicemen attached as **Appendix 'C'**

(d) **Office/Supervisory Staff:** ESM should not be above the age of 60years at any time.

Formation of ESM Company

3. On receipt of a demand from Coal Subsidiary for a Coal Transport Company, the DGR will initiate steps to select eligible retired officers as per the seniority, which are willing to undertake the work after completion of mandatory documentation, to form an ESM Coal Company. The related terms and conditions are as under:-

(a) On receipt of request from the Coal Subsidiary, the DGR will take following action:-

(i) In case demand is for more than one ESM Company, the DGR will seek willingness of ESM (O) from the seniority roster of prospective Directors maintained by DGR. The willingness will be sought in multiple of five for the number of companies to be sponsored as each ESM Company will have five ESM (O) Directors. The willing Directors falling in seniority within that number will be allowed to form the ESM Company with five directors in each.

(ii) In case of demand of only one company the DGR will seek willingness of five ESM (O)s as per the seniority roster [sic] of prospective Directors maintained by DGR. In case any ESM (O), whose turn has come up for sponsorship is unwilling to join in a company with others in that seniority, he will be provided with one more opportunity for sponsorship when next demand of ESM Company is received from the Coal Subsidiary. If the ESM (O) is still unwilling his name will be struck off from the seniority roster of this scheme. In case of any ESM (O) is unwilling the next ESM (O) in seniority roster [sic] will be asked to join to form the ESM Company.

(b) The ESM Company will have a minimum of five directors at all times. However under certain circumstances such as death of an incumbent director, insanity, voluntary withdrawal as approved by the board of directors, removal of a director by DGR or by the board of directors, the shares of

the director so becoming ineffective will be transferred to the other directors or to the widow of the ineffective director as the case may be. Under these circumstances the company may continue to function with less than five directors but not less than three directors at any time. In case the strength of directors is reduced to less than three, then within six months ESM Company will induct new directors.

(c) Any induction/de-induction of director(s) in an ESM Company will be done only on prior approval of the DGR. Copy of the Form 32, reflecting the change in the constitution of the board of the directors of the ESM Company, will be submitted to the DGR and to the concerned Coal Subsidiary by the ESM Company.

(d) An ESM(O) who withdraws voluntarily from the scheme or is removed from the scheme in case of unwillingness to be sponsored as a director and has not been debarred from participating in the scheme by DGR could, in case he so desires, register himself in any other scheme of the DGR in case fulfilling the scheme criteria. His seniority in that scheme will count from the date of such new registration."

8. The petitioner had applied for being considered in terms of the said Guidelines and had also filed an affidavit on 30.10.2015, *inter alia*, affirming as under:-

- “(a) That I am an ESM as per existing definition.
- (b) That as per official record my DOB is 31 May 1957 and as on date 58 years old and I am eligible to participate in ESM Coal Loading and Transportation Scheme of DGR.
- (c) That I have retired from Army after putting in 35 years 9 months of service on 31 Mar 2014. My PPO No. is M/03409/2014 and Ex-Serviceman I-Card No. is 170560.

- (d) That I will not be employed with any Government or Semi Government or Private Organization after having been sponsored for ESM Coal Loading and Transportation scheme by DGR. I will not be practicing and self-Employment venture including running/be associated with any training institute/ school or any other commercial activity individually.
- (e) That I will submit from 26-AS every year by 30th May to provide proof of my Employment status to DGR.
- (f) That I have not taken any other assistance nor availed any other scheme of DGR viz security agency, 24 weeks Management course, Training Institute empanelled with DGR, Management of CNG station and from Zila Sainik Karayala/ Director Sainik Welfare (State) earlier.
- (g) That I will adhere to all the provisions of Memorandum of Understanding signed between DGR, CIL and Coal Subsidiaries and guidelines made by DGR for the formation and running of ESM Coal companies as applicable to me as Director of ESM Coal Loading and Transportation Company.
- (h) That I will not sublet my ESM Company. In case any such report/ complaint is received and found to be correct. I understand that DGR will take legal course of lodging of FIR and filing a criminal case against me besides dis-empanelling me and removing me from directorship of the ESM Company.
- (j) That I am aware of the repercussions of the criminal case i.e. once proved I may have to forfeit my pension.
- (k) That I will represent my ESM Coal Loading and Transportation Company in person to the principle [sic] employer and DGR as and when required.
- (l) That I will follow all directives issued by DGR from time to time.
- (m) That I shall adhere to all laws of the land pertaining to

Coal Loading and Transportation and follow the rules and regulations laid out by Coal Subsidiary.

- (n) That I agree to the DGR or any monitoring agency authorized by the DGR having the right to inspect any documents or accounts of our ESM Coal Loading and Transportation company.
- (o) That in case of my demise during the tenure of ESM Coal Transportation Company all my financial rights be given to my wife Smt. Veena Prasad d/o Lt Col AS Panicker (Retd) age 57 years.
- (p) That in case, it is found/ brought to notice that I have suppressed/ hidden/ misled DGR about any of the above stated statements DGR has the right to dis-empanel me or take legal action against me.”

9. It is relevant to note that the said affidavit was affirmed and submitted prior to the incorporation of Trispace.

10. Thereafter, the petitioner and other ex-servicemen (the promoters of Trispace) were called upon to incorporate a company by a letter dated 29.02.2016. DGR also forwarded the relevant clauses, which were required to be incorporated in the Memorandum of Association and Articles of Association of the ESM Company. The said clauses read as under:-

“COMPLIANCE OF MEMORANDUM OF UNDERSTANDING & GUIDELINES”

1. The ESM Coal Loading & Transportation Companies will adhere to all provisions as mentioned in Memorandum of Understanding, signed on 12 Dec 2013 between Directorate General of Resettlement & Coal India Ltd., addendum signed with Coal Subsidiary and guidelines issued by DGR on formation and running of the said Companies, as amended from time to time.
2. **Submission of Report & Return-** The Ex-Servicemen, Coal

Loading & Transport Company sponsored by the DGR will submit various Reports & Returns as decided by DGR from time to time. Non-submission of specified Reports/Returns or incorrect facts and figures may result in cancellation of sponsorship/non-renewal of contract leading to closure of the Company.

3. **Sub-letting of work** – Work assigned to the Company by the Coal subsidiary shall not be sub-let to anybody else. Any violation of this provision shall lead to closure/de-sponsorship of the company.
4. At least one Officer Director will always be present at the worksite at all times.
5. The company will start the work with minimum 10 tippers and one pay loader. The number of vehicles and pay loaders will be increased to a maximum of 30 tippers and three pay loaders in a time frame required by the Coal Subsidiary after obtaining prior permission of DGR.
6. The company shall be liable to clear its dues/any loans taken for whatsoever purpose where DGR/ESM/Widows/disabled ESM are involved.
7. In case of default on payment to widows/disabled ESM attached under tipper attachment scheme, DGR is competent to issue instructions to Coal Subsidiary to withhold money from security deposit or pending bills in respect of the company and to make payment directly to the affected party.
8. **Non compliance of DGR Instructions** – Violation or non-compliance of above clauses may lead to withholding of payments by coal subsidiary and/or cancellation of sponsorship by the DGR or closure of the Company.”

11. After Trispace was incorporated, the petitioner along with other ex-servicemen who had promoted Trispace furnished an undertaking on 06.04.2016 assuring the DGR to abide by the Guidelines.

12. In view of the above, it is apparent that the petitioner had volunteered to avail the benefits under the Guidelines and having availed the same, it is

no longer open for the petitioner to now challenge the said guidelines. The work of coal transportation was awarded by MCL to Trispace only pursuant to the DGR sponsoring Trispace for such work. The sponsorship was in terms of the Guidelines and it is not open for the petitioner to continue availing the benefit of sponsorship and yet challenge the Guidelines.

13. The contention that neither Trispace and nor its promoters (including the petitioner) receive any grant and therefore are not bound by the restrictions imposed under the Guidelines is unmerited, as indisputably, Trispace has been awarded the work of coal transportation by MCL only on the DGR sponsoring it. The petitioner would plainly be at liberty to give up the work of coal transportation under the sponsorship scheme and take up any other vocation including the work of coal transportation, *albeit* not under the sponsorship of DGR; but, he cannot insist on securing a sponsorship from DGR without following the attendant conditions.

14. The contention that any of the restrictions imposed under the Guidelines are violative of Article 19, is also unmerited. On the contrary, the Guidelines provide a framework for providing employment opportunities to ex-servicemen. The restriction that ex-servicemen availing such opportunities cannot carry on any other business has been inserted only to exclude such ex-servicemen who have other employment opportunities, from availing the benefits of the resettlement scheme. This is to ensure that only the ex-servicemen who otherwise do not have the necessary opportunities are ensured some work post their retirement.

15. The restriction requiring at least one director to be always available at

work site is to ensure that the directors of the ESM Company take full responsibility and certain standards of work are maintained. CIL had agreed to provide the work of coal loading and transportation to ESM Companies on the fundamental premise that such work would effectively be executed by the ex-servicemen. The presence of at least one director at work site would ensure that the work is carried on directly under the supervision of the ex-serviceman.

16. This Court does not find that the requirement of filing returns as required by DGR offends Article 14 or 19(1)(g) of the Constitution of India. Apart from that, the petitioner had also agreed and furnished an undertaking to file the necessary returns and therefore it is not open to the petitioner now to challenge such requirement.

17. In the petition, the petitioner claims that the affidavit furnished by him was under duress of being rendered ineligible for being considered for the scheme and without getting an understanding of the business opportunities, risks and the likely income from the business. The said contention is plainly unacceptable. The petitioner retired as a senior officer of the Indian Armed Forces and would have known the implications of affirming the affidavit submitted by him. The affidavit was in conformity with the Guidelines and the petitioner had voluntarily applied to DGR on the basis of the Guidelines.

18. In view of the above, the petition is dismissed.

VIBHU BAKHRU, J

JULY 10, 2017/pkv