

Amk

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CONTEMPT PETITION NO. 185 OF 2017
IN
WRIT PETITION NO. 3503 OF 2015
WITH
CONTEMPT PETITION NO. 224 OF 2017
IN
WRIT PETITION NO. 5307 OF 2015
WITH
CONTEMPT PETITION NO. 225 OF 2017
IN
WRIT PETITION NO. 3502 OF 2015**

Maharashtra Rajya Suraksha Force &
General Kamgar Union

.. Petitioner

Vs.

The State of Maharashtra & Ors.

.. Respondents

Mr. Saurabh Pakale I/b Mr. S. M. Katkar for the Petitioner.

Mrs. Lata Desai a/w. Mr. Salil Dabke I/b Pallavi Divekar (Divekar & Co.)
for the Respondent No.2.

**CORAM : R. M. SAVANT &
K. K. SONAWANE, JJ.**

DATE : 12th SEPTEMBER, 2018.

P. C.

1. The above Contempt Petitions allege contempt of the order dated 21.12.2016 passed by a Division Bench of this Court by which order the Respondent No.2 herein i.e. Pune District Security Guards Board was directed to consider the applications made by the Petitioner on behalf of its members who are working in the company/organization mentioned in the cause title of each of the above Contempt Petitions for registration. An Affidavit-in-reply has been filed on behalf of Respondent No.2 in each of

the above Contempt Petitions dealing with the accusation which has been made against the Respondent No.2. In the context of the contempt which has been alleged, it is required to be noted that the Inspector of the Respondent No.2 vide his letter dated 18.02.2017 informed the Petitioner-Union that necessary applications would have to be filed within the time stipulated in the said letter so as to enable the Respondent No.2 to send the members of the Petitioner-Union for tests which the Respondent No.2 was holding in the process of registration of the security guards. The said letter was replied by the Advocate of the Petitioner-Union vide his letter dated 07.03.2017. It is mentioned in paragraph 7 of the said letter that the letter dated 18.02.2017 has been replied to and it was once again pointed out that the Ground and Physical Examination sought to be conducted by the Respondent No.2-Board are not within the purview of the Security Guards Act as amended from time to time and hence the action on the part of the Respondent No.2 was unlawful. Hence, a reading of the reply of the Advocate for the Petitioner-Union discloses that the Petitioner-Union had reservations about its members being subjected to the Ground and Physical Tests which are prescribed in the process leading to registration with the Respondent No.2-Board.

2. In so far as the aforesaid aspect is concerned, it would be necessary to make a reference to Section 8 of the Maharashtra Private Security Guards Act, 1981. The said Section 8 spells out the powers and duties of

the Board. In sub-section 4 of the said Section it is provided that in exercise of powers and performance and discharge of its duties shall be bound by such directions as the State Government may issue for reasons to be stated in writing from time to time. Thereafter, it is necessary to refer to Clause 14 of the Maharashtra Private Security Guards Scheme, 2002, sub-section 1(a) of the said Clause 14 postulates that the person who desires to work as security guard shall after following procedure prescribed for selection as security guard of the board and on selection as security guard apply for registration to the board in the form prescribed by it. Hence, the procedure for registration contemplates two stages, first stage that of being selection and the second being that of registration.

3. The State Government has from time to time issued directions in the matter of the registration of the security guards and more specially in respect of the Ground and Physical Tests that they are to be subjected to. The first of the said Resolutions is the Resolution dated 02.03.2009 which provides for the Physical Requirements, Ground Tests, Medical Tests and the Training to be undergone by a registered security guard. The next Resolution is the Resolution dated 25.08.2010 by which the condition of the security guard having worked for 180 days with the principal employer was prescribed and if the security guard seeks registration he is required to bring such certificate from the principal employer. Thereafter it is Resolution dated 17.10.2013 by which the security guards over 35 years of

age were exempted from physical test. However the physical test continued in respect of those guards who are less than 35 years of age. Hence, the directions contained in the aforesaid Resolutions are referable to sub-section 4 of Section 8 of the Security Guards Act. It is required to be noted that in terms of the said Resolutions an “affected guard” was also exempted. An “affected guard” is one who is already working with a security agency and therefore such guards were classified separately and exempted from the Ground and Physical Tests. It is required to be noted that the selected guards have to fill up Form-B which is the form for registration. In so far as the Contempt Petition No. 185 of 2017 is concerned, it is purportedly filed on behalf of the security guards working with Mahindra & Mahindra. As indicated above, the Petitioner- Union has shown its reluctance to subject its members to the Physical Test which is prescribed for registration, in the process of registration of the security guards. The correspondence, therefore, indicates that the Respondent No.2 had informed the Petitioner to submit the forms within the time frame stipulated so as to enable the Respondent No.2 to issue them the letters for attending the Physical Tests. However, the Petitioner having not complied with the same, in our view no contempt would lie against the Respondent No.2 in so far as the non compliance of the order dated 21.12.2017 passed by the Division Bench.

4. In so far as the Contempt Petition No. 224 of 2017 is concerned, the

said Contempt Petition has been filed on behalf of the security guards working with I.B.M. Infocity Pvt. Ltd. The letter dated 09.07.2015 of the security agency one Security & Intelligence Services (I) Ltd. is eloquent in so far as the said aspect is concerned. It is mentioned in the said letter on the first page that the four security guards who are listed in table are working with the said security agency. Thereafter, it is further mentioned that the four security guards who are mentioned in the second table beginning with one Vanita Bagade to Swapnil Sonawane were stated to be working but they have left the job. It is mentioned that the security guards bearing Nos.1 to 32 in the last table beginning with one N. R. Bainade to N. M. Sagar have not joined with the said security agency. Hence, in so far as the aforesaid security guards are concerned, the applications filed on the basis that they are working with the Security and Intelligence Services (I) Ltd. and therefore they in fact are “affected guards” is to say the least misleading and therefore the Contempt Petition filed on the basis that the order dated 21.12.2016 passed by the Division Bench has not been complied with in respect of the said security guards cannot be countenanced.

5. In so far as the Contempt Petition No. 225 of 2017 is concerned, the Contempt alleged is on behalf of the security guards and members of the Union who are allegedly working with M/s. MSEB Mahaparesan at its sub-station in Kashal Tal. Maval, Dist. Pune. The Assistant Engineer, MSEB

has issued a certificate that the Mahapareshan has no relation or nothing to do with the guards on behalf of whom Writ Petition (Stamp) No. 8971 of 2015 was filed. It is further stated that the said generating station has not been fully transferred to the Mahapareshan and is in the possession of Windworld India Ltd., Plot No. 51, Siddhi Bunglow, Anand Nagar, Talegaon Dabhade and the security guards employed on said Windworld India Ltd. are those of one Sachin Security and Intelligence Bureau. Hence, the claim made on behalf of the security guards is also based on misleading facts as the said security guards were never working with the MSEB, Mahapareshan and that the Petitioner as originally filed can be said to be founded on incorrect and misleading facts. The same seems to have been done to somehow see to it that the guards who the Petitioner allegedly claims are its members steal a march in so far as the registration is concerned as once they come within the category of “affected guards” then they are exempted from the Ground and Physical Tests. The aforesaid Contempt Petition is, therefore, also based on misleading facts.

6. In our view, since the contempt alleged is based on misleading facts in all the above Contempt Petitions, we do not deem it appropriate to entertain the above Contempt Petitions. The same are, accordingly, dismissed.

[K. K. SONAWANE, J.]

Arjun
Machhindra
Kadam

Digitally signed
by Arjun
Machhindra
Kadam
Date:
2018.09.19
15:13:44 +0530

[R. M. SAVANT, J.]