

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.12.2019

DATED : 30.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.34305 of 2019

And

W.M.P.No. 34959 of 2019

Lt Col Sasikumar (Retd)
Proprietor
Sasikumar Security Agency
Room No. 4/223A, Kottavilai
Ananthamangalam,
Painkulam
Kanyakumari District,
Tamil Nadu - 629 173.

... Petitioner

Vs.

1. Indian Oil Corporation Limited
LPG Boiling Plant
Government Engineering Campus
Salem - 636 011.

2. The Director General (Resettlement)
Government of India
Ministry of Defence, Directorate General of Resettlement
West Block-IV, R.K.Puram
New Delhi - 110 066.

.. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records of the first respondent in order No. SLMP/SECURITY.2019.20/1 dated 14.11.2019 and quash the same since the same is arbitrary, whimsical and against the principles of natural justice and direct the first respondent to allow the petitioner to continue with the security services till the expiry of the contract.

For Petitioner : Mr. P.J.Rishikesh

For R1 : Mr.T.R.Rajagopalan
Senior Counsel for
Mr.V.Anantha Natarajan

For R2 : Ms. Anuradha Sekar

O R D E R

Writ Petition has been filed in the nature of Writ of Certiorarified Mandamus, seeking the records of the first respondent, Indian Oil Corporation Limited, LPG Boiling Plant, Government Engineering Campus, Salem - 636 011 with respect to letter No. SLMP/SECURITY.2019.20/1 dated 14.11.2019 and to set aside the same and consequently direct the said respondent to allow the petitioner to continue with the security services till the expiry of the contract period.

2. The petitioner, Lt Col Sasikumar (Retd), Proprietor of Sasikumar Security Agency, stated in his affidavit filed in support of the Writ Petition that under the Ministry of Defence, there is a Department of 'Ex-Servicemen Welfare' and an organization called Directorate General of Resettlement. The Director General of Resettlement has been impleaded as the second respondent in the present Writ Petition. They rehabilitate Ex-Servicemen under various schemes and policies and one such scheme is a self employment opportunity, placing them as "Security Agencies", whereby ex-Servicemen are employed as guards/supervisors to Ex-Servicemen below the Officer cadre. As a matter of fact, it is claimed that Government of India has directed all Central Public Sector Undertakings and Government Organizations and Departments to outsource security contracts only to the security agencies sponsored by the Director General of Resettlement.

3. The petitioner claimed to be empanelled with the second respondent from 13.03.2019 and has also filed a Certificate with service No. SL 04274H with effect from 13.03.2019 to 06.01.2020 along with the Writ Petition. The first respondent had requested the second respondent to sponsor a security agency. The second respondent had in-turn sponsored the petitioner as a security agency to the first respondent by letter dated 24.04.2019. Thereafter the first respondent had invited the petitioner to participate in a limited e-tender and the petitioner was thereafter awarded with a Letter of Acceptance dated 10.07.2019. These documents have also been filed along with the Writ Petition.

4. Pursuant to the Letter of Acceptance, a contract was entered into on 24.07.2019 and a work order dated 25.07.2019 was issued which was to be effective from 01.08.2019 to 31.07.2020. Both these documents have also been filed along with the Writ Petition.

5. The petitioner granted work order to provide security services to the first respondent LPG Bottling Plant at Salem from 01.08.2019 till 31.07.2020. The petitioner had commenced providing security agents and twenty number of guards were provided. They were all Ex-Servicemen.

6. The first respondent then issued the impugned order dated 14.11.2019 stating that the work is being pre-closed with effect from 13.12.2019. The petitioner claimed that no notice or enquiry was held prior to issuance of such order and also claimed that no reasons were also given in the said order. The petitioner sought reasons by E-mails dated 22.11.2019, 23.11.2019 and 25.11.2019. Finally a reply was given on 26.11.2019 wherein the first respondent stated that they had pre-closed the contract due to their discretion. It is under these circumstances that the petitioner had come before this Court seeking to quash the said order.

7. A counter had been filed by the first respondent. In the counter, it had been stated that the petitioner was awarded work order on 24.07.2019 based on tender and the duration of the contract was 12 months, namely from 01.08.2019 to 31.07.2020. It was stated that the first respondent reserved the right to terminate the contract by serving one month notice in writing. It was also stated that there was an arbitration clause in the contract. Thereafter, various aspects relating to the Bottling of LPG cylinders have been stated in the counter, which are not directly germane to this petition. It was however stated that the first respondent had been carrying out as many as nine separate activities through various contractors, and that the cost of awarding individual contracts to various parties incurred huge expenditure and consequently, the first respondent had decided to include all the said nine items under the supervision of one contractor. It was stated that a public tender was floated on 29.08.2019 for the said proposed contract and it was claimed that the petitioner had not objected to the same. It was stated that thereafter, the successful bidder, namely, M/s. Meena LPG and Industries at Coimbatore, had been awarded the contract on 15.11.2019. It was stated that on 14.11.2019, a letter was issued to the petitioner for pre-closure of the contract with effect from 13.11.2019. It was therefore stated that the first respondent had every authority to determine the contract at their discretion. It was therefore

claimed that the Writ Petition should be dismissed.

8. Heard arguments advanced by Mr. P.J.Rishikesh, learned counsel for the petitioner and Mr.T.R.Rajagopalan, learned Senior Counsel for the first respondent.

9. During the course of hearing, the learned counsel for the petitioner forwarded a letter dated 11.12.2019 issued by the first respondent extending the period of closure from 13.12.2019 to 31.12.2019 which according to them was actual date of work order closure.

10. Mr. P.J.Rishikesh, learned counsel for the petitioner assailed the impugned order by stating that the said order had not given any reasons whatsoever for the termination of the contract. Attention was drawn to the Security Service Contract Agreement dated 24.07.2019 and more particularly to the Clause relating to 'termination' and it was claimed that specific events have been listed out which would give the first respondent the right to terminate the contract. It was stated that the order which is now sought to be impugned did not contain any of those reasons. The learned counsel also drew the attention of this Court to the work order in which it was again stated that the duration of the contract shall be 12 months from 01.08.2019 to 31.07.2020, wherein it was also stated that the first respondent shall have the right to terminate the contract by serving one month notice. It was insisted by the learned counsel that termination must be only for any one of the reasons as stipulated in the agreement entered into between the parties. It was stated that the order did not give any reason for termination and reasons cannot be subsequently substantiated in a counter affidavit and therefore it was urged that the counter affidavit filed by the respondent claiming that as a cost effective method, all the services of the first respondent were clubbed together and awarded to one contractor should be rejected by this Court.

11. The learned counsel also placed reliance on the Constitution Bench Judgment reported in (1978) 1 SCC 405 {Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others}, particularly paragraph 8, wherein it had been stated as follows:-

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or

otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older."

[Emphasis Supplied]

12. With respect to the contention that the petitioner should have taken recourse to Arbitration, the learned counsel also placed reliance on (2003) 2 SCC 107 { Harbanslal Sahnia and Another Vs. Indian Oil Corporation Ltd., and Others} and in particular to paragraph No. 7, wherein it had been stated as follows:-

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings

are wholly without jurisdiction or the vires of an Act and is challenged [See Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors., (1998) 8 SCC 11. The present case attracts applicability of first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings. "

[Emphasis Supplied]

13. Reliance was also placed on (2015) 16 SCC 125 {Indian Oil Corporation Ltd., Vs. Nilofer Siddiqui and Others}, with respect to determination of a contract to a dealer wherein it was stated that the appellant therein, namely, Indian Oil Corporation Ltd., "must be very cautious and careful while exercising its power to terminate the distributorship of this nature". It was further held that "this conduct on the part of IOCL defeats the laudable object of the scheme of the Government of India by which distributorship was allotted in favour of the ex-defence personnel, war-widows and dependants."

14. Mr.T.R.Rajagopalan, learned Senior Counsel for the first respondent on the other hand justified the determination of the agreement by stating that a policy decision was taken by the first respondent to cut costs and club all activities carried out and awarded to various contractors into one unit and award them to one contractor. It was stated that the said policy decision cannot be interfered with by this Court. It was also stated that the petitioner herein was employing as guards, the actual Ex-Servicemen, who were already on employment under the previous contractor and therefore stated that the actual ex-servicemen would not be put to any loss. Learned Senior Counsel also pointed out the work order which stipulated that a discretion was vested with the first respondent and a contract can be determined and the only requirement is that one month notice must be given. Accordingly, notice was also issued. It was therefore stated that it would not lie in the mouth of the petitioner to seek an explanation or seek interference by this Court of the decision taken by the first respondent. It was therefore urged that the Writ Petition should be dismissed.

15. I have carefully considered the arguments advanced.

16. The fact that the petitioner is an Ex-Servicemen and is having a sole Proprietorship concern with Ex-Servicemen as its members to provide security services to various organizations is not disputed and not questioned. The fact that the second respondent, Director General of Resettlement had evolved a policy that all Public Sector Undertakings and Government Undertakings and Departments must employ only Ex-Servicemen as security guards and must employ those organizations, which have been empanelled by the second respondent is also not disputed and not questioned. The fact that the petitioner herein has been actually empanelled and recognised by the second respondent is also not a fact not disputed and not questioned. The further fact that the first respondent had floated a tender for providing security service to LPG Bottling Plant at Salem and that pursuant to such tender, the petitioner herein was the successful bidder is also not disputed and not questioned. The further averment of the petitioner that thereafter they provided security guards is also not disputed by the first respondent. The first respondent has not placed on record any material to show that there were acts of negligence or misfeasance or misdemeanor committed by any of the security guards provided by the petitioner.

17. The impugned order does not give any such reason or any other reason for determining the contract. The agreement entered into between the petitioner and the respondent may now be referred by the Court. The reasons for determination of a contract have been reduced in writing by the parties. Clause 29 of the agreement stipulates as follows:-

"29. This agreement shall remain in force for a period of 24 months (Two Year) subject to extensions if any and notwithstanding anything to the contrary herein contained, the Corporation shall be at liberty to terminate this agreement forthwith upon or at any time after the happening of any of the following events:-

a) If the contractor shall commit a breach of any of convenient and stipulations contained in the agreement and fail to remedy such breach within three days of the receipt of a written notice from the Corporation in this regard.

b) (i) Upon the death or adjudication as insolvent of the contractor if be as indicated.

(ii) Upon the dissolution of partnership of the contractors firm or the death or adjudication as insolvent of any partners of the firm if the party be a firm.

c) If any attachment is levied and/or continued to be levied for a period of seven days upon the effects of the contractor or any individual partners for the time being of the contractors firm.

(d) A receiver shall be appointed of any property or assets of the contractor or of any partner if the contractor is Partnership Firm or Director if the Contractor is a Company.

(e) If the license issued to the contractor by the relevant authorities is cancelled or revoked.

(f) If the contractor shall for any reason make default in payment to Corporation in full or his outstanding as appearing in the Corporation's book of account beyond four days of demand by the Corporation.

(g) If the contractor does not adhere to the instructions issued from time to time by Corporation with safe practices to be followed by him in carrying out various jobs assigned to him.

(h) If any information given by the contractor shall be found to be untrue or incorrect in any material particular.

(i) The contractor shall either himself or by his servants, agents, commit or suffer to be committed any act which in the opinion of Location-in-Charge whose decision shall be final, is prejudicial to the interest or good name of the

Corporation or its product, the Location-in-Charge shall not be bound to give reasons for such decisions."

[Emphasis Supplied]

18. The agreement also has an Arbitration clause to settle disputes, but neither of the parties herein have stated that either of them should have resorted to arbitration to settle the disputes. There is only a fleeting reference to the said clause in the counter of the first respondent.

19. The first respondent had relied on the work order issued to the petitioner. I hold that the terms of the work order cannot go beyond the agreement entered into between the parties. The work order was issued only pursuant to the agreement entered into between the parties. The conditions in the work order are subject to the terms of the agreement. They cannot supersede the terms of the agreement. In the work order, with respect to duration of the Agreement, it had been stated as follows:-

"Duration of Contract: Duration of contract shall be 12 months from 01.08.2019 to 31.07.2020. Further the provisions contained in clause above, the corporation shall have the right to terminate the contract any time by serving one month's notice in writing to the contractor. The contractor shall not be entitled to any additional compensation for such termination in that event."

[Emphasis Supplied]

19. Taking recourse to the right provided to the first respondent to determine the contract at any time by serving one month notice in writing, the impugned order had been issued to the petitioner. The impugned order is extracted below for ready reference:-

"To

M/s. Sasi Kumar Security Agency,
Room No. 4/223A, Kottavilai,
Ananthamangalam, Painkulam,
Kanyakumari District,
Tamil Nadu - 629 173.

SLMBP/SECURITY/2019-20/1
Dated 14.11.2019.

Sub: Notice for Closure of Work Order placed for Security Services at Salem LPG BP.

Sir,

With reference to the work order (SLMBP/SECURITY/2019-20/WO dtd 25.07.2019) placed on you for the contract of Security Services at Salem LPG Bottling Plant from the date 01.08.2019 to 31.07.2020 (for 1 years), we would like to inform you that, the work order placed on you is being pre-closed on the date 13.12.2019. As per the tender terms and conditions, there shall not be any entitlement for any additional compensation due to this termination of contract.

You are requested to complete all formalities w.r., to closure of work order on or before 13.12.2019 (actual date of work order closure).

Your Sincerely
For Indian Oil Corporation Limited.

Deputy General Manager (Plant)."

[Emphasis Supplied]

20. In this connection, as is seen the impugned order does not give any reason for pre-closing the agreement.

21. It is only in the counter affidavit had it been stated that the first respondent has been carrying out various activities through various contractors. The list had been enumerated as follows:-

"1. Handling, haulage and Housekeeping contract.

2. Security contract through DGR nominated security agencies.

3. PMMC Contract.

4. Emergency car on contract.

5. Canteen contract.

6. Annual maintenance contracts for all major equipments in the plant.

7. Day to day maintenance contract of filling shed equipment.
8. Testing of safety equipment such as Fire Extinguishers, fire hoses etc.
9. Regular upkeep of plant, non-plant - building and machinery."

It had been stated that since the cost of awarding contracts to various authorities resulted in incurring huge expenditure, a policy decision was taken, to award one single contract with respect to all the activities. This reason has been stated only in the counter affidavit and not in the order impugned before this Court.

21. In (1978) 1 SCC 405 {Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others}, referred above, the Constitution Bench had very clearly stated that "when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out." It had been further stated that "Orders are not like old wine becoming better as they grow older." Thus the reasons stated in the counter affidavit cannot be taken into consideration by this Court and have to be rejected outright.

22. Further, with respect to the fleeting observation that since there is an Arbitration clause and the petitioner should have referred to arbitration, as pointed out in (2003) 2 SCC 107 { Harbanslal Sahnia and Another Vs. Indian Oil Corporation Ltd., and Others}, the rule of exclusion of writ jurisdiction by availability of an alternative remedy "is a rule of discretion and not one of compulsion. In an appropriate case in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice." In the present case, no personal hearing was afforded to the petitioner, no explanation was called for from the petitioner, no opportunity was granted to the petitioner and no reasons were given in the order impugned. Therefore, I hold thta driving the petitioner to Arbitration would be wholly unjustified.

23. In (2015) 16 SCC 125 {Indian Oil Corporation Ltd., Vs. Nilofer Siddiqui and Others}, it was emphasised that the first respondent "must be very cautious and careful while exercising its power to terminate the distributorship of this nature". It was further stated that this conduct on "defeats the laudable object of the scheme of the Government of India by which distributorship was allotted in favour of the ex-defence personnel, war-widows and dependants." The dictum laid down is applicable on all fours to the facts of this case.

24. The learned counsel for the petitioner, as stated above, during arguments, had forwarded a letter dated 11.12.2019 which probably was issued pending the writ petition. It was stated that the petitioner should complete all formalities with respect to closure of work order on or before 31.12.2019.

25. I hold that the letter is of no consequence since the impugned order itself is set aside by this order. The first respondent is directed to adhere to the terms of the agreement dated 24.07.2019 and retain the services of the petitioner till the period of the agreement. The Writ Petition is therefore allowed. However taking into consideration the fact that on going relationship between the petitioner and the first respondent has been encouraged by this order, to avoid any further adverse reactions, costs are not awarded.

26. In the result, Writ Petition is allowed. The impugned order dated 14.11.2019 and the letter dated 11.12.2019 are both quashed. Connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

सत्यमेव जयते

To,

1. Indian Oil Corporation Limited
LPG Boiling Plant
Government Engineering Campus
Salem - 636 011.

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2. The Director General (Resettlement)
Government of India
Ministry of Defence, Directorate General of Resettlement
West Block-IV, R.K.Puram
New Delhi - 110 066.

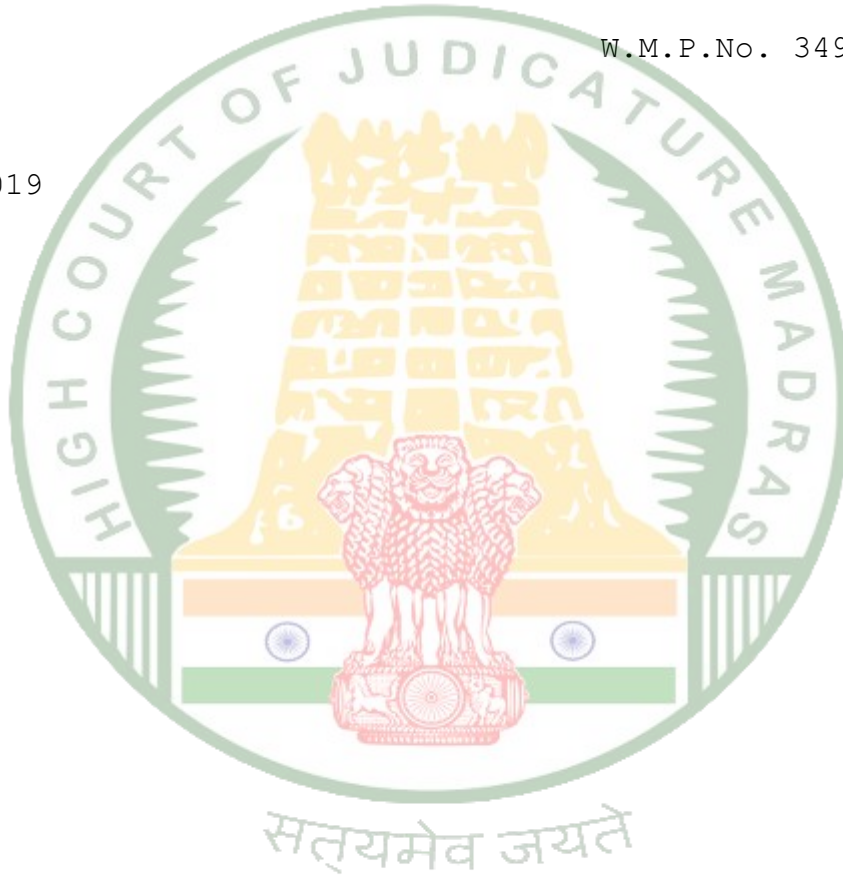
+3 ccs to M/s.V.Ananth Natarajan Advocate sr106832
+1 cc to M/s.P.J.Rishikesh Advocate sr106845

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