

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

+ **RFA No. 127/2019**

% **13th February, 2019**

WELL PROTECT MANPOWER SERVICES PVT. LTD.

..... Appellant

Through: Mr. Tarkeshwar Nath,
Advocate (M. No.9810162373),
Ms. Shashwat Sagar, Mr.
Rishabh Kumar, Advocate (M.
No.9582099257) & Mr. Sushil
Shukla, Advocate (M.
No.9716801384)

versus

LOK NAYAK HOSPITAL

..... Respondent

Through: Ms. Mahamaya Chatterjee,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No. 6650/2019 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RFA No. 127/2019

2. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the trial court dated 08.10.2018 by which the trial court has dismissed the suit for recovery of Rs. 26,55,684.11/- filed by the appellant/plaintiff and in this suit, a declaration was also sought that the contract for providing security services which was terminated by the respondent/defendant in terms of the Office Order dated 12.04.2007 was illegal and that this Office Order dated 12.04.2007 be quashed.

3. The facts of the case are that the appellant/plaintiff was appointed originally for a period of one year from 01.08.2004 to 31.07.2005 to provide security services in the premises of the respondent/defendant/Lok Nayak Hospital at New Delhi. Thereafter, this contract was renewed from year to year with the last extension being from 01.08.2006 to 31.07.2007. The respondent/defendant vide its Order dated 12.04.2007 by invoking Clause 26 of the Agreement between the parties, terminated the contract. As per the appellant/plaintiff, since the termination was done without issuing a

show cause notice and conducting an enquiry, hence, the action of termination was illegal, and therefore, the subject suit was filed seeking an amount of Rs. 26,55,684.11/- on the following counts:-

- “i) Arrears Rs. 13,23,853/-
- ii) Amount due and payable from 31.03.2007 to 12.04.2007 which comes to Rs. 1,39,890.96/-.
- iii) Damages for illegal termination of the agreement which comes to Rs. 9,91,941/-.
- iv) Harassment (physical and mental) computed in monetary terms to the tune of Rs. 2,00,000/-.”

4. The respondent/defendant contested the suit and pleaded that in terms of Clause 26 there is an absolute power to terminate the contract without reasons, and although the reasons were not required but the real reason which led to the termination of the contract was that, in the night of 10/11.04.2007, there was an incident whereby a patient's relatives had manhandled the doctors. This led to a strike/agitation by the doctors and nurses of the hospital resulting in a meeting being held in the chamber of the Private Secretary (Health and Family Welfare), and in this meeting it was decided that the prevailing security arrangements of the appellant/plaintiff be cancelled. Therefore, the Office Order dated 12.04.2007 was issued

cancelling the contract of security services of the appellant/plaintiff. It was also stated that even earlier, there was slackness in duties and mismanagement on the part of the appellant/plaintiff and its staff, and which resulted in issuing of a number of oral warnings to the appellant/plaintiff to improve the security. The respondent/defendant had in fact issued two Show Cause Notices dated 21.11.2006 and 25.11.2006 giving details of the incidents and asking for explanation. The suit was therefore prayed to be dismissed.

5. The following issues were framed in the suit:-

- “1. Whether the office order dated 12.04.2007 terminating the agreement dated 27.04.2004 is null and void? OPP
2. Whether there was lapse in the security services as provided by the plaintiff, as alleged by the defendant? OPD
3. Whether the plaintiff is entitled to a decree of Rs.26,55,684.11/- alongwith interest @ 18% p.a?
4. Relief.”

6. Evidence which was led by the parties and the cross-examination done of the witnesses, and these aspects are referred to in paras 17 to 24 of the impugned judgment, and these paras read as under:-

“17 Plaintiff examined Mr. Manoj Kumar Singh as PW1 by way of evidence affidavit. In his evidence affidavit, PW1 reiterated the contents of his plaint and replication. PW1 filed and relied upon following documents:-

1. Copy of **resolution dated 28.03.2008** Ex.PW1/1
2. Work order dated 27.07.2004 Ex.PW1/2
3. Letter dated 01.07.2005 and 24.07.2006 Ex.PW1/3 & Ex.PW1/4
4. Copy of agreement dated 01.03.2005 Ex.PW1/5
5. Appreciation letter dated 29.03.2007 Ex.PW1/6
6. Office order dated 12.04.2007 Ex.PW1/7
7. Copy of letter dated 09.04.2007 and 24.08.2007 Ex.PW1/8 & Ex.PW1/9
8. Office copy of legal notice dated 17.04.2007 Ex.PW1/10
9. Office copy of legal notice dated 22.09.2007 Ex.PW1/11
10. Copies of registered postal receipts dated 24.09.2007 Ex.PW1/12 & Ex.PW1/13 (colly)
11. Copy of acknowledgement card dated 26.09.2007 Ex.PW1/14

18 Witness was asked **whether he had brought original Board Resolution dated 28.03.2008, copy of which was allowed to be exhibited as Ex.PW1/1 to which witness replied in negative** and deposed that he shall produce the same on the next date of hearing. A specific adjournment was sought by this witness for producing the Board Resolution before the Ld. Predecessor of this Court before his cross examination began. Witness denied the suggestion that he was not authorized by the Board to depose in the present case and that is why no Board Resolution exists and that is why the Board Resolution was not brought by this witness. He denied the suggestion that the hospital authorities had warned the plaintiff from time to time due to slackness of duties, negligence and mis-management on the part of plaintiff as well as on the part of deployed security personnel as security. Witness denied the suggestion that the hospital had appreciated the work of the plaintiff and had also granted extension of contract to the plaintiff company. Witness deposed that no show cause notice dated 21.11.2006 and 25.11.2006 were received by the plaintiff company. Witness was given a suggestion that the plaintiff company had also replied to the abovementioned show cause notice dated 21.11.2006 which suggestion was denied by the witness and he categorically deposed that plaintiff company did not give any reply to the show cause notice dated 21.11.2006. Witness is

associated with plaintiff company since 2004 as one of its Director. Witness deposed that he did not have full knowledge with respect to the facts of the present case. Witness deposed that he had gone through the records of the plaintiff company before deposing as witness. Witness was given a suggestion that he was deposing falsely and deliberately regarding show cause notice and its reply to which witness replied that he was not aware. Witness was confronted with documents from Court file i.e. the two show cause notices dated 21.11.2006 and letter dated 28.11.2006 and was given a suggestion that the letter dated 28.11.2006 is issued by the plaintiff company and same is the reply to the two show cause notices dated 21.11.2006 and 25.11.2006 issued by the defendant hospital to which witness replied that the letter dated 28.11.2006 is issued by the plaintiff company but the same is not a reply to the two show cause notices. Letter dated 28.11.2006 was exhibited as Ex.PW1/X-1.

19. During the course of cross examination of PW1, witness deposed that it is not within the knowledge of the witness whether he has received two show cause notices dated 21.11.2006 issued by the defendant hospital. Witness deposed that he could not produce the show cause notice dated 20/25.11.2006 to which plaintiff company had replied through its letter dated 28.11.2006 Ex.PW1/X-1. PW1 is not aware about theft incident but some incident of manhandling with doctors and the other staff often took place. Witness is not aware whether the defendant hospital had issued memorandum and circulars to the office of plaintiff with respect to thefts and manhandling in the hospital. Witness does not remember when the plaintiff company received last payment from the defendant. Witness also does not remember the amount of last payment received from the defendant by the plaintiff company. It is deposed that the plaintiff company raised bills on tender rates for per personnel deployed. Plaintiff company deployed the same strength during the entire contractual period. Witness deposed that it is correct that the plaintiff company was to furnish payments made to its staff deployed in the hospital alongwith the bills. Witness did not file the payment receipts of the payment made to the staff deployed in the hospital alongwith the bills for the period as claimed in para 11 of the evidence affidavit. Witness volunteered to depose that however the same was submitted to the defendant. Witness could not tell as to how much payment was received for how many staff and for what amount. Witness denied the suggestion that the plaintiff company did not furnish any payment receipt of the payment made by plaintiff company to the deployed staff alongwith bills despite repeated requests of the defendant. Witness volunteered to deposed that entire record has been furnished to the defendant alongwith payment of their regular bills except for the last 12 days. Witness deposed that it is correct that the plaintiff company has admitted its mistake on account of slackness of duties, negligence and mis-management on the part of plaintiff and its staff.

20. Witness denied the suggestion that despite admitting the guilt of plaintiff, plaintiff failed to improve its services. Witness does not remember any instance of manhandling of doctors on duty in Casualty on the night of 10/11.04.2007 which led to a strike by the doctors/nurses and ground staff of the hospital. It is not within the knowledge of the witness that following the incident dated 10/11.04.2007, a meeting was held in the chamber of Principal Secretary (Health and Family Welfare) with the representatives of RDA, nursing where it was decided that the security arrangements with the private contractor i.e. the plaintiff be cancelled immediately and thereafter the contract with the plaintiff was cancelled. Witness denied the suggestion that upto date payment was made to the plaintiff by the defendant till 11.04.2007 as per the bills submitted by the plaintiff with the defendant alongwith the annexed documents i.e. receipts of payment made to the deployed staff. Witness further volunteered to depose that payment of last 12 days is still unpaid on account of defendant towards the plaintiff. Witness does not remember whether the last sanctioned payment made to the plaintiff was dated 11.09.2007. Witness was given a specific suggestion that an appreciation letter dated 29.03.2007 was issued on the request of the plaintiff company only in order not to subvert/put a clot in the future engagement of the plaintiff at any other place to which witness replied in affirmative and accepted the suggestion. Witness deposed that it was incorrect to suggest that cancellation of agreement with the plaintiff was as per the provisions of the agreement and on account of failure on the part of the plaintiff in rendering proper and effective services. Witness denied the suggestion that nothing is due and payable to the plaintiff under the present contract. Witness denied the suggestion that no legal notice dated 22.09.2007 was sent and served by the plaintiff upon the defendant.

21 PW1 was re-examined on the point of Board Resolution. PW1 had brought the original Resolution authorizing him for filing/prosecuting/defending the legal matters on behalf of plaintiff company in all respects. Original Board Resolution is Ex.PW1/1. PW1 was further cross examined on a short point. PW1 deposed that it was incorrect that prior to 29.01.2018, PW1 was not authorized to appear in the present case on behalf of plaintiff company.

22 Thereafter, defendant examined Dr. J.C Passey as the sole defence witness by way of evidence affidavit. He deposed that he was posted at Lok Nayak Hospital and was defendant no.2 in the present case and was well conversant with the facts of the present case and his knowledge of the present case is derived from the official records. He deposed that he was authorized by the Medical Superintendent of Lok Nayak Hospital to appear in this case and depose. Authorization letter is Ex.DW1/1. Rest of his testimony in his evidence affidavit is the same as that of written statement filed on behalf of defendant with no material changes.

23 During this cross examination, plaintiff could not bring out any material on record which might be helpful or corroborative to the case of plaintiff and which might be destructive to the defence of the defendant or in any way contrary to the material pleadings made in the written statement of the defendant.

24 PW1 who is sole witness on behalf of plaintiff was asked to bring his original Board Resolution dated 28.03.2008 which was earlier exhibited as Ex.PW1/1. He was given a specific suggestion that he was not authorized by the Board to file and prosecute this case and depose on behalf of plaintiff which suggestion was denied by PW1 specifically. PW1 filed a Board Resolution Ex.PW1/X-1, but perusal of this resolution authorizing Mr. Manoj Kumar Singh to depose on behalf of plaintiff company shows that the said resolution was passed on 29.01.2018. Witness failed to produce original of Ex.PW1/1 dated 28/03/2008 by virtue of which he was supposedly authorized to file, institute and to verify the present plaint. Therefore, it is clear that witness PW1 who is the sole witness on behalf of plaintiff has failed to prove that he was authorized to institute, prosecute, defend etc. any legal proceeding by and against the company in a court of law in all matters.”

7. In my opinion, the trial court has rightly held that the respondent/defendant had absolute powers in terms of Clause 26 of the Agreement entered into between the parties/Ex.PW1/5 dated 01.08.2005 to terminate the contract without assigning reasons, and therefore, in such a contractual matter the appellant/plaintiff cannot question the termination of the contract in view of Clause 26, this Clause 26 reads as under:-

“**Clause 26.** Principal Employer has the absolute right to terminate the contract at any time without assigning any reason therefore, Principal Employer will also have the right to extend the contract at the same terms and conditions until such time, the new security agency taken over in case fresh tendering is required to be reported.”

8. In my opinion, the trial court has also further rightly held that even though no reason was required, there existed a reason for termination and it has been proved by the respondent/defendant of the incident of assaulting of doctors by the relatives of patient on the night of 10/11.04.2007, and which resulted in the respondent/defendant to pass the impugned Office Order dated 12.04.2007/Ex.PW1/7, and this Office Order reads as under:-

“F. No.62-47(3)/PWD/LNH/2006-07/58-70

April 12, 2007

OFFICE ORDER

On the night of 10-11th April 2007, an incident of manhandling by patient's relatives with the doctors on duty at Casualty took place which led to the strike/agitation by the doctors/nursing/Group 'D' staff. This is not the solitary instance when security at the hospital has been breached by the outsiders and manhandling and misbehavior has occurred with the doctors/staff on duty leading to strike and paralyzing the hospital services totally. Accordingly Show Cause Notices were issued to the private contractor to improve the security, but no improvement has been noticed by the workers of this hospital.

In this regard a meeting was held today in the chamber of Pr. Secretary (H&FW) with representatives of RDA, Nursing Union and Group 'D' union wherein it has been decided that the present security arrangements with the private contractor M/s Well Protect Manpower Services Private Limited be cancelled with immediate effect and ad-hoc arrangements from the Directorate General of Home Guards may be made till further orders.

In view of above it is hereby ordered that the present security contact with M/s. Well Protect Manpower Services Private Limited which was valid up to 31.07.2007 is hereby cancelled with immediate effect. **This is being done in exercise of the powers conferred under Clause 26 of the terms & conditions of the contract entered into between the Principal Employer (LNH) and the Contractor, which reads as under:**

“26. Principal Employer has the absolute right to terminate the contract at any time without assigning any reason therefore. Principal Employer will also have the right to extend the contract at the same terms and conditions until such time, the new security agency taken over in case fresh tendering is required to be reported.”

Sd/-
(DR. VINOD KUMAR RAMTEKE)
MEDICAL SUPERINTENDENT”

9. The trial court has also held, and rightly so, that in fact appellant/plaintiff was earlier notified of its short-comings by the Letters dated 21.11.2006 and 25.11.2006 by the respondent/defendant, and to which Reply was given by the appellant/plaintiff dated 28.11.2006, proved and exhibited as Ex.PW1/X1. The trial Court notes that in the Letter dated 28.11.2006/Ex.PW1/X1, it was stated by the appellant/plaintiff, and even the witness of the appellant/plaintiff admitted this, that the appellant/plaintiff had admitted its mistakes on account of slackness of duties, negligence and mismanagement. I may note that in fact the respondent/defendant need not have even proved earlier slackness of duties, negligence and mismanagement which was proved by the appellant/plaintiff vide Reply dated 28.11.2006

Ex.PW1/X1 inasmuch as the contractual right to terminate the contract under Clause 26 was absolute.

10(i). Ld. counsel for the appellant/plaintiff argues that in terms of Clause 7 of the agreement, the appellant/plaintiff was entitled to the rates based on minimum wages of Delhi Government notifications from time to time, and with respect to which the appellant/plaintiff is entitled to a sum of Rs. 13,23,853/- but this relief has been wrongly declined by the trial court.

10(ii). In my opinion, the argument urged on behalf of the appellant/plaintiff is misconceived because firstly it is seen that claim of the appellant/plaintiff for arrears is from 01.04.2004 i.e. an afterthought for a contractual period which is much prior to the contractual period which was extant when the contract of the appellant/plaintiff was terminated in terms of the Office Order dated 12.04.2007. After the first contractual period which began in the year 2004, there were two further extensions with the third extension being an extension of a one year period when the contract was terminated vide Office Order dated 12.04.2007. If there was

any truth on validity in this claim, that the respondent/defendant did not pay the rates of minimum wages, then there was no reason why in the relevant earlier years of providing the security services, such claims were not raised upon the respondent/defendant by the appellant/plaintiff.

10(iii). It is also noted that merely because the appellant/plaintiff had written its letters to the respondent/defendant in this regard, including the Letter dated 09.04.2007/Ex.PW1/8, would not mean that there did exist a notification for increase of the minimum wages which has not been proved, and even if minimum wages were increased, it was for the appellant/plaintiff to prove that in fact such minimum wages were paid to its employees, for claiming reimbursement from the respondent/defendant, but admittedly, the appellant/plaintiff has led no evidence of payment of minimum wages to its staff, besides the fact that if there was any merit in the claim, then there was no reason why the appellant/plaintiff would have woken up in the fourth contractual period and when the contract was terminated on account of lack of

diligence of the appellant's/plaintiff's security personnel in performance of their duties.

11. In view of the aforesaid discussion, there is no merit in the appeal. Dismissed.

FEBRUARY 13, 2019

Ne

VALMIKI J. MEHTA, J

