

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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COC-1667-2020

Date of Decision : 11.09.2020

M/s B.S.K. Security Service

.....Petitioner

V/s

I.S. Yadav and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present: Mr. Denson Joseph, Advocate for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present Contempt of Court Petition under Section 10 read with Sections 11, 12 and 14 of the Contempt of Courts Act, 1971 for punishing the respondents/contemnors No.1 to 8 for deliberate/willful violation of order dated 22.05.2020 (Annexure P-1) passed by this Court in CWP No.7315 of 2020 titled as 'Satinder Duggal and others Vs. Registrar General of Firms and Societies and others'.

Briefly stated the petition has been filed on the averments that the petitioner-M/s B.S.K. Security Service, Faridabad is a privately owned security agency registered with the Government of Haryana and is represented through its proprietor Lalit Kumar. The petitioner was engaged by the society namely the Ozone Park (TOP) Resident Welfare Association, Sector 86, Faridabad (for short 'the Association') for providing security for its gated residential project located in Sector-86 of Faridabad for a period of 2 years vide agreement executed on

24.09.2015 (sic 24.09.2019). The District Registrar of Societies, Faridabad, vide order dated 03.02.2020, appointed an Adhoc Committee comprising of respondents No.2 to 8 for a period of three months for conducting elections in the Society with the condition that no major expenditure shall be incurred without the prior approval of the appointing authority. The tenure of the Adhoc Committee was extended for a further period of three months vide order dated 04.05.2020. The Adhoc Committee vide order dated 29.04.2020 without the prior approval of its appointing authority terminated the services of the petitioner during the lockdown w.e.f. “at the end of 30th of April 2020, night shift (i.e. 08:00 AM on 1st of May 2020)”. Respondent No.1 granted stay against respondents No.2 to 8 vide order dated 01.05.2020. Some residents of the aforementioned residential project had filed CWP No.7315 of 2020 before this Court for quashing of orders dated 03.02.2020 and 04.05.2020 passed by respondent No.1. This Court vide order dated 22.05.2020 passed on the above-said writ petition stayed orders dated 03.02.2020 and 04.05.2020. The above-said order was conveyed to respondents No.1 to 8. Despite knowledge of the above-said stay order, respondents No.2 to 8 continued to function in the style and capacity of being the Adhoc Committee and respondent No.2 appeared in a proceeding before respondent No.1 on 26.05.2020 as convener of the Adhoc Committee. Respondent No.1 exceeded his jurisdiction by endorsing illegal/arbitrary order of respondents No.2 to 8 by directing them vide order dated 27.05.2020 to get the matter approved in the General Body Meeting. Respondents No.2 to 8 compelled the petitioner to hand over the charge of the security back to

them on 30.05.2020. Due to contemptuous act of the respondents, the petitioner has been subjected to revenue loss of about 1.25 crores and the families of the employees of the petitioner have been subjected to extreme hardship of loss of employment during lock-down.

Learned Counsel for the petitioner has argued that respondents No.1 to 8 have committed contempt of this Court by deliberate/willful violation of stay order dated 22.05.2020 and prayed that proceedings for punishing them for the same may be initiated; respondents No.2 to 8 may be directed to compensate the loss and restore the agreement and the Commissioner of Police, Faridabad may be directed to register FIR against respondents No.2 to 8.

Learned Counsel for the petitioner has further submitted that despite not being a party to CWP No.7315 of 2020 titled as 'Satinder Duggal and others Vs. Registrar General of Firms and Societies and others', the petitioner being aggrieved by the contemptuous acts of the respondents has locus standi to file/maintain the present petition. In support of his submissions learned Counsel for the petitioner has placed reliance on the observations in ***J. Rama Rao Vs. P.V. Rao and others : 2003(3) Civil Court Cases 260 (A.P.); Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) Vs. S.C. Sekar : 2009 (2) SCC 784*** and ***Pravin C. Shah Vs. K.A. Mohd. Ali : 2001(9) SCC 650***.

On consideration of the submissions made by learned Counsel for the petitioner and perusal of the relevant record, I am of the considered view that the respondents cannot be said to have deliberately/willfully disobeyed the order passed dated 22.05.2020

passed by this Court and to have thereby committed civil contempt of this Court.

The expression “contempt of Court” is defined by Section 2(a) of the Contempt of Courts Act, 1971 to mean civil contempt or criminal contempt. Section 2(b) thereof defines “civil contempt” to mean wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court.

Section 11 of the Contempt of Courts Act, 1971 empowers the High Court to try offences committed or offenders found within and outside its jurisdiction. The same reads as under:-

“A High Court shall have jurisdiction to inquire into or try a contempt of itself or of any Court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and whether the person alleged to be guilty of contempt is within or outside such limits.”

Section 12 of the Contempt of Courts Act, 1971 which prescribes the punishment for contempt of Courts reads as under:-

“(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of Court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation. An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of

justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation. For the purpose of sub-sections (4) and (5) -

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm. "

In ***Dinesh Kumar Gupta Vs. United India Insurance Co.***

Ltd. & Ors. : 2011(1) R.C.R.(Civil) 696 Hon'ble Supreme Court

observed as under:-

"13.contempt of a civil nature can be held to have been made out only if there has been a wilful disobedience of the order and even though there may be disobedience, yet if the same does not reflect that it has been a conscious and wilful disobedience, a case for contempt cannot be held to have been made out. In fact, if an order is capable of more than one interpretation giving rise to variety of consequences, non-compliance of the same cannot be held to be wilful disobedience of the order so as to make out a

case of contempt entailing the serious consequence including imposition of punishment. However, when the Courts are confronted with a question as to whether a given situation could be treated to be a case of wilful disobedience, or a case of a lame excuse, in order to subvert its compliance, howsoever articulate it may be, will obviously depend on the facts and circumstances of a particular case; but while deciding so, it would not be legally correct to be too speculative based on assumption as the Contempt of Courts Act 1971 clearly postulates and emphasizes that the ingredient of wilful disobedience must be there before anyone can be hauled up for the charge of contempt of a civil nature.”

In the present case, Satinder Duggal and others challenged order dated 03.02.2020 passed by respondent No.1 constituting Adhoc Committee comprising of respondents No.2 to 8 for managing day to day affairs of the society and for conducting election of Governing Body of the society within three months and order dated 04.05.2020 extending terms of the Adhoc Society for further period of three months by filing CWP No.7315 of 2020 titled as 'Satinder Duggal and others Vs. Registrar General of Firms and Societies and others'. This Court vide order dated 22.05.2020 stayed operation of the impugned orders and relevant part of the order reads as under:-

“Counsel inter alia contends that view order dated 03.02.2020 (Annexure P-7), respondent No.3 reviewed its order dated 12.09.2019 (Annexure P-4) on the strength of directions issued by respondent no.2 dated 24.01.2020 (Annexure P-6). It is contended that the said order does not give any reasons for issuing directions to respondent No.2 and reference has been made to Section 79(5) of the Haryana Registration and Regulation of Societies Act, 2012. It is accordingly submitted that the order is non-speaking as such and has led to the subsequent orders passed by respondent no.3 which are subject matter of writ petition and, therefore, would be without jurisdiction.

Reply to the petition be filed by respondents no.1 to 3 and private respondents no.4 to 10 be served for 23.07.2020.

In the meantime, operation of the impugned orders shall remain stayed.”

It is pertinent to observe here that COCP No.1623 of 2020 was filed by Satinder Duggal and others against respondents No.2 to 8 for punishing them for contempt of Court for deliberate/wilful violation of stay order dated 22.05.2020 which was dismissed as withdrawn vide order dated 02.09.2020 passed by this Court.

The questions which arise are as to whether despite not being a party to CWP No.7315 of 2020 titled as 'Satinder Duggal and others Vs. Registrar General of Firms and Societies and others', the petitioner being aggrieved by the contemptuous acts of the respondents has locus standi to file/maintain the present petition and whether the respondents can be said to have deliberately/willfully violated the above-said order and to have thereby committed contempt of this Court.

In ***Girish Mittal Vs. Parvati V. Sundaram : 2019(6) SCALE 804*** Hon'ble Supreme Court negatived the contention that a contempt petition is maintainable only at the behest of a party to the judgment and held that where the directions issued by the Court are general in nature, any violation of such directions would enable an aggrieved party to file a contempt petition.

In the present case, the petitioner is claiming itself to be aggrieved from alleged deliberate/wilful violation of order dated 22.05.2020 which embodied directions of general nature staying operation of impugned orders dated 03.02.2020 and 04.05.2020. In view of the observations made by Hon'ble Supreme Court in ***Girish Mittal's Case (Supra)*** contempt petition filed by the petitioner on the ground of being aggrieved from alleged deliberate/wilful violation of the same is maintainable.

In the present case the petitioner was engaged by the Association to provide security for a period of two years vide agreement dated 24.09.2019 (Annexure P-3). Agreement of the petitioner was terminated by the Adhoc Committee vide order dated 29.04.2020 (Annexure P-5) with reference to earlier letter dated 31.03.2020 and reminder dated 28.04.2020 on the grounds of not providing PF slip, ESI slip, copy of licence and also non registration under the Private Security Agencies (Regulation) Act, 2015. Security agreement with the petitioner was terminated by the Adhoc Committee w.e.f. at the end of 30th of April 2020, night shift (i.e. 8.00 A.M. on 1st of May 2020). The petitioner has challenged termination of security agreement dated 24.09.2019 entered into between the petitioner and the Association on the ground that the Adhoc Committee was not empowered to take any major decision without the approval of the District Registrar of Societies, Faridabad. The petitioner has relied on earlier order dated 04.10.2019 (Annexure P-10) of the District Registrar of Societies, Faridabad that the appointment/termination of the security agency is the internal matter of the society and such decisions are major decisions which ought to be decided by the General Body of the Society. Said decision passed in the context of termination of security agreement in favour of M/s Anon Security Services Pvt. Ltd., Faridabad instead of supporting negates the case of the petitioner as the said order would invalidate security agreement executed in favour of the petitioner due to wrongful termination of security agreement executed in favour of M/s Anon Security Services Pvt. Ltd., Faridabad in similar manner without decision by the General Body. Admittedly, the petitioner-M/s

B.S.K. Security Services, Faridabad was registered with Haryana Government under Section 13 of the Punjab Shops and Commercial Establishments Act, 1958 and the petitioner-M/s B.S.K. Security Services, Faridabad got the licence under the Private Security Agencies (Regulation) Act, 2005 valid from 09.07.2020 to 08.07.2025. The petitioner has claimed to have entered into partnership with M/s Hermann Enterprises Proprietor Smt. Anita Malik who had licence under the Private Security Agencies (Regulation) Act, 2005 valid from 19.12.2018 to 18.12.2023 vide partnership deed dated 22.07.2019 but the partnership firm was not registered and licence granted to Ms. Anita Malik permitted carrying on of business of private security agency under the name M/s Hermann Enterprises. Therefore, licence in favour of Ms. Anita Malik for running business of private security agency in the name M/s Hermann Enterprises could not enure in favour of the petitioner-M/s B.S.K. Security Service run by Lalit Kumar. Since security agreement dated 24.09.2019 (Annexure P-3) with the petitioner was terminated by the Adhoc Committee vide order dated 29.04.2020 before passing of stay order dated 22.05.2020 by this Court, the same cannot be said to have been done in deliberate/willful violation of the above-said stay order dated 22.05.2020 which was passed much later. Respondent No.1-the District Registrar of Societies, Faridabad vide order dated 27.05.2020 (Annexure P-11) held that allegations levelled by the petitioner-M/s B.S.K. Security Service, Faridabad against the Adhoc Committee regarding wrongful termination of security agreement were improper as the petitioner-M/s B.S.K. Security Service, Faridabad had not produced its licence under the Private Security

Agencies (Regulation) Act, 2015 and directed the Adhoc Committee to approve the same in the upcoming General Body Meeting of the Society. Order dated 27.05.2020 (Annexure P-11) was passed by respondent No.1 on complaint made by the petitioner before 22.05.2020 and was based on determination of facts prevailing before 22.05.2020 and order dated 27.05.2020 (Annexure P-11) cannot be said to be violative of stay order dated 22.05.2020. The petitioner handed over security of Ozone Part apartments to M/s Anon Security Services Pvt. Ltd., Faridabad on 30.05.2020 in compliance of order dated 29.04.2020 (Annexure P-5) and the charge cannot be said to have been taken over by respondents No.2 to 8 as members of the Adhoc Committee and the same cannot be said to involve any deliberate/wilful disobedience of stay order dated 22.05.2020 by respondents No.2 to 8 due to mere presence at the time thereof as residents of the above-said residential project.

In follows from the above discussion, that the respondents cannot be said to have deliberately/willfully violated order dated 22.05.2020 and to have thereby committed civil contempt of this Court and the present petition for punishing them for contempt of Court is devoid of any merit and is liable to be dismissed.

Accordingly, the petition is dismissed.

11.09.2020

Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No