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

WRIT PETITION NO. 864 OF 2022

Maharashtra Suraksha Rakshak Aghadi ..Petitioner

VS.

Security Guards Board for Greater
Mumbai and Thane District & ors. ..Respondents

Ms. Ranjana Todankar for petitioner.
Mr. Amardev Uniyal for respondent no.1.
Mr. Sandeep Marne for respondent nos. 2 to 4.
Ms. Neeta Masurkar a/w. Ms. Nieyaati Masurkar for
respondent no.7.
Mr. B. V. Samant, AGP for respondent no. 8 – State.

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE : JANUARY 28, 2022.

P.C. (M. S. Karnik, J.)

1. This writ petition under Article 226 of the Constitution of India, seeks a Writ of *Mandamus* directing the respondent nos.2 to 4–Mahanagar Telephone Nigam Limited (hereafter 'MTNL' for short) to continue to engage in their services the security guards listed at Exhibit 'A' to the writ petition.

2. The case of the petitioner, in brief, is as under:-

The petitioner is a trade union registered under the Trade Unions Act, 1926. The security guards, on whose

behalf the present writ petition is filed, are members of the petitioner's union and their names have been listed at Exhibit 'A' to the writ petition. These security guards are registered with the respondent no.1-Security Guards Board for Greater Mumbai and Thane District (hereafter 'the Board' for short) and are allotted to MTNL to watch and ward their various establishments in Navi Mumbai.

3. The Board is constituted under Section 6 of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 (hereafter 'the said Act' for short). The said Act is enacted with the object of regulating the employment of private security guards and to stop their exploitation at the hands of the private security agencies. In exercise of the powers conferred by the said Act, the Government of Maharashtra formulated the scheme viz. Maharashtra Private Security Guards (Regulation of Employment and Welfare) Scheme, 2002 (hereafter 'the Scheme' for short) to regulate the employment of the private security guards. The Board is entrusted with the responsibility to implement the Scheme and for regulating the services of the private security guards working in the various factories and establishments. Respondent no.2-MTNL is a Government of India enterprise providing telecommunication services in metro cities in India. The respondent nos. 3 and 4 are the zonal head and unit head of the MTNL.

4. MTNL is a registered principal employer of the Board

and is engaging the services of the registered security guards of the Board since 1994. The security guards concerned in this writ petition are allotted to MTNL at their establishments in Navi Mumbai. It is the petitioner's case that the said security guards are working with the MTNL for about 19 to 25 years. Learned counsel appearing for the petitioner submitted that these security guards are working honestly and without any blemish. She submits that no untoward incident occurred in the establishments where these security guards have been deployed for the last 19 to 25 years. Learned counsel contends that as per clause 25(2) of the Scheme, a registered principal employer is prohibited from employing a Security Guard other than a Security Guard who has been allotted to him by the Secretary of the Board in accordance with provisions of clause 8(e) of the Scheme.

5. Our attention is invited to the letter dated January 1, 2022, which is at Exhibit 'B' to the writ petition. The contents of the letter addressed by the respondent no.4- Deputy General Manager-MTNL to the Board reveals that, as per instructions received from higher authorities, out of 54 security guards, 37 security guards are to be removed with effect from February 1, 2022 and as such these 37 security guards are to be surrendered to the Board with effect from February 1, 2022. Learned counsel contends that as a result, these 37 security guards will be discontinued from the services of the MTNL with effect from February 1, 2022.

Learned counsel for the petitioner urged that, on one hand, MTNL is reducing the number of security guards allotted to them by the Board, and on the other hand, is illegally engaging security guards through the private agency under the guise of electrical workers/security employed through the respondent nos.5 and 6. To support this contention, learned counsel relied upon the copies of the letters dated December 27, 2021, issued by the Deputy Manager (Ext.I), C.B.D. Belapur, Navi Mumbai and by the Executive (TKK) Kalamboli Telephone Exchange, addressed to the Board. Vide these letters, MTNL has informed the Board, that on instructions from higher authorities the Units are surrendering these security guards and with effect from February 1, 2022, electrical Security will take over charge at RSUs. Laying much emphasis on these letters dated December 27, 2021, learned counsel for the petitioner contends that MTNL is engaging security guards under the guise of electrical security.

6. Learned counsel for the petitioner then invited our attention to the definition of "security guards" defined in sub-section 10 of section 2 of the said Act to contend that it is not permissible for MTNL, being a registered principal employer of the Board, to engage contractual electrical staff for watch and ward of their establishments through private agency, as it contravenes the provisions of the said Act and the Scheme framed thereunder. It is further urged that in view of clause 25(2) of the Scheme, it is obligatory on the

part of MTNL to engage only the allotted registered security guards of the Board. According to learned counsel for the petitioner, MTNL with malafide intention is discontinuing the services of the security guards to escape the clutches of the said Act and the Scheme framed thereunder.

7. Learned counsel for the petitioner then referred to the letter dated January 11, 2022 addressed by the Board to MTNL, bringing to their notice the provisions of clause 25 of the Scheme, imposing certain obligations upon the concerned employer-MTNL, that they cannot engage private agency or contractor. Learned counsel, therefore, submits that the action on the part of MTNL discontinuing the services of these 37 security guards with effect from February 1, 2022 is in contravention of the mandatory provisions of the said Act and the Scheme framed thereunder.

8. On the other hand, opposing the writ petition, learned counsel appearing for MTNL invited our attention to the affidavit-in-reply filed on behalf of MTNL. He points out that it is the categorical stand of MTNL that it is not engaging any other security staff in place of the security guards who are being surrendered by the respective units. He submits that MTNL would not engage any contractual electrical staff to perform watch and ward duties of discharged/surrendered security guards. It is pointed out by learned counsel that the decision to surrender these security guards was taken on account of acute shortage of funds with MTNL, which fact

is in public domain. It is the stand of MTNL that the Government of India has repeatedly directed MTNL to reduce its manpower. It is further pointed out that the petitioner is drawing an erroneous presumption on the basis of a stray statement in letters dated December 27, 2021 that the staff employed for electrical works would perform the watch and ward duties. In the affidavit, MTNL denied that it has hired or is intending to hire electrical personnel either from the respondent nos.5 and 6 or from any other contractor for the purpose of performing watch and ward duties. It is thus the stand of MTNL that no new security guard's arrangement is made in place of surrendered security guards.

9. We have heard learned counsel for the respective parties. We have perused the copy of the writ petition, the annexures thereto and the affidavit-in-reply filed on behalf of MTNL.

10. The major thrust of the petitioner's argument is clause 25(2) of the Scheme which provides that a registered principal employer shall not employ a security guard other than a security guard who has been allotted to him by the Secretary in accordance with provisions of clause 8(e) of the Scheme. For the petitioner to succeed in this writ petition, it is necessary for it to make good its case that MTNL is illegally engaging security guards through the private agency under the guise of electrical workers/security employed through the respondent nos.5 and 6. No doubt,

37 security guards out of 54 are to be discontinued from the services of the MTNL with effect from February 1, 2022. The question is whether MTNL is discontinuing the services of these guards in breach of the provisions of the said Act and the Scheme framed thereunder.

11. The submissions of learned counsel for the petitioner needs to be examined with reference to the relevant provisions of the said Act and the Scheme framed thereunder. The said Act is enacted for regulating the employment of private security guards employed in factories and establishment in the State of Maharashtra and for making better provisions for their terms and conditions of employment and welfare, through the establishment of a Board therefor, and for matters connected therewith. Section 3 of the said Act provides that for the purpose of ensuring an adequate supply and full and proper utilisation of security guards in factories and establishments, and generally for making better provision for the terms and conditions of employment of such workers, the State Government may by means of one or more Schemes provide for registration of principal employers and security guards in any factory or establishment and provide for the terms and conditions of employment of registered security guards and make provision for the general welfare of such security guards.

12. The MTNL, as indicated earlier, is a registered principal employer of the Board and is engaging the services of the

registered security guards of the Board since 1994. The provisions of clause 25(2) of the Scheme prescribes that a registered principal employer shall not employ a security guard other than a security guard who has been allotted to him by the Secretary in accordance with provisions of clause 8(e) of the Scheme. The proviso to clause 25(2) of the Scheme stipulates that the prohibition contained in clause 25(2) does not apply to the security guards directly employed by registered principal employers.

13. To support the contention that the MTNL is engaging security guards through the private agency under the guise of electrical workers/security employed through the respondent nos.5 and 6, learned counsel for the petitioner relied upon the copies of the letters dated December 27, 2021 which have been referred to in some detail in paragraph 6 of this order. The contentions of learned counsel for the petitioner needs to be examined in the light of the affidavit-in-reply filed on behalf of the MTNL. To arrive at an appropriate conclusion, it would be profitable to reproduce the relevant portion of the affidavit-in-reply filed on behalf of MTNL, affirmed by Mr. Vidyanand V. Jambhrunkar, working as Deputy General Manager, DGM HQ, Zone-5, Mumbai. The relevant paragraphs 4, 5 6 and 8 read thus:-

"4. I further say that the decision to surrender 96 security guards in various establishments under General Manager, MTNL, Zone 5 which comprises of Mulund, Thane, Navi Mumbai, Panvel and Urban

areas has been taken by MTNL on account of acute shortage of funds with MTNL, which fact is in public domain. The Govt. of India has repeatedly directed MTNL to reduce its manpower. Accordingly, MTNL implemented VRS scheme in the year 2019 and thereby MTNL was successful in reducing its regular staff to the extent of about 80-85% in Mumbai unit. Also a policy decision has been taken to progressively reduce deployment of security guards as cost cutting measure. Accordingly, it has been decided to surrender total 96 security guards in various offices/exchanges/establishments under Zone 5. This is not the first time that MTNL has reduced deployment of security guards. In addition to reduction of security guards deployed in Zones 1 to 4, Zone 5 itself has implemented reduction of security guards in a phased manner. Upto June 2021, there were 228 security guards in Zone 5, which were reduced to 202 in July 2021 and further reduced to 192 in August 2021. Now, the further reductions is effected by the impugned decision of 96 security guards. In similar manner, reduction is effected in Zones 1 to 4 also.

5. I further say that the petitioners are drawing an erroneous presumption on the basis of stray statement in stray letters dated 27.12.2021 that staff employed for electrical works would perform watch and ward duties. It is stoutly denied that MTNL has hired or is intending to hire an electrical personnel either from Respondent Nos. 5 and 6 or from any other contractor for the purpose of performing watch and ward duties.

6. It is further submitted that presence of electrical personnel for operation of telephone exchanges is critical. Prior to implementation of VRS scheme, several regular staff of MTNL used to man telephone exchanges and look after the

electrical maintenance activities. After implementation of VRS scheme, MTNL has hired electrical personnel from various agencies who are now manning electrical maintenance activities in the telephone exchanges. In respect of smaller exchanges, it has been felt by MTNL management that since electrical personnel are already available in such exchanges, it is not necessary to deploy security guards in such smaller exchanges. This is one of the cost-cutting measures adopted by MTNL. This does not mean that the personnel from electrical agencies are being engaged as security guards. It is for MTNL to decide whether to deploy the security guard in a particular exchange or not. MTNL cannot be forced by the Petitioners to engage security guards at every telephone exchange where the deployment is not felt necessary by MTNL with a view to ensure cost cutting measures.

8. I further say that the Petitioners have relied upon letter dated January 11, 2022 of respondent no.1. In pursuance of the said letter, a meeting was convened on January 17, 2022 in the office of Secretary cum Govt. Labour Officer which was attended by DGM CBD Belapur. During the said meeting, the position was explained to the officer concerned. CBD Belapur unit of MTNL has sent letters dated January 20, 2022 and January 24, 2022, copies whereof are annexed thereto and marked as **Exhibit 'A'**. Similarly, letter dated January 24, 2022 of Mulund unit of MTNL is annexed hereto and marked as **Exhibit 'B'**. In all these letters, it was specifically stated that no new security guard's arrangement is made in place of surrendered security guards."

(emphasis supplied by us)

14. A reference also needs to be made to the stand in paragraph 3 of the said affidavit-in-reply wherein it is

stated that MTNL would not engage any contractual electrical staff to perform watch and ward duties of discharged/surrendered security guards. The stand of the MTNL would reveal that the decision to surrender the security guards in various establishments was taken on account of acute shortage of funds with MTNL and progressively reduce deployment of security guards as cost cutting measure. Similar such reduction in a phased manner is implemented in different zones of MTNL. In view of the specific denial of MTNL that it is hiring and/or is intending to hire electrical personnel either from the respondent nos.5 and 6 or from any other contractor for the purpose of performing watch and ward duties, leaves us with little choice but to accept the stand of the MTNL that the petitioner is drawing erroneous presumption on the basis of stray statement in the letter dated December 27, 2021 that the staff employed for electrical works would perform watch and ward duties.

15. The materials placed on record by the petitioner are not sufficient to come to a definite conclusion that the MTNL has committed breach of any of the obligations placed on it by clause 25(2) of the said Scheme. Once a specific stand is taken by the MTNL that with a view to ensure cost cutting measures that it is not necessary to deploy security guards in such smaller exchanges, we find substance in the contention of the MTNL that it cannot be forced by the petitioner to engage the security

guards at every telephone exchange where the deployment is not necessary. The petitioner's cause cannot be taken further in view of the stand of the MTNL that no new security guard's arrangement is made in place of these surrendered security guards. The obligation under clause 25(2) of the Scheme on the principal employer is only that principal employer shall not employ a Security Guard other than a Security Guard who has been allotted to him by the Secretary in accordance with provisions of clause 8(e) of the Scheme. We find force in the submission of the respondent-MTNL that it is for the principal employer to decide whether to deploy the security guards in the particular exchange or not. It is only when principal employer wants to employ a security guard that the obligation under clause 25(2) of the Scheme rests on the principal employer.

16. Suffice it to observe that the petitioner is not in a position to establish that the MTNL is employing security guards in place of the security guards concerned in this writ petition or that the MTNL is illegally engaging security guards through the private agency under the guise of electrical workers/security employed through the respondent nos.5 and 6. In the light of what is stated in the affidavit-in-reply and the statements made therein, we do not find any merit in this writ petition.

17. Consequently, the writ petition is dismissed with no order as to costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)