

Diksha Rane

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

WRIT PETITION NO. 4678 OF 2021

Sulzer Pumps India Private Limited ..Petitioner

vs.

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

**WITH
INTERIM APPLICATION NO. 4213 OF 2021
IN
WRIT PETITION NO. 4678 OF 2021**

Maharashtra Rajya Suraksha
Rakshak & General Kamgar Union ..Applicants/
Interveners

In the matter between

Sulzer Pumps India Private Limited ..Petitioner

vs.

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

Mr. Jitendra M. Pathade for petitioner.

Mr. Avinash Ram Belge for applicant in IA/4213/2021.

Mr. Amardev J. Uniyal for respondent nos. 1 to 3.

Mr. M. M. Pabale, AGP for State.

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

DATE : MARCH 8, 2022.

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P.C. :

1. By this writ petition under Article 226 of the Constitution of India, the petitioner prays for the following reliefs:

“a) Hon’ble Court may kindly by an appropriate writ, order, direction may kindly quash and set aside impugned order dated 25/05/2021 bearing SGB/RECOVERY/ 2021-910 addressed to the Petitioner by the Respondent No.3.

b) Hon’ble Court may by an appropriate writ, order, direction may kindly declare that the order dated 4th November 2020 having reference No. lqjea/fufnHk/2020-3467 and order dated 18th November 2020 having reference No. lqjea/fufnHk/2020-3655 addressed to the Petitioner by the Respondent No.2 are illegal and bad in law.”

2. Considering the narrow controversy involved, we do not propose to burden this order with detailed facts. Suffice it to observe that the petitioner-Suzler Pumps India Private Limited is a registered employer with the respondent no.1-the Security Guards Board for Brihan Mumbai and Thane District (hereafter ‘the Board’ for short) as per the provisions of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 (hereafter ‘the said Act’ for short).

3. The Board had allotted 62 security guards to the petitioner’s establishment. When the Zonal Inspector of the Board visited the petitioner’s establishment on July 1,

2020, it was observed that the petitioner without informing the Board reduced 22 security guards and instead recruited security guards supplied by a private agency-M/s. G4S Secure Solution (I) P. Ltd. The Zonal Inspector noticed that as many as 30 security guards, not registered with the Board are engaged through this private agency.

4. By a communication dated November 4, 2020 which is impugned in this writ petition, it is alleged that the petitioner has violated the provisions of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Scheme, 2002 (hereafter 'the said Scheme' for short). The petitioner was directed to immediately remove the security guards of the private agency and instead engage the security guards registered with the Board. The petitioner was informed about the consequences of recovery action if the petitioner fails to abide by the Board's instructions.

5. Petitioner by its response dated November 20, 2020, informed the Board that 39 security guards provided by the Board are engaged by them for carrying out watch and ward functions. It is the stand of the petitioner that they entered into a legal and valid contract with a private agency for providing Marshal Services by way of facilities management. The petitioner further informed the Board that the manpower provided by the private agency do not perform any watch and ward duties but are merely rendering facility management services with a view to

maintain and upkeep the company's establishment at Digha, Navi Mumbai.

6. After exchange of correspondence and clarifications, the respondent no. 3 vide communication dated January 8, 2021 called upon the petitioner to remit Rs.6,56,010.46 towards disappointment money in respect of the 19 security guards who had presented themselves for work, the petitioner failed to deploy. Similar such claims were made by the Board in respect of some other guards. Vide a communication dated May 25, 2021, the Board called upon the petitioner to remit the payment of wages and levy amounting to Rs.47,97,658.19 including 10% surcharge as provided under Clause 25(7) of the said Scheme and the Collector's surcharge at 10% within seven (7) days from the receipt of the communication, failing which the Board threatened initiating legal action against the petitioner. The petitioner again tried to explain its position vide communication dated May 28, 2021 addressed to the Board.

7. In respect of one such demand notice which was put up for further legal action by the Board, a warrant to attach immovable property of the petitioner came to be issued by the respondent no.4-the Tehsildar, Thane, on May 31, 2021.

8. Challenging the impugned communications, learned counsel for the petitioner submitted that the recovery

action and the consequent action attaching the immovable property is taken without following the provisions of Section 14 of the said Act which provides for a detailed procedure for determination of moneys due from employers, principal employer and security guards. In his submission, no such procedure was followed, nor a reasonable opportunity given to the petitioner of representing its case.

9. Learned counsel for the Board, on the other hand, submitted that the inspection report of the Zonal Inspector reflects that the petitioner was in fact engaging the security guards through a private agency to overcome the rigors of the said Act, Rules and the Scheme framed thereunder.

10. After some deliberations, learned counsel for the Board fairly submitted that the procedure envisaged by Section 14 of the said Act does not appear to have been followed in its letter and spirit and that the impugned communications are based on the report of the Zonal Inspector.

11. It is necessary to refer to Section 14 of the said Act which reads thus: -

"14. Determination of moneys due from employers, [principal employer] and Security Guards.- (1) The Board or such officer as may be specified by it in this behalf may by order, determine any sum due from any employer [principal employer] or Security Guards under this Act or any Scheme made thereunder, and for this purpose may conduct such inquiry as the Board or such officer may think to be necessary.

(2) The Board or such officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (V of 1908) for trying a suit in respect of the following matters, namely: -

- (a) enforcing the attendance of any person or examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit;
- (d) issuing commission for the examination of witnesses; and

any such inquiry shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196 of the Indian Penal Code, 1860 (XLV of 1860).

(3) No order determining the sum due from any employer [principal employer] or Security Guard shall be made under sub-section (1), unless the employer [principal employer] or Security Guard, as the case may be, is given a reasonable opportunity of representing his case.

(4) An order made under this section shall be final and shall not be questioned in any Court.

(5) Any sum determined under this section may, if such sum is in arrears, be recovered as an arrear of land revenue."

12. Furthermore, we find that the stand taken by the petitioner in response to the Board's action is not at all considered by the Board. We hardly find any reasons in support of the determination of the sum due. In view of the reasonable approach of learned counsel for the Board and considering that coercive action is taken without following the procedure laid down by Section 14 of the said Act, we

find it appropriate to allow this writ petition in terms of prayer Clause (a), extracted supra.

13. The Board may proceed with the determination of the moneys due from the petitioner in accordance with the procedure laid down under Section 14 of the said Act and in accordance with law.

14. Needless to mention that the petitioner be given reasonable opportunity of representing its case. Upon hearing all interested parties, the Board may pass appropriate orders within a period of four (4) weeks from today.

15. The writ petition is disposed of with no order as to costs.

16. In view of the disposal of the writ petition, nothing survives for consideration in the interim application. The same is also disposed of.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)