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Court : Mumbai

Decided On : Aug-18-1994

Reported in : 1995(2)BomCR142; (1995)IILLJ238Bom; 1995(1)MhLj86

Judge : Vijay Bahuguna, J.

Appeal No. : CRI. Appln. No. 564 of 1988

Appellant : Narayanan Vaghul and ors.

Respondent : R.K. Mhatre, Inspector, Security Guards Board and ors.

Judgement :

Vijay Bahuguna, J.

1. This is a petition under section 482 of the Criminal Procedure code to quash the complaint filed by Shri R. K. Mhatre, Inspector, Security Guards Board for Greater Bombay and Thane District, against the petitioners for having contravened the provisions of Clause 14 of the Private Security guards (Regulation of Employment and Welfare) Scheme, 1981 read with section 3(3) of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981. The petitioners further pray for quashing of the order of the learned Additional Chief metropolitan Magistrate issue process against the petitioners in Criminal Case No.

63/S of 1987.

2. The petitioner, Industrial Credit Investment Corporation of India Limited, having its registered office at Bombay is a Financial Institution involved with the financing of the development activities of the country. Respondent No. 2 is the Chairman and Managing Director of the Industrial Development Bank of India, which is the apex public financial institution of India. The Respondent No. 2 is a non-executive director of the petitioner No. 3. At the relevant time he has the Managing Director of petitioner No. 3.

3. The Complaint under Clause 39 of the Scheme is for taking appropriate action against the petitioners for having contravened Clause 14 of the Scheme read with section 3(3) of the Act. It is stated in the complaint that the petitioners are involved in commercial activities and have ultimate control over the affairs of the establishment and had employed private security guards with effect from 29-6-1981 through M/s. Top Detective and Security Services Pvt. Ltd. and as such were amenable to the provisions of the Scheme and the Act and as such were required to get themselves registered with the Board as contemplated under Clauses 14 of the Scheme. As the petitioners had employed security guards and had not registered themselves, the aforesaid complaint was filed. The learned Magistrate issued the process which has been challenged in the present petition.

4. It is contended in the petition, that as the staff quarters at Andheri (East) and (West), Borivli, Dadar and Prabhadevi where the security guards have been appointed are staff quarters, it is not 'commercial establishment' under section 2(4) of the Act. Under section 2(4) of the Act 'establishment' means an establishment as defined in clause (8) of section 2 of the Bombay Shops and Establishments Act, 1948. Section 2(8) of the Bombay Shops and Establishments Act, 1948 provides as under :-

"Establishment' means a 'shop' commercial establishment residential hotel, restaurant, eating house, theatre or other place of public of public amusement or entertainment to which the Act applies and includes such other establishment as the State Government may by notification in the Official Gazette declare to be an establishment for the purpose of this Act.'

The term 'Commercial Establishment' as defined in section 2(4) of the Bombay Shops and Establishment Act, 1948, is as under :-

'2(4) 'Commercial Establishment' means as establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession and includes an establishment of any legal practitioner, medical practitioner, architect, engineer accountant tax consultants or any other technical or professional consultant and also includes a society registered under the Societies Registration Act, 1860 (XXI of 1860) and a charitable or other trust whether registered or not, which carries on whether for purpose of gain or not, any business, trade or profession or work in connection with or incidental or ancillary thereto but does not include a factory, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment.'

On the construction of the aforesaid provisions of law, it is contended in the petition that the residential quarters are not a commercial establishment within the meaning of section 2(4) of the Bombay Shops and Establishments Act, and as such it was not the requirement of law that the petitioners should have registered themselves under Clause 14 of the Scheme. It is further averred that he maintenance of the staff quarters is not a business activity, trade or profession and petitioners are not earning any profits from the staff quarters and as such security guards employed for the safety of the staff quarters are not covered under the provisions of the Scheme and the Act.

5. I have heard the counsel for Respondent No. 3, perused the writ petition and the Scheme and the Act. The Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 and the Scheme was enacted for regulating the employment of private security guards employed in factories and establishments in the State of Maharashtra for providing better provisions for their terms and conditions of their employment and welfare through the establishment of a Board. The Act provides security of services and safeguards the interest of the security guards employed by the factory or establishment. The relevant provisions of the Act are as follows :-

'Section 2(3) 'employer' in relation to a Security Guard engaged by or through an agency or agent, means the principal employer, and in relation to any other Security Guard, the person who has ultimate control over the affairs of the factory or establishment and includes any other person to whom the affairs of such factory or establishment are entrusted, whether such person is called an Agent, Manager or by any other name prevailing in the factory or establishment;

Section 2(10) 'Security Guard' or 'Private Security Guard' means a person who is engaged or is to be engaged through any agency or an agent, whether for wages or not, to do security work or watch and ward work in any factory or establishment and, includes any person, not employed by any employer or agency or agent, but working with the permission of, or under an agreement with, the employer or agency or agent, but does not include the members of any employer's family or any person who is a direct and regular person who is a direct and regular employee of the principal employer;

Section 2(11) 'Wages' means all remunerations expressed in terms of money or capable of being so expressed, which would, if the terms of contract of employment express or implied, were fulfilled, be payable to a Security Guard in respect of security work or watch and ward work done in any factory or establishment, but does not include -

- (i) the value of any house accommodation, supply of light, water, medical attendance, or any other amenity or any service excluded from the computation of wages by general or special order of the State Government;
- (ii) any contribution paid by the employer to any pension fund or provident fund or under any scheme of social insurance and the interest which may have accrued thereon;
- (iii) any travelling allowance or the value of any travelling concession;
- (iv) any sum paid to the Security Guard to defray special expenses entailed on him by the nature of his employment; or
- (v) any gratuity payable on discharge.

Section 3(1) provides for the purpose of ensuring an adequate supply and full and proper utilization 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 Scheme provide for the registration of 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.

Section 3(3) provides that a Scheme may provide that a contravention of any provision thereof shall, on conviction, be punished with imprisonment for such term as may be specified (but in no case exceeding three months in respect of a first contravention or six months in respect of any subsequent contravention), or with fine, which may extend to such amount as may be specified (but in no case exceeding five hundred rupees in respect of the first contravention or one thousand rupees in respect of any subsequent contravention), or with both imprisonment and fine and if the contravention is continued after conviction, with a further fine which may extend to one hundred rupees for each day on which the contravention is so continued.'

6. Reading of the aforesaid provisions indicated that the Security Guards employed by the factory or establishment are covered under the Act and the Scheme. The contention in the writ petition that as the petitioners had employed Security Guards for the safety of the employees living in the staff quarters this Act and the Scheme would not apply as there is no commercial activity carried out from the staff quarters or the petitioners are not deriving any profits by maintenance of the staff quarters is wholly misconceived. What is relevant under the Act is identity of the employer which has been defined to be a factory or an establishment as defined in section 2(8) of the Bombay Shops and Establishments Act, 1948 and also section 2(4) of the said Act. The intention of the Legislature is to safeguard the interest and the service conditions of the Security Guards employed by the factories and establishments and it is explicit that Security Guards employed by the factories and establishments are covered under the provisions of the Act and the Scheme, irrespective of the place where they have been allotted work. The mere fact that a Security Guard has been put by the

factory or the establishment at the residence of an Officer or at the staff quarters is not at all relevant for the purposes of the Act. It is not the place of posting which is a relevant consideration under the Act and the Scheme. What is material is as to whether the appointment has been made by the factory or establishment. As the petitioners are the employer and the petitioners are carrying financing activities which by nature is commercial, the business of the petitioners is fully covered under the definition of section 2(8) of the Bombay Shops and Establishments Act, 1948 and as such being employer they are amenable to the provisions of the Act and the Scheme. The Security Guards have been employed by the petitioners for providing safety to their employees. The services are incidental to the business activity carried out by the petitioners and the petitioners being a commercial establishment, are covered under the provisions of the Act and the Scheme and hence may be liable for prosecution for having contravened the provisions of the Act and the Scheme.

7. It is averred that Petitioners Nos. 1 and 2 cannot be made liable for an illegality committed by petitioner No. 3 and there is not provision for vicarious liability under the Act. At this stage, it is not possible for this Court to decide this question as it would require inquiry into certain facts and evidence. The learned Magistrate will go into this question at the appropriate time.

8. For the reasons given above, the criminal application is dismissed. The learned Metropolitan Magistrate shall proceed with the compliant and decide the same in accordance with law. Rule discharged.

9. Criminal Application dismissed.