

Pravin Singh Chauhan vs Union Of India And Anr on 2 June, 2020

Author: Navin Chawla

Bench: Navin Chawla

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 3323/2020

PRAVIN SINGH CHAUHAN Petitioner
Through: Mr.Siddharth Garg and Ms.Nidhi
Mehrotra, Advs.

versus

UNION OF INDIA AND ANR Respondents
Through: Ms.Mrinalini Sen Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
ORDER

% 02.06.2020 This hearing has been held by video conferencing. CM Nos.11678/2020 & 11716/2020 (Exemption from affixing of court fee and filing notarized affidavit) These applications have been filed seeking exemption from filing duly notarized affidavits and affixing requisite court fee. Binding the deponent of the affidavit to the contents of the application, the exemption is granted.

Court fee shall be deposited online with the concerned authority within one week and physical stamp be filed within 72 hours from the date of resumption of regular functioning of the Court, as mandated in terms of Office Order dated April 04, 2020 issued by this Court.

The application is allowed in the above terms.

CM No. 11677/2020 (Exemption from filing certified copies) Allowed, subject to all just exceptions.

W.P.(C) 3323/2020 & CM No.. 11676/2020 (Stay)

1. Issue notice.

2. Notice is accepted by Ms.Mrinalini Sen Gupta, Advocate on behalf of the respondents. She prays for and is granted four weeks to file the counter affidavit. Rejoinder, if any be filed within three weeks thereafter.

3. It is the case of the petitioner that by the Impugned Order dated 18.05.2020, the respondent no.2 has dis-empanelled the petitioner for the alleged violation of paragraph 14(a) of the 'Guidelines for functioning of DGR Empanelled ex-servicemen for security services alongwith Amendments issued vide office memorandum 28(03)/2012/D(RES-I) dated 16th January, 2013' (hereinafter referred to as the 'Guidelines') in relation to the petitioner's contract with the Recruitment and Assessment Centre (RAC) and the School of Open Learning (SOL). It is submitted by the learned counsel for the petitioner that the Impugned Order has been passed in a cryptic manner and does not deal with the submissions made by the petitioner in its reply to the Show Cause Notice. The submission of the petitioner in its reply to the Show Cause Notice that if any violation is found, the petitioner would rectify the same, has been used in the Impugned Order as an evidence and acknowledgment of the default of the petitioner.

4. The learned counsel for the petitioner submits that in terms of the agreement dated 31.07.2018 between the petitioner and the RAC, the petitioner was to provide one Supervisor and thirteen Security Guards. The petitioner in its report of December 2019 clearly indicated that against these 14 Security Guards, including the Supervisor, the petitioner had employed 13 ex-servicemen and one ex-BSF personnel. As far as SOL is concerned, the contract between the petitioner and SOL provided for employment of 6 ex-servicemen and 2 female Security Guards. In terms of the policy of the respondents itself, female security guards are to be excluded from the rigour of paragraph 14(a) of the Guidelines. The petitioner in its report for December, 2019 for SOL had clearly indicated that 6 ex-servicemen had been employed as provided in the contract and 2 female guards were employed as per the contract but not to be counted towards the rigour of para 14(a) of the Guidelines.

5. Based on the above, the learned counsel for the petitioner submits that there was, in fact, no default on part of the petitioner in complying with the rigours of para 14(a) of the Guidelines.

6. On the other hand, the learned counsel for the respondents, drawing reference to the report filed by the petitioner in December, 2019 for its contract with RAC, submits that the same clearly shows that the petitioner has employed 1 ex-BSF personnel, 1 ex-CRPF personnel and 2 civilians in the total of 17 personnel employed by him for the contract, thereby violating the mandate of para 14(a) of the Guidelines. She submits that the personnel retired from BSF and CRPF are not eligible to be counted as ex-servicemen for compliance of para 14(a) of the Guidelines.

7. As far as the contract of the petitioner with SOL is concerned, the learned counsel for the respondents submits that in the sponsorship letter, there is no mention of employment of any female guard/civilian and therefore, the petitioner again is not entitled to claim any exemption from the mandate of para 14(a) of the Guidelines.

8. The learned counsel for the petitioner, however, while reiterating his argument, has further submitted that the contract between the petitioner and the RAC provided for employment of only 14 security guards and even if the BSF personnel is to be excluded, the petitioner would still be in compliance with para 14(a) of the Guidelines. He submits that three additional guards were employed merely as a backup and are not to be counted while considering the ratio as provided in para 14(a) of the Guidelines.

9. As far as the agreement with SOL is concerned, he reiterates that in the contract, it is clearly mentioned that 6 ex-servicemen and 2 female guards would be provided by the petitioner. The petitioner can certainly not be faulted for having complied with the terms of the contract while maintaining the sanctity of the ratio as provided in paragraph 14(a) of the Guidelines.

10. I have considered the submissions made by the learned counsels for the parties. As reflected in the Agreement between the petitioner and the RAC, the petitioner was to provide 14 security guards including 1 Supervisor. The list provided by the petitioner reflects that 13 ex- servicemen and 1 personnel from BSF have been employed by the petitioner against the said contract. Even if the BSF personnel is to be excluded, the petitioner would still meet the requirement of para 14(a) of the Guidelines. Whether the extra personnel employed by the petitioner for discharge of its obligations under the contract also have to meet the requirement of the ratio provided under para 14(a) of the Guidelines will be a question to be determined in this petition. Unfortunately, the Impugned order is rather cryptic and does not deal with any such submission.

11. As far as the Agreement of the petitioner with SOL is concerned, as provided in the agreement, the petitioner was to provide 6 ex servicemen and 2 female security guards. It is presently not denied that the female guards have to be excluded while considering the rigour of para 14(a) of the Guidelines. Therefore, prima facie, the petitioner cannot be found to be in default of the mandate of para 14(a) of the Guidelines as far as its agreement with SOL is concerned.

12. The offer of the petitioner to rectify the default if any, could not have been read against the petitioner for ordering his dis-empanellment, which has far reaching consequence and would lead to its civil death.

13. In view of the above, there shall be a stay on the operation of the Impugned order dated 18.05.2020 till the next date of hearing.

14. List on 24th August, 2020.

15. The order shall be uploaded on the website and shall also be provided to the learned counsels on the e-mail address provided.

NAVIN CHAWLA, J JUNE 02, 2020 RN/sd