Deo Sunder Jha And Ors. vs Union Of India & Ors. on 15 March, 2000

Equivalent citations: 2000IVAD(DELHI)194, 86(2000)DLT616, 2000(54)DRJ6, [2000(87)FLR371], (2000)IILLJ951DEL

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Bench: A.K. Sikri

ORDER

A.K. Sikri, J.

1. This batch of writ petitions raise common question of law and arises from almost identical facts and therefore can be disposed of by one common judgment. In all these writ petitions, interpretation of notification dated 9.12.1976 issued by Central Government in exercise of powers under section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 is involved. The said notification reads as under:

> "In exercise of the power conferred by Sub section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970), the Central Government after consultation with the Central Advisory Contract Labour Board, hereby prohibits employment of contract on and from the 1st March, 1977, for sweeping, cleaning, dusting and watching of buildings owned or occupied by establishments in respect of which the appropriate Government under the said Act is the Central Government.
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> "Provided that this notification shall not apply to the outside cleaning and other maintenance operations of multistoreyed buildings where such cleaning or maintenance operations cannot be carried out except with specialised experience."

2. As per the aforesaid notification issued by the Central Government, employment of contract labour for, inter alia, "watching of buildings" has been prohibited w.e.f. 1.3.1977. Petitioners in all these writ petitions are working as security guards.

3. The question to be determined is as to whether the security services provided by the petitioners would be covered by the expression "watching of buildings"? If that be so, then such petitioners could not have been ap- pointed as contract labour.

4. In order to appreciate the controversy, we may take the facts of CW No. 4211/97 inasmuch as the

nature of employment of such security guards on contract basis in other petitions is almost similar/same.

5. Petitioners in Civil Writ No. 4211/97 are Ex. armymen. Respondent No. 2 is the Airport Authority of India (hereinafter AAI) and it needs security services at various airports including IGI Airport Cargo Terminal for the purpose of providing security at IGI Airport Cargo Terminal. It has hired the services of UP Bhutpurva Sainik Kalyan Nigam Limited i.e. respondent No. 4 which is a contractor and provides such services. Petitioners are the employees of contractor and under the aforesaid contract of providing security between AAI and contractor, the petitioners are deployed/deputed as security guards at IGI Airport Cargo Terminal. They have been working as such at the aforesaid terminal from different dates. It is stand of the petitioners that they are discharging duties of permanent and perennial nature. Moreover according to petitioners, the work performed by them as security guards comes within the expression "watching of buildings" and they may be treated as direct/regular employees of AAI. It is further mentioned that this case is squarely covered by the judgment of Supreme Court in the case of Air India Statutory Corporation Etc. Vs. United Labour Union & Ors. .

6. In the counter affidavit filed on behalf of AAI it is stated that petitioners are the employees of contractor which is a UP Government Corporation and not the employees of AAI. All these petitioners are having a separate employment agreement with contractor as per petitioners' own admission. AAI have awarded contract to contractor for whom the petitioners are working. Contractor is an organisation which was awarded the job of security services at the Cargo Terminal after being sponsored by the Director General of Resettlement, Ministry of defense, Government of India, a department which is entrusted by the Government to resettle the ex-servicemen. The said security agency comprises of ex-servicemen of various categories who, apart from being pensioners from the services, are paid wages by contractor. The rate of finalised negotiated wages of the petitioners is much above, the rate of statutory minimum wages and the same was arrived at keeping in view the basis given by Director General of Resettlement whose rates are also above the rate of statutory minimum wages. Apart from the fair rate of wages being enjoyed by the petitioners employed under contractor, the petitioners are also entitled to and are availing the benefits viz.earned leave, casual leave, medical insurance and other statutory benefits which are more liberal than the statutory entitlements for the contract workmen as mentioned in the relevant statutes. It is further stated that answering respondent had engaged contractor as a Security Agency for providing the security services to the answering respondent vide agreement dated 15.1.1994 which was in consonance with the statutory provisions of the Contract Labour Act. The contractor is operating under a licence issued from Assistant Labour Commissioner (Central), a licensing authority under the regulations framed under provisions of Contract Labour Act, 1970, The contractor on its own and keeping in view the provisions of the said contract agreement engages ex-servicemen without any interference from the AAI. The claim of the petitioners that the nature of job performed by them is covered by notification dated 9.12.1976 is denied by the AAI and it is emphasised in the counter affidavit that the award of work to contractor for providing cargo security services at Cargo Terminal, IGI Airport does not amount to watching of buildings. According to AAI the scope of functions of the contractor i.e. the security agency engaged by the answering respondents comprises of:

I. Cargo Security : Monitoring movement of cargo at various stages in the Cargo Terminal right from its receipt to its delivery/release on the basis of relevant/prescribed documents.

II. Access Control : Monitoring of movement of visitors/users coming in and going out of Cargo Terminal on the basis of entry permits issued by the prescribed authorities or on the basis of relevant documents carried in person by the such visitors/users.

III. Surveillance : Keeping close watch on the movement of the personnel working in the Cargo Terminal and users/visitors visiting the Cargo Terminal so as to ensure avoidance of theft, pilferages and unauthorised removal of cargo and other properties of the answering respondents at the Cargo Terminal.

IV. The security agency as such is not engaged for watching of the buildings but while performing the security functions relating to Cargo and access Control/Surveillance undertakes security of answering respondents' properties.

7. AAI, after filing the counter affidavit, also filed additional affidavit on 2.12.1998 in which specific submissions made by the AAI in earlier counter affidavit are further elaborated. It is stated that the notification dated 9.12.1976 prohibits employment of contract labour, inter alia, in relation to workmen "watching a building". Thus, the prohibition imposed by a statutory notification is only in respect of such workmen who are engaged through a contractor to watch a building, the rationale for the same being that watching and guarding of building is a perpetual activity for which regular workmen are required. No contractor ought to engage contract labour for work which is perennial in character. However, there is no such statutory notification in relation to workmen employed to watch cargo which may be kept in the premises of Airport Authority of India by the Customs Department, where the cargo is to be kept is itself the discretion of the Government/Customs Department. The same may be kept in ware-houses. The cargo are also kept with the Central Warehouse Corporation, the ICD (Container Depot) at Tughlakabad, Pragati Maidan and even in the private warehouses of the Airlines. The work at the Airport Authority of guarding the cargo in specific is not prohibited by any notification under Section 10 of the Act. The Airport Authority submits that the said work can at times be transient and temporary and not perpetual, depending upon where the Government/Customs Department decides to keep the cargo. There cannot be any regularisation of staff for watching and guarding the cargo without the procedure under Section 10 by the Advisory Board being one into in detail. It is also stated in this additional affidavit that petitioners have concealed following facts:-

(i) That the answering respondent is the approved custodian under Section 45(1) of the Customs Act, 1962. The Cargo Security is not perennial in nature and no provision of the Customs Act, 1962 bars anby body else to be approved as custodian of Air Cargo in the customs area. It is pertinent to point out that prior to AAI being notified as a 'Custodian' the task of handling cargo and allied services were performed by Central Warehousing Corporation. Thereafter, Airport Authority of

India took over as 'custodian', being so notified, and has been continuing to perform the tasks of handling cargo and all allied services till such time that government notifies some other agency as a 'Custodian'.

(ii) It is submitted that the answering respondents have been handling cargo and providing all incidental services including Cargo Security Services and for the aforesaid purposes have assigned the contract to U.P.Bhutpurva Sainik Kalyan Nigam Ltd., Respondent No. 4. As far as the security operations at the Air- ports are concerned, the security of the Aircraft, the immigration counter and various other security terminals are handled exclusively by the Anti-Hijacking and Anti-Disruptive Activities Cell of the Delhi Police. The immigration counters are manned by special cell of Delhi Police. Thus, where as the security operations at the Airport are manned predominantly by the Delhi Police, the cargo section is secured by the private security personnel hired through a contractor by the Airport Authority of India. The persons who are managing on behalf of the contractor, namely, U.P. Bhutpurva Sainik Kalyan Nigam Ltd., are former defense personnel. The said agency is sponsored by the Directorate General of Resettlement, Ministry of defense, Government of India. As part of the welfare activities of the Government of India, army personnel who retire at an early age are to be resettled. The Directorate General of Resettlement has floated the present contractor organisation in question i.e. Respondent No. 4 and the same sponsors various personnel to establishments such as Airports for securing the cargo at the said Airports. The agreement with the contractor is for providing security, watch and ward and surveillance service at the cargo terminal. Thus, the engagement of these personnel is directly relatable to the cargo. For merely manning the gates and building even the ordinary guards can suffice.

8. In the rejoinder affidavit as well as reply to the additional affidavit, the allegations made by the AAI are denied and its re-emphasised that the work performed by the petitioners come under the expression of "watching of buildings" as occurring in the notification dated 9.12.1976.

9. Separate affidavit is filed by the contractor also in which it is stated that the contractor is a Government of Utter Pradesh's enterprise under the Companies Act, 1956 and is primarily engaged to look after the welfare of Ex-Servicemen and their dependent family members through its various schemes and projects including providing opportunities for employment/self-employment and training as per guidelines issued by the Directorate of General Re-settlement, Ministry of defense, Govt. of India, New Delhi, from time to time. One of the activities of the answering Respondent is to provide the services of Ex-servicemen on contract basis to various persons, institutions, organisations and Public Sector enterprises to cater to their security, watch and ward and surveillance requirements. The said contractor has employed about 7000 Ex-Servicemen on contract basis throughout U.P., Delhi, Haryana and Himachal Pradesh. It is also submitted by the contractor that pursuant to agreement dated 15.1.1994 by the contractor with the AAI for providing security the contractor has deployed security personnel at IGI Airport, New Delhi and is rendering the contract/security services to AAI. It is also stated that pay and allowances of the petitioners and other contract labourers of the contractor are being paid as per the service/contract agreement. It is

also mentioned that these security personnel are rendering armed security and surveillance services. The claim of the petitioners that they have been engaged for last 10 to 15 years is also denied as patently incorrect because the contract with AAI itself is dated 15.1.1994.

10. Mr. Vijay Bahuguna, Learned Sr. Counsel who appeared for the petitioners contended that the writ petition was maintainable as no questions disputed facts are involved and this Court was to only interpret the agreement between the contractor and AAI and such interpretation was permissible under Article 226 of the Constitution of India. He emphasised that reading of the agreement would show that it was for the purpose of "rendering the security, watch and ward and surveillance" functions at the Cargo Terminal, IGI Airport as enumerated in Schedule `A' annexed to this Agreement and the expression "watch and ward" clearly comes under "watching of buildings". The learned Sr. counsel referred to paras 7, 8 and 26 of the Agreement and taking words from the language used in these paras it is submitted that the scope of the work was guarding area in question manned with arms and security of the IGI Terminal. He also referred to the Schedule A to the Agreement which provides first scope of the services and drew attention to para 1 of this schedule as per which contractor was to deploy security personnel to man the premises on round the clock basis to safeguard the Cargo, properties, installations, equipment at the Cargo Terminal and allied premises and submitted that it clearly amounted to "watching of buildings". He also submitted that the expression "watching the building" as occurring in notification dated 9.12.1976 is to be taken wider interpretation. The act being beneficial legislation intended to protect the service conditions of contract employees. He referred to the judgment of Supreme Court in the case of Sankar Mukherjee Vs. Union of India in support of his submission. He further submitted that as per Clause (d) of Section 123 of the Airport Authorities of India Act it was the statutory duty of the AAI to maintain buildings and to perform this statutory duty contract was awarded to the contractor. The work was therefore of perennial nature. He also tried to draw support from Sub-section 1 of the Contract Labour Act and submitted that "watching of buildings" means "safety and security of buildings". He further submitted that as the arrangement is continuing for last 13 years it can clearly be inferred that the work is of perennial nature. He also relied upon interim order dated 27.3.1998 passed in CW No.4292/97 wherein it has been observed that prima facie services rendered by petitioners are covered by the expression "watching of buildings" occurring in notification dated 9.12.1976. He further submitted that after the judgment of Air India Corporation (supra), AAI at Madras and Calcutta Airports had absorbed such security guards like the petitioners but this treatment was denied to the petitioners who were working at Delhi Airport. He also submitted that the petitioners had distinct advantage in becoming employees of AAI as retirement age in AAI was 60 years as compared to 58 years of the contractor, even though it was the UP Govt. undertaking. He further relied upon the judgments of Supreme Court in the case of Gujarat Electricity Board Thermal Power Station Vs. Hind Mazdoor Sabha and in the case of Catering Cleaners of Southern Railway Vs. UOI & Anr., reported in AIR 1987 SC 784.

11. Ms. Asha Jain Madan who appears for petitioners in CW No. 4356/98 made her submissions on almost identical lines. In this writ petition, petitioners are ex-servicemen who are employed by respondent No. 3 contractor pursuant to contract awarded by Indian Oil Corporation Ltd. Respondent No. 3 namely Snam Securities Services has been approved by Directorate General of Resettlement Ministry of defense as an agency for providing security services covered under the

scheme for resettlement of ex-servicemen of defense forces. It may be stated at this stage that Central Government has formulated the aforesaid scheme for resettlement of ex-servicemen of defense forces. For this purpose, a society under the name and title of Directorate General of Resettlement has been formed. Instructions are issued from Government, particularly from Home Ministry to engage the services of specialised security to provide security services and surveillance to the institutions. The contractors like respondent No. 3 in this case are the approved and sponsored by DGR. Reference to such scheme would be made in detail at the appropriate stage. In addition to the arguments noticed above, Ms. Asha Jain Madan submitted that the duties of the workers were essentially related to 'watching the buildings'. Once there was a notification abolishing the contract labour in this field, act does not make any distinction between ex-servicemen and non-ex-servicemen and all such contract workers who are entitled to regularisation. She referred to the provisions of Ex-Servicmen(Re-employment in Central Civil Services and Posts) Rules 1979 and submitted that these rules provide for resettlement of ex-servicemen. As per Rule 4 particular percentage of vacancies were to be reserved for ex-servicemen. Rule 5 contained provision for relaxing the age limit and Rule 6 provided for relaxation in minimum educational qualification prescribed for such posts. These rules also give right to the ex- servicemen to get employment in public sector undertakings and not as contract workers. It was submitted that even when the contractor was paying wages prescribed by DGR, these contract workers were getting the salary/wages much less than the salary being given to regular employees and therefore it amounted to exploitation. She also referred to the dictionary meaning of the expression 'watch' from various dictionaries to contend that the expression include the security and therefore security guards would be covered by the expression 'watching the buildings' occurring in notification dated 9.12.1976. It was also submitted that liberal meaning be given to the expression 'watching the buildings'.

12. As against the aforesaid submissions of the petitioners, Mr. Lalit Bhasin learned counsel appearing on behalf of AAI in CW No.4211/97 submitted that notification dated 9.12.1976 does not cover "security guards" or "watch and ward". It is submitted that the expression "watching of buildings" covered the cases of those persons who were discharging unskilled job of Chowkidar etc. It was submitted that the security provided by the contractor to the AAI was of highly specialised nature which an ordinary person or Chowkidar could not perform. It was for this reason that the requirement was to engage only Ex-servicemen who were specially trained for such a job. It was also submitted that notification was of the year 1976 and the Central Government intentionally used the word "watching of buildings" rather than "security". It was submitted that the security of the kind now being provided was not even in the contemplation of Central Government in the year 1976 and therefore such type of security could not have been envisaged while issuing notification dated 9.12.1976. He referred to the enactment called Security Guards Regulations Act 1981 and particularly Section 2(i) thereof as per which "security work" and "watch and ward" are treated separately. It was submitted that attention of the Court of the earlier judgments was not drawn to this Act which according to Mr.Bhasin clinches the issue. He also referred to the Black's Law dictionary and other English dictionaries for understanding the meaning of the various expressions connected with security, watch and ward etc. He further submitted that the case of Air India Corporation (supra) which arose from the judgment of Bombay High Court dealt with the case of the "cleaning and sweeping" which activity was also prohibited by notification dated 9.12.1976 and submitted that case was clearly distinguishable. He referred to various averments made in counter

affidavit, already notice above, as per which duties of security guards were of such specialised nature and could not be treated as "watching of buildings". He further submitted that immediately after Air India's judgment (supra) if wrong action was taken by at Madras & Calcutta Airports on the presumptions that the judgment covered the cases of security guards also, such an Act would not bind the respondents to perpetuate which is wrong. In any case according to him, each base was a separate establishment as per the judgment of Kerala High Court in the case of Sakunthala T. & Ors. Vs. Union of India & Ors. O.P. No.19987 of 1997-D decided on 11.3.1998 and therefore IGI Airport at Delhi was to be treated as a separate establishment. For this proposition he also referred to the judgment of Orissa High Court in the case of B.K. Mohanty Vs. State of Orissa reported in 1992 (2) LLJ 190.

13. Mr. G.B. Pai learned senior counsel who appeared Mr. Jagat Arora in CW No. 4356/98 for respondent IOC Ltd. submitted in detail the nature of the security services being taken by IOC Ltd. from the contractor who were engaging ex-servicemen and it was a specialised security services. In fact, according to him, the job was that of 'surveillance and security' and it was different from 'watching the buildings'. It was further submitted that all these persons were employed for last few months to one year that too much after the notification dated 9.12.1976. The Central Government which issued the notification dated 9.12.1976 was conscious of the said notification still it came out with the scheme of resettlement of ex-servicemen and formation of DGR which was to approve the contractors who were suppose to employ these ex-servicemen. This system was evolved keeping in view that the services which are going to be provided by these contractors will not come under the expression of 'watching the buildings' because it could not be accepted that Government would come out with a scheme which would go contrary to its own notification dated 9.12.1976. Therefore on factual premise, it was submitted that the service being provided by such persons were clearly not covered by notification dated 9.12.1976. Mr. G.B. Pai learned senior counsel also made legal submissions on the basis of various provisions contained in the Contract Labour (Regulation and Abolition) Act. It was his submission that the said Act provides for regulation as well as abolition of the contract labour. So long as the contract labour is not abolished in a particular field by issuing notification under section 10, it was to be regulated as per various provisions contained in the Act. In the entire enactment, only section 10 deals with abolition and all other provisions deal with regulation of the contract labour including Chapter 5 dealing with welfare and health of contract labour. Thus, according to him, till the contract labour was not abolished, other provisions in the act took care of such contract labours including about their welfare and health. Thus the intention of the legislature was to abolish the contract labour only when it was absolutely necessary and was germane to the main activity. For this purpose, he drew sustenance from the definition of workman as contained in section 2(b) of the Act as per which a workman is deemed to be employed as contract labour 'in or in connection with the work of establishment'. It was submitted that Supreme Court in M/s. Gammon India Ltd. & Ors. Vs. UOI & Ors. held that the expression 'employed in or in connection with the work of establishment' does not mean that the operation assigned to the workman must be an operative, or incidentally to the work performed by the principle employer. It was submitted 'employed in or in connection with the work' of the establishment was not the same as 'process, operation etc.'. Therefore for the purpose of section 10, the work for which contract needs to be abolished should be such which is directly connected with the work of the establishment and not incidental. The work which was external to core was not to be abolished. Such work was not

germane to the core activity. Otherwise it would create dichotomy . It was submitted that the functions like that of caterers, carrier loading and unloading were not germane to the main activity of the industry. For such functions, contract labour was permissible under the Act and legislature never intended to abolish contract workers in such fields. He also referred to the judgment of Supreme Court in the case of The Standard Vacuum Refining Co.of India Ltd. Vs. Their Workmen & Anr. and relying upon observations made in para 11 of the said judgment, it was submitted that the concept of casual activity was recognised . Word 'germane' appeared in Vegoils' case also . He also referred to the judgment of Supreme Court in the case of Workmen of Bombay Port Trust Vs.Trustees of Port of Bombay reported in 1966 l LLJ 716. Accordingly he submitted that notification under section 10 could be issued only when the following two conditions were satisfied :

(1) The activity in question is core activity.

(2) The work was of perennial nature.

14. He further submitted that Air India's case was per incurium as the aforesaid aspects based on the earlier judgments were not even considered and for this purpose he also referred to the 3 Judges bench order dated 13.10.1995 of Supreme Court in the case of All India General Mazdoor Trade Union Vs. Delhi Administration & Ors., wherein Supreme Court had specifically held that writ petition was not maintainable and proper remedy to move the forum competent to look into the grievance even when contract labour was abolished. He also referred to the judgment of Supreme Court in the case of Punjab Land Devt. & Reclamation Corpn.Ltd. Chandigarh etc. & Several others. Vs. Presiding Officer, Labour Court, Chandigarh etc. & several others reported in 1990 2 LLJ 70 in support of his submission. Mr. C.M. Khanna Learned Counsel appearing for respondent No. 3 in this writ petition stated in detail the nature of scheme provided by Government of rehabilitation of ex-servicemen and submitted that the contract was awarded to respondent No. 3 by respondent No. 2 as per the scheme and even the respondent himself was an ex-servicemen. The purpose was to rehabilitate such persons keeping in view their early and premature retirement from defense forces and those who have not attained 58 years of age. It was further submitted that it was the specialised activity being undertaken by such ex-servicemen which was never contemplated in 1976 when notification dated 9.12.1976 was issued. The salary to these ex-servicemen were given as per DGR prescribed pay scale and there was no exploitation. All permissible benefits were being given to these ex-servicemen who were getting pension from army also. Contractor was only given service charges. It was also submitted that even in the licence issued to the contractor by DGR there was specific reference to notification dated 9.12.1976 and thus the Government was conscious of the said notification and still this arrangement was made clearly keeping in view securities of this nature is not covered by notification dated 9.12.1976. It was further submitted that if such contract workers who are ex-servicemen are treated as covered by notification dated 9.12.1976 and seek direct employment with the principle employer the whole purpose for providing rehabilitation to ex-servicemen would be defeated.

15. Therefore what is to be decided is as to whether security services would fall within the expression of "watching of buildings". It may be observed at this stage that if the work performed by the petitioners is of the nature which comes within the purview of notification dated 9.12.1976 then the

consequence as mentioned in the judgment of Supreme Court in Air India Corporation would follow i.e. the petitioners would be treated as direct employees of the AAI inasmuch as a contract has been abolished by the Government and therefore it was not permissible for the AAI to award the contract of "watching of buildings."

16. Before addressing ourselves to the question involved in this case, it would be appropriate to first examine the scheme of resettlement of these Ex-servicemen as formulated by the Central Government and also the nature of security services being provided by contractors to these public sector undertakings with the help of these Ex-servicemen. It is a matter of record that the age of retirement of defense forces personnel is comparatively much less than the civilians and it depends on the particular rank being enjoyed by such servicemen. In most of the ranks, such servicemen retire much earlier than 58 years/60 years of age. Keeping in view this aspect, Ministry of defense came out with the scheme of resettlement of such Ex- servicemen with a view to provide them the jobs in civilian services after their retirement from defense service at least till they attain the age of 58 years. Scheme for resettlement of Ex-servicemen was thus formulated. A society with the name of Directorate General of Resettlement (in short DGR) for Ex-servicemen was also formed. Rules under proviso to Article 309 of the Constitution for regulating the recruitment of Ex-servicemen in Central Civil Services and Posts were also framed which were promulgated vide notification dated 15.12.1979. These Rules are called the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules 1979. However these Rules apply where such ex-servicemen directly apply for recruitment for posts in Central Civil Services against the post reserved for ex-servicemen. DGR also noticed that a large number of private organisations and public sector undertakings were hiring security agencies to give security cover where the security agencies were hiring ex-servicemen. Accordingly, guidelines dated 19.5.1992 were issued for sponsoring and operating of security agencies and related activities to ensure adequate payments to these ex-servicemen and that they are not exploited. DGR also started sponsoring security agencies and guidelines concerning such security agencies were issued which were made effective from 1.3.1996 after being duly approved by Government of India. These guidelines, interalia, include the wage structure as payable to different security personnel like security guard, gunmen, supervisory assistant security officer etc. Directions/instructions were also issued from time to time to public sector undertakings to engage such security agencies approved by DGR for providing securities to their installations.

17. Thus it is not in dispute that all these petitioners are Ex-servicemen, in fact for rehabilitation of these Ex-servicemen guidelines are issued by Directorate General of Re-settlement (hereinafter DGR) Ministry of defense Government of India, New Delhi from time to time. These guidelines, interalia, provided that public sector undertakings, for the purpose of providing security to their establishments have to award contract to those contractors who employ these Ex-servicemen and are recognised by DGR. Contractor in CW 4211/97 which is Government of UP undertaking is in fact employing about 7000 Ex-servicemen and undertakes the contract of providing security by deploying these Ex-servicemen throughout Delhi, U.P., Haryana and Himachal Pradesh.

18. It may be mentioned at this stage that need hire to specialised security agencies employing these ex-servicemen who have acquired specialised training being part of defense forces was also felt keeping in view the changing trends of security and safety scenario particularly with the upsurge of

terrorist activities and new kinds of law and order situation being faced. The specialised kind of securities which the establishment like Airports Authority of India or Indian Oil Corporation need today hardly requires any emphasis. A watchman or a chowkidar, understood in traditional sense, is illfit to provide such sensitive and highly specialised security and surveillance. Therefore such public sector undertakings were directed to appoint security agencies sponsored by DGR as their contractors inasmuch as such security agencies who are sponsored by DGR are supposed to employ ex-servicemen. Thus it served twin purpose namely (i) rehabilitation of ex-servicemen by providing them with jobs and (ii) providing such public sector undertakings specialised and highly skilled security cover which they require. These security agencies like in the instant cases are providing security cover to the principal employer and not only manpower for watch and ward duties. In CW No. 4356/98 security agencies provide security cover to IOC for its building which is 11 story building with two basements and houses the northern region office of IOC. IOC building is a vulnerable target which requires elaborate planning and implementation of security cover. In the affidavit filed by respondent No.3 in this writ petition, the nature of integrated security and surveillance service provided to IOC is stated in the following words :-

> "(i) My own involvement being retired Army Officer trained in all aspects of Security and disposal of unexploded bombs and other explosive materials.
>
> (ii) Provision of Security and Surveillance Service by employing one Assistant Security officer, three Security Supervisors, 7 Armed Guards and 45 Security Guards, who are mostly ex-servicemen and trained in Security duties. The physical security by deployment of security personnel on ground is planned and supervised by staff deployed separately in the office of my firm.
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> (iii) Security Services include checking of vehicles against carrying of explosive devices checking undercarriages of vehicles, use of metal detectors and other devices, surveillance with the use of closed circuit TV, aggressive patrolling during day and night, collection of information and undesirable activities, security of cash during transit and in cash rooms and duties to assist and evacuate in event of fire fighting in multistoreyed buildings.

That the security services cover provided by my firm to respondent No. 2 organisation does not construe to provide manpower in the form of watchman. The security cover provided in the present case also includes advice to respondent No.2 on all security matters, collection of information on aspects affecting security of the organisation and devising and implementation of preventive scheme for better and more efficient security cover to the organisation. The complete planning, implementation and control of manpower deployed for security cover rests with respondent No. 3 and not the IOC."

19. It is further pointed that such security guards who are providing security cover are not doing mere work of watch and ward duties. In para 11 of the affidavit, the position is explained in the following manner:

> "The category of worker "Security Guard" deployed by my firm is entirely different than the category of worker" Watchman" as contemplated under the Government Gazette Notification of 1976. Security guard forming part of security service cover provided by my firm to respondent No.2 is a member of team work consisting of persons of category of security officer, Assistant Security Officers, Supervisors , Armed Guards and Security Guards. He is not a passive worker deployed on watch and ward duties. He is trained and deployed to perform aggressive role like patrolling along with the armed guards, deployed in a role to show force to deter others and take initiative to prevent untoward happenings affecting security of organisation. The job performed by security guards of my team providing security cover to respondent No.2 is more like the job performed by a policeman or a CISF men and not like a deployed watchman for watch and ward duties. Security employed by my firm are of "Semiskilled category and their wages and other allowances are paid to them under the said category. Their category does not fall under the unskilled category of watchman, which is a prohibited category for employment by contract labour under the Government notification of 1976."

20. In somewhat similar manner, the nature of job being performed by such security guards is stated by the IOC also in its counter affidavit. It is explained that respondent No.2 is an oil company and looking to the overall situation particularly the threat from terrorism etc. the Government has issued instructions that only specialised personnel who deal with crisis situation may be engaged. The security contractor is supposed to perform a specialised job of security and surveillance and its personnel posted inside and outside the building even on the roads and peripheral area to maintain complete security of the institution. Instructions issued by the Government for engaging such security agencies from time to time are annexed with the counter affidavit and in para 3 of the said counter affidavit following averments are made :

> "It is stated that the security guards forming a part of security cover is not a passive worker deployed on watch and ward duties. He is trained and deployed to perform aggressive role like patrolling along with arms, takes initiative to prevent untoward happening affecting security of organisation. The job performed by a security guard is more like a police man or CISF and not like a watchman for watch and ward duties. The deponent states that "watching the building" described in the notification is not the job which is being performed in the establishment of the respondent. It is a complete contract given for integrated security and surveillance incorporating various job functions which has to be provided by the respondent No. 3 Respondent No. 3 is designed to provide security cover to respondent No. 2 and not only to provide manpower for watch and ward duty. Respondent No. 2 is located in a eleven storeyed building with two basements with State of the Art/latest fire fighting equipment and houses Northern Regional office of Indian Oil Corporation's Marketing Division. IOC building is a vulnerable target, which requires elaborate planning and implementation of security cover. Such security cover can only be provided by trained ex-servicemen with proper planning. The security agency of Retired Army Officers is trained in all aspect of security and disposal of unexploded

bomb and other explosive materials. The security services include checking of vehicles against carrying of explosive devices, checking under carriage of vehicles, use of metal detectors and other devices, surveillance with the use of closed circuit TV aggressive patrolling during day and night, collection of information of undesirable activities, security of cash during transit and in cash rooms and duties to assist and evacuate in the event of fire in the multistoreyed buildings."

21. The position in respect of security at IGI Airport is no different. If anything, it is more sensitive.

22. Keeping in view the aforesaid nature of the security services and surveillance namely complete security cover being provided by these contractors who engage ex-servicemen, to such sensitive installations, it cannot be said that the work being done by these security guards is 'watching the buildings'. Notification dated 9.12.1976 which was issued more than 20 years ago could not have contemplated such kind of specialised security services while abolishing the contract in the field of 'watching the buildings'. I agree with the submissions of the learned counsel for the respondents that the expression 'watching the buildings' was at that time used for those who were watchman or chowkidar. It was never contemplated that it would cover the cases of ex-servicemen employed under the aforesaid scheme by the specialised security agencies for providing surveillance and security cover to sensitive installations. The very purpose of providing such kind of security would otherwise be defeated. It is clear from the various documents produced on record that the notification dated 9.12.1976 was in the knowledge of the Government while framing such scheme for rehabilitation and in fact reference is made to the said notification specifically. Thus the Central Government which had issued notification dated 9.12.1976 prohibiting contract labour for 'watching the buildings' was conscious of that fact and it is apparent that the same Central Government while framing the scheme had interpreted that the specialised security services would not be covered by the expression 'watching the buildings'. One can also draw support from the provisions of Section 2(i) of the Security Guards Regulation Act 1981 as per which security work and watch and ward are treated separately. Once we have the material of the kind available on record which clearly distinguishes watch and ward from security guards, one cannot come to different conclusion based on the traditional meaning of the word 'watch' as defined in various dictionaries. In such cases, one has to take pragmatic approach and Court cannot turn its blind eye to the realities of life. The very purpose of providing such specialised and sensitive nature of security cover and surveillance would be defeated if such contract labour is treated as abolished by applying notification dated 9.12.1976. Of course, it can be argued that if contract labour is abolished , the ex-servicemen become direct employee of the principle employers and therefore these ex-servicemen who know the specialised job will keep on providing the security. However this argument missed the essential point namely it is not only the providing of security services by these ex-servicemen but entire security cover which is the specialised job of the security agency who manages the show and plans the job requirement and as to how the security cover is to be provided and on that basis deploys the security personnel employed by it. If these contract workers are made direct and recruit employees of the principle employers for example Airports Authority of India or Indian Oil Corporation in these cases, they are illequipped to achieve the objective of providing security cover to the buildings/sensitive installations. It is not the work which is required to be performed by the security guards individually but planning and management and the manner in which this work is to be taken from security

guards, which is of paramount importance. And this job can be handled by the contractor and not the principal employer.

23. For the aforesaid reasons, I also agree with the submissions of Mr. G.B. Pai, learned senior counsel to the effect that it is not the core activity of the establishment and therefore was not intended to be abolished. However one need not deal with this aspect in detail in the present case as the discussion held above is sufficient to come to the conclusion that this kind of security services do not come under the notification dated 9.12.1976. One has also to keep in mind the objective with which the scheme for rehabilitation was formed and DGR created. If the contention of the petitioner is accepted, the very purpose would be defeated and it would do more harm than good to thes ex-servicemen. May be those ex-servicemen employed presently through contractors would gain marginally by getting direct employment with the principle employers. But simultaneously by sounding death knell to the DGR and the scheme for rehabilitation, it would completely stall the process of rehabilitation of such ex-servicemen in future.

24. Not only this, it is explained by IOC in its counter affidavit filed in CW No.4356/98, the respondent corporation has no post of watchman and no person is employed in Indian Oil Bhavan to perform such jobs. in para 8 of the counter affidavit, it is further explained as to how the notification dated 9.12.1976 is not applicable in its case. This para is reproduced below :

> "That the reliance placed by the petitioners on notification dated 9.12.1976 is complete misplaced for the following reasons:
>
> (a) That in 1976, the Central Government was not the appropriate Government for the respondent No.2 under the provisions of the Industrial Disputes Act and the Contract Labour Regulation & Abolition)Act. The said notification was not issued keeping in mind the security and surveillance needs of the respondent corporation. No study was conducted or procedure followed as prescribed u/s 10 of the Contract Labour (Regulation & Abolition) Act for issue of the notification.
>
> (b) That the respondent No. 2 was declared to be a controlled industry in 1984 vide notification No. 457(E) dated 21.6.1984 under the provisions of Industries (Development & Regulation) Act 1951 (65 of 1951). On declaration of a "controlled industry" the Central Government became the "appropriate Government " for the respondent under the provisions of the Industrial Dispute Act 1947 as defined under section 2(a) of the said Act.
>
> (c) In 1986, the Contract Labour (Regulation & Abolition) Act was also amended and the Central Government became the appropriate Government for the respondent, vide notification No. 371(E) dated 20.6.1986. Since 1986, no notification has been issued by the Central Government to prohibit the employment of contract labour to perform the watch and ward duties, assuming though not admitting that such a notification could be issued in respect of the petitioners.

(d) It is stated that the Central Government acting under the provisions of Section 10 of the Contract Labour (R&A) Act has already issued notification dated 21st October 1997 and 9th November 1998 banning the employment of contract labour in certain specified operations carried on by respondent No. 2 and its installations. No notification having been issued in respect of the petitioners, it is evident that the appropriate authority under the Act does not think that such operations can be prohibited under the Act."

25. At the end I may sum up the entire position as under :

(1) The ex-servicemen, petitioners in the instant cases who are engaged as contract workers by specialised security agencies have got the job because of the scheme of resettlement framed by Central Government.

(2) Security agencies are approved by DGR and they employ these ex-servicemen on the basis of licence granted to the security agencies and the terms and conditions granted to the security agencies by DGR which include service conditions of these ex-servicemen as well as prescribe the rate of wages to be paid to them.

(3) The Government of India has issued instructions to the public sector undertakings for engaging such security agencies which not only enables ex-servicemen to get rehabilitated but the establishments and their sensitive installations also get the security cover.

(4) The security cover being provided by the security agencies to these installations cannot be termed as 'watching the buildings' as it is a highly sensitive security and surveillance.

(5) In 1976 when notification dated 9.12.1976 was issued abolishing contract labour in respect of 'watching the buildings' it was not intended to cover such kinds of security services.

(6) Security and watch and ward are treated separately under section 2(i) of the Security Guards Regulation Act 1981. This Act came after 1976 notification and therefore can be treated as clarifying that security work was not contemplated to be included in the expression 'watching the buildings'.

(7) Giving of interpretation as suggested by the petitioner would amount to defeating the very purpose for which DGR was formed and rehabilitation scheme framed by the Government.

(8) While framing such scheme and giving licence to the contractors reference is made by notification dated 9.12.1976 which leads to obvious conclusion that providing such a security is not treated as 'watching the buildings' and therefore as

per Government's view such activity is still not abolished.

(9) Proper care is taken to provide good service conditions and wages to the secuirty men who are also recipient of pension etc. from their parent department. The consequence of the interpretation given by the petitioners would be doing more harm than good and it would defeat public purpose rather than subserving the same.

26. For all these reasons, I hold that the work of these security guards would not be covered ; by the expression 'watching the buildings' as contained in notification dated 9.12.1976 and therefore the contract labour in this respect is not abolished.

27. The Writ Petitions filed by the petitioners accordingly fail and are hereby dismissed.

28. There shall be no orders as to costs.