

R

IN THE HIGH COURT OF KARNATAKA, AT BANGALORE

DATED THIS THE 23<sup>RD</sup> DAY OF MARCH, 2011

BEFORE

THE HON'BLE MR.JUSTICE B.S.PATIL

WRIT PETITION NO.6911 OF 2011 (GM RES)

BETWEEN

SRI RAMANNA,  
S/O. HANUMAIAH,  
AGED ABOUT 45 YEARS,  
PROPRIETOR, KARNATAKA  
PUBLIC SECURITY SERVICES AND  
CONTRACTORS, NO.2062,  
AKBAR ROAD, MANDI MOHALLA,  
MYSORE-570 021.

... PETITIONER.

(SRI K.V. NARASIMHAN, ADV.)

AND:

1. UNIVERSITY OF MYSORE,  
CRAWFORD HALL,  
POST BOX NO.406,  
MYSORE-570 005.  
REPRESENTED BY ITS REGISTRAR.
2. THE VICE-CHANCELLOR,  
UNIVERSITY OF MYSORE,  
CRAWFORD HALL,  
POST BOX NO.406,  
MYSORE-570 005.
3. THE DIRECTOR GENERAL OF  
POLICE AND COMMANDANT  
GENERAL, HOME GUARDS AND  
DIRECTOR OF CIVIL DEFENSE AND FIRE –  
EMERGENCY SERVICE,  
ANNASWAMY MUDALIYAR ROAD,

ULSOOR.

BANGALORE 560 042.

... RESPONDENTS.

(SRI RAJENDRA KOMAR SUNGAY, ADV. FOR R1 & R2,  
SRI R. DEVADAS, ACA FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE RESOLUTION AT ANNEXURE-D, DATED 10.01.2011 PASSED BY THE SYNDICATE OF THE 1<sup>ST</sup> RESPONDENT - UNIVERSITY VIDE SUBJECT AND THE ORDER AT ANNEXURE E, DATED 29.01.2011 PASSED BY THE 2<sup>ND</sup> RESPONDENT - VICE CHANCELLOR, AND ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. Petitioner is running an establishment by name Karnataka Public Security Services and Contractors at Mysore, which is providing security services. Petitioner is calling in question the resolution dated 10.01.2011 passed by the Syndicate of the 1<sup>st</sup> respondent - University and the order dated 29.01.2011 Annexure-"E" passed by the 1<sup>st</sup> respondent - University.

2. As per Annexure-"D" resolution, the Syndicate of the University has resolved in its meeting dated

4

10.01.2011 that for the purpose of ensuring security in the University, services of the home guards has to be availed as per the terms and conditions agreed, by relaxing Condition No.6, for a period of one year and in that regard, the Vice Chancellor of the University was authorised to take necessary action. Based on this resolution, the University has issued Annexure-"E" order on 29.01.2011 whereby it is ordered that for the purpose of security of the various offices, divisions, Colleges and the movable and immovable property of the University, and the P.G. centres located at Mandya, Hassan and Chamarajanagar, security services from the home guards shall be availed.

3. A perusal of the order Annexure-"E" makes it clear that after several interactions and correspondence with the authorities namely the Director General of Police, the Commandant General, Home Guards and The Director, Home Guards & Civil Defence, Bangalore, the University has decided to avail the services of Home Guards for the purpose of securing and ensuring the safety of its properties, both movable and immovable.



4. This decision taken by the Syndicate and the consequent order issued by the University, are assailed in this writ petition, by the petitioner.

5. The main contention urged by the learned counsel for the petitioner Sri. K.V. Narasimhan is that the University has no power to engage the services of Home Guards by private negotiations without following the provisions of the Karnataka Transparency in Public Procurement's Act, 1999 (for short 'the act') and the rules framed thereunder. Inviting the attention of the Court to the provisions contained under Section 4(d) and Section 5 of the Act, he submits that on and from the date of commencement of the Act, no procurement entity shall procure goods or services except by inviting tenders for supply. It is his submission that in the instant case, as the respondent University is procuring the services for the purpose of safeguarding its property, it ought to have followed the provisions of the Transparency Act and called for tenders in which



event the petitioner would have participated in the tender.

6. Learned Government Advocate strongly refutes the contention of the learned counsel for the petitioner and submits that the provisions of the Act have no application for the services of the nature that are solicited by the University from the commandment of Home Guards. Drawing the attention of the Court to the object and purpose of the Act particularly to the definition of the term 'services', as contained under Section 2(i) of the Act, he contends that the expression 'services' used in the Act and the intention of the Legislature as can be seen from the various provisions of the Act, cannot be extended to cover services extended by the Agencies like Home Guards who are a wing of the Government and which is invested with certain special responsibilities and duties to be attended to for the purpose of securing the property and safety of the citizens. He has also drawn the attention of the Court to the provisions of the Karnataka Home Guards Act, 1962 and the rules framed thereunder. His

4

submission is that as per Section 13 of the Home Guards Act, a member of the Home Guards acting under the Act is deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code and as per the rules namely Rules 17 and 18 of the Karnataka Home Guards Rules, 1963, the functions and duties and also the allowances payable are mentioned which make it clear that a Home Guard is a public servant and the nature of functions and duties discharged by him are meant to safeguard the public buildings. It is in this context that he submits that if the University has availed the services of the Home Guards for the purpose of securing its property, and for enforcing the safety of the movable and immovable properties in the University or the Colleges coming under the jurisdiction of the University, the petitioner Agency engaged in providing security services, cannot claim as of right, that the University cannot avail the services of Home Guards but has to invite public tenders and take the services of the successful tenderer.

4

7. Learned counsel appearing for the respondent University strongly supports the contentions urged by the learned Government Advocate. He also submits, during the course of the arguments that the University has decided to go for tender process to get the security services. In this regard, a memo is filed enclosing the communication issued by the Registrar addressed to the counsel for the University.

8. Having heard the learned counsel for the parties and on careful consideration of the entire material on record and the provisions of law, it is clear from the provisions contained under the Karnataka Transparency in Public Procurements Act, 1999, that the Act is enacted to provide for ensuring transparency in public procurement of goods and services by streamlining the procedure in order to avoid corrupt practices to maximise the financial benefit by ensuring transparency in inviting/processing and acceptance of tenders by the procurement entities. Section 5 of the Act reads as under:



"Procurement other than tender prohibited: On and from the date of commencement of this Act, no procurement entity shall procure goods or services except by inviting tenders for supply".

9. The Act defines the term 'services' under Section 2(f) which reads as under:

'Services' means the action of serving, attending upon, helping or benefiting a procurement entity in the course of discharging its public duties and includes construction works. Section 4 enacts certain exceptions to the application of the provisions of the Act. Sub-clause (d) of Section 4 provides that where the goods or services are procured from certain departments of Government, public sector undertakings, statutory boards and such other institutions specified by the Government and such goods are manufactured or services are provided by them, for a period not exceeding three years from the date of commencement of the Act, the provisions of Chapter-II shall not apply. Sub-clause (g) of Section 4 further enacts and clothes

4



the Government with power to notify from time to time certain specific procurements in respect where of, the provisions of the Act shall not be applicable.

10. It is thus clear from the provisions referred to hereinabove, that even in respect of goods or services which are procured from certain departments of Government or public sector undertakings, the exemption provided was only for a period of three years from the date of commencement of the Act. The Act has come into effect from 4.10.2000. The Act has received the assent of the Government on 10.12.2000. Therefore, it is clear that after the expiry of three years from the date the Act came into force, the goods and services to be procured from the Government Departments and public sector undertakings are also subjected to the procedure contemplated under the provisions of the Act and no exemption can be given.

11. However, the question that falls for consideration in this case is whether at all the provisions of the Karnataka Transparency in Public Procurements Act,



1999 can be made applicable to the nature of services which the University wants to procure from the Home Guards. The Karnataka Home Guards Act, 1962 has been enacted to provide for constitution of Home Guards in the State of Karnataka. Earlier to the enactment of the Act, the organisation called Home Guards was only in existence in the Bombay Karnataka Districts of the State. The Legislature thought it necessary to have a body of persons throughout the State, to discharge duties in relation to the protection of persons, security of property and preservation of public order in emergency. Hence, it was proposed to organise Home Guards in the entire state. In order to effectively control and administer the organisation, it was felt necessary to have a uniform law. Therefore, as an urgent measure and in view of the fact that Legislature was not in session, the Mysore Home Guards Ordinance of 1969 was promulgated which was followed by the Act known as Karnataka Home Guards Act, 1962. Subsequently, by the amending Act 11/1977, certain amendments have been introduced. It is now clear from



the provisions of the Karnataka Home Guards Act, 1962, that Home Guards have become indispensable and decisive force in maintaining peace and tranquillity at different contingencies and times like election time, railway strikes, political and labour demonstrations.

12. Section 13 of the Act states that the members of the Home Guards acting under the Act shall be deemed to be public servants within the meaning of Section 21 of the IPC. Section 21 of the Indian Penal Code deals with the expression 'public servant'. It is stated therein that every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience.

13. The Government of Karnataka, in exercise of the powers conferred under Section 12 of the Karnataka Home Guards Act, 1962 has framed Rules known as Karnataka Home Guards Rules, 1963. Rule 17 which is relevant for our purpose states as under:



"17. Functions and duties.—(1) The functions and duties of members of the Home Guards shall ordinarily consist of,—

(a) guarding of public buildings;

(b) patrolling for the purpose of prevention of crime, and enforcement of such regulations and orders made under the Police Acts in force in the respective areas of the State or any other law for the time being in force as it would be the duty of a Police Officer to enforce under the said Acts or Law;

(c) assisting the ordinary Police Force in enforcing the provisions of the Karnataka Prohibition Act, 1961, when the members of the Home Guards are appointed as Prohibition Officers under the said Act;

(d) performing such other duties as may be assigned to them from time to time by the State Government or the Commandant General.

(2) A member of the Home Guards constituted for any area shall be liable,—

(a) to serve in any other area of the State;

(b) in any emergency to be called out on duty, at any time and for any period and in any part of the State of Karnataka; and

(c) to be required to serve for a period of three years in the Home Guards unless he is allowed to resign in accordance with these rules."

14. Rule 18 deals with allowances payable in connection with the activity pertaining to the Home Guards. A perusal of the provisions contained under Home Guards Act and the rules, particularly Rule 17 relating to functions and duties which the Home Guards are enjoined with, makes it clear that the nature of the services which the Home Guards render is for the purpose of guarding public buildings, patrolling for the purpose of prevention of crime and enforcement of certain regulations and orders made under the Police Act and other laws in force as it would be the duty of a police officer and performing such other duties as may be assigned to them from time to time by the State Government or the Commandant General. Thus it is clear that the Home Guards are regarded as public servants. They are clothed with the duties and powers of public servants for the purpose of the provisions of



the Indian Penal Code and also Code of Criminal Procedure. They discharge the duties of a police officer particularly in the matter of safeguarding public peace and tranquility and for the purpose of police Act and other laws.

15. The Karnataka Home Guards Act provides for constitution of Home Guards appointment of Commandant General and Commandant. It lays down the functions and duties of the members and the powers and functions as also the control mechanism. Section 5 of the Home Guards Act provides that the Commandant General may, at any time, call out any member of the Home Guards for training, or to discharge any other functions or duties assigned to the Home Guards in any part of the State in accordance with the provisions of the Act and the rules made thereunder. Sub-clause (3) of Section 5 states that the Deputy Commissioner or the Superintendent of Police of a District may at any time, call out a member of the Home Guards to discharge any of the functions or duties assigned to him by or under this Act. It is thus



clear, that a Home Guard has become an integral part of the service wherein he is required to answer the call of duty for the purpose of protecting peace and tranquility and securing the public property. Therefore, if the respondent University has decided to protect its properties and ensure safety and security within the precinct and premises of the University and the Colleges run under its control by availing the services of the Home Guards, it cannot be said that the University has no such right to request the Government or the concerned authority to depute the services of Home Guards for protecting its property. Even if the services are so secured by agreeing to certain terms and conditions relating to payment of charges, it cannot be equated to what is known as procurement of services as contemplated under the provisions of the Karnataka Transparency in Public Procurements Act, 1999. In the very nature of services that the Home Guards render in safeguarding public peace, public property and in ensuring the safety of movable and immovable properties of the public, the nature of services rendered

~~A~~

by them cannot be included within the term 'services' as defined under Act 29/2001. The contention of the learned counsel for the petitioner that even such services have to be procured only by calling public tender, is totally untenable. The services of Home Guards cannot be equated with services extended for commercial purposes. They are not a profit making agency. Their services are extended to protect public properties and to ensure peace and tranquility. Their duties and functions are akin to that of police personnel. If the University has decided to avail the services of Home Guards for the aforementioned purpose the University cannot be compelled to invite public tenders and permit other private agencies to compete. There is absolutely no rationale in compelling the Home Guards to compete with other private security agencies for the purpose of extending such services. The services rendered by private security agencies cannot be equated with the services rendered by the police, the home guards or any such State maintained security staff who discharge statutory functions and are





invested with statutory rights. Therefore, the contention urged by the learned counsel for the petitioner has no legal basis.

16. Hence, I do not find any merit in this writ petition. The same is, therefore, dismissed.

Sd/-  
JUDGE

KS