

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3666 of 2021

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Lt. Col. Ishrat Nabi (Retd.) Male, aged about 56 years, Son of Sharfun Nabi, Proprietor M/s 3900 Nabi Ishrat Security Agency, Resident of A/46, Ali Nagar, Anisabad, P.S. Gardanibagh, District Patna.

... .. Petitioner

Versus

1. Union of India through Director General Resettlement, Ministry of Defence, Government of India, New Delhi.
2. Director of Employment, ADG, Directorate Resettlement Zone (Central) Government of India, Ministry of Defence, New Delhi.
3. Joint Director, ADG, Directorate Resettlement Zone (Central) Government of India, Ministry of Defence, Lucknow.
4. Security Cell, Directorate Resettlement Zone (Central) Government of India, Ministry of Defence, Lucknow.
5. The Special Security cum Controlling Authority, Department of Home, Govt. of Bihar, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Ranjan, Adv.
For the Union of India	:	Dr. K.N.Singh ASG with Mr. Tuhin Shankar CGC

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 15-02-2022

This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

2. As per cause title, it is apparent that the petitioner is an Ex- Military Officer. He is proprietor of a Security Agency under the name and style of M/S 3900 Nabi Ishrat Security Agency (for brevity 'NISA'). The agency is empanelled with the Director General Rehabilitation (DGR), having



Empanelment Certificate No. 3900 dated 03.12.2015.

3. The Empanelment of the petitioner needs to be seen with the scope and object of the DGR in the background. For maintaining youthful profile of the Armed Forces, a large number of service personnel are retired/released at a relatively young age every year. By then they have acquired certain skills during their service career which are unique to the service. Such early release/retirement necessitates or allows the taking up of some occupation. The DGR provides opportunities for re-employment/entrepreneurship of Ex-Service man (ESM). The Public Sector Undertaking or State owned establishments are encouraged to engage security agencies sponsored by DGR. The ESM interested in providing their services are, thus, empanelled by DGR. The empanelled agencies are sponsored for providing security services to certain establishments.

4. Having been empanelled on 03.12.2015, it is the petitioner's own case that his agency was sponsored for several contracts with Central PSUs for providing security services. It is also admitted that along with his wife and younger brother he had formed another private limited Company, namely, SAM Security and Man Powers Services Private Limited (hereinafter referred to as 'SAM Security') in the year 2013, apart from



NISA which was registered with DGR. It is the case of the petitioner that he resigned as Managing Director of SAM Security on 01.07.2017.

5. One of the Security Agencies of the petitioner (NISA) has been disempanelled under Memo No. 3900/Bihar dated 31.03.2020, by a communication issued under the signature of Respondent No.3. The same has been assailed by the petitioner in the instant proceedings. Disempanelment is for violation of para 5(e) of the Office Memorandum dated 09-07.2012, copy of which has been submitted to the Court and has been kept on record. Para 5(e) of the OM reads thus:-

“5(e) Should not have availed of any other Employment/Self Employment/welfare benefits from DGR. Should not be re-employed with the Indian Armed Forces or any other Government/Semi-Government organization, Central Public Sector Undertakings, Public Sector Banks after retirement or employed in the private sector once they are awarded the contract. An undertaking by the officer to the effect that he will resign from such job if he takes up the contract should be submitted in this regard at the time of registration of the contract with PSUs. The officer will confirm in writing to the DGR that he has resigned from such job after getting the contract. Any false declaration in this regard will make the applicant liable for cancellation of registration/sponsorship and criminal prosecution for breach of trust.”

6. The petitioner was served with a show-cause notice of disempanelment dated 27-02-2019 as per para 26(b) and



(c) for alleged violation of para 5(e) of the OM dated 09.07.2012. The show-cause notice was issued since it was brought to the notice of the respondents that the petitioner, apart from his agency (NISA) which was registered with the DGR, was also operating another security agency (SAM Security). The petitioner submitted his reply dated 14.03.2019 stating therein that on 02.09.2013 SAM Security was got registered by the petitioner with four directors. NISA, the other Agency in the petitioner's name was empanelled with DGR on 03.12.2015. From the DGR, the first security contract for supply of 17 guards to Food Corporation of India in Bihar commenced on 22.07.2017. He stated that he had submitted his resignation as Director from SAM Security on 01.07.2017 i.e., prior to commencement of the Contract from DGR. He further submitted that he has not taken any remuneration or salary from SAM Security and, therefore, there has been no violation of the OM dated 09.07.2012 and requested that the show-cause notice be set aside and Agency status be retained as operational.

7. Apparently, the respondent Authorities found other violation of the OM being committed by the petitioner's agency and again issued a fresh show cause dated



10-07-2019, further to the earlier show-cause notice dated 27.02.2019. In this show-cause the Authorities mentioned that SAM Security Agency is listed with the petitioner's name as advisor, as per a Circular issued by the Confederation of Indian Industries on 22.02.2019. The petitioner's claim that he had resigned from SAM Security on 01.07.2017 was not accepted. The address of the SAM Security was also the same as that of the petitioner's Security Agency registered with DGR, namely, NISA. Certain other violations were alleged in the show-cause.

8. As a sequel to the above two show cause notices, another show-cause notice was issued to the petitioner on 19.09.2019 based on scrutiny of the petitioner's file. The Authorities reiterated the earlier allegation and certain other lapses pertaining to non participation in tendering process and the fact that Form-26 submitted by the petitioner, under the Income Tax act, was showing income from private entity (NABI Nagar Power Generating Company Limited), for which, details of sponsorship provided by DGR was asked for. In response to this show-cause notice, the petitioner has submitted his reply dated 06.01.2020. Apart from other statements made in reply to the show-cause notice, this Court



would consider it useful to reproduce para-3 of the petitioner's reply to the show cause notice (Annexure-8) which reads as follows:-

“3. The PSARA for Sam Security and Manpower Services Private Limited was initially issued on 29th January 2014 and the same was subsequently renewed on 26th July 2017. My name was mentioned on the certificate because I was the managing director of the company when application for renewal of PSARA was submitted on 20 December 2016 (copy attached). Subsequently, my name has been removed from the records of Home Department, Govt. of Bihar in this regard (Home Department, Government of Bihar letter attached).”

9. It is clear from the petitioner's admission in para 3 of his reply that the other license of the petitioner under Private Security Agency (Regulation) Act, 2005 (PSARA for short) was issued for his other agency, namely SAM Security Agency on 29.01.2014 and, subsequently, renewed on 26.07.2017. The renewal of the PSARA license was, thus, admittedly, after the first security contract for FCI in Bihar was awarded to the petitioner by the DGR on 22.07.2017, as claimed by the petitioner, in his earlier reply to show-cause notice dated 14.03.2019. A vague assertion has been made in the above quoted paragraph that subsequently his name has been removed from the records. What is the date on which it has been removed has not been mentioned. No material has been brought on



record to verify the date from which the petitioner claims that his name has been removed from the record of the Home Department from SAM Security Agency.

10. From para 5(e) of the OM dated 09.07.2012, it is apparent that for empanelment with DGR, the petitioner should not have availed of any employment in private sector. An undertaking was also required to be submitted that he will resign from such job if he takes up a contract sponsored by DGR, at the time of registration of such contract. Subsequently, he was required to confirm in writing to the DGR that he had resigned from such job after getting the contract.

11. From the averments made in the writ petition or the reply submitted by the petitioner, it is apparent that these requirements, under 5(e) have not been complied with. It is apparent that neither any undertaking to the effect that he will resign from SAM Security Agency has been submitted by the petitioner; nor any confirmation regarding resignation in writing was sent to the DGR, as per Clause 5(e) of the OM dated 09.07.2012. It is only when the Authorities have noticed that the petitioner was operating another security agency in the name of SAM Security Agency that they have issued show cause notices to the petitioner, to which he has replied, denying the



allegations. Learned counsel for the petitioner has not been able to show that any such statement has been made by the petitioner in any of his replies submitted, that he had ensured compliance with Clause 5(e) of the OM dated 09.07.2012 by submitting any undertaking or by confirming in writing the fact of his resignation from SAM Security Agency.

12. The stand of the petitioner that he had submitted his resignation as Director from SAM Security on 01.07.2017, prior to commencement of the contract on DGR does not inspire any confidence also for the reason that admittedly the Company was formed by the petitioner with his wife and younger brother. It is, therefore, highly improbable and unacceptable that the petitioner would not be having knowledge whether the resignation claimed to have been submitted by him on 01.07.2017 was accepted or not, as no such details have been provided in the writ petition and Annexures.

13. Based on the averments made in the writ petition along with Annexures the irresistible conclusion of the respondents authorities that Clause 5(e) has been violated cannot be faulted in any manner. The consequential action taken under para 26 of the same, leading to disempanelment of the petitioner's Security Agency, namely, (NISA), therefore,



requires no interference.

14. The writ petition is devoid of merit and is dismissed.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

