IN THE HIGH COURT OF SINDH AT KARACHI

C.P.No.D-2817 of 2009

Ikram ul Majeed Sehgal

Versus

Pakistan & another

BEFORE:

Mr. Justice Mushir Alam, CJ

Mr. Justice Mohammad Shafi Siddiqui

Date of Hearing: 13.11.2012

Petitioner: Through M/s Ali Almani and Sameer ur Rheman Khan Advocates.

Respondent No.1 Mr. Muhammad Ashraf Khan Mughal, DAG

Respondent No.2 Nemo

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Petitioner in this petition has impugned the letter of respondent No.2 dated 18.12.2009 in terms whereof the documents submitted before respondent No.2 regarding change of management were declined in view of recommendation of the Ministry of Interior (respondent No.1) whereby the induction of the petitioner as new director of M/s Wackenhut Pakistan Private, was not recommended.

2. A statement has also been filed by learned DAG on 20.09.2011 along with letter dated 09.09.2011 which letter was addressed to DAG pursuant to calling the comments that were required to be filed by the said Ministry in response to the memo of petition. Such letter discloses that the request of the petitioner for induction in M/s Wackenhut Pakistan (Pvt.) Limited as director forwarded by SECP was rejected on the reports of ISI and IB. The said ministry also addressed that in terms of Sindh Private Security Agencies (Regularization & Control) Ordinance, 2000 and Section 6(i) and (iii) of Private Security Agencies Rules 2001 provide restrictions to employ any person without getting him cleared by the government agencies including Special Branch of police, ISI and IB.

2. With the above background learned counsel for the petitioner argued that the petitioner is a columnist and is author of several books and has been regularly invited in talk shows on all major TV channels. It is averred that he has served as Major in Pakistan Army and retired in 1974. It is claimed that he is permanent member of

World Economic Forum (WEF), Switzerland and a member of WEF Global Agenda Council (GAC) for counter-terrorism. He is on the business advisory board of International Organization of Migration (IOM), Switzerland and also director of the prestigious international think tank East West Institute (EWI) which deals with international security issues.

3. In addition to the above the petitioner claimed to be a founder of well-known security services company known as Security & Management Services (Pvt.) Limited (hereinafter referred to as SMS) established by him in the year 1987 having an employment of over 15000 people. The petitioner claims to be its Chief Executive since 1990 and shareholder and director on its board ever since its incorporation on 27.08.1987 which company has been granted NOC by respondent No.1 and individual licences by the competent authorities to run its operation in four provinces as well as in Islamabad.

4. It is the case of the petitioner that on 24.02.1992 a security services company by the name of M/s Wackenhut Pakistan (Pvt.) Limited was incorporated after getting requisite permissions from concerned authorities which was initially owned by Wackenhut U.S.A. to the extent of 87% and 13% by Pakistanis. This company was also granted NOC by respondent No.1 and thereafter individual licences were issued in the same manner. The company under the name and style of G4S acquired the Wackenhut Corporation which is the second largest security company in USA and

became its owner to the extent of 86% shares in the M/s Wackenhut Pakistan (Pvt.) Limited. Two additional directors of G4S were permitted to become the directors being one British and one US national. The petitioner and G4S reached an agreement as a result of which the petitioner brought 13% share in M/s Wackenhut Pakistan (Pvt.) Limited owned by a Pakistani and remaining 37% shares were to be transferred to the petitioner by Wackenhut USA. On the basis of his 13% shareholding the petitioner was co-opted as director in place of the wife of Capt. (Retd.) Muhammad Abid and became Chief Executive of M/s Wackenhut Pakistan (Pvt.) Limited. In compliance thereof he submitted that on 29.5.2007 necessary documents/returns were submitted to the respondent No.2 while still being a director of SMS for over 20 years.

5. Learned counsel submitted that the petitioner was surprised when after nearly three years of submission of the documents as shareholder, director and Chief Executive of M/s Wackenhut Pakistan (Pvt.) Limited, the respondent No.2 by the impugned letter dated 18.12.2009 received on or about 24.12.2009 conveyed the refusal of respondent No.1 to accept the petitioner as director of M/s Wackenhut Pakistan (Pvt.) Limited. Learned counsel submitted that the same was purposely done in order to paralyse the operation of M/s Wackenhut Pakistan (Pvt.) Limited as no cheques could be issued by the Company without signature of the petitioner. Learned counsel submitted that the refusal of the respondent No.1 without offering any reason

for refusal and without affording the petitioner an opportunity of hearing is in brazen violation of rules of natural justice. Learned counsel further submitted that there are no reasons or occasion for this refusal as the petitioner has been working as director and chief executive of SMS (another security company) since 1987 and 1990 respectively. It is, per learned counsel, inconceivable that a person who is found fit to be a director and chief executive of another security company can be deemed to be a disqualified and unfit for another. Learned counsel submitted that the impugned order is utterly malafide and abuse of authority. The respondents thus claimed to have failed to honour their statutory and constitutional obligations and the stance and action was also contrary and repugnant to Section 24-A of General Clauses Act 1897.

6. Learned DAG appearing for respondent No.1, in reply has just relied upon letter dated 09.09.2011 filed along with statement wherein the concerned ministry of Interior claimed to have rejected the request forwarded by respondent No.2 for the induction of the petitioner as the director/chief executive, on the basis of reports of ISI and IB, however, no detailed explanation and reasons were assigned. Further reliance was p laced on Sindh Private Security Agencies (Regulation and Control) Ordinance 2000 and reliance was placed on Section 6(i)(iii) of the Private Security Agencies Rules, 2001.

7. We have heard learned counsel for the petitioner and learned DAG and perused the record. It appears that defence of the respondent No.1 is based on the

alleged reports of ISI and IB which were never placed on record. The other defence that was allegedly taken by the respondent No.1 is Section 6(i)(iii) of Private Security Agencies Rules, 2001 which reads as under:-

> *"6.(1) No licensee shall:*
>
> *(i) Render any service to any Provincial Government of Federal Government or any body, organization or agency of such Government.*
>
> *(ii) ……*
>
> *(iii) Employ any person without getting him cleared by Government agencies including the Special Branch ISI/IB;"*

8. The aforesaid rule no doubt prescribes that no licensee shall employ any person without getting him cleared by Government agencies including the Special Branch ISI/IB but would not apply to the case of the petitioner in letter and spirit. The petitioner was sought to be inducted as chief executive/director of the company on the basis of shareholding and has not sought his induction as an employee. The provincial government or the federal government cannot refuse such request on flimsy grounds and on personal desires.

9. In support of the above learned counsel for the petitioner has placed reliance on an unreported judgment passed in C.P. No.D-3125 of 2011 (Sindh High Court Bar Association v. Pakistan through Secretary & others) wherein it has been held as under:-

"26. Coming to the question of the Committee's purported reliance on the intelligence reports from Inter Services Intelligence and Intelligence Bureau, as rightly submitted by Mr. Makhdoom Ali Khan the same also do not justify the Committee's refusal to accept the unanimous recommendations of the Commission, as the report from ISI clearly shows that there was no complaint/report of corruption in relation to the said learned Judge and that he enjoys satisfactory reputation. Whereas, the opinion, casting aspersion in relation to the conduct of the said learned Judge, contained in the purported report of the I.B. is wholly unsubstantiated, bereft of any reason, neither the said report furnishes any reason, nor any justification and/or explanation for such opiniated expression, it does not even explain as to how and in what manner, and through what means the Bureau has gathered such impression. The said report clearly reflects non-serious, unprofessional, and irresponsible attitude of it's, undisclosed author and thus the report lacks credibility and cannot be allowed to form any basis for discrediting the learned Judge."

10. The letter dated 09.09.2011 by the Ministry of Interior is also hit by Section 24-A of General Clauses Act, 1897 which provides for a speaking, well-reasoned and detailed order. Section 24-A reads as under:-

*"**24-A. Exercise of power under enactments**.—(1) Where, by or under any enactment, a power to make any order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment.*

(2) The authority, office or person making any order or issuing any direction under the powers conferred by or under any enactment shall, so far as necessary or appropriate, give reasons for making the order or, as the case may be, for issuing the direction and shall provide a copy of the order or, as the case may be, the direction to the person affected prejudicially."

11. Learned counsel for the petitioner has also relied upon the case of Independent Music Group, SMC v. Federation of Pakistan (PLD 2011 Karachi 494), para 14 of which reads as under:-

"14. …..Moreover the Ministry of Interior has not given any reason whatsoever as to why security clearance was not given to the petitioner. Learned Standing Counsel merely stated that she relied upon the comments submitted by the Ministry of Interior. It was available to the Ministry of Interior to bring to this Court the material that they had against the petitioners. They have chosen not to do so. This Court cannot ignore the fact that GEO SUPER has been, though through uplinking licence, temporary landing rights permission telecasting sports programmes, it was stated, for five years and the sole owner of petitioner No.1, (such sole owner is himself petitioner No.2) has been granted TV Licenses for four other channels. No material has been placed before us to prima face establish as to what threat if any was perceived to be likely to be caused by grant of licence to the petitioners. Therefore, based on the material produced before us, it appears to us that it was not justified for the Ministry of Interior to refuse clearance to the petitioners. Moreover every executive order must contain reasons for the order and we have not been able to divine any reason in this regard at the best none has been pleaded."

12. The said order/judgment of the Division Bench of this Court was challenged before the Hon'ble Supreme Court on the ground that the petitioners therein have already suffered the period of about four years and instead of remanding the case may be issued a writ in the nature of mandamus and Hon'ble Supreme Court in terms of Para 6 of the said judgment has held as under:-

"*After hearing both the parties and having gone through the contents of the judgment of the High Court, under challenge, we are of the opinion that the learned High Court, keeping in view the fact that the petitioners have already suffered for a period of about four years, instead of remanding the case, may have issued a writ in the nature of mandamus. Be that as it may, if it has not done so, the PEMRA is under obligation, both legally and morally, to issue licence to the petitioners because the reason which prevailed upon it for refusing to issue licence to the petitioners i.e. "security clearance", has not been accepted to by the learned High Court, therefore, the petitioners who on the basis of their application waited for a period of more than 100 days, during which his application has not been rejected, has acquired a right that they should be dealt with in accordance with law as is envisaged under Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. Any excuse now being made on*

behalf of the PEMRA is not acceptable for the reason that earlier when the rejection order was passed on 8th June, 2007, which has been produced hereinabove, no such demand was put forward calling upon the petitioners to fulfill the same or to remove the objection if any. If such practice is allowed to prevail then there would be no end to the litigation and if a request has been rejected/refused beyond the statutory period and the order is not sustained before the High Court the, with a view to deprive a person who is entitled to the licence and his application has been kept pending for four years, without being processed, there shall be no end to his matters and he is to enter into litigation time and again for the reasons which shall be put before him from time to time."

13. In view of such contention the Hon'ble Supreme Court directed the PEMRA to immediately issue licence to the petitioners therein in terms of such application.

14. In the same way the defence taken by the respondents here in terms of their letter dated 09.09.2011 attached, was not accepted by this Court and for this reason the respondent No.2 was directed to process the necessary changes to be brought about in the constitution of the list of the directors of the subject company.

15. Based on the same analogy it appears that the Ministry of Interior refused the clearance of the petitioner on the basis of surmises and conjectures and there was no material placed before us to believe that the refusal of the concerned ministry (respondent No.1) to continue the petitioner as director of M/s Wackenhut Pakistan (Pvt.) Limited, was justified.

16. There appears to be no logic and sense that when the petitioner is admittedly working as a director and chief executive of another security services company i.e.

SMS since 1982 and 1990 respectively and no such alleged reports were applied to the petitioner while he was and still is working as a chief executive. It is also pertinent to note that the last renewal of the license of Security and Management Services (Pvt.) Limited (SMS) was observed on 02.12.2011 whereas the petitioner's application for his induction as director in M/s Wackenhut Pakistan (Pvt.) Limited was refused in September, 2011. The arguments of learned counsel that it was the campaign of rival groups and disgruntle employees of M/s Wackenhut Pakistan (Pvt.) Limited who had been terminated by the petitioner in concert within the government who are not happy with the petitioner's outspoken, forthright and critical political views on matters of national importance, gained strength.

17. There is absolutely not an iota of evidence in support of letter dated 09.09.2011 nor alleged refusal can remotely be accepted and digested since the petitioner has been working as chief executive of another security services company SMS since 1990 and as director since 1987. The obligation on the licensee not to employ any person without getting him cleared from the government agencies including special branch of police, ISI and IB of course relevant for the purposes of requiring their clearance but should be based on sound, logical and reasonable grounds.

18. Mere fact that the proceedings are treated as confidential does not dispense with the requirements of Section 24-A of General Clauses Act, 1897. If the order is subject to appeal or revision (including special leave petition under Article 185 of the

Constitution) the necessity of recording reasons is greater as without reason the appellate or revisional authority cannot exercise its power effectively inasmuch as there is no material on which it may determine whether the facts were correctly ascertained or properly applied and the decision was just and based on legal, relevant facts. Failure to disclose reasons amounts to depriving the party of the right of appeal or revision. Needless to mention that in terms of Sindh Private Security Agencies (Regulation & Control) Ordinance, 2000 an appeal has been provided under Section 11. The appeal is provided against the order rejecting the application for licence or to revoke the licence, which reads as under:-

> *"11. The Licensing Authority rejects the application for license or Revokes the license, the application or, as the case may be, the licensee may, within thirty days from the date of the order of the Licensing Authority prefer an appeal to Government and the order passed by Government shall be find and given effect to by the Licensing Authority."*

19. As observed earlier the letter dated 09.09.2011 is devoid of any finding and reasoning and as such hit by Section 24-A of the General Clauses Act. The petition was allowed vide short order dated 13.11.2012 and the reservations of Ministry of Interior expressed against the petitioner were struck down and respondent No.2 was directed to process the matter of change of management of Wackenhut Pakistan (Pvt.) Limited in accordance with law. These are the reasons of such short order dated 13.11.2012.

Dated: **Judge**

Chief Justice