



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7640 OF 2015

The Security Association of India ... Petitioner

Versus

Union of India and others ... Respondents

.....

Mr. K. P. Anilkumar, Advocate for petitioner

Mr. Sandesh Patil for respondent No.1

Ms. S. S. Bhende, AGP for respondent No.2

Mr. P. M. Palshikar for respondent No.3

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CORAM: DR. MANJULA CHELLUR, C.J.
AND M.S.SONAK, J.

DATE : 13 DECEMBER 2016

P.C.:

1. The petitioner, which claims to be an association of security agencies, seeks declaration that the following provisions are ultra vires Articles 14, 19 and 21 of the Constitution of India;

(i) Section 13(1)(k) of the Private Security Agencies (Regulation) Act, 2005, (said Act).

(ii) Clauses 4(7) and 4(9) of the Private Security Agencies Central Model Rules, 2006.

(iii) Clause 4 of the Maharashtra Private Security Agencies (Regulation) Rules, 2007 including in particular sub clauses (1) and (7) thereof.

2. The Private Security Agencies (Regulation) Act, 2005 is the Central legislation to provide for the regulation of private security agencies and for matters connected therewith or incidental thereto. Section 3 of the said Act requires the State Government, by notification, to designate an officer not below the rank of a Joint Secretary in the Home Department of the State or an equivalent officer to be the controlling authority for the purposes of the said Act. Section 4 of the said Act provides that no person shall carry on or commence the business of private security agency, unless he holds a licence issued under the said Act. Section 6 prescribes the prerequisites a person must possess, before, he is considered for issue of a licence under the said Act. Section 7 prescribes the procedure to apply for licence under the said Act. Section 8 is concerned with renewal of licence.

3. Section 9 of the said Act provides that every private security agency shall, within six months of obtaining the licence,

commence its activities. Such private security agency is also required to ensure imparting of such training and skills to its private security guards and supervisors as may be prescribed. There is obligation to employ such number of supervisors as may be prescribed. Section 10 of the said Act prescribes the prerequisites in the matter of employment or engagement of private security guards. Sub-section (2) of Section 10 bars the employment or engagement of any person as a private security guard or supervisor who has been convicted by a competent court or who has been dismissed or removed on grounds of misconduct or moral turpitude while serving in any of the armed forces of the Union, State Police Organizations, Central or State Governments or in any private security agency.

4. Section 11 of the said Act empowers the State Government to frame rules to prescribe the conditions on which licence shall be granted under the said Act and such conditions shall include requirements as to the training which the licensee is to undergo, details of the person or persons forming the agency, obligation as to the information to be provided from time to time to the Controlling Authority regarding any change of their address,

change of management and also about any criminal charge made against them in the course of their performance of duties of the private security agency or as the case may be, a private security guard employed or engaged by them. The State Government may also make provision in the rules to verify about imparting of required training by the private security agency and to review continuation or otherwise of licence of such private security agency which may not have adhered to the condition of ensuring the required training.

5. Section 13 of the said Act empowers the Controlling Authority to cancel any licence on one or more of the grounds specifying sub-clauses (a) to (l). Since, the challenge in this petition is to the provision contained in Section 13(1)(k), said provision is transcribed below for convenience of reference.

“13.(1) The Controlling Authority may cancel any licence on any one or more of the following grounds, namely :-

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.....
.....

*(k) that there have been **repeated instances** when the private security guard or guards provided by the private security agency -*

- (i) failed to provide private security or were guilty of gross negligence in not providing such security;
- (ii) committed a breach of trust or misappropriated the property or a part thereof which they were supposed to protect;
- (iii) were found habitually drunk or indisciplined;
- (iv) were found to be involved in committing crimes;
or
- (v) had connived or abetted a crime against the person or property placed under their charge; or

.....

(2) Where the Controlling Authority, for reasons to be recorded in writing, is satisfied that pending the question of cancelling of licence on any of the grounds mentioned in sub-section (1), it is necessary to do so, that Controlling Authority may, by order in writing, suspend the operation of the licence for such period not exceeding thirty days as may be specified in the order and require the licence holder to show cause, within fifteen days from the date of issue of such order, as to why the suspension of the licence should not be extended till the determination of the question of cancellation.

(3) Every order of suspending or cancelling of a licence shall be in writing and shall **specify the reasons** for such suspension or cancellation and a copy thereof shall be communicated to the person affected.

(4) No order of cancellation of licence under sub-section (1) shall be made unless the person concerned has been given a **reasonable opportunity of being heard**".

[Emphasis supplied].

6. Section 14 of the said Act provides that any person aggrieved by an order of the Controlling Authority suspending or canceling the licence under Section 13 of the said Act may prefer an appeal to the Home Secretary of the State Government within sixty days of the date of such order. The proviso empowers the State Government to enlarge the time if sufficient cause is shown for not preferring the appeal within the prescribed period. The State Government is obliged to afford the appellant reasonable opportunity of being heard in the matter.

7. Section 24 of the said Act empowers the Central Government to frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under the said Act and where any such model rules have been framed the State Government shall, while making any rules in respect of that matter under section 25 of the said Act so far as is practicable, conform to such model rules.

8. Section 25 of the said Act empowers the State Government by notification, to make rules for carrying out the provisions of this Act. Sub-section (2) of Section 25, in particular, and without

prejudice to the generality of such power prescribes the matters, which such rules may provide.

9. In exercise of powers conferred by Section 24 of the said Act, the Central Government vide Notification S.O. No. 617 (E) has made the Private Security Agencies Central Model Rules, 2006, which came into force from 26th April, 2006. Amongst other matters, Rule 4 of such model rules prescribes for the verification of character and antecedents of the private security guards and supervisors before they are employed or engaged by any private security agency. Although, the challenge in this petition is restricted to sub-rules (7) and (9), it will be appropriate to transcribe the entire Rule 4 of the model rules for convenience of reference.

“4. Verification of character and antecedents of the private security guard and supervisor;

(1) Before any person is employed or engaged as a security guard or supervisor, the Agency shall satisfy itself about the character and antecedents of such person in any one or more of the following manner:

(a) by verifying the character and antecedents of the person by itself;

(b) by relying upon the character and antecedent verification certificate produced by the person:

Provided that the character and antecedent certificate shall be valid and the Agency does not have any adverse report regarding the person's character and antecedents from any other source; as prescribed hereinunder, produced by the person provided it is valid and the Agency does not have any adverse report regarding the person's character and antecedents from any other source;

(c) by relying on the report received from the police authorities signed under the authority of the District Superintendent of Police or an officer of the equivalent or higher rank.

- (2) *The person desirous of getting employed or engaged as security guard or supervisor shall submit Form II to the Agency. If the person has stayed in more than one District during the last five years, the number of forms will be as many as Districts.*
- (3) *The Agency shall cause an inquiry into the correctness of the particulars filled in either by itself or by sending the form to the respective District Superintendent of Police.*
- (4) *The State Government may prescribe the form and the manner in which the fee is to be deposited for the service of character and antecedent verification by police.*
- (5) *The police will establish identity of the individual and verify the character and antecedents of the person by making a visit to the locality where the person claims to have resided or residing and*

- ascertain his identity and reputation from the respectable residents of the locality. They will also consult the police station record of the concerned police station and other records at the District Police Headquarter before preparing the character and antecedents verification report. This report will contain the comments of the police on every claim of the person in character and antecedents Form and also a general report about his activities including means of livelihood in the period of verification. The police will specifically state if there is a criminal case registered against the person at any point of time or if he has ever been convicted of criminal offence punishable with imprisonment.
- (6) *The police will specifically comment if the engaging or employing the person under verification by the Private Security Agency will pose a threat to National Security.*
- (7) ***The police authorities shall ensure that character and antecedent verification report is issued within ninety days of the receipt of the character and antecedent form.***
- (8) *The report of the police regarding character and antecedents of a person will be graded as confidential. It will be addressed in named cover to a designated officer of the Security Agency requesting for character and antecedents.*
- (9) ***Character and antecedents verification report once issued will remain valid for three years.***
- (10) *On the basis of police verification and on the basis of their own verification, the Agency shall issue in Form III a character certificate and this certificate will not be taken back by such Agency even if the person ceases to be the employee of that Agency”.*

[Emphasis supplied].

10. The State Government, in exercise of powers conferred by section 25 of the said Act vide Notification No. PSA.1006/CR-501/Special-4 dated 14th March, 2007 has made the Maharashtra Private Security Agencies (Regulation) Rules, 2007. Amongst other matters, Rule 4 provides for verification of character and antecedents of a person before he is employed or engaged as a security guard or a supervisor by private security agency. Although, the prayer clause (a) of the petition refers to sub-rules (1) and (7) from the averments in the petition, it appears that the petitioner seeks to challenge sub-rules (1) and (9) of Rule 4. In any case, for convenience of reference, entire Rule 4 is prescribed below.

“4. Verification of character and antecedents of the private security guard and supervisor

(1) Before any person is employed or engaged as a security guard or supervisor, the Agency shall satisfy itself about the good character and antecedents of such person in any one or more of the following manner:-

(a) by verifying the character and antecedents of the person from the police authorities by itself;

- (b) by relying on the report received from the police authorities signed under the authority of the District Superintendent of Police or Deputy Commissioner of Police in-charge of the Zone or an officer of the equivalent or higher rank.**
- (2) *The person desirous of getting employed or engaged as security guard or supervisor shall submit Form II to the Agency. If the person has stayed in more than one District during the last five years, the number of forms will be as many as District.*
- (3) *The Agency shall cause an inquiry into the correctness of the particulars filled in either by itself or by sending the form to the respective District Superintendent of Police or Deputy Commissioner of Police in charge of the Zone.*
- (4) *The State Government may specify by order, form the amount and the manner in which the fee is to be deposited for the service of character and antecedent verification by police.*
- (5) *The police will establish identity of the individual and verify the character and antecedent of the person by making a visit to the locality where the person claims to have resided or residing and ascertain his identity and reputation from the respectable residents of the locality. They will also consult the police station record of the concerned police station and other records at the District Police Headquarters before preparing the character and antecedents verification report. This report will contain the comments of the police on every claim of the person, in character and antecedent and also a general report about his activities, including means of livelihood in the period of verification. The police will specifically state if there is a criminal case registered against the person at any point of time or if he has ever been convicted of*

criminal offence punishable with imprisonment.

- (6) *The police shall specifically comment if the engaging or employing the person under verification by the Agency poses a threat to national security.*
- (7) ***The police authorities shall ensure that character and antecedent verification report is issued within ninety days of the receipt of the character and antecedent form.***
- (8) *The report of the police regarding character and antecedents of a person will be graded as confidential. It will be addressed in named cover to a designated officer of the Agency, requesting for character and antecedents.*
- (9) ***Character and antecedents verification report once issued will remain valid for three years.***
- (10) *On the basis of police verification and on the basis of their own verification, the Agency shall issue in Form III a character certificate and this certificate shall not be taken back by such Agency, even if the person ceases to be the employee of that Agency.”*

[Emphasis supplied].

11. Since, the petitioner also alleges that Rule 4 of the Maharashtra Private Security Agencies (Regulation) Rules, 2007 violates Section 24 of the said Act, the said section is transcribed below for convenience of reference.

“24. The Central Government may frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this Act and where any such model rules have been framed the State Government shall, while making any rules in respect of that matter under section 25, so far as is practicable, conform to such model rules”.

12. Mr. K. P. Anilkumar, learned counsel for the petitioner submits that the provisions in respect of which declarations of unconstitutionality have been applied for are arbitrary and violate Article 14 of the Constitution of India. In any case, learned counsel submits that such provisions impose unreasonable restrictions unprotected by Article 19(6) and therefore, such provisions infringe the fundamental right of the petitioner guaranteed by Article 19(1)(g) of the Constitution of India to carry on occupation, trade or business.

13. Mr. Anilkumar submits the provision in Section 13(1)(k), which entitles the controlling authority to cancel the licence of private security agency, basically, for the faults on the part of the security guards provided by the security agencies is patently arbitrary. He submits that such a provision is akin to cancelling the licence of a factory to operate for the fault of its employee or agent. He submits that such a provision is extremely harsh and

imposes a disproportionate burden upon the private security agency. He submits that there are instances where licenses have been cancelled even for a single default on the part of the security guard, and such cancellation is invariably without even minimum compliance with principles of natural justice. Mr. Anilkumar, accordingly, submits that the provision in Section 13(1)(k) of the said Act is liable to be declared as ultra vires articles 14 and 19 of the Constitution of India.

14. By reference to the 2006 model rules framed by the Central Government, and the 2007 rules framed by the State Government, Mr. Anilkumar submits the requirement of securing verification of character and antecedents of persons before they are employed or engaged as security guards or supervisors by any private security agency, is arbitrary and in the nature of an unreasonable restriction, unprotected by Article 19(6) of the Constitution of India. He submits that the security agencies, mostly engage ex-servicemen or members or persons who have served in the Police force or as Home Guards. To require the verification of character and antecedents of such persons, which is quite a time consuming process, is unnecessary and constitutes an unreasonable restriction

upon the fundamental rights of the persons carrying on the occupation or business as private security agencies. He submits that in any case, once the character and antecedents verification report is issued by the competent authority, there is no reason for prescribing validity period of three years in respect of such report, unless there is any material on record to suggest that some crime is reported against some particular security guard during such period of three years.

15. Learned counsel further submits that a time limit of ninety days granted to the authorities to issue the character and antecedent verification report is too long and the same ought to be reduced to thirty days, if such provision is to be regarded as a reasonable restriction. He further submits that it is necessary to direct that in case, the police authorities fail to complete the verification process within thirty days from the date of receipt of application, then, such verification report should be deemed as granted. This, he submits, is necessary in order to save the provisions from the charge of unconstitutionality.

16. Learned counsel further submits that the condition in the State rules to the effect that security guard should have minimum five years stay in a particular place for seeking character and antecedent certificate is also ultra vires the rights of the petitioner and its members, apart from being ultra vires the provisions of the said act, model rules and the State rules.

17. Mr. Sandesh Patil, who appears for the Union of India, Ms. S. S. Bhende, learned AGP for the State of Maharashtra and Mr. P. M. Palshikar, learned counsel for respondent No.3 have opposed the submissions made by Mr. Anilkumar and submitted that the impugned provisions are neither arbitrary nor do they impose any unreasonable restrictions upon the petitioner or its members. They submit that the petitioner, which, in all probabilities is an unregistered association, can hardly be regarded as a citizen of India, for it to claim any fundamental right under Article 19(1)(g) of the Constitution of India. In any case, they submit that the impugned provisions are regulatory in nature and the restrictions imposed, are perfectly reasonable. They submit that the restrictions are well protected under Article 19(6) of the

Constitution of India. They submit that the petitioner has not adverted any concrete instances of cancellation of licence or unreasonable delays in the matter of issuance of character and antecedent reports. In any case, they submit that individual instances of dereliction are not grounds sufficient for striking down the impugned legislative provisions and it is always open to the persons aggrieved to challenge such instances before the appropriate authority and in the appropriate manner. For all these reasons, the learned counsel submit that the present petition be dismissed with costs.

18. The rival contentions now fall for our determination.

19. The relevant provisions of the said Act, the 2006 model rules framed by the Central Government and the 2007 Rules framed by the State Government have already been adverted to. As noted earlier, the said act and the rules made thereunder seek to regulate private security agencies and provide for matters connected therewith or incidental thereto. There is no challenge to the said Act or the rules made thereunder on the basis of legislative competence.

20. The said Act provides for the designation of a controlling authority in order to ensure due compliances to the provisions of the said Act and the rules made thereunder. Section 13(1) empowers such controlling authority to cancel the licences issued to any private security agency, where, there have been repeated instances when the private security guard or the guards provided by the private security agency failed to provide private security or were guilty of gross negligence in not providing security; or where such security guards commit a breach of trust or misappropriate the property or a part thereof which they were supposed to protect; where they are found to be habitually drunk or indisciplined; where they are found to be involved in committing crimes; or have connived or abetted a crime against the person or property placed under their charge.

21. There is no merit in the contention of Mr. Anilkumar, that the provision contained in Section 13(1)(k) is arbitrary, because, the provision enables the controlling authority to cancel the licence of security agency, even where a single incident of misconduct by a security guard is noticed. Section 13(1)(k) itself

provides that the power of cancellation can be exercised when “**repeated instances**” as prescribed in sub-clauses (i) to (v) are found to exist. The use of the expression “**repeated instances**”, is itself a safeguard provided to private security agencies and therefore, it cannot be said the provision contained in Section 13(1)(k) is either arbitrary or that, the same imposes any unreasonable restriction, which is alien to the purposes set out in Section 19(6) of the Constitution of India.

22. In a situation, where the security guards provided by the security agency, repeatedly fail to provide for security or are grossly negligent in providing security or commit breach of trust or misappropriation or are found to be habitually drunk or indisciplined or are found involved in committing crimes or connive or abet a crime against the person or property placed under their charge, then, such security agency can be required to assume the responsibility for the acts of such security guards provided by them. There is nothing arbitrary or unreasonable in making a provision of this nature taking into consideration the nature of duties which security guards are required to discharge and the standard of care which is expected of a private security

agency, which provides for such security guards. Restriction, in the present case, is undoubtedly reasonable and further, the same is in the interest of the general public.

23. In order to determine the reasonableness of restriction, the regard must be had to the nature of the business, which in the present case, is providing of security guards, who are very often left to guard the person and property of those who engage their services. The reasonableness of restriction is to determined in an objective manner and from the standpoint of the interests of the general public and not from the standpoint of the interests of person upon whom the restrictions have been imposed or upon any abstract consideration.

24. Mr. Anilkumar's submission that licensee are cancelled by the controlling authority even where a single instance of misconduct on the part of the security guard is noticed or that the cancellation of such licences is invariably without compliance with principles of natural justice, deserves no acceptance. In the petition, no specific instances of this nature have been cited. As noted earlier, Section 13(3) of the said Act mandates the record of

reasons by the controlling authority for either suspension or cancellation of a licence. Section 13(4) of the said Act, in terms provides that the order of cancellation has to be preceded by afford of reasonable opportunity of being heard. This means that the principles of natural justice and fair plea have been statutorily structured in section 13 of the said Act. Restriction cannot be held to be unreasonable, merely because in a given case it may operate harshly. Further in determining whether a restriction is unreasonable, the nature of the right alleged to have been infringed, underlying purpose of the restriction imposed, the proportionality of the restriction are some of the aspects which have to be taken into consideration. The circumstances like provision of appeal or the requirement to comply with principles of natural justice before adverse action is initiated, are also matters relevant for determining the reasonability of the provision concerned. *Parbhani Transport Co-operative Society Ltd. Vs. The Regional Transport Authority, Aurangabad and others AIR - 1960 S.C.(801) and Union of India and another Vs. International Trading Co. and another - 2003 (5) SCC 437.*

25. In the present case, apart from the reference to “repeated instances”, in section 13(1)(k), section 13(3) of the said Act requires the controlling authority to make an order or suspension or cancellation of licence in writing and specify the reasons therefore. Such order is required to be communicated to the person affected. Section 13(4) provides that no order of cancellation of licence under sub-section (1) of Section 13 shall be made unless the person has been given reasonable opportunity of being heard. Section 14 provides for appeal to the Home Secretary against the order of cancellation. Sub-section 3 of Section 14 again in terms provides that before disposing of appeal the State Government shall give the appellant reasonable opportunity of being heard.

26. There are no individual instances cited by the petitioner to demonstrate that the provision impugned, operates harshly. In any case, individual instances of such nature, if any, can always be corrected in appeal. Such individual instances, if any, are by no means sufficient grounds to declare the provisions of Section 13(1)(k) of the said Act as unconstitutional or ultra vires. The appellate authority is also required to afford opportunity of

hearing before disposal of appeal against the cancellation. All these factors are relevant to hold that the provision contained in Section 13(1)(k) of the said Act is quite reasonable and there is no merit in the contention that such provision violates Article 14 or Article 19(1)(g) of the Constitution of India.

27. Insofar as the challenge to Rule 4 of the Central Model Rules or the State Rules is concerned, we note that such rules require the security agency to obtain certificate of verification of character and antecedents of the person whom they propose to employ as security guards or supervisors. The circumstance that some of the members of the petitioner association employ or engage only ex-servicemen or persons earlier employed in the police force, is quite besides the point. If the provisions of the said Act are perused in their entirety, it is seen that there is no bar upon security agencies employing or engaging persons other than ex-servicemen or ex-employees of police force, as long as such persons fulfill the requirements set out in Section 10 of the said Act or such other requirements as may be prescribed. The rules, which mandate the obtaining of certificate of verification of character and antecedents, applies uniformly to all private security

agencies and there is really nothing arbitrary or unreasonable with regard to such a requirement. In fact, we are of the opinion that such a provision is undoubtedly in the interest of the members of the general public and to some extent, also in the interest of private security agencies themselves.

28. The private security agencies who engage only ex-servicemen or persons who have served in the police force or in the home guards as security guards or supervisors, will presumably have no serious difficulties in obtaining character and antecedents certificates. However, it must be noted that there can be no universal presumptions in this regard since, it cannot be said with certainty that such ex-servicemen or ex-employees of the police force or home guards will invariably have good character or antecedents, so as to render verification futile or unnecessary.

29. The submissions that, period of ninety days specified in Sub-Rule 7 of Rule 4 in the matter of issuance of character and antecedent verification report ought to be reduced to thirty days or that a provision should be made for grant of deemed verification report, are quite misconceived. It is not within the

province of this court in the exercise of its power of judicial review to rewrite a statute. As long as the statute as it stands, is not in violation of part III of the Constitution or otherwise beyond the legislative competence, there is no question of striking down such statute, on the basis of any hypothetical and unsubstantiated apprehensions expressed by the petitioner.

30. There is a presumption of constitutionality and matters such as prescription of qualification of safeguards are basically matters of legislative policy, which cannot be interfered with in the exercise of powers of judicial review, unless, it is established that same are arbitrary or unreasonable. The same applies to the prescription of time schedules within which applications seeking character and antecedent verification reports must be disposed of. In exercise of powers of judicial review, it is not within the province of this court to either rewrite the statute or to create any legislative fiction, by way of deemed permission, where there is failure to dispose of the application within the prescribed period. Accordingly, we find no merit in the challenge to the rules.

31. There is no inconsistency between 2006 Model Rules and the 2007 State Rules if the provisions containing Rule 4 of the either rules are perused and analysed. Besides, Section 24 merely prescribes the State Government, while making any rules under section 25 shall, *so far as is practicable, confirm to such model rules* made by the Central Government under section 24 of the said Act. Accordingly, there is no merit in the challenge to the State Rules on the ground that they violate Section 24 of the said Act.

32. In the case of *Messrs Tradesvel Security Services Pvt. Ltd. Vs. State of Maharashtra – 1982 (84) Bombay Law Reporter – 608*, the constitutional validity of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 and the Private Security Guards (Regulation of Employment and Welfare) Scheme, 1981 was upheld by this court. The challenges based upon violation of Article 14 and 19 of the Constitution of India were specifically repealed.

33. In the case of *Security Association of India and another Vs. Union of India and others – (2014) 12 Supreme Court Cases – 65* the Supreme Court has specifically affirmed the

decision of this court in the case of *Tradesvel (Supra)*. Further, in the said case, the Supreme Court has also rejected the contention that the provisions of the State Act are repugnant to the provisions of the Private Security Agencies (Regulation) Act, 2005 (Central Act). In the context of the provisions of the State Act, the Supreme Court, after making specific reference to the provisions contained in Section 13 of the Central Act, has rejected the challenge to the State Act as being violative of Articles 14 and 19 of the Constitution. In fact, the Supreme Court has held that the restrictions imposed are reasonable restrictions envisioned by the Constitution and that they protect the rights and ensure the welfare of the private security guards engaged by private security agencies.

34. As regards the challenge to the provision of minimum five years stay in a particular place for the purposes of seeking character or antecedent certificate, we propose not to examine such challenge in the present petition at the behest of the petitioner. In the first place, we have not been shown such specific provision either under the act or under the rules. Secondly, there is not even a single instance cited by the petitioner in this regard.

Thirdly, such a contention, can be better examined at the instance of a person aggrieved by the operation of such a rule or requirement, if any. For all these reasons and in the absence of any particulars or proper pleadings we do not propose to examine this particular issue.

35. For all the aforesaid reasons, we dismiss this petition. There shall be no order for costs.

CHIEF JUSTICE

(M.S.SONAK, J.)