

IN THE HIGH COURT OF DELHI, AT DELHI

WP(C)No.5794/2008

Judgment pronounced on 3rd November, 2009.

M/s Dewan Consultants & Pvt. Ltd. Petitioner
Through: Mr.Mukul Rohtgi, Sr. Advocate with
Ms. Manali Singhal & Mr. Shantosh
Sachin, Advs.

Versus

\$ Union of India & Ors. Respondents
Through: Mr. P.P. Malhotra, ASG with
Ms. Monika Garg, Mr. Chetan
Choudhary, Mr. Shankar Chhabra
and Mr. Gaurav Shankar, Advs.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

G.S.SISTANI, J :

1. Some people travel abroad for a holiday, some out of curiosity, others for the lust and good life and some in search of better job prospects and to improve their standard of living. 120 skilled and unskilled workers, aspiring to earn more for a better living and to improve their standard of life in this country ventured to the United States of America. An article appeared in the Hindustan Times dated 10.03.2008, highlighted the ill-treatment, poor accommodation,

inhuman treatment and being overcharged, which resulted in a Show Cause Notice to this petitioner and thereafter cancellation of its registration

2. Taking into consideration the out flow of skilled and unskilled workers from India for employment purposes and ill-treatment meted out to some of the workers and further exploitation by recruiting agents, resulted in formation of a Legislation in the year 1983 known as “The Emigration Act, 1983”. The aim and object of this Act was to regulate the terms and conditions of overseas employment and to grant protection and safeguards the interest of Indian workers going overseas for employment. Petitioner herein is a recruiting agent.
3. Aggrieved by the action of the respondents by virtue of which the licence of the petitioner was suspended and thereafter cancelled vide order dated 28.07.2008, the present petition has been filed.
4. The petitioner is a private company registered under the Companies Act, 1956, and a registered recruiting agent initially functioning as Indian Overseas Tech Services. The petitioner company was established in the year 1978 and has been functioning as a recruiting agent for the last 30 years. The petitioner is stated to have an excellent

reputation, goodwill and standing in this field. The registration certificate of the petitioner was suspended vide order dated 12.06.2005 and thereafter its registration was cancelled vide order dated 28.07.2008 by respondent no.2 (Office of the Protector General of Immigrants, through Ministry of Overseas Indian Affairs). It is this order of cancellation, which has been challenged by the petitioner and is a subject matter of the present writ petition.

5. The brief facts of the case as set out in the petition are that the petitioner is a registered recruiting agent. The licence of the petitioner was valid upto 29.10.2014. During the period of its functioning, no complaint was received against the petitioner or its predecessor, the proprietor-ship concern, for the last 30 years.
6. According to the petitioner, during this period the petitioner has assisted in the recruitment of several thousands of workers for various regions. On or about the year 2005, there was a shortage of skilled workers in the Mississippi Region due to the devastation caused by Hurricane Katrina and hence there was an urgent need for recruiting foreign workers. One, Global Resources INC ("Global"), a company registered in Mississippi was in the business of assisting skilled foreign workers to find employment in the U.S.A.

under temporary and permanent visa. Global was rendering these services for a fee to be paid by such foreign workers and it undertook as part of such fee to engage an Immigration Attorney to assist in the visa process.

7. Consequently on April 18, 2006, Global and one M/s Signal International (hereinafter referred to as “Signal”) a company incorporated under the laws of Mississippi, U.S.A., entered into a Recruitment Agreement (hereinafter referred to as the “Agreement”) where under the said Global agreed and undertook to:

- i. Advertise, pre-test, select and qualify foreign workers suitable for employment by Signal;
- ii. Provide all immigration documents and an Immigration Attorney free of cost to Signal (but at the cost of the workers) to assist and advise in the visa process for “H2B” temporary visa and/or the “permanent residence” process wherein Signal was liable only for the fees imposed by the US Central or State Governments;
- iii. be responsible for transporting the foreign workers to the U.S.A. and from the U.S.A. back to their place of origin after expiry of their visas;
- iv. provide housing, transportation, meals (“Accommodations”) to the foreign workers upon payment of costs by the said foreign workers. In an amendment to the said Agreement on September 7, 2006, Signal has agreed to pay Global for three

Meals to be provided by Global to the foreign workers on the terms set out in such amendment.

8. Subsequent to the execution of the above Agreement in 2006, since Global was not a registered agent in India as stipulated under the Act, Global approached the petitioner for recruiting 500 skilled workers – mostly welders and fitters for Signal's shipyard in Mississippi and Texas.
9. Signal also issued the Demand Letter and Power of Attorney in favour of the petitioner as required under the Act, which were duly attested by a Notary Public in the U.S.A.
10. In the said documents, it was mentioned that Signal required skilled foreign workers "on temporary and permanent employment visas". Based on the said documents and on the terms and conditions set out in the Agreement wherein it is stated that Signal would be procuring temporary and permanent visas for the foreign workers, the petitioner placed advertisements in leading newspapers for recruitment of skilled workers the jobs available with Signal.
11. The petitioner submits that as per a Government order (D.O. No.Z-11025/9/91 – Emig.) dated 01.08.1991, issued by the Ministry of Labour, Shram Shakti Bhawan, New Delhi, the Emigration Check Requirement Formalities for

emigrants inter alia to North America has been suspended. Hence on and after 1991, no clearance is required from the office of the Protector of Emigrants for emigration to North America. The petitioner submits that a subsequent notification dated 28.12.2006 has reiterated the above.

12. The mandate given by Global to the petitioner was only to the extent of receiving the applications and documents from candidates and arranging for their interviews and tests to be conducted by both representatives of Global and Signal.
13. Accordingly, the petitioner arranged for interview dates for candidates and representatives from Signal and one Mr. Michael Pol of Global came to India in the month of June/July, 2006, and conducted the interviews and tests at Kerala, Vishakapatnam and Chennai. Signal conducted a written test for the Fitters and practical tests for the Welders. Signal representatives, Mr. Pol of Global and the company representatives present, then explained to the selected candidates (selected subject to results of their medical tests) all the terms and conditions of their employment with Signal. The workers were told at the time of their employment that they would be kept in bunkhouses due to large – scale devastation in the region due to

Hurricane Katrina. Upon their acceptance of the said terms, the selected candidates also undertook their medical tests at various locations.

14. Signal and Global meanwhile had certain disputes and Signal therefore terminated the Agreement with Global by its letter dated November 29, 2006. Thereafter though the petitioner was initially engaged only by Global for assisting in the process of fixing interviews with workers and medical tests thereafter in India, Signal continued to use the services of the petitioner (only for facilitating the interviews and medical tests as abovementioned candidates).
15. Finally after further follow ups and completion of formalities by the Mr. Malvern Burnett, an Immigration Attorney appointed by Global, the workers left for the U.S.A. in batches from November, 2006, to January, 2007. There were no complaints whatsoever from the workers except in January, 2007, when the petitioner was informed about poor living conditions and poor food quality.
16. It is contended that though the responsibility for providing accommodations was that of Global, and the fact that there was no contractual obligation for the petitioner to provide any facilities or services after completion of the recruitment process, the petitioner's Managing Director, Mr. Sachin

Dewan, personally visited Signal in January, 2007, and checked the food and accommodation provided. When the said Mr. Dewan found that the living conditions were cramped he took immediate action to rectify the same. Mr. Dewan also checked the other facilities, including the food provided and found that substantial and quality food was provided to the workers but that some of the workers were only complaining about their cuisine not being provided for (i.e. South Indian food, etc.). Mr. Dewan took pictures of the said facilities and food provided.

17. Counsel for the petitioner submits that due to the efforts of Mr. Dewan, Signal, promised to improve the living conditions, which Signal claimed were below par due to the after effect of Hurricane Katrina. Thereafter the petitioner received information from the workers that Signal had improved the working conditions around the month of May, 2007, and that the workers therefore had no further complaint about the same.
18. Further some of the workers recruited through the petitioner had also come to India on a vacation after May, 2007. During their trip some of the recruits contacted the petitioner but did not make any complaints whatsoever about living and food conditions at Signal. To the

knowledge of the petitioner all the workers have been receiving their remuneration as agreed upon and all of them have made substantial amounts of money (nearly USD 75,000 – about Rs.30,00,000/-) from their employment with Signal. To the knowledge of the petitioner all those persons who had visited India for a vacation had returned to the U.S.A.

19. The petitioner further received information sometimes in February/March, 2007, that several of the workers recruited by the petitioner and stationed in Mississippi had absconded i.e. had left the Signal shipyard and had taken up work with other organizations where they could get more money than paid by Signal though they had arrived in the U.S.A. through visas sponsored by Signal, which amounts to a contravention of the conditions of the visas.
20. The petitioner further got information that Signal had filed for extension of visas as the workers had left India with H – 2B work visas, which were valid for a period of 10 months but that as of February – March, 2008, such extension of visas had not yet been received by Signal.
21. On March 10, 2008, the Hindustan Times, carried an article that about 100 workers who are working in Signal, recruited from India, had complained about the living conditions at

Signal and had filed class action suit in the U.S.A. alleging human trafficking. It was also mentioned in the newspaper that several allegations were made against the petitioner including about the excess payments having been made to the tune of 8 to 10 lakhs on the promise of obtaining permanent visas for the workers but only temporary visas were given to the workers.

22. On the date, the Article appeared in the newspaper, respondent no.2 issued the first suspension order, suspending the certificate of registration of the petitioner, for a period of thirty days. Simultaneously, respondent no.3 also issued a show cause notice directing petitioner to file its reply on the suspension order issued by respondent no.2 within a period of fifteen days. According to the petitioner, no reasons were set out for issuance of the said first suspension order dated 10.03.2008 except that the Hindustan Times dated 10.03.2008 had carried an article. On account of the suspension notice, the business of the petitioner came to a standstill. Reply to the notice was sent on 17.03.2008. On 03.04.2008, respondent no.3 called upon the petitioner to submit originals of certain documents which were supplied by the petitioner. On 07.04.2008, the petitioner again received a letter from respondent no.3

asking for certain documents, the reply of which was sent by the petitioner on 09.04.2008.

23. According to the petitioner, he has submitted all the documents pertaining to the recruitment of the workers of the Signal. On 07.04.2008, the petitioner received the second suspension order dated 03.04.2008 from the office of respondent no.2 extending the operation of suspension order dated 10.03.2008 till determination of question as to whether the registration of the petitioner should be cancelled and directed the petitioner to show cause within fifteen days of the receipt of the said second impugned suspension order.
24. As per the petitioner, apart from repeating the allegations verbatim from the first suspension order dated 10.03.2008 the only reason mentioned by respondent no.2 was that preliminary reports from CGI, Houston, had been received and according to which the workers were sent on Guest Workers Visa, which amounted to cheating of innocent immigrants and further the petitioner had not explained the question of payment of huge amounts made by the workers.
25. According to the petitioner, the second show cause notice was also untenable and amounted to holding the petitioner guilty based only on the allegations in a newspaper article

and without any trial. The petitioner is stated to have sent a detailed reply dated 17.04.2008. On 08.04.2008, petitioner filed a reply against the suspension order no.1 dated 10.03.2008 as well as the second suspension order no.1 dated 03.04.2008.

26. On 21.04.2008, the petitioner received yet another show cause notice from respondent no.2 dated 15.04.2008, which according to the petitioner, had raised false, baseless and unsubstantiated allegations. Reply to this was sent on 24.06.2008. The petitioner was constraint to file a writ petition before this Court against issuance of multiple show cause notices. The High Court vide order dated 06.05.2008 directed the respondent to complete the enquiry within a period of one month from the date of its order. The appeal of the petitioner was heard on 06.06.2008 and finally rejected vide order dated 12.06.2008.
27. After passing of the order dated 06.05.2008 by the Delhi High Court, the petitioner issued a letter to respondent no.2 on 13.05.2008 requesting for prior intimation of the date of enquiry. The date for enquiry was fixed as 29.05.2008. Since the petitioner's Managing Director and his counsel were travelling, an adjournment was sought to 06.06.2008, which was granted. The petitioner vide letter dated

01.06.2008 requested respondent no.2 to furnish copies of documents and statements being relied upon by them in the enquiry. Such documents were only furnished to the petitioner on 06.06.2008. Meanwhile the appeal filed by the petitioner herein was rejected on 12.06.2008. Subsequent to the passing of the order in the appeal, respondent no.2 sent a letter dated 17.06.2008 to the petitioner directing the petitioner to produce the documents on 27.06.2008. Meanwhile the petitioner again requested respondent no.2 to furnish copies of documents and statements, if any, which the second respondent would be relying upon against the petitioner in the enquiry. The petitioner is stated to have produced all the documents on 27.06.2008, pertaining to Signal in its possession as requested by the second respondent during the hearing on 06.06.2008. Dissatisfied by the documents supplied, by an order dated 28.07.2008 respondent no.2 cancelled the registration certificate of the petitioner. The petitioner was served with a copy of the order dated 28.07.2008 on 31.07.2008.

28. Learned counsel submits that the petitioner was shocked to receive the order dated 28.07.2008 as he had repeatedly requested respondent no.2 to furnish all documents and

statements which the second respondent wished to rely upon to ensure an effective hearing for the petitioner.

29. Learned counsel submits that the orders of suspension and cancellation order are arbitrary, contrary to the law and without following the principles of natural justice. By passing of the aforesaid orders, the respondents have deprived the petitioner of its right to conduct business and earn its livelihood.
30. Learned counsel contends that the respondents have relied on the material, statements and baseless allegations in cancelling the registration certificate of the petitioner. The petitioner has been deprived of its right to respond to the allegations contained in the cancellation order as the documents relied upon by respondent no.2 in the impugned cancellation order have not been furnished to the petitioner. It is also submitted that the second respondent has failed to furnish copies of the documents and statements relied upon by them and, thus, the petitioner has been deprived of an effective hearing. It has been strongly urged before this Court that the suspension orders and the show cause notices issued by respondent no.2 are based on newspaper reports according to which the petitioner has misled the

workers by promising permanent visas and has charged them exorbitant amounts based on the said promise.

31. It is contended that the sole basis of the said accusations against the petitioner, as set out in the suspension orders and various show cause notices issued by respondent no.2 were the unsubstantiated allegations in the newspaper reports and a report from the Consulate General of India. Any orders passed on the sole basis of newspaper reports are contrary to the established principles of law.
32. Learned counsel has also submitted that while the petitioner produced all documents in its custody before respondent no.2, despite repeated requests, respondent no.2 failed to furnish copies of the documents and statements relied upon by them in deciding the matter against the petitioner.
33. Learned counsel submits that apart from the undated letter from Signal along with annexures which do not set out the basis for allegations, respondent no.2 did not furnish any other document or statement implicating the petitioner, at any point of time. Counsel further submits that the business and livelihood of all its employees have come to an abrupt standstill due to the illegal and arbitrary actions of the respondent.

34. It is submitted that the cancellation of the registration certificate of the petitioner for purported non-maintenance of certain records despite emigration to North America being exempted from the provisions of the Emigration Act, vitiates the impugned cancellation order. While the cancellation order has been passed for purported non-maintenance of records, however, no such show cause notice was issued on this ground. Further the action taken is arbitrary and excessive for non-maintenance of records particularly when emigration to North America is exempted from the provisions of the Emigration Act.
35. It is contended that the cancellation order is vague and baseless, as the respondents have failed to consider that the petitioner only acted as a facilitator for Signal to recruit the workers and had issued the advertisement as per the Demand Letter and Power of Attorney issued by the Signal. Thereafter Signal had arranged for an Immigration Attorney and the said attorney had also arranged for visas and all other formalities were carried out by the Attorney and Global. Based on the recruitment, the workers were provided gainful employment at Signal's shipyards. The workers have made substantial amounts of money, since their emigration to the USA, and the workers continued to

work with Signal as they have got extension visas and the process for their permanent visas has also been commenced. Thus, none of the workers were either misled or cheated and that only some of the workers have raised false complaints for *mala fide* reasons.

36. Learned Additional Solicitor General appearing on behalf of the respondents submits that the present petition would not be maintainable in view of the fact that an appeal is provided under Section 23 of the Emigration Act, 1983, against an order of cancellation. It is contended that the impugned order has been passed after following the due procedure and complying with the principles of natural justice and statutory provisions. Thus, the order of cancellation is not open to judicial review.
37. Learned Additional Solicitor General further submits that the petitioner has been given a show cause notice and a full-fledged enquiry was held after giving an opportunity of hearing in compliance with the principles of natural justice as well as the Emigration Act and Rules. It is submitted that there is adequate evidence on record to establish that the petitioner in complete violation of the Emigration Act, 1983, has cheated and misled the poor prospective emigrant workers in collusion with Michael L. Pol of Global Resources.

38. It is contended that the petitioner/recruiting agency lacks the basic integrity and sensitivity that is required in recruiting agent's business dealings with prospective Indian emigrants as some of them may be only semi-literate or illiterate. It is further contended that despite several opportunities during the enquiry, the petitioner has failed to produce the evidence and complete record of recruitment and amounts charged in respect of the alleged misconduct.
39. Learned Additional Solicitor General submits that the petitioner has misrepresented that there are no complaints against him and petitioner has a clean record. In fact a complaint was received against the petitioner in the year 1997. It is disputed that the action has been taken against the petitioner only on the basis of some newspaper report. Since the petitioner did not comply with the various provision of the Emigration Act, 1983 and also did not behave responsibly and conscientiously in dealing with the poor emigrant workers who had placed their trust in him or their future prospects in foreign lands, the respondents were well within their rights to cancel the registration certificate.
40. It is contended that the petitioner acted irresponsibly and showed scant regard to the welfare of the emigrant

workers, luring them into his net with false promises of a Green Card/permanent residency which only the US Government can decide upon. In these circumstances, order of cancellation of registration certificate is fair and just.

41. It is further contended that a report was published in the Hindustan Times dated 10th March, 2008, that the petitioner/recruiting agency had recruited 120 Indian workers to work with M/s Signal International Company, Mississippi, USA, in two shipyards. It was further reported that the workers have paid huge amounts of money to the recruiting agency for their jobs in the company. The workers were promised good wages, decent accommodation, etc., however, they began facing a lot of problems upon their arrival. The workers were made to live in inhuman conditions without proper food and proper accommodation. The workers alleged, as reported, that the agents had also threatened to burn their passports.
42. Learned Additional Solicitor General submits that the matter was considered and upon enquiry it revealed that the recruiting agent, by way of charging huge amounts of money from the workers, which is more than the prescribed amount in the Emigration Rules, had sent the workers to a

company where they were not provided with proper accommodation and food, and had cheated the innocent emigrants and also violated the terms and conditions of the registration certificate. Therefore, the recruiting agent (petitioner herein) is not fit to continue to hold the certificate and, thus, while suspending the certificate, vide order dated 10.03.2008, petitioner was asked to show cause within fifteen days of the receipt of the order as to why their registration certificate should not be suspended indefinitely/cancelled.

43. Learned Additional Solicitor General contends that no doubt the process of investigation was triggered off on the basis of the newspaper report, but the newspaper report by itself was not the only basis on which the orders were passed against the petitioner. Counsel for the respondent relies upon a preliminary report from the Consulate General of Indi (CGI), Houston, portion of which is reproduced below:-

"In order to meet the labour shortage after Hurricane Katrina which affected Louisiana and part of Mississippi in 2005, M/s Signal International, a marine fabrication company with headquarters at Pascagoula, Mississippi and yards at Orange/Port Arthur, Texas, recruited, with the permission of the US Department of Labour, about 590 Indian workers, mostly welders and fitters and brought them to Mississippi and Texas in December, 2006 on guest worker visa (H2B visa programme) valid initially for 10 months, extendable at the discretion of the company and US authorities.

- The recruitments were arranged through Global Resources Inc., Mississippi and M/s Dewan Consultants, Mumbai.*

- *About 300 workers were deployed at the yard in Pascagoula, Mississippi and the remaining workers were deployed at the yard in Orange Country/Port Arthur, Texas.*
- *About 300 workers were deployed at the yard in Pascagoula, Mississippi and the remaining workers were deployed at the yard in Orange County/Port Arthur, Texas.*
- *The workers, especially those deployed at Pascagoula, were not happy with the accommodation, food supplies etc. They alleged slave like working conditions and openly protested to the employers. They demanded better pay and amenities as well as permission to live outside the camp at cheaper accommodation of their choice in groups. Their grievances included poor group bunk house accommodation, deduction \$35 per day towards accommodation, food, electricity, water etc., denial of permission to live outside at cheaper accommodation, provision for overtime hours and the refund of Rs.6 lakhs to 9 lakhs charged at the time of recruitment as commission by the recruiting firm in India promising long term employment/permanent residency/Green Card etc in the USA.*

44. While it was admitted that neither the Indian workers nor M/s Signal International contacted the CGI, the CGI took up the matter with M/s Signal International and established contact with some of the workers. In the counter affidavit, as pointed out by the learned Additional Solicitor General, it has been stated that, subsequently, the company reduced the number of persons in each bunker accommodation, improved the quality and choice of food and also increased the salary from \$18 to \$19.5 per hour. In a letter from M/s Signal International addressed to the Indian Ambassador in Washington the company stated that they had terminated contract with M/s Global Resources when they came to know of its underhand dealings, overcharging the workers.

45. Learned Additional Solicitor General contends that while the workers were sent on "Guest Worker Visa", which can nowhere be compared with the Green Card and that the recruiting agent held out false promises of Green Card to the prospective emigrants. This amounted to cheating as the issue of Green Card is the prerogative of the US Government alone. Further the question of payment of huge amounts by the workers has not been explained anywhere by the recruiting agent.
46. Learned Additional Solicitor General submits that even as per the writ petition Signal had required skilled foreign workers on temporary and permanent employment visas. Nowhere had Signal promised Green Card to prospective Emigrants which the petitioner had offered in his advertisements. This according to the respondent is a willful act of misleading the prospective workers in order to extract huge sums of money from the poor prospective emigrants who would not be aware of the fact that Green Card can only be granted by the US Government. The workers have been made to pay between Rs.6.00 lakhs and above to the petitioner for processing their recruitment and Green Card. Copy of the advertisement published by the petitioner has been placed on record.

47. In support of his plea that the petitioner has been demanding large sum of money, over and above the amount as per the Emigration Act, petitioner has drawn the attention of the Court to a letter addressed by the petitioner to one Mr. Rajan Pazhambalkode dated 02.12.2006, wherein it has been stated that the company shall process the green Card and the Green Card process fee has been indicated. While in another letter dated 23.06.2008, Rs.66,700/- has been demanded in the name of Mr. Malvern C. Burnett; Rs.66,700/- has been demanded in the name of Mr. Micheal L. Pol; and balance sum of Rs.66,700/- has been demanded in the name of Dewan Consultants Pvt. Ltd. petitioner herein. This would show that the petitioner was misleading the prospective emigrants and it is wrong to suggest that the petitioner had no role to play in recruiting workers.
48. It is submitted that being a recruiting agent, it was sole responsibility of the petitioner to take care of the workers recruited by him. The petitioner by allowing the foreign companies' representatives to conduct the interviews and leaving all terms and conditions to such representatives by itself shows that he has not fulfilled the responsibilities as per the Emigration Act. The communication dated

23.06.2006 by itself would show that the petitioner demanded money from his foreign accomplices.

49. Learned Additional Solicitor General submits that the respondents have acted in a fair and just manner. Although the respondents were well within their right as per the provisions of Section 14 of the Emigration Act to straight away cancel the certificate of the petitioner, the respondents issued a show cause notice to the petitioner and after hearing the petitioner passed the impugned order.
50. In response to the submissions made by counsel for the respondent, learned counsel for the petitioner submits that mere availability of an alternate remedy of appeal under Section 23 of the Emigration Act does not affect the jurisdiction of the High Court to issue a writ, as in fact, the petitioner does not have efficacious alternate remedy.
51. Learned counsel contends that the Apex Court has consistently held that the existence of an alternate remedy does not operate as an absolute bar. The action of the respondents is illegal and without jurisdiction. The principles of natural justice and the petitioner's Fundamental Rights have been violated, in view of the fact that the respondents have failed to furnish all the documents relied upon by them in cancelling the

registration certificate. Further the respondents have also produced and relied upon further additional documents before this court which were neither produced during the enquiry nor furnished to the petitioner. In support of the aforesaid submission, learned counsel relies upon **Baburam Vs. Zilla Parishad**, reported at AIR 1969, SC 556 and more particularly relied on para 3; **A.V. Venkateshwaran Vs. R.S. Wadhwani**, reported at AIR 1961 SC 1506 and more particularly relies on paras 8 and 10; **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai**, reported at (1998) 8 SCC 1 and more particularly relies on paras 14 and 15; **Popcorn Entertainment & Anr. Vs. City Industrial Development Corpn. & Anr.**, reported at (2007) 9 SCC 593 and more particularly relies on paras 22 and 47; **Ram & Shyam Company Vs. State of Haryana & Ors.**, reported at (1985) 3 SCC 267 and more particularly relies on para 9; **Harbanslal Sahnia & Anr. Vs. Indian Oil Corporation Ltd. & Ors.**, reported at (2003) 2 SCC 107 and more particularly para 7; **Saci Allied Products Ltd., U.P. Vs. Commissioner of Central Excise, Merrut**, reported at (2005) 7 SCC 159 and more particularly relies on paras 16 and 17; **Chandra Singh & Ors. Vs. State of Rajasthan & Anr.**, reported at (2003) 6 SCC 545 and more

particularly relies on para 37; and ***Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Other***, reported at (1978) 1 SCC (405) and more particularly relies on para 8.

52. Learned counsel for the petitioner also submits that the appeal would, in any case, be maintainable before the Secretary, who has already applied his mind and more so a joint counter affidavit has been filed by all the three respondents. Thus, the petitioner does not expect a fair decision, having regard to the fact that the availability of an alternate remedy does not create an absolute bar.
53. A preliminary objection was raised with regard to the maintainability of this writ petition on the ground that the petitioner has an alternate remedy under section 23 of the Immigration Act, by way of an appeal. Having heard learned counsel for the parties and the settled position of law that the existence of Statutory remedy does not operate as an absolute bar and further taking into consideration the observations of the Apex Court in the case of **Whirlpool Corporation (Supra)** where it has been held that alternate remedy would not operate as a bar at least in three contingencies: (1) where the writ petition seeks enforcement of any of the fundamental rights; (2) where

there is violation of principles of natural justice; or (3) where the order or the proceedings are wholly without jurisdiction or the vires of an Act is challenged.

54. In this case the main thrust of the argument of the petitioner is with respect to the violation of the principles of natural justice and even otherwise, learned counsel for the petitioner had urged before this Court that the appeal would lie to the Secretary, who has been arrayed as respondent no.1 in the writ petition and all the respondents have filed a joint counter affidavit, thus it would be appropriate for this court to hear the matter.
55. No doubt the scope of the proceedings under Article 226 of the Constitution of India would be narrow and limited to the extent of the order being unreasonable, illegal and the scope of interference would be narrow in comparison to the remedy of appeal. The disadvantage, if any, would be to the petitioner who has chosen to file the present petition. Thus I do not find force in the submission of counsel for the respondent that the present petition is not maintainable.
56. The impugned order has been challenged before this Court primarily on the ground that the respondents have failed to comply with the principles of natural justice. The cancellation order is vitiated as it refers to and relies on

documents not furnished to the petitioner. The allegations against the petitioner are that the petitioner is not fit to carry on the business as a recruiting agent, as it has allegedly cheated and misled poor prospective emigrants with false promises of Green Cards, not provided them proper food and accommodation and has also charged excessive amounts from the workers.

57. It is contended that the petitioner has not violated any of the provisions of the Emigration Act and the workers were sent on H2B work visas and M/s Signal International has now applied for and is processing their applications for permanent visas for those workers who are still working with Signal. It is further contended that upon receipt of the complaint, the Managing Director of the petitioner had immediately gone in person to Signal's shipyard and ensured improvement in their accommodation, facilities and made arrangements for choice of food. While stating that this position has not been denied by the respondents, the petitioner has placed certain photographs on record, to show that the workers were staying in proper accommodation and proper food was being served to them. Learned counsel also contends that the conduct of the petitioner would show that they had every intention to see

that the workers were comfortable and the aims and objects of the Act were fully complied with. It is next contended that the entire enquiry has been based on newspaper reports and not on the basis of any complaint by any individual worker. The allegation of excess payment is also based on hearsay through the newspaper reports and the report of the Consulate General of India is also not on the basis of the complaint of the workers. Even otherwise, in the absence of complete documents, the petitioner was not in a position to reply to the allegations.

58. It has been strongly urged that the extent of penalty and punishment meted out by the respondents to the petitioner by suspending the certificate of the petitioner on the same day, as the reports were published in the newspapers, and thereafter the impugned order dated 28.07.2008 is far in excess on the magnitude or gravity of the misconduct or violation, as alleged.
59. It is submitted that even the Act stipulates a bar of two years before a person may apply for registration if a cancellation order is passed. The petitioner has thus already suffered stoppage of its business and livelihood since 10.03.2008, besides the petitioner has a large number of

employees, whose livelihood is also dependent upon the petitioner.

60. Learned counsel has also contended that the respondents have filed material on record which was neither relied upon at the time of enquiry and passing of the impugned order nor copies were handed over to the petitioner and, thus, the respondents cannot better their own case by filing an additional affidavit. In support of this contention learned counsel for the petitioner relies upon (2003) 6 SCC 545, more particularly para 37.
61. Learned counsel for the petitioner submits that assuming the workers were unhappy with the accommodation or the food, these complaints were looked into by the Managing Director of the petitioner on his visit and admittedly the conditions were improved including that the wages were increased, thus, their grievances stood redressed. This fact is also borne out from the fact that the workers have neither returned back to India and those who have returned back, have neither approached the respondents, nor made any complaint against the petitioner.
62. I have heard the counsel for the parties, who have also taken me through the documents placed on record.

63. The first show cause notice was issued to the petitioner on 10.03.2008, relevant portion of which reads as under:-

"2. Whereas, a report has been published in the Hindustan Times dated 10th March, 2008 that the recruiting agent has recruited about 120 Indian workers to work with M/s Signal International Company, Mississippi, US in their two shipyards. It has been reported that the workers have paid huge amounts of money to the recruiting agent for their job in the company. While the workers were promised good wages, decent accommodation, etc., they are now facing a lot of problems there. The workers are living in inhuman conditions without proper food. The workers have alleged, as reported, that the agents have threatened them to burn their passport.

3. Whereas the RA, by way of charging huge amounts of money from the workers for the job, which is more than that prescribed in the Emigration Rules, 1983 and sending the workers to a company where they are not provided proper accommodation and food, has cheated the innocent emigrants and also has violated the terms and conditions of the certificate. Therefore, the recruiting agent does not appear to be a fit person to continue to hold the certificate, having regard to the manner in which he has conducted the business of recruitment."

64. Reading of this show cause notice would show that based on the report of the Hindustan Times dated 10.03.2007, the petitioner was asked to show cause on four grounds i.e. (1) charging of huge amounts of money from the workers for the job, which is more than that prescribed in the Emigration Rules; (2) sending workers to a company where they are not provided proper accommodation and food; (3) cheating innocent emigrants; and (4) violation of terms and conditions of the certificate.

65. The petitioner had sent a detailed reply vide communication dated 17.03.2008, in which while refuting all the allegations made in the show cause notice gave its explanation. Vide communication dated 03.04.2007, the petitioner was called upon to send all the relevant papers in connection with

recruitment and subsequent deployment of Indian workers with M/s Signal International, in original. By a letter dated 04.04.2008, the petitioner submitted the original Power of Attorney dated 19.06.2006 issued by M/s Signal International, original Demand Letter dated 19.06.2006 issued by the Signal, original acknowledgment of conducting interview dated 23.06.2006 and four copies of the advertisements. The respondents again called upon the petitioner vide letter dated 07.04.2008 to provide the following documents:-

- (a) *Details on records of recruitment in connection with M/s Signal International.*
- (b) *Receipt books in connection with service charges issued to emigrants employed with M/s Signal International.*
- (c) *Advertisement released in newspapers along with bills.*
- (d) *Details of interviews and correspondence records kept in connection with recruitment following the advertisement.*
- (e) *Individual Employment Contract issued by the M/s Signal International.*
- (f) *Application letters mentioning terms and conditions of M/s Signal International issued to the emigrants.*

66. In response to this communication, the petitioner vide letter dated 10.04.2007 furnished certain documents, however, with regard to the employment contracts, it was pointed out that the employment contracts were issued directly by M/s Signal International to the workers on their arrival in the USA, thus the petitioner was unable to produce the same. Similar response was made with regard to the application letters which contained terms and conditions of M/s Signal

International and which were issued to the Emigrants. By an order dated 03.04.2008, another show cause notice was issued to the petitioner, the operative portion of which reads as under:-

3. *Whereas the RA, by way of charging huge amounts of money from the workers for the job, which is more than that prescribed in the Emigration Rules, 1983 and sending the workers to a company where they are not provided proper accommodation and food, has created the innocent emigrants and also has violated the terms and conditions of the certificate. Therefore, the recruiting agent does not appear to be a fit person to continue to hold the certificate, having regard to the manner in which he has conducted the business of recruitment. Therefore the operation of the registration certificate of the recruiting agent was suspended vide order dated 10.03.2008 and the recruiting agent was asked to show cause within 15 days of the receipt of this order as to why their registration certificate should not be suspended indefinitely/cancelled.*

4. *The reply of the recruiting agent has been received. Preliminary reports from the CHI, Houston have also been received. It is observed that the workers were sent on 'guest worker visa'. This amounts to cheating of innocent emigrants. Further the question of payment of huge amounts by the workers have not been explained by the recruiting agent. The matter is under consideration in consultation with the Embassy of India, Washington/CGI, Houston.*

67. The show cause notice dated 03.04.2008 shows that the respondents had considered the preliminary reports received from the Consulat General of India, Houston. It was also observed that the workers were sent on 'Guest Workers Visa'. This order also notices the fact that the report has been received by the recruiting agency. Vide communication dated 17.04.2008, the petitioner sent a reply refuting all the allegations made against it. In this reply, the petitioner has stated that the entire proceedings

have been initiated based on the newspaper reports, the order of suspension is bad in law, no steps were taken to verify the veracity of the allegations, the pre-emptory action had caused great prejudice and irreparable loss and adversely affected their business and livelihood. The petitioner had further stated that all necessary documents had been submitted to the respondents. The petitioner also stated that apart from the newspaper reports there was no basis for passing the suspension order. It was next stated that proper food and accommodation had been provided and the workers are earning a good livelihood. A complete reading of this reply would show that the petitioner did not address the allegation made against it with regard to payment of huge amounts by the workers.

68. Another show cause notice dated 15.04.2008 was sent to the petitioner, which was replied to on 26.04.2008. The impugned order, by virtue of which, the registration has been cancelled, notices the fact that based on the orders of the Delhi High Court dated 07.05.2008, the enquiry was to be concluded within a period of one month after affording a personal hearing to the petitioner. Admittedly, a personal hearing was granted to the petitioner. The petitioner was also called upon to furnish documents required to be

maintained by them as per Rule 10 of the Emigrants Rule, 1983. It has been noticed that the recruiting agency produced all the documents/records except the pre-paid tickets/advice, copies of employment contract of the emigrants, letters of interview, correspondence with emigrants and the original award sheets. The relevant portion of the order dated 28th July, 2008 is reproduced below:-

AND WHEREAS during the course of inquiry into the matter, the following facts have come to notice:

- (i) References dated 8.3.2008, 10.3.2008, 28.5.2008 & 6.6. 2008 were received from Indian Mission abroad pointing out the complaints against the Recruiting Agents to the effect that the workers were being treated like slaves, poor accommodation and various inhumanly treatment being meted with them, excessive charging i.e. Rs.6 lakhs to Rs.9 lakhs, from the workers at the time of their recruitment as Commission by the recruiting firm in India and promising long term employment/permanent residency/Green Card in USA. It further revealed that on May 27th 2008 the workers informed the Indian Mission during their meeting with the Indian Ambassador that five of the works had been granted "U" category visas by US authorities since May, 2007. This visa category was created under the Victims of Trafficking and Violence Prevention Act (2000) and was meant to be available to non-US citizens who had suffered abuse from criminal activities and are helpful for the investigation or prosecution of that crime (Since "U" visas have not yet been operationalised, what the workers actually have is "U visa interim relief" with identical benefits. That the US authorities who are otherwise very stringent in the matter of issuing visas, have given the U category visas to five of the workers clearly indicates involvement of the Recruiting Agent, M/s Dewan Consultant with trafficking in the matter of deployment of these workers to the US.*
- (ii) The US Department of Justice has confirmed to the Indian Mission that they are undertaking a full*

investigation in the matter. The workers, on their part, have filed a lawsuit in the United States District Court for the Eastern District of Louisiana in which M/s Dewan Consultant Pvt. Ltd. and Mr. Sachin Dewan, its Managing Director (A.K.A. Medtech Consultants) are parties.

- (iii) Photocopies of drafts made out by the workers in the name of Mr. Malvern C. Burnett and Mr. Micheal L Pol, representatives of the US recruiters, and Dewan Consultants the Indian recruiter, are proof of Dewan Consultants charging the workers exorbitant amounts and also of the Recruiting Agent being a conduct or go-between for the conveyance of illegally charged amounts. There is also copy of a demand letter from Dewan Consultants to one of the prospective emigrants, Shri Bony V.S, asking DDs to be made out in the names of these three recruiters for an amount of Rs.66,700/- each which is extremely high and far in excess of what is provided in the Emigration Act/Rules 1983 as chargeable by a Recruiting Agent.*
- (iv) The Recruiting Agent, in their reply to the show cause notice dated 10.03.2007 has contended that the responsibility of the Recruiting Agent ceases after the emigrants reach their destination safely. This is not correct. The responsibility of the Recruiting Agent towards the emigrants is till the expiry of the contract against which the Recruiting Agent has recruited and deployed the workers for overseas employment.*
- (v) Preliminary reports received from the CGI, Houston in March, 2008 supported the newspaper report of 10.3.2007. It was, inter alia, stated by the Indian Post that the recruitment for Signal International were arranged through Global Resources Inc., Mississippi and M/s Dewan Consultants, Mumbai. The CGI in its report has further stated that eventually on the intervention of the Post the company reduced the number of persons in each bunker accommodation, improved the quality and choice of food and increased the salary of the workers from US \$ 18 in US \$ 19.15 per hour. This is proof enough that the appalling state of affairs reported earlier was true and that the immediate action taken to suspend the RA's certificate was amply justified.*

- (vi) *A letter from M/s Signal Internal, the US company, to the Indian Ambassador in Washington, a copy thereof received on 4.6.2008, categorically states "Global Resources recruited the workers through Mr. Sachin Dewan of M/s Dewan Consultants Pvt. Ltd., a registered Recruiting Agent, in Mumbai, India to interview and test the potential H-2B recipients. After the workers began to arrive in the United States, M/s Signal learned that both the recruiting agencies, M/s Global Resources and M/s Dewan Consultants had misled both M/s Signal International and had deceived the Indian workers during their recruitment in India by demanding highly excessive fees and making false promises about the green card process. No reason or justification is available on record to ignore the information received from M/s Signal International with whom event he Recruiting Agent has been carrying out the business.*
- (vii) *On complaint of the POE, Mumbai, an FIR No.234/2008 dated 14.5.2008 u/s 420 IPC has been registered with PS Sakinaka, Mumbai against the Recruiting Agent M/s Dewan Consultants Pvt. Ltd., Mumbai.*
- (viii) *During the proceedings dated 6.6.2008, it has been admitted that the Recruiting Agent has not maintained records regarding pre-paid tickets/advice, copy/record of employment contract of each emigrant, copy/record of letters of interview, correspondence with emigrants, original award sheets and the same clearly indicates violation of Rule 10(x) of Emigration Rules, 1983.*
- (ix) *The charging excessively towards the service charges by the Recruitment Agent clearly indicates violation of Rule 25.*

AND WHEREAS I have considered the report of the Indian Mission abroad, report(s) submitted by POE, Mumbai coupled with registration of the aforesaid FIR, various documents and information on record and I am of the considered view that the said Recruiting Agent M/s Dewan Consultants Pvt. Ltd. lacks trustworthiness and has not carried out the business of the overseas recruitment in just and fair manner. In addition, it has violated the terms and conditions of the certificate enshrined under Rule 10 besides violating the provisions of Rule 25 of the Emigration Rules, 1983 and misrepresentation by issuing vague and misleading advertisements. The Recruiting Agent cannot wash out their responsibility about the well

beings of the workers recruited for overseas employment by them once they are sent abroad as the same is in violation of the terms and conditions enshrined under Rule 10 of the Emigration Rules, 1983. The contention of the Recruiting Agent that the PGE was not justified in passing the order of suspension only on the basis of newspaper report is not tenable inasmuch as in view of the gravity of the allegations against the Recruiting Agent, it was just and in the larger interest to suspend the operation of the certificate. It goes without saying that in their defence, the Recruiting Agent M/s Dewan Consultants Pvt. Ltd. has not been able to give any justification for not maintaining the records as required under Rule 10 of Emigration Rules, 1983, for excessive charging than what has been prescribed under Rule 25 of the Emigration Rules, 1983, for making misleading advertisements for temporary/permanent residency, Green Card in US. It is noted that suspension of operation of certificate cannot be termed to be penal. The newspaper report as such may not be conclusive proof of evidence as it is but at the same time there is no legal bar under the provision of Emigration Act, 1983, that such reports coming to the notice of the PGE cannot be taken cognizance of for enquiring into the allegations against any particular Recruiting Agent. It is noted that the Emigration Act, 1983 is a Special Act enacted for a particular purpose as enshrined in the Act and to achieve the objective of the Act, pending confirmation of the veracity of the allegations finding place in the news reports, such news reports were found reasonable and no reason was found as to why such reports published in a national daily of repute cannot be relied upon for the limited purpose. It may be mentioned that such contention of the Recruiting Agent in this regard has been negated even by the Id. Appellate Authority in the order dated 12.6.2008.

69. It is well-settled that in proceedings under Article 226 of the Constitution of India, the High Court cannot sit as a Court of appeal over the findings. The Apex Court has repeatedly held that the judicial review under Article 226 of the Constitution is not directed against the decision, but is confined to the decision making process.

70. In the case of **Major Jai Gopal Srivastava (Retd.) V. Govt of NCT of Delhi & Ors.** WP(C)No.2545/2008 this Court has held:

“It is trite law that natural justice is a procedural requirement of fairness before arriving at any decision. It is the duty of the authority who is to decide the matter that it must act in a fair and just manner to arrive at a decision. This can only be done after granting hearing to the party and an opportunity to state his case. Doctrine of natural justice has been extended to Statutory Authorities Tribunals exercising quasi judicial function and even to Administrative Authorities which determine the Civil Rights of obligations. In the case **Canara Bank & Ors. Vs. Debasis Das and Ors.** (2003) 4 SCC 557, the law relating to natural justice has been discussed in detail. It has been held as under:-

“13. Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

14. The expressions “natural justice” and “legal justice” do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should

ever be permitted to exclude the presentation of a litigant's defence.

15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play.....”

71. Learned counsel for the petitioner has labored hard before this Court to show that all the relevant documents which were considered by the respondents against them and at arriving at the impugned decision were not made available despite repeated requests. On the other hand, it has been alleged by the respondents that neither satisfactory reply nor supporting documents have been furnished by the petitioner with regard to contracts entered into between the workers and the employers, the terms of recruitment and explanation with regard to overcharging. It is not in dispute

that it is really the newspaper reports in the Hindustan Times dated 10.03.2008 which triggered off the investigation into the recruitment carried out by the petitioner for emigration of workers, the newspaper article acted as a whistle blower in the matter and not that merely on the basis of the newspaper report, the order of suspension or cancellation has been passed. If the entire action against the petitioner was based on the newspaper reports there would have been no occasion for the respondents to issue show cause notice to the petitioner or to call upon the petitioner to furnish necessary records. The mere fact that the cancellation order has been passed after issuing a show cause notice and taking into consideration the report received by the Consulat General of India and calling upon the petitioner to furnish necessary documents and the fact that a personal hearing was granted to the petitioner, I am satisfied that the order of cancellation is not merely on the basis of a newspaper report. The question whether the relevant documents were supplied to the petitioner or not can be appreciated in the light of the allegations against the petitioners. Show cause notice was issued to the petitioner on four grounds i.e. (1) charging of huge amounts of money from the workers for the job, which

is more than that prescribed in the Emigration Rules; (2) sending workers to a company where they are not provided proper accommodation and food; (3) cheating innocent emigrants; and (4) violation of terms and conditions of the certificate. Reading of the show cause notice would show that the petitioner was made aware as to the allegations against them by the workers. As far as the poor living conditions are concerned, the fact that the Managing Director of the petitioner visited the shipyard of Signal and thereafter the conditions had improved would show that there was force in this allegation. It would also show that the living conditions were not proper as well as the workers were charged in excess.

72. Under Article 226 of the Constitution of India, the High Court is not empowered to interfere in the finding of a fact. In exercise of special jurisdiction the High Court does not act as a Court of Appeal and would interfere only when there is jurisdictional error apparent on the face of the record.

(1980) 4 SCC 336

73. The aforesaid decision was also considered by the Supreme Court in the case of **Dharamraj & Ors. Vs. Chhitan & Ors.** (2006) 12 SCC 349. It would be useful to reproduce paras, 18, 19 and 20 of the same:

18. It is well-settled position of law by a catena of decisions of this Court that in the writ jurisdiction of the High Court, it is always permissible for it to correct the decision of the consolidation authorities or to declare the law on the basis of facts and proof of such facts. For this proposition, we may usefully refer to a decision of this Court in *Mukunda Bore v. Bangshidhar Buragohain*¹ in which this Court indicated as to when the High Court can interfere with the orders of quasi-judicial authority. This observation may be quoted which is as follows: (SCC pp. 339-40, para 16)

"16. While on facts the order of the Board under appeal is not impeccable, we must remember that under Article 226 of the Constitution, a finding of fact of a domestic tribunal cannot be interfered with. The High Court in the exercise of its special jurisdiction does not act as a court of appeal. *It interferes only when there is a jurisdictional error apparent on the face of the record committed by the domestic tribunal. Such is not the case here. It is true that a finding based on no evidence or purely on surmises and conjectures or which is manifestly against the basic principles of natural justice, may be said to suffer from an error of law.* In the instant case, the finding of the Board that the appellant does not possess the necessary financial capacity, is largely a finding of fact. Under Rule 206(2) of the Assam Excise Rules, an applicant for settlement of a shop is required to give full information regarding his financial capacity in the tender. Such information must include the details of sources of finance, cash in hand, bank balance, security assets, etc. Then, such information is verified by the inquiry officer." (underlining[±] is ours)

19. In *Syed Yakoob v. K.S. Radhakrishnan*² this Court observed as follows: (SCR p. 65)

"... finding of fact cannot be challenged in ... a proceeding on the ground that the relevant and material evidence was insufficient to sustain the finding [and that] adequacy or sufficiency of evidence or an inference of fact to be drawn from the evidence or finding of fact are entirely within the jurisdiction of the Tribunal."

20. Again in *State of W.B. v. Atul Krishna Shaw*³ this Court held that if the quasi-judicial Tribunal had appreciated the evidence on record and recorded the findings of fact, those findings of fact would be binding on the High Court. By the process of

¹ (1980) 4 SCC 336 : 1982 SCC (Tax) 143 : AIR 1980 SC 1524

² (1964) 5 SCR 64 : AIR 1964 SC 477

³ 1991 Supp (1) SCC 414 : AIR 1990 SC 2205.

judicial review, the High Court cannot appreciate the evidence and record its own findings of fact. If the findings are based on no evidence or based on conjectures or surmises and no reasonable man would on given facts and circumstances come to the conclusion reached by the quasi-judicial authority on the basis of the evidence on record, certainly the High Court would oversee whether the findings recorded by the authority is based on no evidence or beset with surmises or conjectures.

74. The Apex Court in the case of **Tata Cellular Vs. UOI** (1994) 6 SCC 651, had extensively dealt with the scope and power of judicial review and observed that:

“74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

75. In *Chief Constable of the North Wales Police v. Evans*²³ Lord Brightman said :

“Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.

* * *

Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.”

In the same case Lord Hailsham commented on the purpose of the remedy by way of judicial review under RSC, Ord. 53 in the following terms :

“This remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of authorities, judicial, quasi-judicial, and, as would originally have been thought when I first practised at the Bar, administrative. It is not intended to take away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the decisions. It is intended

to see that the relevant authorities use their powers in a proper manner (p. 1160)."

In *R. v. Panel on Take-overs and Mergers, ex p Datafin plc*⁴, Sir John Donaldson, M.R. commented :

"An application for judicial review is not an appeal."

In *Lonrho plc v. Secretary of State for Trade and Industry*⁵, Lord Keith said:

"Judicial review is a protection and not a weapon."

It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal. In *Amin, Re*⁶, Lord Fraser observed that :

"Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made.... Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing the administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer."

76. In *R. v. Panel on Take-overs and Mergers, ex p Guinness plc*⁷, Lord Donaldson, M.R. referred to the judicial review jurisdiction as being supervisory or 'longstop' jurisdiction. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power.

77. The duty of the court is to confine itself to the question of legality. Its concern should be :

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,

⁴ (1987) 1 All ER 564

⁵ (1989) 2 All ER 609

⁶ *Amin v. Entry Clearance Officer*, (1983) 2 All ER 864

⁷ 27 (1990) 1 QB 146; (1989) 1 All ER 509

4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under :

- (i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
- (ii) Irrationality, namely, Wednesbury unreasonableness.
- (iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind*⁸, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has gone wrong of a nature and degree which requires its intervention”.

78. What is this charming principle of Wednesbury unreasonableness? Is it a magical formula? In *R. v. Askew*⁹, Lord Mansfield considered the question whether mandamus should be granted against the College of Physicians. He expressed the relevant principles in two eloquent sentences. They gained greater value two centuries later :

“It is true, that the judgment and discretion of determining upon this skill, ability, learning and sufficiency to exercise and practise this profession is trusted to the College of Physicians and this Court will not take it from them, nor interrupt them in the due and proper exercise of it. But their conduct in the exercise of this trust thus committed to them ought to be fair, candid and unprejudiced; not arbitrary, capricious, or biased; much less, warped by resentment, or personal dislike.”

⁸ (1991) 1 AC 696

⁹ (1768) 4 Burr 2186 : 98 ER 139

79. To quote again, Michael Supperstone and James Goudie; in their work *Judicial Review* (1992 Edn.) it is observed at pp. 119 to 121 as under :

“The assertion of a claim to examine the reasonableness been done by a public authority inevitably led to differences of judicial opinion as to the circumstances in which the court should intervene. These differences of opinion were resolved in two landmark cases which confined the circumstances for intervention to narrow limits. In *Kruse v. Johnson*¹⁰ a specially constituted divisional court had to consider the validity of a bye-law made by a local authority. In the leading judgment of Lord Russell of Killowen, C.J., the approach to be adopted by the court was set out. Such bye-laws ought to be ‘benevolently’ interpreted, and credit ought to be given to those who have to administer them that they would be reasonably administered. They could be held invalid if unreasonable : Where for instance bye-laws were found to be partial and unequal in their operation as between different classes, if they were manifestly unjust, if they disclosed bad faith, or if they involved such oppressive or gratuitous interference with the rights of citizens as could find no justification in the minds of reasonable men. Lord Russell emphasised that a bye-law is not unreasonable just because particular judges might think it went further than was prudent or necessary or convenient.

In 1947 the Court of Appeal confirmed a similar approach for the review of executive discretion generally in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn*¹¹. This case was concerned with a complaint by the owners of a cinema in Wednesbury that it was unreasonable of the local authority to licence performances on Sunday only subject to a condition that ‘no children under the age of 15 years shall be admitted to any entertainment whether accompanied by an adult or not’. In an extempore judgment, Lord Greene, M.R. drew attention to the fact that the word ‘unreasonable’ had often been used in a sense which comprehended different grounds of review. (At p. 229, where it was said that the dismissal of a teacher for having red hair (cited by Warrington, L.J. in *Short v. Poole Corpn.*¹², as an example of a ‘frivolous and foolish reason’) was, in

¹⁰ (1898) 2 QB 91: (1895-9) All ER Rep 105

¹¹ 31 (1948) 1 KB 223: (1947) 2 All ER 680

¹² (1926) 1 Ch 66, 91: 1925 All ER Rep 74

another sense, taking into consideration extraneous matters, and might be so unreasonable that it could almost be described as being done in bad faith; see also *R. v. Tower Hamlets London Borough Council, ex p Chetnik Developments Ltd.*³³ (Chapter 4, p. 73, supra). He summarised the principles as follows:

‘The Court is entitled to investigate the action of the local authority with a view to seeing whether or not they have taken into account matters which they ought not to have taken into account, or, conversely, have refused to take into account or neglected to take into account matter which they ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that, although the local authority had kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority has contravened the law by acting in excess of the power which Parliament has confided in them.’

This summary by Lord Greene has been applied in countless subsequent cases.

“The modern statement of the principle is found in a passage in the speech of Lord Diplock in *Council of Civil Service Unions v. Minister for Civil Service*¹³ :

‘By “irrationality” I mean what can now be succinctly referred to as “Wednesbury unreasonableness”. (*Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*³¹) It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at.’ ”

¹³ (1985) 1 AC 374: (1984) 3 All ER 935: (1984) 3 WLR 1174

80. At this stage, *The Supreme Court Practice*, 1993, Vol. 1, pp. 849-850, may be quoted :

“4. *Wednesbury principle*.— A decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. (*Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*³¹, per Lord Greene, M.R.)”

81. Two other facets of irrationality may be mentioned.

(1) It is open to the court to review the decision-maker’s evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld. Thus, in *Emma Hotels Ltd. v. Secretary of State for Environment*¹⁴, the Secretary of State referred to a number of factors which led him to the conclusion that a non-resident’s bar in a hotel was operated in such a way that the bar was not an incident of the hotel use for planning purposes, but constituted a separate use. The Divisional Court analysed the factors which led the Secretary of State to that conclusion and, having done so, set it aside. Donaldson, L.J. said that he could not see on what basis the Secretary of State had reached his conclusion.

(2) A decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes. On this basis in *R. v. Barnet London Borough Council, ex p Johnson*¹⁵ the condition imposed by a local authority prohibiting participation by those affiliated with political parties at events to be held in the authority’s parks was struck down.

¹⁴ (1980) 41 P & CR 255

¹⁵ (1989) 88 LGR 73.

75. Applying the above principles to the facts of the present case it is to be considered whether the order dated 28.7.2008 is illegal or irrational and whether the decision making process was fair and just and also whether the respondents had complied with the principles of natural justice. Learned counsel had raised two issues with regard to non-compliance of the principles of natural justice. The first grievance of the petitioner is that documents relied upon by the respondents were not supplied to the petitioner and the respondents have filed documents along with their counter affidavit which were neither produced during the enquiry nor furnished to the petitioner but have been relied upon and filed along with the counter affidavit. The principles of natural justice are not embodied in a straightjacket formula (depend on the facts of each case and each case has to be decided on its own facts.)
76. Wade in his Administrative Law, 5th Edition at pages 472-475 has observed that it is not possible to lay down rigid rules as to when the principles of natural justice are to apply.
77. In this case no doubt the articles appeared in the Newspaper "The Hindustan Times" which prompted the respondents to issue a show cause notice to the petitioner

as well as pass an order suspending the certificate of the petitioner, but the time was also granted to the petitioner to file a response thereto. A second show cause notice was also issued and further time was granted and petitioner was also called upon to furnish documents. Petitioner was further called upon to file relevant documents vide communication 3.4.2007 and further detail was sought by a communication dated 7.4.2008. The grievance of the petitioner is that respondent had failed to supply documents which were relied upon by the respondents in cancelling the registration certificate and further respondent had relied upon additional documents filed along with counter affidavit. While according to the petitioner despite letters dated 1.6.2008 and 25.6.2008 the documents now filed along with the counter affidavit as R-1, R2, R-4 and R-6 were not supplied to them. The respondents during the course of hearing had disputed that the relevant documents were not supplied to the petitioner.

78. It was contended by counsel for respondent that the additional documents filed by the respondents with the counter affidavit were *primarily* in response to the writ petition, however, document relevant for the purpose of decision by the Protectorate of Immigrants were those

referred to in the order of cancellation. Even otherwise, it was contended that documents filed as Annexures to the counter affidavit are letters written by the petitioner. One of the aims and purposes for issuing a show cause notice to a person is to enable the person to know as to what is to be answered and the precise grievance against such a person. Reading of both the show cause notices would show that the petitioner was served with a copy of the *preliminary* report which has been reproduced above. The petitioner was also served with a show cause notice pertaining to charging a huge amount of money, more than prescribed immigration Rules, 1983, from the workers; sending the workers to a company where they were not provided proper accommodation and food thus violating the terms and conditions of the certifier. The second show cause notice while reiterating the above grounds had also included that the workers were sent on guest workers' visas. Petitioner was also called upon to produce various statutory records which were admittedly not maintained, but were required to be maintained under law. Further copies of the contract were also not available with the petitioner, as they were entered into by foreign recruited agencies as admitted by the petitioner at page 210 of the paper book. This receipt

document was duly acknowledged by the petitioner. The same is reproduced below:

"The Emigration Rules, 1983

Rule 10 (ix)

<u>Requirement</u>	<u>Status</u>
(a) Register prescribed	Maintained
(b) Pre-paid ticket/Advice	<i>Not maintained</i>
(c) Prescribed expenses Register	Maintained
(d) Employer folder	Maintained
(e) Emigrant bio-data	Maintained
(f) Employment Contract of each immigrant	<i>No copies maintained (offer of employer-copy is there)</i>
(g) Original demand letter, Power of attorney	Available.
(h) Advertisements	Original (submitted to POE).
Letters of interview	No
Correspondence with emigrant	No
Original award sheets	No
Persons involved in selection process	Yes, name & address Available.
(i) Register of Visas	Maintained
ix) Monthly return (Form –IV)	490 sent in 03 months – Nov., Dec. & Jan. (06-07) to check if submitted.
xi) Copies of Advertisements	Approved by POE

These statements about status of various requirements as per the Emigration Act/ Rules are recorded during the hearing on 06.06.2008 in my office chamber at 11:00 AM.

(J. PANDA)
Protector General of Emigrants
06.06.2008

Saleem Dewan
A.Singh for R.N. Singh.
Central Govt. Counsel"

79. Learned counsel for the respondent has also drawn attention of the Court to a communication dated 26.6.2008 addressed to the petitioner by the respondent wherein

certain things were pointed out. Communication dated 26.6.2008 reads as under:

“June 26, 2008

To,

Shri Sachin Dewan,
Managing Director,
Dewan Consultants Pvt. Ltd.,
B-708, Sagar Tech Plaza, Sakinaka Junction,
Andheri (E) Mumbai—110 072
Fax: 022-2851 2312.

Subject : Inquiry & Personal Hearing on 27.06.2008 – Reg.

Sir,

I am directed to refer to your fax letter dated 25.06.2008 on the subject cited above. During the hearing on 6.6.2008 in the chamber of the Protector General of Emigrants, you have already taken copy of the list of documents required, which has been signed by you. Further a copy of the Embassy letter was also given to you and your legal counsel has also put it in writing, copy of which is enclosed herewith. As such it is improper on your part to request seeking any further copies and you should come prepared on 27th June, 2008 with all the documents to conclude the enquiry on 27th. You may take note that no further opportunity will be given to you.

Yours faithfully,

(G.KUMAR)

Under Secretary to the Govt. of India.

Encl: As above.”

80. Learned counsel for the respondent has also relied upon a letter written by the petitioner dated 6.6.2008, acknowledging receipt of letter of June, 2008 along with several Annexures while seeking time as their advocate would need instructions from the company. It is stated that two show cause notices were issued, the petitioners were granted time to file their reply, the respondent had called

upon the petitioner to furnish documents, and on the own showing of the petitioner complete documents were not supplied as stated by them in the format under Rule 19 (ix) of the Immigration Rules, 1983.

81. As per rule 10 of the Immigration Rules, 1983 which are quoted below, petitioner was to comply with the terms and conditions:

“10. Terms and conditions of the certificate -

(1) The registration certificate shall be subject to the following terms and conditions

- (i) This certificate shall be valid for a period specified in the certificate;
- (ii) the certificate shall not be transferable;
- (iii) the holder of the certificate shall conduct the business under his own hand and seal;
- (iv) a photocopy of registration certificate shall be displayed prominently at a conspicuously place of business;
- (v) the certificate shall be made available for inspection to the emigration authorities, law enforcement authorities and employers;
- (vi) the certificate shall be produced on demand for satisfaction of the *bona fides* of the recruiting agent, when such demand is made by an emigrant;
- (vii) the holder of the certificate shall conduct the business from the place indicated in certificate. For opening a recruitment centre at a place other than the place indicated in the certificate, the holder of the certificate shall obtain the prior permission of the registering authority or an officer specially authorised by the registering authority;
- (viii) the holder of the certificate shall not employ sub-agents for the purpose of conducting or carrying on his business, and

(ix) the holder of the certificate shall maintain the following records at his place of business and shall make them available for inspection on demand by Protector General of Emigrants or the Protector of Emigrants, -

(a) a register of receipt of charges from emigrants recruited, in the form of an original acquittance roll containing the signature of each emigrant from whom the charge has been received. Each such register shall be with reference to a demand for recruitment. The register shall be maintained as permanent records;

(b) a register and records of the amount and Pre-paid Ticket Advices along with their photo copies received from the employers, identified demand wise;

(c) a register containing details of expenses incurred on the recruitment of emigrants demand wise supported by the documents;

(d) individual folders for each employer whose demands of labour, the holder of the certificate has processed, proposes to process or is processing;

(e) bio-data of each emigrant recruited by the holder of the certificate;

(f) copies of employment contracts of each emigrant as authenticated by the Protector of Emigrants;

(g) original demand letter, power of attorney and correspondence with the employers; (h) all documents relating to the recruitment of emigrants, including office copies of all advertisements issued, letters of interview and correspondence with the applicants, original award sheets leading to the selection, names and addresses of persons involved in the selection process, copies of letters of appointments, trade-testing particulars;

(i) a register of visas received from the employers, giving separate account of block and individual visas;

(j) a register of claims for all compensation, (including for injury or death) made by the emigrants or their dependents, recruited by the holder of the certificate giving the name, address of the emigrant, emigration number, country of employment, nature of compensation (including the details in regard to the circumstances leading to the claim), address of the recipients and the name and address of the employer, and the receipt in original in token of having made the payment of compensation; and

(k) such other records as may be required to be maintained by the registering authority.

(x) the holder of certificate shall file a return every month in Form IV to the Protector General of Emigrants or the Protector of Emigrants specified by the Protector General in this behalf, by the 10th of the succeeding month;

(xi) Copy of each advertisement for recruitment of the emigrants shall be endorsed to the Protector of Emigrants;

(xii) the holder of the certificate shall ensure that the employer observes the terms and conditions of the contracts ; and

(xiii) the holder of the certificate shall not charge any amount from the emigrant towards the repatriation expenses.

(2) The Certificate shall be in Form V.”

82. As already observed in proceedings under Article 226 of the Constitution of India, this Court is not a Court of Appeal and is not concerned with the decision but with the decision making process. Taking into consideration that the

petitioner was issued two show cause notices, granted opportunity to the petitioner to respond, it cannot be said that the principles of natural justice were flouted. Taking into consideration the material placed on record, *prima facie*, I am of the view that material documents were supplied to the petitioner. Even otherwise, on careful reading of the show cause notices and the order passed, it cannot be said that petitioner was not aware of the grounds on which the show cause notice was issued or that petitioner was put to any disadvantage or any prejudice was caused to the rights of the petitioner. Although the respondents would have been well within their rights as per the provisions of Section 14 of the Immigration Act to cancel the licence of the petitioner without issuing any show cause notice, however, the respondents, acting in a fair and just manner by issuing show cause notices and then only passed order of cancellation, hence respondents have not violated the principles of natural justice. According to the impugned order, the petitioner had not maintained the records regarding pre-paid tickets as advised, copy of the record of the employment of each immigrants, copy /letters of interview and correspondence with Immigrants/ original.

83. Having held that there is no infirmity in the order dated 28.7.2008, the only question left for consideration before the court is with regard to the submissions made by counsel for the petitioner that the punishment imposed upon the petitioner is not commensurate with the gravity of the misconduct and the cancellation of the registration is disproportionate to the gravity of the misconduct. In this case once the petitioner learnt about the ill-treatment being meted out to the workman and even prior to the issuing of the show cause notice, admittedly, the Managing Director of the petitioner had visited the office of M/s.Singhal where the workmen had been employed. Even the report received by the Consulate General of India has observed that the employer had improved the conditions of stay and other amenities to the workers. Besides one complaint which has been brought to the notice of the Court which also pertains to the year 1997. The respondents have not been able to show any other complaint pertaining to the petitioner, during the entire period of 30 years of its carrying on the business of recruiting workers. While drawing the attention of the Court to Section 14(6) of the Act, according to which where a certificate has been cancelled, the person shall not be eligible to make any application for certificate until the

expiry of the period of two years from the date of cancellation, learned counsel for the petitioner submitted that the business of the petitioner stands suspended since 10.3.2008, to meet the ends of justice, the punishment should be limited to the period already undergone. It may be observed that the question and the quantum of punishment is a matter which is *primarily* in the domain of the authority, who passes the order. The Apex Court, has also observed that the High Court while exercising its power of judicial review, should normally not substitute its own conclusions on the penalty or the punishment imposed.

84. Both counsel for the petitioner as well as for the respondent had submitted that having regard to the facts and circumstances of this case, should the Court come to the conclusion that the punishment imposed on the petitioner was not commensurate with the gravity of the misconduct rather than remanding the matter back. This Court should keep in view the facts and circumstances of the case and consider such penalty as deemed fit and appropriate. In the case of **B.C. Chaturvedi Vs. UOI** AIR 1996 SC, the Apex Court has held that the High Court would be within its jurisdiction to modify the punishment/ penalty by moulding the relief, which power the Court undoubtedly has when the

punishment /penalty awarded shocks the judicial conscience of the Court. Similar view has also been expressed by the Apex Court in the case of **Rajnit Thakur Vs. UOI** 1982 (2) SCC 611.

85. In the case in hand the first order of suspension was passed as far back as on 10.3.2008 and the order of cancellation was passed on 27.8.2009. According to Section 14(6) of the Act, a person is not permitted to apply for another certificate until the expiry of the period of two years from the date of cancellation.
86. In the light of above, it is to be considered whether the action taken by the respondent is in excess and not commensurate with the gravity of the offence and whether the petitioner would be entitled to apply for a fresh certificate two years after 27.8.2009, while certificate stands suspended from 10.3.2008.
87. Taking into consideration the fact that till date no complaint or any action – Civil or Criminal – has been initiated by any of the workers against the petitioner, the order of cancellation would not commensurate with the gravity of the misconduct more particularly for non-maintenance of the records. The entire business of the petitioner has come to a standstill since 10.03.2008. Accordingly, the

20punishment awarded to the petitioner stands modified to the extent that petitioner shall be permitted to resume its business only after 10.11.2009, which would amount to suspension of work for a period of one year and eight months from the first suspension order i.e. 10.3.2008.

88. Petition stands disposed in above terms.

**G.S. SISTANI
JUDGE**

November 03, 2009
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