

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 25th August, 2011

+ W.P.(C) 5980/2011 & CM No.12092/2011 (for stay).

HABSONS JOBSUP LTD

..... Petitioner

Through: Mr. S. Azad, Mr. Adnan Ahmad,
Ms. Meenu Sharma, Mr. H.O.
Gautam, Ms. Aprajita & Mr.
Shakeel Ahmad, Adv.

versus

UNION OF INDIA AND ANR

..... Respondents

Through: Mr. A.S. Chandhiok, ASG with Mr.
Neeraj Chaudhari, CGSC & Mr.
Khalid Arshad, Adv. for UOI.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Not necessary
2. To be referred to the reporter or not? Not necessary
3. Whether the judgment should be reported in the Digest? Not necessary

RAJIV SAHAI ENDLAW, J.

1. The petitioner had earlier preferred W.P. (C) 5074/2011 challenging the order dated 24th / 28th June, 2011 suspending for a period of 30 days, the Registration Certificate, issued to the petitioner under the Emigration

Act, 1983, permitting the petitioner to recruit workers for overseas employment.

2. The aforesaid writ petition came up before this Court on 20th July, 2011 when Ld. ASG appearing on advance notice stated that the suspension for 30 days was coming to an end on 27th July, 2011 and that under Section 14(2) of the Act the certificate could be suspended for a period of not exceeding 30 days without any show cause notice; it was further contended that the notices given to the petitioner were to show cause against cancellation of Registration Certificate and not to show cause against extension of suspension and thus the fears expressed by the petitioner of extension of suspension were misplaced.

3. On the contention of the counsel for the petitioner on 20th July, 2011 in the earlier writ petition that notwithstanding the reply to the notice to show cause against cancellation having been submitted as far back as in December, 2010, no decision thereon was being taken, the respondents were directed to take a decision in pursuance to the notice to show cause against cancellation within two weeks thereof after giving hearing to the petitioner on 27th July, 2011.

4. This petition has been filed impugning the order dated 27th July, 2011 of the respondents extending the period of suspension till the completion of the proceedings pursuant to the notice to show cause against cancellation and giving further notice to show cause to the petitioner against cancellation.

5. In view of the categorical statement of the respondents contained in the order dated 20th July, 2011 disposing of the earlier writ petition that no notice to show cause against extension of suspension beyond 30 days had been given, it has been enquired from the respondents as to how the suspension could be so extended vide order dated 27th July, 2011 impugned in this petition.

6. The Ld. ASG has contended that Section 14(2) of the Act empowers the respondents to so extend the suspension. The said provision is set-out herein below for ready reference:-

“14(2) Where the registering authority, for reasons to be recorded in writing, is satisfied that pending the consideration of the question of cancelling any certificate on any of the grounds mentioned in sub-section (1) it is necessary so to do, the registering authority may, by order in writing, suspend the operation of the certificate for such period not

exceeding thirty days as may be specified in the order and require the holder of the certificate to show cause, within fifteen days from the date of receipt of such order, as to why the suspension of the certificate should not be extended till the determination of the question as to whether the registration should be cancelled.”

7. It is the contention of the Ld. ASG that once an order for suspension has been made on the basis of the material before the respondents, notice to show cause against cancellation of the Registration Certificate only is to be issued and if on the basis of the material so placed by the noticee in pursuance to the show cause notice, the Registering Authority is satisfied that a case for extension of suspension is made out, such suspension can be extended as has been done in the present case. It is contended that no separate notice to show cause against extension of suspension is required and if it were to be held that such a notice is required to be given, it would defeat the purpose of the Act and the noticee by seeking extension of time for filing the reply to the said notice to show cause against extension of suspension would allow 30 days of suspension to lapse and whereupon the suspension would come to an end.

8. I am unable to agree. The language of Section 14(2) (supra) is

unequivocal. The Registering Authority is empowered to, by recording reasons, suspend without notice for a period not exceeding 30 days and if of the opinion that the suspension would be required to be extended beyond 30 days, is required to, in the order of suspension for 30 days itself, also give notice to show cause within 15 days of the receipt of the said order of suspension, as to why the suspension should not be extended till the determination of the question as to whether the Registration Certificate should be cancelled or not.

9. In the present case admittedly the order of suspension for 30 days challenging which the earlier writ petition was filed did not give such a notice to show cause. Not only so, on 20th July, 2011 when the earlier writ petition of the petitioner was before this Court, a categorical representation was made to this Court that the notice given to the petitioner is to show cause against cancellation and not to show cause against extension of suspension and that the fears of the petitioner of extension of suspension were misplaced.

10. Having taken such a stand, it was not open to the respondents to extend the suspension as has been done vide order dated 27th July, 2011

impugned in this petition. The order dated 27th July, 2011 of extension of suspension is thus not only illegal but also contrary to the stand taken before this Court on 20th July, 2011.

11. The Ld. ASG has however contended that the term of the Registration Certificate of the petitioner has also come to an end on 20th August, 2011.

12. The counsel for the petitioner contends that the petitioner had well in advance applied for extension but the application for extension though has been processed no extension is being granted owing to pendency of the inquiry aforesaid of cancellation of the Registration Certificate.

13. This Court had in the order dated 20th July, 2011 in the earlier writ petition directed that the decision in pursuance to the show cause notice against cancellation to be taken within two weeks therefrom. The status thereof has been enquired into.

14. It is informed that the reply of the petitioner has been forwarded to the complainant who is abroad and a time of three months is sought for taking a decision.

15. No such plea was taken on 20th July, 2011 and no application

seeking extension of time granted in order dated 20th July, 2011 to take decision has been filed. The respondents are thus also in breach of direction contained in order dated 20th July, 2011.

16. It has been the contention of the petitioner that the proceedings for cancellation of its Registration Certificate have been initiated to deprive him from recruiting pursuant to the advertisement of the Government of Saudi Arabia and to benefit the competitors of the petitioner.

17. The explanation for not complying with the direction in the order dated 20th July, 2011 to take a decision within two weeks is not satisfactory. If the complainant is not co-operating in the inquiry, the business of the petitioner cannot be put on hold for the said reason. It is recorded in the order dated 20th July, 2011 in the earlier petition that prior to the show cause notice given on 24th / 28th June, 2011 earlier also a show cause notice on the same facts was given on 25th December, 2010. In fact the Registering Authority has now in the order dated 27th July, 2011 impugned in this petition given yet another notice to show cause to the petitioner as to why the Registration Certificate should not be cancelled. It is the case of the petitioner that the petitioner has already submitted a reply

to the show cause notices long back. It is informed that the hearing as directed has also taken place on 27th July, 2011. There is no basis for giving successive show cause notices to the petitioner.

18. The counsel for the petitioner seeks a direction for permitting the petitioner to continue with his business in pursuance to the Registration Certificate. However such direction cannot be given since as of today there is no Registration Certificate also and till the decision is taken by the respondents and without considering the same on merits.

19. The Ld. ASG has also contended that the order dated 27th July, 2011 is appealable. Similar contention was raised in the earlier writ petition also on 20th July, 2011. However in the view of the peculiar facts hereinabove, the same does not come in the way of this order.

20. Though as aforesaid, the respondents are guilty of acting contrary to the representation to this Court on 20th July, 2011 and of defiance of direction contained in order dated 20th July, 2011 but it is deemed expedient to give another opportunity.

21. In the circumstances, the writ petition is disposed of with a direction to the Registering Authority of the respondents to on or before 9th

September, 2011 pass an order/decision in pursuance to the notice to show cause issued to the petitioner against cancellation of the Registration Certificate and in case the decision is in favour of the petitioner, the application of the petitioner for renewal be processed in accordance with law within two weeks thereafter. Needless to state that if the decision is against the petitioner, the petitioner shall have remedies thereagainst.

Dasti under signature of court master.

CM No.12093/2011 (for exemption).

Allowed, subject to just exceptions.

**RAJIV SAHAI ENDLAW
(JUDGE)**

AUGUST 25, 2011
PP