

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

Date of decision: 29th August, 2011.

+ **W.P.(C) 6284/2011**

M/S J.M. INTERNATIONAL

..... Petitioner

Through: Mr. Rakesh Bhugra & Mr. Ehtasham
Ahmad, Advs.

Versus

UOI AND ANR

..... Respondents

Through: Mr. Neeraj Chaudhary & Mr. Akshay
Chandra, Advs. for UOI.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The petitioner was granted a Registration Certificate under Section 11 of the Emigration Act, 1983 to carry on the business of recruitment of persons for overseas employment. The term of the said certificate was till 4th July, 2010. The petitioner, if desirous of renewal of the said certificate,

was under the first proviso of Section 13 of the Act required to make an application therefor not less than three months prior to the date on which the certificate but for such renewal would cease to be valid. The petitioner was as such required to apply for renewal latest by 4th April, 2010. The petitioner however applied for renewal on 29th May, 2010 i.e. after a delay of 54 days. The application of the petitioner was rejected by the Registering Authority vide order dated 13th July, 2010 for the reason of having not been preferred within time.

2. The second proviso to Section 13 of the Act empowers the Registering Authority to entertain application for renewal made at any time during the period of three months prior to the date on which the certificate would, but for renewal cease to be valid if the applicant satisfies the Registering Authority that he had sufficient cause for not making such application before the said time.

3. It was the case of the petitioner that he could not make an application for renewal within the prescribed time for the reason of being indisposed. The petitioner in this regard filed with the Registering Authority a medical

certificate dated 29th May, 2010 of a private hospital to the effect that he was under treatment for Diabetes Mellitus & Hypertension with acute Abdomen pain from 3rd April, 2010 till 29th May, 2010.

4. The Registering Authority held that the medical certificate was general in nature, not of hospitalization and did not constitute sufficient case for condonation of delay.

5. The petitioner preferred an appeal against the refusal of renewal and which appeal has been dismissed by the Appellate Authority vide order dated 15th March, 2011. The Appellate Authority has also held that the medical certificate does not show that the petitioner was hospitalized or was so incapacitated so as to be unfit to apply for renewal. It was further held that if such grounds were to be entertained, it would defeat the provisions of Section 13 of the Act. Accordingly, the appeal was also dismissed.

6. The counsel for the petitioner relies upon order dated 5th May, 2011 of this Court in W.P.(C) No.2986/2011 titled ***M/s Access Partners Vs. Union of India*** where for the reason of the petitioner therein having produced a medical certificate of suffering from typhoid, the Registering Authority was

directed to consider the application for renewal in accordance with law.

7. The counsel for the respondents appears on advance notice and considering the nature of the relief claimed, need is not felt to issue formal notice or to call for a reply and the counsels have been heard finally.

8. It has been enquired from the counsel for the respondents as to what is the basis for requiring renewal to be applied for three months in advance. The counsel for the respondents informs that the processing of the application requires about three months time and as such, to allow continuity in operations by the certificate holder, renewal is required to be applied for three months in advance.

9. It has further been enquired from the counsel for the respondents as to whether there is any limit on the number of certificates which are granted in a particular city or zone or locality. The answer is in the negative.

10. It thus appears that for the delay if any, it is the certificate holder himself / herself who suffers inasmuch as upon the certificate lapsing, he would not be able to carry on the business. No prejudice is found to be caused to the respondents or to the applicants for overseas employment for

the reason of delay in applying for renewal. It is also not as if the respondents in such a case would be required to process the application before the three months time elapses. In fact upon the application being filed belatedly, the applicant / certificate holder can be imposed with further penalties for any inconvenience which may be caused to the department in this regard. Similarly, if the bank guarantee earlier furnished has lapsed or any other expenses are required to be incurred in processing the application, the same can also be demanded from the applicant.

11. I have in this regard also enquired as to why the petitioner cannot apply for a fresh certificate. As per Section 14(6) of the Act, only in the event of cancellation of a certificate under Section 14(1), is the certificate holder prohibited from applying again, for a period of two years from such cancellation. However, such bar would not apply in the case of a certificate holder who allows his certificate to lapse.

12. The counsel for the petitioner has however stated that the procedure required to be followed on a fresh application would be much longer than the procedure for renewal.

13. It is up to the registering authority to, if of the opinion that owing to the certificate holder having made his application for renewal belatedly and / or having allowed his certificate to lapse and / or sufficiently long time having elapsed, the procedure as in case of a fresh application is required to be followed, to follow the said procedure even while renewing the application, to ensure that all the safeguards which the certificate holder is to observe are observed.

14. Undoubtedly, the medical certificate produced by the petitioner is of a general nature and does not show that he was totally incapacitated from doing anything or that he had shut down his business also at that time. However, it is also not the finding that the medical certificate is false and / or the petitioner was not indisposed. An illness can certainly affect the efficiency of a person.

15. It is therefore deemed expedient to set aside the orders insofar as rejecting the application for renewal for the reason of the petitioner having not applied therefor within the prescribed time and to direct the respondents to deal with the application of the petitioner on merits and in accordance

with the observations hereinabove. The petition is accordingly allowed. The orders aforesaid are set aside. The delay in applying for renewal is condoned. The respondents are now directed to decide the application of the petitioner for renewal on merits.

No order as to costs.

Dasti.

CM No.12628/2011 (u/S 151 CPC for exemption)

Allowed, subject to just exceptions.

**RAJIV SAHAI ENDLAW
(JUDGE)**

AUGUST 29, 2011
'gsr'