

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

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Date of Decision: 08.07.2013

+ W.P.(C) 4231/2013

M/S BALAJI TOUR TRAVELS

..... Petitioner

Through: Mr. Rakesh Bhugra and Mr. E.L. Taslam
Ahmad, Advs.

Versus

UNION OF INDIA & ANR

..... Respondent

Through: Mr. Amrit Pal Singh, CGSC with Mr.
Rupinder Pal Singh, Advs. for R-1, 2

**CORAM:
HON'BLE MR. JUSTICE V.K.JAIN**

JUDGMENT

V.K.JAIN, J. (ORAL)

The petitioner before this Court was issued a Registration Certificate granting him permission to recruit workers for overseas employment during the validity of the said certificate, i.e., up to 14.12.2013. A complaint was received from one Mr. Ashok Kumar stating therein that the petitioner had released advertisement in newspapers to work with (1) M/s Al Tawi Redimix Limited Co., Riyadh and (2) M/s Al Razi Construction Company, Jeddah, Saudi Arabia without having Demand Letters, Power of Attorneys and Specimen Employment Contracts. Also, report were received that the petitioner had lent its registration certificate to an unauthorized person namely Mr. Giridhari Lal Bundela and had aided him in

carrying on activities in violation of Emigration Act, 1983. The Protector General of Emigrants/ Registering Authority issued a notice to the petitioner under Section 14 of the Emigration Act, 1983 requiring him to show cause as to why his registration certificate should not be cancelled.

Vide order dated 21.12.2011, the registration certificate issued to the petitioner was suspended for a period of 30 days with direction to furnish copies of documents such as Power of Attorney, Demand Letter, Employment Contracts etc from the foreign employer for the purpose of Overseas Recruitment and also to show cause as to why the suspension of the registration certificate should not be extended. The petitioner submitted reply dated 6.2.2012 responding to the show cause notice and claimed that he had employed Mr. Giridhari Lal Bundela as General Manager, but later on he came to know that Mr. Giridhari Lal Bundela had published advertisement for recruitment with his name and, therefore, terminated his services with effect from 14.11.2011. Thus stand taken in the reply was that the petitioner had not advertised in newspapers for recruitment but his name had been misused by Mr. Giridhari Lal Bundela.

Another complaint was received from Mr. Nemi Chand and 17 other persons deployed by the petitioner to work with M/s M. Hadi Trading Consulting, Saudi Arabia as 'Mason' alleging therein that they had not been provided with contract job, food and salary by the sponsor. On receipt of the said complaint, another show cause notice dated 3-4.5.2012 was issued to the petitioner requiring him to show cause as to why the certificate should not be cancelled on account of violation of Rule 10(1)(xxii) of Emigration Rule, 1983. The said notice was replied by the petitioner on 25.5.2012. He stated in the reply that Mr. Nemi Chand and others had not been deployed by them but had been deployed by another agency. The reply also referred to another complaint by three persons namely Mr. Sadik Khan, Mr. Phool Chand and Mr. Amar Singh and it was stated that those three persons were

also deployed by another agency M/s Gulfa Manpower Consultant. It was further stated in the reply that out of these three persons, that on receipt of the notice, the petitioner had, on humanitarian ground, contacted these workers and he had come to know that all of them had returned back to India and had no grievance whereas the third one was still working in Saudi Arabia and was happy there.

2. Vide order dated 24.8.2012, the Protector General of Emigration/ Registering Authority, in exercise of the powers conferred upon him by Section 14 of Emigration Act, 1983, directed cancellation of the registration certificate which was granted to the petitioner. He was also directed to show cause as to why the bank guarantee furnished by him should not be forfeited.

3. Being aggrieved from the cancellation of his registration certificate, the petitioner preferred an appeal under Section 23 of Emigration Act, 1983. Vide order dated 20.5.2013, the Appellate Authority rejected the appeal filed by the petitioner. Being aggrieved from rejection of his appeal, the petitioner is before this Court by way of this writ petition.

4. A perusal of the advertisement published in the newspapers would show that Mr. Giridhari Lal Bundela, in his capacity as General Manager of M/s Balaji Tour & Travel had invited applications for recruitment of 50 heavy drivers, 50 masons and 10 tyremen for Al Tavi Redimix Limited Company, Riyadh, Saudi Arabia and invited them for interview, by the representative of Balaji Tour and Travels at its site i.e. Plot No.459, Shaheed Prashant Colony, Jhunjhunu. Vide this very advertisement, the requirement of M/s Al Raji Construction Limited, Saudi Arabia for Mason Block Plaster, Mason Tiles was published and the persons desirous of seeking the employment were asked to come for interview, by the representatives of Balaji Tour and Travels on 26.9.2011 at its site at Plot No.459, Shaheed Prashant Colony, Jhunjhunu. Three telephone numbers were also given on the advertisement, which also carried the address of Imam Nagar, Ward No.5, Bakra

Road, between Road No.2 & 3, Jhunjhunu, Rajasthan, This is the same address which the petitioner has disclosed in the writ petition.

5. The case of the petitioner before the Registering Authority and the Appellate Authority as well as during the course of hearing today was that Mr. Giridhari Lal Bundela had issued the aforesaid advertisement without his permission and on coming to know of the same he had removed Mr. Giridhari Lal Bundela from service. It is not in dispute that Mr. Giridhari Lal Bundela was employed by the petitioner as the General Manager of his concern M/s Balaji Tour and Travels, Jhunjhunu. The advertisement required the persons desirous of seeking employment in Saudi Arabia to come for interview at the site of the petitioner at Plot No.459, Shaheed Prashant Colony, Jhunjhunu. This is not the case of the petitioner that the address given in the advertisement for the purpose of interview was not the address of his site. No such plea was taken in reply to the show cause notice. The persons desirous of seeking employment, pursuant to the aforesaid advertisement, would, therefore, have come for interview at the site of the petitioner i.e. Plot No.459, Shaheed Prashant Colony, Jhunjhunu. Therefore, it would be difficult to accept the plea that the aforesaid advertisement was issued by Mr. Giridhari Lal Bundela without permission and knowledge of the petitioner. The petitioner has placed reliance upon the complaint dated 2.2.2012 lodged by him with Police Station Kotwali, Jhunjhunu stating therein that his company M/s Balaji Tours and Travels had got the advertisement published for employment abroad, in the said advertisement, Mr. Giridhari Lal Bundela had represented himself to be the General Manager of his firm and he had removed Mr. Giridhari Lal Bundela from service on 14.11.2011. This was not the allegation in this complaint that the aforesaid advertisement was got published by Mr. Giridhari Lal Bundela without his permission and knowledge. In any case, this complaint came to be lodged more than four months after the aforesaid advertisement came to be published and more

than three months after the show cause notice dated 21.10.2011 was issued to the petitioner. If the aforesaid advertisement was got published by Mr. Giridhari Lal Bundela without permission or knowledge of the petitioner, he would have lodged the report against him and would have removed him from service immediately on publication of the said advertisement. Making complaint to the police after receipt of show cause notice dated 29.10.2011 and passing of suspension order dated 21.12.2011 was nothing but an attempt to create a defence to the show cause notice issued to the petitioner. Even otherwise, it is difficult to accept that Mr. Giridhari Lal Bundela who besides being an employee also happens to be a relative of the petitioner had issued advertisement and invited a large number of people for interview, at the site of the petitioner without the petitioner coming to know of it. Therefore, it would not be possible to accept the contention that the petitioner had no role to play in issuing of the advertisement inviting applications for employment with (1) M/s Al Tawi Redimix Limited Co., Riyadh and (2) M/s Al Razi Construction Company, Jeddah, Saudi Arabia.

6. Section 14 of Emigration Act, 1983, to the extent it is relevant, reads as under:

“14. Cancellation, suspension, etc., of a certificate (1) The registering authority may cancel any certificate on anyone or more of the following grounds and on no other ground, namely;—

(a) xx;

(b) xx;

(c)xx;

(d)xx;

(e) xx;

(f) that the holder of the certificate has violated any of the terms and conditions of the certificate;

(g) xx.”

7. Rule 10 of Emigration Rules, 1983 prescribes the terms and conditions subject to which the registration certificate shall be issued. One of the conditions

prescribed in the said Rule is that the holder of the certificate shall provide details of employment, including the contract conditions to the intending emigrants before recruitment. Another condition prescribed in this regard is that the holder of the certificate shall file copies of all the advertisements for recruitment to the Protector General of Emigration immediately after their publication or release. Admittedly, the petitioner did not provide details of employment including the contract conditions to the intending emigrants before recruitment. This is not the case of the petitioner that the said details were actually provided, his contention being that even the advertisement was issued without his knowledge and consent. This is also not the case of the petitioner that he had filed copy of the advertisement with the Protector General of Emigration. Therefore, the petitioner clearly committed breach of the terms and conditions subject to which Registration Certificate was issued to him by the Registering Authority. Therefore, in exercise of powers conferred upon him by Section 14 of the Emigration Act, 1983, the Registering Authority was competent to cancel the registration certificate.

8. In any case, disputed questions of facts cannot be adjudicated in a writ petition in case such adjudication involves recording of evidence. The case of the petitioner is that Mr. Giridhari Lal Bundela had issued the impugned advertisement without his knowledge and consent. Whether Mr. Giridhari Lal Bundela acted of his own or with the consent and for the benefit of the petitioner, being a disputed question of fact cannot be gone into in a writ petition. Once the court finds that the order cancelling the registration certificate has been passed after giving show cause notice and opportunity of hearing to the registrant and no illegality or perversity in the order cancelling the Registration Certificate is made out, it would not be open to the Court to go into such disputed question of facts and take a view contrary to

the view taken by the Registering Authority.

For the reasons stated hereinabove, I find no merit in this petition and the same is hereby dismissed. There shall be no orders as to costs.

V.K. JAIN, J

JULY 08 , 2013

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