

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

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Date of Decision: 03.09.2013

+ W.P.(C) 6779/2012 & CM 17756/2012 (stay)

M/S EMREE INTERNATIONAL PVT LTD

..... Petitioner

Through: Dr. Mathew Kuzhalsadan and Mr. Abeer, Advs.

versus

UNION OF INDIA AND ANR

..... Respondents

Through: Mr. Amrit Pal Singh, CGSC for R-1 & 2

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The petitioner before this Court is an overseas consultant which was issued registration certificate under Section 10 of the Emigration Act, 1983 to commence the business of recruitment, for deployment of Indian workers with foreign employers. As per the terms of the certificate, the petitioner was to deploy 300 workers during the period of the said registration. The registration issued to the petitioner expired on 2.4.2011. Vide application dated 28.12.2010, the petitioner applied for renewal of the registration certificate issued to him under Section 10 of the aforesaid Act. Vide order dated 9.5.2011, the application of the petitioner for renewal of the registration certificate was rejected by the Protector General of Emigrants/ Registering Authority. The communication whereby the application for renewal of the certificate was rejected, *inter alia*, reads as under:

“...In your case, the Registration Certificate was issued on 3.7.2006, with a deployment quota of 300 workers. As seen from your E.C. Book submitted along with your present application for renewal, your agency has deployed only 19 ECR workers. During the current

validity which show poor performance. As such keeping in view the provisions of Section 11 & 13 of the Emigration Act, 1983, your application for renewal of Registration Certificate is rejected by the Protector General of Emigrants/ Registering Authority.”

2. Being aggrieved from the decision of the Registering Authority, the petitioner preferred an appeal under Section 23 of the Emigration Act, 1983. The said appeal was dismissed by the Appellate Authority vide order dated 20.6.2012, which, *inter alia*, reads as under:

“...As ascertained, you had deployed only 22 ECR and 39 ECNR (Total 61 workers) during the last validity of your Registration Certificate i.e. from 3.7.2006 to 2.4.2011. Therefore, you had not made minimum deployment (1/3rd of the capacity of RC) during the last validity of RC. Further, you have also violated Emigration Act/ Rules by sending ECNR candidates after the expiry of RC and furnishing false statement/ documents before POE of deployments. Keeping in view of these aspects you have not been found fit for renewal of your Registration Certificate in compliance with direction of Appellate Authority.”

3. The OM dated 4.7.2008 issued by Government of India, with respect to renewal of the registration certificate issued under Section 10 of the Emigration Act, to the extent it is relevant, reads as under:

- (i) Deployment of one-third of the capacity means that the Recruiting Agent should have deployed one third of the capacity of workers in the Registration Certificate is 300 workers, its one-third will be 100 workers and if the capacity is 1000 or 1000+ workers, its one-third will come to 330 workers.
- (ii) Initially, this calculation used to be done for the validity period after last renewal, i.e. current validity whose extension

is sought through renewal. However, on the representation from various quarters, deployment of the workers as one-third is taken into account from the date of issuance of the Registration Certificate. For example, if renewal is sought now for Registration Certificate which has been issued during the year 1996 for 300 workers, its one third will be 100 workers, and in case, the capacity of workers is enhanced from 300 to 1000 or 1000+ workers during the year say 2000, its one third will be taken as 330 workers computed from 1996 onwards.

- (iii) However, deployment during current validity, extension of which is sought through renewal application, the performance should be at least ten percent of the Registration Certificate capacity (30 or 100 as the case may be).

4. It would thus been seen that in order to be eligible for renewal of registration certificate, the petitioner should have deployed at least 1/3rd of the capacity of workers stipulated in the registration certificate. Since the capacity of the petitioner as per the registration certificate was 300 workers, it ought to have at least deployed 100 workers during the validity period of the registration certificate.

5. The case of the respondents, as disclosed in the counter affidavit is that though in its application for renewal, the petitioner claimed deployment of 45 workers, the same could be verified only in respect of 19 ECR deployments and there was proof furnished in respect of 26 ECNR deployments claimed by the petitioner and, therefore, the Registering Authority rejected the request for renewal on account of poor performance of the petitioner. The counter affidavit further shows that on the instructions of the Appellate Authority, a fresh verification of the deployment claimed by the petitioner was carried out. A report in this regard was called from POE, Chennai, which vide its letter dated 20.4.2012 informed as under:

“The proprietor of the firm M/s Emree International, Coimbatore has produced all the relevant documents relating to the total deployment of the 104 cases (both ECR and ECNR) before the undersigned as claimed in his appeal. All the relevant DL, POA, work contract and visa pertaining to these 104 deployment cases (both ECR & ECNR) have been verified. However, out of this 104, twenty two candidates were cleared through Protector of Emigrants, Chennai as ECR candidates during 2009. The remaining 82 candidates were shown as ECNR candidates who have been deployed directly by the RA. On verification of the list provided by the RA it reveals 27 candidates were deployed to Maldives after the expiry of the validity of RC i.e. after 2.4.2011. Further, on the remaining 55 candidates shown as ECNR, the clearance status or otherwise was checked by the undersigned by calling for details from all other Protector of Emigrants which revealed 16 candidates have been given Emigration clearance from Protector of Emigrant, Chennai and Protector of Emigrant, Cochin through other RAs for the same firm on same visa in the same period of deployment as mentioned by the RA, (Protector of Emigrant, Delhi and Chandigarh did not respond to the details called for by the undersigned so far). The above revealed that the RA is making false claims before the Appellate Authority as well as the Registering Authority which should not be encouraged. Hence, the RA has lost trustworthiness and he is not a fit person to hold the RC anymore.”

It was on the basis of the fresh verification that the Appellate Authority rejected the appeal filed by the petitioner.

6. According to the petitioner, it had deployed as many as 104 workers which include ECR as well as ECNR workers. The verification carried out by the Protector of Emigrants, Chennai would show that out of these 104 persons, 22 were cleared through that office. As regards remaining 82 candidates shown as ECNR candidates which the petitioner claims to have deployed, the said office on carrying out verification found that they included 27 candidates who were deployed to Maldives after expiry of the validity of the registration certificate i.e. 2.4.2011. It was further found that out of the remaining 55 ECNR candidates, 16 were such candidates who were given clearance by Protector of Emigration, Chennai, Protector of Cochin through other recruiting agents for the same firm and for the same period of deployment.

7. Thus, the petitioner did not deploy at least 100 persons during the validity of the registration which was valid only till 2.4.2011. The learned counsel for the petitioner submits that since the registration certificate was extended till 30.6.2011, the deployment made till 30.6.2011 ought to be considered for the purpose of renewal of the registration certificate. Even if that be so, the petitioner is not entitled to renewal of the registration certificate for the simple reason that if the names of 16 candidates, who were granted emigration clearance through other recruiting agents are deleted from the list of 104 workers claimed by the petitioner, the number of persons deployed through the petitioner comes to 88 which falls well below the requirement of at least 100 workers during validity of the registration certificate. The petitioner cannot claim any benefit for deployment of the workers which were granted clearance through other recruiting agents.

The learned counsel for the petitioner states that the clearance through other recruiting agents had to be taken for the reason that the registration of the petitioner had expired. The learned counsel further submits that though visa for these persons were obtained prior to June, 2011, the actual deployment took place later. If that be so, no benefit in respect of those workers can be claimed by the petitioner for the reason that under the guidelines it is actual deployment, which needs to be considered and in case the

actual deployment was less than 1/3rd of the licensed capacity, the licensee is not entitled for renewal of the license.

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

V.K. JAIN, J

SEPTEMBER 03, 2013/*rd*