AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8038 OF 2013

MR. MOHAMMED ALAM MIRZA,
Proprietor – M/s. Tarmac Tours & Travels,
Aged 53 years, Indian Nationa, Having his
office at 7th, Umarkhadi Cross Lane, Near
Gulshan Medical, Dongri, Mumbai – 400 009 …Petitioner

Versus

1. **THE SECRETARY (APPELLATE AUTHORITY)**
Government of India, Ministry of Overseas Indian Affairs (Vigilance Section), Akbar Bhavan, Chanakyapuri, New Delhi.

2. **PROTECTOR GENERAL OF EMIGRANTS (REGISTERING AUTHORITY)**
Office of the Protector General of Emigrants, Ministry of Overseas Indian Affairs (Vigilance Section), Akbar Bhavan, Chanakyapuri, New Delhi.

3. **PROTECTOR OF EMIGRANTS,**
Bldg. "E", Khira Nagar, S.V. Road, Santa Cruz (W), Mumbai – 400 039.

4. **UNION OF INDIA,**
Marine Lines, Ayakar Bhavan, Mumbai ...Respondents.

Shri S.G. Abbas Kazmi, for the Petitioner.
Dr. G.R. Sharma, with Mrs. Purnima Awasthi, for the Respondents.

CORAM:	**A.S. OKA & G.S. PATEL, JJ.**
RESERVED ON :	**2nd December 2015**
PRONOUNCED ON:	**15th December 2015**

<u>JUDGMENT:</u> (Per G.S. Patel, J.)

1. By the order of 23rd November 2015, parties were put to notice that the Petition would be taken up for final disposal at the stage of admission on 1st December 2015. Hence, Rule. The Respondents waive service. By consent, Rule made returnable forthwith. The Petition is called out and taken up for hearing and final disposal.

2. The challenge in this Petition is to an order dated 2nd July 2013 passed by the 1st Respondent, the Appellate Authority, Ministry of Overseas Indian Affairs, under the provisions of the Emigration Act, 1983 ("**the Emigration Act**").

3. These are the facts. The Petitioner is engaged in the business of sourcing manpower and personnel and providing recruitment services. He claims to have been doing this business for over 30 years. He says he earlier held a Registration Certificate No. 140/BOM/Per/1000+/3/436/84 under the Emigration Act, 1983 in the name of M/s. Arman Consultants, Mumbai.

4. On 5th August 2011, the Petitioner applied for Registration Certificate under the Emigration Act in his own name. The application requires, among other things, two forms, viz., Form "1" and Form "4", and a business activity sheet. In these documents, information regarding the business conducted by the applicant during the past five years must be mentioned. The Petitioner's application was made to the 2nd Respondent, the Protector General of Emigration (Registering Authority) of the Ministry of Overseas Indian Affairs, Government of India. In exercise of his powers under Section 11(2)(a) of the Emigration Act, the 2nd Respondent returned the Petitioner's application. A copy of the Petitioner's application is Exhibit "A" to this Petition and a copy of the 2nd Respondent's order dated 1st February 2012 returning that application is at Exhibit "B".

5. The reason given for this return by the 2nd Respondent was that in Form "1" accompanying his application and in his Affidavit dated 19th July 2011 sworn before an Executive Magistrate, the Petitioner had not disclosed the fact that he had previous registration in the name of M/s. Arman Consultants. The 2nd Respondent made a further observation that for this reason, the Petitioner did not "appear to be trustworthy".

6. The Petitioner filed an Appeal under Section 23 of the Emigration Act, 1983 to the 1st Respondent. He also filed a rectified or amended application form supported by an affidavit. Copies of these are annexed as Exhibit "C" to the Petition. On 20th September 2012, the 1st Respondent (the Appellate Authority), remanded the case for consideration. A copy of the order dated

20th September 2012 is at Exhibit "D" to the Petition at page 25. The order notes that before the Appellate Authority the Petitioner admitted his inadvertence in not mentioning his earlier Registration Certificate in Forms "1" and "4". The Appellate Authority accepted that the information was, however, provided in the third document, and seems also to have accepted the argument that it was from this third document alone that the 2nd Respondent even learnt of the Petitioner's previous registration. Before the Appellate Authority it was argued that, for these reasons, no *mens rea* could be attributed to the Petitioner. All of these arguments found favour with the Appellate Authority which held that they were reasonable. The Appellate Authority then remanded the matter to the Protector General of Emigration, the 2nd Respondent, who was directed to consider:

> "(a) Whether the application of the Appellant would have been rejected had he pointed out at all three places that he had held an R.C. earlier. (Appellant pointed out and Respondent did not contradict that the said R.C. had been transferred to his elder brother in 2009, whereas the impugned order is dated 1st February, 2012.)
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> (b) Given that this fact was not stated at two of the three places required, is this action is so serious that the Appellant should be debarred from applying afresh for a new R.C.?"

7. The Appellate Authority specifically found that while there was indeed a technical fault in the application, the 1st Respondent should consider the two issues set out above, and should it be found that the Petitioner's application was complete in every other respect, the 1st Respondent should consider granting the application for a fresh Registration Certificate within 90 days.

8. On this remand, the 1st Respondent passed an order dated 1st November 2012. A copy of this is at Exhibit "E" to the Petition. It is sufficient to note that this order is most unsatisfactory. The 1st Respondent did not address the specific questions framed by the Appellate Authority. The observations made by the Appellate Authority were entirely overlooked. The earlier decision was simply reiterated in the order, the relevant part of which reads:

> "Whereas, the undersigned, in view of the order of the Appellate Authority wherein the Appellate Authority has determined that that "the Applicant's application for an R.C. should therefore be given the same treatment as applications submitted by those against whom cases of cheating etc. have been established" determines that the Applicant agency is not fit to be considered for grant of Registration Certificate under the Emigration Act, 1983. (a) and (b) above have also been examined afresh and the action of the application is found to be in serious violation of the Emigration Act and, therefore, does not meet the criteria of trustworthiness as envisaged in the Act."

9. The Petitioner yet again moved the Appellate Authority, the 1st Respondent. On 2nd July 2013, the 1st Respondent passed the impugned order, a copy of which is at Exhibit "F" to the Petition (page 32). We are indeed at a loss to understand how the Appellate Authority could have arrived at the conclusions in the two paragraphs, both numbered 2 at page 33 of the Petition. The Appellate Authority did not consider the past history of the matter. It straightaway arrived at a conclusion that the information was withheld; that this was not an act of omission or inadvertence but an act of commission; and that the Petitioner had deliberately made a false statement including on Affidavit. Not only was the Appeal dismissed, but the 2nd Respondent was also directed to file an FIR filed against the Petitioner for making a false Affidavit.

10. In our view, the impugned order is wholly unsustainable. None of the observations of the Appellate Authority in the first of the two Appeals filed by the Petitioner have been considered in the second round. In the first of the two Appeals, the Appellate Authority accepted the Petitioner's plea of inadvertence and, more importantly, the fact that but for the disclosure by the Petitioner himself in one of the three necessary documents, the authorities would never have known of the previous registration. On its own, that eliminates any question of the non-disclosure being an act of commission, deliberate, not inadvertent or false. Both the questions framed by the Appellate Authority in the first Appeal were correctly placed and were required to be addressed.

11. On remand, the 2nd Respondent did not address question (a) framed in the first appellate round. It not also address the question of whether the matter is or was sufficiently serious to warrant the denial of a Registration Certificate. In the impugned order, the Appellate Authority hearing the second round of Appeal ought to have appreciated these aspects. It was not open to the 1st and 2nd Respondents to entirely give a go-bye to those observations made while remanding the matter. Both issues were required to be considered by the 2nd Respondent, and on its failure to do so, the 1st Respondent was bound to either allow the appeal or to direct a further remand.

12. In the result, the Petition succeeds and Rule is made absolute in terms of prayer clauses (b) and (c). Given the nature of the enquiry, we make it clear that we have not directed the grant of a certificate. We have only directed the 2nd Respondent to consider the Petitioner's application afresh. In doing so, the 2nd Respondent shall not in any way be influenced by the impugned order dated 2nd July 2013, but shall specifically address the two questions framed on 20th September 2012. The 2nd Respondent shall render its decision within a period of four weeks from today. All the rights and contentions of the Petitioner are specifically kept open. If the 2nd Respondent rejects the Petitioner's application, the Petitioner shall be at liberty to pursue his remedies in law. The Petition is disposed of in these terms, with no order as to costs.

(G. S. PATEL, J.) **(A.S. OKA, J.)**