

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 23RD DAY OF JANUARY 2015/3RD VAISAKA 1937

WP(C) .No. 8722 of 2013 (M)

PETITIONERS:

M/S. SALAM NAMASTHE TOURS & TRAVELS
KAMALA BUILDING, SANKAR ROAD, SASTHAMANGALAM
THIRUVANANTHAPURAM, KERALA-676010
REPRESENTED BY ITS MANAGING PARTNER
MR.AJITHKUMAR.T.S, AGED 42 YEARS
S/O.SUBRAMANIAM CHETTIAR, RESIDING AT ANIL NIVAS
AMBALATHARA, THIRUVANANTHAPURAM.

BY ADVS.SRI.MATHEW A KUZHALANADAN
SRI.K.ABDUL JAWAD

RESPONDENTS:

1. PROTECTOR GENERAL OF EMIGRANTS
MINISTRY OF OVERSEAS INDIAN AFFAIRS, AKBAR BHAVAN
CHANAKYAPURI, NEW DELHI-110021.

2. THE SECRETARY,
MINISTRY OF OVERSEAS INDIAN AFFAIRS, AKBAR BHAVAN
CHANAKYAPURI, NEW DELHI-110021.

R1,R2 BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA
R1 & 2 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
23-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS:

EXHIBIT-P1 TRUE COPY OF THE REGISTRATION CERTIFICATE NO.4905/KER/PART/1000/5/7474/2006 DATED 16-01-2007.

EXHIBIT-P2 TRUE COPY OF THE MEDICAL CERTIFICATE DATED 05-01-2012 ISSUED BY THE DR.K.REGHUNADAN TO THE PETITIONER.

EXHIBIT-P3 TRUE COPY OF THE EXTENSION OF BANK GUARANTEE NO.58/01 FOR RS.5 LAKHS DATED 29/11/2006 AND THE BANK GUARANTEE NO.63/05 FOR RS.15 LAKHS ALONG WITH ITS CONFIRMATION LETTER DATED 12/01/2012 (AND THE D.D.NO.133504 DATED 12/01/2012 FOR RS.25,000'-TOWARDS FEE FOR RENEWAL)

EXHIBIT-P4 TRUE COPY OF THE RENEWAL APPLICATION DATED 13/01/2012 SUBMITTED BY THE PETITIONER AT THE RESPONDENTS TRIVANDRUM OFFICE.

EXHIBIT-P5 TRUE COPY OF THE POLICE VERIFICATION REPORT DATED 10/02/2012

EXHIBIT-P6 TRUE COPY OF THE LETTER DATED 01/03/2012 SENT BY THE RESPONDENT TO THE PETITIONER.

EXHIBIT-P7 TRUE COPY OF THE APPEAL DATED 09/04/2012 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXHIBIT-P8 TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 1ST RESPONDENT.

EXHIBIT-P9 TRUE COPY OF THE ORDER DATED 29.8.2012 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT(S) ' EXHIBITS:NIL

True Copy/

P A to Judge

A.MUHAMED MUSTAQUE, J.
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W.P(C).No.8722 of 2013
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Dated this the 23rd day of January, 2015

JUDGMENT

Petitioner was holding a Registration Certificate under the Emigration Act 1983 as Recruiting Agent. This was valid up to 15.01.2012 with 1000 workers quota for deployment. The request of the petitioner for renewal of Registration Certificate was rejected by the Registering Authority vide order dated 01.03.2012 as the petitioner has not furnished his application for renewal of registration before the first respondent three months prior to the date of expiry of the Registration Certificate under Sec.13 of the Emigration Act 1983.

2. As per Sec.13 of Emigration Act, petitioner has to submit his application on 14.10.2011 or before 15.01.2012 with an application to condone delay. Petitioner claims that along with bank guarantee he had submitted his renewal application to the respondents office at Thiruvananthapuram on 13.01.2012. Petitioner also submits that he has received a favourable recommendation from the police authorities. Petitioner's application has been rejected as per Ext.P6. It is noted in Ext.P6 that petitioner's application was received on 23.01.2012 after expiry of

the registration certificate. Challenging Ext.P6, petitioner filed an appeal. Ext.P9 is the order passed in appeal by the Appellate Authority. Appellate Authority also affirmed the order of the original authority in rejecting the application. Appellate Authority thereon noted that the Authority does not have power to condone delay to accept the application after the expiry of the period of Registration Certificate.

3. Statement has been filed on behalf of the respondent. It is stated that petitioner has furnished his application in the office of the Protector of Emigrants, Thiruvananthapuram only on 23.01.2012. It is contended that Registering Authority has no power to take a decision for renewal after the expiry of registration certificate.

4. It is apposite to refer to Sec.13 of emigration for renewal of application. It reads as follows:

“Renewal of Registration

A certificate may be renewed from time to time and the provisions of this Act and the rules made thereunder (including provisions as to fees) shall apply to the renewal of a certificate as they apply to the issue thereof:

Provided that no certificate shall be renewed unless, the application for its renewal is made not

less than three months prior to the date on which the certificate, would, but for such renewal, cease to be valid.

Provided further that registering authority may entertain an application for the renewal of a certificate which has been made at any time during the period of three months prior to the date on which the certificate would, but for such 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 period."

5. First proviso to Sec.13 mandates that application for renewal shall be made not less than three months prior to the date on which the certificate cease to be valid. Here, admittedly, registration certificate was valid upto 15.01.2012. Second proviso to Sec.13 enables the authority to entertain the application any time during the period of three months prior to the date of expiry on being satisfied with sufficient cause for not making application within the said period. Thus, it is clear that application has to be submitted atleast before 15.01.2012.

6. Petitioner's case is that he had submitted the application on 13.01.2012. Petitioner relies on Ext.P3 bank guarantee for ₹15,00,000/- and also demand draft for ₹25,000/- towards renewal of registration certificate. However,

respondents contend that they have received application only on 23.01.2012. Therefore, essentially the question is whether the authority received the application before 15.01.2012, date on which the certificate expired. If petitioner's application was received before 15.01.2012, the only question that arise for consideration for the authority is whether the petitioner has made out a case for condonation of delay. It has to be noted that 13.01.2012 was Friday. The Thiruvananthapuram office stated that they received it only on 23.01.2012. The Appellate Authority entertained a doubt whether this was submitted on 13.01.2012 and recorded as follows.

“From the official records it is seen that the appellant had made an on line application on the 15th January, 2012, which was a Sunday. In this day and age, all offices should move towards accepting applications on line and the office of PoE/PGE cannot be an exception. However, to the best of my knowledge (and that of the learned counsels for the appellant and the respondent) at present there is no system in India by which a bank guarantee can be transferred online. Therefore, a hard copy of the application complete in all respects, including documents that at present cannot be transferred/submitted on line, should have reached the PoE office the

next day, the 16th January, 2012. The appellant had not proved that this has been done, therefore, the appellant was given fifteen days' time to prove that this has been done."

7. The Appellate Authority adverted that it might have received on 16.01.2012. The facts in this case clearly indicates that renewed bank guarantee was obtained on 13.01.2012. 14th and 15th January 2012 were holidays, no doubt, no application would have been made on those days. Therefore, the application might have received the office at Thiruvananthapuram on 16.01.2012. Since there is no system of acknowledging the receipt of application, the normal course of the business of the office at Thiruvananthapuram might have noticed that it was received only on 23.01.2012. If petitioner had obtained the bank guarantee and DD before 15.01.2012, I do not see any reason for making any application after 15.01.2012. Therefore, in all probable sense as pointed out by the appellate authority, application might have received on 16.01.2012. It is the settled principle of law that, if last date of expiry of limitation is a holiday, next working day would be reckoned as last day of limitation. It is equally settled law that date of commencement of the day is excluded for the purpose of limitation (See Sections 9 and 10 of

the General Clause Act 1897). Therefore, treating the application as received on 16.01.2012 within the time, I am of the view that Registering Authority has to consider petitioner's reasons for condonation of delay for not making renewal application within time. The impugned orders are set aside. Registering Authority is directed to consider the application of the petitioner for condonation of delay, treating the application received within time. Needful shall be done within a period of four weeks from the date of receipt of a copy of this judgment.

The Writ Petition is disposed of.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.