IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

WP(C).No. 21897 of 2012 (J)

PETITIONER(S):

M/S. STAR GATE TRAVEL BUREAU
TC.NO.9/2519-2, NEAR INDIAN BHAVAN, VELLAYAMBALAM
TRIVANDRUM-695 010, REPRESENTED BY ITS PROPRIETOR
MUHAMMED JALEEL K.E.

BY ADVS.SRI.R.ANIL
SRI.SUJEESH MENON V.B.
SRI.T.ANIL KUMAR
SRI.MANU TOM

RESPONDENT(S):
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1. THE SECRETARY TO GOVERNMENT
MINISTRY OF OVERSEAS INDIAN AFFAIRS
GOVERNMENT OF INDIA, AKBAR BHAVAN, SATYA MARG
CHANKAYAPURI, NEW DELHI-110 021.

2. THE PROTECTOR GENERAL OF EMIGRANTS,
OFFICE OF THE PROTECTOR GENERAL OF EMIGRANTS
AKBAR BHAVAN, SATYA MARG, CHANKAYAPURAI
NEW DELHI-110 021.

3. THE INDIAN OVERSEAS BANK
P.B.NO.282, YWCA BUILDING, M.G.ROAD
TRIVANDRUM-695 001, REPRESENTED BY ITS CHIEF MANAGER.

4. THE SOUTH INDIAN BANK LTD
TRIVANDRUM MAIN BRANCH, SPENCER JUNCTION
TRIVANDRUM-695 039
REPRESENTED BY ITS CHIEF MANAGER.

R1 & R2 BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA
R3 BY ADV. SRI.LEO GEORGE,SC,INDIAN OVERSEAS BANK
R1 & R2 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R4 BY SRI.K.K.JOHN,STANDING COUNSEL,SOUTH INDIAN BANK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 21897 of 2012 (J)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	:	COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WPC NO.23549 OF 2011 DATED 31.8.2011.
EXHIBIT P2	:	COPY OF THE ORDER OF APPEALLATE AUTHORITY DATED 23.12.2011.
EXHIBIT P3	:	COPY OF THE ORDER OF 2ND RESPONDENT INVOKING THE BANK GUARANTEE FURNISHED BY THE PETITIONER DATED 4.5.2012.
EXHIBIT P4	:	COPY OF THE MEMORANDUM OF APPEAL DATED 15.5.2012 FILED BY THE PETITIONER BEFORE IST RESPONDENT.
EXHIBIT P5	:	COPY OF THE ORDER OF RESPONDENT NO.1 DATED 30.08.2012.

RESPONDENTS' EXHIBITS: N I L

//TRUE COPY//

P.A.TO JUDGE

JV

A.M.SHAFFIQUE, J

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W.P.C.No.21897 of 2012

Dated this the 4th day of December 2015

J U D G M E N T

This writ petition has been filed challenging Exts.P3 and P5 by which the authorities have invoked the bank guarantee submitted by the petitioner.

2. Short facts involved in the writ petition would disclose that the petitioner was given licence to function as a Recruiting Agent under the provisions of the Emigration Act, 1983 (hereinafter referred to as 'the Act'). While granting the agency, petitioner had to furnish bank guarantee as security for complying with the terms and conditions of the licence and to comply with the provisions of the Statute. According to the petitioner, he was complying with the terms of the licence without any demur. On 03/06/2006, Central Bureau of Investigation (for short 'CBI') registered a case against the Protector General of Emigrants, Thiruananthapuram, its staff members and a few recruiting agents. According to the petitioner, he was not an accused. Subsequently, the proprietor of the petitioner's establishment and some other recruiting agents were also included in the array of

parties. CBI filed a final report charge sheeting 25 accused persons and the petitioner is also one of the accused. The licence granted to the petitioner was suspended and subsequently cancelled, which was confirmed by the appellate authority. Petitioner was thereafter served with a notice as to why the bank guarantee should not be invoked. The orders were issued invoking the bank guarantee against which the petitioner preferred an appeal. The appeal was disposed of as per Ext.P2 dated 23/12/2011 wherein directions have been issued to the original authorities to reconsider the matter afresh. Paragraphs 7 to 9 of the order is relevant, which read as under:

> *"7. The PGE is directed to do so before forfeiting the bank guarantee, which is the security referred to in this case. The shadow area referred to above is that Rule 23 explicitly mentions the utilization of the security in part or whole. Read with Section 11(3) referred to above, this will imply that the bank guarantee can only be forfeited, to quote one part of Section 11(3), "for meeting expenses which have to be incurred in the event of the repatriation to India of any of the emigrants who may be*

recruited by the applicant." If we read the whole of the Rule mentioned but only part of the Section mentioned, the appellant's plea that the bank guarantee can only be forfeited for meeting the expenses referred to would seem plausible.

8. However, an earlier part of the said Section 11(3) also lays down that the "security" i.e. bank guarantee in this case is also meant for "securing the due performance of the terms and conditions of [the registration certificate].... and for securing compliance with the provisions of [Emigration Act, 1983]..."

Thus, the Act provides, even if the rules do not, the forfeiture of the bank guarantee for non-compliance and lack of due performance.

9. Therefore, instead of quashing the order of the PGE in this case, this authority is referring the case back to PGE with the direction that (a) the non-compliance and lack of due performance in this case may be spelt out in writing while taking a decision on the forfeiture or otherwise of the security in part or whole; and (b) as required by Rule 23, due notice and an opportunity to represent his case may be given by order in writing to the appellant."

10. On remand of the matter, again it was heard and the Protector General of Emigrants, by Ext.P3 order dated 04/05/2012, confirmed the demand by directing invocation of the bank guarantee. Reference is made to paragraphs 10 and 11 which reads as under:

> *"10. Whereas, the ex-RA could produce nothing in support of his claim and failed to refute the facts and findings contained in the order dated 24th August, 2011 of the Protector of General of Emigrants which is violation of the provisions of Section 11(3) of the Emigration Act, 1983 which reads as follows:*
>
> *"The registering Authority shall, for securing the due performance of the terms and conditions of certificate proposed to be issued by it under sub-section (2) to an applicant and for securing compliance with the provisions of this Act and the rules made thereunder...."*
>
> *Further, it is not known at this point of time as to in how many cases the RA has flattered and the emigrants have suffered at the hands of malpractices resorted to by the RA. All such cases may entail financial liability as and when arisen/decided. Thus, under the circumstances it*

> *cannot be allowed, in public interest, that such violators of law escape their financial liability. Hence, security amount in the shape of bank guarantee requires to be forfeited before it lapses.*
>
> *11. Now, therefore, the undersigned in exercise of the Powers conferred on him under Rule 23 of the Emigration Rules, 1983 hereby orders and requests the Indian Overseas Bank, P.B.No.282, Y.M.C.A.Building, M.G.Road, Thiruvananthapuram-695 001 and The South Indian Bank Ltd., Trivandrum, Main Branch Spencer Junction, Thiruvananthapuram-695 039 to invoke the bank guarantee as detailed in para-I above issued by them and requests the Bank to remit the same to this Ministry in the form of Demand Draft in favour of the 'Pay & Accounts Officer, Ministry of Overseas Indian Affairs, New Delhi' within 15 days from the receipt of this order."*

11. The petitioner preferred an appeal before the appellate authority to confirm the view expressed by the original authority. The main contention urged by the petitioner is that Exts.P3 and P5 orders were passed without reference to the order of remand

passed by the appellate authority as per Ext.P2. Perusal of Ext.P2 order would indicate that the appellate authority had indicated, that the original authority shall consider whether the bank guarantee can be invoked for meeting the expenses which have to be incurred in the event of the repatriation to India of any of the emigrants who may be recruited by the applicant. It is found in Ext.P3 order that the petitioner was unable to refute the facts and findings contained in the order dated 24/08/2011 of the Protector General of Emigrants, wherein it is clearly found that the petitioner had violated the terms and conditions of the licence. It was also observed that it is not known at this point of time as to how many cases the petitioner has flattered and the emigrants had suffered at the hands of malpractices resorted by him. All such cases may entail financial liability as and when arisen/decided. Unless the bank guarantee is invoked, it will lapse and therefore the bank guarantee requires to be invoked. The very purpose of providing bank guarantee is to ensure that the petitioner complies with the terms and conditions of the licence. It is not a case where the petitioner has not been involved in any breach of the conditions of the licence. The very fact that CBI had registered a case against the Government officials as well as the recruiting agency including the petitioner indicates that there was violation of the terms and conditions of the licence under the statutory provisions. The appellate authority also had come to the very same findings in respect of the acts committed by the petitioner and the requirement for invoking the bank guarantee. Both the competent authorities under the Act have clearly come to a conclusion that the bank guarantee given by the petitioner is liable to be invoked. In such an event, I do not think that by exercise of power of judicial review, this Court should interfere with the same. The bank guarantee had been invoked on a clear finding that there is violation of the conditions of the licence by the petitioner and that cases have been registered against him by the CBI.

Under such circumstances, I do not think that the petitioner is entitled for any relief, as prayed for and accordingly, this writ petition is dismissed.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr