

\$~13.

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

+ W.P.(C) No.8188/2013

M/S HARGOBIND TRAVELS

..... Petitioner

Through: Mr. Rahul singh and Mr. Varun Lal,
Advvs.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Amit Mahajan with Mr. Nitya
Sharma, Advvs. for UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **08.09.2015**

1. The petition impugns the order dated 16th September, 2013 of the Secretary, Ministry of Overseas Indian Affairs of the respondent No.1 Government of India exercising powers as an Appellate Authority under Section 23 of the Emigration Act, 1983, of dismissal of appeal preferred by the petitioner against the order dated 31st January, 2013 of the respondent No.2 Protector General of Emigrants (PGE), in exercise of powers under Rule 23 of the Emigration Rules, 1983, of encashing the Bank Guarantee (BG) furnished by the petitioner.

2. Notice of the petition was issued and a counter affidavit has been filed by the respondents. The counsels have been heard.

3. It is the case of the petitioner, (i) that it was registered on 22nd July, 2001 as a Recruiting Agent, as defined under Section 2(l) of the Emigration Act, to recruit workers from India for the purposes of overseas employment; (b) that it had furnished the Bank Guarantee aforesaid as security, as required to be furnished while registering as a Recruiting Agent; (c) it was

carrying on business as a Recruiting Agent from Chandigarh; (d) notices dated 1st November, 2011 and 9th December, 2011 were issued by the respondent no.2 PGE asking the petitioner to show cause as to why its Registration Certificate should not be cancelled for the reasons given therein; (e) though the petitioner filed a reply to the said show cause notices (no copy of which has been filed along with the petition and the receipt whereof is denied by the respondents) but the respondent no.2 PGE vide order dated 4th May, 2012 cancelled the Registration Certificate of the petitioner and issued further notices to the petitioner to show cause as to why the BG submitted by it should not be forfeited and vide order dated 31st January, 2013 ordered invoking of BG and encashed the BGs for Rs.10 lacs; and, (f) that the petitioner preferred an appeal under Section 23 of the Emigration Act to the Secretary, Ministry of Overseas Indian Affairs, Government of India but which was also dismissed vide impugned order dated 16th September, 2013.

4. The respondents, in their counter affidavit, have pleaded that the petitioner failed to reply to any of the show cause notices and did not even submit any documents of having satisfied all the claims of the workers recruited by it and since the petitioner had not taken any re-course against the order of cancellation of his registration also and the BG furnished by him was lapsing, it was deemed appropriate to encash the same to satisfy the claims if any of the workers against the petitioner.

5. Now a period of more than three years having passed since the cancellation of the Registration Certificate of the petitioner and a period of more than 2 ½ years having passed since the invocation of the BG, I have enquired from the counsel for the respondents whether any claims have been

preferred before the respondents against the petitioner and whether out of the encashed amount of Rs.10 lacs, any payments been made to any of the workers.

6. The counsel for the respondents states that he has no instructions in this regard.

7. A reading of Rule 23 supra makes it clear that the forfeiture of the security in the form of BG furnished, is only for the purposes of utilisation of the said amount for such purpose and in such manner as may be specified in the order of forfeiture. In the present case, since the petitioner was uncommunicado inspite of its Registration Certificate having been cancelled and the BG was also to lapse, no fault can be found in the decision of the respondents to invoke and encash the BG to satisfy the claims if any as may arise against the petitioner. However, the amount of BG, under the said Rule, is not to enrich the respondents and in my opinion, if the respondents have till date not received any claim and / or if the possibility of any such claim being made in future does not exist with lapse of time, the respondents would be liable to refund / account for the said amount to the petitioner.

8. Accordingly, this petition is disposed of with the direction to the respondents, to determine whether any claims out of the said sum of Rs.10 lacs have been made as yet or not and / or whether the possibility of any such claims being made in future remains and to pass a reasoned order in this regard. If the respondents are of the opinion that any information from the petitioner is required in this regard, the respondents shall, within eight weeks hereof, issue a notice to the petitioner seeking such information as may be required by the respondents. If the petitioner fails to furnish the information, the respondents shall be entitled to draw adverse inference

against the petitioner. Else, the respondents shall pass a reasoned order as aforesaid within a period of nine months herefrom.

9. Needless to state that if in the said determination it is found that no claims out of the said sum of Rs.10 lacs have been made or are likely to be made in future, the said amount or any part thereof shall be refunded to the petitioner; conversely if the said determination is against the petitioner, the petitioner would have remedies thereagainst.

No costs.

Copy of this order be given *dasti* under signature of Court Master.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 08, 2015

‘pp’