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

+ **W.P.(C) 9881/2015**

**M/S MID LINK CONSULTANTS THROUGH ITS
PROPRIETOR**

..... Petitioner

Through: Mr Nishit Kush, Advocate.

versus

UNION OF INDIA AND ANR

..... Respondents

Through: Ms Suparna Srivastava and Mr Alinda
Bhowal, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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10.08.2017

VIBHU BAKHRU, J

1. The petitioner (Ms Sarabjeet Kaur) has filed the present petition, *inter alia*, impugning an order dated 17.04.2014 passed by the Protector General of Emigrants (hereinafter 'the PGE') rejecting the petitioner's application for renewal of Registration Certificate (hereinafter 'RC'). The petitioner also impugns an order dated 11.09.2015 passed by the Appellate Authority dismissing the petitioner's appeal against the order dated 17.04.2014 preferred by the petitioner under Section 23 of the Emigration Act, 1983.

2. The controversy involved in the present petition essentially relates to the question whether the renewal of the RC could have been rejected on the ground that the petitioner had not deployed a minimum of 1/3rd of the capacity allotted in the RC.

3. Briefly stated the relevant facts of the case are as under:-

3.1 The petitioner is engaged in the business of recruiting employees for

overseas employers. In terms of the Emigration Act, 1983 (hereafter 'the Act'), the petitioner is required to be registered with the office of the PGE for recruitment of workers for overseas employment. The petitioner claims that she was registered as such and the RC was issued to the petitioner for the first time on 04.07.1984. The RC was successively renewed from time to time (on seven occasions).

3.2 The petitioner re-applied for renewal of the RC in the year 2008, which was rejected on the ground that the petitioner's application was not filed within the time prescribed. The petitioner, thereafter, applied for a fresh RC, which was issued to the petitioner on 14.10.2008. The said RC was valid for a period of five years; that is, up to 13.10.2013.

3.3 The petitioner applied for renewal of the said RC on 11.07.2013, which was rejected by the PGE by an order dated 17.04.2014. The said order reads as under:-

“With reference to your application dated 11.07.2013 received through POE, Delhi for renewal of Registration Certificate No.B-0258/DEL/PER/1000+/5/8265/2008 issued on 14.10.2008 beyond 13.10.2013, it is informed that for Renewal of Registration Certificate, one of the points considered is the performance of the recruiting agent (number of workers deployed against the Registration Certificate). Accordingly, for renewal of RC you have to deploy 1/3rd of the capacity i.e. 333 out of 1000+ workers during the last validity of RC. But you have deployed 258 workers during the said period.

2. Your agency has deployed only 72 ECR workers & 186 ECNR workers as stated, during the current validity which shows poor performance not commensurate with the minimum requirement of one

third of quota utilization. This shows you have not made requisite number of deployments (1/3 of 1000+) during the last validity of RC. As such keeping in view this position, your request for renewal of Registration Certificate cannot be considered due to poor performance and is accordingly rejected.”

3.4 Aggrieved by the aforesaid order, the petitioner preferred an appeal under Section 23 of the Act, which was also rejected. The operative part of the said order is extracted below:-

“10. Shri Sooriyanarayanan argued that the renewal of RC is covered under Rule 9A of the Emigration Rules, 1983. As prescribed in the said Rules, such application is to be submitted in form II A. SI. (vi) of this form requires the Appellant to provide "*number of workers deployed against the Certificate*"

11. He further mentioned that the Registering Authority had issued an Office Memorandum vide no. Z-11025/65/2pp7-Emig.(Part) on 07.07.2008 which specifically provided the minimum number of workers to be recruited against the capacity of workers mentioned in the RC. This Office Memorandum is a public document. As per this OM, the Appellant should have recruited 330 workers during the period of validity of RC viz. 14.10.2008 - 13.10.2013.

12. It is also not disputed that the Appellant recruited 117 ECR category workers and 186 ECNR workers totaling 303 during the said validity period.

Order

13. Considered the matter. As the Appellant didn't fulfill the requirement of recruiting minimum number of workers against the capacity of workers mentioned in the RC, the Appellate Authority is of the view that the Order dated 17.04.2014 of the

Registering Authority rejecting the application for renewal of RC does not merit interference of the Appellate Authority.

Ordered Accordingly.”

3.5 The learned counsel for the petitioner submits that the petitioner’s request for renewal of RC has been rejected solely on the ground that the minimum number of persons to be recruited during the tenure of the RC, as computed in terms of the Office Memorandum dated 04/07.07.2008 (hereafter ‘the OM’) was not complied with. He submits that the respondents had erroneously considered the minimum requirement to be 33% of the quota specified in the RC whereas in terms of the said OM, the minimum criteria had been reduced to 10%, as per which the petitioner admittedly qualified. He further states that the finding that the petitioner had recruited only 258 workers (72 workers in ECR category and 186 in ECNR category) is also erroneous as the petitioner had in fact recruited 334 workers and thus even if the minimum criteria is considered as 33%, the petitioner would have still qualified as the quota in the RC was given for 1000 workers.

3.6 He also relied on the decision of a Coordinate Bench of this Court in ***Ashim And Bros Asso. v. Union of India & Anr.: 2013 SCC OnLine Del 4138.***

3.7 Ms Srivastava, learned counsel for the respondents countered the submissions made on behalf of the petitioner. She submitted that a plain reading of the OM would indicate that minimum requirement for further renewal of the RC would require that the agent must have deployed at least 33% of the specified quota of workers in the previous period. She further submitted that notwithstanding that the minimum criteria of 10% is

considered mandatory, the petitioner had not submitted the proof of recruitment of workers. She drew the attention of this Court to paragraph 2 of the aforesaid OM which specifically provided that in case of request for renewal of license made on the basis of workers deployed in ECR countries, the applicant would be required to show ECR clearance duly reflected in the Emigration Clearance Book. And, in case the request for renewal is made on the basis of workers employed for ECNR countries, the same would be required to be supported by copies of visas issued to the workers and the same would be required to be submitted by the recruitment agent to the PGE at the time of renewal of the RC. She submitted that the petitioner had not substantiated the number of workers recruited by her in the manner as specified under the said OM.

4. I have heard the learned counsel for the parties.

5. Before proceeding further, it would be relevant to note the relevant criteria in the OM dated 04/07.07.2008, which 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 during its last validity. For example, if 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).”

6. It is apparent from the reading of clause (iii) above that the mandatory condition for entertaining an application for renewal of RC is recruitment of at least 10% of the registered capacity during the validity of the RC.

7. The interpretation of the OM was also considered by this Court in *Ashim And Bros Asso. (supra)*. In that case, the validity of the OM was questioned as being *ultra vires* the Emigration Act, 1983. Although, the said contention was rejected, this Court had categorically held that the mandatory condition for renewal of a RC, as per the OM, is deployment of at least 10% of the total quota assigned to the registered recruitment agent during the term of the RC.

8. It is also relevant to note that this was also the stand of the respondents while defending the challenge to the validity of the said direction. Paragraph 5 of the said decision is relevant and is set out below:-

"5. The learned counsel for the respondent also points out that in fact vide OM dated 4.7.2008, the condition with respect to deployment in terms of the capacity has been relaxed in the sense that earlier requirement was deployment of 1/3rd of the capacity during its last validity which now has been reduced only to 10% of the registration certificate capacity from the date

of the registration itself. The norms adopted by the respondent cannot be said to be unfair, arbitrary or unreasonable in any manner. Moreover, as rightly pointed out by the learned counsel for the respondents, even the OM dated 4.7.2008 has not been challenged in the writ petition and so long as the said OM is not challenged and the challenge does not succeed, the Protector General of Emigrants as well as the Registering Authority are duty bound to comply with the same."

9. In the present case, it is not disputed that the petitioner's registered capacity is 1000 workers and, therefore, in terms of Clause (iii), the petitioner was required to recruit a minimum of 100 workers during the term of the RC; that is, during the period from 14.10.2008 to 13.10.2013.

10. In view of the above, it is apparent that the PGE as well as the Appellate Authority had proceeded on an erroneous premise that the mandatory condition for renewal of the RC was recruitment of a minimum of 33% of registered capacity; therefore, the said decisions cannot be sustained.

11. The contention that the petitioner has not provided sufficient evidence of the number of workers recruited as claimed by her, also cannot be entertained at this stage. Clearly, this was not a ground on which the petitioner's request for renewal of the RC had been rejected. On the contrary, the PGE had specifically recorded in the order that the petitioner had deployed 72 ECR workers and 186 ECNR workers and there was no challenge to the aforesaid claim.

12. Even before the Appellate Authority, no issue was raised as to the petitioner not providing sufficient evidence to show recruitment of workers. The only contention advanced on behalf of the respondents before the

Appellate Authority was that the petitioner did not qualify the 33% criteria as provided in the OM. The Appellate Authority had also specifically noted that it was not in dispute that the petitioner had recruited 117 ECR category workers and 186 ECNR workers, totalling 303 workers during the validity period. This is in variance to what was recorded by the PGE in its order dated 17.04.2014. However, the finding of the Appellate Authority is not under challenge. And, therefore, this Court must proceed on the basis that the respondents did not, at the material time, raise any dispute regarding the petitioner recruiting a total of 303 workers during the validity period of the RC.

13. Although, the petitioner contends that the said number is not correct and she had in fact recruited 334 workers during the validity of the RC, the said controversy is not required to be examined, as this Court is of the view that even if the number of workers recruited by the petitioner as per the PGE's or the Appellate Authority's decision is assumed to be correct, the petitioner meets the criteria for securing the renewal of her RC as even according to the PGE, the petitioner had recruited 258 workers.

14. In view of the above, this Court is of the view that the petitioner had qualified the minimum criteria for renewal of the RC and, therefore, the petition must be allowed. The respondents are directed to renew the RC of the petitioner for further period as per their policy.

15. The petition is disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J

AUGUST 10, 2017/MK