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

+ **W.P.(C) 9263/2016**

MALKIT SINGH BAMRHA

..... Petitioner

Through: Mr Pranav Rishi, Mr Vinod
Kumar and Ms Astha Sharma,
Advocates alongwith petitioner
in person.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr Roshan Lal Goel and Ms
Anju Gupta, Advocates for
UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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05.02.2019

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying that directions be issued to the respondents to disburse a sum of ₹3,00,000/-, which was collected by the Protector General of Emigrants (PGE) by forfeiture of the bank guarantee submitted by M/s Overseas Travel and Placement Services, in favour of the petitioner.

2. The petitioner claims that he had paid a sum of ₹12 lakhs to M/s Overseas Travel and Placement Services, which was a Registered Recruitment Agent (hereafter 'the RA'), in order to send his relatives for employment overseas. He claims that the RA failed to discharge his obligations and did not send the relatives of the petitioner abroad

as promised by him.

3. In view of the above, the petitioner filed a complaints dated 22.12.2009 and 24.02.2010 against the RA with the PGE. It is also apparent that there are several complaints made against the RA. In view of the above complaints, by an order dated 14.03.2011, the PGE cancelled the registration of the RA under the provisions of the Emigration Act, 1983 (hereafter 'the Act') and further invoked the bank guarantee furnished by the RA. A perusal of the said order indicates that one of the principal reasons for the action was the complaints received by the PGE, including complaints made by the petitioner.

4. Before proceeding further, it would be relevant to refer to Section 33 of the Act, which provides for submission of a security by an RA. The said Section is quoted below:-

“33. Provision as to security.—

(1) Any security or other financial provision which may be required to be made under this Act shall be reasonable having regard to the purpose for which such security or other financial provision is required to be made.

(2) The prescribed authority may, after giving notice in the prescribed manner to a person who has furnished any security for any purpose and after giving to such person an opportunity to represent his case, by order in writing, direct that the whole or any part of such security may be forfeited for being utilised for such purpose and in such manner as may be specified in the order.

(3) Where it appears to the prescribed authority that the security furnished by any person under this Act for any purpose has, for any reason, become inadequate, or has ceased to be available for any reason whatsoever, the prescribed authority may, after giving him an opportunity to represent his case, by order in writing, require such person to furnish such additional security or, as the case may be, such fresh security as may be specified in the order.”

5. It is apparent from the plain reading of Sub-Section (2) of Section 33 of the Act that the security furnished by a RA can be forfeited for being utilised in such manner, as may be specified in the order forfeiting such security.

6. Rule 23 of the Emigration Rules, 1983 (hereafter ‘the Rules’) also contains provisions for forfeiture of the security deposited. Rule 23 of the Rules is set out below:-

“23. Forfeiture of security deposit.—Where the competent authority or the registering authority has reason to believe that it is expedient to forfeit the whole or any part of security furnished by any person for being utilised for such purpose and in such manner as may be specified in the order, he may, after giving a notice to this effect to such person and thereafter giving him an opportunity to represent his case, by order in writing, forfeit the whole or any part of the security.”

7. It is, at once, clear from the plain reading of Section 33(2) of the Act and Rule 23 of the Rules that the respondents cannot forfeit the security without indicating the purpose and without utilising the same for the purpose for which the security was forfeited. It is not disputed in the present case that the security was furnished by the RA for due

performance of its obligation, and the same has been forfeited since there were complaints that the RA had overcharged money from various persons.

8. In view of above, the action of the PGE in invoking the bank guarantee cannot be faulted. However, the PGE was required to clearly state the purpose for which such bank guarantee was being encashed. He is also obliged to ensure that the money collected by forfeiture of the security is utilised for the said purpose. Since in the present case, the bank guarantee furnished by the RA was invoked on account of the complaints of overcharging the amounts from various intending emigrants, it would be necessary for the respondents to ensure that the sums are also utilised for redressal of the said complaints. Plainly, the respondents cannot withhold the said money and appropriate the said funds, as that would militate against the provisions of Section 33(2) of the Act and Rule 23 of the said Rules.

9. Insofar as the petitioner is concerned, the relief as sought for cannot be granted. The question, as to how the sums recovered from the RA by forfeiture are required to be utilised, rests with the PGE. The respondents are required to not only consider the petitioner's case, but also the case of other complainants or other persons who are entitled to refund of the amount overcharged by the RA. This Court is not inclined to examine the entitlement of the petitioner or any other complainant in these proceedings; the same is required to be considered by the respondents.

10. In view of the above, the present petition is disposed of by

directing the respondents to examine the various complaints, including those lodged by the petitioner and disburse the amount collected by it in an equitable manner.

11. The parties are left to bear their own costs.
12. Order *dasti* under signatures of the Court Master.

FEBRUARY 05, 2019
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VIBHU BAKHRU, J



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