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W.P. No.22121 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 30.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

W.P. No.22121 of 2013 and
M.P. No.1 of 2013

IMK Human Resources Service
Represented by V.Muthukumar, Proprietor
Office at New No.90, Old No.149
Door No.D6, Nelson Plaza
Nelson Manikkam Road
Chennai - 600094

. . . Petitioner

Vs

1.Secretary/Appellate Authority
Ministry of Overseas Indian Affairs
Government of India
Akbar Bhavan
Chanakyapuri
New Delhi - 110 021

2.Protector General of Immigrance/Registering Authority
Ministry of Overseas Indian Affairs
Government of India
Akbar Bhavan
Chanakyapuri
New Delhi - 110 021

3.Protector General of Immigrance, Chennai
Ministry of Overseas Indian Affairs
TNHB Complex
Ashok Nagar, Chennai - 600 083

. . . Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari by calling for the records of the first respondent in F. No.C-16016/50/2012-VIG dated 18.04.2013 confirming the order of the second respondent made in No.I-



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11011/7353/2005-PGE-I dated 03.08.2012 and quash the same as illegal and arbitrary.

For Petitioner : Mr.B.Vijay

For Respondents : Mr.R.Rajesh Vivekananthan,
Senior Panel Counsel for R1 to R3

ORDER

This writ petition has been filed for a writ of certiorari to call for the records of the first respondent in F. No.C-16016/50/2012-VIG dated 18.04.2013 confirming the order of the second respondent made in No.I-11011/7353/2005-PGE-I dated 03.08.2012 and quash the same as illegal and arbitrary.

2. The brief facts of the case is as follows:

i) The petitioner was a Recruiting Agency and has applied for grant of Registration Certificate to commence the business of recruitment for deployment of Indian workers with foreign employers. The Registration Certificate was issued by the 2nd respondent on 25.07.2006 for a period of five years from 25.07.2006 to 24.07.2011 and the registration certificate was renewed up to 24.07.2016. While so, one Blue Bay Trading and Contracting WLL Doha-Qatar appointed the petitioner as its recruiting agent for handling all the affairs concerning recruitment in



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Qatar and the employer has issued a letter of demand to the petitioner specifying the terms and conditions of services.

ii) Based on such an offer, the petitioner sought for grant of approval from the 2nd respondent by enclosing the Power of Attorney and letter of demand along with specimen employment offer issued by the employer, namely Blue Bay Trading and Contracting WLL Doha-Qatar. On 17.04.2012, the said employer has issued an offer letter to 135 employees by strictly adhering to the Act and its rules.

iii) On 19.04.2012, the third respondent, namely the Protector General of Immigrance, Chennai, Ministry of Overseas Indian Affairs, has issued deployment permission to the petitioner in terms of the letter of demand. Accordingly, the petitioner has also executed an indemnity bond to the second respondent for all eligible employees and paid necessary fees challan and also obtained insurance policy for the employees for the period of contract.

iv) On 26.04.2012, the third respondent issued emigration clearance token for the employees. The employees have reached Qatar for employment and received the promised salary. When the matter stood thus, the second respondent has issued the impugned order suspending petitioner's registration certificate for 30 days on the ground that the petitioner has obtained emigration clearance for 59 employees for Blue Bay Trading by submitting employment visa issued under Nakilot Keppet Offshore Marine and also sought for an explanation within



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15 days as to why the suspension should not be extended. The petitioner submitted an explanation on 11.06.2012.

v) The third respondent has submitted a report on 25.07.2012 to the effect that the petitioner has forged employment visa with material alterations in visa type, category of job, duration and identity of the employer and the said report was not served on the petitioner. On 03.08.2012, based on the report of the third respondent, the second respondent has cancelled the registration certificate and further directed to surrender registration certificate and emigration clearance book and also issued show cause notice as to why the bank guarantee should not be forfeited.

vi) The above said order has been challenged in an appeal before the first respondent by way of invocation of Section 23 of the Act. The appeal was also dismissed. After dismissal of the appeal on 30.05.2013, the second respondent invoked the bank guarantee on the premise that the appeal was dismissed for default.

Challenging the above actions of the original authority and the appellate authority and also the invocation of the bank guarantee, instant writ petition has been filed.

3. It is also the case of the petitioner that as against the invocation of bank guarantee, he has filed a separate writ petition in W.P. No.16770



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of 2013. This court, by an order dated 21.06.2013 dismissed the writ petition holding that invocation of the bank guarantee is only consequential to the order cancelling the registration certificate.

4. It is the contention of the respondents that the Protector of Emigrants, Chennai had granted permission for submission of passports for grant of emigration clearance for 135 workers for deployment to the foreign employer, namely Blue Bay Trading & Contracting WLL subject to the condition that the Recruiting Agency shall be fully responsible in respect of documents submitted by them and in case, the documents are found not to be genuine in any respect at any point of time, the Recruiting Agency shall be liable for penal action under the provisions of Emigration Act, 1983 and under Section 193 of the Indian Penal Code.

5. It is the further contention of the respondents that when a surprise check as to the genuineness and validity of the visas was done by the Protector of Emigrants in the website of Qatar Government on 28.04.2012, it was revealed that the visas submitted for emigration clearance were originally issued for the company M/s.Nakilot-Keppel Offshore Marine Servicers, Qatar with 'Business visit visa' valid for one month for profession category 'Others'. Hence it is the contention of the respondents that visa was forged to read as 'Work Visa', valid for five years and profession 'Mechanic'. The show cause notice issued by the



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second respondent clearly conveys the violation committed by the Recruiting Agency in connection with obtaining of clearances for 59 emigrants for employment with Blue Bay Trading and Contracting WLL Qatar and the action was taken by the third respondent under the powers vested him under Section 35 of the Emigration Act. The show cause notice has been issued validly. Hence the respondents prayed for dismissal of the writ petition.

6. The learned counsel appearing for the petitioner would submit that till the clearance has been granted to the petitioner all the documents have been properly verified by the authorities. All the documents have been submitted by the petitioner in the original form as received from the employer. Therefore, the question of forgery does not arise at all.

7. The original show cause notice has been issued by the authorities only on the ground that the petitioner misrepresented the facts and obtained clearances and a show cause notice has been issued, while the temporary cancellation order has been passed. Whereas the original authority has gone beyond the scope of the show cause notice and concluded that there was forgery of documents. Hence it is the contention that such a finding beyond the show cause notice, is contrary to the principles of natural justice and no personal hearing whatsoever



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was given to the petitioner and no document, which is said to have been relied upon by the respondent, also put to the notice of the petitioner.

Hence it is submitted that the very order of cancellation passed by the original authority, namely the second respondent is beyond the scope of the show cause notice and when an appeal was filed, the appeal was dismissed solely on a different ground but not on the basis of the show cause notice or the original order. Further, the bank guarantee was also invoked on the ground that the appeal has been dismissed for default. These aspects clearly show that there is total non application of mind and the orders passed on the basis of the alleged forgery, are without any evidence.

8. It is his further contention that Rule 15 of the emigration rules makes it mandatory for the officials to verify various documents submitted by the petitioner. Therefore, merely because some documents said to have been forged by the employer, the same cannot be put against the petitioner on the basis of the conditions set out in the orders, that too, without any proper enquiry and further, it is his contention that there was no complaints from the employees and the employees have also returned to India. Therefore, invoking the bank guarantee is also not valid in the eye of law.

9. In support of his submission, the learned counsel appearing for

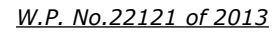


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the petitioner has placed his reliance on the decision of the Hon'ble Apex Court in ***C.B.Gautam vs. Union of India and Others*** reported in **(1993) 1 SCC 78** to the effect that even if the rule does not provide for personal hearing, a reasonable opportunity of being heard should be given before making an order, which will have adverse civil consequences. The learned counsel also relied on another decision of the Hon'ble Apex Court in ***Saci Allied Products Ltd., U.P. vs. Commissioner of Central Excise, Meerut*** reported in **(2005) 7 SCC 159** to show that the original authority cannot go beyond the show cause notice, which is impermissible under law.

10. Per contra, it is the contention of the learned Deputy Solicitor General that even the order granting permission makes it clear that any genuineness of the document is doubted later, the agent will be liable for any action. It is not the duty of the official to verify the foreign visas and only the agent, who apply for clearance has to submit the correct details. Whereas, in this case, on a verification made later, it disclosed the fact that the visa obtained by some other company has been used as if obtained by the employer in Qatar. Therefore, it is his contention that this is nothing but forgery and misrepresentation.

11. The show cause notice contained relevant allegations, which is also replied by the petitioner admitting that originally the employment



13. It is the case of the petitioner that the letter of demand was issued by Blue Trading & Contracting WLL on 05.04.2012 and the power of attorney was also executed in favour of the petitioner and the employment offer was also issued by Blue Bay Trading & Contracting to



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the petitioner and an offer letter dated 17.04.2012 has also been issued for employment of 135 eligible employees. Based on the documents submitted by the employer, the petitioner has applied for deployment permission and the third respondent has also given deployment permission to the petitioner on 19.04.2012 in terms of the letter of demand. An indemnity bond has also been executed by the petitioner in favour of the second respondent for all the eligible employees. These facts are not disputed.

14. Based on the documents submitted by Blue Bay Trading and Contracting company, the employment permission has been granted by the second respondent. Thereafter, the show cause notice has been issued in the month of May 2012. The only allegation made in the show cause notice is that the Protector of Emigrants, Chennai has reported that the recruiting agent has applied for emigration clearance for 59 emigrants for employment with Bluebay Trading and Contracting WLL by submitting employment visas issued under the sponsorship of another company M/s.Nakilot Keppel Offshore Marine, Qatar, thereby the petitioner has misled the government authorities for the purpose to get absolved from the responsibilities in deployment of the workers and hence the recruiting agent has violated Section 24(i) (c) and (d) of the Emigration Rules, 1983 and that a show cause notice has been issued.



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15. A perusal of the show cause notice as referred above, would show the only allegation that the petitioner submitted employment visa issued under the sponsorship of another company M/s.Nakilot Keppel Offshore Marine, Qatar, which has been replied by the petitioner contending that M/s.Blue Bay Trading & Contracting company, Qatar approached the petitioner during April, 2012 for recruitment of Indian workmen at Qatar for a shutdown project obtained by M/s.Nakilot Keppel Offshore Marine, Qatar, who had sub-contracted the work to the said M/s.Bluebay Trading. Thereafter, the original order came to be passed on 03.08.2012 by the second respondent by cancelling the registration by passing the above order. No personal hearing, whatsoever, was given before passing the above order and the bank guarantee has been invoked even though the show cause notice was properly replied by the petitioner. In the original order, the second respondent has gone beyond the scope of the show cause notice. In fact, he has recorded a finding as if there was forgery of visas of the candidates and for the alleged forgery and recording of finding related to the forgery, there was no details as to the nature of the documents relied upon by the respondents to hold that there was forgery. When the show cause notice does not even refer to the allegation of forgery and going beyond the scope of show cause notice and recording a finding without any reference to the document to which they relied upon to come to the conclusion, in the considered view of this court, it does not satisfy the legal parameters to pass an order,



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which will have a serious civil consequences. Who has committed the forgery, whether the petitioner has committed such forgery or the employer has committed forgeries, also to be looked into while passing such an order. This is because the respondents cannot merely shirk their responsibility, when the statute itself is cast upon the respondents to verify all the records properly, they cannot shirk their responsibility merely on the ground that some conditions binding on the petitioner in the event of any misrepresentation, they have no role in verifying the documents. Particularly, on issuing the visa clearance and entry to foreign countries, they ought to have verified all the documents properly.

16. Rule 15 of the Emigration Rules, 1983 states the nature of the documents to be submitted by the agent, the respondents cannot just act as a post office to clear every application by the agent. They ought to have made an enquiry at least a reasonable enquiry within their powers before passing an order holding that there was forgery of the documents. A personal opportunity ought to have been given to the petitioner about the documents relied upon by the respondents for recording such a finding and copies should have also been furnished to the petitioner, which has not been done so in this case. When an appeal has been filed against that order, the appellate authority, in paragraph 6 recorded a finding that, even if it is accepted for argument's sake, that



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the recruiting agent has been misled by his principals in Qatar, then it is even more dangerous to allow a registration certificate to subsist with a person/firm, who has unreliable business partners abroad, because this is an extremely sensitive business involving human beings, and no person being careless in his work, or having unreliable business associates abroad, can be considered to be a fit person to hold a Registration Certificate under the Emigration Act. By holding so, the appellate authority dismissed the appeal. The appellate authority has not even gone to the original authority's order and found that it does not require any interference. Whereas the appeal has been dismissed on a different ground, without going into the merits of the original order passed by the original authority. These facts clearly exhibit the non application of mind on the part of the respondents. Consequent of the dismissal of the appeal, the bank guarantee appears to have been invoked by the respondents. Though there is no separate challenge against invocation of the bank guarantee in this writ petition, the finding is relevant only for the purpose of showing the non application of mind on the part of the respondents. When the bank guarantee has been invoked mainly on the ground that the appeal filed against the original authority was dismissed for default stating that the petitioner has not attended the hearing despite seeking three adjournments. Accordingly, the bank guarantee has been invoked. These facts are totally contradictory to the proceedings before the appellate authority. In fact,



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the appeal was dismissed after hearing the parties. Though it is not on an original order, but on different grounds. These facts clearly exhibit the non application of mind of the authorities.

17. In this regard, it is useful to refer to the decision of the Hon'ble Apex Court in the case of **Saci Allied Products Ltd., U.P. vs. Commissioner of Central Excise, Meerut** reported in **(2005) 7 SCC 159**, and the relevant portion of the judgment, reads thus:

" 16...It was argued that the first proviso to Section 4(1)(a) of the Act was never invoked by the Department either in the show-cause notice or in the impugned order and it was for the first time that the Appellate Tribunal in the impugned order has sought to sustain the impugned order by invoking the first provision to Section 4(1)(a) of the Act. It is thus seen that the Tribunal has gone totally beyond the show-cause notice and the order of the Collector, which is impermissible. The Appellate Tribunal cannot sustain the case of the Revenue against the appellants on a ground not raised by the Revenue either in the show-cause notice or in the order.

17. In this context, we may usefully refer to the judgment of this court in the case of Reckit & Colman of India Ltd. v. CCE [(1997) 10 SCC 379]. This court held that it is beyond the competence of the Tribunal to make out in favour of the Revenue a case which the Revenue had never canvassed and which the appellants had never been required to meet.



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18. The impugned order of the Tribunal which had gone beyond the show-cause notice and the order of the respondent Collector is, therefore, liable to be set aside."

18. It is stated by the petitioner that no prejudice would have caused to the respondents, if an an opportunity of personal hearing is given to the petitioner before passing an order. The fact remains that in this case, since the order has been passed without hearing the petitioner and pursuant to the same, the bank guarantee has also been invoked, which is consequential in nature, will have a civil consequences. Therefore, any finding to be recorded for passing any order which will have civil consequence there must be a proper personal hearing, which has not been done so.

19. In this regard, it is useful to refer to the decision of the Hon'ble Apex Court in **C.B.Gautam vs. Union of India and Others** reported in **(1993) 1 SCC 78**, wherein the Hon'ble Supreme Court has held thus:

" 28. It must, however, be borne in mind that courts have generally read into the provisions of the relevant sections a requirement of giving a reasonable opportunity of being heard before an order is made which would have adverse civil consequences for the parties affected. This would be particularly so in a case where the validity of the section would be open to a serious challenge for want of such an opportunity."



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20. Therefore, without going to the merits of the allegations, this court is of the view that the order passed by the original authority and the appellate authority are liable to be set aside on the ground of non application of mind and on the ground of principles of natural justice.

21. While challenging the invocation of the bank guarantee in W.P. No.16770 of 2013 dated 21.06.2013, this court has passed the following order:

"The only question raised by the petitioner is with respect to the legality of the impugned order on account of violation of Section 23 of the Emigration Act. Section 23 presupposes issuance of notice to the aggrieved. The impugned order clearly shows that the registration certificate was cancelled by the Protector General of Emigrants and the said order was challenged before the appellate authority. The appellate authority dismissed the appeal by order dated 18.04.2013. It was only thereafter show-cause notice was issued as to why the Bank Guarantee should not be invoked. The respondent thereafter passed the impugned order enforcing the Bank Guarantee. The order enforcing the Bank Guarantee is only a consequential order. The registration of the petitioner has already been cancelled. The said order has become final. Therefore, the first respondent was perfectly justified in invoking the Bank Guarantee. The invocation of Bank Guarantee cannot be classified as an independent



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action. It was clubbed with the action relating to cancellation of registration. So long as the registration remain cancelled, it cannot be said that the authority has no power to invoke the Bank Guarantee. Therefore, I do not find merit in the contention raised by the petitioner."

22. Though the learned counsel appearing for the petitioner would submit that the bank guarantee amount may be directed to be refunded and the petitioner is prepared to forego the interest from the inception, as the invocation of the bank guarantee is consequential in nature, until the proceedings are concluded by the original authority, the amount cannot be refunded to the petitioner. Therefore, the respondents are directed to keep the bank guarantee amount in any of the interest fetching deposits in any of the Nationalised banks. While deciding the issue, the authorities may also consider the release of Bank Guarantee, taking note of the fact that sufferings and damages encountered by the workers during their stay in a foreign country.

23. Accordingly, this writ petition is allowed. The impugned order of the first respondent in F. No.C-16016/50/2012-VIG dated 18.04.2013 confirming the order of the second respondent made in No.I-11011/7353/2005-PGE-I dated 03.08.2012, is hereby set aside. The original authority, namely the second respondent shall issue a fresh show-cause notice by including all the allegations viz. forgery, misrepresentation and other aspects and decide the issue afresh, after



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affording an opportunity of personal hearing to the petitioner and such an exercise shall be made within a period of four months from the date of receipt of a copy of this order.

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Index : Yes / No
Speaking/non speaking order
Asr

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- 2.Protector General of Immigrance/Registering Authority
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