* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 08.12.2023
Pronounced on: 09.01.2024

\+ **W.P.(C) 5142/2013 & CM APPL. 11558/2013**

M/S TABISH AIRWAYS ..... Petitioner

Through: Mr.Mahabir Singh, Sr. Adv. with Mr.Gagandeep Sharma, Ms.Preeti Singh, Mr.Amit Nain, Mr.Veerendra Kumar and Ms.Kumkum Mandhanya, Advs.

versus

PROTECTOR GENERAL OF EMIGRANTS AND ANR ..... Respondents

Through: Mr.Anil Soni, CGSC for UOI.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

JUDGMENT

1. This petition has been filed by the petitioner challenging the Order dated 08.03.2013 (hereinafter referred to as the 'Impugned Order') passed by the Secretary, Ministry of Overseas Indian Affairs, Government of India, New Delhi (hereinafter referred to as the 'Appellate Authority'), on an appeal filed by the petitioner herein under Section 23 of the Emigration Act, 1983 (hereinafter referred to as the 'Act'), which in turn challenged the Order dated 24.07.2012 passed by the Protector General of Emigrants (hereinafter referred to as 'PGOE') cancelling the Registration Certificate of the petitioner.

FACTUAL MATRIX

2. It is the case of the petitioner that the petitioner was granted a Registration Certificate on 07.06.2005, permitting the petitioner to work as a 'Recruiting Agent' to recruit workers for overseas employment during the validity of the certificate, which was upto 06.03.2020.

3. By a Notice dated 16th/19th December, 2011, the PGOE suspended the Registration Certificate of the petitioner and called upon the petitioner to show cause as to why the said suspension of the Registration Certificate granted in favour of the petitioner, be not extended. The said Show Cause Notice was based on three distinct allegations against the petitioner, which are as under:

i. the complaint received from one Mrs.Dommati Kalavathi stating that her husband Shri Dommati Rajesh was deployed by the petitioner to work in Riyadh, Saudi Arabia as a Driver, however, once he reached there, his sponsor insisted upon him to work as a Shepherd in the farm instead of the contracted job and he was later brutally murdered by his sponsor on 30.10.2011. It was alleged that the petitioner had charged a huge amount for his deployment.

ii. that the petitioner had obtained emigration clearance for five emigrants whose visas were for the labourer category and their profession was shown other than the labourer category by the petitioner in his affidavit.

iii. that the petitioner had submitted documents for obtaining emigration clearance on behalf of the seven companies named in the Show Cause Notice, which were not even registered in Oman and their telephone numbers, fax numbers and e-mail IDs were all bogus and fake.

4. The petitioner replied to the Show Cause Notice *inter alia* contending that, as far as the seven companies which were alleged to be fake, the documents had been received by the petitioner directly from the foreign companies and the petitioner did not have any mechanism to check the phone numbers, E-mail IDs, fax, etc., of these alleged companies. It was further stated that there were no complaints received from any worker deployed with these companies.

5. The PGOE, vide Order dated 24.07.2012, while observing that the petitioner herein is not a fit person to hold the Registration Certificate, cancelled the Registration Certificate of the petitioner and directed the petitioner to surrender the same.

6. The petitioner, aggrieved of the above order, filed an appeal before the Appellate Authority under Section 23 of the Act. The said appeal, however, has been dismissed by the Appellate Authority vide the Impugned Order dated 08.03.2013.

7. The Appellate Authority, while dismissing the appeal, found in favour of the petitioner as far as the first ground was concerned, by observing that it would be difficult to attach any blame directly to the petitioner for the murder of Shri Dommati Rajesh, as there were no allegations made during his lifetime and, in fact, held that the PGOE could have checked through the Indian Mission whether a case of

murder had been registered or not in Saudi Arabia, or the petitioner could have showed that the same incident is a natural death by way of documents.

8. As far as the second and the third grounds are concerned, the Appellate Authority held that the petitioner had got emigration clearance for five persons on a false declaration and was guilty of knowingly recruiting manpower for the companies which were not even registered in their home country and are, therefore, fraudulent companies. It held that the petitioner showed a gross disregard for the welfare of the emigrants.

SUBMISSIONS OF THE PETITIONER:

9. The petitioner challenges the finding of the Appellate Authority on the second ground, by contending that as far as the emigration clearance for the five persons is concerned, the petitioner had, in fact, withdrawn the application for these workers; these workers had subsequently applied for clearance in their individual capacity; and the petitioner had no role in it, hence the liability for the same cannot be attributed to the petitioner.

10. The learned senior counsel for the petitioner, in support of the above challenge, has drawn reference to the reply dated 07.05.2013 received by the petitioner under the Right to Information Act, 2005, which *inter alia* states that the five applicants with respect to whom the allegation had been made, had obtained emigration clearance as individual applicants.

11. As far as the third ground of the seven companies being not in existence is concerned, the learned senior counsel for the petitioner submits that the respondent has been unable to show any complaint filed by any worker who had been deployed by the petitioner in these companies or by any of their relatives regarding the petitioner company cheating them. He submits that it is the duty of the respondents to verify the genuineness of these companies and such burden cannot be saddled on the petitioner, as the petitioner is only concerned with the genuineness of the visa. He submits that no action has been taken by the respondents against its officers who had granted the emigration clearance for these companies on an application filed by the petitioner. He submits that, therefore, the action of the respondent is *mala fide* and cannot be sustained.

12. The learned senior counsel for the petitioner further submits that now with the passage of time, and as this petition has been pending for almost ten years, the petitioner should not be burdened with further consequences of the Impugned Order and the same, therefore, is liable to be set aside.

SUBMISSIONS OF THE RESPONDENT:

13. On the other hand, the learned counsel for the respondents submits that it is the duty of the petitioner, as a Recruiting Agent, to satisfy itself of the existence and the genuineness of the alleged overseas employer(s)/company(ies). He submits that, in the present case, the seven companies for which the petitioner was recruiting

manpower from India were, in fact, found to be fake and bogus.

14. The learned counsel for the respondent further submits that the petitioner first tried to pass the blame on the alleged agents overseas, from whom it had allegedly received the documents with respect to the said companies. He submits that, in fact, this admission, itself, would constitute a violation of Rule 10(1)(viii) of the Emigration Rules, 1983 (hereinafter referred to as the 'Rules'). He submits that this violation by the respondent, in fact, amounts to an offence as defined in Section 24(1)(c) of the Act. He submits that, therefore, the Impugned Order deserves no interference from this Court.

ANALYSIS & FINDINGS:

15. I have considered the submissions made by the learned counsels for the parties.

16. With the outflow of skilled and unskilled workers from India for employment purposes, it was realised that the workers were ill-treated and were made to do work more than an ordinary person is supposed to do. They were exploited by the recruiting agents as well as by the employers abroad. This led to the promulgation of the Emigration Act, 1922, which was aimed to mitigate the problems and to regulate the emigration of skilled and unskilled workers.

17. With the tremendous jump in the outflow of skilled and unskilled workers from India and increasing concerns of both, the Government and the public in general, the Emigration Act, 1983, was promulgated. The Statement of Objects and Reasons of the Act states

that it is aimed to regulate the terms and conditions of overseas employment and seeks to protect and safeguard the rights and interests of the Indian Workers going overseas for employment on a contractual basis.

18. Under the provisions of the Act, a foreign employer can recruit any citizen of India for employment in any country, either through a *'registered recruiting agent'* or directly, after obtaining a valid Permit from the competent authority. Section 2(1)(l) defines the term 'recruiting agent' as under:-

> *"**2. Definitions.**—(1) In this Act, unless the context otherwise requires,—*
>
> *xxxxx*
>
> *(l) "recruiting agent" means a person engaged in India in the business of recruitment for an employer and representing such employer with respect to any matter in relation to such recruitment including dealings with persons so recruited or desiring to be so recruited;"*

19. Rule 5 of the Emigration Rules, 1983 (hereinafter referred to as the 'Rules') also shows that the 'recruiting agent' acts as a representative and attorney of the foreign employer. Rule 5 is reproduced hereinunder:-

> *"**5. Recruiting agent representing the employer.**-(1) An employer may authorise a recruiting agent in India, registered under the provisions of the Act, by a power of attorney executed in favour of the recruiting agent authorising that recruiting agent for the purposes of the recruitment of persons on his behalf.*
>
> *(2) The power of attorney referred to under sub-rule (1) shall be valid for the period of the employment contract of the recruited worker*

even if the certificate of registration of such recruiting agent ceases to be valid before that period."

20. Section 16 of the Act provides that no employer shall recruit any citizen of India for employment in any country or place outside India except through a recruiting agent or in accordance with a valid permit issued in that behalf. Therefore, the recruiting process under the Act can be initiated only by the recruiting agent on behalf of the employer or by the employer himself. This again emphasizes the role that a recruiting agent plays in the employment of workers from India to a country abroad.

21. Section 22(1) of the Act prohibits a citizen of India to emigrate unless he obtains, from the PGOE, an authorization for emigration. Such application may be made through the recruiting agent, through whom the emigrant has been recruited, or through the employer concerned.

22. The above provisions show that a 'recruiting agent' represents an employer with respect to any matter in relation to the recruitment/employment of the Indian Worker in the foreign country, including dealings with persons so recruited or desiring to be so recruited. As a representative of the employer, therefore, the recruiting agent cannot claim immunity or plead ignorance once it is found that such an employer was, in fact, a non-existing entity.

23. Section 10 of the Act states that no person shall function as a recruiting agent without a valid certificate issued in that behalf by the registering authority. Section 10 of the Act is reproduced

hereinbelow:-

> *"**10. No person to function as recruiting agent without a valid certificate.**—Save as otherwise provided in this Act, no recruiting agent shall, after the commencement of this Act, commence or carry on the business of recruitment except under and in accordance with a certificate issued in that behalf by the registering authority:*
> *Provided that a person carrying on the business of recruiting agent immediately before the commencement of this Act may continue to carry on such business without such a certificate for a period of one month from such commencement, and if he has made an application for such certificate under this Act within the said period of one month and such application is in the prescribed form and contains the prescribed particulars, till the disposal of such application by the registering authority."*

24. Section 11 of the Act provides for the basic eligibility criteria for making an application for registration as a recruiting agent. It emphasizes on the applicant's financial soundness, trustworthiness, and antecedents. Sub-Section (1) of Section 11 is reproduced hereinbelow:-

> *"**11. Application for registration.**—(1) An application for registration shall be made to the registering authority in such form and shall contain such particulars as to the applicant's financial soundness, trustworthiness, premises at which he intends to carry on his business, facilities at his disposal for recruitment, his antecedents (including information as to whether any certificate had been issued to him under this Chapter earlier and if so, whether such certificate had been cancelled) and previous*

> *experience, if any, of recruitment and other relevant matters as may be prescribed and shall be accompanied by a receipt evidencing the payment of the prescribed fee and an affidavit giving his current financial standing and an undertaking in the form prescribed to the effect that in the event of any information furnished in or along with the application for registration being found to be false or incorrect in any respect, the certificate shall be liable to be cancelled at any time in accordance with the procedure prescribed:*
> *Provided that no application shall be entertained under this sub-section from a person disqualified under sub-section (6) of section 14 till the expiry of the period of such disqualification…"*

25. The 'terms and conditions' of the registration are provided in Rule 10 of the Rules, which requires the holder of the Registration Certificate to *inter alia* maintain records in form of individual folder for each employer containing details of *inter alia* original demand letters from the employer, the power of attorney issued in favour of the recruiting agent, and the correspondence exchanged between them. The purpose again is to ensure that the employer is genuine and the recruiting agent is acting on behalf of such an employer after having satisfied himself of the safety and well-being of the employees such recruiting agent is hiring for such employer. Rule 10 of the Rules, so far as is relevant, is reproduced herein below :-

> ***"10. Terms and conditions of the certificate**.-*
> *(1) The registration certificates shall be subject to the following terms and conditions-*
> *xxxxx*
> *(ix) the holder of the certificate shall maintain the following records at his place of business*

and shall make them available for inspection on demand by Protector General of Emigrants or the Protector of Emigrants,—

(a) a register of receipt of charges from emigrants recruited, in the form of an original acquittance roll containing the signature of each emigrant from whom the charge has been received. Each such register shall be with reference to a demand for recruitment. The register shall be maintained as permanent records;

(b) a register and records of the amount and Pre-paid Ticket Advices along with their photo copies received from the employers, identified demand wise;

(c) a register containing details of expenses incurred on the recruitment of emigrants demand wise supported by the documents;

(d) individual folders for each employer whose demands of labour, the holder of the certificate has processed, proposes to process or is processing;

(e) bio-data of each emigrant recruited by the holder of the certificate;

(f) copies of employment contracts of each emigrant as authenticated by the Protector of Emigrants;

(g) original demand letter, power of attorney and correspondence with the employers;

(h) all documents relating to the recruitment of emigrants, including office copies of all advertisements issued, letters of interview and correspondence with the applicants, original award sheets leading to the selection, names and addresses of persons involved in the selection process, copies of letters of appointments, trade-testing particulars;

(i) a register of visas received from the employers, giving separate account of block and individual visas;

(j) a register of claims for all compensation, (including for injury or death) made by the emigrants or their dependents, recruited by the holder of the certificate giving the name, address of the emigrant, emigration number, country of employment, nature of compensation (including the details in regard to the circumstances leading to the claim), address of the recipients and the name and address of the employer, and the receipt in original in token of having made the payment of compensation; and

(k) such other records as may be required to be maintained by the registering authority.

xxxxxx

(xiv) the holder of the certificate shall—

(a) provide details of employment, including contract conditions, to the intending emigrants before recruitment;

(b) endeavor to ensure proper reception of the emigrant by the employer in the country of employment;

(c) endeavor to ensure that subsequent to the employment, the employer shall not alter the terms of the employment contract;

(d) endeavor to ensure that the employer takes timely action for renewal of documents authorising the stay of the emigrant in the country of employment,

(e) facilitate amicable settlement of disputes between the employer and the emigrant;

(f) issue receipt for the payments received from the emigrant;

(g) issue only such advertisements that are genuine and factually correct and shall refrain from any inducement or misrepresentation in this regard;

(h) file copies of all advertisements to the Protector General of Emigrants

immediately after their publication or release."

26. Section 14 of the Act empowers the Registering Authority to suspend or cancel the registration granted in favour of the recruiting agent *inter alia* on the ground that the holder of the certificate is not a fit person to continue to hold the certificate. Section 14 of the Act is reproduced hereinunder:-

> *"**14. Cancellation, suspension, etc., of a certificate.**—(1) The registering authority may cancel any certificate on any one or more of the following grounds and on no other ground namely:—*
>
> *(a) that having regard to the manner in which the holder of the certificate has carried on his business or any deterioration in his financial position, the facilities at his disposal for recruitment, the holder of the certificate is not a fit person to continue to hold the certificate;*
>
> *(b) that the holder of the certificate has recruited emigrants for purposes prejudicial to the interests of India or for purposes contrary to public policy;*
>
> *(c) that the holder of the certificate has, subsequent to the issue of the certificate, been convicted in India for any offence involving moral turpitude;*
>
> *(d) that the holder of the certificate has, subsequent to the issue of the certificate, been convicted by a court in India for any offence under this Act, the Emigration Act, 1922 (7 of 1922), or any other law relating to passports, foreign exchange, drugs, narcotics or smuggling and sentenced in respect thereof to imprisonment for not less than six months;*
>
> *(e) that the certificate has been issued or renewed on misrepresentation or*

suppression of any material fact;
(f) that the holder of the certificate has violated any of the terms and conditions of the certificate;
(g) that in the opinion of the Central Government it is necessary in the interests of friendly relations of India with any foreign country or in the interests of the general public to cancel the certificate.

(2) Where the registering authority, for reasons to be recorded in writing, is satisfied that pending the consideration of the question of cancelling any certificate on any of the grounds mentioned in sub-section (1) it is necessary so to do, the registering authority may, by order in writing, suspend the operation of the certificate for such period not exceeding thirty days as may be specified in the order and require the holder of the certificate to show cause, within fifteen days from the date of receipt of such order, as to why the suspension of the certificate should not be extended till the determination of the question as to whether the registration should be cancelled.

(3) A court convicting a holder of a certificate for an offence under this Act may also cancel the certificate:
Provided that if the conviction is set aside in appeal or otherwise, the cancellation under sub-section (3) shall become void.

(4) An order of cancellation of a certificate may be made under sub-section (3) by an appellate court or by a court exercising its powers of revision.

(5) Before passing an order cancelling or suspending a certificate the registering authority or the court, as the case may be, shall consider the question as to the provisions and arrangements which should be made for

safeguarding the interests of emigrants and other persons with whom the holder of the certificate had any transactions in the course of his business as recruiting agent and may make such orders (including orders permitting the holder of the certificate to continue to carry on his business with respect to all or any such emigrants and other persons) as it may consider necessary in this behalf.

(6) Where a certificate issued to any person has been cancelled under this section, such person shall not be eligible to make any application for another certificate under this Chapter until the expiry of a period of two years from the date of such cancellation."

27. Section 24 of the Act defines the offences and penalties under the Act. Sub-Section (1) of Section 24 is reproduced hereinunder:-

"24. Offences and penalties.—
(1) Whoever—

(a) except in conformity with the provisions of this Act emigrates; or
(b) contravenes the provisions of section 10 or section 16; or
(c) by intentionally furnishing any false information or suppressing any material information obtains a certificate or a permit or an emigration clearance under this Act; or
(d) without lawful authority makes or causes to be made any alteration in any certificate or permit or in any document or endorsement by way of emigration clearance issued or made under this Act; or
(e) disobeys or neglects to comply with any order of the Protector of Emigrants under this Act; or
(f) collects from an emigrant any charges in excess of the limits prescribed under this Act; or

(g) cheats any emigrant;
shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees:
Provided that in the absence of any special and adequate reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than six months and such fine shall not be less than one thousand rupees....”

28. The above provisions of the Act highlights the role and the responsibilities of a recruiting agent. His function is not only to act as a representative of the employer but also as a guardian for the emigrants/workers. The recruiting agent cannot, therefore, be permitted to contend that he does not have any duty to check the antecedents of the employer and that such duty shall lie only with the PGOE. No doubt PGOE must also, in order to achieve the object of the Act, that is, to safeguard the rights and interests of the citizens of India wanting to emigrate to a foreign land for employment purposes, perform its duty of scrutinizing the application made by any such recruiting agents, at the same time, the recruiting agent cannot wash its hands off by placing all the burden of the same only on the PGOE. Any false declaration made by the recruiting agent would, in terms of Section 14 of the Act, authorizes the registering authority to suspend and cancel the registration certificate granted to such recruiting agent.

29. In the present case, the respondents allege that seven of the companies for which the petitioner acted as a recruiting agent were found to be non-existent, inasmuch as they were not registered in Oman and the telephone number, E-mail IDs, fax, etc., given of these

companies were found to be non-existent. The petitioner does not dispute this assertion, but merely seeks to pass the onus of checking the authenticity of these Companies/employers on the Indian Embassy at Oman. As observed herein above, such defence is not available to the petitioner. The petitioner was acting as an agent of non-existing entities. The petitioner cannot feign ignorance of such vital fact, nor can it put the entire blame on the doorstep of the PGOE; it must face the consequences of its acts, which in fact, border on fraud. Its defence that it had acted on the documents supplied by a third party, also cannot be accepted as, under the Act and the Rules, the prime responsibility for verifying the antecedents of the employer is on the petitioner alone.

30. The third ground taken for cancelling the Registration of the petitioner itself was sufficient to justify the impugned action.

31. Even for the second ground, though the petitioner may have withdrawn the applications filed for the concerned applicants, the same again shows a grave lapse on the part of the applicant. I however, need not enter into much detail on this ground, as it would not only involve scrutiny of disputed question of fact and appreciation of evidence, but also because I find that the third ground alleged against the petitioner to cancel its registration, was fully established against the petitioner.

32. In any event, this Court in the exercise of its power under Article 226 of the Constitution of India does not act as an Appellate Court against the order passed by the Appellate Authority; it is only to examine the decision making process and to test if the decision taken

is arbitrary, whimsical or unreasonable. Tested on these parameters, I find that the petitioner has been unable to make out a case for interference with the Impugned Order.

CONCLUSION:

33. In view of the above, I find no merit in the present petition. The same is, accordingly, dismissed. The pending application also stands disposed of. The petitioner shall pay costs of Rs.25,000/- to the respondents within a period of four weeks from today.

NAVIN CHAWLA, J

JANUARY 9, 2024/ns/SS/AS

Click here to check corrigendum, if any