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

+ W.P.(C) 499/2015

M/S JK TRAVELS

..... Petitioner

Through: Mr Sandeep Khurana & Ms Semab Ali
Fatima, Advs.

versus

UOI AND ANR

..... Respondents

Through: Mr Anurag Ahluwalia, CGSC with Mr
Sarfaraz Ahmad, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **19.01.2015**

CM No. 858/2015 (Exemption)

1. Allowed subject to just exceptions.

WP(C) 499/2015

2. This writ petition is directed against the order dated 30.10.2014, passed by the Secretary, Ministry of Overseas Indian Affairs, Government of India, New Delhi (hereinafter referred to as the Appellate Authority).

2.1 The petitioner's concern is, presently, aggrieved by the fact that pursuant to encashment of the bank guarantee furnished by it at the time of seeking a Recruiting Agents License (RAL), the amount so received, at least partially, has been adjusted *pro tanto*, with the potentiality of the balance amount being adjusted in the near future.

2.2 The petitioner concern submits that in the absence of any loss or damage, such directions could not be issued by the Appellate Authority.

2.3 To be noted, by virtue of the impugned order, the Appellate Authority has issued two directions. First, that a sum of Rs. 3 lacs would be retained as compensation towards expenses incurred by the Government of India in processing emigration cases, which ultimately were found to be fraudulent. Second, that the balance sum of Rs. 7 lacs would be returned to the petitioner concern after October, 2015 (i.e., on 01.11.2015), only if, no claims are filed by then, by any emigrant or any mission.

3. The impugned order was passed on an appeal preferred by the petitioner concern against the order of the Protector General of Emigrants (in short PGE). The order of the PGE is dated 03.01.2013. A perusal of the order would show that the petitioner, who had obtained a RAL under the Emigration Act, 1983, facilitated emigration of several persons by submitting a false demand requisition dated 16.02.2011; which ostensibly emanated from a foreign employer, by the name of, M/s Al-Magwa Engineering & Construction Company. Enquiries revealed that the concerned emigrants, were in fact sponsored by another entity, by the name of M/s Heavy Engineering Industries & Shipbuilding Co., KSC, Kuwait.

3.1 The PGE also records that the petitioner concern shifted its office from 36-GF to 126-LGF, Barakhamba Lane, New Delhi, without prior approval of the Registering Authority.

3.2 It is in these circumstances, it is averred, that a decision, was taken to issue a show cause notice, (which was otherwise duly served on the petitioner), to encash the bank guarantee and forfeit the amount.

4. It is the submission of the learned counsel for the petitioner that since no financial loss has been incurred by the respondents, the amount collected on encashment of the bank guarantee could not have been adjusted and/or retained, in the manner indicated in the impugned order. For this purpose, the learned counsel for the petitioner refers me to paragraph 9 of the PGE's order dated 03.01.2013 and the observations made in paragraph 7 of the order of the Appellate Authority.

4.1 It is thus, the learned counsel's submission, that in these circumstances, the entire amount ought to have been returned to the petitioner.

5. I have heard the learned counsel for the petitioner concern. Having perused the impugned order, I tend to agree with the observations made therein, in particular, in paragraph 7 to the effect that in moving and processing papers, costs are incurred, which cannot be readily quantified. It is for this purpose that the appellate authority has directed retention of Rs. 3 lacs. In so far as the direction issued qua the balance Rs. 7 lacs is concerned, in my view, even that is appropriate. Since, the finding reached, that the petitioner, had fraudulently facilitated emigration of certain persons is not disputed, the likelihood of claims being lodged, cannot be ruled out at this stage.

6. As regards the submission that the respondents have not incurred a loss, and therefore the impugned order is flawed, according to me, is an area which would require some bit of evidence, and if, the petitioner concern is aggrieved by the direction, contained therein then, it would be open to it to lay challenge to the said order by way of a suit. I am not inclined, on these

facts, to exercise my discretion under Article 226 of the Constitution.

7. I find no merit in the petition. The only liberty perhaps the petitioner would have, is to file a suit, if it otherwise deems fit. The petition is, accordingly, disposed of.

RAJIV SHAKDHER, J

JANUARY 19, 2015

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