

12 SCOB [2019] HCD

**HIGH COURT DIVISION
(Special Original Jurisdiction)**

Writ Petition No. 489 of 2014.

**Kapasia Overseas Ltd.
4A-B, Baitul Khair Tower, 8th Floor,
Purana Paltan, Dhaka.**

..... Petitioner

-versus-

**Government of the People's of
Bangladesh, Ministry of Expatriates'
Welfare and Oversees Employer
Affairs, Bangladesh Secretariat, Ramna,
Dhaka and others.**

..... Respondents.

Mr. Mizanul Hoque Chowdhury, Advocate
.....For the petitioner.

Mr. Tanvir Parvez, Advocate
..... For the respondent No. 2.

Mrs. Amatul Karim, D. A. G. with
Mr. A. R. M. Hasanuzzaman, A. A. G.
with
Mr. Abu Saleh Md. Fazle Rabbi Khan,
A.A.G.
..... For the Respondents.

Heard on: 21.03.2017, 01.08.2017,
08.08.2017.

Judgment on: 16.08.2017.

Present:

Mr. Justice Tariq ul Hakim

And

Mr. Justice Md. Faruque (M. Faruque)

Emigration Ordinance, recruiting license being, Emigration Ordinance, 1982, section 14 of the Emigration Ordinance, 1982, cancellation of the license and forfeiture of securities;

It is a mandatory provision of law that before cancellation of a license, the authority must give a chance to the licensee of being heard, failing which the cancellation has no basis in the eye of law. ... (Para 24)

In this case, the order does not show nor there is anything on record to show that the respondent has given any chance of hearing to the petitioner before making such an order of cancellation and forfeiture of securities. Therefore, the order is violative of the section 14(1) of the ordinance and was thus bad in law. ... (Para 25)

The writ Court will not examine and weigh the aggrieved person's case on merit as an Appellate Court but to ensure that he was given a fair deal by the authority in accordance with law. ... (Para 26)

JUDGMENT

Md. Faruque (M. Faruque), J:

1. Rule Nisi was issued calling upon the respondents to show cause as to why the Memo No. 49.008.011.0977.00.2075.2010-330 dated 08.07.2013 (Annexure-L) issued by the respondent No. 3 cancelling the petitioner's license being No. RL-977 and thereby forfeiting the entire security deposits against the said recruiting license of the petitioner under section

14 of the Emigration Ordinance, 1982 and/or pass such other or further order or orders as to this Court may seem fit and proper.

2. At the time of issuance of the Rule the operation of the impugned Memo No. 49.008.011.0977.00.2075.2010-330 dated 08.07.2013 (Annexure-L) was stayed.

3. The short facts, for disposal of the Rule are that the petitioner is a private limited company being registered with the Register of Joint Stock Company and engaged in manpower business having recruiting agency and the petitioner is the member of Bangladesh Association of International Recruiting Agencies (BAIRA). The petitioner has been granted a recruiting license being No. RL-977 by observing all the formalities under Section 10 of the Emigration Ordinance, 1982 to conduct the business of a recruiting agency.

4. The respondent No. 2 issued a notice vide Memo No. ESRL-2285/2005/2011 dated 27.09.2012 (Annexure-D) upon the petitioner stating that the Ministry of Manpower, Singapore did not authorize First Care Employment Agency in relation to the appointment of 5000 Bangladeshi Workers and Bangladesh High Commission did not attest any demand letter in favor of the petitioner and accordingly asked the petitioner to give a reply from the within 7(seven) days.

5. The petitioner on 07.10.2013 sent a reply to the respondent No. 2 in relation to the show cause notice dated 27.09.2012 stating that the petitioner had no knowledge about the allegation of the show cause notice and the petitioner did not send any worker to the said company of Singapore and the petitioner did not give any power of authority and also did not take any money in the name of that company of Singapore. (Annexure-E).

6. The Director, Bureau of Manpower, Employment and Trading formed an investigation team for investigation to submit a report about the demand letter for 5000 Bangladeshi Workers to the First Care Employment Agency by forgoing seal and signature of First Secretary (Labour), Singapore, Bangladesh High Commission and also requested the investigation team to submit a report within 10(ten) working days vide Memo No. ESRL 2285/2005 dated 26.11.2012. The Deputy Director and Investigation Officer, Bureau of Manpower, Employment and Trading issued a letter vide Memo No. ESRL-977/তদন্ত/2012/2437 dated 29.11.2012 before the investigation officer in person with a written statement and related evidence to the said allegation. (Annexure-F).

7. Thereafter, respondent No. 3 issued a show cause notice vide memo No. 49.008.011.0833.00.101.2010-11 dated 10.01.2013 upon the petitioner as to why the license of the petitioner shall not be cancelled and the securities of the petitioner shall not be forfeited according to section 14 of the Emigration Ordinance, 1982 and also asked the petitioner submit to reply of that show cause notice within 15 (Fifteen) days. (Annexure-H)

8. Thereafter, the petitioner sent a reply to the Secretary, Ministry of Expatriates' Welfare and Overseas Employer Affairs in relation to the show cause notices dated 10.01.2013 stating that the petitioner had no knowledge about the said allegation and moreso the Investigation Team did not find any connection of the petitioner with the said allegation and accordingly prayed for discharging him from the said allegation. (Annexure-I).

9. The respondent No. 3 again issued another show cause notice vide Memo No. 49.008.011.0033.00.101.2010-179 dated 02.04.2013 upon the petitioner stating that the

petitioner failed to submit any documentary evidence in relation to one namely Md. Hossain and accordingly the liability of making forged seal and signature goes to the petitioner and hence the respondent No. 3 according to section 104 of the Emigration Ordinance, 1982 asked the petitioner as to why the license of the petitioner shall not be cancelled and the securities of the petitioner shall not be forfeited and also requested the petitioner to submit a reply within 15 (Fifteen) days. (Annexure-J).

10. The petitioner submitted a reply to the Secretary, Ministry of Expatriates' Welfare and Overseas Employer Affairs in relation to the show cause notice dated 02.04.2013 stating that the investigation team did not find any connection of the petitioner with the said allegation and moreover gave the address and telephone number of Md. Hossain mentioning that the petitioner is willing to give testimony at any time and prayed for discharging him from the said allegation. (Annexure-K).

11. Thereafter, the respondent No. 3 cancelled the license of the petitioner and forfeited the securities of the petitioner under section 14 of the Emigration Ordinance, 1982 vide Memo No. 49.008.011.0977 .00.2075.2010-330 dated 08.07.2013 stating that the petitioner failed to submit any evidence in relation to confirmation of Md. Hossen with the allegation (Annexure-L). The petitioner having no other alternative and efficacious remedy, filed this writ petitioner under Article 102 of the Constitution of People's Republic of Bangladesh and obtained the instant Rule.

12. The learned Advocate Mr. Mizanul Hoque Chowdhury appearing for the petitioner submits that section 14 of the Emigration Ordinance, 1982 provides that Government may cancel license after making inquiry and by giving opportunity of being heard to the licensee but in the instant case the respondents issued as many as 4 (four) show cause notices upon the petitioner and accordingly the petitioner replied the said show cause notices and also expressed his desire to participate in the hearing vide reply dated 27.04.2013 but the respondents without giving any opportunity to the petitioner issued the impugned order cancelling the license of the petitioner and forfeiting the securities which is violative of section 14 of the Emigration Ordinance, 1982. In this context the learned Advocate referred the case of Government of Bangladesh and others –versus- Tajul Islm reported in 4MLR(AD) 199.

13. He further submits that the respondents did not supply the inquiry report along with the show cause notice before cancelling the license and forfeiting the securities which is violative of section 14 of the Emigration Ordinance, 1982 and also violation of principle of natural justice and the impugned order has been passed at the direction of the Bangladesh High Commission, Singapore. Therefore the respondent No. 3 failed to exercise his own discretion considering the reply of the petitioner which is evident from the impugned order as such the impugned order is liable to be declared to have been passed without lawful authority and is of no legal effect.

14. He submits that the petitioner cannot run his business due to cancellation of the licensee and he has been deprived from his right to life, livelihood, business as guaranteed under Article 31, 32 and 40 of the Constitution of the People's Republic of Bangladesh.

15. Rule has been contested by the respondent No. 2 by filing affidavit-in-opposition wherein it has been stated that the petitioner was given opportunity of being heard appearing before the respondent No. 3. The investigation team mentioned in the investigation report that Md. Hossain is a Bangladeshi national, worked as a representative of the petitioner who

managed the demand letters for sending workers abroad by the petitioner. But while the address of Md. Hossain was asked by the investigating team, the petitioner failed to give the address of Md. Hossain which proved the involvement of the petitioner with the allegation.

16. By filing another supplementary affidavit dated 08.08.2018 for the respondent No. 2 the learned Advocate Mr. Tanvir Parvez submits that the Ministry of Expatriates' Welfare and Overseas Employment came to learn about the forged demand note from a letter dated 27.07.2012 issued by the First Secretary (Labour) of the Bangladesh High Commission in Singapore. The respondent No. 2 cannot confirm as to whether the copy of the inquiry report was given to the writ petitioner and the record does not show anything that the copy was given to the writ-petitioner. He also submits that the petitioner is not entitled to get a copy of the inquiry report, as such the petitioner's right under the principle of natural justice had not been breached. The Ministry of Expatriate Welfare and Overseas Employment has not initiated any action against Md. Hossain.

17. We have heard the learned Advocate for the writ-petitioner and the learned Advocate for the respondent No. 2, perused the impugned letter, writ petition and other materials on record.

18. It appears that the petitioner is a private limited company duly registered in the Register of Joint Stock Company and engaged in manpower business having recruiting agency and the petitioner is a member of Bangladesh Association of International Recruiting Agencies (BAIRA). The petitioner has been granted a recruiting license being No. RL-977 under Section 10 of the Emigration Ordinance, 1982 to conduct the business of a recruiting agency. The respondent No. 2 issued a notice vide Memo No. ESRL-2285/2005/2011 dated 27.09.2012 upon the petitioner stating that the Ministry of Manpower, Singapore did not authorize First Care Employment Agency in relation to the appointment of 5000 Bangladeshi Workers and Bangladesh High Commission did not attest any demand letter in favor of the petitioner and accordingly asked for a reply from the petitioner within 7(seven) days. On 07.10.2013 the petitioner sent a reply to the respondent No. 2 in relation to the show cause notice dated 27.09.2012 stating that the petitioner had no knowledge about the allegation of the show cause notice stating that the petitioner company did not send any worker to the said company of Singapore. The petitioner-company also stated that the company did not give any power of authority to any person and has not take any money in the name of that company of Singapore.

19. The Director, Bureau of Manpower, Employment and Trading formed an investigation team for investigation and to submit a report about the demand letter for 5000 Bangladeshi Workers to the First Care Employment Agency by forgoing seal and signature of First Secretary (Labour), Singapore, High Commission and the investigation team asked to submit a report within 10(ten) working days vide Memo No. ESRL 2285/2005 dated 26.11.2012. The Deputy Director and Investigation Officer, Bureau of Manpower, Employment and Trading issued a letter vide Memo No. ESRL-977/তদন্ত/2012/2437 dated 29.11.2012 before the investigation officer in person with a written statement and related evidence to the said allegation. Thereafter, the respondent No. 3 issued a show cause notice vide memo No. 49.008.011.0833.00.101.2010-11 dated 10.01.2013 upon the petitioner as to why the license of the petitioner shall not be cancelled and the securities of the petitioner shall not be forfeited according to section 14 of the Emigration Ordinance, 1982 and also requested the petitioner to submit a reply of that show cause notice within 15 (Fifteen) days.

20. It appears from the record that the petitioner sent a reply to the Secretary, Ministry of Expatriates' Welfare and Overseas Employer Affairs in relation to the show cause notices dated 10.01.2013 stating that the petitioner had no knowledge about the said allegation. Thereafter, the Investigation Team did not find any connection of the petitioner with the said allegation and accordingly prayed for discharging him from the said allegation.

21. The respondent No. 3 again issued another show cause notice vide Memo No. 49.008.011.0033.00.101.2010-179 dated 02.04.2013 upon the petitioner stating that the petitioner failed to submit any documentary evidence in relation to one namely Md. Hossain and accordingly the liability of making forged seal and signature goes to the petitioner and hence the Respondent No. 3 according to section 104 of the Emigration Ordinance, 1982 asked the petitioner as to why the license of the petitioner shall not be cancelled and the securities of the petitioner shall not be forfeited and also requested the petitioner to submit a reply within 15 (Fifteen) days. Thereafter, the petitioner submitted a reply to the Secretary, Ministry of Expatriate Welfare and Overseas Employer Affairs in relation to the show cause notice dated 02.04.2013 stating that the investigation team did not find any connection of the petitioner with the said allegation and the petitioner has no relation with the said Md. Hossain or any other person to the First Secretary, Singapore and the petitioner never submitted the demand letter for 5000 person or any person to the concerned Ministry and the alleged Mohamad Hossain is not connected with the petitioner company. The petitioner also stated that he is willing to give testimony at any time and prayed for discharging him from the said allegation. But the respondent No. 3 cancelled the license of the petitioner and forfeited the securities of the petitioner under section 14 of the Emigration Ordinance, 1982 vide Memo No. 49.008.011.0977 .00.2075.2010-330 dated 08.07.2013 which cannot be sustainable in the eye of law.

22. Section 14 of the Emigration Ordinance, 1982 clearly provides that before cancelling the licensee, an opportunity of being heard must be given to the petitioner. The said section is reproduced below:

Section 14 (1)- “ If, at any time during the pendency of a license, the Government is satisfied, after making such enquiry as it may deem necessary, that the licensee has been guilty of misconduct or that his conduct or performance as a licensee has been unsatisfactory or that he has violated any of the provisions of the Ordinance or the rules made thereunder or the prescribed Code of Conduct, it may, after giving the licensee an opportunity of being heard, by order in writing, cancel the licence or suspend it for a period to be specified in the order and may also forfeit the security furnished by him under section 10 in full or part.”

23. In the case of Government of Bangladesh and others –versus- Tajul Islm reported in 4MLR(AD) 199 their Lordships held that:

“Section-14(1)-Cancellation of license without proper show cause notice-Violative of natural justice-

Government have the power to suspend or cancel licence under section 14 of the Ordinance on the ground of misconduct and violations of the relevant provisions of the Ordinance. But in doing so the licensee must be given sufficient notice to show cause and reasonable opportunity of being heard. Licence is a legal privilege granted under law and not a charity. The show cause notice is not a mere technicality or idle ceremony. The notice must be clear and contain the facts of allegations. When the notice is vague it is no notice in the eye of law. Cancellation of licence without proper

notice to show cause and without opportunity of representing the defence being arbitrary and violative of the principle of natural justice is not sustainable in law.”

24. Section 14 of the Immigration Ordinance, 1982 and the settled principle of law derives from the decision of our Apex Court stated above, it is a mandatory provision of law that before cancellation of a license, the authority must give a chance to the licensee of being heard, failing which the cancellation has no basis in the eye of law.

25. In this case, the order does not show nor there is anything on record to show that the respondent has given any chance of hearing to the petitioner before making such an order of cancellation and forfeiture of securities. Therefore, the order is violative of the section 14(1) of the ordinance and was thus bad in law. We shall confine to the allegation of not giving the petitioner an opportunity of being heard before issuing the impugned order dated 08.03.2013 (Annexure-L), we find that there was no hearing at all.

26. A license in a commercial sense is not a charity done to a person but a privilege accorded generally on payment of fee. So, the cancellation of a license is a serious matter, adversely touching a person's pecuniary interest. More than that, it affects a fundamental right of a citizen to conduct any lawful trade or business subject to certain restrictions imposed by law. The Court would always insist that an authority exercising such a drastic power of cancellation, do act strictly according to law and always with fairness. The writ Court will not examine and weigh the aggrieved person's case on merit as an Appellate Court but to ensure that he was given a fair deal by the authority in accordance with law.

27. In the instant case, the order of cancellation of the license and forfeiture of securities of the petitioner even does not show that the Government was either “satisfied” as required under section 14(1) or that the petitioner's long representation was ever brought to its notice. The impugned order thus was a bad order in the eye of law.

28. In view of the above facts and circumstance of the case, we find that the impugned order issued by the respondent No. 3 cancelling the petitioner's recruiting license being No. RL-977 and forfeiting the entire securities, deposited by the petitioner (Annexure-L) was not in accordance with law.

29. In the result, the rule is made absolute.

30. Impugned memo No. 49.008.011.0977.00.2075.2010-330 dated 08.07.2013 (Annexure-L) issued by the respondent No. 3 cancelling the petitioner's license being No. RL-977 and forfeiting the entire security deposits against the said recruiting license of the petitioner under section 14 of the Emigration Ordinance, 1982 is declared to have been passed without lawful authority and is of no legal effect.

31. The respondents are directed to renew the license of the petitioner subject to payment of all arrears of renewal fees in accordance with law within 3(three) months from the date of receipt of this judgment and order.

32. However, there shall be no order as to cost.