

Present:
Mr. Justice Mohammad Bazlur Rahman
and
Mr. Justice Md. Ruhul Quddus

Writ Petition No.8751 of 2011

Md. Arfan Khan ...Petitioner
-Versus-
Bangladesh and others ...Respondents

Mr. A. M. Aminuddin with Sk. Shafique Mahmud
and Ms. Selina Akhter, Advocates
... for the petitioner

Ms. Jesmin Sultana Samsad, A.A.G
... for respondent Nos.1 and 4

Judgment on 15.7.2012

Md. Ruhul Quddus,J:

This Rule *nisi* at the instance of a manpower recruiting agent was issued calling in question the legality of an order passed by the Government in the Ministry of Expatriatesq Welfare and Overseas Employment Affairs canceling his recruiting license and forfeiting security money deposited against the same.

Facts leading to this Rule, in brief, are that the petitioner Md. Arfan Khan being proprietor of M/S Khan and Sons having its office at 116/1 (Ground Floor), D.I.T Extension Road, Fakirapool, Dhaka had obtained a recruiting license being R L No.1105 from the Government under the Emigration Ordinance, 1982 (hereinafter called the Ordinance) and was

conducting business of exporting manpower. All on a sudden the Government in the Ministry of Expatriatesq Welfare and Overseas Employment Affairs cancelled his license and forfeited security money deposited against the same by an order as contained in Memo No. 49.008.011.1105.252.2010-372/16(5) dated 15.9.2011 (annex-C to the writ petition) signed by the Deputy Secretary, Branch-8 of the Ministry (herein respondent No.6). The writ petitioner claimed that the order was passed without serving him any prior notice and assigning him any reason whatsoever.

Bangladesh represented by the Secretary, Ministry of Expatriatesq Welfare and Overseas Employment Affairs, and the Director General Bureau of Manpower Employment and Training (respondent Nos.1 and 4 respectively) have contested the Rule by filing a joint affidavit-in-opposition denying the material allegations of the writ petition and contending, *inter alia*, that before issuance of the impugned order a notice as contained in Memo No.49.008.011.1105.00.252.2010-426 dated 29.8.2011 was served upon the petitioner, which he himself received by putting his signature on 4.9.2011 and made a reply thereto on 7.9.2011 (annexes-1 and 2 to the affidavit-in-opposition). In the said notice allegations of fabricating a letter of demand for overseas employment and false attestation of the same by scanning the signature of Third Secretary, Embassy of Bangladesh in Netherlands were brought against the petitioner and he was asked to show cause to that effect. It was also mentioned that the Ministry had enquired into the matter and received fax message from the concerned embassy in Netherlands.

Ms. Selina Akhter, learned Advocate for the petitioner at the very outset submits that the writ petitioner was conducting his business in accordance with law, and following the terms and conditions of the license, but the Government without giving him any opportunity of being heard cancelled his license forfeiting the security money in utter violation of section 14 (1) of the Ordinance. The impugned order having been passed in violation of principle of natural justice is without lawful authority.

In course of hearing, Mr. A. M. Aminuddin, learned Advocate appears as a senior Counsel for the petitioner. We draw his attention to the show cause notice and reply made by the petitioner thereto (annexes-1 and 2 to the affidavit. in-opposition), in respect of which Mr. Aminuddin submits that although a notice was served upon the petitioner, he was not given adequate and fair opportunity of being heard. The notice which was served upon the petitioner, he insisted, did not fulfill the requirement of section 14 (1) of the Ordinance. In support of his contention, Mr. Aminuddin refers to the case of Government of Bangladesh and others Vs. Md. Tajul Islam, 49 DLR (AD) 175.

Mr. Aminuddin further submits that the allegations made in the show cause notice do not constitute any misconduct for which the right to profession and lawful trade or business of a citizen guaranteed under the Constitution can be taken away.

On the other hand, Ms. Jesmin Sultana Samsad, learned Assistant Attorney General appearing for respondent Nos.1 and 4 submits that the



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petitioner not only committed misconduct, but also violated the mandate of law as well as the terms and conditions of his license. Moreover, he obtained the Rule by suppressing the material facts relating to service of notice upon him and as such the Rule is liable to be discharged.

We have considered the submissions of learned Advocates of both the sides and gone through the record and also the Government-file which has been produced by the Assistant Attorney General to meet our query. It appears from annex-1 that before issuance of the impugned order the Ministry served a notice to show cause upon the petitioner, material portion of which is reproduced below:

ÓDch^g weiq Ges m^{ki} w^l Rvb^x h^z w^l Avcbvi wi muus G^x Š^x vym^m
Lvb GÜ m^š (Avi Gj -1105) w^{wj} w^U Farmer Pl w^w úvb^x 250 (‘BkZ cĀvk) Rb
K^w klgK w^w x^{ki} Rb” evQvB AbgwZi w^w g[%] w^x MZ 07-06-2011 w^lt Zwi^x
Av^x b K^x | w[%] MZ 17-08-2011 Ges 23-08-2011 Zwi^x eisj w^x k `Zverm,
w^{wj} w^U n^x d^v gvi dZ Rvb^x nq w^w msikó w^w úvbxi w^w WK^x Š^x mZ^w qb Ki^w
nq^w | ZvQvor H b^w w^w w^{wj} k w^w úvb^x mZ^w q^x Rb” `Zver^x Gi^t w^w WK^x Š^x
Rgv w^w | g[%] w^x q `w^l j K^w WK^x Š^x `Zver^x i b^w w^w mZ^w qb w^w w^x n^x Zv
Rvj | ZvQvor w^{wj} k w^w x^{ki} w^w mxj Ges w^w i e^w envi Ki^w n^x Zv Ab^w b^w K^w MR c^x
mw^x mgÄm^w c^w bq |

G wel **x** ` Zverm Avi I Rvbq **w** ` Zverxi 3q m^uPe Rbve **y** gvmg Avn**x****x**
-**¶**i Ges mxj Scan K**x** Rvij KmRc[†] **y**^u K**x** g%^u**x** ` wLj Kiv n**x****x** G c^hs**x**
MZ 23-08-2011 Zwi **x** G**x****S****x** - EwaKvixi mv**x** w**v** x**v****x** Rvb**x** PvI qv nq Ges gj
KmRc[†] mn g%^u**x** Avmvi Rb" ej v nq | wK%^uAvcbi b gj KmRc[†] mn g%^u**x** Av**x**bi b
Ges w**v** c**K**vi w**v****x****M** K**x**bi b | wel q*u* m*u*eR ch*u***x**Pbvq c*u***x**qg*u*b nq **w** Avcb*v*
G**x****S****x** ` Zverxi Kg**R**Z*A* -**¶**i I mxj scan K**x** Rvij w*g*v*U* **y***v*i Ges Ab*v**b*
Avb*v**z*K WK**x****S****y**^u K**x** g%^u**x** ` wLj K**x** e*m***g**b Aa*v***x**k 1982 Gi 20, 21, 22

avivi Aciva Kxk hv wKbw emMgb Aaixk 1982 Ges wi jwUs GxS AvPi Y I j vBxS
wewagvij v 2002 Gi mPúó j sNb Ges kw- KM Acivxi kwgj |

xxZy -M i I mxj Rvj Kx fgv wgvU yvi yvi I g% x Rgv wvi
Acivx Avcbvi j vBxS emZj , mgj q RgvbZ evRqvB Ges cPj Z AvBx w Avcbvi
wei x wR` vi x gvgj v `xi Kiv nx bv Zvi myúó eL v AvMvgx 07 (mZ) KgP exi
gx- wbg- M i Kvi xi wKU ` wLj Kivi Rb- wBxR cvb Kiv nij |

From the above quoted text it appears that before issuance of the notice, the Ministry had brought the matter into notice of the writ petitioner on 23.8.2011 through telephone and asked him to appear before the Ministry with his original documents i.e. the demand letter with attestation of the embassy. The writ petitioner himself received the notice on 4.9.2011 putting his signature thereon and thereafter made a representation to the Ministry on 7.9.2011 praying for two weeks time to file the original documents. In the said representation the writ petitioner did not deny the statements of the notice or any part thereof and took defense that one Salam Master had obtained the letter of demand for overseas employment on his (petitioner's) behalf and entered into an agreement with him. Annex-3 to the affidavit-in-opposition is a fax message sent by the Second Secretary, Embassy of Bangladesh in Netherlands, which states that the seal and signatures given on the demand letter were fake. The foreign mission also made it clear that the question of attestation of the demand letter did not arise as the mission had not received any such letter from any overseas employer in Poland. Annex-4 is the demand letter bearing the fake signatures and seal of the Third Secretary of Bangladesh Embassy in Netherlands. On perusal of

the Government-file the statements made in the affidavit. in-opposition and documents annexed thereto are found to be correct and authentic.

The petitioner stated in the writ petition that no notice was served upon him. He obtained the Rule mainly on the ground of non-service of notice, but when the affidavit-in-opposition reveals that a notice was served upon him, his learned Advocate shifted his argument from non-service of notice to inadequacy of opportunity of hearing.

It further appears that the writ petitioner had received the notice on 4.9.2011, made reply thereto praying for two weeks time on 7.9.2011 to submit ~~original documents~~ without explaining what purpose those would serve to avert the charge of misconduct. However, the impugned order was issued on 15.9.2011 and thereafter the writ petitioner moved in this Court and obtained the Rule and interim order of stay on 23.10.2011. During pendency of the Rule, he did not produce any ~~original documents~~ before this Court which he chose to submit to the Ministry to prove his bonafide in dealing with the matter. So, it is clear that the writ petitioner was given a fair opportunity of being heard, and that he obtained the Rule by suppressing material facts relating to service of notice.

On careful examination of the Immigration Ordinance, 1982 it appears that section 13 (1) of the same is a prohibitory clause which puts a complete bar on transferring or assigning to any other person or entity to use the same, while section 14 (1) confers authority on the Government to cancel a recruiting license and forfeit the security money for misconduct or violation of any provision of the Ordinance or any

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terms and conditions of the license on the part of the licensee. Sections 20-22 of the Ordinance provide different terms of imprisonment for unlawful immigration, fraudulent inducement towards the immigration, and false representation of Government authority. Sections 13 (1) and 14 (1) of the Ordinance may aptly be quoted below:

%163 (1). No license shall be used, directly or indirectly, by any person other than the person in whose favour it was issued or at any place other than the place mentioned in the license nor shall the license be transferred, conveyed or assigned to any person or entity.

%164 (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 found 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 this 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 license 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 in part".

The writ petitioner has annexed a copy of the license (annex-B), wherein it is mentioned on its face that *%the license is not transferable nor it shall be used directly or indirectly by any person other than the person in whose favour it is issued."* These words are taken from section 13 (1) of the Ordinance. From the reply made by the writ petitioner (annex-2) it

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is evident that he allowed one Salam Master to deal with the employer in Poland on his behalf, in other words he allowed him to use the license. This is nothing but violation of section 13 (1) and also the condition of license as quoted above.

The Immigration Ordinance, 1982, The Recruiting Agent Conduct and License Rules, 2002 or the General Clauses Act do not provide any definition of ~~misconduct~~. The Government Servants (Discipline and Appeal) Rules, 1985 defines it as follows:

2. (f) '*misconduct*' means conduct prejudicial to good order or service discipline or contrary to any provision of the Government servants (Conduct) Rules, 1979 or unbecoming of an officer or gentleman and includes-

- (i) *disobedience to lawful orders of superior officers;*
- (ii) *gross negligence of duty;*
- (iii) *flouting of Government orders, circulars and directives without any lawful cause, and*
- (iv) *submission of petitions before any authority containing wild, vexatious, false or frivolous accusation against a Government servant."*

According to Black's Law Dictionary, misconduct is '*a dereliction of duty; unlawful or improper behavior*'.

In the present case the allegations of fabrication of a demand letter, its false attestation and filing to the concerned Ministry are not only misconduct, but also criminal offence punishable under the law. We do

not find any substance in the submission of the learned Advocate for the petitioner that the allegations do not constitute any misconduct.

We have also gone through the case of 49 DLR (AD), 175 wherein recruiting license of one Md. Tajul Islam was suspended and subsequently cancelled by two separate orders dated 15.9.1993 and 26.2.1994. The subsequent order of cancellation was issued by a Senior Assistant Secretary of the Ministry of Labour and Manpower on the ground of unsatisfactory performance. No prior notice to show cause was served upon the recruiting agent before suspension of the license, but before cancellation of the same a notice was served, wherein no specific allegations regarding unsatisfactory performance on the part of the recruiting agent were made. Both the orders were challenged in a writ petition. The High Court Division, without entering into merit, made the Rule absolute on the ground that a Senior Assistant Secretary of the Ministry had no authority to pass any such order. Against the said decision, the Government had gone to the Appellate Division and obtained leave. The Appellate Division ultimately dismissed the appeal by a majority judgment, but on a different ground that the pre-condition of satisfaction on the part of the Government before exercising the power of cancellation of license under section 14 (1) of the Ordinance was not fulfilled. In the present case the notice contains specific allegations of fabrication of the demand letter and production of the same to the Ministry with false attestation by scanning the signatures of the Third Secretary of Bangladesh Embassy in Netherlands and using his seal. The Ministry held prior enquiry into the matter and assigned valid and

reasonable grounds in passing the impugned order. So, the case cited is plainly distinguishable.

Before parting with the case we record our anxiety over the news items often appearing in various news papers that many of the unemployed youths are being cheated by some recruiting agents, who are usually paid by selling the victim's ultimate means of survival. In these days of serious deterioration of morality in business, the law should not be interpreted in such a manner as would virtually defeat rather than advancing the cause of justice. The expatriate workers have been contributing to our economy by remitting their hard earned foreign exchange. Any corrupt practice to trade upon their miseries should be dealt with strictly.

In view of the above, we do not find any merit in the Rule. Accordingly the Rule is discharged. Stay granted at the time of issuance of the Rule is vacated.

Mohammad Bazlur Rahman, J:

I agree.