

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF MAY, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION No. 16821 OF 2022 (GM-RES)

BETWEEN:

MR. RAMAN SUNDARESAN

... PETITIONER

(BY SRI A.MAHESH CHOWDHARY, ADVOCATE)

AND:

- 1 . JOINT SECRETARY
MINISTRY OF EXTERNAL AFFAIRS
SHRI LAKSHMI NARAIN
SO (DB), 74B SOUTH BLOCK
NEW DELHI – 110 021.
- 2 . PROTECTOR GENERAL OF EMIGRANTS
ROOM NO. 1013-14
10TH FLOOR
AKBAR BHAWAN
CHANAKYAPURI
NEW DELHI – 110 021.

REPRESENTED BY
MR. BRAHMA KUMAR
INDIAN FOREIGN SERVICE
JOINT SECRETARY (OE)

- 3 . IGP.,
NODAL OFFICER
GOVERNMENT OF KARNATAKA
NRUPATHUNGA RAOD
BENGALURU - 560 001.
- 4 . THE STATION HOUSE OFFICER
CENTRAL CRIME BRANCH
COTTONPET MAIN RD
SULTANPET
BAKSHI GARDENS
CHICKPET
BENGALURU - 560 053,
- 5 . A.NANDA KUMAR

... RESPONDENTS

(BY SRI H.SHANTHI BHUSHAN, DSGI FOR R1 AND R2;
SMT. SHWETHA KRISHNAPPA, AGA FOR R3 AND R4;
SRI P.PRASANNA KUMAR, SPECIAL PP FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED LETTER VIDE ANENXURE-A DATED 08.08.2022 BEARING NO.F.NO.C-13019/02/2019 OE-II ISSUED BY THE R2 AS IT IS WITHOUT AUTHORITY AND IN VIOLATION OF PRINCIPLES OF NATURAL JUSTICE.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 11.04.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question communication dated 08-08-2022 issued by the 2rd respondent whereby the 2nd respondent/Joint Secretary to the Protector General of Emigrants communicates to the Director General of Police, Government of Tamil Nadu with regard to the case of the petitioner to be beyond the purview of Section 10 of the Emigration Act, 1983 ('the Act' for short).

2. Heard Sri A. Mahesh Choudhary, learned counsel appearing for the petitioner, Sri H. Shanthi Bhushan, learned Deputy Solicitor General of India appearing for respondents 1 and 2, Smt. Shwetha Krishnappa, learned Additional Government Advocate appearing for respondents 3 and 4 and Sri P. Prasanna Kumar, learned counsel appearing for respondent No.5.

3. Brief facts that lead the petitioner to this Court in the subject petition, as borne out from the pleadings, are as follows:-

The petitioner claims to be employed by one Kamdhenu Ventures Cambodia Limited ('the Company' for short) joined the Company on 23-01-2013. It is averred in the petition that on account of the Company not giving timely salaries to the petitioner, he has tendered resignation on 28-05-2014. It is the allegation in the petition that between the date of offer of employment of the petitioner on 24-11-2012 and the date of resignation dated 28-05-2014 is what forms the entire issue in the *lis*. The Company is a sugar factory in Kratie province in Cambodia which was functioning from 2011. The Company was registered with the Ministry of Commerce in terms of laws of Cambodia and one Mr. A. Nandaa Kumar was the Director of the Company. It is the averment in the petition that due to mismanagement of Mr. A. Nandaa Kumar, as Director of the Company, the Company suffered huge loss and the business came to a standstill due to which many of employees' salaries and other payments were not paid. It is the contention of the petitioner that he himself was not paid the salary that he was offered at 4,000 USD in terms of the letter of appointment. It is the claim of the petitioner, that the petitioner was in due from the

Company an amount of 33,130 USD as payment of salary. After the petitioner coming out of the Company, he sought to initiate several proceedings against the Company and the Director Mr. A. Nandaa Kumar. One of the proceedings was a complaint being registered with the Bureau of Emigration invoking Section 10 of the Act. The correspondence between the Joint Secretary of Bureau of Emigration and the Director General of Police, Chennai is the issue in the *lis*.

4. The learned counsel for the petitioner would vehemently contend that the complaint against 5th respondent, the erstwhile Director of the Company was that he was recruiting employees from India luring them into good jobs and was not fulfilling the promise. All these happened without the agency of the 5th respondent being registered as one to recruiting employees outside India. It is his case that it was a clear case of violation of Section 10 of the Act. The learned counsel further submits that the complaint was in specific and the communication indicates that there is a closure report which was not even made known to the petitioner and indication in the communication which is beyond the

purview of Section 10 of the Act is on the face of it is erroneous. Therefore, the petitioner seeks a direction for investigation/inquiry to be conducted under the Act while holding that under the Act the present communication is one without authority of law.

5. Per-contra, the learned counsel representing the 5th respondent takes this Court through the detailed statement of objections filed on behalf of the 5th respondent and seeks to demonstrate that the petitioner who had indulged in several fraudulent activities has been clearly responsible for the down fall of the Company and the business of the Company coming to a standstill. In order to get over his liability, as several cases are registered by the 5th respondent against the petitioner, the petitioner has registered several cases against the 5th respondent, one such case is a complaint made to the Authorities contending that acts of the 5th respondent were in contravention of Section 10 of the Act. He would submit that the writ petition be dismissed with exemplary costs, as there is no cause of action for the petitioner to have called in question an internal communication which has not fructified into any final proceeding. Merely because a copy is

communicated to the petitioner, it would not give him a cause of action to challenge it in a writ petition.

6. The learned Deputy Solicitor General of India representing the Ministry of External Affairs would also toe the lines of the learned counsel representing the 5th respondent insofar as his contention that the writ petition is not maintainable, as it is only an internal correspondence between two officials of Government of India.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the available material on record.

8. To consider the case of the petitioner, it is necessary to notice the history as is narrated by the 5th respondent in his statement of objections. The Company was incorporated in Cambodia under the Cambodian laws in the year 2012 and was licensed to set up a sugar factory complex at Kratie Province in Cambodia. The Government of Cambodia appears to have handed over about 16,000 hectares of land on lease to the Company for its

project and the Company had a capacity of crushing 5,000/- metric tonnes of sugarcane per day. The Company was floated by two Vietnamese Companies and a Singapore based Company viz., M/s Indo China Food Industries Private Limited. The 5th respondent claims to be one of the investors along with six other persons in the Singapore based M/s Indo China Food Industries Private Limited.

9. In the year 2012, the petitioner was appointed as the General Manager - Operations in the Company and one Mr. Vishwanathan was appointed as the Senior Manager - Finance and Accounts. The functioning of the Company was smooth and lot of capital came into the Company from shareholders of the Company. It is the claim of the 5th respondent that he believed that Mr. Vishwanathan and the petitioner would handle the affairs of the Company with all diligence and as such he did not bother about functioning of the Company. Taking advantage of the absence of the 5th respondent, it appears that the petitioner and others committed several illegalities. The Courts in Cambodia issued warrant of arrest against the petitioner and four other employees of

the Company regarding large scale embezzlement of funds and diversion of funds received by the petitioner. The employees arrested led to statement of confession made before the Indian Embassy which blew out large scale fraud committed by the petitioner and others in the Company. It is the averment that the petitioner to avoid clutches of law, escaped from Cambodia in the year 2014 during subsistence of his employment. Five years after moving out of Cambodia, the petitioner seeks to register several complaints against the 5th respondent – one such complaint was registered with the Ministry of External Affairs alleging that the 5th respondent had set up illegal recruitment agency and that he had committed violation of Emigration laws. Based upon the complaint so registered by the petitioner, a communication is addressed by Government of India to the Director General of Police, Karnataka on 03-09-2019 with regard to illegal recruiting agency. The communication reads as follows:

*"Government of India
Ministry of External Affairs
(Overseas Employment and PGE Division)*

*F.No.C-13019/37/2019-OE-II 1021, New Delhi – 110 021,
Date – 3rd September, 2019*

To,

Director General of Police,
Government of Karnataka,
Bangalore.

Sub: Complaint against illegal recruiting
agency (GR146978)

Sir,

1. I am directed to forward herewith a complaint received from Mr. Raman Sundrasan (R/O M.I.G. Plot No. 7, Hudco Colony, Gandhi Maa Nagar, Peelamedu. Coimbatore, Tamil Nadu - 641 004 and email ID-sundaresanlakshmi5@gamil.com) and (Mob: +91-9597098575, 9626498575) and other fifty eight emigrants against illegal agency Kamadhenu Ventures and Cambodia Ltd. For duping him on the pretext of providing job in Cambodia. The addresses of the above agency are mentioned below.

1st Address-Plot No.5, River Side Road, Kotturpuram, Chennai, Tamil Nadu - 600 085.

2nd Address-Plot No.28, Phase 2, Chettinadu Homes, Chennai, Tamil Nadu - 600 100.

3rd Address Plot No.2, 1st Main Street, R.M.V 2nd Stage, Dollors Colony, Bengaluru, Karnataka - 560 034.

2. It is also submitted that the above mentioned agency is not registered under Section 10 of Emigration Act, 1983 and hence this is not authorized to carry out overseas recruitment business without obtaining a valid Registration Certificate. This requirement is mandatory and any contravention of the same is an offence under Sections 10 and 24 of the Emigration Act, 1983.

3. In view of above, it is requested to direct the concerned officer to register the case and get the

matter investigated thoroughly and send us the action taken report at the earliest.

Yours Sincerely

*(R.A.Meena)
Under secretary (OE-II)"*

(Emphasis added)

A similar complaint was made to the Director General of Police, Government of Tamil Nadu, Chennai on the same date i.e., 03-09-2019. Pursuant to communication of Government of India which was based upon the complaint of the petitioner, the City Crime Branch, Bangalore investigated the matter and submitted its inquiry report to the Deputy Commissioner of Police (Crime) on 16-08-2021 opining that the 5th respondent was not running any recruitment agency, much less an illegal recruitment agency. The communication reads as follows:

*“ರವರಿಗೆ,
ಪೊಲೀಸ್ ಆಯುಕ್ತರು,
ಬೆಂಗಳೂರು ನಗರ.*

ಮಾನ್ಯರೆ,

*ವಿಷಯ: Complaint against illegal recruiting agent
(GR142138)*

ಉಲ್ಲೇಖ: Government of India, Ministry of External Affairs (Overseas Employment and PGE Division) ರವರ ಪತ್ರ ಸಂಖ್ಯೆ: ಸಿ-13019/37/2019-ಓಇ-1! ದಿನಾಂಕ:18.10.2019.

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಉಲ್ಲೇಖಿತ ಪತ್ರ ಹಾಗೂ ಅದರ ಅಡಕಗಳನ್ನು ಈ ಪತ್ರದೊಂದಿಗೆ ಲಗತ್ತಿಸಿದೆ. ಸದರಿ ಪತ್ರದಲ್ಲಿನ ಅಂಶಗಳ ಬಗ್ಗೆ ನಿಯಮಾನುಸಾರ ಪರಿಶೀಲಿಸಿ, ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮ ಕೈಗೊಂಡು, ಕೈಗೊಂಡ ಕ್ರಮದ ಬಗ್ಗೆ ವರದಿಯನ್ನು, ಕೇಂದ್ರ ಸರ್ಕಾರಕ್ಕೆ ನೇರವಾಗಿ ಕಳುಹಿಸಿ, ಈ ಕಛೇರಿಗೆ ಮಾಹಿತಿ ನೀಡುವಂತೆ ಕೋರಿದೆ.

ತಮ್ಮ ವಿಶ್ವಾಸಿ,

(ರಾಧಿಕಾ ಜಿ. ಐ.ಪಿ.ಎಸ್)

ಎ.ಐ.ಜಿ.ಪಿ. (ಸಾಮಾನ್ಯ)

ಡೈರೆಕ್ಟರ್ ಜನರಲ್ ಮತ್ತು ಇನ್‌ವೆಸ್ಟಿಗೇಟಿವ್ ಜನರಲ್ ಆಫ್ ಪೊಲೀಸ್‌ರವರ ಪರವಾಗಿ.

....

4.	Result of the investigation	<p>The Petition is enquired in detail</p> <ul style="list-style-type: none"> The company run by opponent NandaKumar, by name Kamadhenu Ventures and Combodia Ltd., is not a company registered in India. Instead, it is a company registered in Combodia. The opponent Mr. Nanda kumar is residing at No.2, 1" main road. RMV 2nd Stage, Dollars Colony Bangalore and it is his residence and not the office of his business activity. One Mr.Raman Sundareshan had lodged a complaint to Ministry of External Affairs. saying that at the address located in No.2, 1" Main Road,
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		<p>RMV 2nd Stage. Dollars Colony. Bengaluru, illegal recruitment activity is taking place. In this regard Sanjay Nagar Police Station has enquired the issue and has submitted report that no illegal recruitment has taken place at that address.</p> <ul style="list-style-type: none"> • In relation to that petition, already petitioner's colleague Mr. Raman Sundareshan has lodged complaint at CBCID-OCU division Chennai, Tamilunadu, and in that regard investigation is under process in crime No. 02/2021 u/s 420. 506(1) of IPC r/w section 10 of The Emigration Act. Petitioner herein, Mr. Santhosh Kumar Mohanthy is the witness in this case and he has given statement as well.
8	Report/Submission	<p>In relation to the subject of the petition, the matter is under investigation in Crime no. 02/2021 u/s 420. 506(1) of IPC r/w section 10,24 of The Emigration Act at CBCID-OCU, Chennai, Tamilunadu, and this petitioner is a witness person in that case. Since the matter is under investigation as said above, it is hereby submitted that this petition may please be closed.</p>

(Emphasis added)

Simultaneously, the petitioner who had complained to the Ministry of External Affairs also communicates an inquiry report holding that the 5th respondent had nothing to do with the allegations made against him. After holding the inquiry, a communication is made on 08-08-2022 and a copy of which was marked to the petitioner. Since it is this communication that drives the petitioner to this Court, it is necessary to notice the said communication. It reads as follows:

"F.No.C-13019/02/2019.OE-II Dated:08 August 2022

To,

*The Director General of Police
Government of Tamil Nadu
Chennai.*

Dear Sir,

This is with reference to this Ministry's communication of even number dated 3rd September 2019, addressed to Director General of Police, Government of Tamil Nadu Chennai (attached herewith for ready reference).

2. Based on the complaint received from Mr. Raman Sundrasan (R/O M.I.G. Plot No.7, Hudco Colony, Gandhi Maa Nagar, Peelamedu, Coimbatore, Tamil Nadu - 641 004 and email ID: sundaresanlakshmi5@gmail.com), M/s Kamadhenu Ventures and Cambodia Ltd (KVCL), the case was referred to DGP, Govt. of Karnataka for alleged violation of Emigration Act, 1983.

3. The matter was re-examined in the light of closure report filed by CCB, Economic Offence Wing,

Bengaluru and the facts presented by Shri A.Nandaa Kumar. It has been found that M/s. Kamadhenu Ventures and Cambodia Ltd. Was a Cambodian registered sugar company which also owned two sugar factories in Vietnam, viz., NIVL Joint Stock Company and Binh Dinh Sugar Joint Stock Company. Shri A.Nandaa Kumar who was the Managing Director in NIVL Joint Stock Company was nominated as Director of KVCL Cambodia for the project construction. Following the completion of project, the new operation team headed by Shri Sundrasan was appointed during 2012-13. It was learnt that the team headed by him was allegedly involved in misappropriation and the Cambodia court issued warrants against him and 4 others.

4. It was brought to the Ministry's notice that Mr. Sundrasan came to India in mid-2014. However, the aforementioned complaint was filed with the Ministry only in 2019, which is after 5 years.

5. In view of the circumstances, it appears that it is a legal matter between Mr. Sundrasan and KVCL Cambodia Ltd. for non-payment of salaries and other dues. Ministry is of the opinion that this matter is beyond the purview of the Section 10 of the Emigration Act, 1983."

(Emphasis added)

The communication narrates that based upon the complaint received by the petitioner, the case was referred to the Director General of Police, Government of Karnataka for alleged violation of the Act. As observed hereinabove, the matter had been investigated and the case had been closed. Again on insistence of the petitioner, the matter was re-examined in the light of the

closure report by the CCB, Economic Offence Wing, Bengaluru and it was found that the Company was a Cambodian registered Sugar Company owned by two sugar factories and the 5th respondent was the Managing Director of the Company and was later nominated as Director. It is also noticed that the petitioner came to India in Mid 2014 and a complaint was registered with the Ministry only in 2019 after five years. It further observes that it is a legal matter between the petitioner and the Company for non-payment of salaries and other dues. The Ministry of External Affairs was of the opinion that the matter was beyond the purview of Section 10 of the Act. Therefore, it becomes necessary to notice Section 10 of the Act. Section 10 reads as follows:

"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.”

(Emphasis supplied)

Section 10 (*supra*) mandates that no person to function as recruiting agent without a valid certificate. Therefore, the very section mandates that no one should be a recruiting agent.

10. The finding by the City Crime Branch, Bengaluru is that the 5th respondent was not running any recruiting agency. Moreover, if the petitioner was aggrieved by non-payment of salary which is the prime allegation against the Company, he ought to have agitated it without any loss of time in the year 2014 at Cambodia or immediately after return to India in the year 2014. For the first time a complaint emerges against the 5th respondent in the year 2019 that too for violation of Section 10 of the Act. No fault can be found with the communication impugned in the petition as non-payment of salary does not form an issue under Section 10 of the Act. The proviso to Section 10 further mandates that a person carrying on the business as recruiting agent before commencement

of the Act, may so continue without a certificate for a period of one month from its commencement and within that one month an application in the prescribed form should be made to the Registering Authority. The Registering Authority is the Government of India in the office of Protector General of Emigrants. There is no mandate under Section 10 that non-payment of salary, as is alleged by the petitioner, can also be its ingredient. The petitioner seeks to give a colour of violation of Section 10 of the Act by contending that the 5th respondent was running a recruiting agency without a valid certificate and, therefore it was illegal. It is too late in the day for the petitioner to contend that the 5th respondent was running an illegal recruiting agency.

11. Above all, what requires to be noticed is, registering of several cases by the petitioner against the 5th respondent. One such crime under Sections 10 and 24 of the Act is registered by the petitioner before the Sanjaynagar Police Station, Bengaluru in Crime No.185 of 2021. This is called in question before this Court in Criminal Petition No.8912 of 2021 wherein an interim order of stay is operating. Therefore, any observation with regard to the conduct

of the petitioner at Cambodia, as is alleged in the statement of objections filed by the 5th respondent is not considered. The communication that is impugned in the petition is undoubtedly an internal communication and since it is beyond the purview of Section 10 of the Act and the issue being pending investigation in Crime No.185 of 2021, this Court would hold its hands to interpret the said communication.

12. Reserving liberty to the petitioner to knock at the doors of the appropriate Authority, if needed, the writ petition deserves to be rejected and is accordingly rejected. Interim order, granted earlier, stands dissolved.

Consequently, I.A.No.1 of 2023 also stands disposed.

**Sd/-
JUDGE**

bkp
CT:SS