

**Suneer Vs. Union of India**

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**Court :** Kerala

**Decided On :** Oct-21-2011

**Reported in :** 2011(4)KLT1011; 2011(4)KHC730

**Judge :** Antony Dominic

**Appeal No. :** W.P. (C). No.26281 of 2011

**Appellant :** Suneer

**Respondent :** Union of India

**Judgement :**

1. Under the provisions of the Emigration Act, 1983, (in short 'the Act), petitioner was given a certificate or registration under S.11 of the Act. While furnishing the said certificate in terms of the provisions contained under S.11(3), petitioner had furnished a bank guarantee for Rs.5 Lakhs which is kept valid even now. In the meanwhile, on the allegation that irregularities were committed, the registration was suspended. Thereafter, notices were issued and reply was filed by the petitioner and finally Ext.P10 order was issued by the second respondent cancelling Ext.P1 certificate of registration.

2. Ext.P10 order concludes thus:

“Whereas, by falsifying and tampering with the original documents the R.A. has violated Rule 10(1)(ix)(g) and Rule 10(1)(xii) of Emigration Rules, 1963:

And, therefore, the undersigned, in exercised of the powers of the Registering Authority under S.14(1) of the Emigration Act. 1983 hereby orders cancellation of the Registration Certificate from the date of issue of this order with the direction to surrender the Registration Certificate and Emigration Clearance Book (both in original) and show cause within 15 days of receipt of this Notice as to why the Bank Guarantee submitted by the R.A. should not be forfeited, failing which action will be taken ex parte.”

3. Petitioner filed his reply to the show cause notice for forfeiture of the bank guarantee, a copy of which is Ext.P11. After receipt of Ext.P11, the second respondent issued Ext.P12 order forfeiting bank guarantee and the concluding portion of the order reads thus:-

“Whereas the Registration Certificate of the R.A. was cancelled vide order cum show cause notice dated 14/17<sup>th</sup> June, 2011 directing the R.A. to show cause within 15 days as to why their Bank Guarantee should not be forfeited. Reply dated 6<sup>th</sup> July 2011 received from the R.A. has not been found satisfactory.

Now, therefore, the undersigned in exercise of the powers conferred on him under Rule 23 of the Emigration Rules, 1983 hereby orders and requests the Jammu and Kashmir Bank Ltd., M.G. Road, Thiruvananthapuram 695 023 to invoke the Bank Guarantee as detailed in para 1 above issued by them and requests the Bank to remit the same to this Ministry in the form of Demand Draff in favour of the ‘Pay and Accounts Officer, Ministry of Overseas India Affairs, New Delhi, within 15 days from the receipt of this order.”

4. As far as Ext.P10 order is concerned, though there is a prayer to quash the same. I am not inclined to consider such prayer for the reason that the order is appealable under S.23 of the Act and therefore, it is for the petitioner to work out his remedy before the Appellate Authority.

5. Insofar as Ext.P12 order of forfeiting the security is concerned, learned counsel for the petitioner contends that the said order has been passed in violation of Rule 23 of the Emigration Rules 1983 which reads thus:

“Forfeiture of security deposit.-Where the competent authority or the registering authority has reason to believe that it is expedient to forfeit the whole or any part of security furnished by any person for being utilized for such purpose and in such manner as may be specified in the order, he may, after giving a notice to this effect to such person and thereafter giving him an opportunity to represent his case, by order in writing, forfeit the whole or any part of the security.”

6. A reading of this Rule shows that a person whose security is proposed to be forfeited is entitled to be given a notice, and is also entitled to be given an opportunity to represent his case, before an order of forfeiting the security is passed. A reading of Ext.P12, the relevant portion of which is extracted above, shows that the opportunity to represent his case, which is mandatorily to be given, has not been given to the petitioner. Therefore, to that extent. Ext.P12 order is illegal and required to be interfered with.

Accordingly, I dispose of this writ Petition with the following directions.

(i) Ext.P12 order will stand set aside.

(ii) It will be open to the second respondent to issue notice to the petitioner affording him an opportunity to represent his case and thereafter pass fresh orders on the proposal contained in Ext.P10 for forfeiting the security furnished by him.

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