

ITEM NO.11

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No.467/2020

MUSTAFA MH

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

Date : 01-04-2020 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Mr. Sanjay Hegde, Sr. Adv.
Mr. Ashish Virmani, AOR

For Respondent(s) Mr. Tushar Mehta, SG

UPON hearing the counsel the Court made the following
O R D E R

The Court convened through Video Conferencing.

In these proceedings under Article 32 of the Constitution, the petitioner highlighted the plight of Indian citizens who had travelled to Qom (Iran) on a pilgrimage. Many of them have been stranded in Iran following the outbreak of Covid-19. While entertaining the petition, this Court in its order dated 27 March 2020 highlighted the nature of the grievance. The order is extracted below:

"The Court convened through Video Conferencing.

Mr. Sanjay Hegde, learned senior counsel who has appeared in support of the Writ Petition under Article 32 of the Constitution, instructed by Mr. Ashish Virmani, Advocateon-Record submits that about 500 Indian citizens from Ladakh, who had gone to Qom, Iran on a pilgrimage, are presently stranded there. About 250 persons who had also proceeded on a pilgrimage to Qom have been brought back to India. Mr. Hegde, learned senior counsel states that several of the existing batch of 500 persons may have tested positive for Covid-19. Many of them have no funds available for their maintenance. Hence, urgent humanitarian assistance is required to be provided to these persons by the Government of India.

The contents of the petition under Article 32 of the Constitution indicate that there is an urgent need for humanitarian assistance to be provided to Indian citizens who are stranded in Qom. In order to obviate concern over their well being, we issue notice to the Union of India, returnable on 30 March 2020.

We request Mr. Tushar Mehta, learned Solicitor General to assist the Court and to place a status report of the steps which have been taken and which the Union of India through the Ministry of External Affairs proposes to undertake to alleviate the hardship which has been faced by these persons. We hope and trust that in the meantime all necessary steps that are required to protect the welfare of these citizens will be adopted and a suitable plan of action will be chalked out in consultation with all the concerned authorities, including the Indian Embassy in Iran.

List the Writ Petition on 30 March 2020.

The Registrar (Judicial) shall forward in the electronic mode a copy of the Writ Petition under Article 32 of the Constitution, together with this order to the Solicitor General."

In pursuance of the above order, a status report

prepared by the Ministry of External Affairs has been filed on the record by the Solicitor General of India.

The status report indicates that there were six thousand Indian nationals in various provinces of Iran. They comprised of (i) eleven hundred pilgrims mainly from the Union Territories of Ladakh and Jammu and Kashmir and the State of Maharashtra; (ii) three hundred students primarily from the Union Territory of Jammu and Kashmir; and (iii) one thousand fishermen from the States of Tamil Nadu, Kerala and Gujarat, together with other persons who were granted long term visas in Iran for pursuing their livelihood and religious studies. The status report indicates that in view of the cases of Covid-19 in Iran, the Indian Embassy proactively reached out to the Indian nationals in the country. The status report indicates the steps which have been taken thereafter. It needs to be extracted in its entirety, which we do below:

“Status Report on the steps taken by the Ministry of External Affairs to assist Indians, including pilgrims stranded in Iran in the wake of COVID-19 pandemic

1. Since the outbreak of COVID-19 in Iran on 19 February, 2020, the Indian Embassy in Tehran and Consulates in Bandar Abbas and Zahedan have proactively reached out to all Indians living in Iran and ensured that they were in good health and had adequate provisions. This has continued to be done even amidst the most challenging circumstances and impediments due to inter-provincial lock-down imposed by the Iranian authorities to contain and control the spread of the disease.

2. As per available information, there were over 6,000 Indian nationals in various provinces of Iran. These included nearly 1,100 pilgrims

mainly from the Union Territories of Ladakh and Jammu and Kashmir, and the State of Maharashtra; nearly 300 students primarily from the Union Territory of Jammu and Kashmir; about 1,000 fishermen from the States of Tamil Nadu, Kerala and Gujarat; and others who are on longer-term stay visas in Iran for pursuing their livelihood and religious studies. The pilgrims were mainly residing in Qom city; students in Tehran, Shiraj, Esfahan and Kish cities; and fishermen in Asaluyeh, Chiruyeh and Kish cities of Iran. An indicative map representing the spread of Indian community in Iran is annexed.

3. In the wake of rising cases of COVID -19 in Iran, the Indian Embassy immediately reached out to the Indian nationals in Iran. On 25 February 2020, the Embassy issued advisory to all Indian nationals including pilgrims, students to observe health protocols put out by the Iranian health officials and WHO, and adopt safety measures to prevent contraction of COVID-19. Embassy widely circulated helpline numbers [mobile: +989128109115; email: indiahelpline@tehran@gmail.com] and was also publicised the same on its website and through social media accounts.

4. The Indian Embassy officials traveled to various places in Iran and met Indian community and extended all possible assistance. A team from Embassy visited Qom on 26 February, 03 March and 14 March 2020 and met representative of Indian pilgrims stranded in Qom and reassured them of the steps taken by Government of India for their safe and early return. A team from our Consulate in Bandar Abbas went to Kish island on 04 March 2020 and met Indian fishermen stranded there. They were advised to follow health protocols and assured of all possible assistance. The Indian students brought to the Embassy's notice difficulties they were facing with obtaining exit visa. This was taken up with Iranian authorities. Following intervention by the Embassy of India, Iranian authorities relaxed exit visa norms.

5. Steps were also initiated by the Government for safe and early return of the Indians stranded

in Iran. Given the large number of Indians in Iran, it was natural that the Government sought to sequence their return, taking into account their age, nature of residency, location and exposure. The initial focus was on visiting pilgrims. This was particularly so as they were predominantly elderly; most of them were in Qom, where COVID-19 incidence had been strong; and the nature of their residency also increased the risks of exposure. Following them, the focus was on Indian students. Many of the students were studying medicine and were fully aware of the precautions to be taken in this difficult situation. The region where most fishermen are located has not been affected so severely. These factors guided the approach.

6. Given the scale of COVID-19 and its pressure on Iran's own resources, in early March 2020, a team of six Indian health officials were deputed to Iran in order to set up testing and sampling facilities there. There were operational constraints. Given that restrictions had been instituted for public health reasons in Iran, it was not easy to organize transport, accommodation and other logistics. Nevertheless, the Embassy staff and the medical team worked round-the-clock under difficult conditions. A total of 2023 samples, including that of 1158 Indian pilgrims, belonging to the Union Territory of Ladakh, Union Territory of Jammu and Kashmir and Maharashtra, who were stranded in Iran were collected. These were sent to India in batches as and when the flights were available and tested at the National Institute of Virology, Pune. The first batch of 108 samples were received in India on 7 March. 65 of these tested negative for COVID-19. We also received samples of 529 more Indians on 10 March which were tested in National Institute of Virology, Pune. Of these, 384 tested negative. 558 samples were brought to India on 13 March (including 141 students) of which 476 were negative. On 15 March, 319 samples (including 68 of Indian students) were brought to India of which 291 were negative. On 16 March, 192 samples were brought, of which 185 were negative. On 18 March, 317 samples were brought to India for testing.

7. As the test results were made available, repatriation of the Indian nationals was initiated. 58 Indian pilgrims (25 men, 31 women and two children), who tested negative, were repatriated in Indian Air Force special flight on 10 March. As limited commercial flights were cleared for operations, Embassy made arrangements for transportation to ferry the Indians to Tehran. As a result of Government's efforts, a group of 44 Indian pilgrims returned to India on 13 March; 234 Indian [including 131 students, 55 pilgrims from Maharashtra] returned to India on 15 March; 53 Indians [including 52 students] returned on 16 March; 201 Indians returned on 18 March 2020; 277 Indians [including 273 pilgrims] returned to on 25 March 2020. Another 275 Indian nationals (133 Females and 142 males including 2 infants and 4 children), including 223 pilgrims belonging to Ladakh, returned on 29 March 2020. With this, Government has already facilitated the return of 1142 Indians (787 pilgrims, 219 students, 136 others). They are currently quarantined at various locations in India.

8. The Indian Embassy, with cooperation of the Iranian authorities has made elaborate arrangements for 24/7 medical care and monitoring of Indians who have tested positive. Embassy has arranged a well equipped quarantine facility to care for about 250 pilgrims who tested positive. Besides, there are about 70 pilgrims, who tested negative, but have voluntarily chosen to stay back to be alongside their fellow group members or their family members who have tested positive. Embassy has made arrangements for their boarding and lodging along with medicines for those in need. A dedicated team of senior officers of the Embassy has been working closely with several Indian volunteer students in Qom to ensure well being of these Indians. This team has already undertaken several visits and continues to visit Qom for coordination of arrangements and is continuously monitoring progress. Indian patients are being treated by the Iranian doctors arranged by the Indian Embassy. Most of the pilgrims who tested positive are recovering well.

9. Meanwhile, Embassy and Consulate officials continue to maintain contact with most of the remaining Indians in Iran. It is being ensured that they are in good health and have adequate provisions. The Embassy has arranged essential food items and water to nearly 1000 Indian fishermen in Iran's southern provinces of Bushehr (in Asaluyeh port city) and Hormozgan (in Bustaneh, Charak, Chiruyeh, Moqam & Lavan island). These include 744 fishermen from Tamil Nadu, 215 from Gujarat and 70 from Kerala. These places are spread over large distances and have poor connectivity. Place like Lavan Island do not have ferry services. Bustaneh, the nearest place, is at least 200 kms from the Indian Consulate in Bandar Abbas. Asaluyeh, the farthest, is about 500 kms from Bandar Abbas. The logistical difficulties are compounded by inter-provincial lock down in Iran. Embassy engaged the services of a local supplier to procure and supply essential food items and water on 20-21 March 2020.

10. The Indian Embassy and Consulates in Iran are working round-the-clock under very difficult and trying conditions. Given the scale of COVID -19 in Iran, the local authorities and resources in Iran are naturally stretched. Public services are not functioning normally. There are difficulties in accessing some part of the country due to large distances involved, suspension of public transport services and inter-provincial lock down. The officials of the Indian Embassy and Consulates in Iran continue to work selflessly even in the face of personal risk and unprecedented challenges to ensure the well being of Indians in Iran and providing all possible humanitarian assistance to remaining Indians including pilgrims, students and fishermen.

11. That Government attaches high importance to safety and well-being of the Indians stranded in Iran is also evident from the fact that External Affairs Minister took the initiative to meet the parents of some of the Indian students stranded in Iran during his visit the Union Territory of

J&K on 9 March 2020. He reassured them of Government's commitment to extend full support for safe and early return of the Indian students after testing them for coronavirus. External Affairs Minister has also met representatives of the Pilgrim relatives and leaders from the UT of Ladakh and apprised them of steps being taken by the Government to ensure safety, well-fare and return of the stranded pilgrims after testing them. External Affairs Minister has made Suo-Moto statements in Rajya Sabha on 11 March 2020 and in Lok Sabha on 12 March 2020 to apprise the Members of Parliament about the steps being taken by the Government for the Indians stranded in Iran. In keeping with the assurances given in the Parliament and to the families of the Indians stranded in Iran, Government and the Indian Embassy and Consulates continue to work tirelessly to ensure safety and well being of all Indian nationals and facilitate expeditious return. A special cell and helpline has been created in the Ministry of External Affairs to address concerns of the Indians stranded abroad in the wake of measures taken to prevent, control and contain the spread of COVID-19.

12. In view of the fact that the Government is fully seized of the matter and proactively taking steps to ensure safety, welfare and well being of the Indian nationals in Iran; and facilitate safe repatriation wherever possible within overall approach to prevent, control and contain the spread of COVID-19 within India, it is prayed that the Hon'ble Court may kindly dismiss the Petition.

Date: 29 March 2020
Kumar)

(Suresh

Place: New Delhi

Director (Pakistan,
Afghanistan and Iran)
Ministry of External Affairs"

Mr. Tushar Mehta, learned Solicitor General of India states that the two hundred and fifty pilgrims, who are presently in Qom, have either tested positive for Covid-19 or

are relatives of those persons who have voluntarily decided to stay back in Qom, together with those who had tested positive. The Solicitor General has stated that the Indian Embassy in Iran has taken all possible steps to ensure their welfare by making arrangements for medical and other assistance. The Court has been informed that arrangements have also been made for providing food and shelter to these individuals. The status report indicates that the Union Government will in due course facilitate their safe repatriation to India, consistent with its overall approach to prevent, control and contain the spread of Covid-19 within India.

Mr. Sanjay Hegde, learned senior counsel appearing on behalf of the petitioners fairly submits that he does not seek a peremptory direction of this Court requiring the return of the above batch of two hundred and fifty pilgrims at this stage since in the very nature of things, the issue as to whether it is appropriate for them to travel back to India will have to be evaluated on a case to case basis. He submits that many of them may now be asymptomatic and would be in a position to return to India. He suggested that the Union Government may consider arranging a special flight for the return of the two hundred and fifty pilgrims to India but they may be quarantined on returning home.

The status report indicates that the Union Government has been seized with the safety and welfare of the two hundred and fifty pilgrims as, indeed, of other Indian nationals in Iran. The status report indicates that nearly seven hundred and fifty persons out of the batch of one thousand pilgrims who had proceeded to Qom have been brought back to India pursuant to the arrangements made by the Union

Government. Steps were taken for drawing samples of the remaining pilgrims for testing. The samples were brought to India for being tested at the National Institute of Virology, Pune. While the Indian citizens who are presently stranded in Qom would have to be repatriated, the stages in which repatriation takes place would have to depend upon the prevailing circumstances which will be evaluated on a case to case basis. We have been assured on behalf of the Union Government that so long as the pilgrims continue to be in Qom, steps would be taken by the Indian Embassy to ensure that they receive such assistance as is required for their safety and welfare. We expect that the issue of repatriation of these pilgrims be actively considered by the Union Government at the appropriate stages in terms of the assurance provided in the status report. The proactive steps taken by the Indian Embassy in Iran under the auspices of the Ministry of External Affairs need to be commended.

In view of the assurance which has been placed on the record of these proceedings, we dispose of the Writ Petition at the present stage. However, we grant liberty to the petitioner and to any other aggrieved person, should the need arise in future, to move this Court afresh or to apply for revival of these proceedings.

(Chetan Kumar)
A.R. - cum - P.S.

(Anand Prakash)
Court Master