

BEFORE THE HON'BLE HIGH COURT OF KERALA
AT ERNAKULAM

(Special Original Jurisdiction)

W.P. (C) No. _____ of 2020

PETITIONERS:

1.

2.



Vs

RESPONDENTS:

1. Union of India
Represented by its Secretary
Ministry of External Affairs
South Block, New Delhi – 110 001
2. Ministry of Civil Aviation
Represented by its Secretary
Rajiv Gandhi Bhawan, Block B
New Safdarjung Airport Area, SatyaSadan
New Delhi – 110 003.
3. State of Kerala
Represented by its Chief Secretary
Government Secretariat
Thiruvananthapuram,
Kerala, PIN - 695001

The address for service of notices and processes on the Petitioner is that of his Counsel, Haris Beeran, Nuriya O.A.,M. Muhammed Shafi, Advocates, 4th Floor, Empire Building, Near High Court of Kerala, Ernakulam, Kochi-682 018. The address for service of notices and processes on the Respondents are as shown above.

MEMORANDUM OF WRIT PETITION (CIVIL) FILED UNDER ARTICLE
226 OF THE CONSTITUTION OF INDIA

STATEMENT OF FACTS

1.

The organization, through its four decades of dedicated services, has paved a golden path of valuable contributions in the fields of social, cultural and compassionate service.

is Petitioner

a full-fledged

travel service provider including airline reservations, holidays, hotels, tours, activities and all travel related services with an experience of chartering flights whenever it seems to be necessary. Recently

which

travel

restrictions were taken by UAE Government as a precautionary measure to fight pandemic Covid-19.

2. The Petitioners are filing the present petition in public interest under Article 226 of the Constitution and in extraordinary circumstances, seeking issuance of a Writ of Mandamus, to direct the Respondent No. 1- Union of India through Ministry of External Affairs ("MEA") and Respondent No. 2 - The Ministry of Civil Aviation ("MCA") to grant permission for chartered flights/ emirates to operate aircrafts from United Arab Emirates (UAE) to India to evacuate the Indian citizens stranded in UAE. The petition is of utmost urgency as many of the Indian citizens stranded in UAE are on Tourist visas or on transit visas and have already expired their permitted period of stay. There are other categories of citizens who because of their entitlement of leave from work, as also certain other categories requires immediate medical attention and are also stranded in UAE. The petitioners had communicated this to Consul General of India in Dubai who has acknowledged the said fact and also has stated that the Indian embassy in UAE is awaiting permission from New Delhi. The petitioners have also represented to the Ministry For

External Affairs as also the Chief minister of Kerala. But no positive action has come so far. The petitioners are not asking for a direction to Union of India to not to operate a chartered flight to stranded citizens. This is because emirates airlines which is the official Airline of Dubai Government has expressed its willingness to operate flights to India to evacuate the stranded Indian citizens subject to getting permission from the Indian Government. It had come out in news that Air India had operated flights from various situations in India including cochin to evacuate the stranded German citizens back to Germany. It had also come in news that Government of Oman has chartered a flight to take their citizens back to their country. The directions prayed here is also on similar lines that the stranded citizens of India may be brought back from UAE. It is also submitted that strict conditions may be imposed for eligibility of persons who could travel to India as also the quarantine conditions to be imposed on arrival in India. It is submitted that many Indian citizens in labour camps in UAE are suffering because of non employment and non availability of basic needs. Article 21 of Constitution of India demands that such citizens be brought back to their country to alleviate their sufferings.

3. That cause of action for filing present Writ Petition under Article 226 of Constitution of India is that in the wake of the widespread of COVID-19, the Government of India with effect from 22.03.2020 has imposed travel ban on all international commercial passenger aircrafts from any foreign airport for any airport in India till 14.04.2020, because of which thousands of Indian expats are stranded.

4. Considering and segregating situations of stranded Indians, it has been found that many are stranded in the UAE especially Keralites, whose children are left India, some have left their children in UAE, pregnant women who want to fly back to India for further treatment, some are there whose parents are sick and no one is there to look after, people on visit visa and job seekers who are not able to meet their daily expenses etc. are stranded and are unable to return home to their families and are struggling for basic sustenance.

5. It is also submitted that the medical conditions in UAE are not very good as there are reports of all the facilities being over flooded with patients and the facilities not being able to meet many of the patients who need assistance.

6. In relation to the same, the Government of UAE had written to the DGCA to grant permission for the transport of Indian expats in the UAE safely back to India. However, no such permission has been given by the DGCA.

7. The Petitioner No.2 also wrote to the Minister of State for External Affairs to assist or provide approval for the relocation of the Indians. A True Copy of the letter dated 1.4.2020 from Petitioner No.2 to the Respondent Union is produced herewith and marked as Exhibit P-1.

8. In addition, the Petitioner No.2 has been in touch with the Indian Embassy in the UAE for any further directions or assistance required to transport the stranded Indians in the UAE. However, due to their being no further orders or directions from the Union, no help has been given to the stranded Indians in the UAE. A True Copy of the communication of the Petitioner No.2 to the Consul General of Indian Embassy in UAE is produced herewith and marked as Exhibit P-2.

9. The consul general replied to the Petitioner No.2 stating that he has brought the situation to the attention of the Government of India and will update on any developments in the same. A True Copy of the letter of Consul General to the Petitioner is produced herewith and marked as Exhibit P-3.

10. Petitioner No.2 has also written to the Chief Minister of Kerala apprising him of the situation and seeking his assistance in this regard. A True Copy of the letter of the Petitioner to the Chief Minister is produced herewith and marked as Exhibit P-4.

11. It is submitted that the Petitioner No.2 is fully capable of transporting the Indians stuck in UAE via chartered flights. The same has been indicated by him in his communication with the Union Respondent.

Further details of the charter flights being operated by the Petitioner No.2 are as follows:

Fly Dubai flights Available on 31 Mar, 1 & 2 APRIL

FLIGHT NO	SECTOR	DEP TIME	ARR TIME	BAGGAGE
FZ 8009	DXB KBL	8:00 AM	11:10AM	30 KG +7
FZ 8013	DXB KBL	10:00 AM	13:10 PM	30 KG +7
FZ 8525	DXB KBL	13:00 PM	16:10 PM	30 KG +7

It is also submitted that the State of Kerala, with the assistance of the Union and Air India, transported several European tourists back to Europe. The same was lauded by the Chief Minister of Kerala, Shri. Pinarayi Vijayan also on his Facebook Page. The Facebook post was as follows:

"It is a heartening news that the European tourists embarked on the special flight from Trivandrum airport have reached their homeland safely. There were 232 tourists in 13 districts who stuck in the state due to COVID-19 lockdown. Most of them were from Germany.

Tourism help desks in those districts connected with the tourists and arranged their transportation to Thiruvananthapuram. The flight was arranged by the German embassy with the help of Air India.

PinarayiVijayan
Chief Minister"

12. The Supreme Court in a Writ Petition (Civil) No.467/2020 titled "Mustafa MH vs. Union of India", seeking rescue of stranded Indian pilgrims from Qom, Iran directed the Centre to carry out the evacuation of the Indians which was done successfully. As a result the Government of India brought back 750 of the stranded Indian citizens from Qom, Iran, while undertaking that that they ensure that the remaining 250 Indians in Qom, which tested positive for COVID-19, will receive such assistance as is required for their safety and welfare. A True Copy of the order dated 1.4.2020 passed by the Hon'ble Supreme Court in WP(C) No. 467 of 2020 is produced herewith and marked as Exhibit P-5.

13. Air India is conducting three special flights to London from April 8-10 to repatriate Canadians who are stranded in India amid the 21-day lockdown.

The Canadian government will arrange flights to take them to Canada after the Air India flights drop them in London. Air India has signed a contract with the Canadian government to repatriate its citizens amid the lockdown that began on March 25. Along with the Canadian Government, Air India has also signed contracts with the governments of Germany, France and Ireland to repatriate their citizens from India via special rescue flights. It has scheduled to operate 18 such rescue flights from March 31, 2020.

14. On 31.3.2020, Air India rescued several German Nationals stranded in India via special flight. A True Copy of the newspaper report dated 7.4.2020 is produced herewith and marked as Exhibit P-6.

15. Oman Air with the help of Government of Oman has made plans to evacuate its stranded citizens in India. For this purpose they have chartered a flight. A True Copy of the newspaper report dated 3.4.2020 is produced herewith and marked as Exhibit P-7.

16. Emirates has also made plans to repatriate stranded Indians in the UAE however the same could not be done as the approval from the Union has not been given. A True Copy of the newspaper report dated 3.4.2020 is produced herewith and marked as Exhibit P-8.

17. Keeping in view the efforts of the Emirates to transport stranded Indians back, Petitioner No.2 airlines has also started making arrangement for the transport of such Indians. However, the same is awaiting the required approval of the Union of India. True Copy of the newspaper report dated 7.4.2020 is produced herewith and marked as Exhibit P-9.

18. Respondent No.3 has recently constituted an expert group to give suggestions to look into relaxing the current lockdown. The expert group have given recommendation to stop international flights to Kerala should be allowed from June. True copy of newspaper report dated 07.04.2020 is produced herewith and marked as Exhibit P-10.

The petitioner is left with no other alternative and efficacious remedy, but to approach this Hon'ble Court under Article 226 of the Constitution of India, on the following among;

GROUNDS

- A. Because the fundamental rights under Article 14 and 21 of the Constitution of the Indians currently stranded in the UAE will be severely infringed if the present petition is not allowed, as India is probably the only country that has imposed an embargo on the return of its own citizens. Countries with far greater incidence of mortality have too not imposed any embargo on the return of their own nationals from foreign shores.
- B. Because the Respondents have a duty to come to aid and rescue of Indian citizens who are stranded abroad in such extra-ordinary circumstances as the present one, and can certainly quarantine those who return from abroad, impose reasonable restrictions on movement and liberty and further make them undergo such medical protocols as may be necessary, but to pass a blanket order of preventing an Indian citizen from returning back to his homeland is violative of Articles 14 & 21 of the Constitution of India.
- C. Because in similar situations, the Respondents have come to the aid of Indian nationals stranded abroad and that the Indians in the UAE are similarly placed and denial of the same benefits will constitute an egregious violation of Article 14 of the Constitution.
- D. Because there is reasonable apprehension and real likelihood of danger to the life and liberty of the Indians stranded in the UAE and if the prayers as sought for in the instant petitioners not granted then it would lead to a material infraction of their rights under Article 21 of the Constitution.
- E. Because the WHO on 11.03.2020, declared COVID-19 as a pandemic. The Government of India with effect from 22.03.2020 has imposed travel ban on all international commercial passenger aircrafts from any

foreign airport for any airport in India till 14.04.2020, because of which many Indians who had booked tickets and reached various airports in the UAE were stranded.

- F. Because with the situation in the UAE worsening and with the lockdown being imposed, the concerned authorities have directed suspension of all International Flights, the Indians are left with no option but to fight for their sustenance away from their families in India. There are in many cases not being able to pay rents or afford basic sustenance.
- G. Because as per the World Health Organisation ("WHO"), the global Coronavirus disease ("COVID-19") outbreak situation as on 07.04.2020, reports more than 12,79,722 confirmed cases with at least 72,614 deaths in the 203 countries, areas or territories. The number of cases in UAE has seen exponential growth with nearly 29,474 confirmed positive cases reported, of the novel COVID-19 virus and of those, nearly 11 persons have since died, with the number increasing on an hourly basis.
- H. Because given the present circumstances, the Indians lives are at great risk without the basic necessities to sustain themselves. Many of these Indians are running out of finances and facing shortage of food and water. They have not been able to access any protective masks, gloves or sanitizers and are worried about contracting the deadly virus while miles away from their loved ones in India, which is in gross violation of their rights under Articles 14, 19 and 21 of the Constitution.
- I. Because various efforts have been made by these Indians to contact the High Commission of India in UAE, but no steps have been taken till date to repatriate these Indians stranded in UAE. Thus, the interference of this Hon'ble Court is necessitated to evacuate these stranded Indians.
- J. Because it has come to the knowledge of the Petitioners that the Government of UAE have approached the Respondent No. 1 to facilitate the return of Indians stranded in UAE, following the travel restrictions to curb the spread of the COVID-19 outbreak. The reports in the media

further suggest that only permission of the DGCA is keeping from the evacuation of Indians stranded in the UAE and, the Petitioner vide the present petition seeks indulgence of this Hon'ble Court for directions to the Respondents to ensure that the permission is given by the Respondents to evacuate the Indians.

- K. Because unlike evacuations in the other cases to repatriate Indian Nationals stranded in other countries, no special flights shall have to be directed in the present case, since the Petitioner No.2 has required permission from the UAE and the requisite aircrafts to operate charter flights to India. It is therefore unreasonable and arbitrary to not make the optimum use of these resources at this critical juncture.
- L. Because to the best knowledge of the Petitioner, a similar evacuation was carried out by the Respondents, when India repatriated 405 nationals who were stranded in Malaysia's Kuala Lumpur International Airport (KLIA), after the Indian Government banned the entry of passengers from affected countries, including Afghanistan, the Philippines and Malaysia. The flights used to repatriate the Indians from Malaysia, were further used to evacuate the 135 Malaysian citizens who were stranded in India, comprising of 111 citizens from New Delhi and 24 from Vishakhapatnam.
- M. Because these Indians who may be repatriated from the UAE, maybe susceptible to the virus, considering the gravity of the outbreak, in repatriating such students, the Respondents herein, may take all necessary steps as per the guidelines issued by the WHO –“Key considerations for repatriation and quarantine of travellers in relation to the outbreak of novel coronavirus 2019-nCoV.” Screening and quarantine of such Indians may be undertaken, as has been carried out in other instances of evacuation of Indian citizens abroad during this pandemic. The arrangements made by the Respondents herein of special flights to bring back Indians stranded in China, Japan, Italy and Iran, may also be implemented in the present case, and they may be sent to a Quarantine Centre outside Delhi run by

the Indo-Tibetan Border Police after thermal screening, as has been done with the 263 Indians students, which returned to India on 22.03.2020 through a Special Air India Flight in this regard.

- N. Because the Supreme Court in a similar situation, in W.P (C)No.467/2020, titled - "Mustafa MH vs. Union of India", vide its order dated 01.04.2020, has recorded the submissions made by the Respondents vide its Status Report that various special flights were plied by the Respondents herein to ensure safe repatriation of the Indians in Iran, and while recording the said submission by the Union of India, the Supreme Court directed that the same may be done at the earliest possible and if any person is so aggrieved they may file a fresh petition or revive the said proceedings.
- O. Because the present proceedings are not adversarial in nature, and the Petitioner herein is merely seeking similar directions to ensure that thousands of Indians who are presently stranded in the UAE, and are struggling on daily basis to survive the present situation which has plagued the entire World, are brought back to India safely, where not only their families, will be able to provide for them, without additional financial burden, but in case any medical assistance is required to be availed, the same can be done in presence of family and next of kin.
- P. The Petitioners herein craves the liberty of this Court to add, alter, modify or amend the grounds during the pendency of this Writ Petition, if necessary.
- Q. The Petitioners herein states that he has not filed a similar Writ Petition/ PIL or any other Petition before this Hon'ble Court or any other Court/s involving the subject matter of this Petition, which is pending or has been disposed of.
- R. This Hon'ble Court has the jurisdiction to entertain the present Writ Petition.
- S. This writ petition is made bona fide and in the interest of justice.

T. That the annexure filed with the petition are true copies of the respective originals.

For these and other reasons to be submitted at the time of hearing, it is respectfully prayed that this Hon'ble Court be pleased to grant the following: -

RELIEFS

- a) Issue a writ of mandamus, or any appropriate writ, order or direction to the Respondents, to immediately evacuate all the stranded Indians from the UAE to India, either through the chartered flights operated by Emirates/FlyDubai or through arrangements made by Petitioner No.2 at any date(s) soon hereinafter, without any undue delay or demur;
- b) Issue a writ of mandamus, or any appropriate writ, order or direction to the Respondents to ensure that the Indians are quarantined and provided all medical and health facilities are prescribed by the WHO; and
- c) Pass such other and further order or orders as this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case.

INTERIM RELIEF

For the reasons stated in the writ petition and in the accompanying affidavit, it is respectfully prayed that this Hon'ble Court may direct the Respondents to take all steps necessary to arrange for the safe repatriation of Indians stranded in the UAE.

Dated this the 8th day of April, 2020.

Petitioners: 1)

2)

Haris Beeran
Counsel for the Petitioners

BEFORE THE HON'BLE HIGH COURT OF KERALAAT ERNAKULAM

W.P. (C) No. of 2020

Ibrahim Elettill and Anr.	...	Petitioners
	V/s	
Union of India and others	...	Respondents

AFFIDAVIT

1. I am the 1st Petitioner in the above W.P. (C) and I am conversant with the facts of the case. I am authorised to file this petition on behalf of 2nd petitioner.
2. The above W.P. (C) was prepared under our instructions.
3. We have no personal gain other than the one described in relation to the subject matter involved in this Writ Petition. The matter involved in the above case is one involving substantial number of Indian Nationals from the State of Kerala stranded in UAE. There is no authoritative pronouncement on the subject matter by this Honourable Court or the Honourable Supreme Court of India.
4. The averments of law are made on the advice of my counsel and I believe them to be true, sustainable and sufficient to grant the relief's prayed for in the above W.P.(C).
5. The documents produced in the above W.P. (C) are the true copies of the originals they represent.
6. We have not filed earlier petitions seeking similar and identical relief in the same subject.

All the facts stated above are true and correct.

Dated this the 8th day of April, 2020

DEPONENT:

Solemnly affirmed and signed before me by the deponent who is personally known to me on this the 8th day of April, 2020 at my office at Ernakulam.

Haris Beeran,
Advocate.