

PRESENTED ON : 18.06.2020

SUBJECT : MISCELLANEOUS - COVID-19 TESTING MADE MANDATORY FOR THE PETITIONERS TO TRAVEL TO INDIA

BEFORE THE HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM

**W.P.(C). No. Of 2020
(Original Jurisdiction)**

United Nurses Association,
Through Its State President : Petitioner
Mr. Shoby Joseph

vs.

Union of India and Another : Respondents

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

**SRIRAM PARAKKAT
K.R. SRIPATHI
ANUPAMA SUBRAMANIAN**

COUNSEL FOR THE PETITIONER

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Dated this the 18th day of June, 2020

**Adv. Sriram Parakkat
Adv. K.R. Sripathi
Adv. Anupama Subramanian
Counsel for the Petitioner**

BEFORE THE HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM

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United Nurses Association,
Through Its State President
Mr. Shoby Joseph

: Petitioner

vs.

Union of India and Another

: Respondents

SYNOPSIS

1. The Petitioner United Nurses Association (UNA), is a professional association of registered nurses in the state of Kerala in India. It is one of the largest nurses associations with 3.8 lakhs Nurses as its members representing the interest of the registered nurses through its constituents and its organisational affiliates.
2. The petitioners herein have chartered flights for their arrival into India from UAE. Two fo the flights have already operated and has landed in India on the 7th and 18th of this month. Two more flights have have been scheduled to take off from Riyadh to Cochin on 20.06.2020 and 21.06.2020. However on 11.06.2020, the 2nd respondent issued guidelines stating that travel into Kerala is permissible only upon testing for COVID-19 prior to their travel.
3. When the petitioners herein approached their concerned Governments with this request, it was declined on the following ground:-
 - a. Only persons with 80% symptoms shall be considered for testing
 - b. Testing kits are much in need and scarcity of the same is in its extreme state, hence all persons who want themselves to be tested cannot be given the benefits of the same.
 - c. The Government (Foreign Government in this context) will have to give priority to life-saving needs rather than attend to the needs of those who wish to travel back to their homelands.

- d. Neonatals having no registration of birth with any country cannot be considered for testing except upon life-saving circumstances arise.
2. The petitioners herein are now facing an invisible travel ban owing to which their scheduled travel on 20.06.2020 and 21.06.2020 is likely to be affected.

LIST OF EVENTS IN ITS CHRONOLOGICAL ORDER

DATE	EVENT
07.06.2020 & 18.06.2020	Previous flights in which the petitioners travelled into Kerala
11.06.2020	COVID-19 was declared a pandemic by WHO
20.06.2020 & 21.06.2020	Proposed date of the petitioners into India

Hence this writ petition.

Dated this the 18th day of June, 2020

Adv. Sriram Parakkat
Adv. K.R. Sripathi
Adv. Anupama Subramanian
Counsel for the Petitioner

**BEFORE THE HONOURABLE HIGH COURT OF KERALA AT ER-
NAKULAM**

**W.P.(C). No. Of 2020
(Original Jurisdiction)**

Petitioner

United Nurses Association,

Respondents

1. Union of India,
Represented by the Secretary,
Ministry of Health & Family Welfare,
Nirmal Bhavan, Near Udyog Bhawan Metro Station,
Maulana Azad Rd, New Delhi, Delhi 110011
2. The State of Kerala,
Represented by Chief Secretary,
Government Of Kerala, Secretariat
Thiruvananthapuram - 695 001

The address for service of notice and other process on the petitioner is that of their counsel, **K.R. SRIPATHI & ANUPAMA SUBRAMANIAN**, Advocates, A3, Ittoop Tower, Kombara Junction, Near High Court of Kerala, Ernakulam. The address for service of notices and other processes on the respondents are as shown above, or on his Counsel engaged if any.

**MEMORANDUM OF WRIT PETITION FILED UNDER ARTICLE 226
OF THE CONSTITUTION OF INDIA**

1. The Petitioner United Nurses Association (UNA), is a professional association of registered nurses in the state of Kerala in India. It is one of the largest nurses associations with 3.8 lakhs Nurses as its members representing the interest of the registered nurses through its con-

stituents and its organisational affiliates. The UNA was mostly noted for bringing up the issue of exploitation of nurses as underpaid labourers in the thriving private hospital industry in the state. A true copy of certificate of Registration of Trade Union is annexed herewith and marked as **Exhibit P1**.

2. COVID-19 was declared a pandemic by WHO on 11th March, 2020. WHO has advised countries to take a whole-of-government, whole-of-society approach, built around a comprehensive strategy to prevent infections, save lives and minimize impact. In India also, clusters have appeared in multiple States, particularly Kerala, Maharashtra, Rajasthan, Uttar Pradesh, Delhi, Punjab, Karnataka, Telangana and UT of Ladakh. 211 districts are now reporting COVID-19 cases and the risk of further spread remains very high. It is pertinent to mention that health care workers including doctors, nurses from different states are tested positive for Covid-19.
3. It is a known fact that ever since the break out of the pandemic, the State of Kerala has been a model state in so far as the efforts in tackling the pandemic is concerned. The efforts of the medical professionals from the State working all over the globe has been praised by authorities in and out of the country.
4. The Petitioner herein comprises of stranded nurses in the various parts of the globe, who are desirous of reaching their home country as soon as possible due to many reasons such as employment loss and poor conditions of living. Having understood the fact that the Government of Kerala, the 2nd respondent herein, is taking solid steps to bring back stranded natives back to their homeland, the petitioners herein successfully registered with the NORKA ROOTS and has been waiting for favourable directions from the 2nd respondent. However, the wait of the petitioners have been taking a toil on their condition and hence the petitioners having contemplated an alternative solution came up with the idea of chartering a flight to reach India.
5. It is humbly submitted that petitioners herein desirous of chartering a flight to travel to India, approached the Ministry of Civil Aviation and

Government of India for necessary permissions and sanctions. Accordingly, sanctions were accorded and two flights carrying 190 passengers flew into India on 07.06.2020 and on 18.06.2020.

6. It is further submitted that the petitioners herein had scheduled two more flights which is now expected to take off on the 20th and 21st of this month from Riyadh. However, at this juncture, the 2nd respondent herein issued a direction to all applicants who are prospective passengers and to the Ministry of External Affairs mandating the passengers to test for COVID-19 prior to their arrival to the State of Kerala and to carry certificates stating negative results. A true copy of the letter dated 11.06.2020 issued by the Principal Secretary, NORKA, Government of Kerala to all the applicants is herewith marked and produced as **Exhibit P2.**
7. It is further submitted that the decision of the 2nd respondent has communicated to the Ministry of External Affairs. A true copy of the letter dated 17.06.2020 from Chief Secretary, State of Kerala to the Secretary, Ministry of External Affairs is herewith marked and produced as **Exhibit P3.**
8. It is submitted by the petitioners herein that upon getting such an information from the 2nd respondent, the petitioners herein duly approached the Governments of the countries in which they are currently residing and working with seeking assistance and facilities to undergo testing for COVID-19. However, the response that they received was as follows:-
 - a. Only persons with 80% symptoms shall be considered for testing
 - b. Testing kits are much in need and scarcity of the same is in its extreme state, hence all persons who want themselves to be tested cannot be given the benefits of the same.
 - c. The Government (Foreign Government in this context) will have to give priority to life-saving needs rather than attend to the needs of those who wish to travel back to their homelands.

- d. Neonatals having no registration of birth with any country cannot be considered for testing except upon life-saving circumstances arise.
9. It is humbly submitted that upon receiving such information from the concerned Government, the petitioners are herein left with a condition which is impossible to satisfy, for no fault of theirs.
10. The petitioners in the interest of Justice, in order to protect the right to life guaranteed under Article 21 of the Constitution of India of the nurses who have sacrificed their safety for the human beings of this country and across the globe, seek a writ of mandamus to the State of Kerala to withdraw the mandate which is impossible to comply with in the light of their prospective travel into Kerala.

Aggrieved by the same and left with no other efficacious remedy, the petitioner begs to prefer this writ petition among the following other grounds:-

GROUND

- A. It is humbly submitted that making Covid-19 tests mandatory to travel to India is unfair and arbitrary in the light of the fact that each country that a non-resident Indian travels from has its own guidelines to present a person for testing, which makes it impossible for the Indian passengers travelling to Kerala to comply with such a mandate.
- B. It is further submitted that the flights scheduled by the petitioner organisation operating from Riyadh is bound by Rules and Regulations of UAE (Saudi Arabia), which provides for testing for COVID-19 only in the event wherein the person shows symptoms at least to the extent of 80%. Asymptomatic passengers are not considered for testing. This is so in the light of scarcity of testing kits within the concerned Nation.
- C. It is humbly submitted that the incubation period for COVID-19 is 28 days and within 14 days, a COVID-19 affected person is expected to show symptoms. Hence, the mandate of an asymptomatic person to be tested prior to his travel does not provide for any results.

- D. It is further submitted that the combination of the 2nd respondent's rules along with regulations of the concerned Foreign Government is resulting in an invisible travel ban upon the petitioners herein.
- E. Conditions which are impossible to comply is unfair and arbitrary in the light of the situation wherein the petitioners are desperate to travel back to their home country.
- F. It is further submitted that the prospective travellers amongst those proposing to travel include new born babies of the petitioners who were born in UAE only due to the fact that they were unable to travel to India at the time of their delivery. Due to the same, these neonatal have not been able to register their births either with India nor with the Foreign Country owing to inability to meet the procedural requirements. Testing of these neonatal children having no certificate of birth is also not possible.
- G. It is humbly submitted that the 2nd respondent has not imposed such a condition solely against humanitarian grounds and without giving any breathing time to the petitioners herein to provide for compliance of the same.
- H.
- It is therefore essential and expedient in the interest of justice that the main prayer, in the Writ Petition (Civil) is allowed and the interim relief sought for is granted lest the petitioner should be subjected to irreparable injuries and hardships.

RELIEF SOUGHT FOR IN THE WRIT PETITION

On these and other grounds to be urged at the time of hearing it is humbly prayed that this Honourable Court may be pleased to

- a) Issue a writ of mandamus to the State of Kerala to withdraw the mandatory requirement of testing for Covid-19 before travelling to India, pursuant to Exhibit P1, letter from the Principal Secretary to Government, NORKA, Government of Kerala.

- b) Issue a writ of mandamus to the State of Kerala to arrange for Covid-19 testing to the petitioners herein upon their arrival into Kerala at nominal rates.
- c) Pass such other writ, order or direction that this Honourable Court may deem fit and proper in the facts and circumstances of the above case.

Interim Relief Prayed for:-

For the reasons stated in the Writ Petition (Civil) and the affidavit, it may be most humbly prayed that the Hon'ble Court may be pleased to direct the respondents to exempt the flights operating on 20.06.2020 and 21.06.2020 from the prerequisite of producing Covid-19 negative test certificates upon their arrival into Kerala, pending disposal of this writ petition.

Dated this the 18th day of June, 2020

Shoby Joseph
Petitioner

Adv. Sriram Parakkat
Adv. K.R. Sripathi
Adv. Anupama Subramanian
Counsel for the Petitioner