

AT ERNAKULAM

Writ Petition (Civil) No. of 2021

Mrs. Shahubanath Beevi : Petitioner

Vs

Union of India : Respondent

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Dated this the 01st day of July 2021.

Jose Abraham

Counsel for the Petitioner.

25/08/2015	Petitioner's son namely Shihani Meera Sahib Jamal Mohammed, was arrested for the charge of "spying" for Govt. of India.
27/03/2017	Federal Appeal Court in U.A.E. convinced the petitioner's son for 10 years imprisonment and unspecified fine amount which was confirmed by the Supreme Court on 16/04/2017.
11/06/2021	Petitioner here and the entire family is running from pillar to post seeking intervention of the Govt. of India and Indian Embassy in U.A.E. to provide proper legal aid for the petitioner herein but in vain. Finally petitioner herein sent a representation to the respondent herein seeking assistance to get justice for the petitioner's son but no action what so ever

Acts and Rules Referred

1. Article 14 and 21 of the constitution of India
2. *M.H. Hoskot vs State of Maharashtra (1978) 3 SCC 544.*
3. *Pravasi Legal Cell vs Union of India in W.P. (c)No. 14496 of 2020*

Dated this 01st day of July, 2021.

ADV Jose Abraham
Counsel for the Petitioner

BEFORE THE HONOURABLE HIGH COURT OF KERALA AT
ERNAKULAM

W.P(C) No.

of 2021

Shahubanath Beevi,

W/o Jamal Mohammed

Shihani Manzil, Kattuputhussery

Pallickal P.O., Kilimanoor,

Thiruvananthapuram PIN-695604.

: Petitioner

Vs.

Union of India

Represented by Its Foreign Secretary

Ministry of External Affairs,

Room No. 4095, B Wing,

Jawaharlal Nehru Bhavan, 23 –D,

Janpath, New Delhi -110011.

: Respondent

Address for service of notices and processes to the Petitioner is that of his Counsel Adv JOSE ABRAHAM, N. RAGESH, ADITHYAN EZHAPILLY, R. MURALEEDHARAN & ANEESHA NAIR JS of **M/s Jose Abraham & Associates**, GA- 102, Purva Grand Bay, Marine Drive, Near High Court, Ernakulam, Kerala, PIN- 682018. (Ph:-0484- 3511336 , 8547768346)

Address for service of process; notice etc. on the respondent is at the address shown above or on their counsel, if any, engaged

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

STATEMENT OF FACTS

The Petitioner most respectfully submit as follows:

1. The Petitioner herein is an Indian citizen. Petitioner's son Mr. Shihani Meera Sahib Jamal Mohammed was working in U.A.E. since 2005.
2. That the petitioner's son herein got arrested on 25/08/2015 for the charge of "spying" for the Govt. of India through some top ranking officials of the Embassy of India in Adu Dhabi.
3. It is submitted that the petitioner's son was subjected to third degree tortures such as keeping in cellular burrows for months in extreme cold temperature, Bright lights in the cells are kept on for several hours and stun belts fastened around waist which delivered high voltage shocks. His wife, brothers and close relatives working in U.A.E. were not even allowed to meet the petitioner's son and not provided any kind of legal assistance to defend his case.
4. It is pertinent to note herein that the petitioner's son was charged with the offence of spying for Govt. of India which is evident from the court records, nobody from the Govt. of India or from the Embassy had provided any sort of assistance despite the repeated requests from the family of the petitioner.
5. That in the absence of an effective legal support, the petitioner's son was convicted for 10 Years imprisonment and an unspecified amount of fine towards legal expense and deportation after that. True copy of the Judgment rendered by the UAE Federal Appeal Court at Abu Dhabi dated 27-03-2017 is produced herewith and is marked as **Exhibit P1.**
6. It is submitted that the verdict of the Federal Appeal Court, was confirmed by the Federal Supreme Court on 16/04/2017. True copy of the Order of

the Federal Supreme Court dated 16/04/2017 is produced herewith and is marked as **Exhibit P2.**

7. That the aforesaid orders specifically mentioned about the particulars of the Indian Embassy Officials such as Mr. Anup Kumar Shrivastava – Consular Officer, Mr. Anrup Mukherjee – Military Attache and Mr. Arun Jain –First Secretary who collected information from the petitioner’s son herein through emails and SMS. The sad part is that even after the repeated requests, the petitioner herein was not provided for any sort of assistance especially the legal support which is his legal right guaranteed by the Constitution of India.
8. It is submitted that the Petitioner’s son has received many appreciation letters from the representatives of so many embassies for his meritorious service earlier and no previous history of any sort of criminal antecedents whatsoever.
9. The petitioner and her family is running from pillar to post seeking assistance for getting justice to her son but no effective action what so ever so far. True copy of the letter dated 8/06/2016 to the Protector General of Emigrants is produced herewith and is marked as **Exhibit P3.** True copy of the letter dated 21/01/2017 addressed to t The Ambassador United Arab Emirates is produced herewith and is marked as **Exhibit P4.** True copy of the letter dated 24/08/2017 issued by the Principal Secretary, Govt. of Kerala to The Ambassador, United Arab Emirates is produced herewith and is marked as **Exhibit P5.** True copy of the letter dated 20/12/2018 by Deputy Chairman to the then Minister for External Affairs, Govt. of India is produced herewith and is marked as **Exhibit P6.** True copy of the letter dated 29/11/2018 issued by O. Rajagopal M.L.A to the then Minister for External Affairs, Govt. of India seeking assistance is produced herewith and is marked as **Exhibit P7.** True copy of the representation dated 01/12/2019 addressed to the Minister for State for External affairs seeking

assistance is produced herewith and is marked as **Exhibit P8.** True copy of the new item published in the Indian Express on 22/06/2018 is produced herewith and is marked as **Exhibit P9.** True copy of the new item published in Hindustan Times on 22/06/2018 is produced herewith and is marked as **Exhibit P10.**

10. It is submitted that the Petitioner's son was not heard properly on merits and by so the basic principles of natural justice is violated.
11. It is submitted that as it is the bounden duty of the Government of India to save its innocent citizen from the clutches of a blind and merciless justice system by whatever means available, in the instant case neither the Government of India nor its various organs at the Embassy of India in Abu Dhabi ever tried to help its hapless citizen, even though Petitioner's son's wife and his brothers approached the Embassy of India at Abu Dhabi several times.
12. It is submitted that Media reports indicate that there are several Indians currently undergoing imprisonment in various UAE jails convicted of "spying" for Indian Intelligence Agencies. It's a sad fact that Indian Intelligence agencies under the cover of embassy officials entice poor Indians employed in sensitive UAE Govt. institutions to get various types of information about those institutions. Whenever those Indian workers are caught by police, the Indian agents simply escape under the cover of diplomatic immunity. Further, those agents never try to help those poor people from whom the agents tapped information, Unfortunately Petitioners son is one among them.
13. It is submitted that the Petitioners son is the only breadwinner for the family consisting of his wife and two small kids, as well as Aged Petitioner and her husband. Petitioner has no other source of revenue for sustenance. Petitioners son's revenues earned from 2005 to 2015, were spent for litigation expenses.

14. It is submitted that the Petitioner is seeking the indulgence of the authorities to extend the benefit of legal aid to the Petitioner through the Indian Community Welfare Fund (“ICWF”) which was established to meet the contingency expenditure incurred by them for carrying out various on-site welfare activities for Overseas Indian Citizens who are in distress.
15. It is submitted that ICWF guidelines have been revised with effect from September 1st, 2017. The revised guidelines are expected to provide Indian Missions and Posts abroad greater flexibility in swiftly addressing to requests for assistance by Overseas Indian nationals. These guidelines also cover three key areas:
 - A. Assisting overseas Indian Nationals in distress situations.
 - B. Support for community welfare activities.
 - C. Improvement in consular services.
16. The Honourable High Court in the case of Pravasi Legal Cell vs Union Of India in WP 14496 OF 2020, the court had taken the view that There is already a mechanism for documenting and capturing all kinds of claims and grievances of repatriated Indian migrant workers for negotiating and availing legal remedy for their rights, including reduced/non-payment of wages. Mechanism for capturing claims/grievances of Indian migrant workers through concerned missions/embassies are also provided by the Central Government.
17. It is submitted that highlighting all these, the petitioner had forwarded a Detailed Representation to the First Respondent to take immediate steps for the release Mr. Shihani Meera Sahib Jamal Mohammed through whatever means available, legally, diplomatically based on the excellent diplomatic relations between UAE & India, which has not been answered yet. True copy of the Representation dated 11-06-2021 forwarded to the Respondent is produced herewith and is marked as **Exhibit P11**.

Hence this writ petition is filed before this Hon'ble Court seeking justice inter alia among the following grounds:

GROUND

- A. The Hon'ble Supreme Court in *M.H. Hoskot v. State of Maharashtra* (1978) 3 SCC 544 and *Hussainara Khatoon (IV) v. Home Secy., State of Bihar*, (1980) 1 SCC 98 has recognized that the right to free legal aid is guaranteed under Articles 14 and 21 of the Constitution.
- B. This Hon'ble Court in *Pravasi Legal Cell Vs Union of India* held that the Union Government has an established mechanism for providing legal aid for Indian citizens in foreign countries. By invoking the above mentioned Petitioner approached the Government of India seeking legal aid but no action till date which violate the fundamental rights of the Petitioner guaranteed under Article 14 & 21 of the Constitution of India.
- C. The fundamental rights that are guaranteed to all citizens are not extinguished when the person travels or lives abroad. It is humbly submitted that the absence of a legal aid scheme for citizens living abroad is a violation of their rights under Article 14 and 21 of the Constitution. Reliance is placed on a Judgment of the Hon'ble Supreme Court in *Gaurav Kumar Bansal v. Union of India*, (2015) 2 SCC 130, wherein the Court has held:

*“8. There is no manner of doubt that a welfare State is the protector of life and liberty of its citizens not only within the country but also outside the country in certain situations. The concept of *parens patriae* recognises the State as protector of its citizens as parent particularly when citizens are not in a position to protect themselves. The Preamble to the Constitution, read with directive principles, under Articles 38, 39 and 39-A enjoins the State to take all protective measures to which a social welfare State is committed. Interestingly, this doctrine has been recognised in India even before the Constitution came into force.”*

D. Funds for Legal aid are required to be provided through the Indian Community Welfare Fund (“ICWF”). It is humbly submitted that the ICWF is *“aimed at assisting Overseas Indian nationals in times of distress and emergency in the ‘most deserving cases’ on a ‘means tested basis’.*” The ICWF is a purely executive, self-financing scheme. Initial budgetary support is provided Ministry of External Affairs. Subsequently, the ICWF is sustained by:

- i. Funds raised by the Indian Missions by levying a service charge on Consular Services.
- ii. Voluntary contributions by the Indian Community

Disbursement of funds is at the discretion of the Head of Mission and depends on the “*seriousness or sensitivity of the circumstances on case to case basis.*”

It is humbly submitted that there exist no criteria for use of ICWF funds as far as legal aid is concerned. The Petitioner submits that the scheme of ICWF in so far as no funds are allocated to providing legal aid to Petitioners son is arbitrary and thus unconstitutional. In *Sharma Transport v. Govt. of A.P.*, (2002) 2 SCC 188, wherein the Hon’ble Supreme Court has held:

“In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression “arbitrarily” means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone.”

E. It is submitted that The 64th plenary meeting of General Assembly of the United Nations adopted the Resolution 60/147 – “Basic principles and Guidelines on the Right to a Remedy and Reparation for victims of Gross violations of International Human Rights Law and serious violations Of International Humanitarian Law” and it is categorically mentioned that it is the state’s obligation and responsibility to provide appropriate legal, and administrative and other appropriate measures to prevent violations of their people.

- F. The Honourable High Court in the case of Pravasi Legal Cell vs Union Of India in WP 14496 OF 2020 , the court had taken the view that There is already a mechanism for documenting and capturing all kinds of claims and grievances of repatriated Indian migrant workers for negotiating and availing legal remedy for their rights, including reduced/non-payment of wages. Mechanism for capturing claims/grievances of Indian migrant workers through concerned missions/embassies are also provided by the Central Government.
- G. It is submitted that the Petitioners son is the only breadwinner for the family consisting of his wife and two small kids, as well as myself (the petitioner) and my (her) husband. The petitioner & other family members have no other source of revenue for their sustenance. All Petitioners son's revenues earned from 2005 to 2015, were spent for litigation expenses.
- H. It is submitted that There's no trace of evidence to show that the Petitioner's son ever committed an offence in India or in the UAE, other than the accused crime in the present case for which he's undergoing imprisonment, that too for Indian Embassy officials who were acting on behalf of the Government of India.
- I. It is submitted that as it is the bounden duty of the Government of India to save its innocent citizen from the clutches of a blind and merciless justice system by whatever means available, in the instant case neither the Government of India nor its various organs at the Embassy of India in Abu

Dhabi ever tried to help its hapless citizen, even though Petitioners son's wife and his brothers approached the Embassy of India at Abu Dhabi several times.

J. It is submitted that Media reports indicate that there are several Indians currently undergoing imprisonment in various UAE jails convicted of "spying" for Indian Intelligence Agencies. It's a sad fact that Indian Intelligence agencies under the cover of embassy officials entice poor Indians employed in sensitive UAE Govt. institutions to get various types of information about those institutions. Whenever those Indian workers are caught by police, the Indian agents simply escape under the cover of diplomatic immunity. Further, those agents never try to help those poor people from whom the agents tapped information, Unfortunately Petitioners son is one among them.

K. It is submitted that the First respondent is duty bound to consider and dispose of **Exhibit p11** Representation submitted by the Petitioner herein within a reasonable period and to direct the Ambassador, Embassy Of India, UAE to provide legal assistance to the Petitioner, but has miserably failed to act upon. For these and other grounds to be urged at the time of hearing, it is most humbly prayed that this Hon'ble Court may be pleased to grant the following:

PRAYER/ RELIEFS SOUGHT

- i. Issue a Writ of Mandamus or any other appropriate Writ, Order, Direction declaring that the Petitioner is entitled to legal aid.
- ii. Issue a Writ of Mandamus or any other appropriate Writ, Order, Direction or command to the First Respondent to extend necessary support to the petitioner's son legally, diplomatically and politically;
- iii. To issue a Writ of Mandamus or any other appropriate writ, order or direction or command to the First Respondent to consider and pass an appropriate order on Exhibit P11 Representation within a reasonable period.
- iv. Any other relief/order/ direction which the Hon'ble Court may deem fit and just in the light of the facts and circumstances of this case.

Dated this the 01st day of July 2021

Counsel for the Petitioner

PRAYER FOR INTERIM RELIEF

Pending Disposal of the Writ Petition, it is most respectfully prayed to this honorable court to direct the First Respondent to consider and pass an appropriate order on Exhibit P11 Representation within a reasonable period" and to direct The Ambassador, Embassy of India, Abu Dhabi, UAE to provide needed legal assistance to the Petitioner.

Dated this the 01st day of July 2021

Counsel for the Petitioner

Petitioner

APPENDIX

Exhibit p.1

True copy of the Judgment rendered by the UAE Federal Appeal Court at Abu Dhabi dated 27-03-2017

Exhibit p.2

True copy of the Order of the Federal Supreme Court dated 16/04/2017

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True copy of the new item published in Hindustan Times on 22/06/2018.

Exhibit p.11

True copy of the Representation dated 11.06. 2021 forwarded to the Foreign Secretary, Ministry of External Affairs.