

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN  
&**

**THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

**THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937**

**WA.No. 1864 of 2015 () IN WP(C).22897/2015**  
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**AGAINST THE ORDER/JUDGMENT IN WP(C) 22897/2015 of HIGH COURT OF KERALA  
DATED 11-08-2015**

**APPELLANT(S)/PETITIONERS:**  
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1. M/S.CHARTERED AIR TRAVELS  
REG.NO.B0086/KER/PER/1000/+5/7909/2007, 39/1647  
ARJUN CHAMBERS, IST FLOOR, KALATHIPARAMBIL CROSS ROAD  
VALANJAMBALAM, ERNAKULAM, KOCHI-682016  
REPRESENTED BY ITS PROPRIETOR K.M.SALIM, AGED 48 YEARS,  
S/O K.H.MOHAMMED ISMAIL.
2. SHELJA THOMAS  
D/O THOMAS, ALMATHADATHIL JOSEPH  
THERAKATHINADIYIL HOSUE, PAZHYAYARIKANDOM P.O.  
IDUKKI DISTRICT-685606.
3. SRUTHY ANIE MATHEW, KODIKATTU HOUSE,  
CHIRAKKADAVU, KOYIPPALLY, PONKUNNAM P.O.  
KOTTAYAM-686506.

BY ADVS.SRI.K.RAMAKUMAR (SR.)  
SRI.T.RAMPRASAD UNNI  
SRI.S.M.PRASANTH  
SRI.C.DINESH  
SRI.G.RENJITH  
SMT.ASHA BABU

**RESPONDENT(S)/RESPONDENTS:**  
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1. UNION OF INDIA  
REPRESENTED BY ITS SECRETARY TO MINISTRY OF  
EXTERNAL AFFAIRS & MINISTRY OF OVERSEAS INDIAN AFFAIRS  
NEW DELHI-110 001.
2. THE PROTECTOR OF EMIGRANTS  
ERNAKULAM, IIIRD FLOOR, PUTHERICKAL BUILDING  
MARKET ROAD, KOCHI-682 035.

BY SMT.SINDHUMOL.T.P., CGC

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20-08-2015, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**ASHOK BHUSHAN, C.J.**

**&**

**A.M. SHAFFIQUE, J.**

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W.A. No. 1864 of 2015

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Dated this, the 20<sup>th</sup> day of August, 2015

## **J U D G M E N T**

### **Shaffique, J.**

Petitioners in WP(C) No.22897/2015 are the appellants. They challenged order dated 11/8/2015 to the limited extent.

2. Writ petition has been filed seeking for a direction to the 2<sup>nd</sup> respondent to permit petitioners 2 and 3 and others, on receipt of Visa and other travel documents to proceed in terms of selection made by the 1<sup>st</sup> petitioner to Kuwait without insisting for further emigration clearance from the Government of India. Petitioners also sought for a declaration that insistence of emigration clearance pursuant to Ext.P12 is violative of their fundamental rights.

3. The issue in the writ petition relates to Ext.P12 order issued by the Government of India, Ministry of Overseas Indian Affairs (Emigration Policy Division) on 12/3/2015, which reads as under;

-:2:-

*"Pursuant to Ministry of Overseas Indian Affairs mandate to provide protection and welfare of the Indians going abroad for employment, the issue of exploitation/harassment of Indian nurses going abroad for employment was examined in the Ministry and following decisions were taken:*

- (i) With effect from 30<sup>th</sup> April, 2015 the emigration of nurses for Overseas Employment in 18 ECR countries will require emigration clearance from POE Offices.*
  - (ii) The recruitment of nurses for Overseas Employment will initially be restricted through state run recruiting agencies viz. NORKA Roots and ODEPC, Kerala only.*
  - (iii) For this, the Foreign Employer, who seeks to recruit Indian nurses, shall register in the eMigrate system which will be vetted by the Indian Mission in the concerned country. Thereafter, the Foreign Employers can raise the demand for Indian nurses on eMigrate system with terms and conditions of their employment. With this no further attestation of demand would be required from the Indian Missions.*
  - (iv) Recruitment of Indian nurses through any other Indian recruiting agents would be allowed for a specific country whenever such a proposal is received from that country subject to the issue of a county specific order from the Ministry of Overseas Indian Affairs.*
- 2. This issues with the approval of Secretary, MOIA".*

Petitioners submitted that though the recruitment process had been completed, those recruits were not permitted to leave India on account of the aforesaid circular, after 12/3/2015. The contention urged was that there was no such policy prior to 12/3/2015 and as far as the recruitment was concerned, about 120 nurses were recruited by the 1<sup>st</sup> respondent and all formalities had been completed to arrange the selected persons to reach Kuwait. However, after 12/3/2015, they were not permitted to leave India by insisting on the emigration clearance and other formalities in terms of Ext.P12. Learned Single Judge by the aforesaid order observed that since the impugned notification is dated 12/3/2015, it is only proper that whoever has been recruited prior to 12/3/2015, that is the date of Ext.P12, shall be permitted to proceed abroad without emigration clearance as provided in Ext.P12, provided they satisfy the 2<sup>nd</sup> respondent that such recruitment and selection was made prior to the date of Ext.P12 order. But the learned Single Judge did not agree with the contention urged on behalf of the petitioners that the emigration clearance is required only from 30/4/2015 as indicated in Ext.P12 order.

4. Learned counsel for the appellants made only a limited submission. It is stated that when Ext.P12 order has effect only from 30/4/2015, there was no reason for the learned Single Judge to have restricted the right of the nurses to go abroad, who had been recruited upto 30/4/2015. It is submitted that the recruitment process as far as the nurses who were recruited in terms of Exts.P13 and P14 has been completed prior to 30/4/2015, the date on which the circular had come into effect and therefore, the learned Single Judge ought to have permitted those Nurses who had been recruited prior to 30/4/2015 to travel even without insisting for the formalities in terms of Ext.P12.

5. We heard the learned standing counsel appearing on behalf of the respondents also.

6. It is submitted by the learned counsel for respondents that Ext.P12 had come into effect from 12/3/2015 and the learned Single Judge had permitted such persons who were recruited prior to 12/3/2015 to travel without insisting on the procedure prescribed under Ext.P12 only on account of the fact that the circular was issued on the said date. That apart, it is submitted that it is a policy of the Government to insist on further formalities

as far as recruitment of nurses are concerned, taking into account the issue of exploitation/harassment of Indian Nurses who are going abroad for employment.

7. Having regard to the aforesaid argument raised on behalf of the appellants as well as the respondents, we are of the view that the concession extended by the learned Single Judge has to be extended to such persons, who had also obtained Visas for travel prior to 30/4/2015. Only when a person gets a Visa, the question of travelling arises and it is before travel that emigration particulars are required to be stamped in the passport. As far as persons who were not ready for travel after 30/4/2015, i.e., persons who were not holding any Visa are concerned, they have to comply with the procedure prescribed in terms of Ext.P12.

8. Under the above circumstances, we modify the order of the learned Single Judge to the following extent;

- (i) That in addition to the concession granted by the learned Single Judge to such persons who were recruited prior to 12/3/2015, those persons, who had obtained Visa and other travel documents prior to 30/4/2015, shall also be permitted to travel

W.A. No.1864/2015

-:6:-

without insisting on the clearance in terms of Ext.P12.

(ii) The emigration authorities may look into the documents and provide necessary clearance as may be required under law, subject to fulfilment of the aforesaid condition.

Writ appeal is disposed of as above.

Sd/-  
**ASHOK BHUSHAN, CHIEF JUSTICE**

Sd/-  
**A.M. SHAFFIQUE, JUDGE**

Rp

*//True Copy//*

*PS to Judge*