

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WP(C).No. 14641 of 2015 (E)

PETITIONER:

**ISLAND AVIATION SERVICES LIMITED
NATIONAL CARRIER MALDIVES
TRIVANDRUM INTERNATIONAL AIRPORT, TRIVANDRUM
REP.BY THE STATION MANAGER, MR.STANLEY PAULUS
RESIDING AT SHALOM, A11, TENNIS CLUB ENCLAVE
KOWDIAR, JAWAHAR NAGAR, TRIVANDRUM-695 003.**

**BY ADVS.SMT.S.SINDHU
SRI.S.SHARAN**

RESPONDENTS:

- 1. UNION OF INDIA
REP.BY SECRETARY TO GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS, FOREIGNERS DIVISION
(IMMIGRATION SECTION) NDCC-II BUILDING
JAI SINGH ROAD, NEW DELHI - 110 001.**
- 2. FOREIGNERS REGIONAL REGISTRATION OFFICER
BUREAU OF IMMIGRATION (MHA), VAZHUTHACADU
TRIVANDRUM - 695 001.**
- 3. JOINT SECRETARY
MINISTRY OF HOME AFFAIRS, FOREIGNERS DIVISION
(IMMIGRATION SECTION), NDCC-II BUILDING
JAI SINGH ROAD, NEW DELHI -110 001.**

R1-R3 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04-12-2015, ALONG WITH W.P.(C). NO. 36050/2015, THE COURT ON
08.12.2015 DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1(a) - A TRUE COPY OF THE NOTICE ISSUED BY THE PETITIONER TO MISHAL AHMED A MALDIVE IN CITIZENS ARRIVED AT TRIVANDRUM AIRPORT ON 2/6/2014 FROM MALDIVES BY FLIGHT NO.Q2 700.**
- EXT.P1(b) - A TRUE COPY OF THE NOTICE ISSUED BY THE PETITIONER TO SHAMEEMA AMINATH A MALDIVE IN CITIZENS ARRIVED AT TRIVANDRUM AIRPORT ON 6/10/2014 FROM MALDIVES BY FLIGHT NO.Q2 700.**
- EXT.P1(c) - A TRUE COPY OF THE NOTICE ISSUED BY THE PETITIONER TO NIUSHA A MALDIVE IN CITIZENS ARRIVED AT TRIVANDRUM AIRPORT ON 6/10/2014 FROM MALDIVES BY FLIGHT NO.Q2 700.**
- EXT.P1(d) - A TRUE COPY OF THE NOTICE ISSUED BY THE PETITIONER TO FATHIMATH A MALDIVE IN CITIZENS ARRIVED AT TRIVANDRUM AIRPORT ON 6/10/2014 FROM MALDIVES BY FLIGHT NO.Q2 700.**
- EXT.P2(a) - A TRUE COPY OF THE ENTRY REMOVAL FORM DATED 6/10/2014 ISSUED TO NIUSHA**
- EXT.P2(b) - A TRUE COPY OF THE ENTRY REMOVAL FORM DATED 6/10/2014 ISSUED TO SHAMEEMA AMINATH.**
- EXT.P2(c) - A TRUE COPY OF THE ENTRY REMOVAL FORM DATED 6/10/2014 ISSUED TO FARHEEN FATHIMATH.**
- EXT.P2(d) - A TRUE COPY OF THE ENTRY REMOVAL FORM DATED 6/10/2014 ISSUED TO MISHAL AHMED.**
- EXT.P3(a) - A TRUE COPY OF THE ADVANCE INTIMATION DATED 5/6/2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER, PARTICULARS OF PASSENGER, MISHAL AHMED.**
- EXT.P3(b) - A TRUE COPY OF THE ADVANCE INTIMATION DATED 8/10/2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER, PARTICULARS OF PASSENGER, SHAMEEMA AMINATH.**
- EXT.P3(c) - A TRUE COPY OF THE ADVANCE INTIMATION DATED 8/10/2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER, PARTICULARS OF PASSENGER, FARHEEN FATHIMATH.**
- EXT.P3(d) - A TRUE COPY OF THE ADVANCE INTIMATION DATED 8/10/2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER, PARTICULARS OF PASSENGER, NIUSHA.**

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- EXT.P4(a) - A TRUE COPY OF THE NOTICE DATED 10/6/2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER, PARTICULARS OF PASSENGER, MISHAL AHMED.**
- EXT.P4(b) - A TRUE COPY OF THE NOTICE DATED 15/10/2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER, PARTICULARS OF PASSENGER, NIUSHA.**
- EXT.P4(c) - A TRUE COPY OF THE NOTICE DATED 15/10/2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER, PARTICULARS OF PASSENGER, FARHEEN FATHIMATH.**
- EXT.P4(d) - A TRUE COPY OF THE NOTICE DATED 15/10/2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER, PARTICULARS OF PASSENGER, SHAMEEMA AMINATH.**
- EXT.P5(a) - A TRUE COPY OF THE WRITTEN SUBMISSION ALONG WITH COVERING LETTER SUBMITTED BY THE PETITIONER TO THE COMPETENT AUTHORITY DATED 30/6/2014 (PASSENGER, MISHAL AHMED.)**
- EXT.P5(b) - A TRUE COPY OF THE WRITTEN SUBMISSION SUBMITTED BY THE PETITIONER TO THE COMPETENT AUTHORITY (PASSENGERS FARHEEN FATHIMATH, SHAMEEMA AMINATH AND NIUSHA).**
- EXT.P6(a) - A TRUE COPY OF THE ORDER DATED 22/7/2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER, (PASSENGER - MISHAL AHMED).**
- EXT.P6(b) - A TRUE COPY OF THE ORDER DATED 7/11/2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER, (PASSENGER - SHAMEEMA AMINATH)**
- EXT.P6(c) - A TRUE COPY OF THE ORDER DATED 7/11/2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER, (PASSENGER - FARHEEN FATHIMATH)**
- EXT.P6(d) - A TRUE COPY OF THE ORDER DATED 7/11/2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER, (PASSENGER - NIUSHA).**
- EXT.P7(a) - A TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE APPELLATE AUTHORITY DATED 27/11/2014**
- EXT.P7(b) - A TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE APPELLATE AUTHORITY DATED 16/4/2015.**
- EXT.P8(a) - A TRUE COPY OF THE ORDER DATED 27/4/2015 PASSED BY THE APPELLATE AUTHORITY TO THE PETITIONER.**
- EXT.P8(b) - A TRUE COPY OF THE ORDER DATED 27/4/2015 PASSED BY THE APPELLATE AUTHORITY TO THE PETITIONER.**

- EXT.P8(c) - A TRUE COPY OF THE ORDER DATED 27/4/2015 PASSED BY THE APPELLATE AUTHORITY TO THE PETITIONER.**
- EXT.P8(d) - A TRUE COPY OF THE ORDER DATED 27/4/2015 PASSED BY THE APPELLATE AUTHORITY TO THE PETITIONER.**
- EXT.P9(a) - A TRUE COPY OF THE MEMORANDUM DATED 30/4/2015 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**
- EXT.P9(b)- A TRUE COPY OF THE MEMORANDUM DATED 30/4/2015 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**
- EXT.P9(c) - A TRUE COPY OF THE MEMORANDUM DATED 30/4/2015 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**
- EXT.P9(d) - A TRUE COPY OF THE MEMORANDUM DATED 30/4/2015 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**
- EXT.P10 - A TRUE COPY OF THE APPLICATION DATED 9/10/2014 FILED BY THE PETITIONER TO THE CENTRAL PUBLIC INFORMATION OFFICER/MINISTRY OF HOME AFFAIRS UNDER RTI ACT, 2005.**
- EXT.P11 - A TRUE COPY OF THE REPLY DATED 17/11/2014 BY THE CENTRAL PUBLIC INFORMATION OFFICER/MINISTRY OF HOME AFFAIRS TO THE PETITIONER.**
- EXT.P12 - A TRUE COPY OF THE ORDER DATED 12/2/2013 ISSUED BY THE 1ST RESPONDENT TO THE 3RD RESPONDENT.**
- EXT.P13 - A TRUE COPY OF THE LETTER DATED 26/1/2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**
- EXT.P14 - A TRUE COPY OF THE UPDATED WEB SITE PUBLISHED BY HOME AFFAIRS.**
- EXT.P15 - A TRUE COPY OF THE JUDGMENT DATED 21/6/2013 IN WPC.NO.1407/2013 OF THE BOMBAY HIGH COURT.**

RESPONDENT(S)' EXHIBITS:-

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- EXT. R1(a)- COPY OF CLARIFICATION ISSUED BY MINISTRY OF HOME AFFAIRS FOREIGNERS DIVISION REGARDING VISA FEE ENTRY TO MALDIVAN NATIONALS TO INDIA**
- EXT. R1(b)- COPY OF THE ORDER OF MHA FOREIGNERS DIVISION DATED 08.02.2013**
- EXT. R1(c)- COPY OF LETTER DATED 20.01.2014 ISSUED BY MINISTRY OF HOME AFFAIRS, FOREIGNERS DIVISION**

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- EXT. R1(d)- COPY OF ADVANCE INTIMATION LETTER TO MISHAL AHMED DATED 05.06.2014 ISSUED BY BUREAU OF IMMIGRATION, MHA**
- EXT. R1(e)- COPY OF ADVANCE INTIMATION LETTER TO SHAMEEMA AMINATH DATED 08.10.2014 ISSUED BY BUREAU OF IMMIGRATION, MHA**
- EXT. R1(f)- COPY OF ADVANCE INTIMATION LETTER TO NIUSHA DATED 08.10.2014 ISSUED BY BUREAU OF IMMIGRATION,MHA**
- EXT. R1(g)- COPY OF ADVANCE INTIMATION LETTER TO FARHEEN FATHIMA DATED 08.10.2014 ISSUED BY BUREAU OF IMMIGRATION, MHA**
- EXT. R1(h)- COPY OF NOTICE DATED 10.06.2014 ISSUED BY THE 2ND RESPONDENT TO MISHAL AHMED**
- EXT. R1(i)- COPY OF NOTICE DATED 15.10.2014 ISSUED BY THE 2ND RESPONDENT TO SHAMEEMA AMINATH**
- EXT. R1(j)- COPY OF NOTICE DATED 15.10.2014 ISSUED BY THE 2ND RESPONDENT TO NIUSHA**
- EXT. R1(k)- COPY OF NOTICE DATED 15.10.2014 ISSUED BY THE 2ND RESPONDENT TO FARHEEN FATHIMATH**
- EXT. R1(l)- COPY OF ORDER DATED 22.07.2014 ISSUED BY THE 2ND RESPONDENT TO MISHAL AHMED**
- EXT. R1(m)- COPY OF ORDER DATED 7.11.2014 ISSUED BY THE 2ND RESPONDENT TO SHAMEEMA AMINATH**
- EXT. R1(n)- COPY OF ORDER DATED 7.11.2014 ISSUED BY THE 2ND RESPONDENT TO NIUSHA**
- EXT. R1(o)- COPY OF ORDER DATED 7.11.2014 ISSUED BY THE 2ND RESPONDENT TO FARHEEN FATHIMATH**
- EXT. R1(p)- COPY OF ORDER DATED 27.04.2015 ISSUED BY MHA, FOREIGNERS DIVISION IN RESPECT OF MISHAL AHMED**
- EXT. R1(q)- COPY OF ORDER DATED 27.04.2015 ISSUED BY MHA, FOREIGNERS DIVISION IN RESPECT OF SHAMEEMA AMINATH**
- EXT. R1(r)- COPY OF ORDER DATED 27.04.2015 ISSUED BY MHA, FOREIGNERS DIVISION IN RESPECT OF MS. NIUSHA**
- EXT. R1(s)- COPY OF ORDER DATED 27.04.2015 ISSUED BY MHA, FOREIGNERS DIVISION IN RESPECT OF MS. FARHEEN FATHIMATH**
- EXT. R1(t)- COPY OF MEMORANDUM DATED 30.04.2015 ISSUED FROM THE OFFICE OF THE FRRO, TRIVANDRUM IN RESPECT OF MISHAL AHMED**

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**EXT. R1(u)- COPY OF MEMORANDUM DATED 30.04.2015 ISSUED FROM THE
OFFICE OF THE FRRO, TRIVANDRUM IN RESPECT OF SHAMEEMA
AMINATH**

**EXT. R1(v)- COPY OF MEMORANDUM DATED 30.04.2015 ISSUED FROM THE
OFFICE OF THE FRRO, TRIVANDRUM IN RESPECT OF NIUSHA**

**EXT. R1(w)- COPY OF MEMORANDUM DATED 30.04.2015 ISSUED FROM THE
OFFICE OF THE FRRO, TRIVANDRUM IN RESPECT OF FARHEEN
AMINATH**

/TRUE COPY/

P.A. TO JUDGE

DCS

A. Muhamed Mustaque, J.

W.P.(C)Nos.14641 & 36050 of 2015

Dated this the 8th day of December, 2015.

JUDGMENT

1. The petitioner in these writ petitions is a Government Company of Maldives. The petitioner approached this court challenging imposition of penalty under the provisions of Immigration (Carriers' Liability) Act, 2000, (hereinafter referred to as the "Act", for short).
2. The petitioner operates Maldivian Airlines from Mali to Trivandrum. They carry passengers of Maldives as well as others. Government of India, Ministry of Home Affairs, Foreign Division have formulated waiver of visa requirement for a citizen of Maldives, visiting India for a shorter period of upto 90 days, provided he/she holds a valid passport issued by Government of Maldives. The Regulation produced as Ext.R1

(a) by the 1st respondent clearly indicates the period of 90 days, include any prior period of stay of such foreigner in India during a period of six months, immediately preceding the date of his/her entry into India.

3. The petitioner brought Maldivian nationals to India, who did not have visa issued by Indian Consulate. The details of these passengers, 4 in number, are referred in the counter. Three of them visited India during a span of six months prior to arrival in question and stayed for more than 90 days. One of them came to India on a student visa prior to his arrival. Finding that these passengers have violated visa regulations, the immigration authorities deported them back. The facts clearly indicate that these passengers based on free visa or student visa had already stayed for more than 90 days in India in the preceding six months.

4. Petitioner was served with a notice under the Act. Petitioner

gave reply. Thereafter, an order has been passed on 7.11.2014 imposing a penalty of ₹1,00,000/- each on the passenger. Petitioner filed appeal, challenging this order before the Joint Secretary, Ministry of Home Affairs, Government of India. Appeals have has been rejected. These orders are under challenge in W.P.(C)No.14641/15.

5. In W.P.(C)No.36050/15, a similar challenge has been made for imposing penalty for bringing the three passengers and petitioner is directed to pay penalty of ₹1,00,000/- each.

6. Heard learned Senior counsel Sri.P.Santhalingam and learned Assistant Solicitor General appearing for the respondents.

7. Learned Senior Counsel Sri.Santhalingam would argue that there was a violation of the principles of natural justice in as much as passengers who have been found violated were deported to Maldives without ascertaining any details from them. Therefore, petitioner is not in a position to contradict factual matters

imputed against them. It is further argued that the website information given regarding the Regulation is misleading and attempt of the petitioner to obtain copy of the Visa Manual has been declined, citing confidentiality. Further it is argued that petitioner did not violate Visa Manual or Regulations. Learned Senior Counsel lastly argued that penalty imposed is too excessive.

8. On the other hand, learned Assistant Solicitor General pointed out details of the passengers referred to in the counter and would submit that petitioner has not chosen to contradict the factual details furnished in the counter. It is further submitted that Regulations have been put to the notice of the petitioner and ignorance cannot be pleaded as a defence. Learned Assistant Solicitor General also justified for imposing the maximum penalty.

9. The petitioner, challenging the order of the primary authority,

had filed appeal. The appellate authority also adverted to the contentions of the petitioner. The judicial review can be exercised by this court to a limited extent of examining the decision making process. In W.P.(C)No.14641/15, the original orders were passed on 7.1.2014. The right of Maldivian national to enter India on free visa is regulated by Ext.R1(a) produced by the 1st respondent. This Regulation abundantly makes it clear that, a Maldivian national cannot enter into India on free visa, to stay in India, if they had stayed in India for more than 90 days anytime during six months prior to his arrival. This facility is in the nature of exemption. Therefore, when a facility of exemption is being availed, certainly, the carrier is bound to take note of the nature of exemption. Therefore, petitioner cannot pretend ignorance as to the Regulation, which prevailed in India.

10.It is true that website information produced as Ext.P14 in W.P.(C)No.14641/15 creates some confusion. But even that

confusion can only be related to a person who has come down to India on proper visa during the period of six months, immediately preceding the date of his entry. I do not find any illegality with the order. However, taking note of the fact that the imposition of penalty referred to in W.P.(C)No.14641/15 for breach of violation noticed first time, imposition of maximum penalty is disproportionate to the gravity of the offence. It is also to be noted that there was certain confusion on account of particulars furnished in the website, which requires clarity. Further, petitioner's request for copy of the manual has been turned down, citing confidentiality. In such circumstances, this court is of the view that penalty imposed has to be reduced. Accordingly, penalty is reduced to ₹30,000/- per passenger totalling to ₹1,20,000/- referred to in the impugned orders in W.P. (C)No.14641/15. However, I do not find any interference is required for reducing maximum penalty imposed in orders

referred to in W.P.(C)No.36050/15. Petitioner ought to have safeguarded themselves against violation, in the light of the earlier orders. Therefore, the impugned orders in W.P.(C) No.36050 of 2015 are not liable to be interfered with.

11. Thus writ petition is disposed of as follows:

The penalty imposed in the impugned orders produced in W.P.(C)No.14641/15 is reduced and modified to ₹30,000/- each per passenger, while confirming the validity of the order. The impugned orders in W.P.(C)No.36050/15 are affirmed and the same is dismissed. No costs.

Muhamed Mustaque, Judge.

sl.