

**Union of India Vs. Roopesh**

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**Court :** Kerala

**Decided On :** Dec-10-2014

**Judge :** Honourable the Ag.Chief Justice Mr.Ashok Bhushan

**Appellant :** Union of India

**Respondent :** Roopesh

**Judgement :**

(C.R.) IN THE HIGH COURT OF KERALAATERNAKULAM PRESENT: THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN & THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE WEDNESDAY, THE10H DAY OF DECEMBER201419TH AGRAHAYANA, 1936 WA.No. 1869 of 2014 () IN WP(C).31115/2014 ----- AGAINST THE

JUDGMENT

IN WP(C) 31115/2014 DATED0212-2014 APPELLANT(S): ----- 1. UNION OF INDIA REPRESENTED BY SECRETARY MINISTRY OF INDIAN OVERSEAS AFFAIRS, AKBAR BHAVAN CHANKYA PURI, NEW DELHI-110 021.

2. THE PROTECTOR OF EMIGRANTS3D FLOOR, PUTHERICKAL BUILDING, MARKET ROAD KOCHI-682 035. BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL RESPONDENT(S): ----- 1. ROOPESH AGED28YEARS (PASSPORT NO.G445 2678) 313 101 150 KANDARAMATH HOUSE, PALAKKAZHI ALANALLUR POST, PALAKKAD DISTRICT, KERALA.

2. RAJESH MOOLAYIL PARIYARATH (PASSPORT NO.K9487786), PALAKKAD, KERALA NOW RESIDING AT377-B, DDA FLATS, GAZIPUR DELHI-110 096. BY SRI.P.K.MOHAMED JAMEEL THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON1012-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: (C.R) ASHOK BHUSHAN, Ag.CJ & A.M.SHAFFIQUE, J.

----- W.A. No. 1869 of 2014  
----- Dated this the 10th day of  
December, 2014

## **JUDGMENT**

Ashok Bhushan, Ag.CJ Heard learned counsel for the appellant Sri. N. Nagaresh, Assistant Solicitor General of India and learned counsel appearing for the respondent/writ petitioner.

2. This writ appeal has been filed against the judgment dated 2.12.2014 passed by the learned Single Judge in Writ Petition No.31115 of 2014 by which judgment, the learned Single Judge has allowed the writ petition directing for issue of emigration clearance to the petitioner within three working days.

3. Brief facts of the case are: The first respondent, who shall hereinafter be referred to as the writ petitioner being a job aspirant secured an employment visa as Sales Executive in a private company in United Arab Emirates. The visa was issued on 14.10.2014. On 17.10.2014 the writ petitioner approached the second respondent for emigration clearance. The second respondent i.e., the Protector of Emigrants refused to receive the application on the ground that Ext.P2 WA.1869/14 2 employment contract should be attested by the Indian Consulate in UAE. The petitioner submits that both the Directors of the sponsor company are currently in India. Hence there is none in UAE to get attestation by the Indian Embassy. On refusal on the ground of emigration clearance, the writ petition was filed for the following reliefs : "To issue a writ of mandamus or any other writ order or direction to the 2nd respondent commanding him to issue emigration clearance to the petitioner so as to enable him to travel under Ext.P1 employment visa."

4. Learned Single Judge noticing the argument of the petitioner that employment visa will not be issued without lodging employment agreement with the office of the country which issued the employment visa and on being satisfied of the genuineness of the claim of the petitioner based on Ext.P1 (employment visa) issued a direction that without insistence of the attestation of the country of origin, the emigration clearance shall be issued. The following direction was issued in paragraph 3 of the judgment : "It is pointed out by learned counsel for the petitioner that employment visa will not issue without lodging employment agreement with the office of the country which issued the employment visa. I am of the view that the purpose of Emigration Act and Rules is to protect the emigrant from being exploited in a foreign country by luring job. Therefore, on being satisfied with the genuineness of the claim of the petitioner based on WA.1869/14 3 Ext.P1, without insisting for attestation of the country of origin, the emigration clearance shall be issued to the petitioner. In view of the facts circumstances, the petitioner's visa will expire on 9.12.2014, there shall be a direction to issue emigration clearance within three working days."

5. Sri. N. Nagaresh, Assistant Solicitor General of India challenging the judgment of learned Single Judge submits that in view of the provision of section 22(3) of the Emigration Act, 1983, an agreement with respect to employment was required to be verified and authenticated in the prescribed manner, which is prescribed under Rule

15. The contract of employment submitted by the petitioner for emigration clearance being not verified by the Indian Embassy of the country, no error has been committed by the second appellant in refusing the employment emigration clearance. He submits that the statutory provision cannot be breached by the authorities who were bound to follow and there is no error in refusing the emigration clearance.

6. Learned counsel for the writ petitioner refuting the submission of learned counsel for the appellant submits that employment visa has been granted by the country (UAE), there was no requirement for attestation of the employment contract. He submits that the application which is supported by employment visa

by the country is a different category, for which WA.1869/14 4 insistence of verification cannot be made by the authorities. He further referred certain guidelines issued by Ministry of Overseas Indian Affairs (Emigration Policy Division) New Delhi, 2007 where he submits that in so far as skilled/semiskilled workers, employment contract from foreign employer is not mentioned to be attested, verified and authenticated. With regard to unskilled workers the guidelines provide for due attestation by Indian Mission.

7. We have considered the submissions of learned counsel for the parties and perused section 22 of the Act, which provides for emigration clearance. Section 22(3) which is relevant, is quoted below :

"2. Requirement, etc., as to emigration clearance - xx xx xx (3) Every application under sub-section (2) shall be accompanied by - (a) a true copy (verified and authenticated in the prescribed manner) of the agreement with respect to the employment for the taking up of which the applicant proposes to emigrate and where such agreement does not provide for all or any of the prescribed matters, also a statement (verified and authenticated in the prescribed manner) setting out the particulars with respect to such matters; (b) a statement (verified and authenticated in the prescribed manner) as to the provision by way of security for meeting the expenses which may be incurred in case it becomes necessary to arrange for the repatriation to India of the applicant; WA.1869/14 5 (c) a receipt evidencing the payment of the prescribed fee; (d) such other relevant documents or copies of relevant documents as may be prescribed." 8. Rule 15 provides for application for emigration clearance. Rule 15 (1)(c) reads as follows:

"5. Application for emigration clearance - (1) Every application made under sub-section(2)of section 22 of the Act shall be made in Form IX by the applicant directly or through the recruiting agent if any or through the employer including Indian employers permitted under rule 11(2) concerned and shall be accompanied by,- (c) a true copy of the agreement under sub-section (3) of section 22 of the Act verified and authenticated by the Indian Mission in the country of employment." 9. A perusal of the statutory provision of section 22(3) makes it clear that an application under section 22(2) of the Act be mandatorily accompanied by a true

copy of the verified and authenticated agreement with respect to the employment for the taking up of which, the applicant proposes to emigrate. Rule 15 provides for the procedure and Rule 15(1)(c) requires that true copy of the agreement under sub-section (3) of section 22 of the Act be verified and authenticated by the Indian Mission in the country of employment.

10. Admittedly, in the present case, the agreement which is brought on record, Ext.P2 has not been verified and authenticated WA.1869/14 6 by Indian Mission in the country of employment. The submission of learned counsel for the writ petitioner that in this case, where a country of emigration has already issued employment visa, no such requirement can be insisted and that should be treated as a category which is outside the scope of section 22(3) of the Act and for that category insistence of authentication has been dispensed with.

11. We do not agree with that submission. When a statutory provision requires to be complied, the same is to be complied in that manner and not at all. The second appellant who was the second respondent in the writ petition has refused to issue emigration clearance on the basis of the above statutory requirement which cannot be said to be either arbitrary or against the provisions of the Act. This court in exercise of the jurisdiction can direct the authority by a writ of mandamus to do a thing when the authority, fails to discharge the duty under the statutory provision or commits any such error.

12. In so far as the policy decision and the guidelines issued by the Ministry of Overseas Indian Affairs is concerned, the said guidelines has to be read in accordance with the statutory provisions. The guidelines cannot be read to mean to breach any WA.1869/14 7 provision of law and guidelines cannot be permitted to supersede any requirements in the Act. Thus no benefit can enure to the writ petitioner on the basis of the said guidelines.

13. In the present case, the second respondent has not committed error so as to enable this court to issue a mandamus under Article 226. Thus the learned Single Judge committed an error in issuing mandamus directing for issuance of emigration clearance within three days. The judgment of learned Single Judge cannot be sustained and is hereby set aside. We observe that if the petitioner

makes any fresh application in accordance with section 22(3), after completing all the formalities, the application shall be considered and disposed of by the respondent expeditiously. Subject to the above, the writ appeal is allowed. Sd/- ASHOK BHUSHAN, ACTING CHIEF JUSTICE Sd/- A.M.SHAFFIQUE, JUDGE. sou.

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