

A.M.Sherif Vs. State of Kerala

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Court : Kerala

Decided On : Jun-16-2015

Judge : Honourable Mr. Justice Shaji P.Chaly

Appellant : A.M.Sherif

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE SHAJI P.CHALY TUESDAY, THE 16TH DAY OF JUNE 2015 26TH JYAISHTA, 1937 WP(C).No. 11902 of 2004 (P)

----- PETITIONER: ----- 1. A.M.SHERIF, TRANS ASIA YEMAN, SANA'S REPUBLIC OF YEMAN, PRESENTLY RESIDING AT EMBARAYIL HOUSE, PUZHAKULAM, PATHANAMTHITTA DIST.

2. S.NIZURUDHEEN, TRANS ASIA YEMAN, SANA'S REPUBLIC OF YEMAN BY ADVS. SRI.K.MADHUSOODHANAN NAIR SRI.N.REJO RESPONDENT: ----- 1. STATE OF KERALA SECRETARY TO HIGHER EDUCATION DEPARTMENT THIRUVANANTHAPURAM.

2. CENTRE FOR FOREIGN STUDENTS AFFAIR, THIRUVANANTHAPURAM, REPRESENTED BY ITS CHAIRMAN.

3. CENTRE FOR FOREIGN STUDENTS AFFAIRS THIRUVANANTHAPURAM, REPRESENTED BY ITS EXECUTIVE DIRECTOR, DR.A.SUKESHKUMAR,

T.C.NO.4/982/1 KAVADIAR P.O., THIRUVANANTHAPURAM-1. R2 & R3 S.C. SRI.K.ANAND, (A.201) SMT.LATHA KRISHNAN R1 BY GOVERNMENT PLEADER SRI.SHYSON P. MANGUZHA THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-06-2015, ALONG WITH WPC. 16413/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 11902 of 2004 APPENDIX PETITIONER'S EXHIBITS: P1 : A PHOTOCOPY OF THE APPLICATION FORM DATED 41.2.2003 SUBMITTED BY THE PETITIONER TO THE RESPONDENT. P2 : A PHOTOCOPY OF THE CHEQUE DIRECTING PAYMENT OF 200 US\$ TO THE 2D RESPONDENT DATED 41.2.2003. P3 : A PHOTOCOPY OF THE E-MAIL MESSAGE DATED 7.1.2003 SEND BY THE RESPONDENT TO THE PETITIONER. P4 : A PHOTOCOPY OF THE CERTIFICATE DATED 14.1.2003 ISSUED BY THE 2D RESPONDENT TO THE PETITIONER. P5 : A PHOTOCOPY OF THE LETTER DATED 23.9.2003 SEND BY THE 2D RESPONDENT TO THE HIS EXCELLENCY INDIAN AMBASSIDAR YEMAN. P6 : A PHOTOCOPY OF THE EMAIL MESSAGE DATED 16.12.2003 SEND BY THE PETITIONERS TO THE 2D RESPONDENT. P7 : A PHOTOCOPY OF THE LETTER DATED 22.3.2004 ISSUED BY THE PETITIONERS TO THE 2D RESPONDENT. P8 : A PHOTOCOPY OF THE LETTER DATED 25.3.2004 SEND BY THE 2D RESPONDENT TO THE PETITIONERS. RESPONDENT'S ANNEXURES: R2(a) : TRUE COPY OF GOVERNMENT

ORDER

NO.104/2002/H.EDN. DATED 7.8.2002. R2(B) : TRUE COPY OF RELEVANT PAGE OF TERMS AND CONDITIONS FORMULATED BY THE 2D RESPONDENT. //TRUE COPY// P.A. TO JUDGE smv SHAJI P. CHALY, J.

----- W.P.(C) Nos.11902 of 2004 & 16413 of 2007
----- Dated this the 16th day of June, 2015

JUDGMENT

These writ petitions are filed by accredited agents, licensed by the Government for the purpose of canvassing and drawing attention of the students from abroad to carry on their professional education activities in the colleges belonging to the State of Kerala.

2. Since the issues raised in these writ petitions are common, I am not referring to any particular exhibit but the relevant facts required for the disposal of these writ petitions alone are stated.

3. In order to secure the licence as per the documents produced by the petitioners, they have paid 200 US\$ as non-refundable application money and further 10,000 US\$ towards the licence fee to establish and carry on the particular accredited agency for the purposes recited above. The scheme did not work out as it was envisaged, either by the accredited W.P.(C) 11902 of 2004 & 16413 of 2007 2 agents or by the Government. Pursuant to which the agency could not attract the attention of students in order to prosecute their studies in the professional colleges in the State of Kerala. Anyhow, to cut a long story short the system did not work as anticipated by the Government as well as the accredited agencies.

4. Being confronted with such situation, the accredited agencies requested the respondents herein for refund of 10,000 US\$ paid by them towards licence fee, as directed by the respondents. The request made by them was considered by the respondents and they were willing to refund 5,000 US\$. Any how I presume that being dissatisfied with the willingness to make part payment, petitioners have approached this Court by filing these writ petitions.

5. Respondents entered appearance through counsel and respondents 2 and 3 have filed counter basically contending that since the amount paid by the accredited agents were licence fees, they are not liable to be refunded.

6. Heard learned counsel for the petitioner, the learned Standing counsel for respondents 2 and 3 and the learned Government Pleader for the first respondent.

7. I have gone through the records, the pleadings in the W.P.(C) 11902 of 2004 & 16413 of 2007 3 writ petitions and the orders passed by respondents 2 ad 3 pursuant to the refund applications made by the petitioners in these writ petitions. From the records available along with the writ petition, what I understand is that the 200US\$ each accepted by the respondents from the petitioners is against non-refundable money. So far as 10,000 US\$ each accepted from the petitioners are concerned same is accepted as licence fees and there is no mention in any of the

communication whether it is refundable or not. On filing of the writ petitions before this Court as per an interim order passed, 5,000 US\$ were directed to be refunded to the petitioners and accordingly the order was implemented by respondents 2 and 3.

8. The question remains whether the petitioners are entitled to get the balance 5,000 US\$ paid by them towards licence fee paid against securing the accredited agency as a condition precedent.

9. From the records made available with the writ petitions, I find that respondents 2 and 3 have considered the request made by the petitioners and they were prepared to take up the issue with the first respondent Government to consider the question whether the amount paid towards licence fee can be refunded to the petitioners or not. Thereafter there is no record W.P.(C) 11902 of 2004 & 16413 of 2007 4 to show that the respondents 2 and 3 have placed the matter before the first respondent as is recited in the orders passed by them pursuant to the representation made by the petitioners.

10. According to the counsel for the petitioners as well as counsel for the respondents 2 and 3, the accredited agents could not secure or canvass any business as visualised by them and I am told that subsequently the scheme launched by the Government with an intention of attracting foreign students has become defunct. I also do not find either from the counter affidavit or from any of the orders passed by respondents 2 and 3 that any services were rendered by the said respondents or the State for the establishment of these accredited agencies or for carrying on their business activities. Therefore, I am of the opinion that since no services are rendered to the petitioners either by the Government or respondents 2 and 3 to be entitled for retention of the amount by the respondents, there being no quid pro quo, the return of the balance money is to be seriously considered by the respondents. In that view of the matter it is only just and proper that the issue is considered by the Government taking into account the factual situation that has arisen after granting licence to the petitioners in these writ petitions. Therefore, the writ petitions are disposed of with the W.P.(C) 11902 of 2004 & 16413 of 2007 5 following directions: These writ petitions are of the year

2004 and 2007 and therefore there is every likelihood that whatever records appended along with the writ petitions may not be available with the respondents and in that circumstances I direct the petitioners to make suitable applications to the first respondent along with copies of the writ petitions and the appended documents within a period of 45 days from the date of receipt of a copy of this judgment and the first respondent Government shall take a decision on the same taking into account the observations made earlier within a further period of two months thereafter. Writ petitions are disposed of accordingly and in the facts and circumstances without any cost. Sd/- SHAJI P. CHALY JUDGE smv

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