



10 June, 2013

The Secretary to Government,
Ministry of External Affairs,
NEW DELHI.

Ref. Your Letter No.4393/JS(GD)/2012 dated May 2, 2013

Dear Sir,

I refer to my letter dated 20th March, 2013 on the omission of the Government of India in implementing the directives of the High Court of Delhi in relation to my grievances against the U.A.E. Government. A copy of it is attached herewith for ready reference. I regret that, I have not received any reply in this regard from the Ministry of External Affairs, Government of India.

In responding to my recommendation cum representation on the Indo-Gulf Reparation Mechanisms, dated May 2, 2013, Shri A.R. Ghanashyam, Joint Secretary (Gulf & Hajj), Ministry of External Affairs, New Delhi has confirmed that, the Government of India has established institutional arrangements including 'Migrant Cell', 'Reparation Fund' for legal assistance etc., for the welfare of Indians abroad.

Your response to my representation was encouraging. However, I regret to say that it contained substantial misrepresentation of facts.

The statement about making institutional arrangements as detailed therein is misleading and incorrect.

Migrant Cell

Though the Ministry of Overseas Indian Affairs has established in 2004 to address the concerns of the Indian Diaspora, headed by a Cabinet Minister, Shri Vayalar Ravi, no effective action has been taken for the creation of the 'Migrant Cell', to ensure the safety, security and the welfare of Overseas Indian Community.

MOU with GCC

The Memorandum of Understanding (MOU) referred to is of a very limited operation. Rather, the parties involved would have to act in order for this to happen. Singing of MOU with major labour importing countries, implementing the Emigration Act 1983 and securing a legal framework to this regard with the countries concerned are the core responsibilities of 'Ministry of Overseas Indian Affairs'. There was a number of MoUs between India and the Gulf States including MoU on Manpower Sourcing in (2006). The

multiple sufferings of Indian Migrants in Saudi Arabia, UAE and other GCC countries could have been eased greatly if there had been an effective MOU.

Visits:

The visits of the Ministers, it is respectfully submitted, do not do duty for an effective investigation of the sufferings of the migrants. A majority of visiting Ministers are busy with bilateral trade ties or persons of influence. The ostentatious ceremonies do not take note of the core issue. The celebration arrangements submerge the live problems and continuing sufferings.

Reparation Fund:

The functioning of an effective 'Reparation fund' mentioned in your letter is tending to mislead. It may be emphasized that the victims do not get any relief or reply. A verification of the complaints received, and the contrast with the replies given or relief afforded, will establish the above assertions.

About the assistance claimed to have been given, the incorrectness will be demonstrated by a reference to the petitioner's case itself. The details are indicated herein below at the risk of repetition.

The petitioner is a torture survivor of inside the regime's brutal prison in Abu Dhabi, United Arab Emirates and most importantly a Judgment Creditor who is frustrated in the course of enforcing the judgments of that country itself.

I wish to share a summary of my story with you:

I went to UAE on 1st June, 1979 and could successfully develop and manage three Contracting & Trading Establishments in Abu Dhabi. The value of my business assets as on 1996 was worth 100 million USD along with many work contracts with the ruling regime and had a reputation of which solely earned by me with untiring efforts over a period of nearly two decades.

In 1995, there arose a civil dispute regarding a building contract between me and a landlord in Abu Dhabi. I sought relief from the Civil Court. The court of justice was taken a stand in my favour; the other day the said landlord in collusion with police officials trespassed into my office, robbed of cash and valuables to force me to withdraw the lawsuit.

I refused their demand and sought intervention from the police. The police did come, but instead of helping me, I was shackled and literally dragged out of the office and on through the street in the presence of known friends and bystanders. I was subjected to the greatest ordeals by getting arrested, confined to a detention center and beaten to near-death thereafter hospitalized on an emergency, and kept in prison for about a year. It took six months thereafter, for me to have my first appearance in the court.

A case was charged against me, quote "Using Force Against Government Employee and Assault" unquote. The Judges of both the Trial Court and the Appeal Court of Abu Dhabi found the case was wholly false, baseless and that it was fabricated. Court

observed the policeman's disclaim from his complaint only magnified his notoriety. It further reiterated the condemnation of prosecutor.

Ultimately, the Apex Court of Abu Dhabi declared the victim was innocent; 'a martyr'. In addition, the UAE authorities were directed to restore victim's dignity, and to compensate him for all the losses while pronouncing a 'landmark Judgment'.

An excerpt from the appellate judgment is as follows:-

*"Verily the Islamic law and the entire positive laws have honoured man and protected his freedom, his honour, his property and his soul. Hence, if man was killed while protecting these, he is considered to be a martyr. And limitation of his freedom without any right is an unforgiving crime and the same is mentioned in the provisions of article 2 and 3 of the penal procedure code. **And it is proved in this case that the policemen along with the local went to arrest the accused, without any right and curtailed his freedom"**.*

Sad to state, the offending officials of Abu Dhabi ignored the judgment of the highest court of that country and resorted retaliatory tactics instead, in order to save face. They treated me in a manner that was extremely 'libelous' - by 'false statement of facts as if the person was punished for the crime' quote "Using Force Against Government Employee and Assault" unquote and deported me back to India on 28th Sep, 1996.

After reaching India, I endeavoured to seek justice through the Indian Courts for the cruel and illegal actions of the UAE as a torture survivor. I have made representations to the Union Government of India asking them to grant me leave to institute legal proceedings against the state of UAE. In October 1996 a writ petition was filed before the Hon'ble Supreme Court of India. The facts enumerated therein would clearly establish the callous attitude of the authorities in UAE. The Supreme Court of India took cognizance of the case and suggested the Delhi High Court deal with it.

The very fact that the Supreme Court enabled us to withdraw the petition and file it under Article 226 of the Constitution in the High Court of Delhi, shows that the Hon'ble Supreme Court found merit in the case. The petitioner has thereafter moved the Delhi High Court. The Hon'ble High Court of Delhi, was pleased to issue a mandamus to the Government, the Ministry of External Affairs (MEA) to settle the matters within two months vide its judgment dated 20-11-1997.

However, despite the judgment of Hon'ble High Court of Delhi, my agony is remaining unabated due to the inaction of MEA, the Government of India; unless otherwise stated, the 'Appalling Ignorance' of the functions of the Diplomatic Missions, the Vienna Convention on Diplomatic Relations 1961 of United Nations and or the Arab Charter on Human Rights, adopted in 1994 by the League of Arab States.

All the above UN Charter Provisions, Statutes and State Charters explicitly confirm that there is ample scope for genuine reparation. The following directive makes ample scope in this regard:

Under Article 3: The Vienna Convention on Diplomatic Relations, 1961

It may be noted that under Article 3, the functions of a Diplomatic Mission include "Protecting in the receiving State, the interests of the sending State and of ITS NATIONALS, within the limits permitted by International Law".

Under Article 13 & 16: The Arab Charter on Human Rights, 1994:

Article 13: (a) The States parties shall protect every person in their territory from being subjected to physical or mental torture or cruel, inhuman or degrading treatment. They shall take effective measures to prevent such acts and shall regard the practice thereof, or participation therein, as a punishable offence.

Article 16: No one shall be tried twice for the same offence. Anyone against whom such proceedings are brought shall have the right to challenge their legality and to demand his release. Anyone who is the victim of unlawful arrest or detention shall be entitled to compensation.

The Arab Charter on Human Rights, adopted on 15 September 1994 by the League of Arab States, where the UAE is a party. I have been suffering all through ever since I was a victim of violent extortion racket in Abu Dhabi police that targeted me. I was illegally arrested, brutally tortured, wrongfully imprisoned and being held incommunicado and deported illegally from the UAE without any asset whatsoever to India. The anguish resultant from the deprivation of such a huge business assets earned only through my untiring personal efforts causes mental depression which will virtually make the life only a vegetable existence.

When the justice due to the petitioner has been declared by the highest Courts in the U.A.E., and by the observations of the Delhi High Court, it is the bounden duty of the Indian Ambassador in UAE to take up the matter with UAE Government, under Article 3, Vienna Convention on Diplomatic Relations 1961.

As intimated in my previous letter, the judgment of the Delhi High Court 19-9-2007, in my case which had extracted the letter of the MEA dated 29-07-1998 reading: "Although under Section 86 cannot be granted for suing the UAE Government, we are taking up the matter with our Embassy in Abu Dhabi once again, requesting them to pursue this case at appropriate level". (A copy of that judgment was enclosed in the first reminder letter) I have not been informed about the further endeavours of the Embassy in securing justice for my cause.

It is respectfully submitted that a close application of mind to all these aspects is essential at this juncture.

I request that the action in response to my representation should not be delayed further.

The dealing with the petitioner's representation would thus ensure justice to the petitioner as well as to a larger section of Indian population. The attached summary of some recent case reports will substantiate this statement.

If action is further delayed, I will be constrained to move the High Court invoking the Constitutional provisions including Article 226 of the Constitution. I will also be

constrained to claim for compensatory costs from the officials responsible for such a distressing situation for the citizen, and to make them PERSONALLY responsible for payment of such costs. (This has been indicated as a proper and permissible course, by the Supreme Court in Padmanabhan Nair's case).

Yours faithfully,

Panikkaveetil K. Jabir.

Enclosures:

- 1) Response from the Joint Secretary, Ministry of External Affairs, New Delhi. to my representation Indo-Gulf Reparation Mechanisms.
- 2) Important reminder notice dated 20th March, 2013.
- 3) Nitaqat Law & Years of Human Rights Abuses in the GCC Member States (Reports).
- 4) A summary of some recent cases.

Return to:

The second (important) reminder notice to the Secretary, Ministry of External Affairs, New Delhi
<http://www.lawyersindia.com/outsourcing/indo-gulf-reparation-mechanisms-timeline-highlighting-submissions-responses.html>