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**(2013) 07 KL CK 0144**  
**In the High Court Of Kerala**  
**Case No : Writ Petition (C) No. 8769 of 2013**

Aminakutty

APPELLANT

Vs

Haj Committee of India

RESPONDENT

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**Date of Decision :** 25-07-2013

**Acts Referred:**

Constitution of India, 1950 — Article 14, 25, 26

**Citation :** (2013) 3 KLJ 741 : (2013) 3 KLT 684

**Hon'ble Judges :** P.R. Ramachandra Menon, J

**Bench :** Single Bench

**Advocate :** K.K. Mohamed Ravuf, for the Appellant; P. Parameswaran Nair, Asst. Solicitor General of India, K.A. Jaleel, A.A.G. and T.P. Sajid, Sr. Government Pleader, for the Respondent

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## Judgement

P.R. Ramachandra Menon, J.—Whether the stipulation in Clause 3 of Ext. P1 Guidelines issued by the second respondent, insisting that a woman pilgrim proceeding for "Haj" has to be accompanied by a "Mehram" (a male member of the family within the prohibited degree of relationship) is correct or sustainable, is the point sought to be considered in this Writ Petition. The petitioner, who is a lady aged 64 years, sought to perform "Haj" and filed Ext. P2 application in tune with Ext. P1 Notification, which stipulates the Guidelines issued by the second respondent. It is the case of the petitioner that, she does not have a male member in the family, as her son is working in Saudi Arabia and hence the name of "Mehram" was shown in the application as "Sainaba", a close friend/neighbour aged 60 years. But the petitioner was given to understand that, by virtue of Ext. P1 Guidelines, the application of the petitioner will not be considered favourably, for want of a male "Mehram", which made the petitioner to approach this Court by way of this Writ Petition.

2. The prayers in the Writ Petition are as follows:

(i) declare that the stipulation in Clause 3(c) in Ext. P1 shall be satisfied, even if the Mehram accompanying the woman is also a woman;

(ii) declare that the stipulation in Clause 3(c) in Ext. P1 is arbitrary and discriminatory, and violative of Articles 14, 25 and 26 in so far it discriminate Woman applicants, who are not allowed to perform Haj by insistence of male Mehram;

(iii) issue a writ of Mandamus or any other appropriate writ, order or direction directing the respondents to consider Ext. P2 application of the petitioner, accepting the Mehram as shown in Ext. P2; And

(iv) to issue such other directions or orders as this Hon"ble Court may deem fit and proper in the nature and circumstances of the case.

3. The second respondent has filed a counter affidavit pointing out that, the second respondent had issued Ext. P1 in the local language, which is nothing but a translation of the Guidelines issued by the first respondent (in English), a copy of which has been produced as Ext. R2(a). It is for the first respondent, who is the competent body, to make policy decisions for "Haj" every year. The second respondent, who is an authority constituted under the Haj Committee Act, 2002, aids in making arrangements for the pilgrimage of Muslims for "Haj". It is stated that, as per Clause 4(v) of Ext. R2(a) Guidelines issued by the first respondent, ladies not accompanied by "Sharai Mehram" are not eligible for applying for "Haj"-2013. It is also stated that, Ext. P2 application for "Haj" stated as preferred by the petitioner, has not reached the office of the second respondent till date, even though the last date for submission of the application was extended upto 30.3.2013.

4. Heard the learned counsel for the petitioner, the learned Standing Counsel appearing for the first respondent and the learned Government Pleader appearing for the second respondent, at length.

5. The basic question to be answered is, whether a woman pilgrim can be permitted to perform "Haj" without a "Male Mehram" as envisaged in the Guidelines, or in other words, whether the petitioner can be permitted to proceed for "Haj" with a female companion by name Sainaba shown as "Mehram" in Ext. P2 application.

6. Clause 6(i), (ii) and (iii) of Ext. R2(a) Guidelines issued by the first respondent are relevant, which are extracted below:

#### 6. HOW TO APPLY:

##### Application in duplicate

The average size of a cover is three (3). Hence, the Haj Committee of India has printed Haj Application set with 6 application forms for use by a cover size of Three Applicants. If the cover contains more than three applicants then another set of application form is to be filled and attached together. The cover head shall make a cover of all the applicants and submit it to the State/Union Territory Haj Committee. Application for each Pilgrim should be filled in duplicate. The cover

head shall be male (adult) only.

ii) Cover Size

The maximum size of the cover shall be 5 (Five) adults + 2 (two) infants only. The minimum size of cover is one.

For e.g.: For 5 adult + 2 infant pilgrims, 14 applications have to be filled. (2 x 7 = 14). One set of seven applications is meant for State/Union Territory Haj Committee and another set of seven is meant for Haj Committee of India, Mumbai.

INFANTS: Who would complete 2 years of age by 20th November, 2013 i.e. till the arrival of last inward Haj Charter Flight. Infant travel is not free of cost. 10% of full airfare (decided by Ministry of Civil Aviation) will be charged which will be communicated in due course.

CHILD: Above 2 years applicant will be charged as adult Pilgrim and full amount of airfare and Haj Amount has to be paid by them accordingly.

iii) Composition of Cover- Only family members and near relatives:

A maximum number of Five (5) applicants comprising the family members or near relatives can apply in a single cover. The head of cover shall be responsible for payment of the persons included in the cover. Under no circumstances, an alien person should be included in the cover. It is in the interest of Pilgrims to ensure that only family members having blood relation or near relatives are included in the cover. The accommodation status in respect of all Pilgrims under one cover should be same. In no case a cover shall be split. In case a few Pilgrims under one cover intend to prepone/postpone the date of flight it would not be permitted. The Pilgrims of the Cover will travel together and stay together. If the cover head of cover cancels his application for Haj pilgrimage, he should indicate name of another Male Member from among Male Members of such cover, as head of the particular cover. If a Male applicant, who is Mehram of the Female applicant of cover, cancels his application for Haj Pilgrimage, he must indicate the name of other applicant from among the Male Members of the cover as "Mehram" along with relation with the female applicant(s) of that cover. Otherwise application(s) of the female applicant(s) shall also be treated as cancelled. Change of Mehram is allowed only in specific cases on account of death/medical grounds etc.

7. The first respondent has issued Ext. R2(b) Circular on 21.3.2013, paragraphs 1 and 7 of which read as follows:

1. Ministry of External Affairs, Government of India on 21st March, 2013 issued directions waiving the condition of "once in life time Haj through Haj Committee of India" in the cases of;

i) Mehram (male member accompanying the lady Pilgrim/s), and

ii) The companion to accompany and assist Pilgrims who are over 70 years of age subject to the condition that the full air fare be borne by such Repeater Pilgrims and the benefit of Haj travel subsidy is not given to them.

7. State/Union Territory Haj Committees are instructed to make sure that such Pilgrims duly submit a separate Affidavit. At the same time State/U.T. Haj Committees should put a Rubber Stamp FULL AIR FARE on the Haj Application Forms of such Repeater Pilgrims itself.

8. Ext. R2(c) is a copy of the affidavit to be produced as envisaged under paragraph 7 of Ext. R2(b) Circular. Paragraph 1 of the said affidavit, referring to the term "Mehram" as a "male member" is relevant, which hence is extracted below:

1. I am aware that Government of India decided the new policy of Haj "Once in a life time" through Haj Committee of India and subsequently waived this condition for Mehram (Male Member) and Companion of 70+ Pilgrims.

9. The first respondent has filed a counter affidavit, wherein it has been pointed out that the first respondent is responsible for implementing the scheme for performing "Haj", in accordance with the Annual Bilateral Agreement signed between the Government of India and the Kingdom of Saudi Arabia and also the Guidelines issued by the Government of India in that respect from time-to-time. A reference is made to Clause 7 of the Bilateral Agreement for "Haj" - 2013 signed between the Government of India and the Kingdom of Saudi Arabia for "Haj" - 2013, which is extracted below:

The Ministry of Haj reiterates the need to abide by not allowing the Ladies to come except accompanied with their Mehrams (close relative with whom marriage is not permissible). This is not a new issue. In fact it is imposed by the Islamic Sharia and applicable to all ladies from all countries of the world.

It was accordingly, that the first respondent formulated Ext. R2(a) Guidelines, clearly stipulating under Clause 4(v), that ladies not accompanied by "Sharai Mehram" stand excepted from making application for "Haj". Reference is made to Clause 6(iii) of Ext. R2(a) as well.

From the above pleadings and proceedings, it is clear that the term "Mehram" contemplates only a "male member" and in no circumstance, can it be a female member. The petitioner herself has admitted in paragraph 2 of the Writ Petition, as to the necessity to have a "Mehram" for performing "Haj" and it has been conceded that, normally "Mehram" is a person within the prohibited degree of marriage relationship. Since there is no dispute with regard to the status of the party, that "Mehram" should be a person, who should be within the prohibited degree of relationship, who cannot be married, and further since the Muslim law does not envisage marriage between two women, reference made the expression "Mehram" as a person who stands within the prohibited degree of relationship and cannot be married, undoubtedly refers to a "male member" and not a

female.

In the above circumstances, this Court finds that the petitioner has approached this Court moulding the pleadings and prayers on a totally wrong and misconceived idea as to the scope of the Guidelines.

The challenge raised against Clause 3(c) of Ext. P1 fails. Interference is declined and the Writ Petition is dismissed accordingly.