

(2023) 06 DEL CK 0063

In the Delhi High Court

Case No : Civil Writ Petition No. 8410 Of 2023

Barakath Hajj Group

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 07-06-2023

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 25, 25(1), 226

Citation : (2023) 06 DEL CK 0063

Hon'ble Judges : Chandra Dhari Singh, J

Bench : Single Bench

Advocate : Sulaiman Mohd. Khan, Taiba Khan, Bhanu Malhotra, Rakesh Kumar, Sunil

Judgement

Chandra Dhari Singh, J

CM APPL. 32064/2023 (Exemption)

Subject to the petitioner filing the clear, original and legible/typed copies of any dim documents on which the petitioner may seek to place reliance, within four weeks from today, exemption is granted for the present.

The application is disposed of.

CM APPL. 32065/2023 (Stay)

1. The instant application has been filed challenging the suspension of the Registration Certificate and Quota of the Haj Group Organizer (HGOs) as published on 25th May, 2023 of the petitioner in the Consolidated List of Allocation of Haj quota for Haj-2023 and the Show Cause Notice subsequently issued against the petitioner/HGO on 26th May 2023 by the respondent.

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner's registration certificate and Haj quota have arbitrarily been ordered to be kept in abeyance till the finalization of proceedings in a complaint-related matter. It is submitted that this aforesaid course of action has taken place after

the petitioner was found eligible/qualified as per the HGO Policy for Haj-2023 in the list dated 5th May, 2023 of eligible HGOs. Subsequently, the petitioner was issued a Registration Certificate and Quota Allocation on 18th May, 2023.

3. It is submitted that the respondent issued notice/circular inviting applications from eligible HGOs for registration and allocation of Quota for Haj-2023. The policy for registration and allocation of Quota for Haj-2023 was also attached with the said notice.

4. The petitioner submitted/uploaded the application for registration and allocation of Quota for Haj- 2023 on the E-Haj portal of the respondent. The respondent declared the list of eligible and ineligible HGOs for Haj-2023 on its website on 5th May 2023. The petitioner was placed in the said list of eligible/qualified HGOs. The respondent, accordingly, sent the respective Registration Certificate to the petitioner and also allocated respective Haj Quota seats to the petitioners.

5. It is submitted that the respondent on 25th May 2023 issued the consolidated list of allocation of Haj Quota for Haj-2023 and published a comment against the name of the petitioners, which read as "Registration Certificate & Quota Kept in abeyance till finalization of proceedings in complaint related matter" Subsequently, vide email dated 26th May, 2023 the respondent sent a "Show Cause Notice" in relation to a complaint against the petitioner and asked the petitioner to reply to the same within 3 days on the ground of the alleged defaults committed by the petitioner.

6. It is contended that the petitioner have already sent the reply to the Show Cause Notice issued by the respondent objecting to the allegations made is completely false and bogus complaint and other issues to the satisfaction of the respondent.

7. Learned counsel appearing on behalf of petitioner submitted that the action of the respondent of withholding of Registration Certificate and allocation of Haj quota post the scrutiny of the petitioner's application and declaration of petitioner as eligible HGO, when the petitioner has already taken booking from the Pilgrims and the pilgrims have paid in advance for the same, is completely arbitrary and in blatant violation of the fundamental rights of the petitioner, as well as the rights of the pilgrims, as enshrined under Articles 14,19 & 21 of the Constitution of India.

8. It is submitted that the respondent, as a matter of principle of natural justice, should not stop the petitioner to undertake Haj Quota for Haj-2023 as the complaint is bogus and the petitioners have satisfied the HGO Policy. It is further submitted that even if any inquiry/investigation needs to be conducted the respondent can have a thorough investigation and then decide the fate of the petitioner. The HGO Policy has sufficient safeguards in the form of forfeiture of the security deposit and blacklisting of an HGO found in wrongdoings, and therefore, thorough inquiry should be conducted qua the complaint.

9. Learned counsel appearing on behalf of petitioner submitted that the action of the respondent is extremely detrimental to the interest of Pilgrims who have booked seats with petitioner for Haj- 2023. It is stated that if the Registration Certificate and quota of the petitioners are not restored then the once-in-a-lifetime opportunity to undertake Haj for the Pilgrims booked will be ruined and they may not be able to go for Haj this year, as almost all seats are booked for Haj-2023.

10. Given the aforesaid, it has been submitted that this Court may be pleased to quash/set-aside the Show Cause Notice against the petitioner, to restore the Registration Certificate and Haj Quota allocated to the petitioner and to allow the petitioner to undertake the Haj Quota for Haj-2023.

11. Per contra, learned CGSC for the respondent vehemently opposed the submissions made by the learned counsel for the petitioner and submitted that in the case of the petitioners/HGOs, their respective registration has been ordered to be kept in abeyance due to their wilful misrepresentation and misreporting of facts to the Ministry, based on which they were registered as HGOs in the first place. As is evident, the Registration and allocation of Haj Quota to private tour operators subject to certain terms and conditions for registration as HGOs. The registration of HGOs found to be in contravention of the HGO Policy is liable to be cancelled. It is submitted that this Court may also refer to the conditions as applicable to the registration certificate issued to the HGOs for Haj 2023 which provide that the HGOs will abide by the policy for HGOs for Haj-2023 read with Circular No.15/28/20022-Haj-MoMA dated 14th March 2023 and will be held responsible for non-compliance of any of the terms and conditions of registration with MoMA (Ministry of Minority Affairs) at any stage.

12. It is submitted that the Ministry shall have the right to suspend/cancel the registration in case of non-compliance of any of the terms and conditions. It has also been provided therein that in line with the provisions of Circular No. 15/28/2022-Haj-MoMA dated 14th March 2023 stating that if any discrepancy is found in the documents submitted by the HGO, at any stage, and/or if any complaint is received against the HGO regarding misleading documents, submission for Haj, 2023 or tax evasion, appropriate penal action will be taken against the concerned HGO, including forfeiture of the security deposit and debarment for 10 years or more.

13. Learned CGSC for the respondent submitted that in the instant case, there has been a gross misrepresentation of facts, by the petitioner HGOs, which has come to light during the visit of a team of officials from the Ministry to the office premises of the petitioner HGOs. It is stated that the Government is contemplating serious penal action, which would include blacklisting and cancelling of registration of these HGOs.

14. It is submitted by learned CGSC for the respondent that the Government is not willing to take the risk of placing the fate of these pilgrims in the hands of

these non-compliant HGOs. Moreover, allowing these HGOs to take the pilgrims to Kingdom of Saudi Arabia (KSA) after the revelation of serious violations of the law, would not be in the spirit of the bilateral agreement which put the onus of ensuring that the only compliant and verified HGOs would be registered.

15. Learned CGSC for the respondent submitted that the Ministry keeps the pilgrims the focus for all the arrangements for a smooth and hassle-free Haj and policies are devised accordingly. The Haj Committee of India (HCoI) has been mandated to make arrangements for 1,40,000 pilgrims for Haj-2023 as per their guidelines based on the quota allocated by the KSA. In the bilateral agreement entered between the Government of India and the KSA, for Haj 2023, a total quota of 1,75,025 pilgrims (1,40,000 pilgrims for HCoI and 35,025 pilgrims for the HGOs) has been allocated by the KSA to India.

16. It is submitted that the arrangements made by the HCoI include air travel to and fro by Chartered flights, accommodation in Makkah and Madinah, local transport in Saudi Arabia during Haj 2023, etc. The Government of India has also deputed certain officials to Saudi Arabia as part of an administrative and medical contingent for Haj 2023 to look after the welfare of Indian pilgrims going through HCoI. The pilgrims travelling through HCoI travel to KSA from Embarkation Points (EP) across the country. All the arrangements are made by the Government of India in close coordination with HCoI and Indian Mission in Jeddah. The flights for Haj pilgrims have already started and till date more than 35,000 pilgrims of HCoI have departed for KSA. It is also stated that to ensure that the pilgrims booked by the petitioner HGO do not suffer, the Government is more than ready and willing to make special efforts to make their arrangements through the HCoI as per the arrangements already made by HCoI for Haj 2023.

17. Heard learned counsels for the parties and perused the record.

18. As is evident, the Registration and allocation of Haj Quota to private tour operators is subject to certain terms and conditions for registration as HGOs. The registration of HGOs not found to be complying with the HGO Policy is liable to be cancelled. In the instant petition, it has been alleged that the registration of the petitioner has been suspended due to their wilful misrepresentation and misreporting of facts to the Ministry, based on which they were registered as HGOs in the first place. The attention of this Court has also been drawn to the conditions as applicable to the registration certificate. The registration certificate issued to the HGOs for Haj 2023 specifically mentions the following conditions:

"4. HGO will abide by the policy for Haj Group Organisers for Haj 2023 read with the circular No.15/28/20022-Haj-MoMA dated 14.03.2023 and will be held responsible for non-compliance of any of the terms and conditions of registration with MoMA at any stage. The Ministry reserves the right to suspend/ cancel the registration in case of non-compliance of any of the terms and conditions including blacklisting the company and its proprietor/ partner/ director. Special attention of the HGOs is invited to the provisions of Circular No.15/28/2022-Haj-

MoMA dated 14.03.2023 stating that if any discrepancy is found in the documents submitted by the HGO, at any stage, and/ or if any complaint is received against the HGO regarding misleading documents/submission for Haj, 2023/ tax evasion, appropriate penal action will be taken against the concerned HGO, including forfeiture of security deposit and debarment for a period of 10 years or more. Further, it is also informed that complaints received from pilgrims/ intending pilgrims against HGOs will also be dealt with very strictly by the Ministry."

A bare perusal of the conditions makes it clear that registration of the HGOs is an absolute right rather than a privileged right that is bestowed upon the concerned HGO based on the fulfilment of certain conditions as laid out under the Policy. Therefore, the offer made by the HGOs to the pilgrims is subject to certain pre-conditions for the grant of registration and is amenable to the fulfilment of the requisite conditions, the non-compliance of which empowers the Ministry to suspend/cancel the registration as well as for blacklisting the company.

19. The conditions inter alia provide that the HGOs will abide by the policy for HGOs for Haj-2023 read with Circular No.15/28/20022-Haj-MoMA dated 14th March 2023 and will be held responsible for non-compliance with any of the terms and conditions of registration with MoMA at any stage. It is also stated therein that the Ministry shall have the right to suspend/ cancel the registration in case of non-compliance with any of the terms and conditions. It has also been provided therein that as per the provisions of Circular No.15/28/2022-Haj-MoMA dated 14th March 2023 stating that if any discrepancy is found in the documents submitted by the HGO, at any stage, and/ or if any complaint is received against the HGO regarding misleading documents/submission for Haj, 2023/ tax evasion, appropriate penal action will be taken against the concerned HGO, including forfeiture of the security deposit and debarment for a period of 10 years or more.

20. In the instant case, it has been alleged that there has been a gross misrepresentation of facts by the petitioner HGOs, which has come to light during the visit of a team of officials from the respondent to the office premises of the petitioner HGO. It has also been stated on record that the Government is contemplating serious penal action, which would include blacklisting and cancelling of registration of the HGO. It has been submitted by the learned senior panel counsel for the respondent that the Government is not willing to take the risk of placing the fate of these pilgrims in the hands of these non-compliant HGO. It has been stated that the Haj Committee of India has been mandated to make arrangements for 1, 40,000 pilgrims for Haj 2023 as per their guidelines based on the quota allocated by KSA. As per the bilateral agreement entered into between the Government of India and the KSA, for Haj 2023, a total quota of 1,75,025 pilgrims (1,40,000 pilgrims for HCoI and 35,025 pilgrims for the HGOs) has been allocated by the KSA to India.

21. Upon having considered the arguments and contentions of the parties, this Court is of the prima facie opinion that although restrictions and conditions to the

issuance of the Registration Certificate as well as to the Quota allotted to the petitioners/HGOs may be imposed, the same should not be held against the pilgrims who, in good faith, registered with the petitioners/HGOs to undertake the pilgrimage. This Court is of the view that such an action would defeat the purpose of the current Haj Policy and is in derogation of Article 25 of the Constitution of India. Article 25 of the Constitution of India guarantees the freedom of conscience and the freedom to profess, practice and propagate religion to all citizens. Haj Pilgrimage and the ceremonies involved therein fall within the ambit of a religious practice, which is protected by the Constitution of India. Religious freedoms are one of the most cherished rights guaranteed and enshrined under the Constitution in line with the vision of the founding fathers of the Modern Indian Republic. The religious freedom of the person is guaranteed by the Constitution of India under Article 25. The right under Article 25 of the Constitution of India has been discussed in the judgment of Indian Young Lawyers Assn. (Sabarimala Temple-5J.) v. State of Kerala, (2019) 11 SCC 1 as follows:

"98. Now advertent to the rights guaranteed under Article 25(1) of the Constitution, be it clarified that Article 25(1), by employing the expression "all persons", demonstrates that the freedom of conscience and the right to freely profess, practice and propagate religion is available, though subject to the restrictions delineated in Article 25(1) itself, to every person including women.

X X X 176.1. Article 25 recognises a fundamental right in favour of "all persons" which has reference to natural persons.

176.2. This fundamental right equally entitles all such persons to the said fundamental right. Every member of a religious community has a right to practise the religion so long as he does not, in any way, interfere with the corresponding right of his co-religionists to do the same.

176.3. The content of the fundamental right is the fleshing out of what is stated in the Preamble to the Constitution as "liberty of thought, belief, faith and worship". Thus, all persons are entitled to freedom of conscience and the right to freely profess, practice and propagate religion.

176.4. The right to profess, practice and propagate religion will include all acts done in furtherance of thought, belief, faith and worship.

176.5. The content of the right concerns itself with the word "religion". "Religion" in this Article would mean matters of faith with individuals or communities, based on a system of beliefs or doctrines which conduce to spiritual well-being. The aforesaid does not have to be theistic but can include persons who are agnostics and atheists.

176.6. It is only the essential part of religion, as distinguished from secular activities, that is the subject-matter of the fundamental right. Superstitious beliefs which are extraneous, unnecessary accretions to religion cannot be

considered as essential parts of religion. Matters that are essential to religious faith and/or belief are to be judged on evidence before a court of law by what the community professing the religion itself has to say as to the essentiality of such belief. One test that has been evolved would be to remove the particular belief stated to be an essential belief from the religion—would the religion remain the same or would it be altered? Equally, if different groups of a religious community speak with different voices on the essentiality aspect presented before the Court, the Court is then to decide as to whether such matter is or is not essential. Religious activities may also be mixed up with secular activities, in which case the dominant nature of the activity test is to be applied. The Court should take a common-sense view and be actuated by considerations of practical necessity.”

22. This Court is an interpreter of the Constitution as well as the custodian of the rights of citizens, therefore this Court must exercise its powers under Article 226 of the Constitution to give effect to its provisions and the guarantees therein, lest they shall remain only in the black and white in the text but not in its application. An alternative must be sought and put into effect so that with the law taking its course, the same should not become a hurdle for the noble-intentioned citizens of this country who are seeking to undertake the Haj.

23. The Haj pilgrimage is a five-day religious pilgrimage to Mecca and nearby Holy places in Saudi Arabia. As per the Holy Quran, all Muslims who are physically and financially sound must perform the Haj pilgrimage at least once in their lives. Haj takes place only once a year in the twelfth and final month of the Islamic lunar calendar. Haj is one of the five duties of a Muslim and has been discussed by the Hon”ble Supreme Court in the judgment of *Aishat Shifa v. State of Karnataka* (SLP (Civil) No. 5236/2022) dated 13th October 2022 as follows:

”Still further, five duties have been laid down for the Muslims by the Prophet, the same are reproduced as under:

”(i) Kalma :- It is the duty of every Muslim to recite kalma. Kalma implies certain Hymns proclaiming the unity of God accepting Mohammed as the Prophet.

(ii) Namaz :- Every Muslim must say prayers (Namaz) five times a day and on every Friday he must offer his afternoon prayer at the Mosque.

(iii) Zakat :- It is the duty of every Muslim to offer Zakat or charity to the poor and needy.

(iv) Ramzan :- The most pious duty of every Muslim is to observe fasts in the holy month of ”Ramzan”.

(v) Haj :- Every Muslim, should go for Haj or pilgrimage to Mecca at least once in his lifetime.”

The Haj pilgrimage is undertaken by thousands of pilgrims from India annually. In order to enable the Indian Muslims willing to undertake the Haj pilgrimage,

every year a bilateral treaty is executed between India and the Kingdom of Saudi Arabia. In terms of the said agreement, a quota of some pilgrims is allotted to India. The pilgrimage can be undertaken from India only either through the Haj Committee of India (for short, "the Haj Committee") or the HGOs. HGOs usually act as tour operators for pilgrims, and provide a complete package right from the start of the journey from various places in India to Saudi Arabia, covering their accommodation in Saudi Arabia, arranging and making available food, transportation in Saudi Arabia, providing foreign exchange in the form of Saudi Riyals and their return to India. The majority of Haj pilgrims are taken care of by the Haj Committee, and only a limited number of pilgrims can undertake the Haj pilgrimage through HGOs as per the quota of the respective HGO.

24. This Court refers to the judgment of *Union of India and Others v. Rafique Shaikh Bhikan and Another* (2012) 6 SCC 265 wherein this Court emphasized that the main purpose of the Haj Policy was to ensure that pilgrims must be able to perform their pilgrimage duty without undertaking any difficulty, harassment or suffering:

"11. The pilgrim is actually the person behind all this arrangement. For many of the pilgrims Haj is once in a lifetime pilgrimage and they undertake the pilgrimage by taking out the savings made over a lifetime, in many cases especially for this purpose. Haj consists of a number of parts and each one of them has to be performed in a rigid, tight and time-bound schedule. In case due to any mismanagement in the arrangements regarding the journey to Saudi Arabia or stay or travelling inside Saudi Arabia any of the parts is not performed or performed improperly then the pilgrim loses not only his life savings but more importantly he loses the Haj. It is not unknown that on landing in Saudi Arabia a pilgrim finds himself abandoned and completely stranded.

12. It is, thus, clear that in making selection for the registration of PTOs the primary object and purpose of the exercise cannot be lost sight of. The object of registering PTOs is not to distribute the Haj seats to them for making business profits but to ensure that the pilgrim may be able to perform his religious duty without undergoing any difficulty, harassment or suffering. A reasonable profit to the PTO is only incidental to the main object."

25. In the present petition, the Court is at this stage is primarily concerned with the pilgrims who intend to travel on Haj Pilgrimage and have paid in advance to the petitioners for the same. Travelling to Haj is not merely a holiday but is a medium of practicing their religion and faith which is a fundamental right. This Court being the protector of the right of the pilgrims shall take the necessary steps in this regard.

26. Accordingly, to ensure that the pilgrims are not obstructed from completing their journey and undertake Haj, the comments in the consolidated list of allocation of Haj Quota for HAJ-2023 issued on 25th May, 2023 by the

respondent which reads as "Registration Certificate & Quota Kept in abeyance till finalization of proceedings in complaint related matter" is stayed.

27. The respondents shall ensure that the pilgrims who have been affected by the defaults on the part of the petitioner, do not suffer and are able to undertake the Haj Pilgrimage without any obstruction.

28. The respondents may proceed with the investigation in pursuance of the show cause notice issued to the petitioner.

29. The application is, accordingly, disposed of.

30. Dasti.

W.P.(C) 8410/2023

List before the Roster Bench on 3rd August, 2023.