

PETITIONER:

ANJUMAN KHUDDAMUL HUJJAJ, ETC. ETC.

Vs.

RESPONDENT:

UNION OF INDIA & ANR. ETC.

DATE OF JUDGMENT: 05/05/2000

BENCH:

Doraswami Raju, S.S.Ahmad

JUDGMENT:

D E R The present Haj Committee Act, 1959 [51 of 1959], which had replaced the Port Haj Committee Act, 1932, was enacted for the objects and reasons set out in the Gazette of India, 1959, Extra., Pt. II Section 2, page 1161, which are as follows : "According to the Port Haj Committees Act, 1932, as originally enacted, three Port Haj Committees were constituted at the three ports of Bombay, Calcutta and Karachi. Consequent upon constitutional changes in the country, the Act was suitably amended to provide for the continuance of the Calcutta and the Bombay Committees only, the reference to the Karachi Committee being omitted therefrom. The Calcutta Committee, however, ceased to function from 1948 owing to the partition of Bengal and there is a balance of about Rs.15,000 lying to the credit of the defunct Port Haj Fund, Calcutta, which cannot be utilised for any other purpose or transferred to any Port Haj Fund unless the Act is amended. Further all pilgrim traffic to Saudi Arabia, Iraq and Iran is now centralised at Bombay. 2. It is, therefore, considered desirable that the Act should be revised to bring it in line with the present requirements of the Haj pilgrims and to make the Port Haj Committee a representative body of the country. 3. The Bill seeks to achieve this object." In order to manage the pilgrims traffic, a Committee, known as "Haj Committee" was constituted under the Act. The 'Committee' is defined under Section 2(a). 'Pilgrim' has been defined in Section 2(b) as "a Muslim proceeding on or returning from pilgrimage to Saudi Arabia, Syria, Iraq, Iran or Jordan." "Pilgrim ship" has been defined in Section 2(c) as "a ship conveying or about to convey pilgrims from or to the port of Bombay to or from any port in the Red Sea other than Suez." Section 4 relating to the composition of the "Haj Committee" provides as under : "4. Composition of the Committee -- (1) The Committee shall consist of the following members, namely :-- (a) the Collector of Customs, Bombay, ex- officio; (b) the Chairman, Port Trust, Bombay, ex- officio; (c) the Principal Officer, Mercantile Marine Department, Bombay, ex-officio. (d) the Commissioner of Police for Greater Bombay, ex-officio; (e) the Municipal Commissioner, Greater Bombay, ex-officio; (f) the Port Health Officer, Bombay, ex- officio; (g) two members to be nominated by the Central Government; (h) three members of Parliament of whom two are to be nominated by the Speaker of the House of the People from among its members and one by the Chairman of the Council of States from among its members; (i) one member to represent the State Government of Maharashtra to be nominated by that Government; (j) two members of the

Maharashtra State Legislative Assembly to be nominated by the Speaker of that Assembly; (k) two members of the Municipal Corporation of Greater Bombay to be nominated by the State Government of Maharashtra on the recommendation of the Muslim members of the Municipal Corporation of Greater Bombay; (l) three members, of whom two shall be Shia Muslims, to be co-opted by all the members of the Committee to represent such interests as, in their opinion, are directly and actively interested in the welfare of the pilgrims. (2) Every nomination under this section shall take effect as soon as it is notified by the Central Government in the Official Gazette. Section 5 provides for nomination and co-option of members, while Section 6 provides for the Chairman and Vice-Chairman of the Committee. Section 7 prescribes the term of office. Section 9 defines the duties of the "Haj Committee." It provides as under : "9. Duties of Committees -- (1) The duties of the Committee shall be -- (a) to collect and disseminate information useful to pilgrims; (b) to advise and assist pilgrims during their stay in the city and at the port of Bombay, while proceeding on or returning from pilgrimage, in all matters including vaccination, inoculation, medical inspection and issue of passes and passports, and to co-operate with the local authorities concerned in such matters; (c) to give relief to indigent pilgrims; (d) to negotiate and co-operate with railways, shipping companies, airways and travel agencies for the purpose of securing travelling facilities for pilgrims; (e) to find suitable guides for employment by shipping companies on pilgrim ships; (f) to bring the grievances of pilgrims and any irregularities or omissions on the part of a master or owner of a pilgrim ship in carrying out the provisions of the Indian Merchant Shipping Act, 1923, to the notice of the authorities concerned, and to suggest remedies; (g) to appoint a pilgrim as "Amirul-Haj" on board a pilgrim ship to represent the grievances of the pilgrims to the master or owner of the ship; (h) generally to look after the welfare of the pilgrims; and (i) to discharge such other duties in connection with pilgrim traffic as may be prescribed. (2) The Central Government shall afford all reasonable assistance to the Committee in the discharge of the duties imposed by this section." Section 13 provides for constitution of sub-committees in respect of pilgrim ships. From the above, it will be seen that since pilgrims traffic to Saudi Arabia, Iran and Iraq was centralised at Bombay, from where pilgrim ships used to take pilgrims from or to the port of Bombay, to or from any port in the Red Sea (other than Suez), it was rightly and appropriately considered proper by the Legislature to associate the officers mentioned in Section 4(1)(a) to (f) as Members of the "Haj Committee" in their ex-officio capacity. The services of these officers, for purposes of "Haj" pilgrimage, were placed at the disposal of the Committee by associating them in the management of the "Haj" pilgrimage so that pilgrims going on "Haj" by ship may not face any difficulty either at the time of their departure or during the course of journey by ship or on their return from pilgrimage. Now, it is not disputed even by the parties who have filed their counter affidavits, that no ship has sailed from the port of Bombay since 1993 and all the pilgrims are taken to Saudi Arabia and other countries by air. The main concentration of pilgrims is at Delhi from where they leave for Saudi Arabia, Iran or Iraq by air. For the last seven years, the pilgrims have been going to those countries by air, but the officers mentioned in Section 4(1)(a) to (f)

continue to be Members of the "Haj Committee", although with effect from 1993, when pilgrims ceased to be taken to Saudi Arabia, Iran or Iraq by ship, they have practically no role to play in the management of "Haj" pilgrimage. In Writ Petition (C) No. 542 of 1997, which was filed in this Court under Article 32 of the Constitution, it was stated in the counter affidavit filed on behalf of Union of India as under : "That with respect to contents of para number 16 it is submitted that the Govt. is actively considering to replace the present Haj Committee Act in view of changed circumstances." This Writ Petition was disposed of by a 3-Judge Bench [comprising S.C. Agrawal, S.Saghir Ahmad and M. Srinivasan, JJ.] by the following order dated July 15, 1998 : "In view of statement contained in the Counter Affidavit filed on behalf of Union of India that the Govt. is actively considering to replace the present Haj Committee Act, we do not consider it necessary to deal with the questions raised in this writ petition at this stage. The writ petition is, therefore, dismissed." In spite of the above order, a new Legislation has not been enacted and the "Haj Committee" constituted under Section 4 of the Act continues to function in which, as pointed out earlier, the officers mentioned in Section 4(1)(a) to (f) have no role to play. They are reported to be not taking any interest nor do they attend the important meetings of the "Haj Committee". Learned Addl. Solicitor General appearing on behalf of Union of India has stated that the "Haj Committee Bill" has been prepared and cleared by the Govt. and that it will be placed soon on the floor of the House. The proceedings of the Court would indicate that this stage where a Bill has been approved by the Cabinet has been reached only after very many adjournments were granted in the case. In any case, it is not disputed by the learned Addl. Solicitor General that with the passage of time and change in the mode of transport of the "Haj" pilgrims, the Haj Committee Act, 1959 has become obsolete and participation of the Members, at least those set out in Section 4(1)(a) to (f), has ceased to be of any relevance. Having regard to the facts set out above, specially the delay in bringing out a Legislation, we indicated to the Addl. Solicitor General that Mr. Syed Shah Nawaz Hussain, who is a Member of the Central Council of Ministers, may be brought in as Patron of the "Haj Committee" and the "Haj Committee" may function under his direct supervision and control, but this suggestion was not accepted as it was pointed out that Mr. Syed Shah Nawaz Hussain is the Minister for Food Processing Industries, while the "Haj", under the Rules of Business, has been allocated to the Ministry of External Affairs and its shifting to the Ministry of Food Processing Industries would not be possible. We, therefore, provide that till the new Act or Ordinance is brought out and new and appropriate arrangements are made under that Act/Ordinance for the "Haj" pilgrimage, the Foreign Secretary [at present, Mr. Lalit Mansingh] in the Ministry of External Affairs will control, supervise and oversee the performance of the present "Haj Committee" and it will be in his discretion to nominate, in place of Members indicated in Section 4(1)(a) to (f), such persons of merit and high integrity as would be useful in the proper management of "Haj" affairs, on the Committee, so that the "Haj" pilgrims do not suffer for lack of adequate arrangements, including arrangements for their stay in Saudi Arabia, Iran or Iraq, and the inconvenience caused to the "Haj" pilgrims this year, not only at various airports in the country but at Jeddah Airport, is not repeated. We may

make it clear that in selecting persons for nomination, it would be open to the Foreign Secretary to pick up any experienced Member(s) from the past "Haj Committees" constituted during the last 15 to 20 years. Nominations may be made by the Foreign Secretary at the earliest, preferably within three days from the date of communication of this order. The "Haj Committee" so constituted, we may repeat, shall function under the direct supervision and control of the Foreign Secretary and none of its decision would be given effect to unless approved by the Foreign Secretary himself. All Transfer Cases are dismissed as infructuous. The Writ Petition and the Special Leave Petition are disposed of finally.

JUDIS