

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO.28609 OF 2011

UNION OF INDIA & ORS.
(S)

PETITIONER

VERSUS

RAFIQUE SHAIKH BHIKAN & ANR.
RESPONDENT(S)

WITH

SPECIAL LEAVE PETITION (CIVIL) NOS.33190-33217 OF 2011

RAFIQUE SHEIKH BHIKAN ETC.

PETITIONER (S)

VERSUS

GOVERNMENT OF INDIA & ORS.

RESPONDENT(S)

WITH

TRANSFER PETITION (CIVIL) NO.191 OF 2012

MOHAMMAD SHAMS RABBANI

PETITIONER (S)

VERSUS

UNION OF INDIA & ANR.

RESPONDENT (S)

WITH

TRANSFER PETITION (CIVIL) NO.192 OF 2012

MUBARAK HUSSAIN

PETITIONER (S)

VERSUS

UNION OF INDIA & ANR.

RESPONDENT (S)

WITH

TRANSFER PETITION (CIVIL) NO.196 OF 2012

HAJI ABDUL SALEEM KOOKA

PETITIONER (S)

VERSUS

UNION OF INDIA & ANR.

RESPONDENT (S)

WITH

TRANSFER PETITION (CIVIL) NO.197 OF 2012

MOHAMMAD EMAD UDDIN

PETITIONER (S)

VERSUS

UNION OF INDIA & ANR.

RESPONDENT (S)

WITH

TRANSFER PETITION (CIVIL) NO.198 OF 2012

MOHD. ASLAM

PETITIONER (S)

VERSUS

UNION OF INDIA & ANR.

RESPONDENT (S)

AND

TRANSFER PETITION (CIVIL) NO.199 OF 2012

SYED INTESAR MEHDI

PETITIONER (S)

VERSUS

UNION OF INDIA & ANR.

RESPONDENT (S)

ORDER**Aftab Alam, J.****SLP (CIVIL) NO.28609/2011**

This special leave petition has been filed by the Union of India against an order passed by Bombay High Court on October 5, 2011 in a batch of writ petitions challenging the Government of India 2011 Haj Policy that required a private operator/travel agent to have “minimum office area of 250 sq. ft.” as one of the eligibility conditions for registration for ferrying pilgrims for Hajj. The High Court rejected the challenge but gave directions to the Government of India to allocate certain seats to some of the writ petitioners from the eight hundred seats from the Central Government quota that had not been allocated to anyone till the time of passing of the order by the court. Aggrieved by the directions given by the High Court, the Union of India filed this special leave petition and by order dated October 14, 2011 this Court stayed the operation of the directions given by the High Court. In any event, by the time the matter came before this Court, the directions could not be acted upon as there was very little time left for the commencement of Hajj for that year.

By a subsequent order dated February 17, 2012 this Court declared its intent to examine the Haj policy of the Government

in all its aspects and not to limit the matter to the issue of Private Tour Operators (PTOs).

As directed by the Court, the Government of India has filed its affidavit enclosing, among other documents, its Haj Policy for the year 2012 (2012 Haj Policy). A number of intervention petitions are filed in which many issues are raised; IAs are also filed in very large numbers on behalf of private operators/ travel agents (either individually or through associations) in which objections are raised against one or the other condition for eligibility for registration as PTOs for ferrying Hajj pilgrims.

By this interim order, we propose to deal with some of the issues arising from the 2012 Haj Policy on a priority basis leaving others to be dealt with in due course.

THE PTOs

The dispute between private operators/travel agents and the Government of India for registration as PTO for carrying Hajj Pilgrims is of a recent origin but is tending to become an annual feature. It is, therefore, necessary to address the issue and to conclusively resolve it.

In order to clearly understand the context in which the dispute arises a few facts are required to be taken into account.

Under a bilateral agreement signed between the Government of India and the Kingdom of Saudi Arabia every year, the latter Government assigns a fixed number of pilgrims

that are permitted to visit Saudi Arabia for performing Hajj. Out of the overall number, a relatively small portion is specified for the PTOs and the rest for the Haj Committee of India. Before 2002, the PTOs were allocated Hajj seats directly by the Kingdom of Saudi Arabia and there was, therefore, no involvement of the Government of India in the allocation of any Hajj quota to the PTOs. After Hajj 2001, the Kingdom of Saudi Arabia made it mandatory for the PTOs to come through their respective Governments. From 2002, therefore, the Government of India was obliged to evolve a system under which private operators/travel agents would be registered as PTOs and following the registration would be allocated quotas from the overall number of pilgrims specified for PTOs. It is, thus, to be seen that a private operator/travel agent needs first to get registered as PTO and it would then get a fixed number of pilgrims for carrying for Hajj. For registration of a private operator/travel agent as PTO, the Government of India frames policy laying down conditions subject to which registration would be given. It further frames a policy for allocation of quotas to the registered PTOs from the overall number of pilgrims assigned to PTOs in the bilateral agreement with the Kingdom of Saudi Arabia. As noted above, this arrangement began from 2002 when the Kingdom of Saudi Arabia made it mandatory for the PTO to come through their respective Governments. Initially,

there were not many private operators/travel agents coming forward to claim any share in the seats allocated in the bilateral agreements for the PTOs but around the year 2006 more and more private operators/travel agents started claiming allocation from the Hajj seats reserved for PTOs. It appears that it took three or four years for the people in this line of business to realize that this was the opening up of a new highly lucrative commercial venture. It is, thus, to be seen that though for the past four or five years the number of pilgrims reserved for PTOs in the bilateral agreement has slightly gone down, there has been a large increase in the number of registered PTOs and an even larger increase in the number of applications for registration as PTOs. This would be evident from the following chart:-

Sl. No.	Haj Year	Number of PTOs	Total seats for PTOs
1	2005	239	35,960
2	2006 I	277	45,455
3	2006 II	293	46,930
4	2007	297	47,000
5	2008	298	47,080
6	2009	615(*)	47,405
7	2010	602(**)	45,637
8	2011	567(***)	45,441
9	2012	-	45,000

(* comprising 297 old PTOs and 315 new ones)

(** 13 PTOs were disqualified in 2010 because of adverse reports on them)

(*** excluding Duplication of one PTO).

It is stated in the affidavit filed by the Union of India that for Hajj 2011, 1322 applications were received from private operators/travel agents, out of which, only 567 were found eligible and the 45,491 seats were distributed to them as per the PTO policy for Haj 2011. Some of the private operators/travel agents who failed to get registration approached the Bombay High Court in a batch of Writ Petitions in which the High Court passed the order from which this special leave petition arises.

From these facts, it is not difficult to deduce that the dispute between the private operators/travel agents and the Government of India in regard to registration as PTOs arises from a conflict of object and purpose. For most of the private operators/travel agents registration as PTOs is mainly a question of more profitable business. Under the bilateral agreement no PTO can be given a quota of less than fifty pilgrims. Normally, a quota of fifty pilgrims would mean, on an average and by conservative standards, a profit of rupees thirty five to fifty lakhs. This in turn means that any private operator/travel agent, successful in getting registered as a PTO with the Government of India would easily earn rupees thirty five to fifty lakhs in one and a half to two months and may then relax comfortably for the rest of the year without any great deal of business from any other source. For the Government of India, on the other hand the registration of the PTOs, is for the purpose to ensure a comfortable, smooth and

trouble-free journey, stay and performance of Hajj by the pilgrims going through the PTOs.

The pilgrim is actually the person behind all this arrangement. For many of the pilgrims Hajj is once in a life time pilgrimage and they undertake the pilgrimage by taking out the savings made over a life time, in many cases especially for this purpose. Hajj 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 traveling 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 Hajj. It is not unknown that on landing in Saudi Arabia a pilgrim finds himself abandoned and completely stranded.

It is, thus, clear that in making selection for 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 Hajj 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.

In *Prem Printing Press v. Bihar State Text Book Publishing Corporation Ltd. & Ors.*, 2001 (4) PLJR 311 relating to the grant of

contract for printing of text books by the *Bihar State Text Book Publishing Corporation Ltd.*, coming up before Patna High Court one of us (Aftab Alam J.) considered question of the importance of the work and its objective in granting contracts by statutory bodies and made the following observations:

“3. During the past three decades a substantial amount of case law has accumulated on the question of award of government contracts and a lawyer with sufficient skills may without difficulty press into service certain observations from the earlier decisions in any dispute relating to the award of government contracts. **But while hearing learned arguments from the counsel appearing for the parties I was unable to keep out of my mind for a moment the fact that the contract in dispute was for printing of school text books for the academic year 2001 and though two out of the three parts of the year is already over, the school children are yet to receive the books intended for them.** While lengthy arguments were advanced on the plea of upholding the rights-of the individual and much reliance was placed on a number of Supreme Court decisions, I was unable to relinquish the thought that **the contract for printing of school text books for a particular academic year was basically different** from and could not be viewed in the same way as a contract for ten years for extraction of resin from forests (*Kasturi Lal*; (1980) 4 SCC 1) or the contract for the supply of fresh milk for the Military Farms (*Har-minder Singh Arora*; (1986) 3 SCC 247) or the contract for allotment of damaged stocks of rice (*Food Corporation of India*; A.I.R. 1993 SC 1601) or the grant of licence for the operation of 'Cellular Mobile Telephone Service' (*Tata Cellular*; A.I.R. 1996 SC 11) or the contract for publication of telephone directories of *Mahanagar Telephone Nigam Limited* (*Sterling Computers Ltd*; A.I.R. 1996 SC 51) or the contract for development and exploration of oil fields (*Centre for Public Interest Litigation*; A.I.R. 2001 SC 80).

4. To my mind, upholding of individual rights and the enforcement of the individual's rights

by the intervention of the writ court is undoubtedly important but in doing so the court must not over look the damage that might be caused to a larger public cause, as in this case.

Speaking for myself I would not have entertained this writ petition and thrown it out at the very threshold, indeed leaving it open for the Petitioner to claim damages by bringing an action against the Corporation before a Civil Court. Such a course would not have rendered the Petitioner remediless and at the same time it would also have saved this Court from finding itself in a position where it may be seen as causing obstruction in the expeditious and timely supply of text books to school children.”

(emphasis

added)

In another case *Ranjit Kumar Ghosh v. State of Bihar and Others* [2004 (3) BLJR 2242] dealing with the purchase of indelible ink by the Election Commission for proper conduct of election Aftab Alam J. (once again as a judge of Patna High Court) made the following observations:-

“15. What was observed in the case of printing of text-books applies with greater force to this case. Democracy is basic to and inseparable from our constitutional scheme. The survival of democracy depends upon proper conduct of elections and the importance of indelible ink is quite obvious for the proper conduct of elections. The purchase of indelible ink therefore cannot be taken in the same way as the purchase of other common materials such as office furniture, stationary and other articles of ordinary use by the Election Commission. Putting the purchase of indelible ink at par with the other regular purchases would throw the field open to private players and one predictable out-come of it would be that the purchase of indelible ink would inevitably get embroiled in Court cases. On each occasion one or the other of the unsuccessful tenders would drag the dispute with regard to the grant of the supply order to Court. This

would be at a time when elections are very near and all the resources and attention of the Election Commission should be focussed on holding the elections properly. At that stage a notice from the Court to meet the objections of the unsuccessful tenders in the matter of purchase of ink would naturally have a debilitating effect on the Commission and it may also be reflected in the conduct of elections by it. Such a situation, the Court would like to avoid at all costs.

16. What is discussed above are important considerations in the matter of purchase of indelible ink for holding elections. Nevertheless, this Court should have put aside these considerations, howsoever, weighty, had it been satisfied that the present arrangement for the purchase of the ink was tainted with arbitrariness or unreasonableness or it had the slightest tinge of mala fide but on an over all examination of the matter the Court feels satisfied that the arrangement does not suffer from any of those vices. The arrangement was evolved by the Election Commission, with the aid of Government controlled agencies when the constitutional republic of India was only twelve years old and when no private trader might have come forward to help the commission in its work on his expenses. The Commission has stuck to the arrangement that was evolved forty years ago. The arrangement does not confer any material benefits upon anyone and it does not lead to the profiteering by any individual person, inasmuch as, M/s. Mysore Paints and Varnishes Ltd. is a Government concern. In these circumstances, the purchase of indelible ink by the Commission from the Government owned company cannot be described as distribution of any largess by the State."

In *Tata Cellular v. Union of India* (1994) 6 SCC 651, a three Judge Bench of this Court in paragraph 70 of the judgment made the following observations:-

"It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in

exercise of that power of judicial review. *Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State.* The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. **There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down."**

(emphasis added)

In a more recent decision in *Union of India and another v. International Trading Co. and another* (2003) 5 SCC 437, relating to the renewal of the permit granted under the provisions of the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981, while reversing the decision of the High Court, this Court, in paragraphs 22 and 23 of the judgment, held and observed as follows:-

"22. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities and adopt trade policies. As noted above, the ultimate test is whether on the touchstone of reasonableness the policy decision comes out unscathed.

23. Reasonableness of restriction is to be determined in an objective manner **and from the standpoint of interests of the general public and not from the standpoint of the interests of persons upon whom the restrictions have been imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly. In determining whether there is any**

unfairness involved; the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the relevant time, enter into judicial verdict. The reasonableness of the legitimate expectation has to be determined with respect to the circumstances relating to the trade or business in question. Canalisation of a particular business in favour of even a specified individual is reasonable where the interests of the country are concerned or where the business affects the economy of the country. (See *Parbhani Transport Coop. Society Ltd. v. Regional Transport Authority*, AIR 1960 SC 801, *Shree Meenakshi Mills Ltd. v. Union of India* (1974) 1 SCC 468, *Hari Chand Sarda v. Mizo District Council*, AIR 1967 SC 829 and *Krishnan Kakkanth v. Govt. of Kerala*, (1997) 9 SCC 495.)

(emphasis added)

Seen in the light of the aforesaid decisions, no objection can be taken to high standards and stringent conditions being set up for registration as PTOs and the court's interference would be called for only if it is shown that any condition(s) was purely subjective or designed to exclude any individual or group of private operators/travel agents, i.e., bordering on malice.

After this rather long preface, we now proceed to examine the conditions laid down for registration of PTOs in the 2012 Hajj Policy.

First of all a young lady appearing-in-person, stated before us that she worked as a private operator/travel agent and she was aggrieved by clause 4 of the press release for registration of Private Tour Operators – Hajj 2012, that put a restriction over

more than one member of a family getting registration as PTO.

Clause 4 of the press release reads as under:-

“4. In case more than one member of a family applies which includes wife and dependent children, only one member of such family will be eligible for registration for Hajj-2012.”

The lady submitted that though her husband was also in the same business but she worked as private operator/travel agent separately and independently from her husband. She further submitted that simply because her husband was also in the same business, there was no reason to deny her registration as PTO.

In response to the lady's apprehension, the learned Attorney General in his most amiable manner assured the lady and the Court that in case more than one member of a family satisfied the eligibility conditions and one of them was a woman, she would be given preference for registration to the exclusion of others and if there was no woman, preference would be given to the member of the family who was oldest in the business.

In regard to clause 4, another objection was raised that it does not define “family” comprehensively and the Court was asked to give direction for a comprehensive definition of the term “family”. There is no substance in the objection and we find that there is sufficient clarity as to what means “family”. In case anyone makes a complaint that in the process of registration he/she was eliminated arbitrarily and in a *mala fide* way by

abusing the restrictive provision of clause 4, that complaint may be examined on its own merits.

Minimum requirement of 250 sq. ft. office area (carpet)

A number of individuals and groups joined in the objection against the condition that requires a minimum office area (carpet) of 250 sq. ft. and submitted that the condition was arbitrary and was aimed at excluding the smaller operators. It was submitted that the requirement of having such a large area for office was quite harsh especially for a place like Mumbai.

This condition must also be viewed keeping the interest of the pilgrim as paramount. Learned Attorney General submitted that according to the Saudi Regulations, a PTO must be allotted a minimum of 50 pilgrims. He further pointed out that Hajj is a pilgrimage on foreign soil and it comprises a number of rituals. Since a majority of the pilgrims would be going for Hajj for the first time, the PTO needs to extensively brief the pilgrims about the rituals and the procedure to be followed during Hajj. Separate classes for briefing the pilgrims need to be conducted by the PTO. Individual agreements are required to be made with the pilgrims by the PTO for which the pilgrims need to visit the office of the PTO. All logistics including ticketing, accommodation, visa processing etc. has to be made by the PTO for which they need the presence of pilgrims. Further, this condition is laid down to make sure that only genuine operators approach the Ministry for

Hajj quota, i.e. those who have a proper and well maintained office and who are genuinely interested in taking the pilgrims to Saudi Arabia. The condition was further meant to scrutinize the PTOs who sell their quota to other PTOs. The Attorney General stated that during the 2010 Hajj, the Ministry got complaints from various quarters regarding black marketing of seats by some of the PTOs. It was informed that some of the PTOs after getting registration and allocation of seats instead of carrying the pilgrims themselves sold the seats to other PTOs. The Ministry decided to take action against such unscrupulous PTOs but it found that many of them had no offices at all. The addresses furnished by them were fake and they were all fly by night operators. A genuine PTO should be having an office with a reasonable area. The condition is provided to protect the interests of the pilgrims.

On a consideration of submissions made on behalf the parties, we see no arbitrariness and unreasonableness in the requirement of a minimum office area (carpet) of 250 sq. feet.

Annual turnover of Rs.1 crore.

Many objections were raised against the requirement to furnish documents showing minimum annual turnover of Rs.1 crore for the years 2009-2010 **or** 2010-2011.

Mr. N. Rao, senior advocate appearing for a group of private operators/ travel agents, in course of his submissions, admitted

that the turnover on the basis of a quota of 50 Hajj pilgrims alone would not be less than Rs.75 lakhs. This means that if a private operator/travel agent is asking for a readymade business package worth Rs.75 lakhs in turn over he/she should at least show a turn over of rupees one crore from his own business. Seen, thus, the turn over fixed in the Government policy appears to be a modest figure.

Security deposit of Rs.25 lakhs

What is stated above in regard to the annual turnover would equally apply in respect of the refundable security deposit of Rs.25 Lakhs.

In addition, the learned Attorney General pointed out that in case any unforeseen situation arises during Hajj, the PTO should be financially sound enough to face it. The Attorney General further informed the Court that it was often seen in the past that PTOs left the pilgrims in Kingdom of Saudi Arabia and what is worse left them unattended even while hospitalised in Kingdom of Saudi Arabia. There were instances when pilgrims who met with an accident during their stay in Kingdom of Saudi Arabia were not given any medical aid or any kind of help or assistance. In many cases the PTOs did not provide even the promised facilities and this condition was, therefore, necessary to keep them under a check.

We see no unreasonableness in the condition.

Court cases

The learned Attorney General clarified that a court case against a private operator/travel agent that would disqualify him/her for registration did not mean a case instituted by him/her for enforcement of any constitutional or legal rights. The court case that might render a private operator/travel agent ineligible for registration means a case instituted against the private operator/travel agent as an accused or in regard to some liability against him.

On-line applications

It may be recorded here that the learned Attorney General accepted one of the suggestions made by Mr. P.S. Narasimha, learned senior counsel appearing for a group of private operators/travel agents, that applications may be made on-line, subject to the condition that the on-line application must be complete in all respects.

On hearing all sides on the conditions for registration, we are satisfied that none of the conditions can be said to be arbitrary or unreasonable and the conditions prescribed in the Government of India 2012 Haj Policy do not warrant any interference by this Court. The 2012 Haj Policy for registration of PTO as contained in Annexure P5 to the affidavit filed on behalf of the Union of India is, accordingly, approved for the 2012 Hajj.

The grant of approval to Annexure P5, however, is not to say that there is no scope for improvement in the policy of registration for PTOs. We feel that there is a serious omission in the policy in that it does not require the applicants for registration to disclose the kind of arrangements they proposed to offer to the pilgrims and the charges they would levy from the pilgrims. We realize that at the stage of applying for registration the applicant may give only a basic idea of the standard of arrangements and an approximate quotation of charges but even that would provide some check against fixing inflated and arbitrary prices on seats once registration is granted.

We would further like to point out that there is another way of looking at the process of registration. The Government of India has presently adopted an open ended approach under which any private operator/travel agent who satisfies the conditions in the Haj Policy is found eligible and granted registration. Now, it is undeniable that the number of PTOs cannot exceed 900, because in that case the number of seats allotted to each of them would go below 50, which is impermissible under the bilateral agreement. In other words, there is an inbuilt ceiling on the number of PTOs. If that be so, why cannot the ceiling be put on a more manageable number such as 600 to 700 and selection be made from the applicants on a competitive basis applying a uniform criteria.

THE HAJJ SUBSIDY

As regards the Hajj subsidy, from the figures for the past 19 years given in the affidavit filed by the Union of India, it appears that the amount of subsidy has been increasing every year. This is on account of increase both in the number of pilgrims and the travel cost/air fare. In the year 1994, the number of pilgrims going for Hajj from India was as low as 21035; in 2011, the number of pilgrims increased to 125000. In the year 1994, the cost of travel per pilgrim was only Rs.17000.00; in the year 2011, it went up to Rs.54800.00. As a result, the total Hajj subsidy that was Rs.10.51 crores in the year 1994 swelled up to Rs.685 crores in the year 2011.

The Union of India has justified the grant of subsidy stating, in paragraph 21 of the affidavit, as follows:

“The Ministry of Civil Aviation floats a tender to select an airline to get a competitive fare to ferry the Haj pilgrims. For the year 2010, the fare per pilgrim was Rs.47,675/- and in 2011 was Rs.54,800/-. The higher fares charged by the Airlines during the Haj period vis-à-vis other times of the year is due to regulations imposed by the Saudi Arabian Authorities during the Haj period. The norm is that the Airline should carry pilgrims to Jeddah and return with zero load and vice versa. This forces the Airlines to increase the fares, which otherwise come to around Rs.25,000/. Therefore, the Government thought it fit to collect a reasonable fare from the pilgrim and the additional fare charged because of the Haj specific logistics is paid by the Government to the airline. The Government also decided not to pass on and burden the additional amount charged by the airline, purely on logistics, to the pilgrims. During the Haj of 2011, each pilgrim was charged Rs.16,000/- towards airfare

and the additional amount of Rs.38,000/- per Haji is what is termed “subsidy”. It is submitted that the subsidy is given only to those pilgrims who go through the Haj Committee of India.”

It is further stated in paragraph 24 that the grant of Hajj subsidy by the Government of India was challenged before this Court in a petition under Article 32 of the Constitution of India registered as Writ Petition (Civil) No.1 of 2007 (*Prafull v. Union of India*). This Court by a reasoned judgment and order dated January 28, 2011, dismissed the writ petition upholding the constitutional validity of the Haj Committee Act, 2002 and the grant of subsidy by the Government of India in the air fare of the pilgrims.

From the statement made in paragraph 21 of the affidavit, as quoted above, it is clear that the Government of India has no control on the cost of travel for Hajj. The air fare to Jeddah for traveling for Hajj is increased by airlines to more than double as a result of the regulations imposed by the Saudi Arabian Authorities. It is illustratively stated in the affidavit that in the year 2011, the air fare for Hajj was Rs.58,800/- though the normal air fare to and from Jeddah should have been around Rs.25,000/. In the same paragraph, it is also stated that for the Hajj of 2011, each pilgrim was charged Rs.16,000/- towards air fare. In other words, what was charged from the pilgrims is slightly less than 2/3rd of the otherwise normal fare. We see no justification for

charging from the pilgrims an amount that is much lower than even the normal air fare for a return journey to Jeddah.

As regards the difference between the normal air fare and increased fare, we appreciate the intent of the Government of India to provide subsidy to cover the additional burden resulting from the stringent regulation imposed by the Saudi Arabian Authorities. We also take note of the fact that the grant of subsidy has been found to be constitutionally valid by this Court. We are also not oblivious of the fact that in many other purely religious events there are direct and indirect deployment of state funds and state resources. Nevertheless, we are of the view that Hajj subsidy is something that is best done away with.

This Court has no claim to speak on behalf of all the Muslims of the country and it will be presumptuous for us to try to tell the Muslims what is for them a good or bad religious practice. Nevertheless, we have no doubt that a very large majority of Muslims applying to the Haj Committee for going to Hajj would not be aware of the economics of their pilgrimage and if all the facts are made known a good many of the pilgrims would not be very comfortable in the knowledge that their Hajj is funded to a substantial extent by the Government. We remind ourselves that the holy Quran in verse 97 in Surah 3, Al-e-Imran ordains as under:

“ 97. In it are manifest signs (for example), the

Maqam (place) of Ibrahim (Abraham); whosoever enters it, he attains security. And *Hajj* (pilgrimage to Makkah) to the House (Ka'bah) is a duty that mankind owes to Allah, **those who can afford the expenses (for one's conveyance, provision and residence);** and whoever disbelieves [i.e. denies *Hajj* (pilgrimage to Makkah), then he is a disbeliever of Allah], then Allah stands not in need of any of the *Alamin* (mankind, jinn and all that exists)."¹

We, therefore, direct the Central Government to progressively reduce the amount of subsidy so as to completely

¹ The Noble Qur'an (English Translation of the meaning and commentary) published by The Ministry of Islamic Affairs, Endowments, Da'wah and Guidance of the Kingdom of Saudi Arabia which supervises King Fahd Complex For The Printing of The Holy Qur'an in Madinah Munawwarah.

On being asked the meaning of the word "Al Sabeel" occurring in the verse, the Prophet is reported to have said, 'provisions for journey and the means of transport' (*Bulughul Muram by Ibne Hajr, 667 & 713: Jassas Razi, Ahkam-ul-Quran, Darul-Kitab-ul-Arabi Vol. 2 Page 23: also in Tafseer Ibne Kaseer published by Tameer-e-Insaniyat, Urdu Bazar, Lahore, Vol. 1 Pages 458-459*).

On being asked when Hajj becomes obligatory, the Prophet is reported to have said when the provisions of journey and the mode of transport are available. (Tirmizi 813).

It is related that people from Yaman used to come for pilgrimage without any provisions with them, saying that they were people trusting in God and when they came to Makkah, they resorted to begging: The holy Qur'an thus addressed this issue in Verse 197 Surah 2. Al-Baqarah (Bukhari, 1523).

197. The *Hajj* (pilgrimage) is (in) the well-known (lunar year) months (i.e. the 10th month, the 11th month and the first ten days of the 12th month of the Islamic calendar, i.e. two months and ten days). So whosoever intends to perform *Hajj* therein (by assuming *Ihram*), then he should not have sexual relations (with his wife), nor commit sin, nor dispute unjustly during the *Hajj*. And whatever good you do, (be sure) Allah knows it. **And take a provision (with you) for the journey**, but the best provision is *At-Taqla* (piety, righteousness). So fear Me, O men of understanding!

Hajj is obligatory when one has control over expenses of traveling and mode of transport whether as owner or on hire. Borrowing or using the means owned by someone else is impermissible. If someone offers gift for going for Hajj one is within rights to accept or reject the offer. The expenses of traveling and mode of transport means that one should have, besides a house for residence, clothes, household articles, sufficient money for traveling to Makkah and for coming back; if there are any loans, to repay them and to leave behind sufficient money for expenses on those dependent upon him.

(*Fatawa-e-alamgiri edited and corrected by Abdul Latif Hasan Abdul Rehman Darul Kutubul Ilmiya Beirut, Lebanon 2000 Vol. 1 Page 240*).

See also: *the Religion of Islam by Maulana Mohammad Ali S. Chand and Company Pages 525-526*.

See also: *Kitab-ul-Fiqh by Abdul Rehman Al Jazeeri translated by Mr. Manzoor Ahsan Abbassi, published by Mehqama Auqaf Punjab, Lahore, 1977 Pages 1034-1035*.

See also: *Qamusool Fiqh by Khalid Saifulla Rehmani, Kutubkhana Naiyeemya Deoband 206, Vol. 3 Pages 195-196*.

eliminate it within a period of 10 years from today.

The subsidy money may be more profitably used for upliftment of the community in education and other indices of social development.

Before leaving the issue of Hajj subsidy, we would like to point out that as the subsidy is progressively reduced and is finally eliminated, it is likely that more and more pilgrims would like to go for Hajj through PTOs. In that eventuality the need may arise for a substantial increase in the quota for the PTOs and the concerned authorities would then also be required to make a more nuanced policy for registration of PTOs and allocation of quotas of pilgrims to them. For formulating the PTO policy for the coming years, the concerned authorities in the Government of India should bear this in mind. They will also be well advised to invite and take into account suggestions from private operators/ travel agents for preparing the PTO policy for the future.

THE GOODWILL HAJJ DELEGATION

The issue of the Goodwill Hajj Delegation raises two questions; one in regard to the reasonableness and justification for sending an official delegation on the occasion of Hajj and the other about its composition and the manner in which people are nominated as members of the official delegation. In the affidavit of the Union of India, it is stated that the Goodwill Delegation was first sent to Saudi Arabia in the year 1967 and since then the

delegation is being sent every year. The primary purpose of the delegation, according to the affidavit, is “to convey goodwill on the auspicious occasion of Hajj to the Government of Saudi Arabia as well as to the Indian Pilgrims”. It is further stated that the delegation interacts with the Hajj pilgrims from India, understands their issues and takes up the same with the Saudi Arabian authorities. The delegation addresses these issues in their meeting with the Minister of Hajj, Saudi Arabia and the Governor of Makkah. The delegation also has regular meetings with the Indian Hajj mission and the Hajj authorities of Saudi Arabia. A report is submitted to the Government about the conduct of Hajj and recommendations for a better Hajj in the ensuing year.

In the affidavit, it is further stated that a similar but much smaller delegation comprising no more than five to eight members is sent by Bangladesh. The Bangladesh delegation usually consists of Minister of Hajj, Secretary (Hajj), people working in the Islamic Organizations and one or two standing members of Parliamentary Committee relating to Hajj/Religious Affairs. The number of Hajj pilgrims from Bangladesh in the year 2011 was one lakh fifty thousands. Pakistan does not send any official Hajj Delegation.

As to the size of the delegation and the manner of nomination of its members, from the affidavit it appears that in

1967 the Goodwill Delegation consisted of three members. Till 1973, there was no material increase in its size and till 1987 the number of its members remained under ten. Thereafter, the delegation started steadily increasing in size and in 1997 the Goodwill Delegation was of 31 members. In the year 2005, there were 36 members in the delegation and in the year 2010 the number of its members was 30. In the year 2011, the number was marginally reduced to 27.

In pursuance of our direction, the affidavit also gives a list of the members of the Goodwill Hajj Delegation for the years 2002 to 2011. The affidavit does not disclose any criteria or guidelines on the basis of which persons are selected for being included in the Goodwill Delegation. From the list of the members of the Goodwill Delegation for a period of 10 years no rational basis is discernible for selecting members for the delegation. The list shows a disparate group of persons randomly put together from various professions and walks of life. What is more surprising is that there are some people who were able to go as member of the Goodwill Delegation more than once, some even three or four times. In the absence of a reasonable basis the nomination to the Goodwill Delegation evidently works on patronage and granting of favours. On the basis of the materials brought to our notice we have no doubt that the way people are nominated as members of the Goodwill Delegation is in complete violation of Article 14 of

the Constitution.

Now coming back to the reasonableness and justification for sending an official Goodwill Delegation for Hajj, it is noted above that the first such delegation was sent in the year 1967. The sending of the Goodwill Hajj Delegation from India for the first time in the year 1967 was not by accident or chance and those whose memory goes back to that year would recall the circumstances in which the official Goodwill Delegation on the occasion of Hajj was first sent to the Kingdom of Saudi Arabia. It is no secret that after the 1965 war Pakistan tried to use even the Hajj pilgrimage for anti-India propaganda and the purpose of sending the Goodwill Delegation was to meet the anti-India propaganda.

The reason for which the delegation was first sent has long ceased to exist and Pakistan is no longer sending any official Goodwill Hajj Delegation to Saudi Arabia. It may, however, be contended that with the passage of time the purpose of the delegation has changed in the changed circumstances the delegation serves other objects and purpose. As a matter of fact in the affidavit filed by the Union of India the sending of the Goodwill Hajj Delegation is justified on two other counts (1) to convey goodwill to the Government of Saudi Arabia as well as to the Indian pilgrims and (2) to oversee and facilitate reason the arrangements made for pilgrims that go for Hajj through the Haj

Committees. Dealing first with the second reason, we are constrained to say that it appears quite unconvincing. In the earlier paragraph of the affidavit of the Union of India, it is stated that Hajj is one of the most complex organizational tasks undertaken by Government of India outside its borders. It is further stated that all arrangements for the Hajj of pilgrims are coordinated by the Consulate General of India, Jeddah and the Embassy of India, Riyadh. Haj Committee of India, established under the Haj Committee Act, 2002 is responsible for making the arrangements for pilgrims performing Hajj through them. It is, thus, to be noted that the making of arrangements for the pilgrims is the duty and responsibility of Haj Committee of India, a statutory body constituted under an Act of the Parliament. The arrangements are further over seen by the Consulate General of India, Jeddah and the Embassy of India, Riyadh. The arrangements are, thus, looked after by competent professional people and any intervention by a disparate group of persons themselves going to Saudi Arabia for the first time is bound to create more confusion than being of any help in making any proper arrangements for the ordinary pilgrims numbering over 125,000. We are unable to accept the second reason given as justification for sending the Goodwill Hajj Delegation.

Coming now to the first reason, that is, to convey goodwill to the Government of Saudi Arabia as well as to the Indian

pilgrims, we fully appreciate the idea of the people of India extending their goodwill to the Kingdom of Saudi Arabia on the auspicious occasion of Hajj but we completely fail to see how even that purpose can be served by sending such a large, unwieldy, amorphous and randomly selected delegation.

On a careful consideration of the issue we are quite clear that the present practice of sending Goodwill Hajj Delegation must come to stop. If the Government of India wishes to send a message of goodwill to the Kingdom of Saudi Arabia on the occasion of Hajj it may send a leader and a deputy leader and if there be any need to present any group from India for any formal event in the course of Hajj the leader may, in consultation with the Indian Ambassador and Consul General, constitute a group of ten Indians from among the very large number of Indian pilgrims who are there at their own expense. It is to be kept in mind that over a lakh and fifty thousand pilgrims go for Hajj paying for their own expenses. The Indian Ambassador in Saudi Arabia and perhaps more than him, the Consul General at Jeddah would know about the arrival of many distinguished, learned and important Muslims among them and with the assistance of the Ambassador and the Consul General, the leader of the two member official team would be able to form a far more appropriate and representative Indian team from amongst them

than a motley delegation whose members are selected on irrelevant considerations.

In this interim order we have primarily dealt with the issues of PTOs, Hajj Subsidy and the Goodwill Hajj Delegation. There are other issues which we propose to deal with in due course.

In the affidavit filed on behalf of the Union of India, it is stated that from the overall number of 1,70,000 pilgrims fixed under the bilateral agreement, the Government of India sets apart a quota of 11,000 seats to be reserved for the following categories:-

- “(i) Khadim-ul-Hujjaj (to assist Pilgrims in Saudi Arabia) selected by the State Haj Committees (300)
- (ii) Mehram (women who get selected in the Qurrah but must have an accompanying male member as per Saudi Law) (400)
- (iii) The community of Bohras (2,500)
- (iv) States/ Union Territories on special consideration e.g., Jammu and Kashmir (1,500) and Lakshadweep (239)
- (v) States/Union Territories with Hajj applications in excess of Quota (2,500),
- (vi) Haj Committee of India (500) and
- (vii) Government of India (3,061)”

We would like to know in greater detail how the special quotas under the heads (i) to (vii) are allocated. It may be noted that in paragraph 8 of the affidavit it is stated that the quota of

Government of India (3061 for this year) is allocated to unselected/waitlisted applicants before the Haj Committees on recommendation by dignitaries and eminent persons. We have some initial reservations on allocation of seats on recommendation by dignitaries and eminent persons.

We direct the Union of India to file further affidavit stating in greater detail the way the quota of 11,000 seats is being allocated for 2012 Hajj.

We would also like to know in greater detail the procedure followed by the Haj Committee of India and the state Haj committees in making selection for sending pilgrims for Hajj. We would specially like to examine the functioning of the Haj Committees of the States where the number of applicants exceed the quota allotted for the state.

We direct the Haj Committee of India to file a detailed affidavit giving full details of the process of selection of pilgrims from the applications made to the State Haj Committees. The affidavit should also give details of the charges realized from the pilgrims and the facilities made available to them.

Haj Committees of the States of Maharashtra, Kerala and Karnataka are directed to be impleaded as respondents. Let notice go to them with a direction to file affidavits giving details of the selection process and stating stage wise how selections are being made for sending pilgrims for the 2012 Hajj, what

amounts are charged from each pilgrim and what facilities are provided to them.

The affidavits, as directed above, must be filed within two months from today.

Put up on July 23, 2012.

SLP(C) Nos. 33190-33217 of 2011

In view of the order passed in SLP(C) No.28609/2011, these special leave petitions have become infructuous and are disposed of as such.

IAs by private operators.

In view of the order passed in SLP(C) No.28609/2011, all interlocutory applications filed by private operators/travel agents raising objections to the Government of India 2012 Haj Policy stand disposed of.

TP(C) Nos.191/2012, 192/2012, 196/2012, 197/2012, 198/2012, 199/2012.

In view of the order passed in SLP(C) No.28609/2011, the transfer petitions are rendered infructuous and stand disposed of accordingly.

.....J.
(Aftab Alam)

Desai)
New Delhi;
May 08, 2012.