

Jeddah Travels & Jeddah Haji Group

v.

Union of India

(Supreme Court Of India)

Writ Petition (Civil) No. 480 Of 2014 With No. 380, 390-91, 393-94, 399-400, 416, 515, 573, 587-90, 592-94, 596, 602-603 & 605 Of 2014 | 07-08-2014

1. Though the arguments have been extensive, the order that we propose to pass would be a short one and that has been possible due to the enormous amount of clarity that the learned counsel have been able to throw on the issues that confront us in this group of writ petitions.

2. The petitioners are private tour operators (PTOs), who send pilgrims for Haj. They are essentially aggrieved by their disqualification for the Haj Pilgrimage, 2013 which acts as an embargo on consideration of their cases for Haj Pilgrimage, 2014. The learned counsel for the petitioners have made it clear that in the present cases whether such disqualification was made on an erroneous interpretation of Clause (iv) and Clause (vii) of Annexure A [Terms and Conditions for Registration of Private Tour Operators (PTOs) for Haj, 2013] of the order dated 16-4-2013 passed by this Court in Union of India v. Rafique Shaikh Bhikan (2013) 4 SCC 699, is the only issue that arises for our consideration.

3. Clauses (iv) and (vii) of Annexure A to the aforesaid order may be conveniently reproduced hereinbelow:

“(iv) Minimum annual turnover of INR one crore during Financial Year 2010-2011 or 2011-2012 along with balance sheet and profit and loss account duly audited by the statutory auditors, tax audit report and income tax return (ITR) for Financial Years 2010-2011 and 2011-2012

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(vii) Proof of payment made through banking or other authorized channels towards purchase of tickets and hiring of accommodation in Makkah/Madinah. Payments towards purchase of tickets, hiring of accommodation for pilgrims in Makkah/Madinah, by any other means, would not be accepted.”

4. It will also be necessary at this stage to take note of the Ministry of External Affairs (Gulf and Haj Division) clarification on Clause (vii) of Annexure A to PTO Haj Policy, 2013 extracted above, which is stated to be dated 8-5-2013, and is to the following effect:

“As regards Clause (vii) of Annexure A to PTO Haj Policy, 2013, it is clarified that the PTOs will have to submit the documents required under Clause (vii) of Annexure A to PTO Haj Policy, 2013 for a period of at least three years.”

5. The learned counsel for the petitioners urge and contend that the requirement of submission of documents under the aforesaid Clause (vii) for a period of three years not only has the effect of rewriting the order of the Court inasmuch as the aforesaid Clause (vii) is a part of this Court's order dated 16-4-2013 (Union of India v. Rafique Shaikh Bhikan, (2013) 4 SCC 699) but it also runs counter to Clause (iv) which has in mind the years 2010-2011 and/or 2011-2012. In other words, the learned counsel for the petitioners argue that Clause (iv) and Clause (vii) of Annexure A have to be necessarily read together. It is on account of an erroneous attempt to understand the aforesaid clauses independent of each other that the disqualification of the petitioners have been made by the respondents leading to the writ petition in question.

6. Shri Neeraj Kishan Kaul, learned Additional Solicitor General has vehemently contended that the requirement under the order of the Court dated 16-4-2013 (Union of India v. Rafique Shaikh Bhikan, (2013) 4 SCC 699) is really for a seven year period, which is evident from a reading of Appendix I, which is to be found in para 36 of the aforesaid order of this Court. The learned Additional Solicitor General has tried to draw our attention to the detailed facts in which payments for accommodation had been allegedly made by some of the petitioners so as to justify their disqualification under the Haj Policy, 2013. Shri Kaul has further argued that necessary and consequential agreements with the Government of Saudi Arabia have to be executed on or before 16-8-2014 so as to enable selected tour operators to send pilgrims against their allotted quota. It has been emphasized that within the time available it may not be possible and feasible to complete the exercise which must, therefore, be relegated to the calendar years 2015 only. In this regard, it is pointed out that individual rights, if any, of the private tour operators have to give way to the larger public interest inasmuch as, in any event, none of the pilgrims would be affected and the issues raised can only ensure to the benefit of the individual tour operators.

7. Having considered the contentions advanced on behalf of the rival parties, we are of the view that the petitioners who had approached the Court well in time cannot be denied the benefit of an adjudication as urged by the learned ASG. The time-frame still available, in our considered view, is adequate to enforce the rights of the petitioners if they are found so entitled.

8. Clause (vii) of Annexure A referred to above not having stipulated any period of time during which the requirement contemplated thereunder is required to be satisfied by a private tour operator and Clause (iv) which relates to the turnover of a tour operator being confined to a period of one year out of the two available calendar years mentioned thereunder and both the clauses being relatable to a determination of the suitability of a tour operator from a similar perspective, the requirement under Clause (vii) can be reasonably understood in the light of what is contained in Clause (iv) i.e. Financial Years 2010-2011 or 2011-2012. Admittedly, the private tour operators before us have been disqualified by taking into account periods of time other than what is mentioned above. That apart, if the Government of India was of the view that Clause (vii) had to be understood with reference to a period of three years, really, this Court ought to have been approached for an appropriate clarification.

9. In the present proceedings, we do not wish to delve into the question of propriety of the governmental action in issuing the Circular/clarification dated 8-5-2013. However, on the view that we have taken, we consider it proper to conclude that disqualification of the private tour operators before this Court on the interpretation/understanding of Clause (vii) of Annexure A, other than in the manner indicated by us, is patently unacceptable. Disqualification on the said basis of such of the private tour operators who are parties in the present proceedings is, therefore, not correct. However, we make it clear that all the other requirements so far as the Haj Policy, 2013 is concerned, not being the subject-matter of present adjudication, will have to be satisfied by the tour operators.

10. The case of the petitioners will now be considered in accordance with the present directions and also in the light of all the other requirements that were/are in force. Thereafter, such of the private tour operators who are found to be eligible for the Haj 2013 will be considered under the Haj 2014 Policy in accordance with the terms and conditions thereof which have been brought on record in an unregistered application filed on behalf of the petitioner in Writ Petition No. 400 of 2014.

11. In this regard, we also deem it proper to observe that the Government of India has substituted Annexure A of the order dated 16-4-2013 ((Union of India v. Rafique Shaikh Bhikan, (2013) 4 SCC 699) by issuing the Circular/clarification dated 8-5-2013 and also by laying down specific terms and conditions to govern the registration of private tour operators for Haj 2014. It is difficult, at this stage, to appreciate as to how without taking the Court into confidence the Government of India could have so acted inasmuch as the Terms and Conditions for Registration of Private Tour Operators for Haj, 2013 (Annexure A) was an integral part of the order dated 16-4-2013 ((Union of India v. Rafique Shaikh Bhikan, (2013) 4 SCC 699) passed by this Court. However, taking a magnanimous view, we do not wish to further delve into the aforesaid aspect of the matter and leave the same for introspection and self-correction by the authority concerned.

12. The writ petitions are disposed of in the above terms.