

# IN THE HIGH COURT OF SINDH AT KARACHI

CP D – 4479 of 2018

Present: **Muhammad Ali Mazhar and Agha Faisal, JJ.**

Universal Brothers (Private) Limited and Another  
vs.  
Federation of Pakistan and Others

For the Petitioners : Barrister Abid Shahid Zuberi  
Barrister Ayan Mustafa Memon

For the Respondents : Mr. Zahid Fakhruddin Ebrahim  
Additional Attorney General

Mr. Syed Imtiaz Ali Shah  
Deputy Director, Hajj  
Ministry of Religious Affairs

Mr. Rashid Ahmed Malik  
Deputy Assistant Director  
Ministry of Religious Affairs

Dates of Hearing : 06.11.2018 & 16.01.2019

Date of Announcement: 12.02.2019

## JUDGMENT

**Agha Faisal, J.** The petitioners, being a private hajj group operator and its principal officer, have assailed the decision of the Ministry of Religious Affairs – Federation of Pakistan (“**MORA**”), the respondent No. 1 herein, relegating the petitioner No. 1 from Category “A” to Category “D”, of the classifications maintained by MORA for allotment of hajj quota, and as a consequence thereof significantly marginalizing the number of pilgrims that the petitioner No. 1 was permitted to entertain.

2. Barrister Abid Shahid Zuberi, set forth the case of the petitioners and submitted that the petitioner No. 1 has enjoyed the entitlement of Category "A" status from the year 2009 onwards and the quota granted to the said petitioner from the said period has been commensurate with that allotted to the holders of Category "A" status. Per learned counsel, the petitioner No. 1 continued to benefit from the Category "A" entitlement from 2009 up until 2017 and conducted its operations without any let, hindrance or complaints. It was demonstrated from the record that MORA issued a letter dated 25.05.2018 to the Consulate General, Kingdom of Saudi Arabia, wherein a list of all hajj group operators was attached. It was pointed out from the record that the petitioner No. 1 was listed at serial No. 294 therein, with the quota commensurate to that allocated to Category "A" operators. Notwithstanding, the said communication the petitioner No. 1 received a letter issued by MORA dated 31.05.2018 ("**Impugned Letter**") which unilaterally and inexplicably relegated the petitioner No. 1 from Category "A" to Category "D". It was argued that the Impugned Letter was unlawful, arbitrary and discriminatory, hence, the present petition was filed *inter-alia* seeking that the recognition of the petitioner No. 1's entitlement to Category "A" of the classifications maintained by MORA for allotment of hajj quota. The order in this petition dated 07.08.2018 records that notwithstanding the fact that the present petition could not be decided prior to hajj 2018, it was submitted that the issue of categorization of the petitioner No. 1 was pertinent to be determined as the said issue would arise again when the apportionment of pilgrims takes place for the hajj 2019 and thereafter.

3. Mr. Zahid F. Ebrahim, learned Additional Attorney General, argued the case on behalf of the respondents and submitted that the present petition had become infructuous on account of the hajj 2018 having taken place already. It was submitted that the hajj policy is framed on a yearly basis and that the hajj policy 2018, purportedly giving rise to the grievance of the petitioner No. 1, is no longer valid and that the categorization for the quota for 2019 will take place in pursuance of hajj Policy 2019, which is yet to be formulated / notified. It was submitted that the petitioner No. 1 has no vested right to any category whatsoever and if it is aggrieved by any constituent of the upcoming policy, or action taken in pursuance thereof, then the same may be the subject of fresh proceedings and that the same could not be agitated in the present petition. The learned Additional Attorney General opted to eschew addressing the Court with regard to whether the relegation of the petitioner No. 1 from Category "A" to Category "D", undertaken in 2018, was in accordance with the law or otherwise.

4. We have considered the arguments of the respective learned counsel and have also perused the record arrayed before us. In pursuance of the order passed herein dated 07.08.2018 the determination to be made by us is whether the relegation of the petitioner No. 1 from Category "A" to Category "D", and the resultant diminution of the hajj quota allotted to the petitioner No. 1, was in accordance with the law or otherwise.

5. It was submitted that the categorization of hajj group operators for allocation of the hajj quota was initiated vide the Policy and Plan

for Hajj devised by MORA in 2010. The relevant constituent thereof is reproduced herein below:

“QUOTA ALLOCATION

For transparency to bring right people all the right slot and to discourage the companies to get quota on the basis of untoward pressure, the following categorization will be introduced for hajj-2010:

Cat	Criteria	No. of Years	Quota
A	<ul style="list-style-type: none"> <li>Have lifted load of 2000 Hujjaj or more during last 06 hajj Operations.</li> <li>No major or minor complaint is established for hajj 2009.</li> </ul>	6 Yr	300
		5 Yr	270
		4 Yr	260
B	<ul style="list-style-type: none"> <li>Have lifted load of 1500 Hujjaj or more during last 06 hajj Operations.</li> <li>No major or minor complaint is established for hajj 2009.</li> </ul>	6 Yr	250
		5 Yr	240
		4 Yr	230
C	<ul style="list-style-type: none"> <li>Have lifted load of 1000 Hujjaj or more during last 06 hajj Operations.</li> <li>No major complaint is established for hajj 2009.</li> </ul>	6 Yr	150
		5 Yr	145
		4 Yr	140
D	<ul style="list-style-type: none"> <li>Have lifted load of 500 Hujjaj or more during last 06 hajj Operations.</li> <li>No major complaint is established for hajj 2009.</li> </ul>	6 Yr	135
		5 Yr	125
		3/4 Yr	120
E	<ul style="list-style-type: none"> <li>Have lifted load of 50 Hujjaj or more during last 06 hajj Operations.</li> <li>No major complaint is established for hajj 2009.</li> </ul>	6 Yr	115
		5 Yr	110
		4 Yr	105
		1-3 Yr	100
New	<ul style="list-style-type: none"> <li>New HGOs who qualify to operate and are IATA member.</li> <li>New HGOs who have held Munazim Card Number in the past. (The above two conditions are as per Saudi Taleemat)</li> </ul>		50

6. The learned Additional Attorney General submitted a Statement dated 16.01.2019 wherein the criteria for assessment of profiles of existing hajj companies was delineated, after having been framed pursuant to the directions of the honorable Supreme Court of Pakistan and recommendations of the Competent Commission of

Pakistan. It may be pertinent to reproduce the said criteria herein below:

“The honourable Supreme Court of Pakistan’s orders dated 27.08.2013 passed in Civil Appeal Nos. 800-L, 801-L and 802-L of 2013 contain following recommendations by the Competition Commission of Pakistan: -

- i) Past performance of hajj or Umrah or Ziarat Operations.
- ii) Economy of finance packages offered.
- iii) Quality of management and services provided.
- iv) The financial strength of the HGOs.
- v) Weight-age should be allocated to these variables in a manner which does not give undue consideration to experience only.
- vi) MORA shall also allocate specific percentage of hajj quotas to the new entrants to encourage entry of new payers in the market and such quota may be allocated based on the separate criteria.
- vii) MORA shall ensure that the HGOs to whom the quota is allocated, should perform the hajj operations on their own and this fact should also be verified from their financial statement. In case, any HGO continues with such practices, MORA should consider it for blacklisting for an appropriate period.
- viii) All the variables mentioned above should be evaluated by a third party, preferably a chartered accountancy firm approved by ICAP, to ensure transparency for the process.
- ix) MORA should consider forming a panel whose responsibility will be to monitor all the HGO’s. All the complaints against the HGOs shall also be reviewed by that panel. The recommendations and the finding of that panel shall be taken into account when allocating the quota to the HGOs. The panel shall be completely independent to ensure transparency of the process.

Basic Eligibility Criteria for further scrutiny of documents.

Only those HGOs will be eligible for further scrutiny of documents which meet following basic criteria:

- i) Paid up and authorized capital are net loss than Rs.7.5 million and Rs.10 million respectively.
- ii) No management dispute.
- iii) Having appropriate office (located at a proper place, at least three operational staff with adequate furniture and IT facilities).
- iv) The company is not Bank defaulter/Loan defaulter or tax defaulter and is an active taxpayer.
- v) Non-conviction of management in criminal case(s) by any court of law. (Affidavit on stamp paper of Rs.500/- duly attested by notary).

- vi) The company is not presently debarred for carrying out its operation by the government of Pakistan or KSA as the case may be.
- vii) The company is organizing hajj operations by itself and has not sublet it to any other operator, duly supported by a verifiable document.

a) Compliance of SECP Regulation i.e. submission of regular audit reports of last three years prepared by an Auditing Firm of Chartered Accountants registered with ICAP i.e.	
i. Submitted audit report of last three years	15 Marks
ii. Submitted audit report of last two years	10 Marks
iii. Submitted audit report of last one year	05 Marks
b) Filing of annual tax returns of the company:	
i. Last three years	10 Marks
ii. Last two years	06 Marks
iii. Last one year	03 Marks
c) Company is compliant to filing of annual returns to SECP for the last three consecutive years:	
i. Three years	10 Marks
ii. Two years	06 Marks
iii. One year	03 Marks
d) Company has not been convicted by CDC on complaints of hujjaj and confirmed by the appellate committee for last three consecutive years (Conviction means reduction in quota or suspension for specific period, imposition of fine deposited in government treasury etc.):	
i. No Conviction in complaints	0 Marks
ii. One or two convictions	-5 marks
iii. Three or more convictions	-10 marks

7. It is observed that the number of pilgrims carried by the petitioner No. 1 from 2009 till 2017 is pleaded by the petitioners, and not denied by the respondents, to be as follows:

Year	Quota allocated to petitioner No. 1	Quota allocated to other Category "A" HGOs
2009	300 Hujjaj	300 Hujjaj
2010	300 Hujjaj	300 Hujjaj
2011	300 Hujjaj	300 Hujjaj
2012	300 Hujjaj	300 Hujjaj
2013	215 Hujjaj	215 Hujjaj

2014	288 Hujjaj	288 Hujjaj
2015	233 Hujjaj	233 Hujjaj
2016	233 Hujjaj	233 Hujjaj
2017	223 Hujjaj	223 Hujjaj

8. It is thus observed that the petitioner No. 1 has carried the maximum number of pilgrims permissible in the top category from 2009 till 2017 and further that the petitioner No. 1 may also be entitled to the maximum number of marks as per the assessment criteria set-forth by MORA. These contentions, placed before us by the learned counsel for the petitioner No. 1, were not controverted by the learned Additional Attorney General or the officers of MORA present.

9. We have also noted that notwithstanding the foregoing, the hajj quota of the petitioner No. 1 was marginalized to that permissible in Category "D", vide the Impugned Letter, content whereof is reproduced herein below:

*"Subject: HAJJ QUOTA AS PER MATRIX SYSTEM OF 2010.*

*I am directed to refer to the subject cited above and to say that your company has availed hajj quota of more than 200 since 2010 in violation of quota matrix. The case has been examined and quota of your company has been revised and fixed at present as 106 for hajj 2018 in accordance with the matrix system.*

*This issues with the approval the competent authority."*

10. It is observed that the Impugned Letter clearly states that the hajj quota follows the matrix system of 2010, particulars whereof have already been cited *supra*, and whereas it unilaterally marginalizes the categorization of the petitioner No. 1, it does not give any cogent reasoning for doing so. The learned Additional Attorney General had filed a statement dated 16.07.2018 accompanied by a concise

statement filed on behalf of the respondents. The said concise statement stipulated that in order to rationalize the hajj quota of all companies, a matrix system was devised and approved by the hajj policy 2010 and the same remains in vogue till date. It was submitted that the petitioner No. 1 was placed in Category "D" at the said time, however, pursuant to such placement being assailed in a Writ Petition before this Court and the vide the orders passed therein the petitioner No. 1 was allowed to carry the maximum number of pilgrims, as permissible to those placed in Category "A". It was further submitted that during scrutiny of profiles for companies for allocation of hajj quota 2018, MORA observed that the petitioner No. 1 is unlawfully getting a quota in excess of that permissible, therefore, the same was rectified and the petitioner No. 1 was placed in Category "D". The basic premise invoked by the respondents in the concise statement was that since the quota allocated to the petitioner No. 1 in 2010 was contrary to the approved matrix system, yet in compliance of the orders of this Court, hence the relegation of the category and the marginalization of the quota was merited.

11. We consider it appropriate to first address the argument advanced before us by the learned Additional Attorney General that the present petition has become infructuous, hence, may be dismissed as such. We are unable to concur with the said argument as the categorization of the petitioner No. 1 is an issue which would be contentious notwithstanding whether it was in respect of hajj 2018 or any time thereafter. It is noted that the said matrix / criteria has been uniformly applied since 2010 and that unless the same is varied



by the competent authority it is reasonably anticipated that the same would also be the determinant for the subsequent hajj policy as well. We had put a direct question to the learned Additional Attorney General as to whether the said matrix / criteria was no longer applicable and whether the subsequent hajj policies would predicated upon other factors; the learned Additional Attorney General pleaded no instructions in response to our query. It is also noted that the controversy in the present petition had been narrowed down, vide the order dated 07.08.2018, to determine this issue of categorization so that if and when it arose in the future, the same would stand addressed in the light of the findings herein. It is thus our considered opinion that the present petition has not been rendered infructuous and must be determined in the light of the question framed by the Court vide the aforementioned order.

12. The matrix system, in vogue since 2010, predicates the categorization of hajj operators on the basis of the load of pilgrims carried by such operators in the preceding years. It is apparent from the figures provided by the petitioner No. 1, which have not been denied by the respondents, that the petitioner No. 1 has carried the maximum number of pilgrims permissible since the year 2009. It was submitted on behalf of the respondents that in the year 2010, the petitioner No. 1 carried the maximum number of pilgrims permissible by virtue of a Judgment of a Division Bench of this Court and not on account of having qualified in such regard upon the anvil of the matrix. Be that as it may, it is noted that the categorization as per the matrix predicates the outcome upon the number of pilgrims

successfully carried and not upon the basis upon which permission in regard thereof was accorded. Even otherwise, the sanction for carrying the maximum number of pilgrims in 2010 was as a consequence of a Judgment of this Court, which was never set aside / varied despite having been challenged before the honorable Supreme Court of Pakistan. Notwithstanding the foregoing even if the number of pilgrims carried by the petitioner No. 1 in 2010 is disregarded, the criteria in place stipulates that the load of pilgrims carried during last six (06) hajj operations is to be considered and upon the said anvil the petitioner No. 1 would remain entitled to the award of Category "A". Hence the objections of the respondents with regard to the basis of categorization of the petitioner No. 1 in respect of hajj 2010, which even otherwise does not find merit with us, could have no applicability for the hajj 2018 as the six year determinant period would be subsequent to hajj 2010.

13. During the hearing on held 06.11.2018 Mr. Syed Imtiaz Ali Shah, Deputy Director-hajj, MORA, Karachi, was also present in Court. The Court put a direct query to him and asked whether the petitioner No. 1's contention, that it scored the maximum permissible marks, being 35, in the criteria for assessment of profiles of existing hajj companies, was correct. The concerned officer considered the criteria prescribing a maximum 15 marks for submission of regular audit for the last three (03) years; a maximum 10 marks of filing annual tax returns; a maximum 10 marks for filing of the annual returns to SECP for the last three (03) consecutive years; and a maximum of 10 marks deductible if complaints of pilgrims were filed

against the hajj operator and the same stood confirmed by the Appellate Committee for the last three (03) consecutive years. We also categorically asked the Deputy Director if any complaints were received from the pilgrims in respect of the petitioner's operations or whether any show cause etc. was served thereupon with regard to any infringement of the rules / policy; the said query was unequivocally answered in the negative. It was admitted by the Deputy Director that upon consideration of the criteria set forth in the scoring system, it was apparent that the petitioner No. 1 was entitled to the maximum permissible marks.

14. It is thus observed that as per the matrix / criteria for categorization of the hajj operators, predicated upon the load of pilgrims carried by each such operator for the last six (06) hajj operations, the petitioner No. 1 does in fact qualify to be a constituent of Category "A", as has been previously awarded thereto in the past. It is further observed that the assessment criteria prescribed by MORA pursuant to the orders of the honorable Supreme Court of Pakistan is also complied with by the petitioner No. 1 and it has scored the maximum available marks therein, as confirmed by Director-Hajj, MORA.

15. A Division Bench of this Court was seized of a similar matter in *inter alia* in CP D 1605 of 2009, being an earlier case between the same parties pertaining to reduction of quota in respect of an earlier hajj, and the judgment pronounced therein maintained that while the executive retained the domain to impose reasonable restrictions upon commercial activity; it could only do so subject to the law. Reliance

was placed upon pronouncements of the Supreme Court to observe that a limitation imposed upon a person on enjoyment of a right could not be arbitrary or of an excessive nature beyond what is required in the public interest. The respondents have been unable to justify the Impugned Letter and it is demonstrated from the record that the prescription contained therein is contrary to the policy of MORA itself.

16. In view hereof, we find that the marginalization of the category awarded to the petitioner No. 1, and the diminution of the quota allotted to the petitioner No. 1, was unmerited and unjustified, hence, the Impugned Letter is hereby set aside. This petition is allowed in terms herein contained.

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**J U D G E**

*SHABAN ALI/PA\**