

IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.D-406 OF 2024

Date Order with signature of Judge

Present:

Mr. Justice Aqeel Ahmed Abbasi, C.J.
Mr. Justice Abdul Mobeen Lakho.

Major (retired) Shahid Mehmood AwanPetitioner

Versus

**M/s.Karvan-e-Royal
Karachi & others.....Respondents**

Date of hearing 29th January, 2024

Ms.Bushra Zia along with Ms.Motia Sikandar,
Advocates for the Petitioner.

Abdul Mobeen Lakho, J. This Petition has been filed by the petitioner against the impugned decision dated 28.12.2023 passed by Appellate Committee on an appeal filed by Respondent No.1 against the decision of Complaint Disposal Committee, Ministry of Religious Affairs & Interfaith Harmony, in which on a complaint filed by the petitioner against the respondent No.1, whereby the respondent No.1 (Hajj Group Organizer) was directed to pay Rs.50,000/- each to complainant and beside imposing fine of Rs.50,000/- the respondent No.1 was placed under suspension for one year.

The petitioner has prayed as under:-

(a). Declare impugned Order dated 28.12.2023 as void, unlawful, discriminatory and made in violation of SPA Agreement as well as in flagrant disregard and contrary to the prescribed criteria of Service Provider as enunciated by MORA.

(b). Direct Respondent No.3 to upheld and execute Order dated 26.9.2023 in favor of Petitioner and against Respondent No.1 in letter and spirit.

(c) To restrain and prohibit Respondent No.1 from making any Hajj deals and offer Hajj & Umrah Package for one year as the same has already been declared as black listed in order dated 26.09.2023.



2. Briefly the fact of the case are that in the year 2023 the Petitioner along with his family planned to perform Hajj in 2023 and decided to avail Hajj Package of Respondent No.1, who offered "C" Package, which contained more than a month stay in Makkah and Madina, return Air fare, lodgement facilities, hotel stay, separate room, food and other amenities which costs around Rs.13,85,000/- per person. However, the Respondent neither provided any receipt for the above amount nor the signed SPA (Service Provider Agreement) under the law. The petitioner was told that it would not be possible to accommodate petitioner's complete family (06 members) in a single room as room can accommodate 4 or 5 persons. After arriving in Makkah Respondent No.1 accommodated Petitioner's family into two groups i.e. his wife along with two daughters were accommodated in a room with two stranger ladies and Petitioner with his two minor sons were accommodated in other room and in Madina also the petitioner and his family treated/accommodated in the same manner. According to petitioner the entire family as well as the entire Hajj Group experienced stress, mental agony and being uncomfortable after experiencing pathetic facilities provided to the Petitioner during entire stay of Hajj. Respondent No. 1, who tried to extort money from public at large dishonestly by misusing its name, experience and reputation under the garb of MORA for Hajj & Umrah Services.

3. Learned counsel for the petitioner argued that Complaint Disposal Appellate Committee has unlawfully decided the fate of the appeal filed by Respondent No.1 based on mala fide, unwarranted, unfair and is against the interest of public at large, therefore, the impugned order dated: 28-12-2023 announced in contravention and in violation of Clauses C (12) and 1(1) of Service Provider Agreement (SPA) is arbitrary, erroneous and unsustainable as the same contravenes the aforementioned major penalty clauses of SPA,

Amal
Kear

wherein, it has been categorically stated that the Service Provider in violation of the relevant clauses shall be black listed. Learned counsel further argued that the impugned order is bad in law and Respondent No.3 has acted in a manner which can only be classified as discriminatory, mala fide and the acts and omissions of the Respondent No.3 are illegal and ultra vires and further that dated 26-9-2023 pronounced by the Respondent No. 2 is affirmative and in conjunction with the clauses of the SPA, therefore, is likely to be upheld in letter and spirit.

4. Heard learned counsel for the petitioner and perused the record. Learned counsel for the petitioner was asked to satisfy on the question of the maintainability of instant petition against the order passed by Appellate Committee, Hajj-2023, wherein, compensation and damages has been denied regarding hardship and agony caused to the petitioner and his family during Hajj-2023 by a private organization (Respondent No.1), whereas, alternate remedy is available to the Petitioner to file Suit for compensation and damages. Learned counsel for the petitioner could not satisfy this Court on the aforesaid query, however, submits that through instant petition the petitioner has challenged the impugned decision of the Appellate Committee to be declared unlawful, discriminatory and against the major penalty clauses of Service Provider Agreement, therefore, liable to be set-aside. The perusal of the impugned decision reflects that the Appellate Committee has reduced the amount of compensation from Rs.1,00,000/- to Rs.50,000/- but the Appellate Committee has imposed fine of Rs.50,000/- to be deposited in the Government Treasury and placed the Respondent No.1 (HGO) under observation for one year.

5. In the present case the alleged claim of violations of Service Provider Agreement translating into damages/compensation if at all is a factual controversy cannot be decided in writ jurisdiction. The appraisal of the

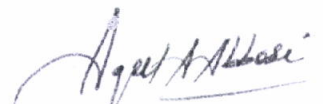
*And
Clear*

impugned decision expounded that the petitioner has been awarded Rs.50,000/- per complainant as compensation as well as the Respondent No.1 has been placed under observation for one year, therefore, through impugned Decision the amount of compensation has been assessed and if the petitioner is not satisfied or feels that the amount of compensation is not as per his expectation or less than the agony caused to him and his family, he is at liberty seek redressal of his grievance by filing civil suit in accordance with law, as this Court cannot go into miniature and diminutive details which could only be resolved by adducing evidence by the parties vice versa.

6. In the case in hand, the remedy of filing civil suit was an appropriate and alternate remedy as *remedium juris* which was more convenient, beneficial and effective. This Court keeping in mind the numerous dictums laid down by the superior Courts recapitulate that this Court cannot resolve the disputed question of facts in exercise of constitutional jurisdiction under Article 199 of the Constitution.

7. For the foregoing reasons, instant petition is *dismissed* along with listed applications. The above are the reasons of our short order dated 29.01.2024.


Judge


Chief Justice