

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN

MR. JUSTICE MAQBOOL BAQAR

MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL

Criminal Original Petition Nos.59 of 2015, 65, 66, 67, 68, 84, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 105, 104, 112, 113, 140, 227 and 233 of 2016, 50, 89, 88, 87, 86, 68, 70, 71, 72, 73, 74, 75, 76, 77, 78 and 79 of 2017, CrI.M.A. Nos. 752, 863, 909, 910, 918, 862, 911, 912, 973, 974, 891, 892, 1003, 1004, 1021, 1112, 1028, 1044, 1179, 1360, 1424, 1627, 1263, 1717, 1995, 1300, 1303, 1783, 1784, of 2016, 44, 65, 66, 653, 620, 621, 622, 573, 574, 575. 643, 645, 661, 662, 685, 686, 687, 688, 689, 691, 698, 699 and 700 of 2017 AND C.M.Appeal No.126 of 2016 in Const.P.No.Nil of 2016, C.M.Appeal No.159 of 2016 in Const.P.No.Nil of 2016 and C.M.Appeal No.162 of 2016 in Const.P.No.Nil of 2016.

(For non-compliance of the judgments of this Court dated 27.8.2013 and 21.7.2014 passed in Civil Appeal No.800-L of 2013 etc. and CP Nos.1270 of 2014 etc. respectively)

Muhammad Arif Idress & others

...Petitioner(s)

VERSUS

Sohail Aamir and others.

...Respondent(s)

For the petitioner(s)/:
Applicants

Mr. Azhar Siddique, ASC
Mr. M.Ozair Chughtai, AOR (absent)
(In Cr.O.P.59/16, CrI.M.A.1003, 1004, 1044, 1179, 1360, 1627 of 2016 and 645 of 2017)

Sardar Muhammad Aslam, ASC
Mr. Anmed Nawaz Chaudhry, AOR
(In Cr.O.P.66/16 & CrI.M.A.1995 of 2016)

Mr. M. Shahnawaz Sikandari, ASC
Mr. Mehmood A.Sheikh, AOR
(In CrI.M.A.918, 93, 1112 of 2016)

Mr. Kamran Murtaza, ASC
Syed Rifaqat Hussain Shah, AOR
(In Cr.O.P.67 & 92 of 2016)

Kazi Sheheryar Iqbal, ASC
Mr. Ahmed Nawaz Chaudhry, AOR
(In Cr.O.P.68, 84, 98, 100, 112 of 2016, 88, 68, 70, 71 & 78 of 2017)

Mr. Nazir Ahmed Bhutta, ASC
Mr. Ahmed Nawaz Chaudhry, AOR.
(In CrI.M.A.863, 909, 1717 of 2016 and 689 of 2017)

Mr. Abdul Wahid Ch., ASC
Mian Ghulam Hussain, AOR (absent)
(In CrI.M.A.974 of 2016)

Raja Ghazanfar Ali Khan, ASC
Syed Rifaqat Hussain Shah, AOR
(In Cr.O.P.97 & 99 of 2016)

Raja Muqsit Nawaz Khan, ASC
Ch.Akhtar Ali, AOR.
(In Cr.O.P.140/16 & 86/17)

Mr. M. Habibullah Khan, ASC
Mr. Ahmed Nawaz Chaudhry, AOR.
(In Cr.O.P.87/17)

Mr. Masood Ahmad Zafar, ASC
Ch.Akhtar Ali, AOR.
(In CrI.M.A.643 of 2017)

Mr. Ali Zafar, ASC
Mr. Zahid Nawaz Cheema, ASC
Syed Rifaqat Hussain Shah, AOR.
(In Cr.O.P.65/16, CrI.M.A.65 and 66 of 2017)

Mr. Aftab Bajwa, ASC
Mr. Mehmood A.Sheikh, AOR.
(In CrI.M.A.661 & 688 of 2017)

Mr. Aftab Alam Yasir, ASC
Syed Rifaqat Hussain Shah, AOR.
(In Cr.O.P.227/16, 50, 79 of 2017, CrI.M.A.662, 685, 687, 699 & 700 of 2017)

Mr. Tahir Munir Malik, ASC
Ch.Akhtar Ali, AOR
(In CrI.M.A.1300 of 2016)

Ch. Ishtiaq Ahmed Khan, ASC
Ch.Akhtar Ali, AOR.
(In CrI.M.A.1424 and 1263 of 2016)

Qari Abdul Rasheed, ASC
Mr. Ahmed Nawaz Chaudhry, AOR.
(In CrI.M.A.1303 of 2016)

Mr. Muhammad Shah Khawar, ASC
Mr. Mehmood A.Sheikh, AOR.
(In Cr.O.P.94, 95, 96, 113, 233 of 2016 & 89 of 2017)

Mr. Khan Afzal Khan, ASC
Syed Rifaqat Hussain Shah, AOR
(In CrI.M.A.159 of 2016)

Mr. M. Habib Qureshi, ASC
Mr. Ahmed Nawaz Chaudhry, AOR
(In CrI.M.A.1303 of 2016)

Mr. Zulfiqar Ahmed Bhutta, ASC
Mr. Ahmed Nawaz Chaudhry, AOR.
(In Cr.O.P.105/16, CrI.M.A.653, 72, 73, 74, 75, 76 & 77 of 2017)

Raja M.Farooq, ASC
Syed Rifaqat Hussain Shah, AOR.
(In C.M.Appeal No.126 of 2016)

Mr. Abid S.Zuberi, ASC
Mr. Tariq Aziz, AOR.
Assisted by Barrister Ayan M.Memon,
Farhan Shah, Advocates
(In CrI.M.A.620, 621, 622, 573, 574 & 575 of 2017)

Mr. Aleem Baig Chughtai, ASC
Mr. Arshad Ali Chaudhry, AOR.(absent)
(In Cr.O.P.101/16 & CrI.M.A.910 of 2016)

Kanwar Iqbal Ahmed Khan, ASC
(In CrI.M.A.862 & 912 of 2016)

Mr. M.Bashir Khan, ASC
Mr. Arshad Ali Chaudhry, AOR (absent)
(In CrI.M.A.891 & 892 of 2016)

Mr. Waseem Majid Malik, ASC
Mr. Mehmoodul Islam, AOR (absent)
(In Cr.O.P.104/16 & CrI.M.A.1021 of 2016)

Mian Muhammad Aslam, ASC
Mr. Abdul Majeed Iftikhar Bajwa, AOR.
(absent) (In CrI.M.A.691 of 2017)

Syed Rifaqat Hussain Shah, AOR.
(In CrI.M.A.686 of 2017)

Mr. Mehmood A.Sheikh, ASC/AOR.
(In CrI.M.A.1783, 1784 of 2016 & 44 of 2017)

In person.
(In CrI.M.A.1028 of 2016)

Nemo.
(In CrI.M.A.911 & 973 of 2016 and C.M.Appeal 162/16)

For the respondents: Mr. Sohail Mehmood, DAG
Mr.M.S.Khattak, AOR.

For HGO/
HOAP Mr. Abid S. Zuberi, ASC
Tariq Aziz, AOR
Assisted by Barrister Ayan M. Memon
Farhan Shah, Advocate

Date of hearing: 21.04.2017

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ORDER

MAQBOOL BAQAR, J.- Through the above Criminal Original Petitions, the petitioners have prayed for initiating proceedings under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973, read with Section 3 of the Contempt of Court Ordinance, 2003, against the respondents for violating this Court's judgment dated 27.8.2013, rendered in the case of **Dossani Travels**

(Pvt.) Ltd and others v. M/s Travels Shop (Pvt.) Ltd and others
(PLD 2014 SC 1), in terms whereof the respondent were, inter alia,
directed to seek guidance from the following recommendations of the
Competition Commission of Pakistan in framing the *Hajj* Policy:-

"F. RECOMMENDATIONS

58. Keeping in view the background and the findings, MORA may consider the following two sets of suggestions. These suggestions, if implemented, can address the **competition and transparency issues** that have been raised. The first set of suggestions assumes that the MORA continues with the quota system in place. The second set of suggestions allow for the possibility of free **competition** within the overall quota allocated for the HGO Scheme.

59. In case MORA wants to continue with the quota allocation policy to HGO's it is recommended as follows:

- (a) Currently MORA is allocating *Hajj* quota only based on *Hajj* operations performed. Such criteria provide **undue advantage** to the HGOs who have performed maximum number of *Hajj* operations, whereas it places the new entrants and the HGOs who have performed lesser number of *Hajj* operations at a Competition disadvantage. The allocation of quota should be decided, in addition to experience, on various qualitative variables which inter alia includes:-
 - (i) Past performance of *Hajj* or Umrah or Ziyarat Operations,
 - (ii) Economy of financial packages offered,
 - (iii) Quality of management and services provided, and
 - (iv) The financial strength of the HGOs.Weightage should be allocated to these variables **in a manner which does not give undue consideration to experience only.**
- (b) MORA shall also **allocate a specific percentage of *Hajj* quotas to the new entrants to encourage entry of new players** in the market and such quota may be allocated based on the separate criteria.
- (c)

- (d) All the variables mentioned above should be evaluated by a third party, preferably a chartered accountancy firm approved by ICAP, **to ensure transparency of the process.**
- (e) MORA should consider forming a panel, whose responsibility will be to monitor all the HGOs. 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.

60. In the event that MORA would like to consider opening up the market for competition, as has been done in some other jurisdictions, here are some suggestions it should consider.

- (a) MORA could enlist/approve/license HGO's that meet the criteria as recommended in the previous paragraph and then allow them to offer services to first come basis to intending pilgrims. Such a system would allow the market, most importantly the intending pilgrims, to decide which HGO they prefer. The enlistment/ license could be reviewed based on the feedback received from the market.
- (b)
- (c)

61. The above recommendations are made in order to ensure that the **competitiveness and transparency** in the *Hajj* Sector is achieved by providing a level playing field to all the concerned undertakings." (*emphasis supplied*)

2. Through the said judgment this Court also directed that the *Hajj* policy should be framed by a Committee headed by Secretary, Ministry of Religious Affairs, Government of Pakistan (MORA), **nominee of the Competition Commission of Pakistan**, nominee of Ministry of Foreign Affairs, Government of Pakistan, nominee of Ministry of Law and Justice Division and Parliamentary Affairs and a nominee of Attorney General for Pakistan. It is further

directed that **the credential of each application/*Hajj* Group Organizer (HGO) should be examined and decision taken on merits.** (*emphasis supplied*)

3. The petitioner submitted that the various directions as contained in the aforesaid judgment, including the foregoing, were, as mentioned in the judgment itself, provided so that just, fair, and confidence inspiring policy be framed with regard to the *Hajj* arrangements and management.

4. The petitioners further submitted that although in pursuance of the above judgment the respondent Nos.1 to 7 invited *Hajj* packages from all the HGOs, in response whereof the petitioners submitted their respective packages, however, no such package was submitted by the members of the *Hajj* Group Organizers Association of Pakistan (**HOAP**), but still, and in clear violation of the above directive of this Court, the respondent, instead of distributing the private sector Quota amongst all the HGOs, granted the whole of such quota to the members of the HOAP exclusively, thus depriving the petitioners of their participation in the *Hajj* 2017, in clear and brazen violation of the above discussed judgment. The respondents according to the petitioners are therefore liable to be dealt with in accordance with Article 204 of the Constitution and section 3 of the Contempt of Court Act.

5. On the other hand, Mr. Abid S. Zuberi, learned ASC appearing for some of the quota holders HGOs, who along with all other quota holders HGOs, are members of HOAP, submitted that contrary to the claim of the petitioners the impugned allocation has rather been made in pursuance of, and in conformity with, not only the dicta of this Court in Dossani Travels' case (*supra*), but also in conformity with the later judgment in Civil Petition Nos.1270, 1308 1309 of 2014, CMA No.4094 of 2014, rendered on 21.7.2014

(*Muhammad Arif Idrees case*). Mr. Zuberi further submitted that genesis of this matter lies in the *Hajj* policy for the year 2013, when on account of an overall reduction in the number of persons permitted to perform *Hajj* for that year, by 20%, the quota for Pakistani *Hujjaj* was also slashed in the same proportion. The reduction was made by the Government of Saudi Arabia on account of the ongoing expansion works of *Khana Kaaba*. The MORA therefore was compelled to reduce the quota for the members of the HOAP, which was to be 50% of the overall national quota, to 40%, however, in order to persuade the members of HOAP for the said reduction, the MORA agreed, and promised to provide to HOAP a quota of 12000 *Hujjaj* in addition to their original 50% quota, for the *Hajj* 2014, and thus a Memorandum of Understanding (**MoU**) was signed between MORA and HOAP on 04.7.2013. The MoU reads:-

Subject: MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is signed between the Ministry of Religious Affairs and Hajj Organizers Association of Pakistan (HOAP) for the adjustment of Hajj Quota for Hajj 2013 on 4th July 2013 at Islamabad.

Whereas both parties have mutually agreed and resolved that:-

- (a) The current reduced allocation of the quota of Private Hajj Group would be increased by 3000 pilgrims for Hajj 2013*
- (b) For Hajj 2014, the quota granted to Pakistan shall be distributed equally between the private and public sector with an additionality of 12000 pilgrims in the private sector and corresponding reduction in the public sector.*
- (c) The restriction on the Hajj Group Organizers on change in point of departure shall be relaxed for Hajj 2013 to facilitate inter regional accommodation between the members of HOAP. The deadline in the private Hajj Group Organizers fixed earlier 20th July 2013 shall be extended to*

30th Ramazan, 1434 subject to concurrence by Saudi authorities.

- (d) The change in quota necessitated by the extraordinary circumstances shall be without prejudice to the original quota of Hajj group Organizers in 2013 before announcement of reduction or revision.*
- (e) The distribution of additional 3000 and the subsequent 12000 next year shall be on pro-rata basis amongst all Hajj Group Organizers.*
- (f) That HOAP would facilitate through their Hajj Group Organizers on other Provinces the Hajj Group Organizers of Karachi to fulfill their contractual liabilities for Hajj 2013, and assured to provide a quota upto 5000 with mutual arrangements.*

6. The learned counsel submitted that the commitments made by the MORA through the above MoU are of a binding nature, and fully attracts the principle of promissory estoppel, as the member of HOAP have acted on the faith of the said memo, who are therefore entitled to the continued provision of their quota in terms thereof. He submitted that the allocation made to the members of the HOAP as prescribed in terms of the above MOU came under scrutiny before this Court in Dossani Travels' case (*supra*) where this Court, after thoroughly examining and analyzing all the factual and legal aspects involved, set-aside the order dated 24.6.2013, whereby a learned Judge of the Lahore High Court directed MORA to allocate the quota retrieved from 19 HGOs, (on account of their poor performance during the preceding *Hajj*), through a bidding process. Mr. Zuberi also referred to the judgment in Muhammad Arif Idrees case (*supra*), in terms whereof this Court was pleased to set-aside an interim order passed by the Lahore High Court in a writ petition, restraining MORA from allocating 15000 pilgrims, out of the government scheme to the HGOs who operated during the *Hajj* 2013, (which allocation was

being made in pursuance of the above MoU), and was also pleased to set-aside a judgment of the said Court in WP No.1332/2014, whereby *Hajj* policy 2014, to the extent of the aforesaid grant of quota of 15000 pilgrims, was declared without lawful authority, with direction to the MORA to, in the first instance, utilize the said quota itself and in case it is unable to do so, the same be offered to all the tour operators/HGOs registered with the MORA.

7. Mr. Abid Zuberi further submitted that it was on the faith of the aforesaid MoU, and on the assurance of its adherence, that the members of HOAP were persuaded to accept the reduction in their quota of 50% to 40%, for the *Hajj* 2013 and that it was in pursuance of the above MoU and keeping in view the future prospects thereunder, that the members of HOAP made heavy investments to increase/maintain their capacity and resources to be able to make arrangements of the magnitude commensurate to their respective quotas in terms of the MoU, and also raised their respective paid up capital as required by MORA. Mr. Zuberi further submitted that the judgment of this Court in Dossani Travels' case (supra) has nowhere ordered the curtailment of the quota as granted/maintained and promised to the members of the HOAP in terms of the aforesaid MoU, and that the orders of the High Courts curtailing the said quota, or for dispensing the same to others through auction, or otherwise, have been set-aside by this Court at least thrice, thus endorsing the legality, propriety and currency of the aforesaid MoU. He submitted that through yet another judgment, rendered in the case of *Hajj Organizers Association of Pakistan Islamabad etc. v. Al-Qasim Hajj & Umrah Services (Pvt.) Ltd and another*, (in CP No.1180, 1265 and 1297 of 2016 etc.), on 03.5.2016, (the third judgment), this Court found the proposed reduction of the quota of the members of HOAP from 50% of the national quota, to

40% thereof to be violative of the aforesaid MoU, whereby the original quota in favour of the members of the HOAP has been protected. He further submitted that a vested right in the maintenance of the original quota has been created in favour of the members of HOAP, as relying upon the government representation contained in the MoU they have made substantial investments to improve their *Hajj* services and also increased their paid up capital as required by the government. Concluding his submissions the learned counsel submitted that it is absolutely misconceived to claim that the allocation of the entire quota for private sector to the members of the HOAP is in any way violative of any direction contained in the Dossani Travels case. On the contrary any reduction in the quota of the members of the HOAP and its allocation to the present petitioners, or to any one else would be contrary to and violative of the dictums of this Court in the afore-discussed cases and urged dismissal of the present petitions.

8. Mr. Sohail Mehmood, learned DAG submitted that the directions given by this Court in the afore-noted judgments have been complied with, to the extent possible. However, since after allocating quota to the Members of the HOAP no surplus quota is available to be allocated to the non-quota holder HGOs, but efforts are underway so that a possibility be created for granting quota to them also. Learned DAG while arguing the matter also referred to the concise statements filed on behalf of respondent No.1, relevant portions whereof have been noted in the later part of the judgment.

9. *Hajj* is a sacred and a mandatory religious obligation for every adult Muslim with the requisite physical and financial capacity. However, because of a limited capacity and financial resources only a limited number of pilgrims are allowed to visit *Makkah Mukarramah* and Madinah Munawarah and perform *munasik-e-Hajj* each year. In

the year 2011 the Kingdom of Saudi Arabia (**KSA**) allocated a *Hajj* quota of 179,210 pilgrims for Pakistan. This was in consonance with the ratio of 1000 pilgrims per one million Muslim inhabitants, as decided by the Organization of Islamic Conference in the meeting of its foreign ministers held in the year 1987.

10. The government of Pakistan in order to manage and organize the *Hajj* arrangements, and for providing various services like boarding, lodging, transportation and other logistic and health care for the pilgrims during the *Hajj*, evolved two separate schemes, one being the "**Government Hajj Scheme**" and the other the "**Private Hajj Scheme**". The former for those Pakistanis who may want to perform *Hajj* under government arrangements, and the later for those who may want to make their *Hajj* arrangements through a private concerns duly enrolled/registered for the purpose with MORA, as a *Hajj* Group Organizer (HGO), in accordance with service provider agreement between MORA and HGO, and in terms of a separate agreement between the intending Haji and HGO.

11. For a concern or an entity to be recognized as a HGO, it has to meet certain prerequisite and abide by certain terms and conditions prescribed by MORA, and it is only after scrutiny of its credentials, not only by a scrutiny committee, but also by a duly appointed chartered accountant, and as per certain prescribed criteria; that the said concern/entity is enrolled with MORA as a HGO. However, there are two sets of enrolled HGOs. The first set comprises of 743 HGOs, who have been allocated *Hajj* quota by MORA which is to be renewed every year (the quota holders), who as noted earlier are also the members of HOAP. The second set comprising 2033 HGOs, enrolled in the year 2012, through due process. Though the credential of all these HGOs were scrutinized through six Chartered Accountant firm in the year 2013, as per the

criteria prescribed, to evaluate them for allocation of *Hajj* quota, however, due to some controversy a re-assessment was ordered, in response 1500 HGOs came forward for re-assessment, and were thus re-assessed accordingly. The entities enrolled in the year 2012 as above, were however not allocated any quota for the years 2014, 2015 and 2016, and according to the MORA, though *Hajj* formulation committee deliberated upon the issue of allocation of *Hajj* quota to the said newly enrolled companies/HGOs but could not decide the matter on account of non-availability of *Hajj* quota, and more so for the reason that the committee recommended that the restored quota (perhaps referring to revival/restoration of 20% quota that was reduced by KSA in the year 2012), be allocated towards the government *Hajj* scheme. In their comments the MORA further submitted that the Secretary MORA has proposed constitution of a committee to review/scrutinize credentials of all HGOs including those who are newly enrolled, to pave the way for new quota regime before commencement of *Hajj* operation 2018.

12. It was because of the above deprivation that the newly enrolled HGOs approached the High Courts through various petitions, which culminated in this Court's afore-noted two judgments. In both the above judgments this court has dealt with peculiar circumstances arising out of a certain background, being, that in the year 2013 after the Government of Pakistan has accepted the application of the intending Hajis under the government *Hajj* scheme, and issued them facilitation letter, and had also made arrangements accordingly, which certainly were of a massive scale, KSA, on account of the ongoing expansion work of the *Khana Kaaba* reduced the overall quota for *Hujjaj* by 20%, which equally affected Pakistan, and thus the Government of Pakistan/MORA, in order to honour its commitment to the *Hujjaj*, and to utilize the arrangements

made accordingly, persuaded the HGOs, who on account of their past participation had been issued *Hajj* recognition letters for the *Hajj* 2013, and had also activated themselves accordingly, to agree to bear the said reduction in the quota, and promised to them that not only their share of 50% in the national quota shall be revived for *Hajj* 2014, but that the present shortfall shall also be then made good by allocation of an additional quota accordingly, and thus the aforesaid MoU was signed between the parties, further more it was in pursuance of the said MoU that the HGOs started booking *Hujjaj* for *Hajj* 2014, obtained their relevant documents including CNICs and passports, and accordingly arranged for their accommodation in *Makkah Mukarma* and *Madinah Munawara* by executing rent deeds with the Saudi citizens. It was at this late stage that various petitions were filed before the High Court and therefore two different Benches of this Court set-aside the orders of the High Court through their judgment containing certain directions for MORA, as discussed hereinabove.

13. As regards the judgment dated 03.5.2016 rendered in HOAP's case (*supra*), and relied upon by Mr. Abid Zuberi, it may be crucial to note that the learned Judges, while rendering the said judgment, have in their wisdom found it necessary to mention in the judgment itself, that the same "may not be cited as a precedent, which would debar the government from exercising" their "*exclusive powers to review/reframe the Hajj policy every year, keeping in view the latest developments and expediencies, which would be **subject to the guidelines given by this Court in Dossani's case (supra)***", and that "there would be no restriction on the government to alter or vary the *Hajj* policy (quota system)", and therefore the decision as contained in the said judgment, or any observation made therein, do not stand in the way of the government in framing a just, fair and

lawful *Hajj* policy, and the same certainly does not come in the way of this Court in passing an appropriate order in the instant matter. The said judgment has in fact sanctified and reinforced the judgment in Dossani Travels' case which required the government to frame future *Hajj* policy as directed therein and non-compliance, rather defiance whereof has provided a cause of action for the present petitions. *(emphasis supplied)*

14. As noted above, the present petitioners are duly enrolled as HGOs with the MORA. Such enrolment was effected after the petitioners applied for the same in response to an advertisement inviting applications for enrolment as HGO from MORA, and only after they fulfilled the requisite qualification and met the prescribed criteria. They also underwent a third party evaluation, and have been scrutinized by chartered accountants duly appointed by the MORA, for the purpose, at least twice. The petitioners, being free citizens of this country, who enjoy certain fundamental right, including their right to enter upon any lawful profession or occupation and to conduct any lawful trade or business, as enshrined by Article 18 of the Constitution, decided to enter into the business of *Hajj* Organizers/Operators, prepared themselves for conducting and carrying out the said business, and fulfilled the various terms and conditions as prescribed and required by MORA, and thus became legitimately entitled to operate as such, and to their share in the national *Hajj* quota in accordance with law, which is *sine quo non* to enable them to function/operate as HGOs. The above registration/enrolment created a legitimate expectancy in the petitioners, and others like them, of sharing the private scheme quota with the members of the HOAP, but the government/MORA, despite recognizing their right to share the private scheme quota, and despite even having categorically undertaken before this Court as noted

hereunder, has been avoiding/delaying to allocate their shares to the petitioners, and other non-quota holder HGO, on the pretext of "non-availability of surplus quota". It was in fact in pursuance to this Court's judgment dated 21.7.2014 in Muhammad Arif Idrees's case (*supra*), that MORA furnished before the Registrar of this Court, a compliance report dated 25.5.2015, with the following submissions:-

"It is stated that during the policy formulation committee's meeting held on 12.03.2015, the **representative of the commission showed his concerns over blockade of entry of new HGOs in the system.** However the chair informed that the Ministry of Religious Affairs has issued letters to the existing HGOs for five years i.e. till 2015 for allocation of *Hajj* business for their long terms planning as per clause 20(II) of *Hajj* Policy 2011. So the **Ministry will review the quota regime before *Hajj* Policy 2016 and new quota allocation policy be evolved accordingly.** The representative of CCP appreciated the Ministry's point of view regarding allocation of quota on merits and as per Policy guidelines of the concerned year." (*emphasis supplied*)

15. The non-quota holder HGOs are being denied quota merely on the pretext that no surplus quota is available with the government of Pakistan. The quota allocated by KSA to Pakistan is for the people of Pakistan and not for any particular group, segment or association. As noted above the quota for Pakistan is bifurcated by the government of Pakistan into two segments, one under the *Government Hajj Scheme* and the other for *Private Hajj Scheme*. There is absolutely no basis, rationale or justification to continue to grant quota only to those who have been granted such quota earlier also, as is presently being done, especially so when fresh entrants have been lured into joining the business/occupation of HGOs, through advertisement and have been enrolled as such through due process, as noted above. In terms of clause (c) of Article 18 of the Constitution,

it is only the Federal or Provincial Government or a corporation controlled by any such government, that can monopolize any trade, business, industry or service to the exclusion of other persons. The artificial, unjust and unfair classification created by MORA between quota holder HGO, and the non-quota holder HGO also offends Article 25 of the Constitution, which guarantees to all citizen equality before and equal protection of law, as the above discussed differentia has no rationale nexus to the avowed objective of the *Hajj* policy, of developing plans for efficient *Hajj* arrangements through provision of services and logistics like affordable lodging and boarding, transport and health care during the *Hajj*, it rather runs contrary thereto. Creating monopoly like in the present case is also violative of clause (c) of Article 18 of the Constitution and defeats the provisions of clause (b) of Article 18 of the Constitution which provides for regulation of trade, commerce and industry in the interest of free competition therein, and as rightly laid down in the case of **Arshad Mehmood v. Government of Punjab and others** (PLD 2005 SC 193), as long as the trade or business is lawful, the citizen who is eligible to conduct the same cannot be deprived from undertaking the same subject to law which regulate it, and as noted earlier, the petitioners have been duly enrolled and as such permitted to operate as HGO and no handicap or disqualification has been alleged against them. Even in its comments, MORA has submitted that there is no rule that the *Hajj* quota once allotted cannot be reduced and further that the *Hajj* quota is allocated to private sector on yearly basis. Furthermore by monopolizing the private *Hajj* arrangements in the hands of the members of HOAP, the government is also depriving the intending *Hujjaj* of a larger, or may be better choices of HGO, and is thus facilitating/encouraging their exploitation at the hands of the former.

16. In fact the issues of competition or monopoly and transparency are since long being raised during the deliberations and meetings of MORA. In fact the representative of the Competition Commission of Pakistan have specifically addressed these issues through their recommendations, as discussed herein earlier and has also pointed out that by allocating *Hajj* quota on the basis of *Hajj* operations performed by the HGO, MORA is giving undue advantage to the HGO who have performed larger number of *Hajj* operations, and is putting the new entrants and the HGO who have performed lesser number of *Hajj* operations at a competitive disadvantage. This court being cognizant of the above has through its judgment in the case of Dossani Travels (*supra*), directed MORA that in framing the *Hajj* policy, it should seek guidance from the aforesaid recommendations of the Competition Commission of Pakistan, and that the credential of each applicant/HGO should be examined and decision regarding allocation of quota be made on merits.

17. In the case of Muhammad Arif Idrees (*supra*), this Court ordered that directions as contained in the case of Dossani Travels (*supra*) must be strictly adhered to in formulating *Hajj* policy in future. Whereas in the case of HOAP v. Al.Qasim Hajj & Umra Services (Pvt.) Ltd. (*supra*), this Court, whilst holding that government has the exclusive power to review or reform *Hajj* policy, has bridled the same with the guidelines as contained in Dossani Travels (*supra*). However, the official respondents in clear violation and defiance of the above dicta of this Court and their clear undertaking as discussed above, are still avoiding to grant any quota to the non-quota holder HGO, including the petitioners, and have thus, *prima facie*, made themselves liable to be proceeded against accordingly. We would, however, taking a lenient view, grant an opportunity to them to review their decision and reframe their policy,

allocate quota to the petitioners and all other like them in the light of the above judgments.

18. We may however observe here that in doing as above and while following the recommendations of the Competition Commission of Pakistan, MORA and the policy formulating committee may, devise a formula/criteria so that where a HGO achieves a certain quantitative threshold, through a third party audit/evaluation, the number of times it has performed as HGO may not remain relevant, so that any HGO may not suffer on account of being a comparatively newer/junior HGO. The policy be reviewed/reframed in accordance with the foregoing and the compliance report be accordingly submitted within thirty days of the receipt of this order.

19. The titled cases are accordingly disposed of.

Foregoing are the reasons for our short order of the even date.

JUDGE

JUDGE

JUDGE

Islamabad the,
21st April 2017

APPROVED FOR REPORTING
(Aamir Sh.)