

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.875/2018

Hajj Organizers Association of Pakistan & 8 others

Versus

Federation of Pakistan
through Secretary, Ministry of Religious Affairs & Interfaith Harmony
& 2 others

Petitioners by : M/s Abid S. Zuberi, Mr Ayan Mustafa Memon, Mr Saif Sohail Younas, Syed Javed Akbar Shah, Mr Asghar Siddique, Malik Ghulam Sabir, Mr Faiz Rasool, Raja Muqsit Nawaz, Mr Mohammad Yasir, Mr Salman Akram Raja, Mr. Faraaz Ansar, Advocate, Mr. M. Nisar, Qazi Sheryar Iqbal, Mr Hasan Rashid Qamar, Malik Waqar Mehmood Awan, Mr Niaz Ullah Khan Niazi, Saadia Noreen Malik, Mr. M. Ikram Chaudhry, Mr. Mohammad Akram Gondal, Ch. Zubair Mehmood Gujjar, Mr. Hamood ur Rehman Awan, Qari Abdul Rasheed, Sardar Liaqat Hussain, Mr Zeeshan Ali Khursheed, Mrs. Surriya Maryam Khaleeq, Mr Shahzad Ali Rana and Riaz Hussain Azam Bopara, Dr. M. Aslam Khan and Ms Yasmin Haider, Advocates/learned counsels for the petitioner in their respective petitions.

Respondents by : Mr. Afnan Karim Kundi, Additional Attorney General, Mr. Arshad Kiayani, Deputy Attorney General, Mr Shabbir Abbasi, Assistant Attorney General. Syed Farhan Shah, Advocate. Mr. Mohammad Aftab, Addl. Secretary, M/o Religious Affairs.

Date of Hearing : 15-03-2018

ATHAR MINALLAH, J.- Through this consolidated judgment we propose to decide the petitions/appeals listed in Annexure-A attached hereto. These petitions/appeals were pending

before the respective High Courts and transferred to this Court pursuant to the order, dated 26-02-2017, passed by the august Supreme Court in Constitutional Petition No.03/2018 titled '*Federation of Pakistan through Ministry of Religious Affairs and others v. Majmua-tun-noor Hajj and Umrah Services (Pvt.) Ltd., through its Member Mufti Abdul Majid etc*'. These matters were placed before us on 13-03-2018.

2. The controversy in all these petitions/appeals stems from the arrangements which are made for facilitating Pakistani citizens to perform Hajj, the annual pilgrimage to Mekkah that is mandatory for such followers of Islam who fulfill the prescribed conditions. Each year the Government of Pakistan issues a policy regarding matters relating to the performance of Hajj. Every year the Kingdom of Saudi Arabia allocates a quota in respect of each country. The quota which is allocated to Pakistan is regulated through a policy formulated by the Federal Government, since the Majlis-e-Shura [Parliament] has not enacted any legislation in this regard. Every year superior courts throughout the country are inundated with litigation relating to disputes emanating from decisions taken by the Federal Government. Prior to the year 2005 Hajj used to be organized exclusively by the Federal Government through a sponsorship scheme without the involvement of the private sector. However, after 2005 the concept of public/private partnership was introduced for the first time for organizing Hajj arrangements and facilitating citizens of Pakistan in this regard. Initially the quota allocated by the Kingdom of Saudi

Arabia in favour of Pakistan was equally distributed i.e. 50% was earmarked to be utilized by the Federal Government while the remaining 50% was distributed amongst the registered Hajj Group Organizers (*hereinafter referred to as the 'HGOs'*). The mismanagement during the performance of Hajj in the year 2010 lead to *suo motu* proceedings before the august Supreme Court which culminated in the judgment titled '*Corruption in Hajj Arrangements in 2010*' [PLD 2011 SC 963]. The dispute, however, persisted in the following years. The controversy regarding the distribution of quota *inter se* the Government and the HGOs or amongst members of the latter was settled when a mechanism and guidelines were eloquently articulated by the apex Court in the judgment titled '*Dossani Travels Pvt. Ltd and others v. Messrs Travels Shop (Pvt) Ltd and others*' [PLD 2014 SC 1]. The august Supreme Court has observed that since Hajj operation is a time bound exercise for which arrangements have to be made within a limited time, therefore it was imperative that the Hajj policy be framed well in time in a manner which is fair, just, inspires confidence and evokes minimum criticism. The august Supreme Court, in the said judgment, has laid down guidelines regarding the formulation of the Hajj policy and it was directed as follows.-

- "(i) *The Hajj Policy should be framed, announced and placed on the website of MORA preferably within six weeks of the arrival of last flight of Hajis from KSA under intimation to the Registrar of this Court. This of course would be subject to any policy decision of the Saudi*

Government regarding allocation of Hajj quota for Pakistan;

- (ii) The Hajj Policy should be framed by a Committee headed by the Secretary, Ministry of Religious Affairs (MORA); a nominee of the Competition Commission of Pakistan; a nominee of the Secretary, Ministry of Foreign Affairs, Government of Pakistan; a nominee of the Secretary Ministry of Law and Justice Division and Parliamentary Affairs; and a nominee of the Attorney General for Pakistan;*
- (iii) The credential of each application/HGO should be examined and decision taken on merit;*
- (iv) While framing the Hajj Policy, the MORA should be guided, inter alia, by the recommendations made by the Competition Commission of Pakistan to which reference has been made in Para 8 above; and*
- (v) The MORA should constantly monitor the working and performance of each HGO during Hajj and this assessment should form basis for further improvements in Hajj Policy for next year's Hajj."*

3. The above guidelines were reaffirmed by the august Supreme Court in Civil Petition Nos.1270, 1308, 1309 of 2014 titled '*The Federation of Pakistan through Ministry of Religious Affairs, Islamabad and others v. Muhammad Arif Idrees and others*' by observing and holding vide order, dated 21-07-2014, as follows.-

*"Every year issues arise out of the allocation of pilgrim quota which are brought before the Court. This Court in the case of **Dossani Travels Pvt. Ltd. and others** (ibid) laid down the principles guiding interference by the Courts in the framing and implementation of Hajj Policies. While emphasizing the principle of trichotomy of power enshrined in the Constitution it was held that the High Court under Article 199 should generally refrain from interfering in the policy making domain of the Executive. The Court held that the allocation of quota for making arrangements for the pilgrims fell within the policy making domain of MORA and in the absence of any illegality or establishment of mala fide it was not open for the High Court to annul the policy framed by the competent authority."*

It was also explicitly held as follows.-

*"Before parting with this judgment we would like to reiterate that though the directions in **Dossani Travels Pvt. Ltd. and others case** (ibid) were expressly made for the Hajj Policy of 2014 the same must be adhered to and strictly followed in formulating Hajj Policies in future."*

4. The august Supreme Court, vide judgment dated 03-05-2016, rendered in Civil Petitions No.1180, 1265 & 1297/2016 titled '*Hajj Organizers Association of Pakistan and others v. Federation of*

Pakistan through Secretary M/o Religious Affairs & Interfaith Harmony, Islamabad and another' considered the controversy relating to the Hajj Policy 2016 in which the Federal Government had reduced the quota of the private sector from 50% to 40%. It was the case of the Federal Government that the arrangements for Hajj should be conducted exclusively through the Government scheme by excluding the involvement of private sector. It was also argued that the status of the Committee referred to in the Dossani case, *supra*, was for the purpose of providing suggestions and that it could not be delegated with the power to frame the Hajj Policy which is the exclusive domain of the Federal Government. In the aforementioned case the Government quota had increased its share on the ground that the maximum number of pilgrims would be able to perform Hajj at a considerably lower cost as compared to the price charged by the HGOs. The august Supreme Court, while acknowledging that it was not within the domain of the Court to interfere in policy making, nonetheless emphasized and observed that it was imperative that such policy could be subject to judicial scrutiny so as to assess whether it suffers from legal infirmity and whether its formulation was in an arbitrary and whimsical manner. The august Supreme Court has explicitly observed and held as follows.-

"The Dossani case (supra) lays down essential directions which are to be adopted and complied with in the formulation of the annual Hajj Policy by the government."

It was further held as under.-

"In the present lis, this Court must regretfully observe that it does not find the decision for reduction in private scheme Hajj quota by the MoRA to be justified in law and it is pertinent to observe in this regard that the procedure adopted in the formulation of this policy decision appears shrouded in doubt. The record reveals that the manner in which this decision has been taken and such policy formulated does not comply with the directions given by this Court in Dossani case (supra) regarding the process which is to be given effect in the formulation of the annual Hajj Policy. The formulation of the Hajj Policy by the Special Committee as directed by this Court and mandated in law is based upon the rationale of promoting transparency and ensuring participation of all interested parties/stakeholders in the Hajj Service Industry with the ultimate objective of the formulation of a more democratic Hajj Policy."

It was also observed as follows.-

"This highlights the MoRA's deliberate deprivation of CCP from their right to negotiate the terms of the Hajj Policy 2016 which consequently also defeats the very purpose for which the Special Committee was directed by this Court. Suppressing CCP from voicing their concerns regarding the reduction in private scheme Hajj quota and leaving such contentions unaddressed is indicative of the MoRA's failure in formulating the 2016 Hajj Policy as per the directions laid down in the Dossani case (supra) which

renders the same as bad in law. In Para 51 of the said case, this Court has made the following observations:

"...It is therefore imperative that the Hajj Policy be framed well in time in such a manner which is fair, just, inspires confidence and evokes minimum criticism..."

It was also observed as follows.-

"This is reflective of the arbitrary manner in which the decision to reduce the private Hajj schemes quota has been undertaken, that is without providing any sound and cogent reasons, rationale or justification of the decision and without substantial consultation of the Special Committee and the CCP in the formulation of the same. In direction (iv) under Para 51 of the Dossani case (supra), emphasis has been implied upon the role of the CCP as a stakeholder of the Hajj Service Provider Industry and its recommendations regarding annual Hajj Policies."

The august Supreme Court yet again reiterated as follows.-

"Before parting with this judgment, we may emphasis here that the Government has the exclusive power to review/reframe the Hajj Policy every year keeping in view the latest developments and expediencies which would be subject to guidelines given by this Court in Dossani case (supra) and this case may not be cited as precedent which would debar the Government from exercising such powers as such there would be no restriction on the Government to alter or vary the Hajj Policy (quota system)."

5. A Bench consisting of five Hon'ble Judges of the august Supreme Court further reiterated and reaffirmed the guidelines laid down by the apex Court in the Dossani case (supra) vide order, dated 06-06-2017, passed in the Intra Court Appeals No.10 to 17 of 2017 titled '*Hajj Organizers Association of Pakistan v. M/s Kalf Intl (Pvt Ltd * others*' and the relevant portion is as follows.-

"Thus, there is consensus that in allocation of quota of Hajj to HGO's the guidelines as laid down in Dossani's case has to be followed in letter and spirit and there appears to be no room for deviating from it. Judgments in the case of Muhammad Arif Idrees (supra) so also in the case of HOAP (supra) have followed and approved guidelines given in Dossani's case."

6. The controversy in the context of the Hajj policy yet again came before the august Supreme Court in the case titled '*Muhammad Arif Idrees and others v. Sohail Aamir and others*' [2017 SCMR 1379] wherein it has been held and observed as follows.-

"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 case of HOAP v. Al. Qasim Hajj and 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 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."

7. It is obvious from the above enunciated principles and law that generally Courts refrain from interfering in the policy making domain of the executive. The allocation of quota also falls within the ambit of the policy making authority of the executive. Interference by a High Court could only be justified if the policy suffers from illegality or it is based on malafide which is established. The object of the directions in the Dossani case, *supra*, is to promote transparency and to ensure meaningful and purposive consultation with all the stakeholders. The apex Court has declared its object as the formulation of a 'democratic Hajj Policy'. The sanctity and role of the formulations made after deliberations by the committee constituted and referred to in paragraph 51(ii) has been consistently emphasized by the august Supreme Court in the above mentioned judgments. There is no cavil to the proposition that the ultimate authority to approve a policy of the Federal Government is the Cabinet as has been held by the august Supreme Court in the case of *'Messrs Mustafa Impex, Karachi and others v The Government of Pakistan through*

Secretary Finance and others' [PLD 2016 SC 808]. However, by now it is settled law that meaningful and purposive consultation with the Committee identified in paragraph 51(ii) of the Dossani case, supra, is mandatory. A deviation from the formulations finalized by the said Committee, in the absence of meaningful and purposive consultation therewith, would not be sustainable. Moreover, a deviation besides meaningful and purposive consultation has to be based on cogent reasons and rational justifications. It has been consistently held that the directions in the Dossani case, supra, must be strictly adhered to and followed while formulating the Hajj policy every year. In case the Cabinet has reservations regarding the formulations of the Committee identified in paragraph 51(ii) then deviation there from without meaningful and purposive consultation, and that too without rational justification or sound and cogent reason, would not be sustainable. It is emphasized that even obiter observations of the august Supreme Court are binding.

8. We would examine the Hajj Policy and Plan 2018 impugned before us in the light of the above principles and law later, but it would be useful to record some relevant facts. The Committee referred to by the august Supreme Court in paragraph 51(ii) of the judgment rendered in the Dossani case, supra, held three sessions to deliberate the matter. The meetings were held on 07-11-2017, 22-11-2017 and 04-12-2017. After extensive deliberations the Committee concluded that the quota between the Federal Government and the private sector for Hajj Policy and Plan 2018 be distributed in the ratio

of 60:40 i.e. 60% for the Federal Government scheme and the remaining 40% to be distributed amongst the HGOs. Moreover, it was further unanimously decided that the applicants over the age of eighty years would be exempt from balloting if their number is less than 5,000. It was also decided that those applicants who remained unsuccessful for the last three years shall also be exempt from balloting to the extent of accommodating 5,000 applicants falling in this category. The Ministry of Religious Affairs and Interfaith Harmony forwarded the formulations of the Committee for approval to the Cabinet. The Federal Cabinet, in its meeting held on 26-12-2017, considered the summary and accorded its approval. The relevant decision for the purposes of adjudication of the matter at hand are reproduced as follows.-

"(i) Out of Hajj quota of Pakistan i.e. 179,210, the share of the Government scheme will be 2/3rd whereas the Private sector shall be allocated 1/3rd. In case Hajj quota of Pakistan is increased, this may also be afforded to the Private sector."

(ii) ...

(iii) ...

(iv) ...

(v) ...

(vi) The applicants over 80 years of age along with one physically fit attendant will be exempted from balloting, provided their number is less than 10,000. In case their number is more than 10,000, selection will be made on the basis of age wise seniority.

(vii) The applicants who remained unsuccessful continuously for the last three years will be selected through separate balloting and their number will be restricted to 10,000 only. The leftover applicants will also be included in the general balloting."

9. It is obvious from the above decision taken by the Federal Cabinet that the formulations made by the Committee constituted pursuant to the Dossani case, supra, rendered by the august Supreme Court, were materially deviated from by increasing the Government quota and reducing the allocation in respect of the HGOs. The number of applicants falling under the two categories which were to be exempt from balloting were also increased. After the above approval granted by the Federal Cabinet, the Ministry of Religious Affairs and Interfaith Harmony published the Hajj Policy and Plan 2018 which is attached with the instant petition at pages 35 to 67. The reason stated in the policy for reducing the quota allocated to the private sector as against the formulations made by the Committee are as follows.-

"Due to the lowest package and on the persistent demand of the general public to perform Hajj under Government Hajj Scheme where the number of applicants has increased from 86,919(2013) to 338,696(2017) and in the best interest of general public, out of the total Hajj quota of 179,210, 2/3rd (119,473) would be allocated to Government Hajj Scheme which provides an economical package with reasonable facilities for the pilgrims while the rest 1/3rd (59,737) would be allocated to Private Scheme

i.e. Hajj Group Organizers (HGOs). In case Hajj quota of Pakistan is increased, this may also be offered to the Private sector."

10. The quota allocation for Pakistan by the Kingdom of Saudi Arabia for Hajj 2018 is 179,210. According to the written report filed on behalf of the Federal Government, the latter has received 374,857 applications. Pursuant to the decision taken by the Cabinet in its meeting held on 28-02-2018, balloting has already been conducted to the extent of 50% of the total Hajj quota and thus 87,813 Pakistani citizens who had applied for the performance of Hajj against the Government quota have been declared as successful. The number of applications received from citizens who are above the age of eighty years, along with their respective helpers, and those who were unsuccessful during the past three years or more are 4,928 and 12,212 respectively. Against the quota reserved for the category of hardship, including labour, 2,389 applications have been received. In case the ratio of allocation of the quota formulated by the Committee is maintained and the decision of the Cabinet in respect of applicants who are more than eighty years old and those who could not succeed in the last three years or more is implemented, then according to the report submitted on behalf of the Federal Government a balance of 3,006 is left to be distributed by the Federal Government amongst the applicants. In a nut shell, no person will be adversely affected at this stage if the formulations of the Committee regarding the determination of the quota is to be maintained.

11. The petitions/appeals at hand raise grievances which may be divided into three broad categories. The first category relates to the already registered HGOs who have challenged the reduction of its quota from 40% to 33%. In the second category the grievances have been raised by the New Hajj Group Organizers (*hereinafter referred to as 'N-HGOs'*). The latter are aggrieved on two grounds, firstly, delay in the completion of the reassessment process and, secondly, unreasonable conditions imposed as part of the eligibility criteria. The last category covers those petitioners/appellants who are seeking fresh enrollment as an HGO. In a nutshell, the latter category is aggrieved on account of the lack of transparency and delay in the processing of their cases. In some of the petitions the petitioners have alleged violation of the law laid down by the apex Court and orders passed by the High Courts and, therefore, they are seeking initiation of proceedings under the Contempt of Court Ordinance, 2003.

12. The learned counsels who have appeared for the petitioners/appellants falling under the first category have contended that; the Hajj Policy and Plan 2018 is illegal, *malafide*, *coram non judice* and without jurisdiction as neither the Government nor the Cabinet was vested with the jurisdiction to alter or change the decision of the Special Committee; the guidelines laid down by the august Supreme Court in the Dossani case were upheld by a Larger Bench and, therefore, the same are binding; the Special Committee had held three meetings and, pursuant thereto, a unanimous formulation was made by allocating a quota of 40% to the private

sector; the Committee had also agreed upon a maximum quota of 5,000 for elderly citizens over the age of 80 years and the same number for those who were not successful during the past three years or more; the deviation from the formulations made by the Special Committee cannot be sustained and is liable to be set aside; the Special Committee had taken a conclusive decision and the same had become a past and closed transaction; the HGOs have carried out operations in the past to the utmost satisfaction of their respective Hujjaj and had fulfilled all the conditions which were imposed by the Federal Government from time to time; a vested right has accrued in favour of the HGOs; the reduction of quota is a violation of the fundamental rights guaranteed under Articles 9 and 18(c) of the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the '**Constitution**'*); The Hajj Policy and Plan 2018 has been issued without waiting for the execution of contracts / agreements with the Kingdom of Saudi Arabia; the Hajj Policy and Plan 2018 fails to address the issues of distribution of quota between the private sector; the policy formulated by the Special Committee has been unlawfully and arbitrarily disregarded and the same is in violation of the judgments of the august Supreme Court.

13. The learned counsels who have appeared for the N-HGOs have argued that; the Committee constituted for the reassessment of the N-HGOs is delaying its proceedings which would inevitably deprive the petitioners/applicants from being considered for allocation of quota under the Hajj Policy and Plan 2018; some of the conditions are

arbitrary and unworkable; the conditions such as having past experience of Umrah or Hajj does not meet the threshold of reasonableness; a special dispensation was required to have been offered in the case of the applicants who belong to the Federally Administered Tribal Areas (*hereinafter referred to as the 'FATA'*); the learned counsels have urged that the Federal Government be directed to expedite the process of scrutiny and that unreasonable restrictions such membership of IATA (International Air Transport Association) be held as illegal.

14. Mr Afnan Karim Kundi, the learned Additional Attorney General, Mr Sohail Mehmood and Mr Arshad Kiyani, Deputy Attorney Generals and Mr Shabbir Abbasi, Assistant Attorney General appeared alongwith Mr Muhammad Aftab, Additional Secretary, Ministry of Religious Affairs and Interfaith Harmony and have argued on behalf of the Federation. They have contended that; the Hajj Policy and Plan 2018 was framed by the Special Committee, constituted in the light of the judgment of the august Supreme Court; the role of the Special Committee is to the extent of making recommendations which are not binding on the Federal Cabinet; the mandate of the Special Committee was to frame the policy whereas the Federal Cabinet is the appropriate forum to accord approval; the allocation of the fixed quota to the private sector is not a vested right nor was such a direction given by the august Supreme Court in the judgment rendered in the Dossani case; under Article 18(c) of the Constitution, the Federal Government is empowered to utilize the entire Hajj quota without

giving any share to the private sector; the Federal Government has progressively increased the quota in the Government scheme; the Ministry of Religious Affairs and Interfaith Harmony is not vested with power to reduce the quota without the approval of the Cabinet; the decision of the Federal Cabinet in its meeting held on 26-12-2017 is binding; no right has accrued in favour of the petitioners/appellants; the annual Hajj Agreement has been concluded between the Government of Pakistan and the Kingdom of Saudi Arabia on 02-02-2018; the Federal Cabinet has directed the Federal Government to seek permission from the Court for the allocation of the entire Hajj quota to be utilized under the Government scheme; the increase of quota under the Government scheme is aimed at benefiting the maximum number of Pakistani citizens; a large number of applications have been received this year under the Government Hajj scheme; it is the obligation of the Federal Government to provide attractive Hajj packages to every citizen; those who belong to the lower income groups will benefit under the Government Hajj scheme; the selection is made in a transparent manner i.e. through balloting; the demand to perform Hajj under the Government scheme is enormous; the Provincial Assemblies of the Provinces have passed Resolutions urging that the entire Hajj quota allocated to Pakistan be utilized under the Government scheme; a large number of applicants were not successful.

15. The learned counsels for the petitioners and the law officers have been heard and the record perused with their able assistance.

16. There is no cavil to the proposition that the performance of Hajj is a sacred and mandatory religious obligation for those followers of the faith of Islam who meet the requisite physical and financial conditions. A person who is *Sahib-e-Isteta'at* is saddled with the obligation to perform this religious duty at least once in his or her lifetime. The arrangements which are made by the Government of Pakistan for the performance of Hajj in respect of its citizens is also an onerous duty. It has been observed and held by the august Supreme Court that the HGOs are indeed not driven by charitable considerations and that their interest is based on financial returns. Neither the Federal Government nor the registered and prospective HGOs are the real stake holders. The actual and real stake holders are those Pakistani citizens who become *Sahib-e-Isteta'at* i.e. fulfill the physical and financial conditions and intend to perform Hajj. It is not denied that under the Government Hajj scheme every citizen, regardless of his or her financial status, is at liberty to apply. The scheme is not restricted nor has a percentage been earmarked for the low income groups, though the question raised by the learned counsels for the petitioners/appellants that subsidizing the Government Hajj scheme goes against the tenets of Islam may be worthy of consideration. Likewise, there is also force in the argument that citizens must have a choice to either apply under the Government

scheme or make arrangements through the HGOs, since a large number of *Sahib-e-Isteta'at* do not find satisfaction with the former. Both these questions, though relevant, are not required to be answered in these petitions because there are other valid grounds for adjudication thereof. The mismanagement in the past was acknowledged by no less than the august Supreme Court in the judgment rendered in the Hajj Corruption case, *supra*. Due to wide spread complaints of mismanagement every year and the absence of legislation in this regard, the august Supreme Court had to lay down guidelines in the *Dossani* case, *supra*. Subsequently the said guidelines have been reaffirmed by the apex Court so much so that a larger Bench consisting of five Hon'ble Judges, while rendering the judgment in the case of *Hajj Organizers Association of Pakistan and others v. M/s Kalf Intl (Pvt) Ltd*, *supra*, has unequivocally observed and held that the guidelines laid down in the *Dossani* case, *supra*, ought to be observed and followed in letter and spirit. The august Supreme Court, in the case titled *HOAP v. Al. Qasim Hajj and Umra Services (Pvt.) Ltd.*, *supra*, in the context of the Committee referred to in the *Dossani* case, *supra*, has observed that reducing the quota allocated by the Committee in favour of the private sector may be justified if it is based on cogent reasons and rational justifications in addition to substantial consultation with the Committee. The survey of the precedent law and the observations and rulings of the apex Court have been highlighted above.

17. We have examined with utmost care the minutes of the meeting of the Cabinet, held on 26-12-2017. We have also cautiously perused the record. The Committee, constituted pursuant to paragraph 51(ii) of the judgment of the apex Court in the *Dossani* case, supra, had unanimously formulated the allocation of 60% quota in favour of the Federal Government and the remaining 40% to be utilized by the private sector. We are afraid that we have not been able to persuade ourselves that the decision of the Cabinet to deviate from and alter the formulations of the Committee are sustainable. Before taking a decision there was admittedly no consultation with the Committee let alone it being meaningful and purposive. The only basis for the increase of the quota under the Government scheme was on the ground that the latter offers packages which are at lower rates in juxtaposition to the prices charged by the private sector. This argument was raised on behalf of the Federation before the august Supreme Court in the case of *HOAP v. Al. Qasim Hajj and Umra Services (Pvt.) Ltd.* (supra). However, the august Supreme Court had emphasized the importance of the status of the Committee referred to in paragraph 51(ii) of the judgment in the *Dossani* case, supra, in the context of the determination of quota amongst various contenders. Even otherwise the ground for the increase i.e. under the Government scheme lower rates are charged and thus maximum citizens could be benefited is not convincing nor does it satisfy the test of reasonableness. It is quite possible that most of the applicants selected through balloting may fall under higher income groups. Moreover, all the applicants in any case cannot be accommodated.

This ground, therefore, is not based on rational or sound and cogent reasons. Nonetheless, non compliance with the directions of the august Supreme Court in the Dossani case, supra, which ought to have been adhered to and followed in letter and spirit is fatal in the cases at hand. We therefore hold that the reduction of the quota formulated by the Committee, constituted pursuant to the direction of the august Supreme Court in the Dossani case, supra, is not sustainable and thus declared to be illegal.

18. The N-HGOs, according to the learned Law Officers, are being reassessed by a Committee which has been specially constituted for this purpose. The arrangements of Hajj are time bound and, therefore, the petitioners/appellants who fall under the category of N-HGOs are justified in urging that their cases be processed at the earliest so that they may also benefit under the Hajj Policy and Plan 2018.

19. *Mr Muhammad Aftab*, Additional Secretary, Ministry of Religious Affairs and Interfaith Harmony was asked as to how much more time was required by the Committee to complete the proceedings. He stated that the Committee had completed most of its work and that it was expected to conclude the process in the next few weeks. It would, therefore, be appropriate to direct that the Committee constituted for reassessment of the cases of N-HGOs to conclude the proceedings not later than 30-03-2018. After the proceedings have been completed, the Ministry of Religious Affairs and

Interfaith Harmony shall place the findings of the Committee relating to N-HGOs on its Website not later than 02-04-2018. The N-HGOs who may have a grievance shall submit their respective petitions on or before 17-04-2018. The Secretary, Ministry of Religious Affairs and Interfaith Harmony shall nominate authorized officers for deciding the petitions through speaking orders after affording an opportunity of hearing. This Court expects that the entire process shall be completed expeditiously and within the timeline specified in our short order. We have not been able to find any legal infirmity regarding the conditions and criteria relating to eligibility. As noted above, the rights and interests of the *Sahib-e-Isteta'at* who intend to perform Hajj are paramount and would take precedence over the interests of the HGOs. We are satisfied that the requirements of being a member of IATA or having past experience as a tour operator and Umrah are by no stretch of the imagination unreasonable let alone being illegal. The fulfillment of these conditions is to ensure that the real stakeholders, *Sahib-e-Isteta'at* citizens of Pakistan, are offered the most reliable services.

20. The learned Additional Secretary of the Ministry of Religious Affairs and Interfaith Harmony was asked whether any policy and criteria has been prescribed in the case of those who are interested in fresh enrollment or registration as HGOs. He has answered in the negative. There is no urgency as far as this category of petitioners/appellants is concerned. In any case, even if they get enrolled they would not be eligible to be considered for allocation of

quota under the Hajj Policy and Plan 2018. However, they have rightly agitated the lack of transparency and timely processing of their case in the light of prescribed eligibility criteria. It would, therefore, be just and proper to direct the Federal Government through the Ministry of Religious Affairs and Interfaith Harmony to formulate a policy and criteria in consultation with the Committee constituted by the august Supreme Court, referred to in paragraph 51(ii) of the judgment rendered in the *Dossani* case. The Committee shall formulate criteria for the enrollment/registration of new applicants as HGOs. This Court expects that the Committee shall conclude its proceedings and forward the prescribed criteria to the Ministry of Religious Affairs and Interfaith Harmony within three months. The Ministry of Religious Affairs and Interfaith Harmony shall, thereafter, through publication in the daily newspapers, invite applications and the same shall be processed according to the prescribed criteria, preferably within three months from the last date fixed for the submission of the applications.

21. The above are the reasons for our short order of even date, which is reproduced as follows.-

"For reasons to be recorded later, all these petitions/appeals are decided and accordingly disposed-of in the following terms.-

- i. A Bench consisting of five Hon'ble Judges of the august Supreme Court vide order, dated*

06-06-2017, passed in Intra Court Appeals No.10/2017 titled 'Hajj Organizers Association of Pakistan, etc. v. M/s Kaif International (Pvt) Ltd & others' has unambiguously held that the guidelines laid down in the judgment of 'Dossani Travels (Pvt.) Ltd. and others Vs. Messrs Travels Shop (Pvt.) Ltd. and others' and reported as PLD 2014 SC 01, have to be followed in letter and spirit. The said guidelines are, therefore, binding.

- ii. The Committee constituted by the august Supreme Court vide paragraph 51(ii) of the judgment rendered in the Dossani case (supra) had unanimously formulated the quota percentage i.e. 60% for the Government and 40% for the private Hajj Group Organizers for the Hajj Policy and Plan – 2018.
- iii. The above formulated quota percentage was altered by the Federal Cabinet to 67:33 and perusal of the minutes of the meeting shows that the decision is not supported by justification/reasons sustainable in law.
- iv. The quota inter se the Government and private Hajj Group Organizers shall be maintained for Hajj Policy and Plan 2018 which was unanimously formulated by the Committee constituted by the august Supreme Court vide paragraph 51(ii) of the judgment rendered in Dossani case supra.
- v. In case of the New Hajj Organizers, the Committee constituted for their re-assessment is directed to conclude the proceedings before

30-03-2018. The Ministry of Religious Affairs shall then make the findings of the Committee public by putting it on the Website not later than 02-04-2018. Any New Hajj Group Organizer, if aggrieved, shall submit grievance petition on or before 17-04-2018. The Secretary, Ministry of Religious Affairs shall constitute a Committee for the purposes of deciding the grievance petitions. This Court expects that the Committee after affording an opportunity of hearing shall decide the grievance petitions, if any, through speaking orders, preferably before 30-04-2018.

vi. In case of those who are seeking fresh enrollment, the Committee referred to in paragraph 51(ii) of the Dossani case (supra) shall formulate guidelines and eligibility criteria for processing their applications. This Court expects that the proceedings shall be completed within three months. The Ministry shall then invite applications from eligible persons and complete the scrutiny process, preferably within three months from the last date for submission of applications. It is also expected that the Ministry of Religious Affairs shall provide a forum for resolving disputes and grievances which may arise from processing of the applications.

vii. The observations and directions in paragraphs (i) to (v) are confined to Hajj Policy and Plan 2018. Moreover, the quota of 40% earmarked by the Committee for the private Hajj Group Organizers shall be distributed among the old

and new categories in a transparent manner. It is expected that the Ministry of Religious Affairs will resolve disputes and grievances relating to allocation of quota inter se the private Hajj Group Organizers by affording the aggrieved persons an opportunity of hearing and through speaking orders."

(ATHAR MINALLAH)
JUDGE
(MIANGUL HASSAN AURANGZEB)
JUDGE

Approved for reporting.

Lugman Khan/*

ANNEXURE - A

S.No.	Case No.	Title.
<i>Writ Petitions</i>		
1.	2363/2013	Al-Sajideen Travels and Tours (Pvt) Ltd v. Federation of Pakistan, etc.
2.	3188/2013	M/s Razaq Travels & Tours (Pvt) Ltd, etc. v. Federation of Pakistan.
3.	3678/2013	Fayyaz Riaz Travel and Tours (Pvt.) Ltd. v. Federation of Pakistan, etc.
4.	2010/2014	Karim Bukhsh Shoaib v Government of Pakistan Ministry of Religious Affairs
5.	944/2016	M/s Shirazi Travels (Pvt) Ltd, etc v. Federation of Pakistan, etc.
6.	845/2018	Abbotabad Travel & Tours Pvt. Ltd. v. Federation of Pakistan, etc.
7.	4309/2017	Alisha Travel and Tours (Pvt) Ltd etc v. Federation of Pakistan, etc.
8.	425/2018	M/s Build new Century Travel & Tours (Pvt) Limited etc v. Federation of Pakistan, etc.
9.	2872/2017	Ghazva Travel & Tours (Pvt) Ltd etc v. Federation of Pakistan, etc.
10.	1040/2018	Al-Nasr Travels (Pvt) Ltd, etc. v. Federation of Pakistan, etc.
11.	1041/2018	M/s National Air Express Travel Services (Pvt) Ltd v. The Federation of Pakistan, etc
12.	1006/2018	M/s Kawrwan-e-Fahhad Hajj and Umrah Services, etc v Federal Minister for Religious Affairs, etc.
13.	984/2018	Karwan-e-Owais Hajj Travel & Tours (Pvt) Ltd v Federation of Pakistan through Secretary Ministry of Religious Affairs, etc
14.	1039/2018	M/s Travel Channel International (Pvt) Ltd etc v. The Federation of Pakistan, etc.
15.	1777/2017	Maaz Hajj (Pvt) Ltd etc v. Federation of Pakistan, etc.
16.	2696/2017	M/s Arsala Hajj Services (Pvt) Ltd etc v. Federation of Pakistan, etc.
17.	2589/2017	M/s Air Madina Pvt. Ltd., etc v. Federation of Pakistan, etc.
18.	893/2018	Aroma International (Pvt) Ltd etc v. Federation of Pakistan, etc.
19.	631/2018	E ZEE Travels (Pvt) Ltd v. Federation of Pakistan
20.	728/2018	Shad Bibi Trave & Tours v. Ministry of Religious Affairs, etc.
21.	2615/2017	M/s Karwan-e-Alfalak (Pvt) Ltd etc v. Federation of Pakistan, etc.

22.	2962/2017	Islamabad Travel Consultants Pvt Ltd. etc v. The Federation of Pakistan, etc.
23.	3031/2010	Insaaf Welfare Trust through its Chairman v. Federation of Pakistan
24.	2038/2013	Malik Abdul Basit Awan etc v. Secretary, Ministry of Religious Affairs
25.	2361/2013	M/sAl-Mubarak Tours and travels v. The Federation of Pakistan, etc.
26.	1531/2017	Karwan-e-Mehdi (Pvt) Ltd etc. v. Federation of Pakistan, etc.
27.	924/2018	Koibagh Hajj & Umrah Services (Pvt) Ltd v. Federation of Pakistan, etc.
28.	925/2018	M/s Jamal e Madina Hajj & Umrah Services (Pvt) Ltd etc v. Federation of Pakistan, etc.
Intra Court Appeal		
29.	458/2012	Falcon Haj Services (Pvt) Ltd, etc v. Federation of Pakistan, etc.
Crl. Org. Petitions		
30.	284/2012	Milli Haram Hajj Services Peshawar v Ch. Muhammad Azam Summa, etc.
31.	314/2013	Karwan-e-Madina Tours & Travels (Pvt) Ltd v Ch. Muhammad Azam Samman, etc.
32.	297/2015	M/s Waddan Hajj and Umra Services v Sohail Ammar, etc.
33.	117/2017	H & U (Pvt) Ltd, etc. v. Sardar Muhammad Yousuf, etc.