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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
W.P.(C) 6918/2010

ALIF TRAVELS PVT LTD Petitioner
Through Mr. Ravi Gupta, Senior Advocate
with Ms. Nilofar Quereshi, Mr. Khushi
Mohd, Advocates

versus

UNION OF INDIA Respondent
Through Mr. Rajesh Katyal with Mr. Ashok
Singh, Advocate along with Mr. A.M. Khan,
Admn. Officer (Haj), MoEA, Govt. of India.

With

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W.P.(C) 6919/2010

LABBAIK TOURS & TRAVELS Petitioner
Through Mr. Ravi Gupta, Senior Advocate
with Ms. Nilofar Quereshi, Mr. Khushi
Mohd, Advocates

versus

UNION OF INDIA Respondent
Through Mr. Rajesh Katyal with Mr. Ashok
Singh, Advocate along with Mr. A.M. Khan,
Admn. Officer (Haj), MoEA, Govt. of India.

And

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W.P.(C) 6920/2010

UNITED TRAVEL SERVICE Petitioner
Through Mr. Ravi Gupta, Senior Advocate
with Ms. Nilofar Quereshi, Mr. Khushi
Mohd, Advocates

versus

UNION OF INDIA Respondent
Through Mr. Rajesh Katyal with Mr. Ashok
Singh, Advocate along with Mr. A.M. Khan,
Admn. Officer (Haj), MoEA, Govt. of India.

ORDER
21.10.2010

WP (Civil) 6918/2010 & CM APPLs 13911/2010, 13912/2010
WP (Civil) 6919/2010 & CM APPLs 13900/2010, 13899/2010
WP (Civil) 6920/2010 & CM APPLs 13901/2010, 13902/2010

1. These three petitions are by Private Tour Operators (PTOs) registered as such with the Ministry of External Affairs (MEA), Government of India for the Haj Pilgrimages during the years previous to 2010. Each of them had been issued notices asking for their explanation in regard to complaints received against them in connection with the Haj Pilgrimage 2009. The Petitioners replied to the notices but did not hear thereafter from the MEA. In fact, the security deposited for Haj pilgrimage-2009 was returned and applications made by each of them for Haj pilgrimage-2010 were accepted. They learnt that their names figured in the list of 615 PTOs furnished by the MEA to the Supreme Court when it passed an order on 21st September 2010 upholding the Haj Policy for 2010. According to the Petitioners the Supreme Court was informed by the MEA that the quota for the Haj Pilgrimage 2010 had already been distributed among the said 615 PTOs. However, none of the Petitioners was in fact allotted any quota for the Haj 2010.

2. Apprehending that they may have been blacklisted, although no such order was communicated to them till then, the Petitioners filed these petitions on 7th October 2010 seeking a stay of the blacklisting process or the blacklisting order if any passed and for a mandamus to the MEA to allot them quotas for the Haj 2010.

3. At the hearing on 8th October 2010, one of the points urged by Ms.Nilofar

Quereshi, learned counsel for the Petitioners was that none of them was communicated any order by the MEA purportedly blacklisting them. It was insisted that their names figured in the list of 615 PTOs handed over to the Supreme Court at the hearing on 21st September 2010 and that the Supreme Court was informed that the quota for Haj 2010 was being distributed among them. Countering this, it was stated by Mr. Rajesh Katyal, the learned counsel for the MEA who appeared on 8th October 2010 on advance notice, that at the hearing on 21st September 2010, a separate list of 13 PTOs had been shown to the Supreme Court and the MEA had informed the Supreme Court that those 13 PTOs, which included the three petitioners, had been dropped. Mr. Katyal added that the names had been dropped on the orders of the competent authority on complaints received against the petitioners about transfer of pilgrims from one PTO to another and some other factors. Since the order dated 21st September 2010 of the Supreme Court did not record any such production of a list of 13 PTOs by the MEA, this Court wanted to know if by then orders had been passed blacklisting the Petitioners and whether such orders had been communicated to each of the petitioners. Counsel for the MEA sought time to seek instructions on this aspect and the case was adjourned to today.

4. Thereafter it appears that on 13th October 2010 each of the Petitioners received by Speed Post identical orders dated 5th October 2010 informing them that they have been “dropped from the list of registered PTOs for Haj 2010.” These orders were dispatched on 12th October 2010 and received by each of them on 13th October 2010. Each of the Petitioners has filed separate applications seeking the quashing of the said blacklisting orders

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subsequently communicated and seeking in the meanwhile for the stay of those orders. An additional affidavit has also been filed by each petitioner to place on record the list of PTOs to whom quotas were distributed for the Haj Pilgrimage 2009, which list included the names of the Petitioners. It is reiterated that since the same list was to operate for Haj 2010, which policy was accepted by the Supreme Court, the decision to blacklist the Petitioners after was in any event wholly arbitrary and unjustified.

5. Mr. Ravi Gupta, learned Senior counsel for the Petitioners, while reiterating the submissions made before, pointed out that the blacklisting letter was dispatched only on 12th October 2010 four days after the previous hearing of the petitions. In the letter sent to M/s. Alif Travels Pvt. Ltd. (ATPL) the Petitioner in W.P. (C) No. 6918 of 2010 the date has been originally typed as 29th June 2010. Thereafter the words “29th June” has been scored out and “5th Oct” written beneath it by hand. It is submitted that the show cause notice issued to ATPL was also on 29th June 2010. According to the Petitioners this showed that the decision to blacklist ATPL and the other two Petitioners was a pre-determined one. It is further submitted that none of the orders dated 5th October 2010 give reasons why the Petitioners were being blacklisted.

6. Appearing for the MEA, Mr. Rajesh Katyal, learned counsel initially submitted that he was not aware if the Petitioners had been blacklisted but referred to the order dated 21st September 2010 of the Supreme Court and stated that the entire quota for the Haj 2010 stood distributed. He was however unable to show any record regarding the list of 13 PTOs

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purportedly shown to the Supreme Court, which included the names of the Petitioners.

7. This Court finds on a perusal of the order dated 21st September 2010 passed by Supreme Court in Special Leave Petition (Civil) No. 27032 of 2010 (*Government of India v. Al Ameen Haj Group & Ors*) that it makes no mention of such list of 13 PTOs, who were dropped for the Haj 2010, being shown to the Supreme Court. Clause 1 of the operative directions issued by the Supreme Court records that the PTOs who already stand identified are approximately 615 “and they have been selected by the Govt. of India and specified numbers of pilgrims are also being distributed amongst them giving them a specific number.” Clearly therefore at this stage the three petitioners, who were in the list of 615 PTOs, were in the reckoning for being allotted a quota each for the Haj Pilgrimage 2010.

8. Secondly, the letters blacklisting the Petitioners are each dated 5th October 2010. This puts paid to the contention of the MEA that even as on 21st September 2010 they were dropped from the list of PTOs. It must be added that the original one of the letters dated 5th October 2010 addressed to ATPL (the date on which has been corrected from 29th June to 5th October) as well the original of the cover in which it was dispatched by Speed Post was shown to Mr. A.M. Khan, Admn. Officer (Haj) MEA, who was present in Court. He confirmed that the signature on the letter was of the Under Secretary to the Government of India and that it had indeed been dispatched on 12th October 2010. Therefore prior to being deprived of the quota for Haj 2010, the three Petitioners were not communicated any order of blacklisting

9. Learned counsel for the MEA sought to argue that, in keeping with the normal practice the names of those PTOs who had been allotted pilgrims for Haj 2010 was on the MEA's website. Those PTOs whose names did not find place in the said list would automatically presume that they have been blacklisted. Therefore, there was no need to separately communicate a blacklisting order to each such PTO.

10. Both as a factual and legal proposition, this submission is untenable. No PTO is possibly going to 'presume' that it has been blacklisted unless an order to that effect is communicated to such PTO. A blacklisting order has adverse civil consequences affecting the reputation of the entity blacklisted. It has to be only by a written order giving the reasons for such blacklisting. The procedure in arriving at such decision has to be in compliance with the principles of natural justice. The order containing the reasons has to be communicated to the affected PTO. Any deviation from any of these legal imperatives will render the order vulnerable to invalidation.

11. Factually, the MEA itself has considered it necessary to communicate, albeit after the petitions were heard by this court, the blacklisting orders to the petitioners. The MEA has not proceeded on the footing that the petitioners should already have known of such blacklisting. With there being nothing to show that there was any list of 13 PTOs shown to the Supreme Court which included the Petitioners, the inescapable conclusion is that no blacklisting order against each of them was passed prior to 5th October 2010 and factually no such order was communicated till 13th October 2010. The

Petitioners were part of the list of the PTOs who had quotas for Haj 2009 and in keeping with the policy for 2010 were in line for allotments for Haj 2010. Therefore, the decision to drop the Petitioners from the list of PTOs to whom quotas for the Haj 2010 were to be distributed, even before any blacklisting order was passed, much less communicated to each of them, was a pre-determined one which cannot be said to be either just or reasonable.

12. Turning to the blacklisting orders dated 5th October 2010, they simply state that the explanation offered by each Petitioner to the notice issued by the MEA based on the complaints received against them was not found satisfactory and therefore they were being dropped from the list of PTOs for the Haj 2010. It must be recalled at this stage that as regards the Petitioners in Writ Petition (Civil) Nos. 6918 of 2010 & 6920 of 2010, the allegation against them was that they had transferred their pilgrims to M/s. Labbaik Tours & Travels, the Petitioner in Writ Petition (Civil) 6919 of 2010 and that this was impermissible and violative of the terms and conditions upon which allotments had been made to them for Haj 2009. All three Petitioners replied to the notices denying such allegation. M/s. Labbaik Tours & Travels denied having any connection with other two Petitioners.

13. The communication dated 5th October 2010 from the MEA to the Petitioner ATPL reads as under:

“No. M/Haj/1183/30/2010

5th Oct 2010

To

The Proprietor,
M/s. Alif Travels Pvt. Ltd.
101, Akash Deep, 26, Barkhamba Road
New Delhi – 110 001.

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Subject: Complaints received from pilgrims regarding deficiency of services during Haj – 2009.

Sir,

Reference our previous correspondence on the above mentioned subject.

The undersigned is directed to inform you that clarification given by you on the complaints received against your company was considered by the competent authorities in the Ministry and was not found satisfactory. Therefore, your company has been dropped from the list of registered PTOs for Haj-2010.

Yours faithfully,

Sd/-
Under Secretary to the Govt. of
India”

14. The letters to the other two Petitioners is identically worded and dated 5th October 2010. That the file number does not correspond with the number in the (show cause) notice issued to ATPL is not of much significance. As regards the letter sent to ATPL, the scoring out of the originally typed date of 29th June and its substitution by ink with “5th Oct” does create some suspicion, although in the other two cases the date is typed as 5th October. Nevertheless, what is significant is that in each of three communications dated 5th October 2010, no reasons for the blacklisting are given. There is nothing to indicate why the explanation offered by each of the Petitioners was not found satisfactory. The sentence that the explanation of the Petitioners is not “satisfactory” is the MEA’s conclusion, and not the reasons. The letters hardly satisfy the requirement of an order, having adverse civil consequences for the person against whom it is made, having to

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reflect the mind of the decision maker. In this connection, it would be useful to recall the observations of this Court in *Mekaster Trading Corp. v. Union of India* 106 (2003) DLT 573 where this Court quashed the blacklisting order by observing that “passing the order in such a slip shod manner which has the serious effect of blacklisting the petitioner for a long period of 5 years is certainly not an act of good administration”. It observed that “the aforesaid summation cannot be called as ‘reasons’ in support of the order. It can, at best, be termed as conclusion. Apart from this conclusion there is nothing in the order to indicate any supportive reason”. This Court pointed out that the link between the material on which conclusions are based and the actual conclusion had to be found. “If that has remained at the back of the mind of the authority passing the order, and has not surfaced on the records of the case, the ingredients of a reasoned order are not met”. Further it was emphasized that the reasons for arriving at the conclusions “should be discernible from the order itself. It is trite law that when authority has omitted to give reasons in the impugned order such a deficiency cannot be supplied by the State by adducing sufficient ground therefor when the validity of the order is challenged”.

15. Having being issued a prior notice and having received a reply in response thereto, it was incumbent upon the Respondent to pass individual reasoned orders in each case giving the reasons why such PTO was being blacklisted. On the other hand the impugned orders are inscrutable for their reasons. They have been passed in a mechanical way giving the reader no occasion to discern the reasons for the conclusion. This is yet another reason why the impugned blacklisting orders cannot be sustained in law.

16. Accordingly each of the orders dated 5th October 2010 passed by the MEA dropping each of the Petitioners from the list of PTOs for Haj 2010 is hereby set aside.

17. An earnest plea was made by Mr. Gupta, learned Senior counsel for the Petitioners that a consequential order must be passed directing the MEA to withdraw the excess quota of pilgrims allotted to the Haj Committee and re-distribute them among the Petitioners. With the Haj 2010 already underway and bookings of pilgrims having already been made, it will not be possible for this Court to issue any such mandamus of that nature. For any loss suffered by the Petitioners on account of the impugned blacklisting orders, which have been set aside by this order, they can avail of appropriate remedies available to them in accordance with law. It is nevertheless clarified that this order will not preclude the Petitioners from making representations to the MEA to consider them for allotment of pilgrims, if any remain to be allotted, even for Haj 2010. Such representation when made will be considered by the MEA on merits and in accordance with law.

18. The writ petitions are allowed in the above terms. The pending applications are disposed of.



S. MURALIDHAR, J.

OCTOBER 21, 2010
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