

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

WP(C).No. 5468 of 2015 (G)

PETITIONER :

**SAFFIA K.A., AGED 43 YEARS
W/O. MUHAMMED ISMAIL, ELANKATHIL LL HOUSE,
ELIPPAKULAM P.O., ALAPPUZHA DISTRICT, KERALA-690 503.**

**BY ADVS.SRI.P.K.ABOOBACKER(EDAPPALLY)
SRI.T.M.VASUDEVAN
SRI.N.P.AMMU**

RESPONDENTS :

- 1. UNION OF INDIA
REPRESENTED BY ITS JOINT SECRETARY(HAJ),
MINISTRY OF EXTERNAL AFFAIRS, GOVERNMENT OF INDIA,
JAWAHARLAL NEHRU BHAVAN, ROOM NO.2025
NEW DELHI-110 001.**
- 2. THE HAJJ COMMITTEE OF INDIA
REPRESENTED BY ITS CHAIRMAN, HAJ HOUSE, 7-A,
M.R.A.MARG, PALTON ROAD, MUMBAI-400 001.**
- 3. THE KERALA STATE HAJJ COMMITTEE
REPRESENTED BY ITS EXECUTIVE OFFICER, HAJ HOUSE,
CALICUT AIRPORT P.O., MALAPPURAM-673 647.**

**R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R2 & R3 BY ADV. SRI.K.A.JALEEL, ADDL. ADVOCATE GENERAL**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : COPY OF THE RELEVANT PORTION OF THE DRAFT HAJ POLICY FOR 2013-2017 ISSUED BY THE 2ND RESPONDENT.
- P2 : COPY OF THE CIRCULAR NO.7 DTD.21.3.2013 ISSUED BY THE 2ND RESPONDENT.
- P3 : COPY OF THE NOTIFICATION DTD.19.7.2013 ISSUED BY THE 2ND RESPONDENT FOR MEHRAM.
- P4 : COPY OF THE RELEVANT PORTION OF THE GUIDELINES ISSUED ALONG WITH THE APPLICATION FOR HAJ 2015.
- P5 : COPY OF THE REPRESENTATION DTD.16.2.2015 SENT BY THE PETITIONER TO THE 3RD RESPONDENT.
- P6 : COPY OF THE RECEIPT DTD.13.2.2015 ISSUED BY THE OFFICE OF THE 3RD RESPONDENT TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS : **NIL.**

//TRUE COPY//

P.A. TO JUDGE

bp

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.5468 of 2015

Dated this the 10th day of March, 2015

JUDGMENT

Refusal on the part of the 3rd respondent in considering the claim of the petitioner in the Reserved Category, ie. 'Category B' for performing 'Haj' for the year 2015 made her to approach this Court by filing the writ petition.

2. The case of the petitioner is that, she is applying for a chance to be selected and sent for 'Haj' consecutively for the fourth time, right from 2012. By virtue of the fact that, the petitioner is a woman, she cannot go for 'Haj' alone and has necessarily to be accompanied by a 'Mehram', who has to be a person within the prohibited degree of relationship. In respect of the years 2014-2015, the petitioner's husband stood as the 'Mehram'. By virtue of the relevant norms/guidelines issued by the concerned respondent, a person, who is applying for 'Haj' consecutively for the 4th time, is entitled to be placed in the Reserve Category, ie. Category B. It was accordingly, that the

application was sought to be made by the petitioner, which however was refused to be accepted by the 3rd respondent, stating that the 'Mehram' in the instant case has not successively applied for the fourth time and hence cannot be considered.

3. Respondents seek to place reliance on Clause 7.3.(ii) of Ext.P4 guidelines to justify their stand that the co-applicant has also to be a person, who is applying continuously for the 4th time, so as to have the benefit of reservation under Category B. According to the petitioner, there is no rhyme or reason to have such a stipulation and that the interpretation given to the provision is wrong. It is contended that, the **applicant** alone requires to be a person, who is applying consecutively for the 4th time, which stipulation cannot be extended to the 'Mehram' as 'Mehram' is not the applicant concerned.

4. The 3rd respondent has filed a Counter Affidavit explaining the sequence of events and pointing out that, by virtue of the provisions under Clause 7.3.(ii) of the guidelines, the applicant in the Category should have applied for 'Haj' and selected continuously for four years and must not be selected/

selected, but could not proceed for 'Haj'. The husband of the petitioner had not applied for accompanying the petitioner for the 'Haj' in the years 2012 and 2013, as 'Mehram' and that he has already performed Haj. Limited availability of seats/accommodation extended by the Kingdom of Saudi Arabia is referred to, adding that chance has to be given to persons who could not perform 'Haj' so far, to the maximum possible extent.

5. The learned counsel for the petitioner points out that, earlier there was a restriction to the effect that the 'Mehram' cannot be a repeater, which stipulation has been subsequently changed and that there is no ban as on this date.

6. The first respondent has filed a statement; paragraphs 4 and 5 of which are relevant and hence extracted below:

*"4. In this context, it is stated that as per Guidelines for Haj-2015, **Reserved Category-B: 4th Time Applicants:** para No.7.3(ii), "A Cover is registered under this category, only if, each of the applicants in the Cover had been applying continuously in each of the last three years. **In other words, if in a Cover there is any fresh applicant who has not been applying for the last three years, the Cover shall be treated in the General Category** and none of the applicants in the Cover shall get the benefit of reserved category". In view of para No.7.3.(ii) of the*

Guidelines for Haj-2015, the plea of the petitioner cannot be acceded as her husband is not a fourth time applicant, therefore, he is not eligible to apply under Reserved Category-B: 4th Time Applicants along with her.

5. From the above Guidelines, it is crystal clear that the interpretation of the petitioner with regard to availing the benefit of Reserved Category-B - 4th time Applicants is devoid of facts whereas the stand taken by Kerala State Haj Committee in accepting their Haj Applications for Haj-2015 under General Category is in fully consonance with the Guidelines formulated for Haj-2015."

7. The crucial question to be considered is whether the rider placed as per Clause 7.3.(ii) in the case of the applicant, could be equally applied in the case of '**Mehram**' as well, or in other words, whether the term 'Mehram' could be taken to mean the '**applicant**' as mentioned therein.

8. The learned Government Pleader points out that such a doubt was raised from different corners and hence clarification was sought for. It was accordingly, that a Circular bearing No.HC-II-ZONE/2012/4068 dated 01.03.2013 was issued by the Haj Committee of India, ie. the second respondent. The point sought to be clarified and answer given, as stated in the Circular, is extracted below:

Status of Lady Haj Applicant, who is continuously applying for Haj since last three years and this year (Haj-2013) being her 4 th year but her Mehram expired during this period. Can she be allowed to apply with new Mehram under Reserved “B” category.	Such lady Pilgrim is eligible to apply for Haj-2013 under Reserved “B” category being 4 th Timer. However, new Mehram will be considered only in case of DEATH as Substitute Mehram-subject to the condition that new Mehram fulfills all other norms and conditions formulated in the Guidelines for Haj-2013.
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The learned Government Pleader submits that, only in the case of 'death' of the 'Mehram', that the change is contemplated and in all other cases, the 'Mehram' has also to be same person for all the four years, so as to avail the benefit of Category-B reservation.

9. The learned counsel for the petitioner however points out that, the said clarification was issued in the year 2013, which, as such, may not be applicable to the subsequent years, as separate guidelines are being issued every year. Different guidelines were there in respect of the year 2014, and in respect of the current year, another set of guidelines has been issued. It is also pointed out that, the stipulations/riders were not the same in respect of the previous years. Reference is made to the eligibility of

'Mehram', pointing out that, under the earlier guidelines, it was stipulated that 'Mehram' cannot be a repeater, which stipulation has been watered down and there is no such prohibition as on date. The amendment was made, taking note of the difficulties expressed from different corners. This being the position, a fresh look is necessary, with reference to the circumstances pointed out by the petitioner.

10. It is brought to the notice of this Court, Ext.P7 representation preferred before the first respondent was considered by the second respondent and answered as per Ext.P9. But the controversy as now pointed out before this Court, is not specifically adverted to, particularly as to whether a '**Mehram**' can be treated as an '**applicant**' and as to the scope of Annexure R3(c) Circular issued by the second respondent in the year 2013; ie. whether the same is continues to govern the field.

In the above facts and circumstances, the writ petition is disposed of, directing the second respondent to reconsider the issue and to pass appropriate orders/clarifications so as to

remove the doubts and to have a common and transparent procedure in all respects. This shall be done at the earliest, at any rate, within 'two weeks' from the date of receipt of a copy of this judgment.

Petitioner shall produce a copy of this judgment, along with a copy of the writ petition, before the concerned respondents, for further steps.

**P.R. RAMACHANDRA MENON,
JUDGE**

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