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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 07.07.2023

+ **CONT.CAS(C) 843/2023**

AL TAWAF HAJJ AND UMRAH TRAVELS AND TOURISM

..... Petitioner

Through: Mr Sulaiman Mohd. Khan, Ms Taiba Khan, Mr Bhanu Malhotra, Mr Akash Bhusham and Mr Gopeshwer Singh Chandel, Advs.

versus

UNION OF INDIA AND ANR

..... Respondents

Through: Mr Chetan Sharma, ASG with Mr Rakesh Kumar, CGSC, Ms Avshreya Pratap Rudy, Mr Amit Gupta and Mr Saurabh Tripathi, Advs.

Mr Sumit Goel, Adv. with Mr Ankur Yadav, DS, Ministry of Minority Affairs and Sh. S.S. Srivastava, DS, MoMA

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: JASMEET SINGH, J (ORAL)

1. This is a petition seeking initiation of contempt proceedings for wilful and deliberate disobedience of the orders dated 07.06.2023 and 14.06.2023 passed in W.P.(C) 8412/2023 which was filed by the petitioner seeking quashing and setting aside of the show cause notice dated 26.05.2023 and restoring the registration certificate and Haj quota allocated to the petitioner for Haj 2023.

2. On 07.06.2023, a stay order was passed with respect to the comments in the consolidated list of allocation of Haj Quota for HAJ-2023 issued on

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25.05.2023 by the respondent. The operative portion of the order dated 07.06.2023 reads as under:

“26. Accordingly, to ensure that the pilgrims are not obstructed from completing their journey and undertake Haj, the comments in the consolidated list of allocation of Haj Quota for HAJ-2023 issued on 25th May, 2023 by the respondent which reads as “Registration Certificate & Quota Kept in abeyance till finalization of proceedings in complaint related matter” is stayed.

27. The respondents shall ensure that the pilgrims who have been affected by the defaults on the part of the petitioner, do not suffer and are able to undertake the Haj Pilgrimage without any obstruction.”

3. The respondent Ministry on 08.06.2023 issued Registration Certificates and issued additional list of Haj Group Organisers (hereinafter referred to as “HGOs”) allotting them Quota as Category-1 HGOs and cleared the way for them to proceed for Haj with their group of Hajis.

4. The respondent on 11.06.2023 issued a consolidated and updated list of allocation of Haj Quota to HGOs for Haj-2023 with allocation of additional Haj Quota to Category-1 and Category-2 HGOs but the remarks which were stayed by this court were re-issued/mentioned in the second list despite their being no stay on the order dated 07.06.2023.

5. As a result, the Petitioner approached this Hon’ble Court via CM. APPL. 32327/2023 in W.P. (C) No. 8412 of 2023 seeking direction to the respondent Ministry to issue additional list of HGOs reflecting the Haj quota allocation under Category-1.

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6. Thereupon, order dated 14.06.2023 came to be passed wherein this Court directed the respondent to immediately and forthwith issue an additional list of HGOs reflecting the Haj quota allocation under Category-1. The operative portion of the order dated 14.06.2023 reads as under:

“3. Since the comments in the consolidated list of allocation of quota for Haj 2023 has been stayed, the consequence would be to issue an additional list of Haj group organisers under Category-1. There is no challenge to the order dated 07.06.2023 vis-à-vis the petitioners.

4. The applications are allowed and the respondent shall take steps pursuant to the order dated 07.06.2023 immediately.”

7. Since the orders dated 07.06.2023 and 14.06.2023 were not complied with, the present contempt petition was filed.

8. On 21.06.2023 when the contempt petition was listed, the learned ASG appearing for respondent No.1 made the following statement:

“3. Mr. Sanjay Jain, learned Additional Solicitor General of India on instructions, submits that the Respondent No.1 is taking the following steps immediately, keeping the interest of the Haj pilgrims as paramount:

(i) The Respondent No.1 shall withdraw its “kept in abeyance” order dated 25.05.2023;

(ii) The Respondent No.1 shall request the Ministry of External Affairs to send a “note verbale” to the Kingdom of Saudi Arabia to keep its E-Haj portal operational till 24.06.2023;

(iii) The Respondents shall take all necessary steps to open the portal within 2 hours i.e., by 6 PM on 21.06.2023; and

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(iv) The portal shall remain open for the benefit of all 17 Haj Group Organisers (HGOs) until 24.06.2023. ”

9. In addition, the petitioner was permitted to register through the e-Haj portal subject to their filing an undertaking that the petitioner would ensure that Haj pilgrims do not suffer any difficulty or inconvenience and are able to take Haj pilgrimage without any obstruction.

10. On the next date of hearing i.e. 22.06.2023, the learned counsel for the petitioner submitted that e-Haj portal had not yet been opened even though the directions were passed for its opening on 21.06.2023 by 06:00 p.m. The matter was kept for 03:30 p.m. and at 03:30 p.m. this court passed the following order:

“1. Pursuant to the order passed in the morning today, the matter is being listed again at 03:30 pm.

2. Mr. Sanjay Jain, learned Additional Solicitor General appearing on behalf of the Respondents, on instructions from Mr. CPS Bakshi, submits that E-Haj Portal has since been opened for all 18 HGOs between 12:30 pm and 03:00 pm today. Mr. Jain further submits that all necessary formalities, in terms of the directions passed yesterday are being undertaken by Respondent No.1, however, he states, that the Kingdom of Saudi Arabia has informed the Ministry of External Affairs that the E-Haj Portal shall be open till 23.06.2023.

3. Mr. Sulaiman Mohd. Khan, learned Counsel appears on behalf of the Petitioner submits that the Petitioners will be in a difficulty, in view of the fact that 23.06.2023 and 24.06.2023 are bank holidays in Saudi Arabia.

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4. *In view of the ensuing banking holidays on 23.06.2023 and 24.06.2023 in the Kingdom of Saudi Arabia, and with a view to facilitate the travel of the Haj Pilgrims, the Respondents shall address an additional communication requesting the Kingdom of Saudi Arabia to keep their E-Haj Portal operational till 6:00 pm IST on 25.06.2023.*

5. *Learned Counsel for the Petitioners submits that some HGOs are yet to file their Undertaking as the E-Haj Portal was not functional. He will ensure that all Undertakings as directed in order dated 21.06.2023; are filed in this Court by 6:00 pm on 22.06.2023.*

5.1 *Learned Counsel for the Petitioner further submits that the Petitioners shall take all necessary steps to expedite and facilitate the travel of the Haj Pilgrims.*

6. *Learned Additional Solicitor General, on instructions further submits that the Respondents shall also take all necessary steps to facilitate the travel of Haj Pilgrims.*

7. *List the matter on the date already fixed, i.e., 23.06.2023.”*

11. Pursuant to the said directions, the respondent has filed an affidavit of compliance in CONT. CAS(C) 842/2023 dated 05.07.2023 wherein it has been stated as under:

“5. It may be appreciated that the issue related to authorization to HGOs registered by Government, on e-Haj portal of Kingdom of Saudi Arabia (KSA) which is within the sovereign jurisdiction of KSA. However, in compliance of order dated 21.06.2023 of this Hon’ble Court, the Respondent Ministry requested the Ministry of

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*External Affairs to issue a 'note verbale' to KSA for keeping their E-Haj portal operational till 24.06.23. The MEA accordingly issued a 'note verbale' requesting KSA for extending the timelines for opening of e-Haj Portal for HGOs registered by the Government for Haj 2023 so that the HGOs can proceed further. Subsequently, in compliance to the order dated 22.06.2023 of Hon'ble High Court, the Government again requested the KSA authorities to keep their e-Haj portal open and operational till 6 PM (IST) of 25.06.2023 for facilitating the HGOs and travel of Haj pilgrims to the KSA including the petitioner HGO. This issue was also followed up by the Ambassador diplomatically. A true Copy of the 'note verbales' is annexed as **Annexure R-3 (colly)**.*

6. In view of the aforesaid, it is respectfully submitted that the Answering Respondent has fully complied with the directions passed by this Hon'ble Court vide Order dated 14.06.2023 and 19.06.2023. The Government made all necessary efforts to comply with the direction of the Court in letter and spirit to facilitate the participation of HGOs in Haj 2023 including the petitioner HGO. As a matter of fact, it is also informed that many of the HGOs who were facilitated under aforesaid efforts have successfully carried out Haj operations and taken pilgrims to KSA for Haj 2023."

12. Mr Khan, learned counsel for the petitioner states that even though the e-Haj portal was open on 22.06.23 between 12:30 p.m. to 03:00 p.m. for all the 18 HGOs, in fact, it was not so opened for some. He further states that for the petitioner in CONT.CAS(C) 843/2023 it was opened at 02:45 p.m. whereas for the petitioner in CONT.CAS(C) 842/2023 it was opened at

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12:30 p.m. He states that there was not enough time for them to do international banking within the said short period. Mr Khan further states that because of this deliberate and intentional delay, the purpose and intent of the orders dated 07.06.2023 and 14.06.2023 have been frustrated.

13. In the present case, the order dated 22.06.2023 was a detailed order which was passed in the presence of the petitioner and the same was not objected to wherein it was clearly stated that the e-Haj portal would remain open between 12:30 p.m. and 03:00 p.m., and that the respondent would request the Kingdom of Saudi Arabia to keep their e-Haj portal operational till 6:00 pm IST on 25.06.2023. The respondents have duly complied with their assurances and undertakings given before this Court.

14. In *Sushila Raje Holkar v. Anil Kak (Retired)* (2008) 14 SCC 392, the Supreme Court held that whether contempt has been committed or not is not a matter of mechanical application of mind. In a given case, it has to be tested having regard to the subject matter of the proceeding in which it is made and the nexus between the alleged contumacious act.

“23. A proceeding under the Contempt of Courts Act has a serious consequence. Whether the alleged contemnor has wilfully committed breach of the order passed by a competent court of law or not having regard to the civil/evil consequences ensuing therefor requires strict scrutiny. For the said purpose, it may be permissible to read the order of the court in its entirety. The effect and purport of the order should be taken into consideration. Whereas the court shall always zealously enforce its order but a mere technicality should not be a ground to punish the contemnor. A proceeding for contempt should be



initiated with utmost reservation. It should be exercised with due care and caution. The power of the court in imposing punishment for contempt of the court is not an uncontrolled or unlimited power. It is a controlled power and restrictive in nature. (See P.C. Sen, Re [AIR 1970 SC 1821 : (1969) 2 SCR 649] and Jhareswar Prasad Paul v. Tarak Nath Ganguly [(2002) 5 SCC 352 : 2002 SCC (L&S) 703] .) A contemnor, thus, may be punished only when a clear case for contumacious conduct has been made out.”

(emphasis supplied)

15. In ***Sudhir Vasudeva, Chairman and Managing Director, Oil and Natural Gas Corporation Limited and others v. M. George Ravishekar and others*** (2014) 3 SCC 373, the Hon’ble Supreme Court held as under:-

*“19. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. **The Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided***



in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or wilful violation of the same. Decided issues cannot be reopened; nor can the plea of equities be considered.

The Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the Bar, namely, Jhareswar Prasad Paul v. Tarak Nath Ganguly (2002) 5 SCC 352, V.M. Manohar Prasad v. N. Ratnam Raju (2004) 13 SCC 610, Bihar Finance Service House Construction Coop. Society Ltd. v. Gautam Goswami (2008) 5 SCC 339 and Union of India v. Subedar Devassy PV (2006) 1 SCC 613.”

(emphasis supplied)

16. Applying these principles to the present case, I am of the view that the obligations of the respondents were noted in detail in the order dated 22.06.2023 and in view of the affidavit handed over in Court today, the same has duly been complied with. Admittedly, the e-Haj portal is within the sovereign jurisdiction of Kingdom of Saudi Arabia (“KSA”). The

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responsibility of the respondent in the present case was limited to the extent of issuing directions to the Ministry of External Affairs to communicate with KSA to keep the e-Haj portal operational for the petitioners. In my view, the same has been duly complied with in letter and in spirit. The direction to the respondent was to facilitate the participation of HGOs in Haj 2023, and the respondent has taken the necessary efforts to comply with the direction, as per the affidavit. The fact that the e-Haj portal could not be opened on time for some petitioners is something over which the respondent does not have control or jurisdiction. This cannot be said to be intentional delay or wilful non-compliance of the directions issued to them, but rather a mere technical difficulty. It cannot be said that the purpose of the orders is frustrated. In deciding otherwise, this court would be overstepping its jurisdiction. In case the petitioners have been unable to avail the opening of the e-Haj portal for shortage of time or for any other reason, the appropriate remedy would not be to pursue the contempt petition but to file a suit for damages. The petitioners, if so advised, may take appropriate course of action. I am of the view that this contempt petition does not survive. In this view of the matter, the petition is dismissed.

JASMEET SINGH, J

JULY 7, 2023

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