JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1111 of 2023
Neelum Tours & Travels (Pvt.) Ltd.
Versus
Federation of Pakistan and others

Date of Hearing:	20.12.2023
Petitioner by:	Syed Zulfiqar Abbas Naqvi and Mudassar Hussain Malik, Advocates.
Respondents by:	Syed Ahsan Raza Kazmi, learned Deputy Attorney-General. Mr. Muhammad Zubair, Section Officer, Ministry of Religious Affairs and Interfaith Harmony.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide writ petition No.1111/2023 titled Neelam Tours & Travels (Pvt.) Ltd. **("Neelam Tours")** Vs. Federation of Pakistan etc." and writ petition No.1194/2023 titled Karwan-e-Arafat Travels & Tours (Pvt.) Ltd. (**"Karwan-e-Arafat Travels"**) Vs. Federation of Pakistan etc" since they entail common features.

2. In both the cases, the Ministry of Religious Affairs and Interfaith Harmony (**"Ministry of RA&IH"**) had imposed a penalty on both the petitioners of 20% deduction of Hajj quota for two years due to booking through agents, non-signing of agreements, and entering into a collaborative arrangement without the approval of the said Ministry. Furthermore, the petitioner in W.P. No.1194/2023 was required to return 500,000/- to each Haji, who paid more than Rs.2.5 million and Rs.250,000/- to each Haji, who paid less than 2.5 million. The petitioner in writ petition No.1111/2023 was required to return Rs.250,000 to each Haji, who paid more than 2.5 million. These fines were imposed on the petitioners for not providing proper facilities to the Hujjaj.

3. Learned counsel for the petitioners submitted that the decision of the Ministry of RA&IH requiring the petitioners to refund the above-mentioned huge amounts to all the Hujjaj booked through the petitioners is most irrational because only 04 Hujjaj filed complaints against Neelam Tours whereas only 09 Hujjaj filed complaints against Karwan-e-Arafat Travels; that at best, the

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Ministry of RA&IH could have required the petitioners to refund the said amounts to the complainants but not to all the Hujjaj booked through the petitioners and who had not filed any complaint against the petitioners; that the proceedings against the petitioners were conducted by the Complaint Resolution Committee (**"CRC"**) with undue haste and in violation of the requirements of Article 10-A of the Constitution; that the Complaint Disposal Committee (**"CDC"**) also did not consider the petitioners' appeal in an adequate manner; that after the filing of the complaints, the complainants had clarified their positions by stating that they were fully satisfied with the services provided by the petitioners during the Hajj, 2022; and that the penalty of reduction of 20% quota is not commensurate with the lapses, if any, committed by the petitioners. Learned counsel for the petitioners prayed for the writ petitions to be allowed and for the impugned decisions taken by the Ministry of RA&IH to be set aside.

4. On the other hand, Mr. Muhammad Zubair, Section Officer, Ministry of RA&IH tendered appearance along with the learned Deputy Attorney-General and submitted that complaints were lodged against the petitioners in the Kingdom of Saudi Arabia; that in the said complaints, it was alleged that the petitioners had provided poor services to the Hujjaj; that as per the report of the Monitoring Committee, the Hujjaj were dissatisfied with the services / arrangements of the petitioners; that the report of the Monitoring Committee shows that the petitioners had not executed a written agreement with the Hujjaj; that the petitioners did not accompany the Hujjaj while travelling to Jeddah; that despite an assurance to the Hujjaj, no one came with them on the flight to Jeddah; that at the Airport in Jeddah, the Hujjaj had to arrange for transportation themselves; that ID Cards and wrist bands were not provided to the Hujjaj; that the Hujjaj were not told about the arrangements for travelling to Mina; that the Monitoring Committee comprising of three persons had referred the matter to the CRC with the recommendation that the Hujjaj be refunded Rs.500,000/-; and that the proceedings conducted by the CDC and

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the CRC do not suffer from any legal infirmity. Learned Deputy Attorney-General prayed for the writ petitions to be dismissed.

5. I have heard the contentions of the learned counsel for the petitioners as well as the learned Deputy Attorney-General and have perused the record with their able assistance. The facts leading to the filing of both the petitions have been set out in sufficient detail in paragraph 02 above and need not be recapitulated.

6. The Ministry of RA&IH has brought on record the performa / draft of the *"Service Provider Agreement ("SPA") for Hajj-2022"* which is to be executed between a service provider and the said Ministry. It is not disputed that both the petitioners had entered into a service provider agreement with the said Ministry. Clause 3-C (III) of the SPA provides that the service provider shall not sell or purchase or sublet his assigned quota to or from other service providers / persons / agents. Additionally, clause 3-C(IX) of the SPA provides that the service provider shall sign an agreement (covering all details and facilities including airline, accommodation, transportation, food etc. as per the Hajj package) with each pilgrim at the time of booking and shall provide a copy of the same to the pilgrim as well as upload the same on Hajj Group Organizer Management Information System.

7. The SPA also provides that violation of the said Clauses 3-C(III) and C(IX) of the SPA would entail the imposition of a major penalty which as per Clause-2(i) of the SPA includes the reduction of Hajj quota for a period to be decided by the CDC or the CRC and forfeiture of performance guarantee.

8. The grounds on which the Ministry of RA&IH imposed the major penalty of 20% reduction of Hajj quota for two years were that the petitioners had made bookings of Hujjaj through agents and had not signed an agreement directly with the Hujjaj. This allegation against the petitioners could easily have been negated by the petitioners by bringing on record the written agreements executed with the Hujjaj. The mere fact that they did not do so would imply that no such agreements exist. In this view of the matter, interference by this Court with the penalty of the reduction

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of Hajj quota by 20% for two years imposed on the petitioners would amount to re-writing the agreements between the petitioners and the Ministry of RA&IH. The petitioners had not even pleaded that they had entered into agreements directly with the Hujjaj in compliance with the requirements under Clause 3-C(IX) of the SPA. Therefore, I have no reason to interfere with the imposition of the said penalty on the petitioners.

9. As regards the penalty on Neelam Tours to refund Rs.250,000 to each Haji, who paid less than 2.5 million and the penalty on Karwan-e-Arafat Travels to refund 500,000/- to each Haji who paid more than Rs.2.5 million and Rs.250,000/- to each Haji, who paid less than 2.5 million, this Court in exercise of its constitutional jurisdiction cannot embark on fact finding exercise to determine whether there was any falsehood in the complaints made against the petitioners. This exercise has already been conducted by the Monitoring Committee in the Kingdom of Saudi Arabia as well as the CRC (while considering the recommendations of the Monitoring Committee and CDC while deciding the petitioners' appeals).

10. However, it ought to be borne in mind that against Neelam Tours complaints were filed only by 04 complainants / Hujjaj whereas against Karwan-e-Arafat Travels, complaints were filed by only 09 complainants / Hujjaj. These complainants / Hujjaj were not holding brief for all the other Hujjaj for whom arrangements had been made by the petitioners. The complainants were not and could not have been treated as the representatives of all the other Hujjaj. Therefore, I am of the view that the decision of the Ministry of RA&IH that the petitioners should refund amounts to all the Hujjaj, who were not even complainants, is irrational and illogical.

11. In view of the above, the instant petitions are partly allowed in that the decision requiring the petitioners to refund the amounts mentioned herein above to all the Hujjaj is set aside; the decision of the Ministry of RA&IH to reduce the petitioners' Hajj quota by 20% for two years and the decision to refund the amounts to the Hujjaj who had filed complaints are upheld; the matter is remanded to the Ministry of RA&IH to decide the question as to

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whether under the given circumstances, the petitioners could be directed to refund the said amounts to the Hujjaj, who had not filed complaints. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Announced in an open Court on 29.12.2023.

JUDGE

Sanaullah*

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