

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Present:

Ahmed Ali M. Shaikh, CJ
Yousuf Ali Sayeed, J

C. P. No. D-3009 of 2016

Petitioner : Dr. Abdul Qadir A. Akhund,
through Khawaja Naveed Ahmed,
Advocate.

Respondents No.1 : M/s. Hermain Travels (Pvt.) Ltd,
through Badar Alam, Advocate

Respondent No.3 : Federation of Pakistan, through
Mukhtiar Ali Junejo, Assistant
Attorney General alongwith Umer
Farooque, Assistant Director,
Directorate of Hajj, Karachi.

Date of hearing : 16.03.2022

ORDER

YOUSUF ALI SAYEED, J. The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning the Order made by the Revision Committee of the Ministry of Religious Affairs and Inter-Faith Harmony (the "**Revision Committee**"), Government of Pakistan dated 05.05.2016, whereby the Decision of the Complaint Disposal Committee ("**CDC**") for Hajj 2015 dated 15.03.2016 was modified and partially reversed.

2. Succinctly the facts underpinning the case are that the Petitioner apparently booked a Hajj Package for the aforementioned year through the Respondent No.1 - a Hajj Group Organiser ("**HGO**"), as he was dissatisfied with the arrangements made and services rendered, the Petitioner made a complaint to the CDC which was decided in his favour, with the Respondent No.1 being directed to refund a sum of Rs.857,587/- on account of certain accommodation found to have unduly been booked in excess of the requirement and two functionaries of the Respondent also being blacklisted as their behaviour towards the Petitioner was held to be inappropriate.

3. On referral to the Revision Committee, the decision of the CDC to the extent of the refund was modified, with the Respondent No.1 being directed to refund only half of the amount that had been determined by the CDC (i.e. Rs.428,794/- instead of Rs.857,587/-), whereas the penalty of blacklisting of management was reversed.

4. Learned counsel for the Petitioner confined his argument to the point that such a determination had been arrived at by the Revision Committee in an arbitrary manner, without ascribing any reasons in that regard, hence was not a speaking order, whereas learned counsel for the Respondent sought to sidestep that aspect altogether by arguing that the complaint made by the Petitioner to the CDC had itself been misconceived as the Petitioner had booked a complete package and there was no prospect for refund of any sums due to his then failing to utilize the accommodation on certain days.

5. It is well settled that the scope of judicial review under Article 199 is not to inquire into the merits of the decision being challenged so as to dissect and reconstruct the same, but to conduct a review of the process by which the decision was reached in order to assess whether the same was flawed in the sense of being illegal, irrational or suffering from some element of procedural impropriety that requires that the decision should be set aside. A case in point is the judgment of a learned Division Bench of this Court in the case reported as Hajj Organizers Association of Pakistan through Authorised Officer and 11 others v, Federation of Pakistan through Secretary Ministry of Religious Affairs and Interfaith Harmony, Islamabad and 2 others PLD 2020 Sindh 42, where it was held that:

"One of the principal aims of a system of judicial review must be to maintain a high level of public confidence in the administrative decision making process and this must also be borne in mind in assessing the level of judicial intervention which is desirable. With reference to the case of Dr. Akhtar Hassan Khan, the apex court reiterated the parameters of judicial review with another reference of Tata Cellular v. Union of India (36(1994) 6 SCC 651) in which the Supreme Court of India while dilating the parameters of judicial review in matters of awarding of contract by the Government candidly laid down that the duty of the court is to confine itself to the question of legality. Its concern should be, whether a decision-making authority exceeded its powers; committed an error of law; committed a breach of the rules of natural justice; reached a decision which no reasonable tribunal would have reached or abused its powers. The grounds upon which an administrative action is subject to control by judicial review can be classified as illegality, this means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it; irrationality, namely, Wednesbury unreasonableness and procedural impropriety."

6. Needless to say, the presence of valid reasons is an essential element for a decision to constitute a speaking order, and it is well settled that all the authorities, including the Courts, are required to pass speaking orders. Indeed, in the case of Messrs Airport Support Services v. The Airport Manager. Quaid -e-Azam International Airport, Karachi 1998 SCMR 2268, it was observed by the Honourable Supreme Court that:

"The doctrine has further been recognized and augmented by the recent insertion of section 24-A in the General Clauses Act, 1897, which declares that where a statute confers a power to make any order or to give any direction to any Authority, office or person, such would be exercised reasonably, fairly, justly and for the advancement of the purpose of the enactment. What is more, the order or direction, so far as necessary or appropriate would reflect reasons for its making or issuance and, where the same is lacking, an effectee may demand the necessary reasons, which, in response, would be furnished."

7. A perusal of the impugned Order dated 05.05.2016 addressed by the Revision Committee to the Respondent No.1 and copied to the Petitioner reflects that the same simply reads as follows:

“Government of Pakistan
Ministry of Religious Affairs
and Inter-Faith Harmony

No.4(3)/2016-Monitoring (4158) Islamabad 5th May, 2016

To

The Chief Executive,
M/s. Harmain Travels Pvt Ltd,

Subject: DECISION OF APPELLATE COMMITTEE

I am directed to convey that the Appellate Committee deliberated upon your appeal and decision of CDC on the complaints during Hajj 2015. The Committee decided as under:

- a. HGO is directed to refund half the amount decided by the CDC i.e. Rs.428,794/- to the complainant as compensation.
- b. Reverse the penalty of blacklisting of management of the company.
- c. HGO is directed to explain each and every facility in its Hajj package to the understanding of Hujjaj in future.

(Nasir Aziz Khan)
Section Officer (Monitoring)”

8. From the face of the impugned Order, it is apparent that the same is devoid of any reasons whatsoever, hence cannot stand. As such, without commenting on the merits of the allegations underpinning the complaint or correctness of the orders that flowed from the proceedings before the fora below, we remand the matter to the Revision Committee for decision afresh through a speaking Order while affording a proper opportunity of hearing to the parties.

Judge

Chief Justice

TariqAli/PA