

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO.638 OF 2018

RUBY TOUR SERVICES PVT. LTD. ... PETITIONER

VERSUS

UNION OF INDIA ... RESPONDENT

WITHWRIT PETITION (C) NO.646 OF 2018

M/S. NAWAB TRAVELS PRIVATE LIMITED ... PETITIONER

VERSUS

UNION OF INDIA ... RESPONDENT

ANDWRIT PETITION (C) NO.668 OF 2018

M/S. HIBA EXPORTS INDIA ... PETITIONER

VERSUS

UNION OF INDIA ... RESPONDENT

J U D G M E N TASHOK BHUSHAN, J.

These three writ petitions under Article 32 of the

Constitution of India have been filed by three Private Tour Operators (PTOs) challenging the communications dated 31.05.2018 issued by the Ministry of Minority Affairs rejecting their applications submitted for registration of PTOs for Haj 2018. The applications of petitioners have been rejected for not fulfilling few conditions as enumerated in Annexure A of PTO Policy for Haj 2018.

2. The Haj Pilgrimage by Muslims all over the world has been treated as of utmost religious importance and Muslims all over the world have been going for Haj Pilgrimage to Makkah and Madina for last several centuries. Until year 2002, the Saudi Arabian Government was directly allotting visas for Haj to the private tour operators and separately allotting quota of visas for the Haj pilgrims travelling through the Haj Committee of India. Thereafter the Saudi Government started allotting one single quota of Haj visas to the Government of India, who in turn would allot part of the said quota to the PTOs and retained

part of the said quota for itself for allotment through the Haj Committee of India.

3. The policy for allotment of quota to the private tour operators has been issued by the Government of India from time to time. The Policy for registration of private tour operators for Haj 2013 came for consideration before this Court and this Court after elaborate consideration approved the Haj Policy-2013 with certain modifications. This Court by its judgment dated 16.04.2013 in ***Union of India Vs. Rafique Shaikh Bhikan, (2013) 4 SCC 699***, approved the Haj Policy 2013, Appendix I of the judgment contained the policy for registration of private tour operators – Haj 2013, the terms and conditions for registration of Private Tour Operators (PTOs) for Haj 2013 in Annexure-A, in Annexure-B other important instructions/guidelines for Haj 2013 and in Annexure-C application for registration as Private Tour Operators (PTOs). The policy was initially directed to remain valid for five years, i.e., 2013-2017. The Government of India has extended the said policy for the year 2018. The proceeding for

formulation of fresh policy for the next five years, i.e., 2019 onwards is in process, we, however, in the present writ petitions are only concerned with the Haj Policy of 2018.

4. After 2013 also, there has been various subsequent decisions by this Court while considering Haj Policy for subsequent years, which shall be noticed by us little later. The Government of India (Ministry of Minority Affairs) vide its circular dated 09.12.2017 issued policy for Private Tour Operators for Haj 2018. The applications were invited on or before 05.01.2018. Annexure A to the policy was "Terms and Conditions for Registration of Private Tour Operators (PTOs) for Haj-2018". Annexure B contained "Other Important Instructions/Guidelines for Haj-2018. Annexure C contained "Application for Registration as Private Tour Operator (PTO)" - Haj 2018. All the petitioners in pursuance of the said circular has submitted their applications for registration for Haj-2018. After certain queries, separate communication dated 31.05.2018 has been issued to petitioners refusing

registration of them as Private Tour Operators for Haj-2018, which communication has been challenged.

5. The prayers made in all the writ petitions being identical, it is sufficient to notice the prayers made in the Writ Petition (C) No. 638 of 2018. which are to the following effect:-

“(a) Declare that the order dated 31.05.2018 by the respondent is illegal and unconstitutional and consequentially, issue Mandamus to the respondent to register petitioner as a PTO for Haj 2018 and allot appropriate quota;

(b) Alternatively, Issue a Writ, order or direction in the nature of Mandamus commanding and directing the respondent to grant registration to the petitioner as PTO for conducting Haj Tour, 2019;

(c) Issue a Writ, order or direction in the nature of Mandamus commanding and directing the respondent to pay compensation to the petitioner for the loss occurred to it by not granting registration for Haj 2018;

(d) Pass such other and further orders as this Hon'ble Court may think fit in the interest of justice and equity."

6. As noted above, the applications of petitioners were rejected due to non-compliance of various conditions as enumerated in Annexure A. Application of petitioner in Writ Petition (C) No. 638 of 2018 has been rejected for non-compliance of Clause (iv) and Clause (xi). Application of petitioner in Writ Petition (C) No. 646 of 2018 has been rejected for non-compliance of Clause (xii), whereas application of petitioner in Writ Petition (C) No. 668 of 2018 has been rejected for non-compliance of Clause (xi). Thus, it is sufficient to notice Clause (iv), Clause (xi) and Clause (xii) of Annexure A for deciding these writ petitions, which are to the following effect:-

Clause(iv)	Minimum Annual Turnover of INR One Crore or more from Haj and Umrah operations during any of the two preceding financial years along with Balance Sheet and Profit & Loss Account-duly audited by the Statutory Auditors, Tax Audit Report and Income Tax Return (ITR).
Clause (xi)	Contract for hiring of buildings for

	pilgrims and "Tasreeh" together with English translations PTO category wise. (Please enclose rental receipts and a copy of lease deed, duly signed with the Saudi owners).
Clause (xii)	Copy of Munazzim Card and relevant Haj visa pages of the Passport of the Proprietor/Owner.

7. Now, we proceed to notice the facts of each writ petition.

Writ Petition (C) No. 638 of 2018 – Ruby Tour Services Pvt. Ltd. Vs. Union of India

8. The petitioner was a qualified Private Tour Operator from 2002 to 2015 and 2017 and was so registered with the Government of India. After issue of Haj Policy-2013, the respondent had released the list of qualified Private Tour Operators for the Haj-2013, in which name of petitioner was included at Sl. No.224 of qualified Private Tour Operators under Category I. In the year 2014, 2015, petitioner's name was included in the List of eligible Private Tour Operators. Petitioner conducted services for Haj-2015 without any complaint. By press release dated

29.04.2016, applications were invited from eligible Private Tour Operators for registration of Haj – 2016 in response to which, petitioner applied. The respondent vide communication dated 26.07.2016 rejected the application of the petitioner for Haj-2016. Petitioner filed a Writ Petition (C) No. 623 of 2016 against the rejection of its application for Haj-2016, in which notice was issued by this Court on 08.08.2016. The respondent after the scrutiny of the application and documents submitted by the petitioner, found the petitioner eligible to conduct Haj Pilgrimage for 2017 and accordingly issued certificate of registration and allotted quota of 105 pilgrims. The Writ Petition (C) No. 623 of 2016 filed by the petitioner has been dismissed as infructuous. In pursuance of Circular dated 09.12.2017 inviting applications, petitioner submitted an application along with supporting documents. Fourteen queries were raised by the respondent through e-mail dated 25.03.2018 raising different objections. Petitioner vide its letter dated 05.04.2018 submitted reply to all the queries raised.

9. In query No. 11 regarding turn over details, following was communicated:

"PTO attached Turnover Certificate of 2.16 cr. of ruby tour and travels and have mentioned that the documents explaining the same have been attached on page 50-52 of the Application File but there are no such documents on record which explain the turnover of 2.16 cr."

10. Petitioner had replied the said query in its reply as follows:-

"The Turnover Certificate of INR 2.16CR is attached herewith for your kind perusal. The omission error of Page No. 50-52 is highly regrettable."

11. With regard to non-compliance of Clause(xi) of Annexure-A, the Government noticed the reply dated 05.04.2018 but has refused to register citing technical advice from empanelled Chartered Accountant Firms. It is useful to refer to Paragraphs 2 to 5 of the letter dated 31.05.2018, which contains the consideration by the Government of India:-

"2. As per Clause (iv) of Annexure A of PTO Policy, the said PTO was required to submit the turnover certificate. On scrutiny of the documents submitted by the PTO, it has been found that PTO is not fulfilling the clause(iv) of Annexure A of PTO Policy for Haj 2018. The PTO was requested to clarify the followings:-

"PTO attached Turnover Certificate of 2.16 cr. of Ruby Tour and Travels and have mentioned that the documents explaining the same have been attached on page 50-52 of the Application File but there are no such documents on record which explain the turnover of 2.16 cr."

3. As per Clause (xi) of Annexure A of PTO Policy, the said PTO was required to submit rental receipts and a copy of lease deed, duly signed with the Saudi owners. On scrutiny of the documents submitted by the PTO, it has been found that PTO is not fulfilling the clause (xi) of Annexure A. The PTO was requested to clarify the followings:-

"In the invoice copy of Makkah 2 invoice dated 17/08/2015 there is a

condition that PTO should send the payment on or before 25/07/2015 which is prima facie not possible as that date has already passed. Moreover payment made on 19/08/2015 but receipt for the same issued on 24/07/2015. Hence the authenticity of the Receipt cannot be established."

4. The said PTO in its reply clarified as under:

"The Turnover Certificate of INR 2.16CR is attached herewith for your kind perusal. The omission error of Page No. 50-52 is highly regrettable."

"In the Invoice copy of Makkah 2 Invoice dated 17/08/2015, the supplier has erroneously typed the wrong sending date as 25/07/2015 instead of 25/08/2015, and also the receipt issued date as 24/07/2015, instead of 24/08/2015. We regret the oversight by supplier and hereby attach the swift copy along with Invoice and Bank Statement details to authenticate the same. The

Tashree agreement dated 17.08.2015 also authenticates the transaction done in August 2015".

5. As per the technical advice received from the empanelled Chartered Accountant Firms and on scrutiny of the clarification/reply of the PTO, it has been observed that the PTO Applicant's turnover is less than Rs.1 crore from Haj and Umrah operations as required under Clause (iv) of Annexure A of PTO Policy 2018. It is further observed that the receipt of accommodation is dated prior to the date of Payment (as authenticated from the Bank Statement and Foreign exchange Purchase Invoices). Hence the Receipts lack authenticity. The requirements of Clause (iv) and (xi) of Annexure A of PTO Policy 2018 are not complied."

12. The petitioner has filed additional documents to support its reply given on 05.04.2018. Counter Affidavit has also been filed by the respondent.

Writ Petition (C) No. 646 of 2018 – M/s. Nawab Travels Private Limited Vs. Union of India

13. The petitioner had been found eligible for the years 2002, 2006-I, 2006-II, 2007 to 2010 and during each period, registration certificate was issued to the petitioner and Haj quotas were also allotted. In response to the circular dated 09.12.2017 inviting applications for Private Tour Operators for Haj-2018, petitioner also submitted an application. Certain clarifications were sought through online PTO portal. Petitioner submitted its clarification on 04.04.2018. By communication dated 31.05.2018, the petitioner's application was refused to register on the ground of non-fulfillment of Clause (xii) of Annexure A. It is useful to extract Paras 2, 3 and 4 of the communication dated 31.05.2018, which is to the following effect:-

"2. As per Clause (xii) of Annexure A of PTO Policy, the said PTO was required to submit the copy of Munazzim card and Haj visa pages of the passport of the owner/proprietor. On scrutiny of the documents submitted by the PTO, it has been found that PTO is not fulfilling the Clause (xii) of Annexure A. The PTO was sent the following observation:-

"Copies of Munazzim Card and visa copy are not legible."

3. The said PTO in its reply clarified as under:

"It is hereby clarified that the Munazzim Card and Haj Visa is issued in the name of Tour Assistant. We have deputed Mr. Abdur Razzaque Chand Mia as Tour Assistant for Haj 2010. We have already submitted a drafted letter providing details of Tour Assistant along with the Application for Registration of PTO for Haj 2018 vide Page No. 199, we are again submitting self-attested copy of the same for your kind perusal."

4. As per the technical advice received from the empanelled Chartered Accountant Firms and on scrutiny of the clarification/reply of the PTO it has been observed that the copies of Munazim Card and Haj Visa pages copy provided in the Physical file and uploaded on the portal were not completely legible. A difference was found in the name and Passport No. as per Munazim Card and Visa Copy. Other details were not legible. Copies of Munazzim

Card and Visa Copy are not attached in the clarification. The same is required under Clause (xii) of Annexure A of PTO Policy 2018. Hence, the copy of Munazzim card and Haj Visa pages of the passport of the owner/proprietor as required under Clause (xii) of Annexure A of PTO Policy for Haj 2018 is not complied."

14. Counter Affidavit has been filed by the respondent. Petitioner has also filed additional documents to support his reply.

Writ Petition (C) No. 668 of 2018 – M/s. Hiba Exports India Vs. Union of India

15. The petitioner – a sole proprietor is carrying on the business of recruitment for deployment of Indian workers with foreign employers, who is license holder for last 20 years from Government of India. The petitioner firm also provided Haj services to the pilgrims for the year 2002, 2009, 2010 and 2011. In response to registration of Private Tour Operators-Haj 2013, petitioner also submitted its application. After response to the explanations called for from the petitioner and submission of clarifications by

petitioner vide letter dated 30.07.2013, petitioner was included in the List issued on 07.01.2014. For the year 2014 and 2015, petitioner's name was not included as a qualified Private Tour Operator. Petitioner had also filed Writ Petition (C) No. 413 of 2015, in response to registration for Haj 2016, petitioner submitted application and his name was included in the list of private tour operators issued on 29.04.2016. Although, petitioner was included in the list of Private Tour Operators for the draw of lots as per Press Release dated 29.04.2016 but unfortunately was not granted quota due to draw of lots. Petitioner was thus eligible for quota of Haj Pilgrimage for 2017 even without draw of lots. In response to application for Haj-2018, petitioner submitted its application, objections were raised by communication dated 25.03.2018, which were duly replied. The application of the petitioner for registration for Haj-2018 has been rejected by communication dated 31.05.2018. In Paras 2 and 3 of the communication, following has been stated:-

"2. As per Clause (xi) of Annexure A of PTO Policy, the said PTO was required to submit rental receipts and a copy of lease deed, duly signed with the Saudi owners. As per the technical advice received from the empanelled Chartered Accountant Firms and on scrutiny of the clarification/reply of the PTO the following has been observed:

"The PTO has not submitted Rental receipt of SAR 22500/- for contract No. 705522 entered with Ali M.A. Jabullah (Amjadus Salam) and Rental Receipt of SAR 75000/- for Contract No.213351 entered with Zaid A.A. Abid for hiring of accommodation for pilgrims, instead submitted with reply of the query Receipt Voucher No.0006 for SAR 200000/- issued by Muttawiffy Hujjaj South Asia Establishment and Receipt Voucher No.49812 which is in Arabic and no translation of the same has been submitted. Hence PTO has not complied with the requirement of Clause (xi) of Annexure A of PTO Policy"

4. In view of the deficiencies mentioned in Para 2 above, M/s. Hiba Exports India, D 60/4 FIRST FLOOR NEAR GREEN PARK, METRO STATION GATE NO.1 YUSUF SARAI, NEW DELHI-110016 has not been found eligible for registration and allocation of quota for Haj 2018."

16. We have heard Shri Santosh Krishnan, learned counsel appearing for the petitioner in first two writ petitions. We have also heard learned counsel appearing in Writ Petition (C) No.668 of 2018. Shri K.K. Venugopal learned Attorney General and Ms. Pinky Anand, learned Additional Solicitor General have been heard for the respondent.

17. Shri Santosh Krishnan, learned counsel for the petitioner assailing the order dated 31.05.2018 of the respondent in Writ Petition No.638 of 2018 submits that the two reasons given in the order dated 31.05.2018 have no basis. The petitioner had fully complied with Clause (iv) of Annexure A since it has filed all relevant documents showing turnover of Rs.2.16 crore during the financial year 2015-16. He refers pages 6 to 27 of additional documents filed in the writ petition

attacking on the averments made in the counter-affidavit that the PTO did not submit its own balance-sheet but submitted the balance-sheet of Ruby Tours & Travels. It is submitted that till Haj 2015, the petitioner herein was conducting the service as a Proprietorship Firm under the name Ruby Tours & Travels. However, from Haj 2017 the entity Type was changed to Private Limited Company and this fact having been accepted by all authorities including the respondent for Haj 2017, the ground was no longer available to reject the registration by the respondent for Haj 2018. Coming to the second reason that violation of Clause (xi), the petitioner submitted all documents including the Contract for hiring of buildings and rent receipts, proof of payment through authorised channel and invoices from the owner, however, due to a typographical error by the building owner at Saudi Arabia, date of receipt is mentioned as 25.07.2015 instead of 25.08.2015 and date of payment is mentioned as 24.07.2015 instead of 20.08.2015. A Bank statement and soft copy would show that payment was actually made on 25.08.2015.

18. Learned counsel further submitted that there has been no application of mind by the respondent while refusing registration. The respondent has mechanically followed the advice given by Chartered Accountant Firms. The rejection was premised on the technical advice received from the empanelled Chartered Accountant Firms which itself shows non-application of mind by the respondent.

19. Shri K.K. Venugopal, learned Attorney General, refuting the above submissions contends that order rejecting registration has been issued considering the objections raised, clarifications/replies submitted and documents submitted by the petitioner. He submitted that the documents for turnover submitted by the petitioner were the documents of Proprietorship Firm that is Ruby Tours & Travels whereas registration was applied for Haj by the Private Limited Company and no documents have been submitted that Proprietorship Firm has been converted into Private Limited Company. The petitioner which is a Private Limited Company cannot rely on turnover of Proprietorship Firm. It is

submitted that decision was arrived after application of mind and the rejection having been based on valid reason this Court shall not substitute its own decision with that of department. On submission pertaining to second ground, it is contended that PTO's application that there was a typographical error, cannot be submitted since typographical error was not only in one document but in the various documents submitted by the PTO which fact itself raises question of credibility of the PTO.

20. We have gone through the rival submissions and perused the records of Writ Petition No.638 of 2018.

21. For turnover the petitioner has placed reliance on certificate of Chartered Accountants dated 02.01.2018 as Annexure P-18. The certificate reads:

"To whomsoever it may concern

This is to certify that the Ruby Tours & Travels (Prop. Nazir Ahmed Shaikh) having its office at 7/8, Ground Floor, 2421 East Street Galleria, East Street Camp, Pune-411001 had doing the business of Haj Tours.

This is also to certify that Ruby Tours

& Travels is having Haj turnover of Rs.2.16 Crore during the financial year 2015-16.

This is on the basis of information, explanations & records produced before me.

*For A S Gholkar & Co.
Chartered Accountants*

*Amit S. Gholkar
(Proprietor)*

*Place: Pune
Date: 02/01/2018
Certificate No.ASG/2017-18/068."*

22. The petitioner has applied quota as Private Limited Company which fact is not disputed. Objection was raised by query dated 25.03.2018 that all documents were submitted for Private Limited Company but previous quota including 2015 were allotted to proprietor. The Type of entity is changed. After considering the reply ultimately order dated 31.05.2018 stated that PTO's turnover is less than Rs.1 crore as required under Clause (iv). In the counter-affidavit as well as in the oral submissions, the aforesaid ground was relied on behalf of the respondents for rejection.

The petitioner has filed rejoinder-affidavit to the counter-affidavit in which petitioner submits that till Haj 2015 petitioner was conducting service as a Proprietorship Firm under the name Ruby Tours & Travels, however, from Haj 2017 the entity Type was changed to Private Limited Company. The PTO who has applied for registration is admittedly a Private Limited Company and the turnover which is relied was of a Proprietorship Firm. It is not the case that the Company having incorporated after the Proprietor business was closed. It is not a case of conversion of Proprietorship Firm into Company. No documents have been submitted that Proprietorship Firm sold its entire business to the Company. It is also relevant to point out that when the petitioner had applied for registration for Haj 2016, the objection was raised by letter dated 07.06.2016 of the respondent where following was stated:

"2(vi). In the application form the PTO has mentioned it is a proprietorship firm but as per documents provided it is a private limited company. Further, the names of all directors are also not disclosed."

23. Thus, the petitioner was well aware of the objections raised by the respondent under Clause (iv) regarding turnover relied by the petitioner being of different entity. The position ought to have been explained by the petitioner by submitting all relevant documents including conversion of Proprietorship Firm into Private Limited Company with transfer of its assets and liabilities. The fact that turnover of different entity was relied, the decision rejecting the registration cannot be said to be perverse or based on no material. Learned counsel for the petitioner laid much emphasis that for the Haj 2017 when the petitioner was granted registration, it was not open to respondent to raise objections again. Learned Attorney General submitted that there are large number of applications every year and there being time constraint in verification of the application if in the event a PTO is ineligible which escaped notice of the respondent in a particular year there cannot be estoppel on the Government to raise issue of ineligibility in the subsequent year. We find substance in the submission of

the learned Attorney General. The Government cannot be estopped to raise issue of ineligibility in case it escaped its notice in any earlier order. We, thus, do not find any infirmity in the ground taken in the order dated 31.05.2018 in refusing registration due to non-compliance of Clause (iv). We having upheld the order dated 31.05.2018, it is not necessary for us to consider the rival submissions with regard to non-compliance of Clause (xi).

24. The submission of the learned counsel for the petitioner that report of Chartered Accountant Firms empanelled by the respondent has been mechanically considered also cannot be accepted. The objections were raised after scrutiny of the application to which reply was submitted by the petitioner. In the event the Government received the assistance from a Chartered Accountant Firm no exception can be taken to such assistance provided it is proved that there is no non-application of mind by the Government on the relevant facts and documents. In the present case order dated 31.05.2018 refers to the objections raised,

clarifications/replies submitted by the petitioner. The technical advice received from the empanelled Chartered Accountant Firms has also been relied to support its conclusion in which no infirmity can be found. We, thus, are of the view that there are no grounds for interfering in the order dated 31.05.2018 in Writ Petition No.638 of 2018 which writ petition deserves to be dismissed. The writ petition is accordingly dismissed.

25. Now coming to the Writ Petition (C) No. 646 of 2018. Mr. Santosh Krishnan, learned counsel for the petitioner with emphasis and clarity submits that reasons given in the Order dated 31.05.2018 for refusing registration is trivial and non-existent. He submits that copies of Munazzim card and Visa copy were duly submitted and the error pointed out in the name of Mr. Abdur Razzaque as Abdul Razzaque in Munazzim card being insignificant and trivial, ought not to have been relied by the respondent to reject the claim. It is further submitted that typographical error in passport number as contained in the Munazzim Card was also to be

ignored since the copy of the passport with correct number was already submitted and it was not the case of the respondent that any other person apart from Abdur Razzaque was tour Assistant of the petitioner.

26. Ms. Pinky Anand, learned Additional Solicitor General refuting the submissions contended that the name as per translation duly attested by the Director of PTO showed the name as Abdul and there was difference in passport number in the Munazzim Card, which showed passport No. as F-83847646 whereas the correct passport number is F-8384646. It is submitted that rejection was on valid ground.

27. We have considered the submissions of the learned counsel for the parties and have perused the records.

28. The Munazzim Card and Haj Visa is issued in the name of tour assistant by the Saudi Authorities. Details of tour assistants were already submitted at Page No. 199 of the application, which was re-submitted alongwith clarification of the petitioner. In the

translated copy as is the case of the respondent, attested by the Director of the PTO, the name of Abdur Razzaque was shown as Abdul Razzaque. The Munazzim Card is issued by the Saudi Authorities and the mention of word "l" in place of "r" at the end of the name Abdur is on account of difference in pronunciation of the name by the Saudi Authorities, which does not go to the root of the matter since it is not the case of the respondent that the tour assistant was any other person except the one who was authorised by the petitioner. Further, the photocopy of the passport of Abdur Razzaque Chand Mia was submitted by the petitioner alongwith photograph and other details. Correct number of passport i.e. F-8384646 is also submitted to the respondent. Photocopy of the visa issued by the Saudi Authorities is also brought on the record alongwith additional documents which mentions correct passport number i.e. F-8384646. In the Munazzim Card issued by authorities, it is also brought on record before us that passport number mentioned is F-83847646. The digit "7" has been mentioned additionally in the passport number, which is an obvious mistake. We are of the

view that the reliance on aforesaid two grounds which are too trivial and insignificant, cannot be said to be any valid ground for rejection of the claim. Moreover when the same tour assistant with the same passport number has conducted the Haj services for the year 2010, the respondent's authorities while considering the case of the PTO for registration have to advert to the substance of the matter and substance of the reply submitted by the PTO need to be gone into. In event of PTO fulfills other conditions, rejection of claim on trivial and non-substantial grounds cannot be countenance. We are of the view that rejection of registration of the PTO for Haj-2018 in the present case cannot be supported and deserves to be set aside.

29. Now, we come to the question of relief, which is to be granted to the petitioner, in view of our above decision that rejection of claim of petitioner for Haj-2018 was unfounded. Learned counsel for the petitioner has placed reliance on the judgment of this Court in ***Jeddah Travels and Jeddah Hajj Group Vs. Union of***

India, (2014) 14 SCC 378, where this Court laid down following in Paragrph 7:-

"7. Having considered the contentions advanced on behalf of the rival parties, we are of the view that the petitioners who had approached the Court well in time cannot be denied the benefit of an adjudication as urged by the learned ASG. The time-frame still available, in our considered view, is adequate to enforce the rights of the petitioners if they are found so entitled. "

30. Learned counsel submits that since the petitioner has filed this petition on 04.06.2018, which was the date for allocation of Haj quota to the eligible PTOs, petitioner is entitled for relief. Shri Santosh Krishnan submitted that even if the quota is allotted to all the PTOs, the number of passengers allotted to each PTO may be reduced by one, which may be re-allotted to petitioner and another eligible person. This Court in **United Air Travels Services Through its Proprietor A.D.M. Anwar Khan vs. Union of India through Secretary (Ministry of External Affairs), (2018) 7**

SCALE 1: AIR 2018 SC 2264 decided on 07.05.2018 came to consider the question of relief to be granted to PTO, whose application for grant of registration for Hajj Pilgrimage – 2016 was rejected. In the present writ petition, one of the reliefs claimed by the petitioner is for grant of compensation. In Prayer C, following has been prayed:-

“(c) Issue a Writ, order or direction in the nature of Mandamus commanding and directing the respondent to pay compensation to the petitioner for the loss occurred to it by not granting registration for Hajj 2018;”

31. This Court in **United Air Travel Services (supra)** considered the question of grant of relief and has laid down following in Paragraphs 13 to 18:-

“13. The question, however, rises what relief can be granted in such a situation. The passage of time has made certain reliefs infructuous. The time period for conducting Hajj tours for 2016 as well as 2017 is over. Thus, even the alternative relief prayed for 2017 has become infructuous. In three of the writ petitions, i.e., WP (C) Nos.631/2016; 634/2016 & 636/2016, there is a specific

alternative plea for compensation to the petitioners for the loss accrued due to non-grant of registration for the Hajj of 2016. While there is no such specific plea in the other writ petitions, given the identical situation, we are of the view that the same principle ought to be applied in all these cases. The petitioners cannot be left remediless. The mindless action of the respondents in rejecting the eligibility of the petitioners for the year 2016 on the very grounds on which they were exempted necessitates that the petitioners should be entitled to damages in public law so that they are compensated, at least, to some extent for not having been able to carry on with their business on account of illegal action of the respondents.

14. The principles of damages in public law have to, however, satisfy certain tests. In ***Nilabati Behera v. State of Orissa, (1993) 2 SCC 746***, it was observed that public law proceedings serve a different purpose than private law proceedings. In that context, it was observed as under:

“The purpose of public law is not only to civilize public power but also to assure the citizen that they

live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court molds the relief by granting 'compensation' in proceedings under Articles 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrong doer for the breach of its public law duty

and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law."

It was also emphasized that it is a sound policy to punish the wrongdoer and it is in that spirit that the courts have molded the relief by granting compensation in exercise of writ jurisdiction. The objective is to ensure that public bodies or officials do not act unlawfully. Since the issue is one of enforcement of public duties, the remedy would be available under public law notwithstanding that damages are claimed in those proceedings.

15. The aforesaid aspect was, once again, emphasized in ***Common Cause, a Registered Society v. Union of India***, (1999) 6 SCC 667. We may also usefully refer to ***N. Nagendra Rao & Co. v. State of A.P.***, (1994) 6 SCC 205 qua the proposition that the determination of vicarious liability of the State being linked with the negligence of its officer is nothing

new if they can be sued personally for which there is no dearth of authority.

16. In the facts of the present case, the arbitrariness and illegality of the action of the authority is writ large. The petitioners have been deprived of their right to secure the quota on a patently wrongful order passed for reasons, which did not apply to them and for conditions, which had been specifically exempted. What could be a greater arbitrariness and illegality? Where there is such patent arbitrariness and illegality, there is consequent violation of the principles enshrined under Article 14 of the Constitution of India. The facts of the present case are, thus, undoubtedly giving rise to the satisfaction of parameters as a fit case for grant of compensation.

17. On a conspectus of the aforesaid facts including the number of pilgrims for whom the petitioners would have been entitled to arrange the Hajj pilgrimage, an amount of Rs.5 lakh per petitioner would be adequate compensation for the loss suffered by them and sub-serve the ends of justice. We are conscious of the fact that there is no quantification based on actual loss, but then

the award by us is in the nature of damages in public law.

18. The amount for each of the petitioners be remitted by the respondents within two months from the date of this order failing which the amount would carry interest @ 15 per cent per annum apart from any other remedy available to the petitioners. It will be open to the respondents to recover the amount of damages and costs from the delinquent officers responsible for passing such unsustainable orders."

32. We are of the view that petitioner is also entitled for same compensation of Rs.5 lakh, which is adequate compensation for the loss suffered by the petitioner and shall subserve the justice. We further direct that the aforesaid amount be paid within two months from this date, failing which the amount would carry simple interest @ 15 per cent per annum. The Writ Petition (C) No. 646 of 20185 is allowed to the above extent.

33. Now we come to the last writ petition being Writ Petition (C) No. 668 of 2018. Learned counsel for the petitioner in support of the above petition submits that although the petitioner has submitted necessary details including rental receipts, which is reflected in their reply dated 31.03.2018 but the claim has been rejected with the observation that petitioner has not submitted that rental receipts and the receipts and vouchers submitted by the petitioner were issued by Muttawiffy Hujjaj South Asia Establishment, which was not rental receipt with regard to contract entered with Ali M.A. Jabullah and Zaid A.A. Abid for hiring of accommodation for pilgrims. Petitioner submitted that receipts having been again submitted alongwith the reply dated 31.03.2018, the rejection was uncalled for. Ms. Pinky Anand, learned Additional Solicitor General refuting the submission contends that Muttawiffy Hujjaj South Asia Establishment was not the party who had provided accommodation to PTOs. Since the accommodation contract at Madina was entered with different persons and further no proper reply has been

given to the petitioner except again relying on the said receipts.

34. We have considered the above submissions of the parties and have perused the records. Although the rejection of the claim of the petitioner clearly mentions about the above mismatch and stated that receipt voucher has been issued by entity with whom the contract for accommodation was not entered into, but no proper explanation in the writ petition has been given. The writ petition only reiterates what was stated in the reply dated 31.03.2018 without explaining the objection raised by the respondent. We are satisfied that there was valid reason for the respondent to refuse registration to the petitioner when the objection was raised, which was not satisfactorily replied by the petitioner. We are of the view that petitioner in this writ petition is not entitled for any relief and the petition deserves to be dismissed.

35. In result, Writ Petition (C) No. 638 of 2018 - Ruby Tour Services Pvt. Ltd. Vs. Union of India and Writ

Petition (C) No. 668 of 2018 - M/s. Hiba Exports India Vs. Union of India are dismissed. Writ Petition (C) No. 646 of 2018 - M/s. Nawab Travels Private Limited Vs. Union of India is allowed with a direction to the respondent to pay compensation of Rs.5 lakh within a period of two months from today, failing which the petitioner shall be entitled to claim simple interest @ 15 per cent per annum. Parties shall bear their own costs.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI,
JULY 30, 2018.