



HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

OWP No. 876/2008
CMP No. 1268/2008

Date of Decision: **24.11. 2008**

Bashir Ahmed and anr
v.
State of J&K & ors

CORAM:

MR. JUSTICE J. P. SINGH, JUDGE.

Appearing counsel:

For Petitioner(s) : Mr. S. S. Ahmed, Advocate.
For Respondent(s) : Mr. V. K. Chopra, AAG.

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| i) | Whether approved for reporting in Press/Journal/Media | : Yes |
| ii) | Whether to be reported in Digest/Journal | : Yes |
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Bashir Ahmed and Sajda Begum, petitioners, were selected by the Jammu and Kashmir State Haj Committee for Haj Pilgrimage 2008. After having deposited requisite Foreign Exchange and Airfare, as demanded by the functionaries controlling the Haj Pilgrimage, they had been waiting for getting Permission and Travel Documents, when the Jammu and Kashmir State Haj Committee informed Deputy Commissioner Reasi vide its reference No. Haj/2008/295 of October 12, 2008, that petitioners's pilgrimage had not been cleared.

Petitioners Haj pilgrimage appears to have been stalled on respondents noticing that petitioner no.1 was involved in FIR no. 67/2007 registered at Police Station Mahore under Sections 212,216 RPC and Sections 18/20 of the Unlawful Activity Prevention Act, 1967.

Petitioner no.1, though released on bail in FIR no. 67/2007, had been directed not to leave the State of Jammu and Kashmir except after obtaining permission of the Court. He accordingly applied for lifting the condition whereby he had been restrained from leaving the State of Jammu and Kashmir.

Learned Judicial Magistrate First Class (Munsiff) Reasi, after hearing the State in this behalf, permitted the petitioner no.1 to leave the jurisdiction of the State for a period of two months with effect from 10.11.2008 for Haj pilgrimage, after completing other requisite formalities. This permission was given to petitioner no.1 subject to his furnishing two sureties and a Personal Undertaking, in the amount of Rs.70,000/- each, undertaking that he would return to the State on or before January 11, 2009.

The State had questioned Judicial Magistrate's order before Sessions Judge Reasi in a revision petition.

In view of the orders passed by learned Magistrate, permitting petitioner no.1 to go for Haj, the petitioners have filed this petition questioning the Jammu and Kashmir State Haj Committee's order on the ground that restraint placed on petitioner's proceeding for Haj by the respondents, was not only arbitrary and unwarranted but also in violation of their fundamental right guaranteed to them under Article 25 of the Constitution of India.

Director General of Police (C.I.D) Jammu and Kashmir, respondent no.3, in his objections to the writ petition, indicated that because of petitioner no.1's involvement in FIR no. 67/2007, the petitioners could not be permitted to leave the State because the permission granted to them to go for Haj by learned Judicial Magistrate had been stayed by learned Sessions Judge Reasi.

On this petition coming up for consideration on 17.11.2008, petitioners' counsel submitted that stay issued by learned Sessions Judge Reasi having been vacated with the dismissal of State's Revision Petition, the Jammu and Kashmir State Haj Committee's communication impugned in the writ petition needs to be set aside as its continuance

would amount to violation of petitioner's right to practice their religion.

Impleading Financial Commissioner Home, J&K Government, as respondent no.5 to this petition, learned Additional Advocate General appearing for the respondents was asked to report instructions as to whether there was still any impediment in petitioners' proceeding for their Haj pilgrimage. The writ petition slated for consideration for 19.11.2008 was, however, adjourned to 21.11.2008 directing the State counsel to place all such material on records on the basis whereof the State Government would justify restraining the petitioners for their Haj pilgrimage.

I have considered the submissions of learned counsel for the parties and gone through the pleadings as also the records which were made available for perusal by the learned State counsel.

Perusal of the official records indicates that no new material other than FIR no. 67/2007, appears to have been collected by the State and its functionaries on the basis whereof it may be said that petitioners going for Haj would, in any way, be detrimental to the interests of the State or

would affect the security or maintenance of public order in the State.

The only objection on the basis whereof the petitioners appear to have been declined permission to go for Haj was the existence of a condition in petitioner no.1's bail order that he would not leave the State except with the permission of the Court, which had granted him bail in FIR no. 67/2007. The condition having been lifted and State's challenge to the grant of permission by the learned Magistrate to petitioner no.1 to go for Haj having failed with the dismissal of their Criminal Revision Petition by learned Sessions Judge Reasi, I do not find any justification in State's refusal to permit the petitioners to go for Haj pilgrimage.

The basis on which the Jammu and Kashmir State Haj Committee had informed the Deputy Commissioner Reasi about the non-clearance of petitioner's case for proceeding for Haj, having disappeared with the grant of permission by the learned Magistrate and dismissal of State's revision petition preferred against the Magistrate's order, operation and continuance of its order No. Haj/2008/295 of October 12, 2008 cannot be justified.

Petitioners fundamental right to profess their religion, which includes going for Haj, may be curtailed only if such curtailment is in the interest of public order, morality and health or in violation of any law in force regulating the religious practices. No such case having been projected much less substantiated by the State, refusal of permission to petitioners to go for Haj would, in my opinion, amount to violation of Article 25 of the Constitution of India. The petitioners are therefore held entitled to perform their Haj pilgrimage without any interference.

For all what has been said above, I am of the view that Jammu and Kashmir State Haj Committee's communication No. Haj/2008/295 of October 12, 2008 needs to be set aside and quashed.

Accordingly, quashing Jammu and Kashmir State Haj Committee's communication No. Haj/2008/295 of October 12, 2008, the Jammu and Kashmir State Haj Committee, its functionaries and the functionaries of the State of Jammu and Kashmir are directed to issue requisite Permission and Travel Documents to the petitioners forthwith. The respondents shall take all such measures as may be necessary to facilitate petitioners proceeding for Haj pilgrimage 2008.



Keeping in view the urgency projected during the course of hearing, it is provided that a copy of this order shall be supplied to the petitioners through their counsel under the seal and signatures of the Court Secretary today itself.

(J. P. Singh)
Judge

JAMMU
24.11.2008:
Anil Raina, Secy