

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

Writ Petition No. 92 of 2017

In the matter of :

An application under Article 102(2) of the Constitution of the People's Republic of Bangladesh.

-And-

In the matter of :

Madina Air Travels Limited represented by its Proprietor Fazlur Rahman.

..... Petitioner

-Versus-

Bangladesh and others.

.....Respondents

Mr. Motahar Hossain, Advocate with
Ms. Salina Akter Chowdhury, Advocate

...For the Petitioner

Mr. Md. Jakaria Khan, Advocate with
Mr. Sajed Ahammad Sami, Advocate

.....For Respondent Nos. 2

Present:

Mr. Justice Zubayer Rahman Chowdhury

And

Mr. Justice Kazi Ebadoth Hossain

Date of Hearing : 11.05.2023 &
17.05.2023

Date of Judgment : 02.08.2023

Zubayer Rahman Chowdhury, J :

By this Rule, the petitioner has challenged the legality of the notice dated 05.09.2016, issued by respondent no. 2, cancelling the

Umrah Hajj license and also confiscating the security money amounting Taka 30,00,000/- (Taka Thirty Lacs).

At the time of issuance of the Rule, the operation of the notice dated 05.09.2016 was stayed for a period of three months, which was subsequently extended from time to time by orders of different dates.

Briefly stated, facts relevant for disposal of the Rule are that the petitioner, being engaged in the business of Travel Agency, applied to the Ministry of Religious Affairs for obtaining a Hajj/Umrah license. An inquiry was conducted and thereafter the petitioner was granted a license bearing no. 216 dated 31.12.2015. Since then, the petitioner has been regularly sending pilgrims from Bangladesh to Saudi Arabia for performing Hajj and Umrah.

While the petitioner was running his business, a show cause notice was issued on 11.06.2015 by respondent no. 2 asking the petitioner to give an explanation as to why 63 persons, who had been sent to Saudi Arabia by the petitioner, failed to return to Bangladesh after performing Umrah. The petitioner appeared before the Inquiry Committee formed by the Ministry of Religious Affairs and submitted his reply explaining his position and stating that all the Hajjis, who had been sent to Saudi Arabia by the petitioner, had returned to Bangladesh. However, by Memo dated 25.11.2015, the

petitioner's license was cancelled by the Authority and the security money amounting to Taka 30,00,000/- (Taka Thirty Lacs), was forfeited. Challenging the aforesaid decision, the petitioner filed a Review application on 06.12.2015, but the Authority did not consider the same. Being aggrieved thereby, the petitioner moved this Court and obtained the instant Rule.

Ms. Selina Akter Chowdhury, the learned Advocate appearing in support of the Rule submits that impugned order cancelling the petitioner's Hajj license and forfeiting the security deposit money is liable to be set aside as the same was issued in an arbitrary and malafide manner. She submits that the allegation brought against the petitioner is baseless as all the pilgrims, who went to Saudi Arabia through the petitioner, had duly returned to Bangladesh. She submits that without giving a proper hearing or considering the petitioner's case, the impugned order was passed in an arbitrary manner.

Referring to Annexure G(1) of the supplementary affidavit dated on 13.03.2003, Ms. Chowdhury submits that it is evident from the said document that the petitioner had sent a total of 796 pilgrims to Saudi Arabia and all of them duly returned to Bangladesh. She submits that despite the position as aforesaid, the respondents cancelled the petitioner's license.

Referring to Annexure H(1) of the supplementary affidavit dated 11.05.2023, the learned Advocate submits that the petitioner's license has been renewed by the concerned Ministry upto 21st January, 2025.

Mr. Motahar Hossain the learned Advocate appearing in support of the Rule submits that the petitioner has been sending pilgrims to Saudia Arabia for the purpose of performing Hajj and Umrah for the past several years without any complaint from any quarter and therefore, it is clear that the allegation brought against the petitioner is baseless and misleading and consequently, the Rule is liable to be made absolute.

The Rule is being opposed by respondent no. 2 by filling an affidavit in opposition.

Mr. Sajed Ahammad Sami, learned Advocate appearing along with Mr. Md Jakaria Khan, the learned Advocate, having placed the affidavit in opposition along with the documents appended thereto, submits that the action against the petitioner was taken by the Ministry following a complaint sent to the Government of Bangladesh by the concerned Ministry in Saudi Arabia. He submits that upon receiving the said complaint, the Ministry of Religious Affairs conducted an inquiry and found substance in the complaint.

He further submits that the petitioner appeared before the Inquiry Committee and denied the allegation, but failed to produce any document in support of its contention. He submits that as the petitioner was unable to provide any satisfactory explanation with regard to the charge brought against it, the Ministry had rightly passed the impugned order. Mr. Sami submits that although the petitioner had filed a Review application before the Authority, the said application was not supported by any documents to show that all the pilgrims sent by the petitioner to Saudi Arabia had returned to Bangladesh and accordingly, the Review was rightly rejected.

Mr. Sami submits that according to the report sent to the Government of Bangladesh by the Ministry of Foreign Affairs, Kingdom of Saudi Arabia, a total of 63 persons sent by the petitioner in 2024 to Saudi Arabia to perform Umrah Hajj did not return to Bangladesh. Referring to this particular document, Mr. Sami submits forcefully that the petitioner has not been able to controvert this positive finding of the Ministry of Foreign Affairs, Kingdom of Saudi Arabia. Mr. Sami further submit that the petitioner's claim that all the pilgrims sent to Saudi Arabia by the petitioner had duly returned to Bangladesh can only be verified upon taking oral and documentary evidence. He submits that it is now well settled that the

Court, in exercises of its writ jurisdiction, cannot settle a disputed question of fact. In support of this contention, Mr. Sami relies on the decision reported in 51 DLR (AD) (1999) 232.

Referring to Annexure H of the supplementary affidavit dated 15.03.2023, filed on behalf of the petitioner, Mr. Ahmed submits forcefully that this document was fabricated as the concerned Ministry in Bangladesh has no record of such a document having been issued by the Authority in Saudi Arabia. More importantly, he submits that although the document is dated 18.06.2015, which is prior to the investigation conducted by the Enquiry Committee, the petitioner did not submit this particular document before the Enquiry Committee or even before the Review Board but filed the same through a supplementary affidavit before this Court after a period of eight years in March, 2023. Mr. Ahmed submits that in view of the factual and legal position noted above, the instant Rule is liable to be discharged.

We have perused the application and the affidavit in opposition as well as the documents appended thereto. We have also considered the submission advanced by the learned Advocates of the contending sides.

The petitioner is engaged in the business of sending pilgrims from Bangladesh to Saudi Arabia for the purpose of performing Hajj and Umrah and a license was issued in its favour by the Ministry of Religious Affairs. Following a complaint sent to the Government of Bangladesh by the Ministry of Foreign Affairs, Kingdom of Saudi Arabia, an inquiry was conducted in Bangladesh. A show cause notice was issued, following which the petitioner duly appeared before the Committee, but was unable to produce any document in support of the explanation that all the pilgrims sent by the petitioner to Saudi Arabia had duly returned to Bangladesh. On the basis of the committee's report, the impugned order was issued cancelling the petitioner's license and forfeiting the deposit money. The Review application filed by the petitioner was also rejected.

We have perused Annexure-H which was filed by the petitioner during pendency of the Rule. The learned Advocate for the petitioner has contended that this particular document dated 18.06.2015 provides testimony to the petitioner's claim that all the pilgrims sent to Saudi Arabia had duly returned to Bangladesh. However, the Investigation Report, which was signed by the concerned officials on 13.09.2015, contains the following statement:

“তদন্তে প্রতিনিধি (ম্যানেজার) উপস্থিত হয়। কিন্তু বক্তব্যের স্বপক্ষে অনলাইনে তথ্য প্রদর্শন করতে পারেনি। অভিযোগ প্রমাণিত মর্মে প্রতীয়মান হয়।”

It is evident from the said report that the petitioner failed to produce any online proof in support of this contention. Reverting to Annexure-H noted above, we find that this document was downloaded by the petitioner from the internet. As this document predates the inquiry conducted by the Authority, we are unable to understand as to why the petitioner did not produce this important document before the Inquiry Committee or the Review Board. It is after a period of eight years that the petitioner has now filed this document before this Court. We have also noted that this particular document does not bear any official endorsement or seal from the Authority; it only bears the seal of the petitioner’s Travel Agency. In our view, the veracity of this document, on which the petitioner rests the claim that all the pilgrims had returned to Bangladesh, can only be ascertained upon scrutinising the evidence, both oral and documentary, which this Court is unable to do in exercise of its writ jurisdiction.

In the case of Shamsunnahar Salam vs Md. Wahidur Rahman and others, reported in 51 DLR (AD) (1999), 233 the apex Court held:

“However extraordinary its powers, a writ Court cannot and should not decide any disputed question of fact which requires evidence to be taken for settlement”

In view of the foregoing discussion, we are inclined to hold that the instant Rule is devoid of any substance.

In the result, the Rule is discharged.

The order of stay, granted at the time of issuance of the Rule, stands recalled and vacated.

The Authority shall be at liberty to take appropriate action against the petitioner in accordance with law.

There will be no order as to costs.

Kazi Ebadoth Hossain, J:

I agree