

PETITIONER NO.2 TO 10 AS MEMBERS OF THE KARNATAKA STATE HAJ COMMITTEE (R-3) TILL COMPLETION OF THEIR TERM OF THREE YEARS I.E., TILL 06.07.2024 AND ETC.,

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

Petitioners being the nominated members of the State Haj Committee (hereafter 'K-SHC') constituted in terms of section 18 of the Haj Committee Act, 2002, vide Notification 20.01.2020 are seeking directions at the hands of the Writ Court as under:

"(a) A writ of Mandamus or any other writ or order directing the Respondent No.1 & 2 to not to disturb the functioning of the Petitioner No.1 as Chairman and Petitioner No.2 to 10 as members of the Karnataka State Haj Committee (Respondent No.3) till completion of their term of three years i.e., till 06.07.2024, in the Interest of Justice and Equity.

(b) A writ of Mandamus to declare that the term of the Petitioners as members of the Karnataka State Haj Committee (Respondent No.3) for a period of three years has commenced from 07.07.2021 "ANN-D and will end on 06.07.2024," in the interest of Justice and Equity."

2. Learned counsel for the petitioners argued that the tenure of the Chairman of Committee is three

years as prescribed under section 21(4) of the Act; such election ought to have been held within 45 days as provided under section 21(3) of the Act; however, it was held belatedly that too with the intervention of this court in W.P.No.3772/2021 between *KHUSRO QURESHI vs. STATE OF KARNATAKA*, disposed off on 23.2.2021 and the appointment came to be notified only on 7.7.2021; this period has to be reckoned from the date of election of the Chairman i.e., 24.06.2021; the Chairman was accordingly appointed vide Notification dated 7.7.2021; therefore, the tenure of the first petitioner as the Chairman should be allowed to continue till 6.7.2024. There is power to extend tenure of the Committee for not more than two terms u/s 21(4) of the Act and the representations made in this regard on 23.12.2022, remain unconsidered. Therefore, the government should be directed to extend the tenure of Committee, as well. So contending, he seeks grant of Petition prayers.

3. Learned Advocate General appearing for the State opposed the Petition contending that the tenure of

the Haj Committee and of the Chairman heading it are prescribed by the statute; by no ingenious argument, that tenure can be elongated; it is only a member of the Committee who is elected by other members and therefore, the tenure of the Chairman is coterminous with his membership; an argument to the contrary would offend the provisions of Act which incorporate the principles of democracy, the mode of selecting the Chairman being election. He highlighted the consequences that would follow if petitioners' argument is accepted. Learned counsel appearing for respondent No.3 adopted the submission of learned Advocate General. So contending, they sought for dismissal of Writ Petition.

4. Having heard the learned counsel for the parties and having perused the Petition Papers, this Court declines indulgence in the matter for the following reasons:

(I) Foundational facts of the case:

(i) Petitioner Nos.2 to 10 are the members of Karnataka State Haj Committee; they were so nominated by the State Government vide Notification dated 20.1.2020 for a period of three years. For very long, the Chairman was not elected till the intervention of a Coordinate Bench in *KHUSRO QUERESHI supra* in which assurance of the State Government to conduct the election within an outer limit of six weeks was recorded. Accordingly, election was held on 24.6.2021 and the State Government vide Notification dated 7.7.2021 issued under sub-sections (1) & (3) of section 21 of the Act notified the appointment of first Petitioner as the Chairman of the Committee.

(ii) The Executive Officer of the K-SHC vide letter dated 20.9.2022 sent a proposal for the reconstitution of Committee stating that the tenure of the present Committee would come to an end on 20.1.2023 and that necessary steps in terms of section 22(1) of the Act need to be taken for the reconstitution of the new Committee at least four months in advance. The first petitioner being

the Chairman of K-SHC vide letter dated 23.12.2022 requested the State Government for extension of the term of the present Committee. He had sent similar representation to the Minister for Haj. These letters have triggered the present petition.

(II) A brief legislative history of Haj:

(i) Since the 2002 Act deals with Haj, a few words about the same are not out of the place: In Encyclopedia Britannica, what its Editor Mr. Adam Augustyn wrote on 30.06.2023, runs as under:

*"...hajj, also spelled **hadjdj** or **hadj**, in Islam, the pilgrimage to the holy city of Mecca in Saudi Arabia... The hajj is the fifth of the fundamental Muslim practices and institutions known as the Five Pillars of Islam. The pilgrimage rite begins on the 7th day of Dhū al-Ḥijjah (the last month of the Islamic year) and ends on the 12th day.*

The hajj is incumbent on all Muslims who are physically and financially able to make the pilgrimage, but only if their absence will not place hardships on their family. A person may perform the hajj by proxy, appointing a relative or friend going on the pilgrimage to "stand in" for him or her.

The pattern of pilgrimage rites was established by the Prophet Muhammad, but

variations have arisen in it, and the stringent formal itinerary is not strictly adhered to by the mass of pilgrims, who frequently visit the various Meccan sites out of their proper order.

When the pilgrim is about 6 miles (10 km) from Mecca, he or she enters the state of holiness and purity known as ihram and dons the ihram garments; for men they consist of two white seamless sheets that are wrapped around the body, while women may wear sewn clothes. The pilgrims cut neither their hair nor their nails until the pilgrimage rite is over. They enter Mecca and walk seven times around the sacred shrine called the Kaaba, in the Great Mosque, kiss or touch the Black Stone (al-Ḥajar al-Aswad) in the Kaaba, pray twice in the direction of the Maqām Ibrāhīm and the Kaaba, and run seven times between the minor prominences of Mount Ṣafā and Mount Marwah. On the 7th day of Dhū al-Ḥijjah the pilgrims are reminded of their duties. At the second stage of the ritual, which takes place between the 8th and the 12th days of the month, the pilgrim visits the holy places outside Mecca—Jabal al-Rahmah, Muzdalifah, and Mina—and sacrifices an animal in commemoration of Abraham's sacrifice. Male pilgrims' heads are then usually shaved, and female pilgrims remove a lock of hair. After the rajm ritual at Minā, in which pilgrims throw seven stones at three walls (formerly pillars, symbolizing the Devil) on three successive days, the pilgrim returns to Mecca to perform the farewell ṭawāf,...

About two million persons perform the hajj each year... Once a believer has completed the pilgrimage, he or she may add the

title ḥājj or ḥajjī (for a male) or ḥājjah (for a female) to his or her name. The pilgrimage, if performed properly, is believed to wipe out previous sins for the sincere believer..."

(ii) There is abundant Islamic literature to support the view that Haj has the elements of *essential religious practice* since Islam mandates every adult muslim (male/female) to undertake one such pilgrimage in his/her life time. *Kitab -ul-Hajj* (Islambase publications www.islambase.tk) at page 3 says: "*The Hajj (Pilgrimage to Makkah) is one of the five pillars of Islam. Anybody declaring to be a Muslim must fulfil this ritual act, or at least have the intention to do so once in their lifetime. There are many evidences with regards to this obligation. Allah (swt) says in the Qur'an: And Hajj (pilgrimage to Makkah) to the House (Ka'bah) is a duty that mankind owes to Allah, those who can afford the expenses (EMQ 3:97)*". Therefore the same enjoys constitutional protection, of course subject to all reasonable restrictions under the provisions of Article 25. The Hon'ble Delhi High Court in **AL Tawaf Hajj &**

Umrah Travel & Tourism v. Union of India, 2023

SCC OnLine Del 3572, has pertinently observed as under:

"This Court is of the view that such an action would defeat the purpose of the current Haj Policy and is in derogation of Article 25 of the Constitution of India. Article 25 of the Constitution of India guarantees the freedom of conscience and the freedom to profess, practice and propagate religion to all citizens. Haj Pilgrimage and the ceremonies involved therein fall within the ambit of a religious practice, which is protected by the Constitution of India. Religious freedoms are one of the most cherished rights guaranteed and enshrined under the Constitution in line with the vision of the founding fathers of the Modern Indian Republic. The religious freedom of the person is guaranteed by the Constitution of India under Article 25."

(III) A brief legislative history of Haj:

(a) The records available indicate the existence of the Haj Committee, Bombay since the year 1927. The City of Bombay has a very long association with Haj. Muslims had been proceeding for Haj through Sea Route during British Rule from the Sea-Port of Bombay. On 1st October, 1932, the Port Haj Committees Act of 1932 was passed, to establish Committees in the principal Ports of

Pilgrim Traffic, to assist the Muslim Pilgrims to Haj. It envisaged the constitution of Port Haj Committees for Calcutta & Bombay. The Port Haj Committee of Bombay continued to work under the Presidentship of Commissioner of Police, Bombay till April, 1939. It rendered necessary services to the pilgrims proceeding for Haj till 1959.

(b) On 17th December, 1959, the Haj Committee Act of 1959 (No.51 of 1959), was passed, to establish a Committee in the Port of Bombay for assisting Muslim Pilgrims to Saudi Arabia, Syria, Iraq, Iran & Jordan and for matters connected therewith. The Act envisaged constitution of Haj Committee. As a global phenomenon, the passenger travel by ships declined. People started travelling by air. Air travel was introduced gradually for Haj Pilgrims also. Till the year 1994, around 5,000 Pilgrims used to travel by Ship from the Sea Port of Bombay for performing Haj and about 19,000 Pilgrims used to travel by Air. However, from the year 1995 travelling of Haj Pilgrims by Sea-Route came to be

discarded and since then, almost all pilgrims travel for Haj through Air. After introduction of air travel, it was no more necessary for all the Haj pilgrims to reach Bombay, gradually other Embarkation Points having been progressively established.

(c) With the proliferation of Embarkation Points, the management of Haj also diversified. It was felt necessary to have appropriate representation from all parts of the country in the Haj Committee of India (hereafter 'HCI'). Accordingly, Haj Committee Act 2002 (No.35 of 2002) has been passed by the Parliament repealing the 1959 Act. Its Preamble reads "*An Act to establish a Haj Committee of India and State Haj Committees for making arrangements for the pilgrimage of Muslims for Haj, and for matters connected therewith*".

(d) Section 1(1) of the Act gives nomenclature to the legislation. Sub-section (2) empowers government to bring into force the Act in piecemeal in various States. Section 2 is the Dictionary Clause; section 3 provides for

the constitution of HCI; section 4 mentions about its composition and number & qualification of members; section 6 prescribes three year tenure for the Committee, and its Proviso empowers the Central Government to elongate the tenure by six months, twice. Section 7 provides for the election of Chairman and two Vice Chairmen of HCI; their tenure is also three years; their term of office is coterminous with that of the Committee; section 9 gives the duties of Committee, and section 10 provides for meetings & their procedure; section 11 provides for the appointment of Standing Committees. Section 12 prescribes disqualification of members of Committee. Section 13 provides for resignation of Chairman, Vice Chairmen or members of HCI. Section 14 provides for their removal by the Central Government; section 15 provides for filling the vacancies arising due to resignation or removal. Section 16 provides for the appointment of Chief Executive Officer by the Central Government chosen from amongst its officials not below the rank of Deputy Secretary; CEO happens to be the

Secretary of the Committee, ex officio; his tenure is three years and one year extension is permissible.

(e) Section 17 authorizes the Central Government to empower the State Government to constitute a SHC; section 18 speaks of the composition & qualification of members and election of Chairperson; section 20 prescribes a tenure of three years and payment of allowances to the Chairperson & members; section 21 provides for election of Chairperson, whose tenure again is three years and for the filling up vacancy in the office of Chairperson. Section 23 speaks of disqualification of members; section 24 provides for resignation of Chairman and members of SHC; section 25 provides for removal of Chairman and Haj Committee Members; section 26 provides for filing their vacancies; section 28 provides for meetings & their procedure; section 29 provides for appointment of CEO for SHC by the State Government.

(f) Chapter IV comprising of sections 30 to 34 deals with finance, accounts and audit of the HCI and K-SHC. Chapter V comprising of sections 35 to 52 deals with miscellaneous aspects. Section 36(1) empowers the Central Government to supersede HCI and the effect of supersession. Section 36(4) vests similar power in the State Government *qua* the K-SHC. Section 44 vests rule making power in the Central Government prescribing laying procedure. Similar power is vested in the State Government under Section 47. Accordingly, Karnataka State Haj Committee Rules, 2010 have been promulgated. Section 45 empowers the HCI & K-SHCs to make byelaws. Section 51 empowers the Central Government and the State Governments to give directions to the HCI and K-SHCs, respectively.

(IV) Legal aspects of the case:

(a) The first submission of learned counsel for the petitioners that the tenure of the Chairman of the K-SHC is three years and that the due election of the first petitioner as Chairman having been notified only on

7.7.2021, his tenure would continue till 6.7.2021, is bit difficult to countenance. Reasons for this are not far to seek: The K-SHC shall comprise of sixteen members to be nominated by the State Government as provided u/s 18. The nomination is notified u/s 19 with effect from which the Committee is comprised. Section 20(1) prescribes a tenure of three years to be reckoned from the Notification issued u/s 19. In the case at hands, this Notification was issued by the State Government on 20.1.2020 and thus, its tenure of three years expired on 19.1.2023, the request for extension of the tenure sought for by the Chairman of the Committee having not been acceded to. Secondly, it is the Committee constituted under the Notification dated 20.1.2020 which elected the first petitioner as the Chairman. The tenure of the Committee itself being three years, it can elect the Chairman for the length of its tenure and not beyond; this view is consistent with the democratic principle enacted in the provisions of the Act. The prescription of term of office of the Chairman u/s 21(4) is three years, is

true. However, it only means that his tenure can be three years or for the remainder of the Committee's tenure, whichever is earlier.

(b) The Chairman is a post or office as contradistinguished from its incumbent. The Committee is a corporate entity and the Chairman presides over its meetings. The office of Chairman ordinarily has a prescribed tenure and such tenure begins from the day one of the Committee regardless of its incumbency. Section 21(1) mandates the government to convene the maiden meeting of the Committee within 45 days of its formation for electing one of its members as the Chairman. If delay is brooked in conducting such a meeting that does not elongate the tenure of the electee as the Chairman. In other words, the tenure of the Chairman is coterminous with that of his membership and once he ceases to be a member by resignation, removal or expiry of his membership, his Chairmanship also stands determined. This view gains support from the

statutory scheme that a Chairman necessarily has to be a member of the Committee and thus, being a member is a pre-requisite for becoming the Chairman. Had the Committee had power to elect a non-member to be the Chairman, arguably a different consideration would have arisen.

(c) A formal appointment to the office of Chairman by election does not decide his tenure as long as there can be someone to officiate in his position, on *ad hoc* basis or otherwise. If the statutory tenure of Chairman is three years and the election of Chairman happens, say one year after the Committee was formed, it does not imply that still he holds the office for three years thereafter and eventually beyond the tenure of the very Committee which elected him. This proposition is consistent with the scheme enacted *inter alia* in sections 18, 19, 20, 21 & 22 of the Act, as rightly contended by the learned Advocate General. The soundness of an argument can be adjudged better by contemplating the consequences of its opposite. Let me assume that the

Committee was constituted on 1.1.2020 and therefore, its tenure would expire on 31.12.2022 and it if at all elects the Chairman from amongst its members on 31.12.2022 i.e., on the last day of its tenure (whatever be the reasons for not making the appointment earlier), then going by the submission of petitioners counsel, the person elected as the Chairman on the eve of 1.1.2023 shall act as such for one day *qua* the outgoing Committee and he shall be the Chairman for a period of three years minus one day for the next Committee. It is incongruous to contend that a person can cease to be a member of the Committee by efflux of his statutory tenure of three years and still can continue to be its Chairman; eventually, his membership can be six years; added, he shall be the Chairman of the Committee which has not elected him at all. In the scheme of the Act, there is absolutely no scope for such a thing to happen.

(d) Learned counsel for the petitioners argued that sub-section (6) of section 7 provides that the Chairman's "tenure shall be coterminous with the term of

the Central Committee” and such an expression being conspicuously absent in section 21(4), there is no scope for the view that with the expiry of the tenure of the State Committee, the tenure of Chairman should also come to an end. Let me examine Section 7(6) of the Act which has the following text:

*“7. Chairperson and Vice-Chairpersons.—
(6) The term of office of the Chairperson and the Vice-Chairpersons, as the case may be, shall be co-terminus with the term of the Committee and no person shall hold office of the Chairperson or the Vice-Chairpersons, as the case may be, for more than two consecutive terms. ”*

The following text of section 21(4) also needs to be seen:

*“21. Chairperson.—
(4) The term of office of the Chairperson shall be three years and no person shall hold the office of the Chairperson for more than two consecutive terms.”*

The variation in the terminology of these two provisions appears to give some scope for the invocation of the maxim '*expressio unius est exclusio alterius*'. This Latin term literally means "*the expression of one thing is the exclusion of the other*". This is an ordinary common law principle for construing legislations.

(e) P ST J Langan, 'Maxwell on The Interpretation of Statutes', Twelfth Edition, Eighteenth Reprint, pp 283 - 84 (2010) writes about the above maxim as under:

"...By the rule usually known in the form of this Latin maxim, mention of one or more things of a particular class may be regarded as silently excluding all other members of the class: expressum facit cessare tacitum. Further, where a statute uses two words or expressions one of which generally includes the other, the more general term is taken in a sense excluding the less general one: otherwise there would have been little point in using the latter as well as the former".

At page 2946, what Maxwell's editor Mr.P.St.J.Langan writes is illustrative:

"Where section 2(2) of the Rating and Valuation (Apportionment) Act 1928 provided definitions of both "agricultural land" and "agricultural buildings", the definition of the former including "land exceeding one quarter of an acre used for the purpose of poultry farming", it was held by the Court of Appeal that a broiler house fell outside the definition of agricultural land. "The Act", said Lord Denning M.R., "draws a clear distinction between 'buildings' and 'land' and those terms are mutually exclusive here.... I have no doubt that the whole of a broiler house, including the earth on which it stands, is a 'building' and not 'land'."

This maxim like all other is not to be applied as a Thumb Rule regardless of the intent & policy content of the statute in question. There is strong juristic opinion to the effect that the subject maxim being ordinary of application, is not be readily invocable in all circumstances. It admits plural exceptions & variations. Maxwell at page 295 reads as under:

*"...expressio unius, may not always provide the answer to problems of construction. "It is," said Lopes L.J., **often a valuable servant, but a dangerous master to follow** in the construction of statues or documents. The exclusion is often the result of inadvertence or accident, and the maxim ought not to be applied when its application, having regard to the subject-matter to which it is to be applied, leads to inconsistency or injustice. More recently, Russell J. refused to apply the rule where to have done so would have produced **a wholly irrational situation.**"*

(f) Added to the above, the word 'democratic' occurs in the Preamble of our Constitution. Democracy is held to be one of the Basic Features of the Constitution vide *INDIRA NEHRU GANDHI vs. RAJ NARAIN*, AIR 1975 SC 2299. When a federal legislation enacts a democratic principle, due significance has to be attached to the same

in respect of all institutions. Therefore, such a principle of democracy cannot be hibernated by a Latin maxim of the kind. After all, the said maxim is not that as sacrosanct as to overwrite the principles of Democracy enacted in the provisions of the statute.

In the above circumstances, this Petition being devoid of merits, is liable to be dismissed and accordingly, it is, costs having been made easy.

**Sd/-
JUDGE**

Snb/