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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 18th May, 2021

+ **W.P.(C) 3238/2021**

ASHWINI KUMAR

..... Petitioner

Through Petitioner in person

versus

UNION OF INDIA

..... Respondent

Through Mr. Chetan Sharma, Ld. ASG with
Mr. Vinay Yadav, Mr. Akshay
Gadeock, Mr. Amit Gupta &
Mr. Sahaj Gupta, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

D.N. PATEL, CHIEF JUSTICE(ORAL)

Proceedings have been conducted through video conferencing.

CM APPL. 9876/2021 (exemption)

Allowed, subject to all just exceptions.

The application is disposed of.

W.P.(C) 3238/2021

1. This Public Interest Litigation has been preferred with the following prayers:-

“A. Issue a writ or order in the nature of mandamus and/or any other appropriate writ, order, or direction, directing the

Respondent to include in clause 8 (b) of the Scheme for Faster Adoption and Manufacturing of Electric Vehicles in India Phase II (FAME India Phase II) "Establishment of Hydrogen Refueling Stations"; and

B. Issue a writ or order in the nature of mandamus and/or any other appropriate writ, order, or direction, directing the Respondent to include in clauses 15(a) and 15(b) of the Scheme for Faster Adoption and Manufacturing of Electric Vehicles in India Phase II (FAME India Phase II)

- a. Buses (including hydrogen fuel cell)*
- b. Four Wheelers {Fuel Cell Electric Vehicle (FCEV)};*
- and*

C. Issue a writ or order in the nature of mandamus and/or any other appropriate writ, order, or direction, directing the Respondent to allocate a part of the un-utilized funds from the FAME India Phase II Scheme for promoting and incentivizing demand for hydrogen fuel cell electric vehicles and construction and operation of hydrogen refueling stations; and ...”

2. We have heard counsels for the parties and looked into the facts and circumstances of the case. Petitioner herein seeks a direction to the respondent to expand the scope and ambit of Scheme for Faster Adoption and Manufacturing of Electric Vehicles in India Phase II and include and encompass Hydrogen energetic infrastructure and fuel cell electric vehicles to be eligible for incentive under the Scheme, by including “establishment of hydrogen refuelling stations” in Clause 8(b).

3. Directions are also sought to the respondent to include buses (including hydrogen fuel cell) and four-wheelers (fuel cell electric vehicles) in Clauses 15(a) and 15(b) of the said Scheme. Prayer is also made for allocation of part of the unutilized funds from the aforesaid Scheme for

promoting and incentivizing demand for Hydrogen Fuel Cell Electric Vehicles and construction and operation of hydrogen refuelling stations.

4. The Scheme, FAME India Phase II, was framed by the Government to address problems of fossil fuels and is a policy decision. It is no longer *res integra* that a Court will not ordinarily interfere in policy matters as the policies are framed based on expert knowledge of the persons concerned in the respective fields. Courts are not equipped with the necessary expertise to substitute their own views and direct formulation of policies tailor-made to suit the requirements of the Petitioner in a given case. While exercising the power of judicial review, it must be kept in mind that Court cannot direct, advise or sermonise the executive in matters of policy framing, which is purely the domain of the executive under the doctrine of separation of powers. This should, however, not be understood to mean that a Court would abdicate its responsibility to scrutinize and test, whether the policy in question is unreasonable, unfair or violative of the mandate of Article 14 of the Constitution of India and in case it is so found, it can certainly be struck down.

5. Looking at the aforesaid aspects of the matter and the clear separation of powers under the Constitution of India, at this stage, we can only direct the Respondent to treat this writ petition as a representation and decide the same in accordance with law, relevant rules, regulations and Government policies applicable to the case.

6. Petitioner also submits that certain additional points are required to be brought to the notice of the concerned Department, which would help in taking the decision. Petitioner is at liberty to file an additional representation, urging fresh points along with necessary documents, he

wishes to rely on. The representation/additional representation (if any) shall be decided by the Respondent as early as possible and practicable.

7. With these observations the writ petition is hereby disposed of.

CHIEF JUSTICE

JYOTI SINGH, J

MAY 18, 2021/rk

