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

Date of Decision: 6th April, 2023

+ **W.P.(C) 4289/2023 & CM APPL. 16565/2023**

AL-AMEEN HAJJ GROUP

..... Petitioner

Through: Mr. Abid Ali Beeran P Advocate with
Mr. Ziyad M and Mr. Ajmal Ahmed
Advocates (M: 9911638780).

versus

UNION OF INDIA

..... Respondent

Through: Ms. Pratima N Lakra, CGSC with
Ms. Vanya Bajaj, Adv. (M:
9873429431)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The Petitioner has preferred the present petition seeking directions to the Respondent to consider the Petitioner's application dated 19th/20th December, 2022 for upgrading of Petitioner from Category 2 to Category 1 Haj Group Organiser (HGO) for Haj 2023. The present writ petition is the second round of litigation being filed by the Petitioner.
3. The Petitioner is a Haj operator, who was registered in 2011. The said licence has been renewed for the last several years. The Petitioner has, over the years, facilitated and provided services to several Haj pilgrims on a year to year basis.
4. Vide notification dated 20th December, 2018, the Haj Division of the Ministry of Home Affairs issued, a fresh policy for Haj Group Organisers wherein Haj Group Organisers were divided into three categories 1+, 1 and

2, which are as under:

“Category-1: Experience of 12 or 12+ years of Haj Pilgrimage and annual turnover of Rs. 5 Crores or more from Haj and Umrah Services in any of the preceding 2 years.*

Category-1: Experience of 7 or 7+ years of Haj Pilgrimage and annual turnover of Rs. 3 Crores or more from Haj and Umrah Services in any of the preceding 2 years.

Category-2: Annual turnover of Rs.1 Crore or more from Haj and Umrah Services in any of the preceding 2 years. New HGO should have facilitated a minimum of 50 Umrah pilgrims in a year for any 5 years.”

5. As per the above policy, it was the contention of the Petitioner that it was eligible to be in Category-1, owing to his turnover. However, the Petitioner was placed in Category 2, despite having an annual turnover of Rs. 3 crores or more. Thereafter, the Petitioner’s turnover has further increased and the Petitioner wanted to be considered for Category 1. As per the Petitioner, he is entitled for upgradation from Category 2 to Category 1 in terms of the notification dated 20th December, 2018.

6. However, since the upgradation of the category was not given, In this context, a writ petition was filed by the Petitioner being **W.P.(C) 9491/2022** titled ‘**Al-Rahma Hajj Group through its Proprietor Mr. Abbasali Vadakkethil v. Union of India**’. The said petition was disposed of on 10th June, 2022.

7. The Haj Group Organiser policy has now been revised by the Government vide notification dated 14th March, 2023 and there are only two categories, which have been created. The said two categories are as under:

*“i. **Category-1** - HGOs having experience of minimum 3 Haj and an annual turnover of Rs.5 crore or more from Haj and / or Umrah operations in any of the preceding two years (excluding 2020 and 2021 which were hit by COVID pandemic). They should also fulfill other terms and conditions for being eligible as an HGO (Annexure-I)*

70% of the total quota will be reserved for category-1 HGOs

*ii. **Category-2**- HGOs having experience of upto 2 Haj and / or at least 3 Umrah with an annual turnover of Rs.1.5 crore or more from Haj and / or Umrah operations in any of the preceding two years (excluding 2020 and 2021 which were hit by COVID pandemic) are covered under this category.”*

8. The Petitioner again seeks upgradation of his license from Category 2 to Category 1. The submission of Id. Counsel for the Petitioner is that on the last occasion, the Court had considered the matter on 10th June 2022 and the submission had been recorded on behalf of the Union of India to the following effect:

“5.0 Learned Counsel for the respondent submits that vide order dated 13.05.2022 passed in W.P.(C) 333/2022 with W.P.(C) 33812022, the Hon'ble Supreme Court has observed as under:

“In both these writ petitions, the petitioners have sought for a writ of mandamus or for any other writ or order directing the respondent to upgrade the petitioners to Category-I as per the policy of HGOs for Haj-2019-23.

Learned counsel for the petitioners submits that the upgradation of the petitioners to Category-I and allocation of Haj quota may be considered by the respondent for the Haj-2022 itself.

We are not inclined to accept this submission, as the petitioners have approached this Court at the last minute.

However, we direct the respondent to consider upgradation of the petitioners to Category-1 as per the policy for HGOs for Haj-2023 onwards.

With these observations, writ petitions are disposed of Pending application(s), if any, shall also stand disposed of”

*5.1 Learned CGSC for the respondent/UOI further submits that **in terms of Hon'ble Supreme Court's order, requests for upgradation to Category-1 shall be considered for the year 2023 including that of the petitioner, if any such request is made.***

6.0 Learned counsel for the petitioner submits that request has already been made vide letter dated 21.04.2022 annexed as A/nnexure P-10 (at page 38) along with the present petition.

7.0 Learned counsel for the respondent submits that allocation of seats is done through lottery which fact is evident from letter of Ministry of Minority Affairs dated 12.05.2022 filed as Annexure P-11 by the petitioner himself.

7.1 The said letter reads as follows:

“1. I am directed to inform you that the lottery for allotment of Haj quota for Category-2 HGOs for the year 2022 will held on 13.05.2022 at Chintan, 11th Floor, Pt. Deendayal Antyodaya Bhawan, CGO Complex, New Delhi at 5 PM

2. It is informed that the number of representatives may be kept minimum i.e. not more than 2 from each Association, so as to ensure observance of Covid-19 protocols.

3. It is therefore, kindly requested to make it convenient to attend the proceeding.”

7.2 Learned CGSC for the respondent/UOI, on

instructions, further submits that all the seats have already been allotted; no further seats remain to be allotted. Her statement to this effect is taken on record.

8.0 In view of the above, this petition can be disposed of accordingly.

9.0 At this stage, learned senior counsel for the petitioner requests for time for seeking instructions in the matter.

10.0 List on 07.07.2022.

11.0 Reference to Annexures and page numbers is made as per W.P.(C)9489/2022.”

9. In view of this order, the Petitioner prays for upgradation to Category 1, considering the assurance given on behalf of the UOI. He has made a representation dated 20th December, 2022, which has admittedly, not been considered.

10. Ld. counsel for the Respondent submits that the three categories have now been merged and now there are only two categories, in terms of the latest policy of Haj 2023. This policy was challenged by various Haj federations in a writ petition before the Supreme Court in **W.P.(C) 375/2023** titled **‘Federation Haj PTOs of India v. Union of India’** and other connected matters. In the said writ petitions, vide order dated 27th March, 2023, the following order was passed:

“ Heard the learned senior counsel appearing for the petitioners and the learned Solicitor General of India for the respondent-Union of India.

We have perused the preliminary counter affidavit filed by the Union of India and, in particular, the statement therein regarding the policy decision taken by the Government to help the poor pilgrims.

The learned senior counsel appearing for the petitioners submits that the petitioners are willing to match the price of the package offered by the

Government of India through Haj Committee.

If that be so, the petitioners are free to represent their case(s) before the Government. It is ultimately the Government which has to take the appropriate policy decision in the light of the representation which may be made by the petitioners. By directing the Government to consider the representation at the earliest, the Writ Petitions are disposed of.

Pending applications also stand disposed of.”

11. A perusal of the above order would show that the Supreme Court has clearly held that the Union Government has to take an appropriate policy decision in respect of these Haj tour operators and consider their representations.

12. A perusal of the chronology of events that have transpired would show that the Petitioner was clearly eligible for Category 1 upgradation last year, owing to the turnover. However, the same was not granted. An assurance was recorded in the order dated 10th June 2022 would show that the Petitioner was to be given the upgradation this year. Moreover, the policy which was prevalent last year was to continue till 2023. In the present case, the Petitioner appears to have been put to a disadvantage despite the fact that as recorded in the order dated 10th June, 2022, the Petitioner may have been able to qualify if the policy was not changed midway.

13. The Court is of the opinion that, in these circumstances, the representation of the Petitioner deserves consideration as per the order dated 10th June, 2022. Accordingly, let a decision be taken on the representation of the Petitioner on or before 17th April, 2023 by the competent authority. The remedies, if any, of the Petitioner in respect of the said decision are left open.

14. The petition, along with all pending applications, is disposed of in the above terms.

**PRATHIBA M. SINGH
JUDGE**

APRIL 6, 2023/dk/am

