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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 11th April, 2023

+ **W.P.(C) 4467/2023 & CM APPLs.17142-43/2023**

**HAJJ E BETULLAH HAJ UMRAH TOUR
 CORPORATION**

..... Petitioner

Through: Mr. Sulaiman Mohd Khan, Ms. Taiba Khan, Mr. Mohd Ainul Ansari Mr Bhanu Malhotra & Mr. Akash Bhushan, Advocates. (M: 9873008776)

versus

UNION OF INDIA

..... Respondent

Through: Ms. Pratima N. Lakra, CGSC with Mr. Chandan Prajapati & Ms. Vanya Bajaj, Advocates. (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 March, 2023 for upgrading of the Petitioner 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 has undertaken 7 Haj operations since 2009. The licence of the Petitioner has been renewed for the last several years and 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 the turnover of Rs. 3 crores or more. However, the Petitioner was placed in Category 2. The Petitioner wanted to be considered for Category 1 in terms of the notification dated 20th December, 2018.

6. Since the upgradation of the category was not given, a writ petition was filed by the Petitioner in the Supreme Court being **W.P.(C) 333/2022** titled ‘**M/S. Hajj E Betullah Haj Umrah Tour Corporation v. Union of India**’. The said petition was disposed of on 13th May 2022 in the following terms:

“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-1 as per the Policy of HGOs for Haj-2019-23.

Learned counsel for the petitioners submits that the upgradation of the petitioners to Category-1 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.”

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 submission of Id. Counsel for the Petitioner is that the Supreme Court had directed that the Petitioner’s case for upgradation ought to be considered. By revising the policy and merging two categories, the benefit

which was to be given to the Petitioner has been nullified.

9. In terms of the order of the Supreme Court, the Petitioner made a representation dated 19th March, 2023, which has admittedly, not been considered by the Respondent. Thus, the Petitioner has filed the present petition praying for upgradation to Category 1. The reliefs sought are:

“(a) Issue a Writ, order or direction in the nature of Mandamus or any other writ, order or direction to the respondent to allocate Haj Quota to the petitioner without draw of lots for Haj-2023;

(b) Issue a Writ, order or direction in the nature of Mandamus Commanding and directing the Respondent to elevate the petitioner to Category-1 as per the original HGOs Policy for Haj-2019-23 and restore the categorization of HGOs as well as turnover as per the original HGOs Policy for Haj-2019-23;

(c) Issue a Writ, order or direction in the nature of Mandamus or any other writ, order or direction quashing/setting aside the arbitrary changes made vide notice dated 14.03.2023 in the original HGOs Policy for Haj-2019-23 (Annexure-P/17);

(d) Issue a Writ, order or direction in the nature of Mandamus Commanding and directing the Respondent to restore the settled HGOs Policy for Haj-2019-23 settled by the Judgement of this Hon’ble Court reported as (2020) 18 SCC 527 (Annexure-P/14 & P/15);”

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. However, the new policy has not been interfered with.

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. The Supreme Court vide order dated 13th May, 2022 had directed the Respondent to consider upgradation of the Petitioner to Category-1. 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 13th May, 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 of the Supreme Court dated 13th May, 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 11, 2023
dj/sk

