



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

Date of decision: 10th APRIL, 2024

IN THE MATTER OF:

+ **W.P.(C) 16471/2022 & CM APPL. 1105/2024**

MG TOURS AND TRAVELS

..... Petitioner

Through: Mr. Santhosh Krishnan, Ms. Sonam Anand and Ms. Deepshikha Sansanwal, Advocates.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor, Ms. Shreya V. Mehra, Ms. Vidhi Jain, Mr. Kartik, Mr. Aditya Singh and Mr. Sumit Goel, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court challenging the Order dated 23.05.2022 passed by the Respondent No.1/MoMA, Haj Division whereby the Petitioner were found ineligible for registration as a Haj Organizer/HGO for Haj, 2022-2023.

2. The facts in brief leading to the filing of the instant writ petition are as follows:

- i. The Petitioner was established as a sole proprietorship by one Mokshedur Tarafder. The proprietorship firm was engaged in business of providing Haj tours to pilgrims and was registered



as an HGO for the following Haj i.e., Haj 2005, Haj, 2006, Haj, 2007, Haj, 2008, Haj, 2009, Haj, 2010, Haj, 2011, Haj, 2014, Haj, 2015, Haj, 2016, Haj, 2017, Haj, 2018.

- ii. A new 5 year policy for Haj titled “Policy for Haj Group Organiser for Haj 2019-23” was issued by the Ministry of Minority Affairs, Haj Division on 20.12.2018. Pursuant to which the Petitioner firm made its application as a Category I Haj Group Organizer under the HGO Policy 2019-2023. The Petitioner was subsequently recognised as a Category I Haj Group Organizer for Haj, 2019 by the Respondents on 20.05.2019.
- iii. Due to the advent of the COVID-19 pandemic, Haj tours were suspended by the Kingdom of Saudi Arabia due to which Haj tours were not undertaken by any HGOs registered under the HGO Policy 2019-2023.
- iv. The proprietorship firm was reconstituted on 01.04.2020 from a Sole-Proprietorship firm to a partnership firm with the Son of the original proprietor Ghalib Tarafder being inducted as a new partner. The conversion of the firm was intimated to the respondents by the petitioner vide email dated 21.10.2020.
- v. However, Mokshuk Tarafder, the original proprietor/partner of the petitioner firm died due to Covid-19 on 06.11.2021 pursuant to which Samsum Nehar, wife of the original proprietor and the mother of the surviving partner was inducted into the partnership. The respondents thereafter communicated the death



of Mokshuk Tarafder and the reconstitution of the partnership to the respondent vide email dated 14.01.2022.

- vi. In the year 2022, the Kingdom of Saudi Arabia started accepting Haj Pilgrims pursuant to which a circular was issued by the Respondents to all registered HGOs under the 2019-23 Policy to express their willingness for participating in Haj, 2022. The interested HGOs were required to submit relevant documents confirming their eligibility under the said policy and subsequent allocation of pilgrims to the HGO. A circular dated 18.05.2022 was also issued by the Respondents whereby additional clarifications were provided vis-à-vis Haj policy 2019-23.
 - vii. The Petitioner firm thereafter sent its willingness to operate as an HGO for Haj, 2022 along with supporting documents mentioned under annexure-I under 2019-23 Policy. Subsequently, the Respondents sought clarifications from the Petitioner regarding its prior experience of conducting Haj and it was also intimated to the Petitioner firm that neither of the partners of the firm fulfill the eligibility criteria as required under the 2019-23 Policy. An undertaking was submitted by the Petitioner to the Respondents providing the required clarifications, pursuant to which the Impugned Order finding the Petitioner ineligible for registration as an HGO for Haj, 2022 was passed by the Respondents.
3. Notice was issued in the writ petition 01.12.2022. Counter affidavit



has been filed by the Respondents.

4. During the pendency of the writ petition, a new policy titled “Registration of Haj Group Organisers (HGOs) for Haj-2023-registration and allocation of quota for Haj-2023” was issued by the Respondents whereby all HGOs regardless of their registration under the previous policy of 2019-23 were required to register a fresh as an HGO. Pursuant to the new policy being announced, this Court on 20.03.2023 allowed the Petitioner to file an application for registration as an HGO for Haj, 2023 and the Respondents were directed to file a status report after examining the applications. A report came to be submitted by the Petitioner wherein it was stated that the partners of the petitioner firm had not provided a proper justification, details or documents against queries which were raised by the Respondents. It was further noted in the status report that details of prior Umrah experience after the death of the erstwhile partner were not provided, It was also noted that the Petitioner failed to submit a proper break up of their GST filings or a copy of the GSTR-9 form.

5. Learned Counsel appearing for the Petitioner submits that it is undoubted that the legal identity of the proprietorship is intertwined with the proprietor but the law recognises the continuity of a business of a proprietorship firm after its conversion into a partnership. He places reliance on **Al Muqaddas Tours and Travels v Union of India W.P.(C) 7120/2023** and states that the petitioner firm therein was converted into a partnership firm after the death of the erstwhile sole-proprietor and were still found eligible for allocation of quota for Haj 2022 after consideration of their prior experience, and for Haj 2023 by the orders of this court. He states that the



petitioner firm is similarly placed and the same benefit should be afforded to them as they were also constituted as a partnership firm and are relying on the experience of the erstwhile sole-proprietor to be considered eligible. He further states that once a firm is recognised as an HGO under the 2019-23 policy, it is not upto the Government to negate the experience garnered by the firm on the basis of change in ownership of the firm.

6. Learned Counsel appearing for the Petitioner also submits that there is no explicit prohibition either in the 2019-23 policy or the Haj, 2023 policy which bars the transmission of the business from a proprietorship firm to a partnership firm. . He, therefore, states that after the death of the original proprietor/partner, the experience garnered by the partner prior to the constitution of the partnership will continue to subsist even with the current partners.

7. It is the contention of the learned Counsel for the Petitioner that the Haj policy creates an artificial distinction between the transfer/conversion of business and transmission of business which ultimately discriminate against small operators. The learned Counsel for the Petitioner places reliance on Ruby Tours Services Pvt. Ltd. vs. Union of India, (2018) 9 SCC 537 to contend that if a proprietorship which is converted to a private limited company is allowed to continue with the experience garnered by it while it was a proprietorship firm, the same should apply to the partnership concerns upon the death of the experienced partner as well.

8. The learned Counsel for the Petitioner while referring to the status report filed by the Respondents contends that the absence of experience related to Umrah or Haj with the current partner is not determinative of the



absence of the partner from the business of the HGO. He states that the current partner(s) of the firm visited KSA with the haj pilgrims in the year with the erstwhile partner and it cannot be stated that the current partner(s) have no individual experience in holding Haj as partners of the firms themselves.

9. The learned Counsel for the Petitioner lastly submits that the clarification letter dated 18.05.2022 issued by the Respondents stipulated a new requirement for HGOs wherein Munazzam Card of the proprietor is needed ultimately meaning that the proprietor/director/partner of the firm were supposed to be personally present during the Haj. He states that the 2019-23 policy as envisaged does not confer the same requirement on HGOs and the same is beyond the scope of the policy.

10. *Per contra*, the learned Counsel appearing for the Respondents states that the documents submitted by the new partners Moksehdur Tarafder and Samsun Nehar could not establish the requisite experience needed for HGOs either under the 2019-23 policy or the Haj 2023 policy. He states that as per the 2019-23 policy, HGOs registered under the category I are supposed to have an experience of 7 or more Haj with an annual turnover of Rs.3 crores from Haj/Umrah operations in any of the two preceding years. He states that since both the partners were inducted as the partners of the Petitioner firm in the year 2021 and 2022 respectively, the partners could not have the requisite experience to be registered as a category I under the policy.

11. The learned Counsel for the Respondents also contends that partnership firms do not have perpetual succession which means that the partnership changes upon the death of a partner. He states that upon the



death of the erstwhile partner and a new partnership came into existence by executing a fresh partnership deed between Samsun Nehar and Ghalib Tarafder, both of whom did not possess the requisite experience of conducting Haj and Umrah tours. He further states that the experience of conducting Haj Tours in the year 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2015, 2016, 2017, 2018 and 2019 was garnered by the erstwhile original proprietor/partner of the firm when the firm was a sole-proprietorship, and such experience came to an end after the death of the original proprietor in the year 2021.

12. The learned Counsel for the Respondents submits that no additional criteria has been introduced by way of the circular dated 18.05.2022 for existing HGOs. He submits that under clause 11 of the 2019-23 policy, the directors/proprietors/partners of the HGOs are supposed to provide a copy of a valid Munazzam Card which is proof of the presence of the proprietor in the KSA along with the Haj pilgrims. He states that what has been provided under the circular dated 18.05.2022 is merely a decision of the Ministry to strictly comply with the provisions of Munazzam for HGOs given in the Haj Policy.

13. Heard learned Counsel for the Petitioner and perused the material on record.

14. The Ministry of Minority Affairs, Haj Division has, from time to time, issued various policies and guidelines regarding Hajj Group Operators and Private Tour Operators which relate to Haj and Umrah pilgrimage to the Kingdom of Saudi Arabia (K.S.A) upon various bilateral agreements signed between the Government of India and Kingdom of Saudi Arabia for easing



the plight of pilgrims. The Haj Policy 2019-2023 was envisaged to allow for experienced Haj Group organisers / Private Tour Operators to aid the pilgrims and allow them to undertake pilgrimage without bearing the trouble of organizing the required visa, stay and travel to and from the Kingdom of Saudi Arabia.

15. It is the case of the petitioner that the petitioner firm has been engaged in the business of providing organized Hajj Tours to pilgrims since 2005 and it has undertaken Haj operations prior to the issuance of the impugned order rendering the petitioner ineligible. Material On record discloses that the petitioner was established as a Sole Proprietorship which continued till the firm was reconstituted to a partnership and the son of the original proprietor was inducted into the firm. The original proprietor died in 2021 pursuant to which the wife of the deceased also became a partner of the firm. It has been stated by the petitioners that they had helped the erstwhile partner in conducting the Haj tours and the firm is a family-run business.

16. However, it has been vehemently contended by the Id. Counsel for the respondent that merely because the partnership firm had engaged in multiple Haj operations under the erstwhile partner does not transfer the experience which was garnered to the new partners, due to which the petitioner firm will not be able to rely on the experience which was garnered by it under a different partner.

17. The Ld. Counsel for the Petitioner placed reliance on Al Muqaddas Tours and Travels v Union of India, **W.P.(C) 7120/2023** to establish that similarly placed firms have been provided relief of grant of allocation of pilgrims under the policy. The relevant portion reads as under:



"13. In this case, the application of the Petitioner Al Muqaddas Tours and Travels for allotment of quota has been rejected by the Ministry on 19th May, 2023 on the ground that the earlier proprietor of the Petitioner firm has passed away, the existing experience of the Petitioner firm cannot be taken into account for the allocation of quota as per the Haj Policy, 2023.

14. A perusal of the facts of the present case would show that as per the Haj Policy, 2023, Al Muqaddas Tours and Travels is a category-2 HGO and has been organizing Haj and Umrah for the last 20 years.

15. Al Muqaddas Tours and Travels was started by Late Fakih Abdul Rashid Hajatay in 1991 as a sole proprietorship. It is stated that since 2006, the three sons of late Mr. Hajatay are working in the firm. Unfortunately, Mr. Hajatay passed away during Covid-19 in September, 2020. The firm is stated to have continued to do business and after the death of Mr. Hajatay, the firm has been converted from a proprietor firm to a partnership firm. The same has been notified to the Ministry vide letter dated 6th May, 2023. Currently, the sons of late Mr. Hajatay's are partners in the firm.

16. It is noticed that the Petitioner was found to be one of the eligible HGOs selected for Haj 2022 vide a list issued by the Ministry in May 2022. Considering the fact that the Petitioner was declared as eligible HGO last year, the submission of the Ministry that the existing experience of the Petitioner cannot be taken into account would no longer be tenable for disqualifying the Al Muqaddas Tours and Travels.



17. Accordingly, the writ petition is allowed. The Petitioner shall be allotted the quota as per the Policy.

18. The present petition, along with all pending applications, is disposed of. "

18. It is clear from the aforementioned discussion that the petitioner firm therein was found eligible as an HGO for Haj 2022 and they were considered ineligible for Haj 2023 on the basis of the firm not having requisite experience. This court therefore noted that since the petitioner firm had been considered eligible for one year, they cannot be considered excluded for the subsequent year on the basis of not having prior experience under the same policy. The petitioners herein were not declared eligible for Haj 2022, and therefore, cannot claim the same benefit to be considered for entitlement under Haj 2023 by relying on the aforementioned judgement of this court.

19. The only question which arises for consideration is as to whether the experience of a partner which was garnered individually as a sole-proprietor can be transferred to different partners after the reconstitution of the proprietorship firm into a partnership firm.

20. The Hon'ble Apex Court in Vinayak Purshottam Dube v. Jayashree Padamkar Bhat, **2024 SCC OnLine SC 212**, while discussing the nature of sole proprietorship has held as under:

"22. In this regard, it is necessary to discuss the jurisprudential status of a proprietary concern. In a report of the Insolvency Law Committee submitted in February, 2020, the definition of 'Proprietorship Firms' reads as under:

"2. DEFINITION OF 'PROPRIETORSHIP FIRMS'



2.2 Proprietorship firms are businesses that are owned, managed and controlled by one person. They are the most common form of businesses in India and are based in unlimited liability of the owner. Legally, a proprietorship is not a separate legal entity and is merely the name under which a proprietor carries on business. [Raghu Lakshminarayanan v. Fine Tubes (2007) 5 SCC 103.]

Due to this, proprietorships are usually not defined in statutes. Though some statutes define proprietorships, such definition is limited to the context of the statute. For example, Section 2(haa) of the Chartered Accountants Act, 1949 defined a 'sole proprietorship' as "an individual who engages himself in practice of accountancy or engages in services...". Notably, 'proprietorship firms' have also not been statutorily defined in many other jurisdictions."

[Source: Report of the Insolvency Law Committee, Page No. 117-118, Government of India (Ministry of Corporate Affairs, February, 2020).]

21. The Court further delved into the rights and obligations which would arise for the proprietorship in the event of demise of the sole-proprietor. The Apex Court held as follows"

"36. But in the case of sole proprietorship, which is a common form of business in India, when a legal obligation arises under a contract which has to be discharged personally by the sole proprietor, who is since deceased, had entered into the agreement, such as, in the case of a Development Agreement in the instant case, can such obligations be imposed on his legal representatives or heirs who are not parties to the Development Agreement and where the obligations under such an agreement per se cannot be fulfilled inasmuch as they neither have the skills nor the expertise to do so and those obligations depend purely



on the skills and expertise of the deceased sole proprietor? In other words, where the decree or order is not against the estate of a deceased sole proprietor but based on the skills and expertise of the sole proprietor, we are of the view that in the latter case, the obligations which had to be performed by the sole proprietor would come to an end on his demise and the same cannot be imposed on his legal heirs or representatives. We reiterate that such a position is distinguished from a position where the estate of the deceased sole proprietor would become liable to satisfy the decree in monetary terms. This is because a proprietorship firm is not a separate legal entity as compared to the proprietor and his estate would become liable only to satisfy a decree or an order in monetary terms on his demise.”

(emphasis supplied)

From the aforementioned discussion, it is evident that any obligation which is to be performed by a proprietorship concern based on the experience of the sole-proprietor comes to an end upon the demise of the sole proprietor, and the same cannot be imposed on his legal heirs and representatives.

22. This court in Sushila v. Delhi International Airport (P) Ltd., 2022 SCC OnLine Del 3188 further held that there is no difference between a proprietor of a sole-proprietorship and the proprietorship itself. The relevant excerpt is as follows:

“11. A brief reference to the concept of a ‘sole proprietor’ versus the ‘sole proprietorship concern’ may not be out of place at this point. A recent decision of the Hon’ble Supreme Court in Amway (India) Enterprises (P) Ltd. v. Ravindranath Rao Sindhia¹ gives a very lucid explanation of the concept, while relying on an earlier decision, in the following words:



“15. By way of contrast, we have seen how the respondents have themselves applied to become distributors of Amway products in India as a sole proprietorship concern under the relevant forms issued by the appellant, read with the Code of Ethics referred to hereinabove. In Ashok Transport Agency v. Awadhesh [(1998) 5 SCC 567], this Court has clearly held that a sole proprietary concern is equated with the proprietor of the business as follows:

*“6. A partnership firm differs from a proprietary concern owned by an individual. A partnership is governed by the provisions of the Indian Partnership Act, 1932. Though a partnership is not a juristic person but Order 30 Rule 1 CPC enables the partners of a partnership firm to sue or to be sued in the name of the firm. A **proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business.** In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business”*

(emphasis supplied)

23. It is clear from the above mentioned discussion that a proprietorship concern is not a separate legal entity and differs vastly from other legal entities such as a partnership or a company. A proprietorship concern is undoubtedly intertwined with the identity of a sole-proprietor himself, and a proprietorship concern is only the business name in which the proprietor of the business carries on the business. It is well settled that the Assets and Liabilities of a proprietorship concern are transferable, and the same has been done after the conversion of the proprietorship into a partnership.



However, taking note of the above mentioned discussion, this court does not agree with the contention of the Ld. Counsel for the petitioners that experience which has been garnered by a sole-proprietor of a firm is also transferable to different partners upon the reconstitution of the proprietorship firm into a partnership firm.

24. In the present case, the petitioner was registered as a Proprietorship having a sole-proprietor for the purpose of carrying out the business of organizing Haj tours. The proprietor ran the business as a sole-proprietorship for 2 decades and undertook 13 Haj Operations. The proprietorship was thereafter reconstituted to a partnership with the son of the original proprietor inducted as a partnership. The original proprietor passed away in the year 2021 during the advent of the Covid-19 Pandemic and the wife of the deceased partner was also inducted into the partnership firm. The material on record discloses that after the constitution of the firm into a partnership, and further reconstitution in the year 2022, no Haj tours or Umrah tours were undertaken by the petitioner under the new partners. It has been stated by the Ld. Counsel for the petitioner that the current partners had previously accompanied the erstwhile proprietor on Haj Tours for a few years, but no Munazzam Card has been provided by the petitioner which confirms that he had travelled to the KSA for purposes of facilitating a Haj Tour with the erstwhile proprietor.

25. In the view of the above mentioned discussion and the decision of the Apex Court and various High Courts, this court agrees with the contention put forth by the Ld. Counsel for the Respondents that the previous experience garnered by the petitioner firm of undertaking 13 Haj's under the erstwhile sole-proprietor cannot be appreciated while deciding its eligibility



to be registered as an HGO under the new partners.

26. Consequently, in the opinion of this court, there is no reason for interfering with the impugned order declaring the petitioner firm as ineligible on the account of not meeting the requisite condition regarding previous experience garnered by the firm.

27. It is made clear that even though the experience garnered under the erstwhile sole-proprietor/partner cannot be taken into account while deciding the eligibility of the Petitioner firm under the HGO Policy of 2019-2023 and subsequent policies issued by the Respondents, the petitioner has the right to undertake the necessary number of Umrah operations to be considered for registration as an eligible HGO for subsequent Haj's.

28. Resultantly, the present writ petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

APRIL 10, 2024
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