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

Date of decision: 24th APRIL, 2024

IN THE MATTER OF:

\+ **W.P.(C) 5033/2023 & CM APPL. 904/2024**

AL ISLAM TOUR CORPORATION ..... Petitioner

Through: Mr. Sulaiman Mohd. Khan, Ms. Taiba Khan, Mr. Bhanu Malhotra, Mr. Gopeshwar Singh Chander, Mr. Shamaul Haq Khan and Mr. Abdul Bari Khan, Advocates.

versus

UNION OF INDIA ..... Respondent

Through: Mr. Anurag Ahluwalia, CGSC with Mr. Abhigyan Siddhant, GP.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court challenging the Order dated 16.03.2023 passed by the Respondent No.1/MoMA, Haj Division forfeiting security deposit of Rs.25,00,000/- submitted by the Petitioner as a Haj Group Organizer (HGO) and blacklisting the Petitioner for a period of 10 years w.e.f. Haj 2021.

2. The facts in brief leading to the filing of the instant Writ Petition are as under:

a. Prior to 2002 any person who intended to undertake Haj Pilgrimage could either approach the Kingdom of Saudi Arabi

(KSA) either through the Government, i.e. the Haj Committee of India, or through private tour operators. The quota for the Hag pilgrimage was allocated by the KSA between the Haj Committee of India and the private tour operators. However, after the attack on the World Trade Centre in New York on 11.09.2001, the Government of KSA made it mandatory for the private tour operators to come through Government channel only. The private tour operators are now called as Haj Group Organizers (HGO). The HGOs get their quota from the Government of India.

b. Haj Policy was evolved in 2002 under which only registered HGOs were to be allocated quota by the Government of India. The allotment of quota is governed by a bilateral agreement signed between India and the KSA in the year 2018. Under the said agreement, the total Haj quota for India is 1,70,025 persons. The arrangement for the pilgrims/hajis was made after their arrival through the Office of Haj Affairs in India. However, the arrangement of Hajis who were travelling through the HGOs had to be made by the private tour operators under the direct supervision of the Office of Haj Affairs. Out of the total quota of 1,70,025 the quota allocated for HGOs is 45,000. The Agreement also provides for the places where the Hajis would be accommodated and holy sites, transportation services that would be provided to the Hajis.

c. It is stated that in 2018, even though the Petitioner was not

registered as an operator, he was found engaged in Haj related business, which is not permitted. It is stated that the Petitioner was sending Haj pilgrims under the style of a package which was described as "land package". It is stated in the counter affidavit that though the Petitioner had applied for registration in 2018 but he was registered only in 2019. It also transpires that the Petitioner was a registered HGO for Haj 2002, Haj 2003, Haj 2009, Haj 2010 and, therefore, the Petitioner was well aware of the procedure.

d. It is stated that a complaint was received from one Muzammil Khan stating that the Petitioner has defrauded him in 2013. The gist of the complaint is that the Petitioner took a sum of Rs.13,00,000/- from the complainant for the purpose of Haj but has not refunded the amount on the Complainant cancelling his pilgrimage. The complainant provided copies of bank statement regarding the transfer of funds, the brochures which have been given by the Petitioner. A perusal of the brochures reveal that the Petitioner has a license and he also gave a Moallim number. Material on record reveals that the complainant had transferred 21,00,000/- to the Petitioner for the purpose of Haj Pilgrimage but he was refunded only Rs.8,00,000/- and, therefore, he was defrauded of Rs.13,00,000/-.

e. It is stated that that a Show Cause Notice was sent to the Petitioner and a reply to the Show Cause Notice was sent by the Petitioner stating that the Petitioner is running the business for

20 years. The reply further discloses that the Petitioner accepted that the Complainant had approached the Petitioner for the land package excluding visa for Haj tour for 30 Hajis. It is stated that the complainant cancelled the tour on 11.08.2018 and it was agreed between the parties that a sum of Rs.3,00,000/- would be deducted from the total amount of Rs.21,00,000/- towards cancellation charges. It is stated that Rs.18,00,000/- has already been returned and, therefore, it cannot be said that the Petitioner had done any act in defrauding Muzammil Khan.

f. The Committee of the Respondent examined the case and came to the conclusion that the Petitioner has violated the Haj Policy and recommended action to be taken against the Petitioner by issuing a Show Cause Notice as per the HGO Policy. Accordingly, the Petitioner was issued a Show Cause Notice dated 12.03.2020 asking the Petitioner to explain as to why the security deposit for Haj 2019 should not be forfeited and the Petitioner should not be blacklisted in terms of HGO Policy 2019-2023. Reply to the said Show Cause Notice has been given by the Petitioner on 18.03.2020 stating as under:

   i. The Petitioner was not registered as HGO in 2018 and, therefore, the Policy is not applicable to the Petitioner.

   ii. The Petitioner had only accepted Rs.21,00,000/- from the Complainant towards "land package" covering the stay, transport, food and other services and excluding the visa. It is stated that these packages can be offered by any Haj

Operator who are not responsible for the Visa but can provide all other facilities which are permitted and, therefore, there is no violation of any guidelines.

iii. The FIR which has been lodged against the Petitioner had been investigated and a closure report has been filed by the Police.

iv. The Petitioner has not collected any money towards Haj services from the Complainant or any Haj pilgrimage knowing fully well that they were not authorised to do so.

g. After considering the reply, the Respondent has passed the impugned Order holding that the Petitioner has violated the Haj Policy and, therefore, the Petitioner's security money has been forfeited and the Petitioner has been debarred from conducting Haj operations for a period of 10 years w.e.f. 2021.

h. It is this Order which has been challenged by the Petitioner in the present Writ Petition.

3. It is stated by the learned Counsel for the Petitioner that the incident which is the basis of the impugned Order is of the year 2018 and in 2018 the Petitioner was not registered either as an HGO or a Private Tour Operator and, therefore, the Petitioner cannot be prosecuted for violation of a Policy of 2018. He, therefore, contends that the entire proceedings against the Petitioner is bad. He contends that the Petitioner has not sold any Haj quota seat and because he has not sold any Haj quota seats, the Petitioner cannot be prosecuted on the basis of a complaint which is unconnected to the Policy. It is stated by the learned Counsel for the Petitioner that at best the

case against the Petitioner is that he offered a package which was termed as a "land package" wherein there was no promise of giving any visa and only accommodation and other facilities had been offered by the Petitioner. It is, therefore, stated that proceedings cannot be initiated against the Petitioner for debarring the Petitioner from conducting Haj operations. He further contends that the criminal case against the Petitioner has been closed by the Police as the complaint was only a blackmailing tactic against the Petitioner. He states that since the criminal case against the Petitioner has been closed, there is no question of either forfeiture of the security amount submitted by the Petitioner for the year 2019 or debarment of the Petitioner from conducting Haj operations. Learned Counsel for the Petitioner also places reliance on a Lab Report contending that the brochure filed by the Complainant is a forged and fabricated document and action cannot be initiated against the Petitioner on the basis of that brochure. He also stated that the complainant was summoned by the Ministry but he did not appear before the Ministry and since the Complainant did not appear, the case against the Petitioner ought to have been closed. It is also stated by the learned Counsel for the Petitioner that the punishment imposed upon the Petitioner is disproportionate to the infringement of the Petitioner. He states that the blacklisting for a period of 10 years is excessive.

4. *Per contra*, learned Counsel for the Respondent submits that the Petitioner has been blacklisted for blatant violation of the Haj Policy. He states that the Petitioner is well aware of the Policy and knowing that he does not have any quota, the Petitioner could not have given any promise to the pilgrim, including any promise of providing any kind of services for

performing Haj. He states that it is the responsibility of the Union of India to oversee the welfare of the Haj Pilgrims irrespective of the fact that the Haji is going under the quota allotted to the Haj Committee of India or through a HGO. He states that there are serious charges against the Petitioner and such persons should not be permitted to operate as a HGO. He states that even though a closure report has been filed by the police in the complaint case against the Petitioner but it does not mean that the Respondents cannot take any action against the Petitioner.

5. Heard the Counsels for the parties and perused the material on record.

6. The facts of the case reveal that the Petitioner was not registered as a HGO for Haj 2018. Therefore, the Petitioner ought not to have engaged himself in any kind of activity related to Haj without being registered as an HGO. The allegations against the Petitioner is that he has taken money from Hajis without being a registered HGO for providing services and facilities to the Hajis. Hajis can only be provided services and facilities by the registered HGOs and all the affairs are over-seen by the Union of India.

7. Normally for a poor person Haj is a once in a lifetime pilgrimage and majority of persons in India spend their entire life savings to perform Haj. In order to ensure that the Indian citizens do not face any difficulties, the Government of India oversees the entire Haj Pilgrimage. Every country is allotted a Haj Quota by the KSA and only limited number of pilgrims are allowed from every country. Majority of the pilgrims from India visit KSA for performing Haj after getting permission from the Haj Committee. Some Private Tour Operators, who are well experienced, have also been given

permission to enable pilgrims to perform Haj. The Apex Court in Union of India v. Rafique Shaikh Bhikan, **(2012) 6 SCC 265**, while emphasizing on the importance of Haj and the role of the HGO has observed as under:

> "*11. The pilgrim is actually the person behind all this arrangement. For many of the pilgrims Haj is once in a lifetime pilgrimage and they undertake the pilgrimage by taking out the savings made over a lifetime, in many cases especially for this purpose. Haj consists of a number of parts and each one of them has to be performed in a rigid, tight and time-bound schedule. In case due to any mismanagement in the arrangements regarding the journey to Saudi Arabia or stay or travelling inside Saudi Arabia any of the parts is not performed or performed improperly then the pilgrim loses not only his life savings but more importantly he loses the Haj. It is not unknown that on landing in Saudi Arabia a pilgrim finds himself abandoned and completely stranded.*
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> *12. It is, thus, clear that in making selection for the registration of PTOs the primary object and purpose of the exercise cannot be lost sight of. The object of registering PTOs is not to distribute the Haj seats to them for making business profits but to ensure that the pilgrim may be able to perform his religious duty without undergoing any difficulty, harassment or suffering. A reasonable profit to the PTO is only incidental to the main object."*

8. As observed by the Apex Court, the HGO performs a very pious obligation to enable a person to perform Haj. Profit cannot be the only motive for the HGOs. Viewed in this perspective, the Petitioner who was well versed with the Haj and Haj Policy ought not to have conducted any

activity in relation to Haj. Material on record indicates that the Complainant paid Rs.21,00,000/- to the Petitioner for Haj 2018. Even though the Petitioner has paid Rs.18,00,000/- to the Complainant, the conduct of the Petitioner itself disqualifies the Petitioner from operating as an HGO and, therefore, the decision of the Respondent cannot be said to arbitrary or perverse.

9. The argument of the learned Counsel for the Petitioner that since the Petitioner was not registered as an HGO in 2018, the security given by the Petitioner for 2019 cannot be forfeited, cannot be accepted. A perusal of Haj Policy indicates that the Ministry has the right to debar those HGOs against whom complaints have been received and who are involved with the pilgrims. The Policy does not state that the complaints ought to be restricted only to those years for which the quota has been allotted to the HGOs.

10. A perusal of the Judgment of the Apex Court and the Haj Policy shows that the object of the Haj Policy is to ensure that any person who is found to be deceiving the Hajis should not be permitted to operate as an HGO. The Hajis being very pious pilgrims should be handled only by such persons who do not have allegations of swindling or deceiving people on them. The fact that criminal complaint has been closed against the Petitioner also does not mean that the Union of India should also close the complaint. It is well settled that the tests of conviction in a criminal jurisprudence is based on proof beyond reasonable doubt whereas an administrative action can be taken on the basis of preponderance of probabilities and the strict test of criminal law is not generally applied in disciplinary proceedings. In State of Karnataka v. Umesh, **(2022) 6 SCC 563,** the Apex Court has held as

under:

> "*16. The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment.* ***Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.***
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> *17. In a judgment of a three-Judge Bench of this Court in State of Haryana v. Rattan Singh [State of Haryana v. Rattan Singh, (1977) 2 SCC 491 : 1977 SCC (L&S) 298 : (1977) 1 SLR 750] , V.R. Krishna Iyer, J. set out the principles which govern disciplinary proceedings as follows : (SCC p. 493, para 4)*
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> > *"4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Evidence Act, 1872 may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental*

authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The "residuum" rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge

> *levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground." (emphasis in original and supplied)*
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> *These principles have been reiterated in subsequent decisions of this Court including State of Rajasthan v. B.K. Meena [State of Rajasthan v. B.K. Meena, (1996) 6 SCC 417 : 1996 SCC (L&S) 1455] ; Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh [Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh, (2004) 8 SCC 200 : 2004 SCC (L&S) 1067] ; Ajit Kumar Nag v. Indian Oil Corpn. Ltd. [Ajit Kumar Nag v. Indian Oil Corpn. Ltd., (2005) 7 SCC 764 : 2005 SCC (L&S) 1020] and CISF v. Abrar Ali [CISF v. Abrar Ali, (2017) 4 SCC 507 : (2018) 1 SCC (L&S) 310]*." (emphasis supplied)

11. This Court has also taken into consideration as to whether the punishment imposed on the Petitioner is disproportionate to the impropriety or not. It is well settled that a breach of a serious nature cannot go unpunished, ignored or rendered inconsequential and that the gravity of commission and omission on the part of the service providers which has led to the incident is of a relevant consideration while computing the period of debarment.

12. The Doctrine of Proportionality has been explained succinctly by the Apex Court in Coimbatore District Central Coop. Bank v. Employees Assn., **(2007) 4 SCC 669**, wherein the Apex Court has held as under:

> ***"Doctrine of proportionality***
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> ***17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but***

has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the "doctrine of proportionality".

18. "Proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise—the elaboration of a rule of permissible priorities.

19. de Smith states that "proportionality" involves "balancing test" and "necessity test". Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative. [Judicial Review of Administrative Action (1995), pp. 601-05, para 13.085; see also Wade & Forsyth: Administrative Law (2005), p. 366.]

20. In Halsbury's Laws of England (4th Edn.), Reissue, Vol. 1(1), pp. 144-45, para 78, it is stated:

"The court will quash exercise of discretionary

> *powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. The principle of proportionality is well established in European law, and will be applied by English courts where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage of development in English law; lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness."*
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> *21. The doctrine has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no "pick and choose", selective applicability of the government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a "sledgehammer to crack a nut". As has been said many a time; "where paring knife suffices, battle axe is precluded".*
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> *(emphasis supplied)*

13. It is well settled that Writ Courts while exercising jurisdiction under Article 226 of the Constitution of India do not sit as an Appellate Authority and interfere with the punishments unless the punishment is so perverse that is shocks the conscious of the Court. For a High Court to interfere with the punishment, the punishment must be so disproportionate to the misconduct

that the High Court gets compelled to interfere. In the absence of any disproportionality, the High Courts, under Article 226 of the Constitution of India, do not sit on the quantum of punishment and tinker with it just because another view is possible.

14. Looking at the object of the Haj Pilgrimage and the purpose behind the Haj Policy, the complaint against the Petitioner and the conduct of the Petitioner, this Court is of the opinion that the punishment imposed on the Petitioner by the Respondent does not require to be modified.

15. Resultantly, the present writ petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

APRIL 24, 2024
Rahul