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

% **Judgment reserved on: 23 January 2023**
Judgment pronounced on: 30 January 2023

\+ W.P.(C) 2588/2021, CM APPL. 7647/2021(Interim Stay)

AL SUDAIS HAJ AND UMRAH SERVICE ..... Petitioner
Through: Mr. Santhosh Krishnan and Ms. Deepshikha Sansanwal, Advs.

versus

UNION OF INDIA & ANR. ..... Respondents
Through: Mr. Vikrant N. Goyal, Ms. Tesu Gupta, Ms. Ayushi Garg, Adv. for UOI.
Mr. Bhuvan Mishra and Mr. Yash Maheshwari, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

J U D G M E N T

1. The instant writ petition has been preferred seeking the following reliefs: -

> "A. Issue a writ of certiorari and call for the records leading up to the Impugned Order dt.27.01.2021, declare such order as illegal and set it aside,
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> B. Issue a writ of mandamus or direction to Respondents to refund the Petitioner's security deposit of Rs.25,00,000/- forfeited by the Impugned Order,
>
> C. Issue a writ of mandamus or direction permitting Petitioner to apply for and seek Haj quota for Haj 2021 and thereafter, without reference to Impugned Order dt.27.01.2021"

2. The petitioner is essentially aggrieved by the order of 27 January 2021 passed by the first respondent debarring it from applying for being enlisted as a **Haj Group Operator**[1] for a period of five years together with the forfeiture of the security deposit of Rs.25 lakhs. For the purposes of evaluating the challenge which stands raised, the following salient facts would merit notice.

3. The Kingdom of Saudi Arabia regulates the annual inflow of pilgrims to Mecca based on a country-wise quota which is announced periodically. The quota fixed for the nation is envisaged to be distributed through the Haj Committee set up under the **Haj Committee Act, 2002**[2]. Out of the quota so prescribed and fixed for the country, a smaller percentage is earmarked to be distributed amongst **Private Tour Operators** who are also called **Haj Group Operators** [hereinafter and for the sake of brevity to be called *"HGOs"*]. The policy for registration and allocation of the Haj quota amongst HGOs' stands encompassed in the order of 20 December 2018 issued by the **Ministry of Minority Affairs (Haj Division)**[3] under the Union Government. The aforesaid policy governs the selection of HGOs during the period 2019-2023.

4. Being desirous of being selected as an HGO, the petitioner submitted an online application on 20 January 2019. As would be

[1] HGO
[2] 2002 Act
[3] Ministry

evident from a reading of the relevant parts of the policy, the following broad categories were formulated:-

> "The new Policy for 2019-2023 created three categories:
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> A. Category I* - HGOs having experience of 12 years or more in Haj operations with annual turnover of Rs.5 Crores or more from Haj and/or Umrah operations in any of the preceding two years (30% quota).
>
> B. Category I - HGOs having experience of minimum 6 years in Haj with annual turnover of Rs.3 Crore or more from Haj and/or Umrah operations in any of the preceding two years (40% quota).
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> C. Category II- HGOs having annual turnover of Rs.1 Crore or more from Haj and/or Umrah operations in any of the preceding two years (30% quota)."

5. In terms of the eligibility conditions prescribed in the policy document, an HGO was required to have a minimum annual turnover of Rs. 1 /3/5 crores or more as may be applicable from Haj *"and/or"* Umrah operations in any of the two financial years preceding the empanelment year. The petitioner, who had not prior to the making of the aforesaid application been enlisted or selected as an HGO, had applied under Category II.

6. Upon the submission of the aforesaid application and on due scrutiny thereof, the respondents No.1 issued a communication on 03 April 2019 pointing out various defects which had been noticed in the application submitted by the petitioner. It becomes pertinent to note that the respondents found upon examination of the document which had been submitted by the petitioner that although it had set out receipts reflected in its audited Profit and Loss Account for Financial Year 2017-18 as being from Haj

operations, since the petitioner had never been selected as an HGO earlier, the declarations made in that respect were doubted. The respondents further noted that the extracts of the **Income Tax Return**[4] and the Tax Audit Report had not been downloaded from the official portal of the Income Tax Department and thus could not be validated.

7. While responding to the aforesaid deficiency letter, the petitioner by its communication of 08 April 2019 wrote to the respondents admitting that it had not earned any revenues from Haj operations in the previous years and that the receipts which had been shown in the ITRs were from Umrah operations only. In support of the aforesaid clarification, a certificate of a Chartered Accountant was also enclosed. The petitioner further asserted that the aforesaid was due to an inadvertent mistake made in the application form that had been submitted.

8. Along with the aforesaid communication, the petitioner also enclosed a CA certificate as well as its latest ITR and Tax Audit Report and projected those documents as having been downloaded from the official portal of the Income Tax Department. It becomes pertinent to note that the ITR which was submitted by the petitioner bore an acknowledgement number identical to that which stood embossed on the original copy of the return which had been submitted along with the application. Under the column relating to "other income" and more particularly at point 2(x)(i)

[4] ITR

thereof, the ITR purported to declare gross receipts or revenue as having been earned by the petitioner from Umrah operations. There was thus an evident disparity between the disclosures which were set forth in the original ITR copy which had been submitted and the one which was submitted along with the letter of 08 April 2019. This indubitably because while the ITR originally filed purported to show gross revenues earned from Haj operations, the return subsequently filed purported to hold out that the petitioner had made a declaration in its return that gross revenues had been earned from Umrah operations.

9. On 20 May 2019, the respondent No.1 notified the list of eligible HGOs as well as those who had been found to be ineligible. The name of the petitioner figured in the latter. On 20 May 2019, a further notification came to be issued by the respondent No.1 permitting all those who sought ventilation of grievances arising out of the selection of HGOs of an avenue of approaching a committee that had been constituted by the Ministry for considering any representation that may be made. The aforesaid committee constituted for the purposes of redressal of grievances is known as the Apex Committee. The notification of 20 May 2019 is extracted hereinbelow: -

"Annexure- P/9

No.15/13/2019-Haj-MoMA
भारत सरकार
Government of India
अल्पसंख्यक कार्य मंत्रालय
Ministry of Minority Affairs

(Haj Division)

पश्चिम खंड-VIII, विंग -2, प्रथम तल,
सेक्टर-1, आर. के. पुरम, नई दिल्ली- 110066
West Block-VIII,
Wing-2, 1st Floor, Sector-1, RK Puram, New Delhi-110 066
दिनांक /Date: 20.05.2019

Subject: Registration of Haj Group Organisers for Haj 2019 - regarding.

With reference to this Ministry's circular No.5/24/2018-Haj dated 20.12.2018 inviting applications for registration and allocation of quota to the Haj Group Organisers for Haj 2019, a total of 807 applications were received in the Ministry for registration under different categories (121 in Category-1*, 198 in Category-1 and 488 in Category-2). These applications were examined in the Ministry in terms of the provisions of the Policy for Haj Group Organisers for Haj 2019-23 and on the basis of the documents/ information submitted by the HGOs in their application and their subsequent clarifications/ replies.

2. As a result of the scrutiny process, 117 HGOS in Category-1*, 195 HGOs in Category-1 and 394 HGOS in Category-2 have been found eligible for registration for Haj 2019. The List of eligible HGOs in Cat-1*, Cat-1 and Cat-2 is at Annexure I, II and III respectively. The list of HGOs who are not found eligible for Haj 2019 is at Annexure-IV.

3. Those HGOs who have been found eligible subject to certain conditions are requested to submit the requisite documents to the Haj Division by 23.05.2019 positively.

4. A Committee has been constituted in the Ministry under the Chairmanship of Additional Secretary (MA) to look into the grievances of the HGOs for Haj 2019. Accordingly, the HGOS who wish to represent their case with new facts, may submit their representation to the Haj Division, West Block-VIII, Wing-2, 1st Floor, Sector-1, R.K. Puram, New Delhi - 110 066 or through email to ushaj-mma@gov.in latest by 23.05.2019 (5:00 p.m.). The representations received after due date and time will not be considered.

(Ravi Chandra)
Under Secretary
Ministry of Minority Affairs
Govt. of India, New Delhi"

10. On 20 May 2019, the respondent by its communication of the said date apprised the petitioner of the reasons which had weighed in rejecting the application that had been made. This is evident from Para 2 of the said communication which is reproduced hereinbelow: -

> "2. As per **Clause 4** of Annexure I of HGO Haj Policy, HGO is required to show a minimum annual turnover of INR 1 Crore/ 3 Cr/ 5 Cr or more as applicable from Haj and/or Umrah operations in any of the preceding two financial years along with balance sheet and profit and loss account duly audited by the statutory auditors, tax audit report and income tax return (ITR). As per the technical advice received from the empanelled Chartered Accountant firms and on scrutiny of the clarification/reply of the HGO, it has been observed that in its clarification, the HGO submitted the ITR from income tax portal in which the source of income is disclosed as Gross Receipt from Umrah. However, in ITR submitted earlier along with the application, the source of Income was disclosed as Gross Receipt from Haj. Revised ITR is not filed by the PTO as the Acknowledgement Number (357720061301018) is same for both the ITR. Therefore, authenticity of the document could not be established. Hence the provisions of clause 4 of Annexure I of HGO Policy has not been complied."

11. The respondents essentially held that there was an evident discrepancy in the two ITR copies which had been submitted by the petitioner on two separate occasions with one disclosing gross receipts from Haj while the other showing gross receipts from Umrah. It further noted that the acknowledgement number on both those returns were identical. They further went on to observe that since the authenticity of the two documents could not be

established, the petitioner has been found ineligible for registration and allocation of quota for Haj 2019.

12. On 23 May 2019, the petitioner is stated to have made a representation to the respondents asserting that due to oversight and typographical mistakes, the ITR had shown "*Gross Receipts from Haj*" instead of "*Gross receipts from Umrah*". It contended that upon the aforesaid mistake coming to light, it had also approached the Income Tax authorities for rectification. The rectification application along with the acknowledgement issued by the Income Tax Department was also enclosed. It becomes relevant to note that the rectification application which has been duly placed on the record is shown to have been filed on or about 22 May 2019.

13. The aforesaid rectification application came to be allowed and granted on 01 June 2019. In the meanwhile, the representation made by the petitioner for a review of the decision taken by the respondents rejecting its application came to be placed before the Apex Committee in terms of the notification of 20 May 2019. Upon due consideration of the representation as well as the additional document which had been submitted by the petitioner, the Committee found that modifications had been made in the copy of the ITR which had been originally submitted even though the acknowledgement number was identical. It further noted that the rectification application had been made only on 22 May 2019 and thus evidently after the application of the petitioner had come

to be rejected. It also observed that the rectified ITR had ultimately been issued after the last date for submission of applications.

14. The Committee, in view of the aforesaid, not only proceeded to reject the representation made by the petitioner, it proceeded further to form the opinion that the petitioner appeared to have indulged in "*fudging of documents and thus misleading the Government authorities for securing Haj quota*". Accordingly, and in light of clause 2 of Annexure II of the policy document, it recommended the debarment of the petitioner for a period of five years besides forfeiture of its security deposit.

15. The aforesaid recommendation of the Committee was duly accepted by the respondents as would be evident from its communication of 02 July 2019. Paragraphs 6 and 7 of the aforenoted communication are extracted hereinbelow: -

> "6. The Committee observed that this is a case of fudging of documents and thus misleading the Government authorities for securing Haj quota. As per clause 2 of Annexure-II of HGO Policy, HGOS that misrepresent or mislead the authorities in their application and documents will be automatically debarred from applying for at least 5 subsequent years besides forfeiture of security deposit. Accordingly, the Committee recommended that the HGO M/s Al Sudais Haj & Umrah Service be debarred for registration and allocation of quota for Haj 2019 and action may be initiated against the HGO as per the HGO Policy.
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> 7. The recommendation of the Committee has been accepted by the Ministry. Hence, **M/s Al Sudais Haj & Umrah Service** has not been found eligible for registration and allocation of quota for Haj 2019 and action has been

> initiated for its debarment and forfeiture of security deposit as per the HGO Policy 2019-23."

16. On 27 February 2020, a show cause notice came to be issued by the respondents calling upon it to explain why it not be debarred for at least five subsequent years and its security deposit be not forfeited. The aforesaid show case notice was founded on the recommendations of the Apex Committee noticed hereinabove. This is clearly evident when one reads the following recitals as appearing in the show cause notice:-

> "2. The Committee noted that it has been established beyond doubt that the government documents (ITR downloaded from Income tax website) were fudged to satisfy the query raised by the empanelled Chartered Accountant Firm and to secure Haj quota, which is tantamount to misrepresentation of documents to the Government authorities. The Committee observed that if an HGO, in connection with a requirement under HGO Policy, provides any information that is false or misleading, or produces any false document; he shall be liable to be punished under the provisions of the Policy. As per clause 2 of Annexure-II of HGO Policy, HGOs that misrepresent or mislead the authorities in their application and documents will be automatically debarred from applying for at least 5 subsequent years besides forfeiture of security deposit. Accordingly, it recommended that action may be initiated against the HGO M/s Al Sudais Haj & Umrah Service as per HGO Policy 2019-23 for misrepresentation of documents in the application for Haj 2019. The recommendation of the Committee has been approved by the Competent Authority in this Ministry.
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> 3. You are, therefore, requested to explain within a period of 7 days as to why the security deposit of **M/s Al Sudais Haj & Umrah Service** should not be forfeited and it should not be debarred from applying, for at least 5 subsequent years under clause 2 of Annexure II of HGO Policy for Haj 2019-23 for fudging of documents submitted along with its application for Haj 2019."

17. Responding to the said notice, the petitioner refuted the allegation of any attempt having been made to mislead the respondents and contended that the mistake was bona fide. It further held out an assurance that it would take utmost care in the future. Ultimately and upon a consideration of the aforesaid reply, the respondents proceeded to pass the impugned order of 27 January 2021. For our purposes, it would be relevant to extract the following paragraphs as they appear in the impugned order: -

> "12. The representations of the HGO in response to the show cause notice were examined in the Ministry and it was decided to get the veracity/ authenticity of these documents verified from the Income Tax Department. Accordingly, Principal Commissioner Income Tax -23, Mumbai was requested to verify the veracity/authenticity of the documents (ITRs submitted by HGO).
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> 13. IT Department has informed that the narration at point no.2(x(i) of Part A - P&L Account for the FY 2017-18 filed along with the original IT Return for AY 2018-19 (Ack No.357720061301018) is "Gross Receipt from Haj" and there is no narration such as 'Gross Receipt from Umrah'. Further, as per E-filling portal, the assessee Shri Arif Hasan Shaikh (PAN ANCPS1891C) filed the return of income for AY 2018-19 on 30.10.2018 bearing E- filing acknowledgement no 357720061301018 and there is no other return of income filed for the year under consideration besides the return of income filed on 30.10.2018. A copy of the Original ITR was also provided by the IT Department.
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> 14. From the Original ITR furnished by the IT Department and that submitted by the HGO for the AY 2018-19, it has been observed that besides the narration as mentioned above, following changes have also been made by the HGO:
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> (i) The copy of ITR provided by IT Dept mentions trade name of proprietorship of HGO as "AL SUDAIS TOURS & TRAVELS" whereas the copy of ITR submitted by HGO mentioned name as "AL SUDAIS HAJ & UMRAH TOURS".

(ii) The copy of ITR provided by IT Dept mentions address of HGO as "Shop No 8, 1st Floor, 279, Circular Bldg, S.V. Road, Near Jama Masjid, Bandra West, Mumbai -400050, Maharashtra" but the copy of ITR submitted by HGO mentioned address as "Shop no 6. Ground floor, Maklai Park CHS, Bazaar Road, Bandra West, Mumbai-400050, Maharashtra.

15. Therefore, the original ITR submitted by the HGO was fudged at various places. Also, as per IT Department, the HGO had filed only one return for the AY 2018-19. The HGO had Fudged Government documents (ITR downloaded from Income tax website) to satisfy the query raised by the empanelled Chartered Accountant Firm of MoMA and to secure Haj quota. HGO also misrepresented about filing of Rectification Returns for AY 2018-19.

16. As per Clause 2 of Annexure II of HGO Policy for Haj 2019-23, HGOs that misrepresent or mislead the authorities in their application and documents will be automatically debarred from applying for at least 5 subsequent years besides forfeiture of security deposit. This debarment will apply to all companies and firms in which the director/proprietor/partner of the debarred firm is present, provided that blacklisting will not be ordered unless an opportunity to show cause against such blacklisting is given to the HGO concerned. The HGO had been given opportunity vide this Ministry's show cause dated 27.02.2020.

17. Keeping in view the above position, it has been decided with the approval of the Competent Authority in the Ministry that as per the provisions of clause 2 of Annexure II of HGO Policy 2019-23, the security deposit of Rs.25 lakh submitted by **M/s Al Sudais Haj & Umrah Services** for Haj 2019 be forfeited for fudging the documents thereby misrepresenting the authorities in its application for registration during Haj 2019 and the HGO be debarred from applying as Haj Group Organiser for 5 years starting from Haj 2019. This debarment shall apply to all companies/ firms in which the proprietor of the debarred firm is present. The debarment will continue till Haj 2023."

18. On a consideration of the aforesaid and the material placed on the record, the Court notes that the respondents have ultimately

found that the original ITRs had set forth the gross revenues that had been received by the petitioner from Haj and at no time had those returns referred to those gross receipts as having been earned from Umrah operations. The respondents have also taken note of the apparent discrepancy in the address appearing in the multiple copies of the ITRs that were submitted by the petitioner with the original mentioning it as being housed in shop No. "6" and another version mentioning it as being housed in shop No. "8".

19. The respondents in this respect have held that the ITR provided by the Income Tax Department shows the address as set forth in the ITR as being shop No. "8". They have also noted the fact that quite apart from the original ITR having been "*fudged*" at various places, the Income Tax Department had apprised them that only one return had been filed for Financial Year 2018-19. It accordingly proceeded to debar the petitioner for a period of five years and further framed directions for forfeiture of its security deposit.

20. Appearing for the petitioner, Mr. Krishnan submitted that the respondents appear to have proceeded on a blatantly incorrect foundation that no rectification application had been filed and that the original ITR for Financial Year 2018-19 had not been rectified. This, according to learned counsel, is clearly belied from the documents which have been placed on the record and which clearly establish that an application for rectification had come to be preferred on 22 May 2019 and which was ultimately allowed

by the Income Tax Department on 01 June 2019. According to learned counsel, the mention in the ITRs of revenues obtained from Haj operations was a genuine mistake since undisputedly the petitioner had never been selected as an HGO by the respondents. Mr. Krishnan further urged that the record of the respondents would clearly establish that it had only undertaken activities connected with Umrah operations.

21. On a more fundamental plane, learned counsel submitted that the proceedings before the respondent had evidently come to a close on 20 May 2019 on which date its application for being enlisted as an HGO had come to be rejected. Learned counsel submitted that the notification of 20 May 2019 and which conferred an opportunity on the entities whose applications had been rejected to make a representation was effectively envisioned to be for redressal of grievances. It was in the aforesaid backdrop that learned counsel submitted that such an entity could not have been placed in a more disadvantageous position than where it stood on the date of the rejection of its application. The submission essentially was that the Apex Committee could not have visited an applicant with penalties which were neither contemplated nor inflicted by the principal authority and that too in proceedings which were confined to the consideration of representations that were made.

22. Learned counsel also submitted that the action of the respondents is wholly disproportionate bearing in mind the fact

that the declarations appearing in the ITR had been ultimately rectified by the Department itself. Learned counsel in support of his aforesaid contentions had placed reliance upon the following decisions: -

1. **Kulja Industries Limited versus Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and Ors.**[5]

2. **Coimbatore District Central Cooperative Bank versus Coimbatore District Central Cooperative Bank Employees Assn. and Anr.**[6]

3. **Ashok Kumar Nigam versus State of Uttar Pradesh and Anr.**[7]

23. Learned counsel appearing for the first respondent had while reiterating the pleas taken in the counter affidavit filed in these proceedings, submitted that the multiple ITRs which were tendered by the petitioner clearly evidence the inconsistent declarations made by it. It was pointed out that while originally the ITR as submitted sought to disclose revenue received from Haj operations, the subsequent copy which was filed purported to hold out that the declaration in respect of revenue earning was in respect of Umrah operations. It was further submitted that the rectification application undisputedly came to be made after the

[5] (2014) 14 SCC 731
[6] (2007) 4 SCC 669
[7] (2016) 12 SCC 797

application of the petitioner had been rejected and a decision to that effect had been duly communicated. It was further urged that the rectification admittedly came to be granted approval by the Income Tax Department on 01 June 2019 and thus clearly after the last date of submission of applications and in any case after the final order rejecting the application of the petitioner had come to be passed.

24. Taking the Court through the contents of the counter affidavit which has been filed, learned counsel further submitted that the action to debar the petitioner as well as forfeiture of its security deposit was based on the recommendations as framed by the Apex Committee and which had been duly accepted and endorsed by the Ministry. It was further argued that the policy in terms of clause 2 contained in Annexure II had clearly placed parties on notice of a misrepresentation inevitably leading to respondents being entitled to debar them from applying for five subsequent years in addition to forfeiture of the security deposit. Clause 2 as contained in the policy is extracted hereinbelow: -

> "19. That the Clause 2 of Annexure 2 of HGO Policy clearly states that:
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> *"HGOs that misrepresent or mislead the authorities in their application and documents will be automatically debarred from applying for at least 5 subsequent years besides forfeiture of security deposit. This debarment will apply to all companies and firms in which the director/proprietor/partner of the debarred firm is present, provided that blacklisting will not be ordered unless an opportunity to show cause against such blacklisting is given to the HGO concerned."*

25. It would be pertinent to note that the writ petition has been principally contested by respondent No.2, the Haj Committee of India which had filed detailed written submissions also in these proceedings. Although the said respondent is neither a necessary nor a proper party, since it was duly represented by learned counsel, the Court had permitted submissions to be addressed at its behest also. Taking the Court through the written submissions which were filed, learned counsel pointed out that in the ITR which had been initially filed, undisputedly, the petitioner had placed reliance on revenues generated from Haj operations and which fact was also evidenced from the disclosures made therein. Learned counsel laid emphasis on the fact that the ITRs which were submitted along with the clarificatory letter of 08 April 2019, ex facie, amount to a misrepresentation and a clear attempt to deceive and misinform the respondents. Learned counsel pointed out that the ITRs which were submitted along with the aforesaid communication were asserted to be those existing on the portal of the Income Tax Department. The aforesaid assertion, according to learned counsel, has been clearly found to be fictitious and incorrect since at least on that date the return had neither been rectified nor had any corrections thereto been permitted by the Department.

26. Learned counsel also laid stress on the discrepancies existing in the address details which appear in the multiple copies and versions of the ITR which had been submitted by the petitioner. It was lastly submitted that, in any case, the

rectification came to be allowed after the last date of submission of applications and after the applications submitted by the petitioner had come to be finally rejected by the first respondent. In view of the aforesaid, it was his submission that the debarment of the petitioner as well as forfeiture of security could not be assailed by the petitioner.

27. It was further urged that the consequences of submission of misleading documents or acts of misrepresentation stood duly set out in clause 2 as appearing in Annexure II of the HGO policy. In view of the aforesaid, learned counsel urged that it was clearly not open to the petitioner to question or assail the ultimate action taken by the first respondent. It is these rival submissions which fall for consideration.

28. As this Court reviews the records which have been placed on the writ petition, it is manifest that the ITRs which were submitted along with the original application appeared to suggest that the petitioner had declared gross receipts and revenues as having been derived from Haj operations. Undisputedly, the petitioner had prior to the making of the application in question never been enlisted as an HGO. It could not have consequently asserted that it had earned revenues from Haj operations.

29. Once the deficiency letter came to be issued, the petitioner proceeded to submit certain documents along with its letter of 08 April 2019. In the said communication, it was clearly and unequivocally conceded by the petitioner that it could not have

claimed any turnover connected with assisting the passage of persons to the Kingdom of Saudi Arabia during the Haj. It consequently clarified that due to oversight, the turnover had been shown as having been obtained from Haj operations when in fact they were drawn only from Umrah business receipts. The certificates of the Chartered Accountant which were appended to the aforesaid communication had also asserted that the revenues had been obtained from the carrying on of operations relating to Umrah as distinct from Haj.

30. However, a copy of the ITR which was submitted purported to represent as if the revenues which were disclosed therein had been obtained from Umrah operations. This clearly could not have been the position which prevailed on that date since the ITR submitted for the assessment year in question had yet not been rectified. The statement, therefore, to the aforesaid extent was clearly incorrect and misleading. This could not possibly have been the position since the application for rectification came to be made only on 22 May 2019. The recitals appearing in the concerned ITR consequently could not have been deemed to have been amended prior thereto. The rectification application ultimately came to be granted on 01 June 2019. However, and by this time, the application of the petitioner had come to be finally rejected by the first respondent in terms of the order of 20 May 2019. The rectification thus could not have inured to the benefit of the petitioner nor could it had been taken into consideration for the

purposes of reviving an application which had already been rejected on 20 May 2019.

31. The petitioner, however, sought to explain the same as being an action taken by the Chartered Accountant and principally amounting to an overzealous attempt on its part to present a stand that the ITR showed and carried disclosures relating to revenues obtained from Umrah operations. The Court finds itself unable to accept this explanation since the representation had been made by the petitioner itself. It cannot now seek to disavow the Chartered Accountant who had been engaged by it or distance itself from the evident attempt to mislead by virtue of submission of an ITR return which purported to show and represent revenues as having been obtained from Umrah operations.

32. However, and as the record would bear out, the petitioner sought to represent its case in light of the provisions made in Para 4 of the notification dated 20 May 2019. It is the aforesaid representation which appears to have been placed for the consideration of the Apex Committee. A representation in terms of Para 4 of the notification of 20 May 2019 was clearly envisaged for redressal of grievances. It could not, in the considered opinion of this Court, have been utilized to foist further or additional penalties upon the petitioner. That was clearly not the province or the remit of the Apex Committee. While examining grievances raised by the applicants, the said Committee could not have possibly visited the representee with penalties far greater or in

excess of those that the original authority may have chosen to impose.

33. It becomes pertinent to observe that the first respondent while proceeding to reject the application of the petitioner had chosen neither to debar it nor to initiate any action for forfeiture of its security deposit. That decision admittedly appears to have been the view and the opinion formed by the Apex Committee. In fact, the record would establish that it was the recommendation of the Apex Committee which predicated the issuance of the show cause notice. Learned counsel for the petitioner had in this connection referred to the principles laid down by the Supreme Court in **Ashok Kumar** and more particularly to the following passages as appearing therein: -

> "**4.** The legal position, as to the powers of the High Court to direct enhancement of punishment in a writ petition arising out of disciplinary action taken against an employee, stands concluded by the decisions of this Court, referred to above. In *Pradeep Kumar case* [*Pradeep Kumar* v. *Union of India*, (2005) 12 SCC 219] , in a somewhat similar circumstances, a similar question had arisen for consideration before this Court. In that case too the High Court had found the punishment of reduction in pay and denial of increments awarded to the appellant to be inadequate, for the gravity of the misconduct. The High Court had accordingly remanded the matter back to the disciplinary authority to award the maximum punishment of dismissal from service which direction was then assailed before this Court on the ground that the High Court had no such power to direct enhancement of punishment either by itself or by remanding the matter to the disciplinary authority. An employee complaining against the punishment awarded to him could not, observed this Court, be placed in a worse-off position for coming to the Court.
>
> **5.** The following passages from the judgment is in this regard are apposite: (*Pradeep Kumar case* [*Pradeep*

Kumar v. *Union of India*, (2005) 12 SCC 219], SCC pp. 219-20, paras 3-4)

> "*3.* According to the appellant, similar punishment was inflicted on the other two employees. Being aggrieved, all three employees filed separate writ petitions before the High Court. The writ petitions of the other two employees were merely dismissed as withdrawn. As far as the appellant was concerned, the High Court not only dismissed the writ petition but also directed the punishing authority to reconsider the punishment imposed in view of the observations of the High Court and held that the maximum penalty of dismissal from service ought to have been accorded. There was a further direction that the action taken against the appellant should be intimated to the Court as soon as possible.
>
> *4.* Irrespective of the crime/offence with which the appellant may have been charged, it was not open to the High Court to have issued such a direction. The scope of judicial review did not allow the High Court to have interfered with the punishment imposed by the disciplinary authorities on the appellant. Besides, a writ petitioner cannot be put in a worse position by coming to court. The directions of the High Court are not sustainable and must be set aside. We are told by the learned counsel for the appellant that the respondent authority pursuant to the directions issued by the High Court initiated proceedings against the appellant for the purpose of imposing the penalty of dismissal from service. We have held that the direction of the High Court was wholly outside its jurisdiction. The appeals are thus allowed and the High Court's directions are set aside. The disciplinary enquiry initiated on the basis of the High Court's order is consequently also quashed. However, the writ petitions will stand dismissed. There is no order as to costs."

6. To the same effect is the decision in *Ramesh Chander Singh case* [*Ramesh Chander Singh* v. *High Court of Allahabad*, (2007) 4 SCC 247 : (2007) 2 SCC (Cri) 266] where too the question whether the High Court could interfere with the order of punishment in a matter where the employee challenged the punishment awarded to him in a writ petition, fell for consideration before this Court. The question was answered in the following words: (SCC p. 252, para 6)

> "*6.* Based on the enquiry report, the appellant was served with a notice to show cause as to why his two increments should not be withheld with cumulative effect. The matter was placed before the Full Court on 20-11-1999 and the Full Court by its resolution imposed a major punishment of withholding two annual increments of the appellant with cumulative effect. The appellant filed a review application against the said punishment and the same was rejected. Thereupon, he filed a writ petition under Article 226 of the Constitution challenging the punishment imposed on him. By judgment dated 3-10-2005, the writ petition was dismissed and in the very same judgment the appellant was directed to show cause within three weeks from the date of the judgment as to why the High Court should not consider substitution of the punishment imposed, by removing him from service. Pursuant to the notice, the appellant appeared and presented his case before the Division Bench. By judgment dated 25-11-2005, the appellant was reduced to the rank next below, that is, Civil Judge (Senior Division). Both the judgments of the Division Bench are challenged before us."

7. We have, in the light of the above decisions, no hesitation in holding that the High Court had fallen in a palpable error in directing issuance of a show-cause notice to the appellant. The appellant could not, as observed earlier, be placed in a worse-off situation because of his having sought redress against the punishment awarded to him by the disciplinary authority which in the instant case is the High Court itself.

8. In the result, we allow this appeal and direct setting aside of that part of the order [*Ashok Kumar Nigam* v. *State of U.P.*, 2012 SCC OnLine All 4210] passed by the High Court whereby the High Court had directed the issuing of show-cause notice to the appellant for award of a heavier punishment upon him. The fact that the appellant has since retired from service, is only an added feature why the direction of the High Court should be set aside. The parties are left to bear their own costs."

34. In **Ashok Kumar Nigam,** the Supreme Court was called upon to consider the correctness of the order passed by the Allahabad High Court which had proceeded to direct enhancement of punishment on a writ petition which had been preferred by an employee aggrieved by the disciplinary action taken against him. It was in the said backdrop that the Supreme Court had observed that the High Court would clearly have no power to direct enhancement of the punishment. It had pertinently observed that an employee complaining against the punishment awarded to him cannot be placed in a *"worse-off position"* merely because he chose to approach the High Court to seek redress against the order of the disciplinary authority. The aforesaid principles, though enunciated in the context of a High Court having enhanced the punishment imposed, would clearly be apposite to evaluate the validity of the action that was taken by the Apex Committee.

35. The Apex Committee while considering the grievance raised by the applicant and when petitioned to examine the same could not have possibly proceeded to either impose or recommend punishments which had not been contemplated by the original authority. The adoption of such a recourse would amount to recognizing the Apex Committee as being empowered to enhance any punishment that the original authority may have chosen to impose. In fact, if the action of the Apex Committee were to be accorded a judicial imprimatur, it would amount to recognizing a power inhering in it to independently impose and inflict penalties even though the original authority may have refrained from doing

so. Such a course of action cannot be countenanced more so when one bears in mind the limited extent of the remit of the Apex Committee and which was indubitably confined to the consideration of representations. A committee which is constituted merely as an avenue for redressal of grievances cannot be recognised to be vested with such a power. The Court consequently comes to hold that the action of the Apex Committee in proceeding to frame peremptory recommendations for the debarment of the petitioner as well as for forfeiture of the security deposit cannot possibly be sustained.

36. That takes the Court then to the action initiated by the first respondent based upon the recommendation of the Apex Committee. As would be evident from the contents of the show cause notice dated 27 February 2020, the initiation of action was based entirely upon the recommendation framed by the Apex Committee. This becomes palpably evident from a reading of Para 2 of the show cause notice. The Court further notes that Para 2 of the show cause notice then proceeds to observe that the recommendation of the Apex Committee had been approved by the competent authority in the Ministry. The aforesaid aspect assumes significance since the language as employed in Para 2 clearly appears to suggest that a decision to visit the petitioner with debarment and forfeiture appears to have been already formed. The show cause notice clearly evidences the entire issue having been already prejudged and predetermined.

37. It is the aforementioned facts which leads the Court to recall the pertinent principles relating to the mindset of an authority which issues a show cause notice, as were expounded by the Supreme Court in **Oryx Fisheries Pvt. Ltd. v. Union of India**[8]:-

> **"27.** It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.
>
> **28.** Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against.
>
> **29.** In the instant case from the underlined [**Ed.** : Herein italicised.] portion of the show-cause notice it is clear that the third respondent has demonstrated a totally closed mind at the stage of show-cause notice itself. Such a closed mind is inconsistent with the scheme of Rule 43 which is set out below. The aforesaid Rule has been framed in exercise of the power conferred under Section 33 of the Marine Products Export Development Authority Act, 1972 and as such that Rule is statutory in nature.
>
> **31.** It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will

[8] (2010) 13 SCC 427

merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice.

33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi-judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it.

34. A somewhat similar observation was made by this Court in *Kumaon Mandal Vikas Nigam Ltd.* v. *Girja Shankar Pant* [(2001) 1 SCC 182 : 2001 SCC (L&S) 189] . In that case, this Court was dealing with a show-cause notice-cum-charge-sheet issued to an employee. While dealing with the same, this Court in para 25 (SCC p. 198 of the Report) by referring to the language in the show-cause notice observed as follows:

> "*25*. Upon consideration of the language in the show-cause notice-cum-charge-sheet, it has been very strongly contended that it is clear that the officer concerned has a mindset even at the stage of framing of charges and we also do find some justification in such a submission since the chain is otherwise complete."

After para 25, this Court discussed in detail the emerging law of bias in different jurisdictions and ultimately held in para 35 (SCC p. 201 of the Report), the true test of bias is:

> "*35*. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances *must and ought to be collated and necessary conclusion drawn* therefrom—in the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained:"
>
> (emphasis supplied)

35. Going by the aforesaid test any man of ordinary prudence would come to a conclusion that in the instant case

> the alleged guilt of the appellant has been prejudged at the stage of show-cause notice itself."

38. Tested on the aforesaid lines, the show cause notice as well as all consequential proceedings that were taken and that led up to the passing of the impugned order are thus additionally liable to be set aside on this score.

39. The Court then lastly proceeds to consider the submission of learned counsel for the petitioner based on the doctrine of "proportionality". The precepts underlying the proportionality principle were eloquently enunciated by the Supreme Court in **Coimbatore District** in the following terms: -

> ***"Doctrine of proportionality***
>
> **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."

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".

22. In the celebrated decision of *Council of Civil Service Union* v. *Minister for Civil Service* [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] Lord Diplock proclaimed: (All ER p. 950*h-j*)

"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify

> under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. *I have in mind particularly the possible adoption in the future of the principle of 'proportionality*'…."
>
> (emphasis supplied)"

40. **Coimbatore District** bids an administrative authority to weigh and balance the competing aspects that must be borne in mind and inform the decision making process. Proportionality, as the Supreme Court noted in the aforesaid decision, involves the application of the *"balancing test"* as well as the *"necessity test"*. The former deals with the validity of penalties which may be viewed as onerous and an outcome of a failure to balance relevant considerations and options available with an administrative authority. De Smith in his celebrated treatise on Administrative Law described it to be *"a manifest imbalance of relevant considerations"*.

41. When tested on the aforesaid principles, the Court finds that undisputedly the petitioner had not derived any benefit from the inaccurate disclosures which were made before the respondents. Even if the contents of the letter dated 08 April 2019 were to be taken into account, those would clearly suggest that the petitioner had accepted the fact that it had not earned any revenues from Haj operations. In fact, it had fairly conceded that the gross revenues as depicted in the ITR were from Umrah operations only. While it is apparent that the ITR which was submitted along with the

aforesaid letter was misleading, the Court bears in mind that the contents of the ITR filed for the concerned assessment year had ultimately come to be duly rectified and the stand of the petitioner of having earned revenues from Umrah as opposed to Haj was duly accepted by the Income Tax Department itself. The Court also takes into consideration the undisputed fact that in the absence of the petitioner having been selected as an HGO in the past, it could not have possibly been recognized to have obtained revenues from those operations.

42. Turning then to clause 2 of Annexure - II, it would be pertinent to note that the power conferred on the respondent to debar or to forfeit a security deposit cannot possibly be understood as being predetermined penalties which could be said to be inevitable or ineluctable. The mere usage of the word "automatically" also does not lead this Court to conclude that the penalty of debarment or forfeiture is to be necessarily imposed. Those penalties would be warranted provided the circumstances of a particular case or the conduct of a party warrants the imposition of those measures. The doctrine of proportionality applies with full vigor even to an action of blacklisting. This is evident from the following principles enunciated in **Kulja Industries**:-

> "**19.** Even the second facet of the scrutiny which the blacklisting order must suffer is no longer res integra. The decisions of this Court in *Radhakrishna Agarwal* v. *State of Bihar* [(1977) 3 SCC 457 : (1977) 3 SCR 249] ; *E.P. Royappa* v. *State of T.N.* [(1974) 4 SCC 3 : 1974 SCC (L&S) 165] ; *Maneka Gandhi* v. *Union of India* [(1978) 1 SCC 248] ; *Ajay Hasia* v. *Khalid Mujib Sehravardi* [(1981) 1 SCC 722 : 1981 SCC (L&S) 258] ; *Ramana Dayaram*

Shetty v. *International Airport Authority of India* [(1979) 3 SCC 489] and *DwarkadasMarfatia and Sons* v. *Port of Bombay* [(1989) 3 SCC 293] have ruled against arbitrariness and discrimination in every matter that is subject to judicial review before a writ court exercising powers under Article 226 or Article 32 of the Constitution.

20. It is also well settled that even though the right of the writ petitioner is in the nature of a contractual right, the manner, the method and the motive behind the decision of the authority whether or not to enter into a contract is subject to judicial review on the touchstone of fairness, relevance, natural justice, non-discrimination, equality and proportionality. All these considerations that go to determine whether the action is sustainable in law have been sanctified by judicial pronouncements of this Court and are of seminal importance in a system that is committed to the rule of law. We do not consider it necessary to burden this judgment by a copious reference to the decisions on the subject. A reference to the following passage from the decision of this Court in *Mahabir Auto Stores* v. *Indian Oil Corpn.* [(1990) 3 SCC 752] should, in our view, suffice: (SCC pp. 760-61, para 12)

> "*12*. It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in *Radhakrishna Agarwal* v. *State of Bihar* [(1977) 3 SCC 457 : (1977) 3 SCR 249] . … In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. … It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of

> law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case."

43. The aforesaid aspect was highlighted in a decision of our Court in **Raman Kalra v. Govt. (NCT of Delhi)**[9], as would be evident from the following passages:

> "**26.** In the present case, the NIT provides for a bidder, who either withdraw his bid within the validity period or defaults in paying the amounts in terms of the LOA, to be visited with the consequences of forfeiture of EMD/bid security and also be debarred from participating in tenders/RFPs issued by DTIDC for a period exceeding four years (the current financial year and four succeeding financial years). *Ex facie* such provision of debarring a bidder is harsh and may in certain circumstances be wholly inequitable. The period of blacklisting is also significantly long. In the circumstances, it would be necessary for DTIDC to examine the proportionality of such measure in the context of the facts of each case. In a given case, a bidder may have been prevented by reasons completely beyond his control and may be in a position to establish the same. In such cases, it may not be apposite for DTIDC to ignore the mitigating circumstances and impose such a harsh punishment of debarring the bidder for more than a period of four financial years. It is difficult to accept that such an imposition of a harsh and severe punitive action should follow mechanically.
>
> **27.** This Court is thus of the view that it is necessary for DTIDC to permit the bidder against whom such action of blacklisting is proposed, to explain and show cause why such action for debarring him not be taken and/or that the period of blacklisting be reduced. In *Otik Hotels* (supra), a Coordinate Bench of this Court observed that no show cause notice was required because the tender documents itself

[9] 2017 SCC OnLine Del 9414

stipulated that the applicant who failed to pay the licence fee as required would be debarred from participating in bidding for future projects of the respondent therein for a period of one year. However, the Court also found that in the facts of that case, punishment of debarment for a period of one year was not proportionate and consequently, reduced the punishment of debarment imposed on the petitioner therein to a period of one month. Thus, the said decision also underscores the importance of evaluating whether the harsh measure of debarring a defaulting bidder for a period ought to be taken mechanically, without considering the question if such measure is proportionate in the given circumstances. This Court is of the view that such question cannot be considered without affording the bidder a chance to furnish an explanation.

28. In the case of *Naresh Khetrapal* (supra), a Division Bench of this Court considered a challenge to the clause of the tender document whereby the Ministry of Tourism had reserved its right to not to accept bids from agencies resorting to unethical practices or against whom investigation/enquiry proceedings had been initiated by investigating agencies. The Court held that such a clause could not be read in a manner so as to exclude from its ambit, the principles of fair play and natural justice.

29. Indisputably, DTIDC would have the discretion to not to deal with a bidder who has been found to be untrustworthy as he has defaulted. In *Patel Engineering Ltd.* v. *Union of India*: (2012) 11 SCC 257, the Supreme Court had reiterated the principle that the "*authority of the State to blacklist a person is a necessary concomitant to the executive power of the State to carry on the trade or the business and making of contracts for any purpose, etc*".

30. However, the exercise of such powers cannot be arbitrary or unreasonable and must take into account the doctrine of proportionality and fair play. Thus, although paragraph 4.7 of the NIT expressly provides that the failure on the part of the bidder to pay advance licence fee and security deposit within seven days of the receipt of LOA would result in the bidder being debarred for the specified period; this Court is not persuaded to accept that the said punitive measure would follow automatically and without affording the bidder a chance to represent against the same. The provisions to debar the bidders on account of any default must be read as only enabling DTIDC to take such action.

> Such provision also serves as a notice to the bidders that their default could invite such measures. However, the bidders ought to be given a right to represent against the imposition of such punitive measures and it is necessary for DTIDC to consider the same before imposing such punitive measures.
>
> **31.** In the circumstances, the decision of DTIDC to debar the petitioner for the financial year 2016-17 and four further financial years is set aside. DTIDC is at liberty to blacklist and debar the petitioner from participating in future tenders; however, it would be necessary for DTIDC to issue a notice indicating its intention to impose such punishment and take a final decision to do so after considering the petitioner's response, if any, and following the principles of natural justice."

44. When tested on the aforesaid lines, the Court finds that the petitioner was visited with the maximum punishment and imposed the most onerous of penalties which were contemplated under the Policy without the assignment of any reason why the harshest of penalties was warranted. The authorities, in fact, appear to have acted solely on the basis of the recommendations of the Apex Committee. As was noticed in the preceding parts of this decision, the first respondent had originally neither imposed nor contemplated the imposition of the penalty of debarment and forfeiture of security. The Apex Committee, as has been held above, had no authority to either impose such a penalty or make a recommendation in that regard while dealing with a representation for redressal of grievances. While the enclosures of 08 April 2019 clearly attempted to convey a position which was wholly incorrect and inaccurate, the petitioner had in its representation unequivocally conceded that it had not earned any revenues from Haj operations. It had described that declaration as being an oversight. The inaccuracy as evident upon a perusal of the ITR

which was filed came to be duly rectified by the Income Tax Department and the mistake that had occurred during the course of filing was ultimately corrected. While the rectification which apparently came to be granted after the rejection of the application of the petitioner may have had no bearing on the validity of the decision taken by the first respondent to reject the application of the petitioner, it was clearly a circumstance which had relevance insofar as the proposed action of blacklisting and forfeiture was concerned.

45. The petitioner has undisputedly suffered the impact of debarment for the entire period of 05 years as imposed. This since in terms of the impugned order, the same was to take effect from 2019. The petitioner has already undergone the entire period of debarment during the pendency of these proceedings before this Court. While it would not be possible for the Court to turn the clock around, it must be held that the unsustainable order of blacklisting would not operate so as to render the petitioner disqualified in case it was to apply for enlistment as an HGO in the future years. For reasons aforenoted, the additional punishment of forfeiture of security deposit also clearly appears to be disproportionate and arbitrary.

46. Accordingly, and for the aforesaid reasons, the instant writ petition shall stand allowed on the following terms. The impugned order dated 27 January 2021 shall stand quashed. The petitioner shall be entitled to consequential reliefs including the refund of the

security deposit which stood forfeited. Since the Court has found that the debarment would not sustain, the same shall not act as a disqualification in the future years.

YASHWANT VARMA, J.

JANUARY 30, 2023 / *neha*