FEDERATION HAJ PTOS OF INDIA

v.

UNION OF INDIA

Writ Petition (Civil) No. 4 of 2019

FEBRUARY 04, 2019

[A. K. SIKRI, S. ABDUL NAZEER AND M. R. SHAH, JJ.]

Haj Pilgrimage :

Haj policy for 2019-23 – Grievance of the petitioner was that some of their vital suggestions, were not incorporated while finalising the Haj policy – Petitioner contended that while fixing the criteria of experience-cum-financial strength, the respondent had given more emphasis on the financial aspects thereby sidelining the aspect of experience – Held: Public authorities must have liberty and freedom in framing policies – It is well accepted principle that in complex social, economic and commercial matters, decisions have to be taken by governmental authorities keeping in view several factors and it is not possible for the courts to consider completing claims and to conclude which way balance tilts – In instant case, Haj Policy for 2019-23 is based on data collected and complied in the study by IIT-Delhi, an expert body – Further, views of the stakeholders, including petitioners, were invited and duly considered – Ministry has considered both experience and financial strengths, as recommended in the IIT Delhi study itself – Financial strength is important because when the pilgrims travel, the Private Tour Operators (PTOs) are required to make all arrangements for transportation, air travel, boarding and lodging, local transportation and provision of guide etc. – Also, views of the petitioners were not only considered but accommodated to the extent possible and permissible – Thus, difficult to agree with the petitioners – Administrative Law – Policy decision.

Administrative Law – Policy decision – Haj policy for 2019-23 – Scope of judicial review – Held: The scope of judicial review is very limited in such matters – It is only when a particular policy decision is found to be against a statute or it offends any of the provisions of the Constitution or it is manifestly arbitrary, capricious or mala fide*, the court would interfere with such policy decisions – In instant case, no such case was made out.*

A **Disposing of the writ petitions, the Court**

HELD: 1. The Haj Policy for 2019-23 is based on data collected and compiled in the study by IIT Delhi, an expert body. Further, views of the stakeholders, including the petitioners, were invited and duly considered. The respondent has categorically submitted that the aforesaid demand of the petitioners is not based on any factual data, whereas the decision taken by the Ministry is based on data collected and compiled in the study by IIT Delhi. Secondly, the petitioners' suggestion is only to take experience into account, whereas the Ministry has considered both experience and financial strength, as recommended in the IIT Delhi study itself. It is submitted that where 1,75,000 people embark upon a pilgrimage, financial strength of the (Private Tour Operator) PTO is of utmost importance and cannot be overlooked. Financial strength is important because when the pilgrims travel to Saudi Arabia, the PTOs are required to make all arrangements for transportation, air travel, boarding and lodging, local transportation and provision of guide, etc. It is submitted that the Ministry cannot afford to take any chance on this aspect as the lack of adequate financial strength of the PTOs may result in the pilgrims becoming stranded in a foreign country or facing other hardships. [Para 16][638-D-F]

2. Additionally, it is submitted by the respondent that if the suggestion of the petitioners is accepted, there would be eleven sub-categories amongst Category-I, inasmuch as what is sought by them is allocation of seats on a pro-rata basis depending on the number of years of experience. This would result in major structural changes, which is not advisable and cannot be accepted. [Para 17][638-G]

3. Going by the aforesaid considerations, the respondent has carved out the categories of (Haj Group Organisers) HGOs on the parameters of experience as well as financial strength of HGOs. Such a decision is based on policy considerations. It cannot be said that this decision is manifestly arbitrary or unreasonable. It is settled law that policy decisions of the Executive are best left to it and a court cannot be propelled into the unchartered ocean of Government policy. Public authorities

must have liberty and freedom in framing the policies. It is well accepted principle that in complex social, economic and commercial matters, decisions have to be taken by governmental authorities keeping in view several factors and it is not possible for the courts to consider competing claims and to conclude which way the balance tilts. Courts are ill-equipped to substitute their decisions. It is not within the realm of the courts to go into the issue as to whether there could have been a better policy and on that parameters direct the Executive to formulate, change, vary and/or modify the policy which appears better to the court. Such an exercise is impermissible in policy matters. [Para 18][639-A-D]

4. The scope of judicial review is very limited in such matters. It is only when a particular policy decision is found to be against a statute or it offends any of the provisions of the Constitution or it is manifestly arbitrary, capricious or *mala fide*, the court would interfere with such policy decisions. No such case is made out. On the contrary, views of the petitioners have not only been considered but accommodated to the extent possible and permissible. [Para 19][639-F]

Maharashtra State Board of Secondary & Higher Secondary Education v. Paritosh Bhupeshkumar Sheth **(1984) 4 SCC 27 : [1985] 1 SCR 29 ;** *State of Madhya Pradesh v. Nandlan Jaiswal* **(1986) 4 SCC 566 : [1987] 1 SCR 1;** *Benett Coleman & Co. v. Union of India Maharashtra State* **(1972) 2 SCC 788 : [1973] 2 SCR 757 – relied on.**

Union of India and Others v. Rafique Shaikh Bhikan and Another **(2013) 4 SCC 699 : [2013] 5 SCR 428;** *Union of India and Others v. Rafique Shaikh Bhikan and Another* **(2012) 6 SCC 265 : [2012] 5 SCR 715 – referred to.**

Case Law Reference

[2013] 5 SCR 428	**referred to**	**Para 5**
[2012] 5 SCR 715	**referred to**	**Para 13**
[1973] 2 SCR 757	**relied on**	**Para 18**
[1985] 1 SCR 29	**relied on**	**Para 19**
[1987] 1 SCR 1	**relied on**	**Para 20**

A CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 4 of 2019

UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

WITH

W.P.(C) Nos. 26, 33 and 93 of 2019.

B ANS Nadkarni, ASG, Salman Khurshid, Sr. Adv., Gaurav Agrawal, George Thomas, Ms. Monica Haseja, Ms. Mitali Chauhan, Ms. Roshni W. Anand, Ms. Gargi Srivastava, Sulaiman Mohd. Khan, (Mohd.) Ainul Ansari, Ms. Taiba Khan, Kripa Shankar Prasad, Sunil Khatwani, Pardeep Jatav, Santosh Krishnan, Bhuvan Mishra, Ms. Suhasini Sen, C Sumit Goel, Raj Bahadur Yadav, Mrs. Anil Katiyar, Advs. for the appearing parties.

The Judgment of the Court was delivered by

A. K. SIKRI, J.

1. Petitioners in Writ Petition (Civil) Nos. 4 and 33 of 2019 are the D Federation/Association of the Private Tour Operators (PTOs)/ Haj Group Organisers (HGOs) who have taken up the cause on behalf of their members, namely, various PTOs/HGOs. Other two writ petitions are filed by the PTOs themselves. The issue raised in all these petitions is common. For this reason these petitions were clubbed together and counsel for all the parties were heard. We now proceed to decide the E controversy by this common judgment.

2. For Muslims, place of birth of Hazrat Muhammed, i.e. Saudi Arabia, is the most sacred place. Visiting that place is pilgrimage for Muslim community, which is known as performing *'Haj'*. It is the desire of every person of Muslim faith, living anywhere in this world, to visit F Saudi Arabia for performing Haj, which is normally during the last month of the Islamic calendar being eleven days shorter than the Gregorian calendar since the dates cannot be fixed in the latter. As the number of pilgrims during this period is unbounded, the Kingdom of Saudi Arabia has regulated and restricted, in public interest and for the safety of the G pilgrims themselves, the number of persons who can visit Saudi Arabia and perform Haj, from time to time. In the process, number of persons from each country to visit Saudi Arabia has also been restricted. Towards this end, a bilateral agreement is signed between the Government of India and the Kingdom of Saudi Arabia whereby the latter Government assigns a fixed number of pilgrims that are permitted to visit and perform H Haj. Since the share of Indian pilgrims is limited by numbers, based on

such a bilateral agreement, the Government of India also formulates its Haj Policy for smooth operations, particularly keeping in mind the interest of these pilgrims (who are known as Hajjis). This Haj Policy, *inter alia*, provides for eligibility and registrations of PTOs and HGOs as well who act as tour operators for these pilgrims. Purpose is to ensure complete package from the start of journey from defined places in India to Saudi Arabia, their arrangements for stay and performance of Haj and their smooth and safe return back to India. Out of the overall number of pilgrims, relatively small portion is assigned for PTOs and the rest of the pilgrims are taken care of by the Haj Committee of India.

3. The Haj Policy, which is formulated by the Government of India from time to time, lays down various eligibility conditions for registration for ferrying pilgrims for Haj. It has, however, been noticed that PTOs/HGOs normally feel aggrieved by one or the other conditions for registrations in such Haj Policies. Similar kind of dispute has now arisen in respect of HGOs Policy 2019-2023 dated December 20, 2018 (hereinafter referred to as 'Haj Policy') captioned as *'Policy for Haj Group Organisers for Haj 2019-23 – Registration and allocation of Haj quota for Haj – 2019'*.

4. We may mention at this stage that before formulating a particular Haj Policy the Government of India normally invites suggestions/ improvements from the PTOs/HGOs. In respect of the aforesaid Haj Policy as well, such suggestions were invited which were given by the Federation and Association of these PTOs/HGOs. However, the petitioners still felt aggrieved by some of the eligibility conditions and other provisions contained in this Haj Policy.

5. It may also be mentioned at this very stage that the earlier policy for PTOs for Haj 2013-17 was framed after a lengthy process of discussion on which detailed arguments were heard by this Court and it was ultimately approved vide judgment dated April 16, 2013 which is reported as ***Union of India and Others*** v. ***Rafique Shaikh Bhikan and Another***[1]. It remained valid for five years and thereafter the PTO Policy was reviewed by a Haj Policy Review Committee constituted for the purpose and they suggested new framework for Haj 2018-22. Meanwhile, during the pendency of the finalisation of the recommendation for next five year Policy, previous Haj Policy for PTOs was extended for Haj 2018 as well. The Government assigned the work of formulation

[1] (2013) 4 SCC 699

of next five year Policy to Indian Institute of Technology (IIT), Delhi. Accordingly, IIT Delhi suggested a new Policy for PTOs/HGOs and the draft Policy was placed in public domain vide Press Release dated November 16, 2018 on the website of the Ministry of Minority Affairs (MoMA) for any suggestions/comments for improvement of the draft Policy to be submitted by November 30, 2018 to the Ministry. In the draft Policy for PTOs for Haj 2019-23, several simplifications and modifications were made over the previous Policy. The following nine eligibility conditions required in the previous Policy have been removed in the new Policy:

(i) To simplify the financial criteria for assessment, reduce the requirements and to remove any discretion due to varying accounting definitions. Requirement of Minimum Capital employed was removed.

(ii) To reduce the documentation for filing application, requirement for assessing eligibility and to simplify the application process. Requirement of furnishing proof of payment for accommodation/air travel (for the registered HGOs of 2013-17) was removed.

For reducing the requirements for assessing eligibility, less documentation and simplified application process and also to reduce the chances of error in the application process leading to rejection, following criteria has been removed:

(iii) Requirement of giving employees details.

(iv) Requirement of giving details of Maktab No. and service provider.

(v) Requirement of giving details of arrival/departure of pilgrims.

(vi) Requirement of furnishing details of transport arrangement in KSA.

(vii) Requirement of furnishing details of orientation/training of pilgrims.

(viii) Requirement of furnishing details of local correspondent company in KSA.

(ix) To remove ambiguity and duplicity in the HGO policy and to make the application process simple. Annexure of application format was removed.

6. Further, following seven provisions of the Terms and Conditions have been simplified/clarified at the stage of draft Policy:

(i) To give relief to the PTOs and to save them from unnecessary harassment, the provision for PTOs involved in court cases/adverse police report has been simplified. Now only PTOs involved in heinous crimes and Haj related court cases will be barred.

(ii) To give relief given to the small PTOs, the requirement of office area has been lowered. This has also reduced financial burden on the HGOs for purchasing/hiring large offices.

(iii) The requirement of layout plan has been simplified. Now the PTOs need not run around State/District authorities for validating the layout plan of offices.

(iv) Provision for the new entrants and the documentary requirements were given in detail to remove ambiguity and improved transparency. Uniform system of assessment for new PTOs.

(v) The Annexures of the HGO Policy have been simplified to simplify the application process (only one Annexure describing the eligibility conditions and another Annexure regarding important instructions and guidelines).

(vi) To remove ambiguity, the requirement of agreement/receipt of accommodation clarified.

(vii) To remove ambiguity, requirement of Affidavit/declaration clarified wherever mentioned in the previous policy were clarified in the draft policy.

7. Comments were received from more than 180 individual PTOs and the PTO Associations, including Indian Federation Haj PTOs of India and jointly by other PTO Associations. All the issues raised by the PTOs and their Associations were examined in the Ministry. These suggestions/comments were considered in the Ministry in consultation with the IIT Delhi. Taking into consideration the suggestions/comments received on the draft Policy, twelve changes/modifications were made in the draft Policy and final Policy was circulated on December 20, 2018. The changes/modifications in the final Policy vis-a-vis draft Policy are as under:

(i) HGOs renamed as Haj Group Organisers (HGO) – This has given a separate identity to the Haj PTOs and distinguished them from general tour operators.

(ii) Amount of security deposit reduced to Rs.30 lakhs for Category-I HGOs and Rs.35 lakhs for Category-I* HGOs – reduced

financial burden on the HGOs by Rs. 5 lakh for Category-I HGOs and Rs. 10 lakhs for Category-I* HGOs.

(iii) Distribution formula modified to ensure allocation of minimum number of seats during each year of the Policy period to Category-I*, Category-I and Category-II HGOs – this gives allocation of minimum assured seats to each category during each of the years of the Policy period. PTOs may plan for the long term arrangements in Saudi Arabia on the basis of minimum assured allocation of seats.

(iv) It has been ensured that higher category HGO gets more quota than a lower category HGO – this is to ensure that a reasonable difference is maintained among different category of PTOs. To safeguard minimum allocation of seats to Category-I*, Category-I and Category-II HGOs, the following proviso was added below Stage-I:

> "In case of non-allocation of minimum 70, 60 and 50 seats to any of the Cat-1*, Cat-1 and Cat-2 HGOs, the surplus seats will first be distributed among the HGOs in that category. If there is shortfall in more than one category, surplus seats will first be distributed to Cat-1*, Cat-1 and Cat-2 HGOs in order of priority. Only after fulfilling the minimum earmarked seats in all categories, to the extent possible, the surplus seats, if any, will be distributed as per stage-II."

(v) In case of surplus seats generated after allocation of Category-II HGOs, the available seats will be allocated to Category-I* and Category-I respectively subject to their upper limits – this will enable higher category PTOs to get more quota.

(vi) Mid-term review of the policy after two years – this will provide an opportunity to review the policy mid way instead of after completion of five years and make mid term corrections within the broad policy framework.

(vii) Requirement of submission of proof of payment for accommodation/air travel clarified for the registered HGOs of 2013 to 2017. The HGOs registered during previous policy period are dispensed with submission of these documents – simplified the documents and application process.

(viii) Annual turnover criteria clarified. Only one year documents are required now – removed ambiguity and reduced the documentation.

(ix) The time for reporting of HGOs to CGI Jeddah after their arrival in Saudi Arabia has been increased to 48 hours – relief to HGOs. The time of reporting has been doubled from 24 hours to 48 hours.

(x) The year for which the new entrants are required to submit details of umrah pilgrims has been clarified – removed ambiguity and confusion and HGOs.

(xi) Director of a company has been added as Munazzim of the HGO – expanded the ambit of Munazzim of HGOs to include Director of a company.

(xii) Disclosure statement under point 3 of Annexure-II made elaborate with provision for furnishing details of arrangements made in Saudi Arabia, package cost and the agreement signed with the pilgrims – this will improve transparency in the HGO business.

8. It is only after due examination of the issues raised/suggestions made on the PTO Policy, that the final Policy for HGOs was approved by the competent authority in the Ministry and circulated on December 20, 2018. Thereafter, final Policy was announced, as mentioned above.

9. Grievance of the petitioners is that some of their vital suggestions, though quite reasonable and justified, have not been incorporated while finalising the Haj Policy.

10. In the first three writ petitions, notice was issued on January 11, 2019, returnable on January 16, 2019. On January 16, 2019, the following order was passed:

> "Mr. A.N.S. Nadkarni, learned Additional Solicitor General of India, has very fairly stated that the Government is open to the suggestions which can be made by the petitioner-Federation. For this purpose, the Hon'ble Minister is ready to give hearing to the representation(s) of the Federation on 17.01.2019 at 11:00 a.m.
>
> We are happy to note that the parties are maintaining that it shall not be treated as an adversarial litigation and if some suitable formula is devised, which is acceptable to all the parties, that would be an ideal thing.
>
> List on 23.01.2019."

11. Pursuant to the said order, representatives of the Federation and Association met the Hon'ble Minister on January 17, 2019 bringing to his notice their grievances which are raised in these writ petitions.

During the course of hearing, this Court was informed that the representative of the HGO associations submitted before the Hon'ble Minister that they have devised a new formula for distribution of seats. Three petitioner associations submitted their written representations to the Chair. The representations contained eight proposals/suggestions. After deliberations, the representatives of HGO associations prioritised their three proposals/suggestions as under:

(i) The total quota of 50,000 seats allocated to HGOs may be distributed without any condition, i.e. without imposing the condition to charge additional seats over and above 45,000 seats at the rate of HcoI.

(ii) The HGOs may be divided in two categories on the basis of their experience with turnover of Rs.1 crore and Rs.2 crore for Category-II and Category-I HGOs respectively. 50 seats may be distributed to each eligible HGO and the remaining seats may be distributed to Category-I HGOs on pro-rata basis on the basis of number of years of experience.

(iii) IBAN receipts may be accepted as valid document for receipt of accommodation.

After due examination of the feasibility of the aforesaid proposal, the respondent has agreed with suggestions (i) and (iii). However, it did not find suggestion (ii) to be feasible.

12. In view of the above, very limited controversy pertaining to suggestion (ii) above now remains to be resolved.

13. Mr. Salman Khurshid, learned senior counsel appearing in one of these petitions, insisted that suggestion (ii) mentioned above should have been accepted. According to him, Category-I* and Category I, eligibility for which is turnover of Rs.5 crores and Rs.3 crores respectively, is unreasonable. Instead, there should be only two categories with turnover of Rs.2 crores and Rs.1 crore respectively. It was emphasised by him, which was also the argument of the other counsel who represented the petitioners in the other writ petitions, that fixation of turnover of Rs. 5 crores/Rs. 3 crores is exceptionally high. It is contended that for achieving such a turnover, HGOs may fix very high rates of package for pilgrims which may not be in the interest of the pilgrims. They relied upon the following discussion contained in ***Union of India and Others*** v. ***Rafique Shaikh Bhikan and Another***[2] wherein this Court emphasised that the main purpose of Haj Policy was to ensure that pilgrims may be able to

[2] (2012) 6 SCC 265

perform their pilgrimage duty without undertaking any difficulty, harassment or suffering:

> "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.
>
> 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."

14. They also referred to the following passages from that judgment, as per which annual turnover of Rs. 1 crore only was fixed:

> "*Annual turnover of Rs. 1 crore*
>
> 25. Many objections were raised against the requirement to furnish documents showing minimum annual turnover of Rs. 1 crore for the years 2009-2010 or 2010-11.
>
> 26. Mr. N. Rao, Senior Advocate appearing for a group of private operators/travel agents, in the course of his submissions, admitted that the turnover on the basis of a quota of 50 Haj pilgrims alone would not be less than Rs.75 lakhs. This means that if a private operator/travel agent is asking for a readymade business package worth Rs.75 lakhs in turnover he/she should at least show a turnover of rupees one crore from his own business. Seen, thus, the turnover fixed in the Government policy appears to be a modest figure."

A 15. It was submitted that in the instant Policy, while fixing the criteria of experience-cum-financial strength, the respondent had given more emphasis on the financial aspects thereby sidelining the aspect of experience. It was pointed out that many members of these Federation/ Association had experience of fourteen to seventeen Haj operations. However, they were not given Category-I* as their turnover was less B than Rs.5 crores. It was further argued that this Court in its aforesaid judgment, as can be seen from paragraphs 25 and 26 cited above, had applied the doctrine of proportionality, which was given a go-by. It was emphasised that since the quota is in the hands of the Government and only limited seats are allotted to each PTOs/ HGOs, it is difficult to have C a turnover of Rs.5 crores without hiking the cost for pilgrims.

16. From the events mentioned above, particularly those that led to formulating the Haj Policy for 2019-23, it is apparent that the Policy is based on data collected and compiled in the study by IIT Delhi, an expert body. Further, views of the stakeholders, including the petitioners, were D invited and duly considered. The respondent has categorically submitted that the aforesaid demand of the petitioners is not based on any factual data, whereas the decision taken by the Ministry is based on data collected and compiled in the study by IIT Delhi. Secondly, the petitioners' suggestion is only to take experience into account, whereas the Ministry has considered both experience and financial strength, as recommended E in the IIT Delhi study itself. It is submitted that where 1,75,000 people embark upon a pilgrimage, financial strength of the PTO is of utmost importance and cannot be overlooked. Financial strength is important because when the pilgrims travel to Saudi Arabia, the PTOs are required to make all arrangements for transportation, air travel, boarding and F lodging, local transportation and provision of guide, etc. It is submitted that the Ministry cannot afford to take any chance on this aspect as the lack of adequate financial strength of the PTOs may result in the pilgrims becoming stranded in a foreign country or facing other hardships.

17. Additionally, it is submitted by the respondent that if the G suggestion of the petitioners is accepted, there would be eleven sub-categories amongst Category-I, inasmuch as what is sought by them is allocation of seats on a pro-rata basis depending on the number of years of experience. This would result in major structural changes, which is not advisable and cannot be accepted.

H

18. Going by the aforesaid considerations, the respondent has carved out the categories of HGOs on the parameters of experience as well as financial strength of HGOs. Such a decision is based on policy considerations. It cannot be said that this decision is manifestly arbitrary or unreasonable. It is settled law that policy decisions of the Executive are best left to it and a court cannot be propelled into the unchartered ocean of Government policy {See ***Benett Coleman & Co.*** v. ***Union of India***[3]}. Public authorities must have liberty and freedom in framing the policies. It is well accepted principle that in complex social, economic and commercial matters, decisions have to be taken by governmental authorities keeping in view several factors and it is not possible for the courts to consider competing claims and to conclude which way the balance tilts. Courts are ill-equipped to substitute their decisions. It is not within the realm of the courts to go into the issue as to whether there could have been a better policy and on that parameters direct the Executive to formulate, change, vary and/or modify the policy which appears better to the court. Such an exercise is impermissible in policy matters. In ***Bennett Coleman***'s case, the Court explained this principle in the following manner:

> "The argument of the petitioners that Government should have accorded greater priority to the import of newsprint to supply the need of all newspaper proprietor to the maximum extent is a matter relating to the policy of import and this Court cannot be propelled into the unchartered ocean of governmental policy."

19. The scope of judicial review is very limited in such matters. It is only when a particular policy decision is found to be against a statute or it offends any of the provisions of the Constitution or it is manifestly arbitrary, capricious or *mala fide*, the court would interfere with such policy decisions. No such case is made out. On the contrary, views of the petitioners have not only been considered but accommodated to the extent possible and permissible. We may, at this junction, recall the following observations from the judgment in ***Maharashtra State Board of Secondary & Higher Secondary Education*** v. ***Paritosh Bhupeshkumar Sheth***[4]:

> "16... The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the subordinate regulation-

[3] (1972) 2 SCC 788
[4] (1984) 4 SCC 27

A making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitation imposed by the Constitution."

20. We may also usefully refer to the judgment in ***State of Madhya Pradesh*** v. ***Nandlan Jaiswal***[5]. In this judgment, licence to run a liquor shop granted in favour of *A* was challenged as arbitrary and unreasonable. The Supreme Court held that there was no fundamental right in a citizen to carry on trade or business in liquor. However, the State was bound to act in accordance with law and not according to its sweet will or in an arbitrary manner and it could not escape the rigour of Article 14. Therefore, the contention that Article 14 would have no application in a case where the licence to manufacture or sell liquor was to be granted by the State Government was negatived by the Supreme Court. The Court, however, observed:

"But, while considering the applicability of Article 14 in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would

[5] (1986) 4 SCC 566

hesitate to intervene and strike down what the State Government had done, unless it appears to be plainly arbitrary, irrational or *mala fide*." A

21. It is not necessary to multiply the cases as the aforesaid principle can be said to be cast in stone. It is, therefore, difficult to agree to the aforesaid argument of the petitioners. B

22. In Writ Petition (Civil) No. 93 of 2019, the petitioner has made an alternate submission as well, which is based on the facts of its case. It is pointed out that in 2017-18 this petitioner was fully capable and, in a position, to earn turnover of more than Rs.3 crores but was prevented from operating any Haj services on account of respondent's willful neglect in registering the petitioner as Category-I PTO for that year. The petitioner filed Writ Petition (Civil) No. 508 of 2017, which was allowed by this Court vide orders dated May 08, 2018 in the following manner: C

"We have heard the learned counsel appearing on behalf of the parties.

Respondent sought to dispute the receipt of the application sent by the petitioner by post for Category I registration. However, with the rejoinder the petitioner has filed the proof of having sent such an application by courier service. To this aspect, despite time taken, there is no rebuttal. D

Result of the aforesaid is that the petitioner has to be treated as having been duly applied for registration under Category I in 2017 which was wrongfully denied to him on account of the application not being taken up. For any further consideration of Registration in Category I, this period has, thus, to be counted in favour of the petitioner. E

Insofar as year 2018 is concerned, the petitioner has already applied and learned counsel for the respondent states that the application of the petitioner shall be duly considered as he meets the requirement of number of years of providing service for consideration under Category I. F

His statement is taken on record. G

The writ petition is disposed of in the above terms."

23. It is argued that this direction was meant to ensure that for future years, the petitioner is deemed to have completed the Haj 2017. However, since it was prevented from any Haj turnover for the year H

A 2017, because of the fault of the respondent, the petitioner would not be able to meet the requirement of turnover for the year 2017. It is further mentioned that for the Financial Year 2018, the petitioner has already come close to crossing the turnover threshold of Rs.3 crores despite the Financial Year not having expired. Therefore, turnover of Financial Year 2018 be taken into consideration for assigning category to the petitioner.

B

24. Insofar as this prayer of the petitioner is concerned, we find that there is a merit in the contention of the petitioner that as far as turnover for the year 2017 is concerned, the petitioner should not be made to suffer. Therefore, the petitioner's case be considered by the competent authority having regard to the aforesaid peculiar facts and

C circumstances and necessary orders passed thereon within a period of one week.

25. All the writ petitions are disposed of in the aforesaid terms.

Ankit Gyan Writ petitions disposed of.