$~66 to 68, 70 to 83

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

\+ W.P.(C) 10971/2024

BENZY TOURS AND TRAVELS PVT LTD .....Petitioner

versus

UNION OF INDIA .....Respondent

With

W.P.(C) 10983/2024, W.P.(C) 11007/2024, W.P.(C)-11311/2024, W.P.(C)-11312/2024, W.P.(C)-11313/2024, W.P.(C)-11314/2024, W.P.(C)-11339/2024, W.P.(C)-11340/2024, W.P.(C)-11351/2024, W.P.(C)-11356/2024, W.P.(C)-11383/2024, W.P.(C)-11385/2024, W.P.(C)-11387/2024, W.P.(C)-11390/2024, W.P.(C)-11392/2024, W.P.(C)-11393/2024.

For Petitioners: Mr.Sulaiman Mohd. Khan, Ms.Taiba Khan, Mr.Bhanu Malhotra, Mr.Gopeshwar Singh Chandel, Mr.Abdul Bari Khan and Ms.Aditi Chaudhary, Advocatess in Item Nos. 66,68,70,71,72,73.74,75,76,78,79,80,81 & 83

For Respondents: Mr. Mukul Singh, CGSC for R-1 with Ms. Ira Singh, Advocate and Ms. Rashi Mangal, GP in Item No. 66 & 67

Mr.Anurag Ahluwalia,CGSC with Mr.Kaushal Jeet Kait, Ms.Hridyanshi Sharma, Advocates and Mr.Ankur Yadav, DSC and Mr.Abhishek (YP) Legal in Item Nos. 68,73 and 83

Mr.Manish Mohan, CGSC with Mr. Jatin Teotia, Mr.Samarth Talesara and

Ms.Aishani Mohan, Advocates in Item No.70
Mr.Ripu Daman Bhardwaj and Mr.Abhinav Bhardwaj, Advocates for UOI in Item No. 70 to 74
Mr.Syed A. Haseeb SPC with Mr.Hilaq Haidar, GP in Item No. 72
Mr.Vikrant N. Goyal SPC Ms.Supriya and Mr.Rajat Srivastava, Advocates and Ms. Archana Kumari GP in Item No. 74
Ms. Iram Majid, CGSC with Mohd. Suboor, Advocate in Item No. 75 with Mr.Hilaq Haider, GP
Mr.Farman Ali, SPC with Ms.Laavanya Kaushik, GP in Item No. 76
Mr.Mukul Singh, CGSC with Ms.Ira Singh, Advocate in Item No. 77
Ms.Avshreya Pratap Singh Rudy, SPC with Mr.Hussain Adil Taqvi, (GP) in Item No. 78
Mr.Anshuman Singh, SPC with Mr.Vidur Dewivedi (GP) in Item No. 79
Ms. Anubha Bhardwaj, CGSC with Mr. Rishav Dubey, GP with Mr. Ujjwal Chaudhary and Mr. Vishal Sharma, Advocates in Item No. 80
Ms.Nidhi Raman, CGSC with Mr.Akash Mishra, Advocate in Item No. 81 with Ms.Archana Kumari (GP)
Mr.Mukul Singh, CGSC with Ms.Ira Singh, Advocate in Item No. 82

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 18.09.2024

1. This clutch of petitions impugns the orders passed by the Ministry of Minority Affairs whereby the Petitioners are blacklisted from applying for

registration as Haj Group Organizers,[1] for periods ranging from 5 to 15 years, effective from Haj, 2024. In addition, the Ministry has ordered the forfeiture of the security deposits submitted by the Petitioners for Haj, 2023.

2. A brief background leading to the filing of the present petitions is as follows:

2.1. The Petitioners, HGOs, were engaged in facilitating the pilgrimage journeys for Haj and Umrah to the Kingdom of Saudi Arabia. As per the bilateral agreement between the Government of India and the Kingdom of Saudi Arabia, the Saudi Government allocates a fixed number of seats, allowing HGOs to send pilgrims for Haj. While previously, the Saudi Government directly allocated these seats to HGOs, since 2002, the process was changed, requiring HGOs to operate through their respective governments. In response, the Government of India formulated policies mandating the registration of travel agents, after which registered HGOs would receive a quota from the total number of seats allocated to India.

2.2. On 16th May, 2023, the Petitioners were granted registration and quota allocation for Haj, 2023.

2.3. However, on 26th May, 2023, all Petitioners were served with show cause notices following a complaint, alleging cartelization and black-marketing of HGO seats. The Petitioners responded to these notices, denying the allegations and clarifying their stance.

2.4. The Petitioners subsequently filed a writ petition [W.P.(C) No.8265/2023][2] and by order dated 07th June, 2023, this Court permitted the Petitioners to proceed with facilitating pilgrims for Haj, 2023. Aggrieved by

[1] "HGOs"
[2] Main petition bearing No. W.P.(C) 7717/2023

this order, Union of India filed a Letters Patent Appeal [LPA No. 502/2023], however, the Division Bench of this Court denied interim relief. The Union of India then assailed the order before the Supreme Court of India, which was dismissed through order dated 19th June, 2023.

2.5. In the meantime, pursuant to the show cause notices issued to each of the Petitioners, the Respondent issued the respective impugned orders, blacklisting/debarring the Petitioners for specific periods starting from Haj, 2024. The Respondents also forfeited the security deposits of the Petitioners, citing violations of the Haj Group Organizers Policy for Haj-2023.[3] These actions have prompted the present petitions.

3. In this background, Mr. Sulaiman Mohd. Khan, counsel for the Petitioners, raises multiple grounds to challenge the impugned orders. At the outset, he argues that the show cause notices, which preceded the blacklisting of the Petitioners, are defective in law as they did not explicitly mention that the Respondent was contemplating the imposition of severe penalties of debarment/blacklisting or the forfeiture of the security deposits. According to the counsel, the notices merely stated that if the Petitioners failed to reply within three days, necessary action would be taken, without clarifying the nature or extent of such action. As a result, the Petitioners were deprived of a fair opportunity to present their defence against the specific penalties imposed. Reliance is placed on the decisions of the Supreme Court in ***Vet India Pharmaceuticals Limited v. State of Uttar Pradesh and Another***,[4] and ***Gorkha Security Services v. Govt. of NCT of***

[3] "Haj Policy, 2023"
[4] (2021) 1 SCC 804

Delhi & Ors.[5] He emphasizes that the principles of natural justice, as laid down in these cases, require that any proposed punitive action be clearly indicated in the show cause notice to afford the effected party a reasonable opportunity to respond. Failure to do so vitiates the proceedings, rendering the impugned orders legally unsustainable and deserving of quashing.

4. Contrarily, Mr. Anurag Ahluwalia, CGSC, as well as other CGSC and the Senior Panel Counsels representing the Union of India, strongly oppose the present petitions. They argue that the show cause notices were sufficiently clear and specific, as they explicitly outlined the violations allegedly committed by the Petitioners. The notices further warned that, in the event of non-compliance with the complaint or the violations of the Haj Policy, 2023, appropriate action would be taken against the Petitioners. The Counsel further submits that the Haj Policy, 2023, unequivocally provides for the action of blacklisting in cases of policy violations, as delineated in Annexure II/ Haj Policy, 2023. Therefore, the legal requirement for due notice was fulfilled, as the Petitioners were sufficiently alerted to the potential consequence of blacklisting, given their alleged violations of the Policy. Moreover, given the serious nature of these violations, the Respondent argues that the impugned actions are both justified and necessary in the public interest. In particular, the Respondent stresses the need to safeguard the interests of pilgrims, ensuring that their journey is smooth and memorable, free from any malpractice or irregularities that could prejudice their experience. Thus, the penalties imposed on the Petitioners are crucial to maintain the integrity of the Haj pilgrimage process.

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[5] (2014) 9 SCC 105

5. The Court has noted the facts and contentions of the parties. The impugned orders were preceded by show cause notices which are similar in all the petitions, varying only with respect to the nature of the alleged violations. Thus for reference, the show cause notice in W.P.(C) 10971/2024 is extracted hereinbelow:

ANNEXURE-P-9 128

Haj-20/26/2023-Haj-MoMA
भारतसरकार
Government of India
अल्पसंख्याककार्यमंत्रालय
Ministry of Minority Affairs
(Haj Division)

11th Floor,
Pandit Deendayal Antyodaya Bhawan,
CGO Complex, Lodhi Road, New Delhi-110003.
Date: 26.05.2023

To
M/s Benzy Tours & Travels Pvt Ltd.(Cat-I/0592)
62 , Janjikar Street , 1st Floor near Crawford Market ,
Mumbai Pincode-400003

Subject: Show Cause Notice with regard to allegation of cartelisation and black marketing of HGO seats-reg.

The Ministry has received a complaint against your HGO, i.e. M/s Benzy Tours & Travels Pvt Ltd.(Cat-I/0592).

2. It has been stated in the complaint that M/s Benzy Tours & Travels is subsidiary/ close association with M/s Akbar Travels & Tours. The said HGO is involved in cartelisation with other HGOS/PTOs and doing price fixation and monopolistic trade practice and the same is causing appreciable adverse effect on competition. Further, the said HGO opens the rates of per seat allocation to hajis which is exorbitant and black mail the hajis who are desperate to go for Haj. In addition, other observations found by this Ministry are as follows:

i. GST Annual return for FY 2020-21 and 2021-22 not filled.
ii. Layout plan of office not provided by chartered engineer.
iii. GST for FY 2019-20 and 2022-23 partially paid.
iv. IP address for this applicant is same with another HGO Delta Tours & Travels.
v. Name as per PAN is UNNIKRISHNAN THAZHA THILLAM, whereas name as per affidavit is "UNNIKRISHNAN THAZHA THILAM"

3. In the light of aforesaid complaints/ observations, the quota allocated has been kept in abeyance and M/s Benzy Tours & Travels Pvt Ltd. is directed to provide its reply to above mentioned allegations/ observations to the email ID mentioned below within 03 days of receipt of this communication. In case no reply is received within 03 days regarding the complaint and the violations of Haj Policy 2023, further necessary action against M/s Benzy Tours & Travels Pvt Ltd.will be taken immediately by the Ministry, as per due process.

Yours sincerely
Haj Division

6. Upon perusal of the show cause notice, it becomes evident that the notices issued to the Petitioners fall short of the requisite legal threshold that must be met before taking such a drastic action as blacklisting or debarment. The fundamental principle of natural justice necessitates that the notice must explicitly mention the proposed action of blacklisting/debarment, giving the

recipient a clear opportunity to respond adequately to such a serious consequence. Failure to specify this action leaves the notice deficient and vitiates the basis for the subsequent blacklisting/debarment orders. On this point the decision of the Supreme Court in ***Vet India Pharmaceuticals Limited*** is particularly instructive as it provides a direct analogy to the present case, where the notices merely mention "necessary action" as per "due process" without specifying blacklisting/debarment, thus, violating the principles of natural justice. The relevant extract of the afore-noted judgment is provided below:

> *"8. There is no dispute that the injection was not supplied to the respondents by the appellant. Yet the show-cause notice dated 21-10-2008 referred to further action in terms of the tender for supplying misbranded medicine to the appellant. Furthermore, the show-cause notice did not state that action by blacklisting was to be taken, or was under contemplation. It only mentioned appropriate action in accordance with the rules of the tender. The fact that the terms of the tender may have provided for blacklisting is irrelevant in the facts of the case. In the absence of any supply by the appellant, the order of blacklisting dated 8-9-2009 invoking Clauses 8.12 and 8.23 of the tender is a fundamental flaw, vitiating the impugned order on the face of it reflecting non-application of mind to the issues involved. Even after the appellant brought this fact to the attention of the respondents, they refused to pay any heed to it. Further, it specifies no duration for the same.*
>
> *9. Erusian Equipment & Chemicals Ltd. v. State of W.B. [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] , held that there could not be arbitrary blacklisting and that too in violation of the principles of natural justice. In Joseph Vilangandan v. Executive Engineer (PWD) [Joseph Vilangandan v. Executive Engineer (PWD), (1978) 3 SCC 36] , this Court was considering a show-cause notice as follows : (Joseph Vilangandan case [Joseph Vilangandan v. Executive Engineer (PWD), (1978) 3 SCC 36] , SCC pp. 41-42, para 17)*
>
> > *"17. ... 'You are therefore requested to show cause ... why the work may not be arranged otherwise at your risk and loss, through other agencies after debarring you as a defaulter ...'*
> >
> > *The crucial words are those that have been underlined [Ed. : Herein italicised.] . They take their colour from the context. Construed along with the links of the sentence which precede and succeed them, the words "debarring you as a defaulter", could be understood as*

conveying no more than that an action with reference to the contract in question, only, was under contemplation. There are no words in the notice which could give a clear intimation to the addressee that it was proposed to debar him from taking any contract, whatever, in future under the Department."

(emphasis in original)

10. The question whether a show-cause notice prior to blacklisting mandates express communication why blacklisting be not ordered or was in contemplation of the authorities, this Court in Gorkha Security Services [Gorkha Security Services v. State (NCT of Delhi), (2014) 9 SCC 105] held as follows : (SCC pp. 120-21 & 123, paras 27-28 & 33)

"27. We are, therefore, of the opinion that it was incumbent on the part of the Department to state in the show-cause notice that the competent authority intended to impose such a penalty of blacklisting, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same. However, we may also add that even if it is not mentioned specifically but from the reading of the show-cause notice, it can be clearly inferred that such an action was proposed, that would fulfil this requirement. In the present case, however, reading of the show-cause notice does not suggest that noticee could find out that such an action could also be taken. We say so for the reasons that are recorded hereinafter.

28. In the instant case, no doubt the show-cause notice dated 6-2-2013 was served upon the appellant. Relevant portion thereof has already been extracted above (see para 5). This show-cause notice is conspicuously silent about the blacklisting action. On the contrary, after stating in detail the nature of alleged defaults and breaches of the agreement committed by the appellant the notice specifically mentions that because of the said defaults the appellant was "as such liable to be levied the cost accordingly". It further says 'why the action as mentioned above may not be taken against the firm, besides other action as deemed fit by the competent authority'. It follows from the above that main action which the respondents wanted to take was to levy the cost. No doubt, the notice further mentions that the competent authority could take other actions as deemed fit. However, that may not fulfil the requirement of putting the defaulter to the notice that action of blacklisting was also in the mind of the competent authority. Mere existence of Clause 27 in the agreement entered into between the parties, would not suffice the aforesaid mandatory requirement by vaguely mentioning other "actions as deemed fit". As already pointed out above insofar as penalty of blacklisting and forfeiture of earnest money/security deposit is concerned it can be imposed only, "if so warranted". Therefore,

> *without any specific stipulation in this behalf, the respondent could not have imposed the penalty of blacklisting.*
> ***
> *33. When we apply the ratio of the aforesaid judgment to the facts of the present case, it becomes difficult to accept the argument of the learned Additional Solicitor General. In the first instance, we may point out that no such case was set up by the respondents that by omitting to state the proposed action of blacklisting the appellant in the show-cause notice, has not caused any prejudice to the appellant. Moreover, had the action of blacklisting being specifically proposed in the show-cause notice, the appellant could have mentioned as to why such extreme penalty is not justified. It could have come out with extenuating circumstances defending such an action even if the defaults were there and the Department was not satisfied with the explanation qua the defaults. It could have even pleaded with the Department not to blacklist the appellant or do it for a lesser period in case the Department still wanted to blacklist the appellant. Therefore, it is not at all acceptable that non-mentioning of proposed blacklisting in the show-cause notice has not caused any prejudice to the appellant. This apart, the extreme nature of such a harsh penalty like blacklisting with severe consequences, would itself amount to causing prejudice to the appellant."*

11. If the respondents had expressed their mind in the show-cause notice to blacklist, the appellant could have filed an appropriate response to the same. The insistence of the respondents to support the impugned order [Vetindia Pharmaceuticals Ltd. v. State of U.P., 2019 SCC OnLine All 6734] by reference to the terms of the tender cannot cure the illegality in the absence of the appellant being a successful tenderer and supplier. We therefore hold that the order of blacklisting dated 8-9-2009 stands vitiated from the very inception on more than one ground and merits interference.

12. In view of the aforesaid conclusion, there may have been no need to go into the question of the duration of the blacklisting, but for the arguments addressed before us. An order of blacklisting operates to the prejudice of a commercial person not only in praesenti but also puts a taint which attaches far beyond and may well spell the death knell of the organisation/institution for all times to come described as a civil death. The repercussions on the appellant were clearly spelt out by it in the representations as also in the writ petition, including the consequences under the Rajasthan tender, where it stood debarred expressly because of the present impugned order. The possibility always remains that if a proper show-cause notice had been given and the reply furnished would have been considered in accordance

> *with law, even if the respondents decided to blacklist the appellant, entirely different considerations may have prevailed in their minds especially with regard to the duration.*
> *13. This Court in Kulja Industries Ltd. v. Western Telecom Project BSNL [Kulja Industries Ltd. v. Western Telecom Project BSNL, (2014) 14 SCC 731] , despite declining to interfere with an order of blacklisting, but noticing that an order of permanent debarment was unjustified, observed : (SCC p. 744, para 28)*
> *"28.2. Secondly, because while determining the period for which the blacklisting should be effective the respondent Corporation may for the sake of objectivity and transparency formulate broad guidelines to be followed in such cases. Different periods of debarment depending upon the gravity of the offences, violations and breaches may be prescribed by such guidelines. While it may not be possible to exhaustively enumerate all types of offences and acts of misdemeanour, or violations of contractual obligations by a contractor, the respondent Corporation may do so as far as possible to reduce if not totally eliminate arbitrariness in the exercise of the power vested in it and inspire confidence in the fairness of the order which the competent authority may pass against a defaulting contractor."*
> *14. Since the order of blacklisting has been found to be unsustainable by us, and considering the long passage of time, we are not inclined to remand the matter to the authorities. In Daffodills Pharmaceuticals [Daffodills Pharmaceuticals Ltd. v. State of U.P., (2020) 18 SCC 550 : 2019 SCC OnLine SC 1607] , relied upon by the appellant, this Court has observed that an order of blacklisting beyond 3 years or maximum of 5 years was disproportionate."*

7. The Court's reasoning in ***Vet India Pharmaceuticals Limited*** and ***Gorkha Security Services*** emphasizes that the failure to provide an explicit notice of blacklisting as a potential penalty constitutes a fundamental violation of principles of natural justice. This is because blacklisting has far-reaching consequences that go beyond the immediate issue, often leading to a civil death for the organization in question. As observed in ***Kulja Industries Ltd. v. Western Telecom Project BSNL***,[6] blacklisting not only impacts current contractual opportunities but also taints future prospects, making it essential that this penalty is not imposed arbitrarily or without

[6] (2014) 14 SCC 731

proper notice. Furthermore, in ***Vet India Pharmaceuticals Limited***, the Supreme Court observed that merely mentioning that an action shall follow in furtherance of the tender conditions, which provided for the possibility of debarment, does not satisfy the principles of natural justice. The Court held that it is insufficient to vaguely refer to "appropriate action" or to rely on the existence of tender clauses allowing for debarment. Instead, the show cause notice must explicitly state that the action of debarment is being contemplated. The Court found that failing to clearly communicate the specific nature of the proposed action—debarment—deprives the noticee of a meaningful opportunity to respond. The Supreme Court held that even if the tender conditions provided for such a penalty, simply alluding to future action without explicitly mentioning debarment was not enough. The effected party must be made aware in clear terms of the exact nature of the consequences it faces, allowing it to prepare a defence accordingly.

8. Thus, in the present case, the Respondent's reliance on vague language in the show cause notices, without clearly indicating that blacklisting or debarment was under consideration, mirrors the situation in ***Vet India Pharmaceuticals Limited***. This failure to explicitly state the proposed action renders the impugned orders legally unsustainable and in violation of the principles of natural justice. Hence, the Respondent's argument that mere reference to violations of the Haj Policy, 2023 in the show cause notices is sufficient to imply the possibility of blacklisting or debarment, lacks merit.

9. We also observe that while the impugned orders are elaborate and explicitly cite specific provisions and clauses of the Haj Policy, 2023, which the Petitioners were found to be violating, the show cause notices do not

refer to any particular violations of the Haj Policy, 2023, attributable to the Petitioners. Therefore, in the absence of specific details of the provisions in the show cause notices about the proposed action of blacklisting or debarment, the Petitioners were denied a fair opportunity to mount a proper defence against such severe punitive measures, including blacklisting/debarment and the forfeiture of their security deposits.

10. In view of the foregoing, without delving into the merits of the allegations against the Petitioners, the Court is of the view that the Respondent must be directed to provide the Petitioners with an opportunity to present their defence specifically with respect to the proposed blacklisting or debarment.

11. At this juncture, it must also be noted that the Notification for Registration and Allocation of Haj Quota for Haj-2025 has been announced on 07th September, 2024. Therefore, keeping the above circumstances in mind, the following directions are issued:

a. The impugned orders in all the afore-noted petitions are set aside;

b. The Respondent Ministry is directed to issue fresh show cause notices within one week from today delineating the clauses the Haj Policy, 2023 which are being violated and the proposed actions;

c. The Petitioners shall be permitted to file a response thereto within a period of one week from the date of the receipt of the notices;

d. Upon receiving the Petitioners' responses, the Respondent shall consider them thoroughly. If any clarifications are required, the Ministry shall be at liberty to afford the Petitioners' representatives a personal hearing;

e. A fresh decision shall then be rendered by the Respondent with 10

days thereafter.

12. Considering that the impugned orders have been set aside, it follows that there is no subsisting order of blacklisting/debarment against the Petitioners. Hence, the Petitioners are eligible to apply for Haj, 2025. Such applications would be scrutinized in accordance with law, however, the allocation of seats to the Petitioners shall proceed only after decisions are rendered on the fresh issued show cause notices. It is understood that these decisions will be made prior to the commencement of the seat allocation process for HGOs.

13. As regards the furnishing of the security deposit for Haj, 2025, it is noted that the security deposit for Haj, 2023 has already been submitted to the Respondent by the Petitioners. Accordingly, the same is directed to be rolled over for Haj, 2025, subject to the Petitioners paying any enhanced deposit amount, if so required by the Respondent.

14. The Court clarifies that it has not delved into the merits of the allegations raised by the Petitioners, nor has it scrutinized the grounds relied upon in the impugned orders for blacklisting/debarment. All rights and contentions of the parties are expressly left open.

15. With the above directions, the present petitions, along with pending application(s), if any, are disposed of.

16. The next date of hearing of 01st October, 2024, stands cancelled.

SANJEEV NARULA, J

SEPTEMBER 18, 2024
SV