

(2019) 09 RAJ CK 0242
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1001 Of 2013

Bhagwat Singh Ranawat

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 17-09-2019

Acts Referred:

Ancient Monuments And Archaeological Sites And Remains Act, 1958 — Section 2(c),
38, 38(1), 38(2)(c), 29, 29(a)

Ancient Monuments And Archaeological Sites And Remains Rules, 1959 — Section 8(d)

Citation : (2019) 09 RAJ CK 0242

Hon'ble Judges : Mohammad Rafiq, J; Narendra Singh Dhaddha, J

Bench : Division Bench

Advocate : Ashish Kumar Singh, Chhavi B. Lodha, Bhagwat Singh Ranawat, B.S. Chhaba

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J

This writ petition was filed by Mr. Bhagwat Singh Ranawat way back on 22.01.2013 inter alia with the prayer that Notification dated 20.05.2010 issued by the Ministry of Culture and Guidelines, 2011 issued by the Tourism Department with regard to issuance of licence for guides may be quashed and set aside and the action taken by the respondents pursuant to Notification dated 21.01.2003 be declared illegal and the licences issued to the guides in response to the applications invited under the said notification may be revoked in view of the judgment of this Court dated 19.09.2008 passed in Bhagwat Singh Ranawat Vs. Union of India & Others (S.B. Civil Writ Petition NO. 5607/2004 decided along with Writ Petition No. 8221/2005 and 7615/2005).

We have heard Mr. Bhagwat Singh Ranawat, petitioner who appears in person, Mr. Ashish Kumar Singh, learned Amicus Curiae and Mr. B.S. Chhaba, learned Assistant Solicitor General.

Writ petition filed by the petitioner is primarily founded on the judgment dated 19.09.2008 passed by learned Single Judge of this Court in Bhagwat Singh Ranawat (supra). Learned Single Judge of this Court in the aforesaid judgment examined the validity of Notification dated 21.01.2003 issued by the Central Government under Section 29(a) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (for short 'the Act of 1958') whereby the Central Government appointed Additional Director General (Department of Tourism), Ministry of Tourism as the Statutory Authority under the Act of 1958, for framing and issuing guidelines, for issuance of the Guide Licences, approval and registration of qualified persons selected through due process by a Committee constituted for the purpose to operate in the protected monuments of national importance. Argument of the petitioner is that as per Section 29(a) of the Act of 1958, the Central Government was not competent to appoint Additional Director General (Department of Tourism), Ministry of Tourism as the Statutory Authority. It may be noted here that aforementioned judgment of the Single Bench was challenged before the Division Bench which eventually vide order dated 15.12.2009 stayed operation of the same. Later, the appeal was dismissed as having become infructuous vide order dated 28.05.2012.

According to the petitioner, licence could be granted only by an Archaeological Officer along with the condition of the same, therefore, the general provisions of delegation, as laid down under Section 29 of the Act of 1958 would not apply. Learned Single Judge in the aforementioned judgment considered the scope of Section 29 of the Act of 1958, according to which, the Central Government may, by notification in the Official Gazette, direct that any powers conferred on it by or under the Act shall, subject to such conditions as may be specified in the direction, be exercisable also by such officer or authority subordinate to the Central Government, or such State Government or such officer or authority subordinate to the State Government, as may be specified in the direction. Learned Single Judge held that as per Section 2(c), 38(2)(c) of the Act of 1958 and Rule 8(d) of the Rules of 1959, once the power has been given to regulate the condition of licence to an Archaeological Officer, then the same could not have been delegated to the Additional Director General, (Department of Tourism), Ministry of Tourism. Learned Single Judge held Notification dated 21.01.2003 without jurisdiction.

An Additional Affidavit has been filed by the Superintending Archaeologist, Archaeological Survey of India, Jaipur Circle, Jaipur on 03.07.2019 placing on record the new policy guidelines dated 20.07.2018 issued by Respondent No. 2. In the additional affidavit, it has been stated that Notification dated 20.05.2010, challenged in the present writ petition, has since been superceded by another Notification dated 26.09.2016 published in the Gazette of India on 27.09.2016 and the new Policy dated 31.01.2017 has been promulgated. Subsequently, the said Policy dated 31.01.2017 was also challenged before the Delhi High Court. The Delhi High Court vide its order dated 15.05.2017 has stayed operation and effect of the aforesaid policy. Thereafter, new guidelines were issued vide

Notification dated 20.07.2018 in the light of directions of Delhi High Court and the matter is still pending before Delhi High Court.

The Central Government, in exercise of power conferred by Section 38 of the Act of 1958, framed rules namely; the Ancient Monuments and Archaeological Sites and Remains Rules, 1959 (for short 'the Rules of 1959'). According to Rule 8(d) of the Rules of 1959, no person shall within a protected monuments hawk or sell any goods or wares or canvass any custom for such goods of wares or display any advertisement in any form or show a visitor round or take his photographs for monetary consideration except under the authority of, or under, and in accordance with the conditions of a license granted by, an archaeological officer. The Archaeological Officer defined under Section 2(c) of the Act of 1958 means an officer of the Department of Archaeology of the Government of India not lower in rank than Assistant Superintendent of Archaeology. Section 38(1) of the Act of 1958 provides that the Central Government may, by notification, in the Official Gazette and subject to the condition of previous publication, make Rule for carrying out the purposes of the Act, which as per Clause 38(2) (c) of the Act of 1958 pertains to the right of access of the public to a protected monument and the fee, if any, to be charged therefor.

Perusal of the order dated 15.05.2017 passed by the Delhi High Court indicates that it has taken note of the judgment dated 19.09.2008 passed by the learned Single Judge of this Court and the fact that operation of the aforesaid judgment was stayed by Division Bench of this Court. Thereafter, the Ministry of Culture (Archaeological Survey of India) vide notification dated 11.01.2010 conveyed their intention to give powers to Additional Director General (Tourism) and invited public objections thereto. Since no objections were received, Ministry of Culture (Archaeological Survey of India) has issued the notification dated 20.05.2010 declaring the Additional Director General (Tourism) as the 'Statutory Authority' under the Act of 1958 for framing and issuing guidelines. Delhi High Court was informed that vide notification dated 20.05.2010, the Rules of 1959 stood amended and under Rule 8(d) of the Rules of 1959, the power to frame the said guidelines shall stand vested in the Additional Director, Department of Tourism, Ministry of Tourism, Government of India. Division Bench of Delhi High Court took note of the objection of the petitioner therein to the policy dated 31.01.2017 and observed that prima facie there appears to be substance in the contention of the petitioners that the policy dated 31.01.2017 may negatively impact inbound tourism into the country. With the aforesaid observations, Delhi High Court directed as under:

"13. Perhaps these issues could have been resolved and provided for if representatives of tour guides or tour operators were joined in the policy making. It also appears that this has happened because the concerned department i.e. the Ministry of Tourism does not appear to have been joined in the decision making.

14. In view of the above, it is directed as follows:

(i) There shall be a stay of the effect and operation of the impugned policy dated 31st January, 2017 till further orders.

(ii) In the light of the difficulties pointed out by the petitioners in these writ petition, a direction is issued to the Ministry of Culture as well as Ministry of Tourism, through their Secretaries, to revisit the notification dated 31st January, 2017 within four weeks from today.

(iii) In case, deemed appropriate, the Secretaries of the respondent nos. 1 and 3 may invite representatives of the petitioners in their deliberations. A considered view shall be taken on the issues raised by the petitioners and be placed before us in the counter affidavit which shall be filed within a period of eight weeks from today."

It was in this background that the Government of India issued new policy dated 20.07.2018 in supersession of Notification dated 31.01.2017. Present writ petition was filed way back in the year 2013 challenging notification dated 20.05.2010 and the guidelines of 2011, which have since been superceded by introduction of new policy guidelines. Notification dated 21.01.2003, which has been challenged by the petitioner in the present writ petition, as per his own showing in the affidavit dated 09.07.2019, has been withdrawn by subsequent notification dated 31.01.2017. We are afraid that in this writ petition we cannot examine correctness of the new policy as no specific challenge has been made to the aforesaid policy before this Court. However, it is subject matter of challenge before Delhi High Court. Moreover, Notification dated 31.01.2017, which has been placed on record, clearly indicates that vide Notification dated 21.01.2003, the powers for framing and issuing of guidelines, for issuance of the guide licences, approval and registration of qualified persons selected through due process by a committee constituted for the purpose to operate in the protected monuments of national importance were delegated to the Additional Director General, (Ministry of Tourism), Government of India but that delegation has since been withdrawn. Clause 2.5 of the aforesaid notification dated 31.01.2017 clearly stipulates that all guide licences granted by the Additional Director General, Department of Tourism, Ministry of Tourism (GOI) shall be acknowledged and deemed to have been issued under that policy, till fresh licences are issued to such guides in accordance with that policy, which shall not be later than one year from the date of notification of that policy. This is, however, subject to a proviso that the Archaeological Survey of India shall conduct the necessary examination within the said period of one year. Clause 2.6 of the aforesaid policy further provides that only those guides, who have been issued licences under the present policy or those who are deemed to have been licenced under Clause 2.5, subject to the provisions thereof, shall be entitled to act as licenced guide(s) within the Centrally Protected Monuments/sites maintained/ administered/ managed by the Archaeological Survey of India. Clause 2.5 and 2.6 of Notification dated 31.01.2017 read as under:

"2.5 This Policy shall acknowledge all licences given to guides working at

Fatehpur Sikri, by the Archaeological Survey of India pursuant to the directions of the Hon'ble Supreme Court of India and shall be deemed to have been given under this policy, till fresh licences are issued to such guides in accordance with present policy, which shall not be later than one year from the date of notification of this policy.

Similarly, all guide licences granted by the Additional Director General, Department of Tourism, Ministry of Tourism (GOI) shall be acknowledged and deemed to have been issued under this policy, till fresh licences are issued to such guides in accordance with present policy, which shall not be later than one year from the date of notification of this policy.

Provided that the Archaeological Survey of India shall conduct the necessary examination within the said period of one year.

2.6 Only those Guides who have been issued licences under the present policy or those who are deemed to have been licenced under clause 2.5, subject to the provisions thereof, shall be entitled to act as licenced guide(s) within the Centrally Protected Monuments/sites maintained/ administered/ managed by the Archaeological Survey of India."

In view of the above, prayer made by the petitioner in prayer clause (c) of the writ petition that the action taken by the respondents pursuant to Notification dated 21.01.2003 be declared illegal and the licences issued to the guides in response to the applications invited under the said notification may be revoked in view of the judgment of the Single Bench of this Court dated 19.09.2008 passed in Bhagwat Singh Ranawat Vs. Union of India & Others (S.B. Civil Writ Petition NO. 5607/2004 decided along with Writ Petition No. 8221/2005 and 7615/2005), cannot be granted, as the respondents have already provided that such licences shall be deemed to continue only for a period of one year and thereafter they would be required to have fresh licences upon qualifying the necessary examination.

In view of above, we do not find any merit in this writ petition, which is accordingly dismissed.