

(2009) 02 AHC CK 0145
In the Allahabad High Court

Government Approved Tourist Guide Association and
Approved Guide Association (Regd).

APPELLANT

Vs

State of U.P. and Others
Asad Mughni and Others Vs
Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-02-2009

Acts Referred:

Ancient Monuments and Archaeological Sites and Remains Act, 1958 — Section 2,
29, 3, 38
Constitution of India, 1950 — Article 19

Citation : (2009) 2 AWC 2050 : (2009) 2 UPLBEC 1141

Hon'ble Judges : Ashok Bhushan, J;Arun Tandon, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Ashok Bhushan, J.—These writ petitions raise similar issues of facts and law and are being disposed of by this common judgment. The first two writ petitions contain similar pleadings and reliefs whereas the relief claimed in third writ petition is dependent on outcome of decision in first two writ petitions.

2. Brief facts giving rise to these writ petitions are:

Writ Petition No. 68499 of 2006 (hereinafter referred to as first writ petition).

The first writ petition has been filed by a registered association of tourist guides registered at Varanasi, the members of which have been recognised as Regional Guides by Department of Tourism, Government of India and are known as Regional Guides. They claimed to have been issued identity cards by the Department of Tourism, Government of India for guiding the tourists at ancient monuments, i.e., protected monuments. The petitioners have challenged the advertisement dated 21st November, 2006 issued by the Directorate of Tourism, State of Uttar Pradesh inviting applications for training of State Level Tourist Guide Programme. The petitioners' case in the writ petition is that advertisement issued by the State Government is not in consonance with the guidelines dated

24th February, 2003 issued by the Government of India, Department of Tourism. The petitioners' case further is that the State of Uttar Pradesh has no jurisdiction to recruit any State Level Tourist Guide at the places where offices of India Tourism have been established by the Government of India. The petitioners claim to be stationed at Varanasi where India Tourism Office is situated, hence the State has no jurisdiction to recruit any guides at such place. The case of the petitioners is that the State of U.P. can recruit State Level Guide and Local Guides only at places where India Tourism Offices are not located. Following prayers have been made in the writ petition:

(a) issue a writ, order or direction in the nature of certiorari, calling for the records and quashing the advertisement dated 21.11.2006, issued by the respondent No. 2 as well as the corrigendum issued on 30.11.2006 (Annexure-1 and 2 to the present writ petition).

(b) issue a writ, order or direction in the nature of prohibition restraining the respondents No. 1 and 2 from undertaking any selection process pursuant to the impugned advertisement dated 21.11.2006 insofar as recruitment of State Level Guide in Varanasi Region is concerned.

(c) issue a writ, order or direction in the nature of prohibition restraining the respondents No. 2, 3 and 4 from recruiting any State Level Guide in Varanasi Region.

Writ Petition No. 52805 of 2007 (hereinafter referred to as second writ petition).

The second writ petition has been filed by Approved Guides of the Department of Tourism whose members are stationed at Agra and claimed to be working as Guide. The pleadings in the second writ petition are almost similar to the first writ petition. This writ petition also makes the similar prayers as made in the first writ petition. In this writ petition a counter affidavit has also been filed on behalf of the Director General, Department of Tourism, Government of India.

Writ Petition No. 11104 of 2007 (hereinafter referred to as third writ petition).

The petitioners, who are thirteen in number, claim to be resident of Agra and working as Tourist Guide at various historical places. Petitioners' case in the writ petition is that they submitted their application in response to the advertisement dated 21st November, 2006 issued by the Director of Tourism, State of Uttar Pradesh. However, it has been pleaded that no call letter for holding the training of State Level Guide has yet been issued to the petitioners. The petitioners claim that looking to the large number of tourists (about 20,000 per day) more and more tourist guides are required. The prayers of the writ petition as amended are to the following effect:

(A) to issue writ, order or direction in the nature of mandamus directing the respondents No. 3 and 4 to complete the proceedings of recruitment of State Level Guides in lieu of the advertisement dated 21.11.2006 filed as Annexure-1 to the writ petition published by respondent No. 3, Director General, Directorate

of Tourism, C-13, Vipin Khand, Gomti Nagar, Lucknow in Dainik Jagaran newspaper.

(b) to issue writ, order or direction in the nature of mandamus commanding and directing the respondents to restraining them not to interfere in the peaceful working of the petitioners as Tourist Guide at the Historical Monuments.

2. In first writ petition two applications for impleadment have been filed, one by Agra Tourist Guides Welfare Association and another by Indian Association of Tour Operators, which have been allowed permitting them to be impleaded as respondents. The impleadment applications are supported by detail affidavits. The case of the newly impleaded respondents is that the advertisement dated 21st November, 2006 is fully in consonance with the guidelines issued by the Government of India. It is stated that the State Level Guides cannot be discriminated by prohibiting them to work as Guide in the monuments controlled by the Archaeological Survey of India. It is pleaded that the State Level Guides are also entitled to guide the tourist at protected monuments. It is further pleaded that Regional Guides have no right to challenge the advertisement.

3. A counter affidavit by the State of U.P. has also been filed in the first writ petition supporting the advertisement issued by the Director of Tourism, State of U.P. It is stated that the State Level Guides are to operate in whole State of Uttar Pradesh including Agra and Varanasi whereas the Regional Guides are permitted to work in their respective regions which normally comprises of several States of their regions. It is pleaded that State Level Guides are licensed to work in particular State and not for particular City or Cities. It has further been pleaded that by large number of Guides, the State can ensure larger number of tourist arrival.

4. The Director of Tourism, Government of India has filed counter affidavit and supplementary counter affidavit in second and third writ petitions. The Government of India has pleaded in the counter affidavit that guidelines have been issued in exercise of power u/s 29(a) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter referred to as the 1958 Act). It has further been stated that revised guidelines for selection of Regional Level Guides have been issued in the year 2007. In the supplementary counter affidavit relying on a D.O. letter dated 14th August, 1985 issued by the Additional Director General, Department of Tourism, Government of India, it has been stated that Archaeological Survey of India and State should not be recognising any guides at stations where guide training courses have been conducted by the department of tourism.

5. We have heard Sri Manish Goyal, learned Counsel appearing for the petitioners in first two writ petitions and Sri J.P. Singh, learned Counsel for the petitioners in third writ petition. Smt. Subhash Rathi, learned Standing Counsel has appeared for State of U.P., Dr. A.K. Nigam assisted by Sri K.P. Bajpayee has appeared on behalf of the Union of India and Smt. Anjana Gosain, Advocate assisted by Sri

Manu Khare has appeared on behalf of the newly impleaded respondents in first writ petition.

6. The first two writ petitions are based on same pleadings and issues and claim the relief of quashing the advertisement dated 21st November, 2006 issued by the Directorate of Tourism, State of U.P. The third writ petition prays for completing the process of selecting State Level Guides under the advertisement dated 21st November, 2006. Thus the relief claimed in first two writ petitions and third writ petition are diagonally opposite. The decision in third writ petition shall depend on the decision as taken in first two writ petitions, hence we proceed to consider the pleadings and submissions in first two writ petitions, which shall automatically decide the fate of third writ petition.

7. Sri Manish Goyal, learned Counsel for the petitioner has raised following submissions in support of first and second writ petition:

(i) The State of U.P. has exceeded its jurisdiction given under the State Act, namely, the U.P. Ancient and Historical Monuments and Archaeological Sites and Remains Preservation Act, 1956 in proceeding to recruit State Level Guide for the places where India Tourism Offices are located encroaching the jurisdiction under the Central Act, namely, the 1958 Act. No State Level Guide can be permitted to operate in an area where the India Tourism Office has been located. At Varanasi and Agra India Tourism Office is located and the members of the petitioners' association are already working, who are approved Regional Level Guides having granted necessary permission by the Department of Tourism, Government of India. The recruitment of State Level Guide to operate at such placed is beyond the jurisdiction of the State Government and since the advertisement does not contain any such restrictions, whole exercise is without jurisdiction and uncalled for.

(ii) The 1958 Act defines the monuments of national importance, which are defined as protected monuments u/s 2(j) of the 1958 Act. Only Regional Level Guides have jurisdiction to take tourists to protected monuments like the members of the petitioners' association and the State Level Guides have no jurisdiction to guide the tourists at protected monuments. The area of operation of the State Level Guide has to confine to the State monuments.

(iii) The advertisement dated 21st November, 2006 is also not in consonance with the guidelines framed by the Government of India dated 24th February, 2003 insofar as it does not provide for number of vacancies for which recruitment process has been initiated. The qualifications mentioned in the advertisement are not in consonance with the qualification prescribed in 2003 guidelines. The guidelines provide for holding of a written test after selection is made for tourist guide training programme but the advertisement does not provide for any subsequent written examination. The written examination and viva-voce is missing in the advertisement, which are mandatory according to 2003 guidelines.

8. Refuting the submissions of learned Counsel for the petitioners, learned Standing Counsel Smt. Subhash Rathi as well as Smt. Anjana Gosain appearing for the newly impleaded respondents in the first writ petition contended that advertisement dated 21st November, 2006 is fully in consonance with the guidelines provided for by the Government of India dated 24th February, 2003. It is contended that State Level Guides are fully entitled to guide the tourists at protected monuments. The State Level Guides are entitled to guide the tourists throughout the State whereas territory of the Regional Level Guides are beyond the State as per their region. The 2003 guidelines does not provide for any prohibition on State Level Guides to enter into the protected monuments nor the State Level Guides can be confined only to the State monuments as contended by the petitioners. The written test and viva voce are yet to take place in pursuance of the advertisement, hence the challenge of the petitioners that guidelines of 2003 are not being followed in the process of selection is wholly premature. The petitioners have no right to challenge the advertisement since none of their rights to work at protected monuments is being affected by the State Level Guides. The fact of the matter is that the petitioners want to create a monopoly of Regional Level Guides and to prohibit the State Level Guide to enter into the protected monuments, which is not in consonance with the 2003 guidelines or constitutional philosophy. The State Level Guides have right under Article 19(1)(g) of the Constitution of India to work as guide after obtaining necessary permission and prohibiting them to enter into the protected monuments violates the rights provided under Article 19(1)(g) of the Constitution of India.

9. Dr. A.K. Nigam appearing for Director General, Department of Tourism, Government of India referring to a D.O. letter dated 14th August, 1985 submitted that States are not required to recognise any Guide at stations where guide training courses have been conducted by the Department of Tourism. From the aforesaid letter Dr. Nigam sought to contend that State Level Guides are not to be selected at places where India Tourism Offices have been situated.

10. We have considered the submissions of learned Counsel for the parties and have perused the record.

11. The Regional Level Guides at one side and the State Level Guide on the other side are pitted against each other and the real issue, which has come up for consideration between them is as to whether it is only the Regional Level Guides, who are entitled to work as approved Guide in protected monuments or apart from the Regional Level Guides, State Level Guides are also entitled to carry their profession in protected monuments.

12. The first and second submissions, being interrelated, are being considered together. The Parliament has enacted the Ancient Monuments and Archaeological Sites and Remains Act, 1958 to provide for the preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaeological excavations and for the

protection of sculptures, carvings and other like objects. Entry 67 of List-I of the Seventh Schedule of the Constitution of India provides as under:

Ancient and historical monuments and records, and archaeological sites and remains, declared by or under law made by Parliament to be of national importance.

13. The 1958 Act has been enacted by the Parliament, which legislation is referable to Entry 67, List-I. Section 2(d) defines the words "'archaeological site and remains'" whereas Section 2(j) defines the words "'protected monument'". Sections 2(d) and 2(j) of the 1958 Act are quoted below:

2(d). "Archaeological sites and remains" means any area which contains or is reasonably believed to contain ruins or relics of historical or archaeological importance which have been in existence for not less than one hundred years, and includes-

(i) such portion of land adjoining the area as may be required for fencing or covering in or otherwise preserving it, and

(ii) the means of access to, and convenient inspection of the area;

2(j). "protected monument" means any ancient monument which is declared to be of national importance by or under this Act.

13. Section 3 of the 1958 Act provides for certain ancient monuments, which are deemed to be of national importance. Section 3 of the 1958 Act is quoted below:

3. Certain ancient monuments, etc., deemed to be of national importance. - (1) All ancient and historical monuments and all archaeological sites and remains which have been declared by the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (71 of 1951), or by Section 126 of the State Reorganizations Act, 1956 (37 of 1956), to be of national importance shall be deemed to be ancient and historical monuments or archaeological sites and remains declared to be of national importance for the purpose of this Act.

14. Section 29 of the 1958 Act provides for delegation of powers. Section 38 of the 1958 Act empowers the Central Government to make rules for carrying out the purposes of the Act. Section 29 is quoted as below:

29. Delegation of powers.- The Central Government may, by notification in the Official Gazette, direct that any powers conferred on it by or under this Act shall, subject to such conditions as may be specified in the direction, be exercisable also by-

(a) such officer or authority subordinate to the Central Government, or

(b) such State Government or such officer or authority subordinate to the State Government.

as may be specified in the direction.

Rules have been framed in exercise of power u/s 38 of the 1958 Act, namely, the Ancient Monuments and Archaeological Sites and Remains Rules, 1959 (hereinafter referred to as the 1959 Rules). Rule 8(d) contains a restriction against any person from showing a visitor round for monetary consideration except under the authority of, or under in accordance with the conditions of a licence granted by an archaeological officer. Rule 8(d) of the 1959 Rules is quoted as below:

8. Prohibition of certain acts within monuments.- No person shall within a protected monument,-

(a) ...

(b) ...

(c) ...

(d) hawk or sell any goods or wares or canvass any custom for such goods or wares or display and advertisement in any form or show a visitor round for monetary consideration except under the authority of, or under and in accordance with the conditions of a licence granted by, an archaeological officer; or

Vide notification dated 21st January, 2003 issued by the Central Government in exercise of jurisdiction u/s 29(a) of the 1958 Act, the Additional Director General (Department of Tourism), Ministry of Tourism has been nominated as statutory authority for framing and issuing guidelines for issuance of Guide Licenses. The notification dated 21st January, 2003 is quoted below:

Notification

In exercise of the powers conferred by Sub-section 29(a) of the Ancient Monuments and Archaeological Sites & Remains Act, 1958 the Central Government hereby appoints the Additional Director General, (Department of Tourism), Ministry of Tourism as the ""statutory authority" under the Act for framing and issuing guidelines, for issuance of Guide Licenses, 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.

15. The Additional Director General, Department of Tourism having been authorised to frame and issue guidelines, guidelines have been framed which have been circulated by letter dated 24th February, 2003 to all Regional Directors. The guidelines contemplated three categories of Guides as referred to in paragraph 1 of the guidelines, i.e., Regional Guides, State Level Guides and Local Guides, which are to the following effect:

(a) REGIONAL GUIDES:

(1) To be trained by the Department of Tourism, Government of India through Indian Institute of Tourism and Travel Management (IITTM) or their chapters in coordination with the concerned Regional Director and Indiatourism offices located in that region. The regional guides will be recruited only at those places where Indiatourism Offices are located. At other places the State Government will recruit state level and local level guides.

(2) PART-TIME GUIDES:- In order to encourage scholars, linguists and proven from the fields of Indian history, architecture, and culture to join this profession there would be a special category of regional level guides known as Part-time guides. These guides would have academic qualifications of doctorate levels or have published papers in their specialized fields of activity at national/international levels.

Since there are acute shortages of guides speaking some of the foreign languages such as Chinese, Russian, Korean, Thai, Arabic, Hungarian, Polish, hebrew etc. linguists with specialised qualifications/proven skills and fluency in these languages may be approved under this category. Guides under this category could hold regular employment (in non-tourism related fields as mentioned in para 8). They would however, undergo an abridged special training of 4 weeks only.

(b) STATE LEVEL GUIDES: To be trained by the State Government. However, in specific cases the Department of Tourism Government of India could organise these courses wherever the State Government deem it necessary.

It is clarified that the Department of Tourism, Government of India will not train any State-level guides unless the State Government makes a written request in this regard. In such a case, the Department of Tourism will train the guides according to the curriculum prescribed for the State-level Guides.

(c) LOCAL GUIDES: To be trained under the control of the State Government/ Local Administration. The respective State Government at their discretion, will decide their training programme, if any.

16. The 2003 guidelines contain detail procedure providing for qualification, selection for guide training course, course content, manner of issue of licence, terms and conditions for the conduct and performance of approved guides. The answer to the question as to whether State Level Guides are entitled to guide the tourists at protected monuments has to be found out in the detail scheme as delineated by the 2003 guidelines since in the provisions of the 1958 Act and the 1959 Rules nothing can be found out as to read out any prohibition in the State Level Guides.

17. The submission of counsel for the petitioners is that for the State of U.P. there is a separate enactment, namely, the 1956 Act and the advertisement issued by the State of U.P. for recruitment of the State Level Guide and permitting them to enter into the protected monuments is beyond the jurisdiction

of the State under the State Act and shall be encroachment of an occupied field under the 1958 Act. The State Act 1956 is referable to Entry 12 of List-II of the Constitution of India, i.e., concurrent List. Entry 12 of List-II is quoted below:

12 - Libraries, museums and other similar institutions controlled or financed by the State, ancient and historical monuments and records other than those [declared by or under law made by Parliament] to be of national importance.

18. According to Entry-12 the legislative field of the State is with regard to ancient and historical monuments other than those declared by or under law made by Parliament to be of national importance. In the present case we are considering the respective rights of Regional Guides and State Level Guides with regard to protected monuments. The protected monuments by virtue of definition of Section 2(j) of the 1958 Act are that ancient monuments which have been declared to be of national importance by or under the 1958 Act. Thus the issue, which has arisen in the writ petition, does not relate to any issue within the meaning of 1956 Act and answer of the issue has to be found out in the scheme of the 1958 Act, the rules framed thereunder and the guidelines issued therein. The submission of counsel for the petitioner that advertisement by the Tourism Department of the State of U.P. is beyond the State Act, i.e., the 1956 Act is, thus, misconceived. The advertisement has been issued by the Tourism Department of the State of U.P. in exercise of the powers as given under the 2003 Guidelines framed by the Government of India under the 1958 Act. In this context, it is useful to notice the notification dated 21st January, 2003 issued u/s 29(a) of the 1958 Act by which the Central Government has delegated its authority to frame guidelines for issuance of guide licenses, approval and registration of qualified persons for the purposes to operate in the protected monuments of national importance. The Guidelines thus framed in the year 2003 are with respect to protected monuments of national importance and any action as per the guidelines is to operate in the protected monuments of national importance. Further the advertisement has been issued by the State Government in exercise of power given under the 2003 Guidelines and thus the submission that State acted beyond the jurisdiction for initiating process for selection of Guides for protected monuments is misconceived.

19. For finding out the answer to the issue raised, we have to carefully look into the scheme as delineated by the Guidelines and the object and intention, which appears from the guidelines with regard to the question as to whether State Level Guide are also entitled to guide the tourists in the protected monuments. There is no issue that Regional Guides who are being approved by the Government of India, Department of Tourism and by the Archaeological Survey of India have authority to guide the tourists at protected monuments. The area of operation of Regional Guides is the region. The whole country has been divided in several regions and the northern region comprises of Delhi, Haryana, Himachal Pradesh, Jammu & Kashmir, Punjab, Rajasthan, Union Territory of Chandigarh, Uttaranchal and Uttar Pradesh. The Regional Guides of northern

region are free to operate in any of the above States. A close scrutiny of the 2003 Guidelines is necessary for finding out the real object and purpose of the guideline and the area of the operation of State Level Guides, which is the bone of contention in this case.

20. Clause 4 of the guidelines provides for educational qualification of Regional Level Guides as well as the State Level Guides. For both the minimum educational qualification is Graduate from a recognised University or three years degree holder in tourism/hospitality from a recognised University/Institute or Diploma in Archaeology from the institute of Archaeology under the Archaeological Survey of India, New Delhi or from any other reconsigned institutions/University along with fluency in English language. For State Level Guides there is an alternative qualification, i.e., 10+2 or equivalent certificate with at least six months regular course in foreign language from a recognised University whereas for a Local Guide the minimum qualification is High School. Clause 5 of the guidelines provides for guide training course. A screening committee is contemplated to screen the applications of both Regional Level Guides and State Level Guides. In the screening committee of Regional Level Guide Regional Director, Indiatourism Office, Director Tourism of the State or his representative and representatives from Indian Association of Tour Operators and Travel Agents Association of India are members and in the committee of State Level Guide also representative of Archaeological Survey of India and Director, Department of Tourism of the State are members apart from a representative of Indian Association of Travel Agents and the similar procedure for selection/training of guides as indicates for Regional Level Guides is provided for the State Level Guide. The guide training course, written examination, viva-voce and practical training are provided both for Regional Level Guide and State Level Guide. Clause 9, which is very material, is regarding issuance of guide license. Clause 9 of the 2003 guidelines is quoted as below:

9. Issuance of guide license on successful completion of their training course the regional level guides would be issued guide license by the concerned regional Indiatourism office of Government of India.

State level Guides, on successful completion of their training course would be issued guide licenses by the Director of Tourism of the respective State which would be duly endorsed by the Department of Tourism, Government of India and Archaeological Survey of India.

Identity cards of State level Guides would be endorsed by the respective State Archaeological Departments etc. State Government would also be requested to extend similar endorsement on the Identity Cards of the regional level guides for coverage of the State monuments etc. under their control.

The local level guides will have no authority to conduct visitors to the monuments controlled by ASI. As regards State controlled monuments, it is for the respective State Department of Tourism or the Archaeological Departments

to take a decision on permitting them to conduct tourists to such monuments.

21. The State Level Guides as per Clause 9 of the 2003 Guidelines are to be issued guide licenses by Director of Tourism of the respective State, which would be duly endorsed by the Department of Tourism, Government of India and the Archaeological Survey of India. The third paragraph of Clause 9 also contemplates that State Government would also be requested to extend similar endorsement on the Identity Cards of the Regional Level Guides for coverage of the State monuments etc. under their control. The last paragraph of Clause 9 clearly contemplates that Local Level Guides would have no authority to conduct visitors to the monuments controlled by ASI. Clause-9, as noticed above, indicates that although a specific exclusion of Local Level Guides has been provided for qua the visiting to the monuments controlled by the ASI but no such exclusion or prohibition can be read for State Level Guides, rather there is indication in Clause 9 that State Level Guides are permitted to visit the monuments controlled by ASI since the license of State Level Guides are also endorsed by Department of Tourism, Government of India and the Archaeological Survey of India. When the said clause contemplates similar endorsement by the State Government on Regional Level Guides for coverage of the State monuments, the endorsement on State Level Guide by Archaeological Survey of India and Tourism Department of the Government of India clearly spells out coverage of the monuments controlled by the ASI for State Level Guides. Rule 8(d) as noticed above, entitles a person to take tourist around for monetary consideration under the authority of, or under and in accordance with the conditions of a licence granted by an archaeological officer. An Archaeological Officer has been defined in Section 2(c) of the 1958 Act as an officer of the Department of Archaeology of the Government of India not lower in rank than Assistant Superintendent of Archaeology. Two words have been used in Rule 8(d), i.e., under the authority of, or under and in accordance with the conditions of a licence granted by, an archaeological officer. When an endorsement is made by an officer of the Archaeological Survey of India on the guide license of the State Level Guide, the said endorsement is in fully inconformity with the requirement as provided under Rule 8(d) of the 1959 Rules and a State Level Guide is fully entitled to take a tourist to a protected monument.

22. It is settled rule of interpretation that while interpreting a statute the entire provisions have to be read to make the statute a consistent enactment. Further while interpreting the statute, we have to accept the construction which carry forward the purpose of the statute. It is useful to refer to the principles of statutory interpretation as noticed and approved by the Apex Court in the case of *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, Following was laid down in paragraph 6 of the said judgment:

6. Before we consider this argument in some detail, it will be convenient at this stage to notice some of the well established rules of construction which would help us to steer clear of the complications created by the Act. Maxwell "On the

Interpretation of Statutes", 10th edn., says at p. 7 thus:

...if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.

23. It is in the Craies on Statute Law, 5th edn., at p. 82:

Manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly to be avoided.

24. Lord Davey in *Canada Sugar Refining Co. v. R.* 1898 AC 735 provides another useful guide of correct perspective to such a problem in the following words:

Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter.

25. In view of the above, it is to be held that State Level Guides are entitled to guide the tourists at protected monuments also as per the 2003 Guidelines. The terms and conditions for regulating the Regional Level Guide and State Level Guides are almost similar as per Clause 10 of the guidelines.

26. Reading the 2003 Guidelines as a whole and looking to the purpose and object of the scheme to license the State Level Guide, the manner of their selection, qualification, course content, it is clearly demonstrated that State Level Guides are chosen to guide the tourists in the entire State including the protected monuments. The scheme does not contain any rule or indication that State Level Guides are to be excluded from entering into the protected monuments or into the monuments controlled by ASI, rather indication is otherwise that they are entitled to guide the tourists at protected monuments/monuments controlled by ASI also. Looking the issue in question in another context also the same conclusion is arrived at. Article 19(1)(g) of the Constitution of India guarantees to a citizen to practise any profession, or to carry on any occupation, trade or business. Article 19(6) of the Constitution of India, however, places a restriction that nothing would prevent the State from making any law imposing, in the interest of the general public, reasonable restrictions. When the State Level Guides are selected by almost similar process by going through the course contents relevant for the State concerned and by prescribed selection committee consisting of both Director of State Tourism and Officer of the Central Government and the Archaeological Survey of India, excluding them from taking the tourists to protected monuments may affect their rights under Article 19(1)(g). No basis of exclusion having nexus with the object sought to be achieved has been made out to accept the interpretation as contended by the learned Counsel for the petitioners. There has to be some very strong reason to prohibit the State Level Guide to visit protected monuments.

The Apex Court while considering the rights of guide to get their license renewed had made following observations in context to Article 19(1)(g) of the Constitution of India in the case of B.P. Sharma Vs. Union of India (UOI) and Others,

15. The freedom under Article 19(1)(g) can also be completely curtailed in certain circumstances e.g. where the profession chosen is so inherently pernicious that nobody can be considered to have a fundamental right to carry on such business, trade, calling or profession like gambling, betting or dealing in intoxicants or an activity injurious to be public health and morals. It may be useful to refer to a few decisions of this Court on the point at this stage viz. in Saghir Ahmad Vs. The State of U.P. and Others, and J.K. Industries Ltd. and Others Vs. Chief Inspector of Factories and Boilers and Others, The main purpose of restricting the exercise of the right is to strike a balance between individual freedom and social control. The freedom, however, as guaranteed under Article 19(1)(g) is valuable and cannot be violated on grounds which are not established to be in public interest or just on the basis that it is permissible to do so. For placing complete prohibition on any professional activity, there must exist some strong reason for the same with a view to attain some legitimate object and in case of non-imposition of such prohibition, it may result in jeopardizing or seriously affecting the interest of the people in general. If it is not so, it would not be reasonable restriction if placed on exercise of the right guaranteed under Article 19(1)(g).

27. It is also relevant to note that in the supplementary counter affidavit filed in the second writ petition by Union of India Annexure SCA-2 has been filed, which is list of centrally protected monuments/sites under the jurisdiction of Agra Circle. A perusal of the list indicates that under the Agra Circle there are 395 protected and in Agra itself there are 198 centrally protected monuments. No object and purpose or restraint has shown to exist, which may exclude the State Level Guides not to inter into the protected monuments. To prohibit the State Level Guides to enter into the protected monuments shall be nothing but virtually ousting them to carry on their profession in substantial places where they can carry on their profession.

28. The submission made by Dr. A.K. Nigam in this context is also required to be noticed. Dr. A.K. Nigam relying on the supplementary counter affidavit filed in the second writ petition, contended that where India Tourism Offices are located, the State is not entitled to recognise any State Level Guide. Dr. Nigam referred to D.O. letter dated 14th August, 1985 filed as Annexure SCA-1 to the supplementary counter affidavit. Relevant portion of the said D.O. letter on which reliance has been placed, is quoted as below:

By means of a separate communication I am requesting different State Governments and Archaeological Survey of India not to duplicate our efforts. In other words they should not be recognising any guides at stations where guide training courses have been conducted by the Department of Tourism. I have also clarified to them that in case they need any assistance from us for organising

training courses at places where Department of Tourism is not in a position to organise such course, we would be very happy to be of help. A copy of this letter is also enclosed.

29. The observation in the above mentioned D.O. letter dated 14th August, 1985 only emphasises the conduct of the guide training programme. The letter emphasises that the State Government and the Archaeological Survey of India should not duplicate our efforts, i.e., they should not recognise any guides at stations where guide training courses have been conducted by the Department of Tourism. The object of the aforesaid letter was that where the Department of Tourism has initiated a tourist training course, the State should not duplicate the same. Although in the next sentence the Government of India had clarified that if the State is not able to organise the training course, the Government of India is ready to help them and organise the training courses for them. The letter dated 14th August, 1985 can at best be termed as guidelines framed at the relevant time. The guidelines for selecting the guides and their training courses have now been elaborately dealt with in the 2003 Guidelines. The 2003 Guidelines has thus to be looked into for the purpose and object. The said guidelines has introduced a 3-tier system of guides, i.e., Regional Level Guide, State Level Guide and Local Guide. The letter dated 14th August, 1985 is now not relevant in the present context. However, Dr. Nigam when was confronted with the 2003 Guidelines, specifically paragraph 9, he very fairly conceded that he is not sure about the stand taken by the Department of Tourism, Government of India regarding the State Level Guides entitling them to visit to only State protected monuments.

30. Learned Counsel for the parties have referred to the judgment of the Delhi High Court dated 7th March, 2005 in Writ Petition No. 4366 of 2001 (Anuj Johri v. Union of India and Ors.). In the said judgment the writ petition was filed for a direction to respondents to conduct examination every year for grant of license to work as tourist guide. The petitioners claimed to be working for several years and taking tourists to various monuments in Delhi, Rajasthan, Varanasi, Khajuraho etc. It was pleaded that examination was conducted in the year 1986 and thereafter in 1996 only. The petitioners claimed grant of license by virtue of their experience. The submission on behalf of the State Level Guides was made that they being qualified and having 15 years experience, they are entitled for exemption from screening test as well as open examination and Regional Level Guide license be issued to them. The Delhi High Court heard the bunch of cases and dispose of the writ petition with various directions. The plea of the State Level Guides for exemption from giving test and final examination was not accepted. The said judgment did not consider the issue, which has been raised in the present writ petition as to whether State Level Guides are entitled to visit the protected monuments, hence on the above issue the said judgment does not help either of the parties.

31. Learned Counsel for the petitioners has also placed reliance on two judgments, first is Division Bench judgment of this Court dated 9th February,

2009 passed in Writ Petition No. 25637 of 1998 (Approved Guide Association v. State of Uttar Pradesh and Ors.) and another is judgment of the Rajasthan High Court dated 7th January, 1992 passed in SB Writ Petition No. 1507 of 1991 (Bhagwat Singh Ranawat v. Union of India and Ors.). Insofar as the Division Bench of judgment of this Court dated 9th February, 2009 is concerned, the said writ petition was filed in the year 1998. A perusal of the judgment dated 9th February, 2009 does not indicate that the 2003 Guidelines framed u/s 29(a) of the 1958 Act were subject matter of consideration before the Division Bench. In the judgment of this Court dated 9th February, 2009, the 2003 Guidelines having not been considered, the said judgment cannot be treated to be a precedent on the issues, which have arisen in the present writ petition. It is well settled that precedent is to be followed of the case where the similar issues have been deliberated and decided. The said judgment does not help the petitioner in the present case. The judgment of the Rajasthan High Court again was a case decided in the year 1992, i.e., much before the 2003 Guidelines were enforced. Before the Rajasthan High Court the 2003 Guidelines having not yet been framed and were not subject matter of consideration, the said judgment also does not help the petitioners in any manner. In view of the aforesaid, both the judgments do not help the petitioners.

32. In view of the foregoing discussions, we are of the view that the 2003 Guidelines framed by the Additional Director Tourism, Government of India in exercise of delegated power u/s 29(a) of the 1958 Act for the purposes of Rule 8(d) of the 1959 Rules clearly contemplates selection of State Level Guides also for protected monuments in the State. The 2003 Guidelines cannot be interpreted to mean that State Level Guides are prohibited to guide the tourists at protected monuments and that they have to confine themselves to the State monuments only. The submission of counsel for the petitioners that advertisement not containing the restriction regarding the State Level Guides not to enter into protected monuments is invalid, cannot be accepted. It is held that State Level Guides after having been issued guide licence in accordance with the 2003 Guidelines are fully entitled to guide the tourists at protected monuments also situate in State of U.P. including Agra and Varanasi.

33. Now comes the third submission of learned Counsel for the petitioners, i.e., advertisement issued by the Director of Tourism, State of U.P. is not in accordance with the 2003 Guidelines. The challenge is on the ground that number of vacancies is not mentioned, the qualifications are not in accordance with the guidelines, written test after selection as tourist guide has not been provided for and no viva voce has been provided. A copy of the advertisement has been filed as Annexure-1 to the first writ petition. The first submission of learned Counsel for the petitioner is regarding non mention of number of vacancies of State Level Guide for which selection is initiated. To support his submission, learned Counsel for the petitioners has referred to Clause 5 of the 2003 Guidelines. Clause 5(b), which is relevant for the purpose, is quoted below:

5(b). Interview: The required number of candidates in order of their scoring at least minimum of 40 percent marks in written test will be selected for interview. Besides knowledge of three subjects mentioned above, the interview will be primarily to check the level of fluency, skill of expression and aptitude. The Screening Committees for both, the Regional and State level Guides would restrict the number of candidates to three times the total number of vacancies subject to availability of eligible successful candidates, so as to ensure a wider selection. The Interview Committee would comprise the following:

- i) Regional Director, Indiatourism Office or his representative.
- ii) Director of Tourism of the State Government or his representative.
- iii) A representative from the Archaeological Survey of India.
- iv) A representative of Travel Agents Association of India/Indian Association of Tour Operators wherever possible or from the local travel trade.
- v) A professor from the local university.
- vi) Foreign Language experts.
- vii) A Psychologist.

It may be mentioned that the minimum quorum of the Interview Committee shall be four representatives. However, this list of four must include the Regional Director, Indian tourism office or his representative.

34. It is to be noted that advertisement is not for the purposes of recruitment to any service. The process has been initiated for issue of guide license to eligible persons to carry on profession of guide subject to restrictions as laid down under the 1958 Act and the 2003 Guidelines. The opening words of Clause-5(b) are ""required number of candidates will be selected for interview". Clause 5(b) will come into play when candidates, who have given the written test, are to be called for interview. Clause 5(b) empowers the screening committee to call for required number of candidates, who at least obtained minimum 40% marks in the written test. Clause 5(b) of the 2003 Guidelines cannot mean that number of vacancies are required to be provided for in the advertisement, the advertisement being only for selection of State Level Guide and not for any post. Rule 5(b) is for the purposes of empowering screening committee to call for required number of candidates for interview. The number of candidates who will be called for interview is in the domain of the screening committee to decide taking into consideration various factors including the number of guides, required number of candidates who have secured more than 40% and other relevant factors. However not mentioning the number of vacancies in the advertisement is not fatal. The advertisement cannot be held to be vitiated on above submission.

35. The submission next pressed by learned Counsel for the petitioners is that the qualifications as mentioned in the advertisement are not in accordance with the guidelines. It is submitted that qualification in the guidelines provides for two

alternative whereas the advertisement does not provide alternative qualification. By means of the counter affidavit a corrigendum has been brought on the record as Annexure CA-5 by which the advertisement was corrected inserting word ""or" between both the qualification. Insofar as providing for written test after training is concerned, suffice it to say that Clause-10 of the advertisement mentioned that after successful training and passing out each candidate will be issued a yellow colour guide identity card. The advertisement, thus, clearly contemplates passing out by the candidate after successful training, hence the submission of the petitioners that no test subsequent to training has been provided cannot be accepted. The advertisement clearly contemplates holding of examination, which is apparent from the use of the words ""passing out". Insofar as the contention with regard to non mention of viva-voce is concerned, Clause 6 of the advertisement clearly provides for interview and even after successful completion of training course there is no lack of power in the authority to conduct the written test and viva-voce as required by the 2003 Guidelines. The advertisement does not breach any clauses of the 2003 Guidelines so as to strike down the advertisement at this stage. Moreso the process has not yet been proceeded or finalised, hence the submission that no written test or viva-voce shall be conducted after training course is in the realm of speculation and it is premature to consider any such submission as raised by the counsel for the petitioners. Thus it is held that the advertisement does not violate any clause of the 2003 Guidelines and no infirmity is found in the advertisement on the basis of which the advertisement can be quashed.

36. In the result the first and second writ petitions, i.e., Writ Petition No. 68499 of 2006 and Writ Petition No. 52805 of 2007 are dismissed.

37. In the third writ petition, the petitioners have prayed for a writ of mandamus directing the respondents No. 3 and 4 to complete the process of recruitment of State Level Guide as per the advertisement dated 21st November, 2006. In Writ Petition No. 68499 of 2006 (first writ petition) an interim order was granted by this Court to the effect that State Government may select the State Level Guides but they shall not function in district Varanasi and Agra. By subsequent order dated 4th October, 2007, the said interim order insofar as it provided for district Agra was modified.

38. Learned Counsel for the petitioners submits that there was no stay of proceedings of selection, however, as submitted by the learned Counsel for the respondents no selection has yet taken place for State Level Guides. The process was started in the month of November, 2006. The profession of Guide is a profession of self employment. Large number of qualified persons are available to take up the self employed profession of Guide. It is the duty of the respondents to take prompt and appropriate steps for licensing the eligible persons to work as State Level Guides in the State of Uttar Pradesh to provide for self employment and also to provide sufficient number of Guides for visiting tourists in the interest of tourism. The advertisement having been issued more than two years ago and

further interim order having been granted by this Court on 15th December, 2006, large number of persons could not have applied. The respondent No. 3 (Director General, Directorate of Tourism, Lucknow) is required to issue a fresh corrigendum extending the date for inviting applications for State Level Guides so that all eligible persons including the petitioners of third writ petition may participate.

39. In view of the foregoing discussions, the third writ petition (Writ Petition No. 11104 of 2007) is allowed with the following directions:

(i) Respondent No. 3 (Director General, Directorate of Tourism, Lucknow) shall issue a corrigendum in continuation of the advertisement dated 21st November, 2006 extending the date for inviting applications for the selection of State Level Guide within two weeks from the date of presentation of a certified copy of this order upon him.

(ii) Respondent No. 3 shall complete the process of selection of State Level Guide strictly in accordance with the 2003 Guidelines (Guidelines dated 24th February, 2003) expeditiously preferably within a period of six months from the date of issue of corrigendum. The other respondents may take all necessary steps enabling the selection of State Level Guide to be completed within the aforesaid period.

40. In result, the Writ Petition No. 68499 of 2006 and Writ Petition No. 52805 of 2007 fail and are dismissed and Writ Petition No. 11104 of 2007 is allowed to the extent indicated above. Parties shall bear their own costs.