
(1995) 02 AHC CK 0120

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 29806 of 1990

Pavan Kumar and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 16-02-1995

Acts Referred:

Ancient Monuments and Archaeological Sites and Remains Act, 1958 — Section 18, 38
Ancient Monuments and Archaeological Sites and Remains Rules, 1959 — Rule 8
Constitution of India, 1950 — Article 14, 19(1)

Citation : AIR 1995 All 440

Hon'ble Judges : V.N. Khare, J;S.R. Singh, J

Bench : Division Bench

Advocate : Mr. G.C. Bhattacharya, for the Appellant;

Final Decision : Dismissed

Judgement

S.R. Singh, J.—Principal reliefs claimed in these petitions are three fold, (i) Issue a writ, order or direction in the nature of mandamus directing the respondents not to interfere with the working of the petitioners as Professional Guides on the ground that they do not have licence from the department of Archaeological Survey of India or Tourism, (ii) Issue a writ, order or direction in the nature of certiorari quashing the last part of R. 8(d) of the Rules made under the Ancient Monument and Archeoiological Sites and Remains Act, 1958, and (iii) Issue a writ, order or direction in the nature of mandamus directing the respondents to issue licences to the petitioners forthwith.

2. Sri G. C. Bhattacharya, counsel appearing for the petitioners in Writ Petn. No. 29806 of 1990 led the principal arguments and the counsel appearing for the petitioners in other writ petitions made short work of their arguments by adoption of the arguments canvassed by Sri G. C. Bhattacharya. Bottomline of the arguments advanced by Sri G. C. Bhattacharya was that the petitioners had vested fundamental right to carry on the vocation of Guides and the Department of Tourism could not levy any restriction on their rights by executive orders. The

validity of Rule 8(d) though challenged in the petition, was not assailed at the time of arguments but what Sri. G. C. Bhattacharya urged was that under R. 8(d) the power to grant licence under the rule vests with the Archeological Officer but in fact, proceeded the argument, the licence is practically granted by the department of Tourism which is unauthorised in law and further that in the garb of granting licence, the Tourism Department is illegally interfering with the petitioners' profession as Guides.

3. Smt. Poonam Srivastava, learned counsel appealing for the respondents refuted the submissions made by Sri G. C. Bhattacharya and urged that what the Tourism Department does is to select proper persons as Guides and issue Identity Cards to such persons who are ultimately issued licences under R. 8(d) of the Rules by the Archeological Officer. Smt. Poonam Srivastava, also urged that the points raised by Sri G. C. Bhattacharya are covered by a decision of the Division Bench dated 10th September, 1992 rendered in C. M. Writ Petn. No. 10714 of 1991, *Virendra Kurnar Chadha v. Union of India*.

4. Having heard the counsel for the parties, we are of the view that the writ petitions lack merit and are liable to be dismissed.

5. In Civil Misc. Writ Petn. No. 948 of 1979 in the matter of J. K. Agarwal v. Union of India decided by the High Court of Delhi at New Delhi vide judgment and order dated 6th of May, 1980, it was observed as under :

"There is no law which regulates the profession of tourism guides. In absence of any such law government is free to regulate the profession by executive instructions provided they do not violate any existing law or the fundamental rights of the citizens. As regards the historical monuments, however, there is some "difference. The Archeological Sites and Remains Rules 1959, issued under the Archeological Sites and Remains Act, 1958 regulate and restrict the entry of the visitors at such monuments. The petitioners' objection is that, Rule 8 in so far as it empowers the authority to regulate entry of the visitors and the conduct of the tourist guides, is without any guideline and is violative of Art. 14. There is no substance in the argument. It is true that Rule 8 does not specify under what conditions and under what circumstances, the said regulatory measures can be taken. However, this does not mean that practice of Archeology Department, permitting only the guides approved by the Tourism Department, to show round the visitors for monetary consideration, is either arbitrary or unreasonable. The primary function of Archeological Department is to protect and maintain the historical monuments. Incidentally, Archeological Department is empowered with the regulatory powers. Tourism Department is a specialised department which looks after the tourist traffic and is, therefore, principally concerned with the work and remuneration of the tourist guides. There is nothing wrong if the Archeological Department takes help of the specialised department such as the Department of Tourism. The practice of the endorsement of an identity card issued by the Tourist Department, to signify its approval is neither illegal nor unconstitutional. Rule 8 does not suffer from any vice of arbitrariness or

unreasonableness. There is no violation of Am. 14 and 19(1)(g)"

6. In the case of Virendra Kumar Chadda (*supra*), it was observed by the Bench that "in the case of Tourist whether national or international, the Department of Tourism has to work in unison with the Department of Archeological Survey of India and consequently, the guidelines laid down for the issue of the licence under R. 8(d) were decided in a joint meeting of both the departments held on 11-4-60" and dealing with the submissions made in that petition regarding the jurisdiction of the Tourist Department of the Government, the Division Bench observed as under :

"It is, consequently, essential that the Department of Tourism works in consonance with the Department of Archeology and it cannot possibly be said that any joint decision taken by the Tourism Department with the Department of Archeology would in any manner be invalid in law. Licence, in any case, which is issued to a person is always by an Archeological Officer as required under Rule 8(d) of the Rules. It may be that with the agreement of the Department of Archeology, the Tourist Department may be holding the tests under their authority but that does not mean that the power of the Archeological Officer has been delegated to the Tourist Department. In our opinion, consequently, it cannot be said that merely because the Tourist Department is associated with the issue of the licence to the tourist guide, the whole procedure is without jurisdiction. The second submission is, therefore, in our opinion, not well founded."

7. We find ourselves in agreement with the view expressed in the aforesaid cases. We are further of the view that no person has any fundamental right to access to any protected monument or to carry on the profession of guides in an unfettered manner. Section 18 of the Act confers a right upon public to have an access to any protected monument "subject to any rules made under the Act" and Rule 8(d) of the Rules prohibits certain acts within the protected monuments in that it is clearly provided therein that no person shall "hawk or sell" any goods or wares or canvass any customer for such goods or wares or display any 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 Archeological Officer. It is thus evident that no person has a right to act as a guide inside any national monument except under licence granted under and in accordance with the provisions of Rule 8(d), the validity of which has been countenanced by a Division Bench of this court in the case of Virendra Chadda (*supra*). We do not find any reason to take a contrary view. The Tourism Department of the Government of India is empowered to issue executive orders laying down the conditions on fulfillment of which the licence can be issued. The fact that process of selection for issuance of licence under Rule 8(d) is done by the Tourism Department, would not vitiate the licence which is granted by an Archeological Officer as pointed out in Virendra Chadda's case (*supra*) both the Departments of Tourism and Archeological Survey of India, work

in unison and the process of selection for issuance of licence in favour of guides done by the Tourism Department would inure to grant of licence under R. 8(d) only after it is approved by the officer empowered to grant licence under R. 8(d) that is implicit for the requirement of Identity Cards issued by the Tourism Department being countersigned by the Archeological Officer.

8. In the conspectus of the above discussion, we find no merit in any of the submission made by the learned counsel appearing for the petitioners and the writ petitions are accordingly dismissed. Interim order, if any, shall stand vacated.

9. Petitions dismissed.