
(2017) 08 UK CK 0029
In the Uttarakhand High Court
Case No : 541 of 2017

Pawan Puri and others

APPELLANT

Vs

Prem Singh Mehra and others.

RESPONDENT

Date of Decision : 25-08-2017

Acts Referred:

[Wild Life \(Protection\) Act, 1972](#), [Section 28](#) - Grant of permit

Citation : (2017) 08 UK CK 0029

Hon'ble Judges : K.M. Joseph, Alok Singh

Bench : Division Bench

Advocate : A.S. Rawat, Kartikey Hari Gupta, T.A. Khan, Aditya Kumar Arya, Paresh Tripathi

Final Decision : Disposed

Judgement

1. Appellants are the party respondents in the writ petition. The writ petition was filed seeking the following reliefs:

"I. To issue a writ, order or direction in the nature of certiorari quashing the guidelines, issued by the respondent no. 2 and 3, bearing letter no. 1638/15-1, dated 02.12.2013, for the purpose of registration of Light Motor Vehicles within the limit of Corbett Tiger Reserve for the purpose of Tourism. II. To issue a writ, order or direction in the nature of mandamus commanding the respondents to register the vehicles of the petitioners for the purpose of tourism in the area of Corbett Tiger Reserve and permit them to enter into the area of Corbett Tiger Reserve, Ramnagar, District Nainital, if they bring the tourists with them, having online booking."

2. Briefly put, the case of the writ petitioner was as follows:

Petitioners are the registered owners of their respective vehicles, having the model of Maruti Gypsy. They have secured permits from the R.T.O. of Haldwani for the purpose of plying the vehicle from Ramnagar to Corbett National Park.

They are having certificates of pollution under control. Respondent nos. 2 & 3 have framed guidelines for the purpose of permitting the vehicles within the limits of Corbett National Park, Ramnagar, District Nainital. Annexure No. 2 was produced as the guidelines. In short, their further complaint was that permits have been granted arbitrarily. They gave details in paragraph 10 of the writ petition. More than one permit is given to a person; permits were also given to members of one

family. The learned Single Judge noted that the Corbett National Park is a Forest National Park, which attracts wildlife enthusiasts and adventure tourists, who visit this Corbett Tiger Reserve Park between October to June. He then referred to the policy of the Forest Department and the Chief Wild Life Warden that the only permitted vehicle is Maruti Gypsy Model, which is allowed to ply inside the Corbett Tiger Reserve for the purposes of Safari. The guidelines have been issued by the Chief Wild Life Warden vide order dated 02.12.2013, which was in fact also challenged in the writ petition. The guidelines provide for registration of the vehicle, make of the vehicle, colour of the vehicle, the health and fitness of the vehicle, experience of the driver and owner, etc. The provision for permitting the vehicle is given under Section 28 of the Wildlife (Protection) Act, 1972. After setting out the complaint of the petitioner and after referring to the case of the appellants, who intervened in the writ petition and further noting that normally, the Court will not interfere with the policy, but noticing the facts as we have noted, where more than one permit was granted and the persons like the writ petitioner were being excluded, the learned Single Judge disposed of the writ petition as follows:

"13. A policy which excludes a large category of drivers and owners of vehicles and which is ostensibly in favour of the rich and the powerful, is clearly arbitrary and in the considered opinion of this Court is violative of Article 14 of the Constitution of India. Therefore, the writ petition stands disposed with the direction that subject to all the conditions which are existing in the directions issued vide order dated 02.12.2013, further permits which will be given after 30.09.2017 shall follow the following principles:- (a) No person shall be given more than one permit, either as a driver or as an owner of a vehicle. (b) the three years of experience must be taken into consideration before granting permit or registration of an individual is, subject to his fulfilling all other conditions but the experience which has to be shown to the concerned authority should be either as an owner of a vehicle or a driver of a vehicle, which is a proof that he has actually driven a vehicle inside Corbett National Park, without any complaint from the authorities as that is the actual requirement under the guidelines."

14. The petitioners' case is that three years of experience should be read as experience as drivers, and not merely as an experience as owner of the vehicle seems to be appropriate and it nowhere interferes with the general policy or guidelines. The remaining provisions of the guidelines and policy such as the

make of the vehicle, fitness and health of the vehicle, no interference is warranted as that is a subject matter for the experts, who have come to the conclusion that in the National Park, particular kind of vehicles and a limited number of vehicles are required, which shall remain, subject to the discretion of the authorities, and experts. 15. It has further been alleged by the petitioners before this Court that there has been no prior publication inviting applications from the eligible candidates. To this, learned counsel for the interveners has argued that the publication is not necessary, for which the learned counsel for the interveners has relied upon paragraph 34 of the judgment of this Court passed in WPMS No. 918 of 2017. It has further been said that many of the petitioners have not applied and those who have applied, even in their cases, the applications submitted are not made to the proper authority, therefore, a writ of mandamus cannot be granted as there is no demand or refusal. 16. Since a commercial benefit to be derived out of public resources, this must be based on an equitable policy. It should also be fair and transparent. Therefore, the Chief Wild Life Warden while undertaking the exercise for the grant of a licence beyond 30.09.2017 shall make a publication in at least two newspapers having wide circulation in the area, inviting applications from eligible owners and drivers of the vehicles who have at least three years of satisfactory experience, either as a driver or as an owner of the vehicle. What is the satisfactory experience, the proof of it, must be shown to the Chief Wild Life Warden by the Driver and it will be to the satisfaction of the Chief Wild Life Warden, who would determine as to whether an individual has three years of satisfactory experience or not. It is further made clear that the practice which was continuing in the past for giving an individual more than one permits in his name should be stopped immediately and the permits shall only be given on the principle of "one person, one permit".

3. We heard Mr.A.S. Rawat, learned Senior Counsel along with Mr. (Dr.) Kartikey Hari Gupta, learned counsel for the appellants, Mr. T.A. Khan, learned Senior Counsel on behalf of the writ

petitioners and Mr. Paresh Tripathi, learned Chief Standing Counsel on behalf of the State Government.

4. Learned Senior Counsel for the appellants would in fact make submission in regard to the direction that only one permit can be given to a person. He would submit that the appellants have been operating since 2004, satisfactorily, as per the norms laid down and the condition in the Corbett Park requires certain regulations, and the learned Single Judge was not right.

5. Per contra, Mr. T.A. Khan, learned counsel for the writ petitioners would submit that the direction to give only one permit to a person would be justified. The learned counsel for the State, on the other hand, Mr. Paresh Tripathi would submit in answer to a query by the Court, as to whether it would be feasible in all situations that the direction to give only one permit to a person would be feasible, he would submit that it may not be feasible.

6. After hearing the parties, we are of the view that the learned Single Judge was right in reasoning that while ordinarily a policy would get the deference from the Court, but if the policy is found to be arbitrary and it is violative of Article 14 of the Constitution of India, certainly the court is not powerless. The preamble of the Constitution proclaims that India is to be a socialist country. Various parts of the provisions relating to directive principles also shed light on the definite direction, which the founding father intended that the Nation should take. An Egalitarian society informed by equality between equals, which is in fact the golden thread in Constitution, in particular Article 14 of the Constitution must be at the forefront of every decision maker's mind. The Authorities coming under the State must, therefore, chip away any existing inequality and try to put in any policy, which prevents perpetuation of monopoly. It is to be remembered that the new form of wealth has ceased to be landed property as it used to be earlier and, today, it consists of the largesse granted by the State in various forms.

7. Coming to the case in hand, it is undoubtedly true, that we are dealing with Corbett National Park, which, as noted by the

learned Single Judge, is a place visited by the persons from all over the country. The learned Single Judge has not deemed it fit to interfere with the policy, except in the manner provided, which we have referred to. The learned Single Judge is right in saying that the direction should be given that one permit shall only be given to a person. This, however, in our view should not be without exceptions. We also agree that ordinarily, it should be so. Every effort should be made to see that the largess is distributed equitably, but we do contemplate that there can be situations, where departure from this Rule may be inevitable and absolutely necessary. Take for instance, pursuant to the paper publication ordered by the learned Single Judge, which we are not interfering with, the number of applicants are not as per the requirements. Then, it may become necessary for the Authorities to give more than one permit. Equally, even though there may be number of persons, but they may not satisfy the norms laid down.

8. In such circumstances, since the area has to be serviced by persons having permit, it may become necessary to grant more than one permit. But barring these two conditions, we reiterate that only one permit should be given to a person. In other words, we only modify the order of the learned Single Judge to the extent as above and direct that on other things being equal, the principle of one permit to a person should be conformed to, but if it becomes absolutely impossible, except after jeopardizing the public interest to conform to the direction, then alone the respondents will be free to depart from the Rule of one permit to one person.

9. The Appeal is disposed of as above.

10. In order to ensure further transparency in the matter and to ensure that the orders of this Court are not flouted, all the applications received will be uploaded on the website of the Park. The decisions granting permits will also be uploaded

on the website of the Park as soon as they are made.