

(2015) 09 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil Writ Petition No. 16967 of 2013

Ranthambore Nature Guide Association

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Constitution of India, 1950 — Article 226

Wild Life (Protection) Act, 1972 — Section 28, 54, 64

Citation : (2015) 09 RAJ CK 0039

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Mahesh Gupta, for the Appellant; G.S. Gill, AAG, N.K. Bhatt, Addl. G.C. and Harish Kandpal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J—A challenge has been made to the order/letter dated 19.08.2013 under the hand of the Chief Forest Conservator and Chief Forest Wildlife Conservator, Jaipur to the Forest Conservator, Ranthambhore Tiger Project, Sawai Madhopur relating to the induction of additional nature guides after due training in the Ranthambhore Tiger Project Area, Sawai Madhopur.

2. The case of the aggrieved petitioner-Association is that its 103 members are already working as nature guides in Ranthambhore National Park/Sanctuary, Ranthambhore Tiger Reserve, Sawai Madhopur (hereinafter "the Sanctuary"). Under Section 54 of the Wild Life (Protection) Act, 1972 (hereinafter "the Act of 1972"), permits for entering the Sanctuary are issued on the terms and conditions prescribed. Vehicles are also registered for entry in the Sanctuary. During the off season 80 such registered vehicles with tourists are allowed entry each day and during the tourist season 110 vehicles. Each vehicle carries a nature guide on the basis of a roster system.

3. The Chief Conservator of Forest and Chief Wild Life Warden issued an order

dated 24.06.2011 whereby certain guidelines were set out for allowing entry into the Sanctuary. It has been submitted that Clause 4.3.4 of the order dated 24.06.2011 inter alia provides that each year the requirement of nature guides will be evaluated by the licencing authority i.e. the Deputy Conservator of Forest, Ranthambhore Tiger Reserve, Sawai Madhopur three months prior to the commencement of the tourist season and information in regard thereto affixed on the notice board of the office of the licencing authority. Counsel submitted that in breach of Clause 4.3.4 of the order dated 24.06.2011, the respondents are determined, as apparent from the impugned order dated 19.08.2013, to allow influx of ill-qualified nature guides into the Sanctuary. It has been submitted that tourist guides as the private respondents are, without proper training as a nature guide ought not to be inducted in the Sanctuary and overcrowd it. It has been further submitted that optimum requisite number of the nature guides are presently available with work on an average only of 10 to 15 days each month and in the event additional nature guides were to be allowed entry into Sanctuary, the members of the petitioner-Association would stand deprived of their livelihood. In the circumstances, the decision reflected in the impugned order dated 19.08.2013 is contrary to the order dated 24.06.2011 and ultra vires the provisions of the Act of 1972 whereunder the Chief Wild Life Warden alone is empowered to determine the number of nature guides required in the Sanctuary and the terms and conditions of the issue of entry permits into the Sanctuary.

4. The case set up by the petitioner-Association has been opposed by the State Government. So too by the private respondents, trained nature guides seeking licence as nature guides in the Sanctuary. The learned AAG has pointed out that in the circumstances a decision was taken at the level of the Chief Secretary in a meeting of 17.12.2013 that even though 19 tourist guides who had been trained as nature guides would be entitled to grant of licence in that capacity in the Sanctuary/Ranthambhore Tiger Project Area, for a period of three year following no additional nature guides would be inducted. The AAG submitted that the State Government is conscious both of preventing overcrowding in the Sanctuary/Ranthambhore Tiger Project Area as also ensuring that potential over supply of nature guides does not render the job totally unviable. It has been submitted that for one, the petitioner-Association has no locus standi to challenge the order dated 19.08.2013 as they already ensconced as nature guides in the Sanctuary are commercial competitors of private respondents and seek to obstruct their entry as nature guides only with the intent to monopolise such work in the Sanctuary. It has been further submitted that this Court should not interfere with the policy decision of the State Government to allow guides registered with the Tourist Department, when trained as nature guides, to seek licence as nature guides in the Sanctuary. The policy decision is neither arbitrary nor unreasonable nor in violation of any fundamental/legal right of the members of the petitioner-Association. It has been further pointed out that there are about 105 licenced nature guides in Ranthambhore Tiger Project of which about 82 to 98 (depending

on different counts) are active. There is thus a necessity for induction of additional nature guides, duly trained, in the Sanctuary and the Ranthambhore Tiger Project Area as even while during off season about 80 vehicles each with a nature guide are allowed every day into the Sanctuary, during the tourist season 110 vehicles each day are allowed entry into the Sanctuary/Ranthambhore Tiger Project Area. That requires a minimum of 110 nature guides, with some to spare for unplanned yet inevitable absentees, to ensure availability to tourists.

5. It has been submitted that under the provisions of Rajasthan Tourism Trade (Facilitation and Regulation) Act, 2010, a decision was taken by the State Government on 06.12.2013 that the Forest Department would initiate training of 19 guides of Sawai Madhopur selected by the Tourism Department and they would be thereafter engaged as nature guides. Following the aforesaid decision dated 06.12.2013, the private respondents were admitted to the training programme, successfully completed it between 10.01.2014 and 30.01.2014 and are entitled to be inducted as nature guides in the Sanctuary/Ranthambhore Tiger Project since they fulfill the requisite eligibility conditions as provided for in the guidelines of 24.06.2011. No restraint order against such engagement in that capacity can be sought by the petitioner-Association. It has been further pointed out that three members of the petitioner-Association one Prince Rahul, one Mahendra Mali and one Sabir Ali filed a suit for permanent injunction before the Civil Judge (Jr. Div.), Sawai Madhopur seeking a permanent injunction against the official respondents in respect of issue of new licences for nature guides. An accompanying application under Order 39 Rule 1 & 2 CPC was dismissed on 07.09.2013 as was the appeal there against by the District Judge, Sawai Madhopur on 04.10.2013. It has been submitted that the petitioner-Association if aggrieved instead of having approached this Court ought to have taken its remedy in the Civil Suit filed by the three members before the Civil Judge (Jr. Div.), Sawai Madhopur, lest in such matters, the members of Associations be allowed to pursue parallel remedies with some members approaching Civil Courts and the others similarly placed or that Association invoking the jurisdiction of this Court under Article 226 of the Constitution of India. Remedy of a civil suit in such circumstances should be treated as obvious alternative remedy and the petitioners related thereto. It has been submitted that number of nature guides in the Sanctuary/Ranthambhore Tiger Project is a matter for the State Government and the Chief Wild Life Warden can only determine the conditions of the permit/permission to enter such Sanctuary/Ranthambhore Tiger Project and cannot restrict the number in regard thereto. The State Government as a stakeholder in the Sanctuary is not denuded of all authority to determine their upkeep and best utilization within the ambit of the Wild Life (Protection) Act, 1972. It was also submitted that no provision of Act of 1972 or any other law has been pointed out by the petitioner-Association which confers power of determining the number of nature guides on the Chief Wild Life Warden, nor in fact the guidelines of 24.06.2011 so do. Besides, that 34 members of the petitioner-Association themselves were engaged as guides with the Rajasthan

Tourism Department and thereafter having obtained the requisite training were with the intervention of the Court engaged as nature guides in the Sanctuary and cannot now set up a case of other similarly situate such as the private respondents being denied the same benefit not so much for the vindication of their any legal or fundamental right but only for the protection of their vested interest in a misdirected proceedings unfairly invoking the equitable and extraordinary jurisdiction of this Court.

6. Heard. Considered.

7. A writ petition under Article 226 of the Constitution of India, it is trite, is maintainable for reason of contravention of legal and/or fundamental right or failure of a statutory authority to perform its statutory obligation. From the averments in the writ petition and for that matter from the submissions made in Court, this Court has been unable to decipher any breach of legal or fundamental right of the members of the petitioner-Association or failure of the respondents to discharge any of their statutory duty qua the petitioners. It has been held by the Hon'ble Supreme Court in *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, AIR 1971 SC 246 : (1970) 1 SCC 575 : (1970) 3 SCR 846 that a writ petition at the instance of the commercial competitor seeking to guard his territory and keep out others therefrom is not maintainable. From the facts on record, it is quite apparent that the members of the petitioner-Association working as nature guides in the Sanctuary/Ranthambhore Tiger Project Area are seeking to prevent the induction of additional nature guides thereto. The members of the petitioner-Association therefore, to my mind, do not have any locus standi to agitate this writ petition, whatsoever its merit.

8. Aside of the aforesaid, even on merit, I am of the considered view that the number of licences for nature guides in the Sanctuary/National Park/Tiger Project is a matter of policy, no doubt required to be fair and rooted in hard facts to negate a challenge on the ground of arbitrariness and/or discrimination. The order dated 24.06.2011 passed by the Chief Forest Conservator and Chief Wild Life Conservator, Jaipur sets out the manner with regard to additional nature guides to be allowed entry to the Sanctuary. But under Section 28 of the Act of 1972, the Chief Wild Life Warden only has the power to grant permit inter alia to enter a Sanctuary. Clause 4.3.4 of the order dated 24.06.2011 issued by the Chief Wild Life Warden provides that the number of nature guides required ought to be determined three months prior to the commencement of tourist season by the licencing authority. The time frame of three months however appears to be a mere gloss, unrelated to the power under Section 28 of the Act of 1972 and can at best be construed, not even as directory but, as merely advisory. On the other hand, Section 64 of the Act of 1972 delineates of the power of State Government to make rules. Clause (d) of Sub-rule (2) of Rule 64 empowers the State Government to make rules inter alia pertaining to the conditions subject to which any licence or permit may be granted under the Act of 1972. The power to

determine conditions subject to which permission and permits may be granted under the Act of 1972 is thus that of the State Government. Even though Rules for the purpose have not been framed by the State Government, yet it is well settled that in their absence, the executive powers of the State Government being co-terminus, in respect of such matters, can be exercised. And from the reply to the writ petition, it is evident that a dispute arising with regard to induction of additional number of nature guides to the Sanctuary, a Committee headed by the Chief Secretary, Government of Rajasthan as the administrative head, in the meeting of 17.12.2013, decided after taking the view of both the Tourism and Forest Department that 19 guides selected by the Tourism Department, trained as nature guides, be considered for being licenced as such. Subsequently there would be a freeze for three years on the induction of additional nature guides not only for the Sanctuary/Ranthambhore Tiger Project Area, Sawai Madhopur but also for other wildlife Sanctuaries. The policy decision on the facts of the case cannot be held to be either arbitrary, unreasonable, capricious, discriminatory or vitiated by mala fides. In fact, it has not been so argued.

9. There are other issues agitated, such as of the rule against parallel remedies, alternative remedy in the facts of the case and the inequity of 34 members of the petitioner-Association similarly placed as private respondents yet trying to keep them out from working as nature guides. However, as I am in any event disinclined to allow the writ petition for reasons already recorded, address thereto would be an exercise in redundancy.

10. In view of overall facts of the case, I find no force in the petition.

11. The writ petition stands accordingly dismissed.

12. Stay application also dismissed.