

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: August 24, 2009

+ **LPA NO.330/2009**

RAJESH SHARMA & ORS. Appellants
Through: Mr.Tarique Siddiqui,
Advocate .

Versus

UNION OF INDIA & ORS. Respondents
Through: Ms.Shilpa Singh, Advocate
for respondent nos.1 & 2.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE AJIT BHARIHOKE

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not ? | No |
| 3. | Whether the judgment should be reported in Digest ? | No |

SANJAY KISHAN KAUL, J.(ORAL)

CM No.9785/2009 in LPA No.330/2009

Heard.

Delay of 51 days in filing the appeal is condoned.

The application is allowed.

LPA No.330/2009

1. Admit.
2. Learned counsel for the respondents accepts notice.

3. The appellants had been working as Tourist Guides. The respondents sought to regulate and certify as to what persons would be eligible to work as Tourist Guides by introducing an examination. The appellants wanted a licence to continue to work as Tourist Guides and filed a writ petition seeking a direction to the Union of India to conduct the examination/test every year for grant of licence to work as Tourist Guides and that the appellants amongst others could continue to work in that capacity till such tests were held since no tests had been held since 1996. This gave rise to the judgment of the learned Single Judge in **Anuj Johri Vs. Union of India & Ors.**, 118 (2005) DLT 418.

4. The grievance of the petitioners in Anuj Johri's case (supra) had been noticed in Para 24 and 25 of the said judgment which are reproduced herein as under:-

"24. The main grievance of the petitioners is that they were endowed with necessary skills and experience to work as Regional Tourist Guides in the Northern Region, but were unable to do so, since the Department of Tourism, Government of India, failed to hold the examination. This is an admitted position that the Government of India failed to hold examination after 1996, thereby preventing eligible persons from obtaining a licence and pursuing a profession of their choice. This was more so, particularly, when issuance of licence did not amount to granting or guaranting employment, but was merely a licence to practice profession.

25. Another grievance of the petitioners is that respondent had been issuing licences to retired personnel of the Department and at the same time were not holding and conducting examination to grant licences to aspirants from general public. The age restriction for entry, compulsory exit from profession were unwarranted and unreasonably restrictive and in violation of fundamental rights of the citizens."

5. The respondents made a concession by agreeing to exclude the provision of granting licences to retired personnel of Tourist Department as recorded in Para 26 of that judgment and thus that grievance stood redressed. The Court issued certain directions keeping in mind that the Government had not held any examination for grant of licences since 1996 and there was a sudden change in eligibility conditions by increasing the minimum educational qualifications. In the absence of examination, such petitioners were affected as they had not been able to take any examination from 1996 to 2003 till the eligibility criteria changed and had also not acquired any higher qualifications as they had not been prescribed. A one-time concession was thus made as recorded in Para 30 of the judgment in Anuj Johri's case (supra) in the following terms:-

“However, considering that the Government of India did not hold examination for the grant of licence, since 1996 and there is a sudden change in eligibility, which would affect all those who did not enrol or acquire the higher qualifications as they were eligible under the criteria prevalent in 1996, such persons would otherwise suffer for no fault of theirs. In these circumstances, it commends to the Court that Government as a one time exemption to permit those, who were eligible, as per the 1996 criteria to take part in Stage II examination/screening test and further examination. In case, such persons, qualify for the grant of licence, the same may be granted, subject to condition of their obtaining the requisite educational qualifications as per the eligibility criteria in 4-5 years.”

6. In so far as revision in conditions of eligibility and qualifications for the regional level Tourist Guides is concerned, the following observations were made:-

“Government has the power to revise eligibility criteria for grant of licence to Tourist Guides including enhancing educational qualifications to strive for better quality of Guides. As no examination held since 1996 and the

minimum requirement of being a graduate introduced by 2003 Guidelines, it prejudices all those who did not enroll or acquire higher qualification because of being eligible under 1996 criteria of 10 + 2 with two years foreign language course. Such persons in the absence of tests from 1996 were not granted licence and now find themselves ineligible under 2003 Guidelines. UOI is directed as a one time exemption to permit those Guides eligible under 1996 criteria and carrying on profession to appear in Stage II examination/screening test. In case, they qualify in screening test and final examination, licence be granted subject to their obtaining requisite educational qualification as per eligibility criteria in 4-5 years."

7. In pursuance to the aforesaid directions, an examination was held in December 2005. However, dispute once again arose in a batch of petitions, **Ashok Yadav & Ors. Vs. Union of India & Ors.**, which were disposed of by a common order on 9.1.2007.

It would be useful to reproduce the said order as under:-

"The petitioners are tourist guides, who were aggrieved by the process of recruitment in pursuance to an exam held. After hearing learned counsel for the parties and in view of the fair stand of both the counsels, it has been possible to arrive at an agreed solution:

- i. It is agreed that all the candidates who appeared in the examination and scored 40 per cent or above marks would be eligible to be called for interview.
- ii. For the examination in question, in view of there being no separate criteria prescribed for minimum marks, benchmark of a minimum of 40 per cent of the aggregate marks for written test and interview shall continue to operate making it clear that it will be open to the respondent to prescribe a higher percentage of aggregate marks for future examinations.
- iii. The number of candidates already selected is 190. It is stated by the respondent that now a total recruitment of 300 candidates would be made and thus 110 more candidates would be recruited on merit on the basis of aggregate marks.
- iv. The candidates already selected can be issued the license and all such candidates who are yet to be called for the interview but hold the minimum qualifying marks of 40 per cent would be permitted to operate the business till the final result is declared for the remaining 110 candidates.
- v. Since in the process of recruiting 190 people, 311

candidates were called for interview, persons not aggregating 50 per cent were not selected. The present order will ensure for the benefit of all those candidates who did not have an aggregate of 50 per cent but are covered by the other parameters as laid down in this order.

vi. In view of the aforesaid position, the respondents may examine and it will be open to the respondents to increase the total number of candidates to be recruited over 300.

vii. Another exam for the year 2007 shall be held in February/March, 2007 to enable the candidates who have not been successful to get another chance for clearing the same.

The petitions and the applications stand disposed of.

Dasti to learned counsel for the parties.”

(..... emphasis supplied)

8. The third said controversy arose out of the directions passed in sub para (vii) above.

9. It is the contention of the learned counsel for the appellants that the aforesaid observations required another examination to be held in February/March 2007 for the unsuccessful candidates whereby the benchmark would remain of 40% minimum marks as against the increased benchmark of 50%. On the other hand, the contention of the learned counsel for the respondents is that the said observations were made in the context of the apprehension of the petitioners therein that some condition may be imposed to render them ineligible in future on account of their already having availed of certain number of opportunities to appear in the test or on account of any age bar.

10. The writ petition filed by the appellants has been dismissed in terms of the impugned judgment dated 1.4.2009.

11. The present Letters Patent Appeal was taken up by the Bench of Hon'ble the Chief Justice on 17.8.2009 and the following order was passed:-

“ The main question involved in this appeal is about the interpretation of the order dated 9.1.2007 passed by Sanjay Kishan Kaul, J. in WP(C) No. 11378- 425/2006 and connected cases and the issue is whether the order intended to give one more chance to those who are working as Tourist Guides for quite a long time but could not even get 40% of the marks, as required. The relevant portion of the order dated 9.1.2007 reads as follows:

“ Another exam for the year 2007 shall be held in February/March, 2007 to enable the candidates who have not been successful to get another chance for clearing the same.”

The argument of the appellant is that the order of Sanjay Kishan Kaul, J. clearly directed that the supplementary examination will be held in February/March, 2007 to enable the candidates who have not been successful to get another chance for clearing the same and the earlier portion of the order which permits the respondents to prescribe a higher percentage is not applicable to this one time exercise which was contemplated by Clause (vii) of the order.

Our attention was also drawn to the observations made by a Division Bench of the Allahabad High Court in Civil Writ Petition No. 64899/2006. In our view, some serious issues are raised in this matter which are likely to affect the livelihood of the appellants. Having regard to the fact that the question is one of interpretation of the order passed by Sanjay Kishan Kaul, J., we deem it appropriate to place this matter before the bench presided over by Sanjay Kishan Kaul, J.

Let this appeal be placed before DB-7 headed by Sanjay Kishan Kaul, J. on 24.08.2009.”

12. It is in view of the aforesaid, that this matter has been placed before our Bench.

13. We have heard learned counsel for the parties in respect of the question which is the sole question urged before us, as framed aforesaid.

14. In our considered view, there is no doubt that one time concession was made in pursuance to the judgment in Anuj

Johri's(supra) so that the requirement of higher qualification or higher benchmark would not come in the way of these Guides getting a licence as they were eligible to appear in the examination as per the earlier norms from 1996 to 2003 when such norms were changed. This is apparent from the observations reproduced herein above. The order dated 9.1.2007 thereafter passed only emphasised that the persons would be called for interview with the benchmark of 40% instead of 50%, the examination having been held in pursuance to Anuj Johri's case (supra). In fact Clause (ii) of the said order makes it clear that it will be open to the respondents to prescribe higher percentage of aggregate marks in the future examination. The order does not make a provision for any so called supplementary examination for the persons who failed in the examination of 2005. If the contention of the learned counsel for the appellants was to be accepted, then there would be two different benchmarks – one for such persons who failed to clear 2005 examination and the other for persons who appeared in the examination for the first time. Such a position would be wholly unsustainable in law.

15. The context in which the observation was made in clause (vii) aforesaid is clear. No doubt, at that stage of time, there was no impediment of an age bar or the number of attempts a person could take but the apprehensions of the petitioners therein was that as the minimum qualifications and percentage of marks in the written test for qualifying interview had been raised, in future

there may be an impediment created by introduction of some norm which may come in the way of the petitioners in those petitions. It was thus observed that another examination would be held in the year 2007 in February/March which would enable the candidates, who had not been successful, to get another chance for clearing the same but that would have to be as per the said norms. This is also clear from the observations made in Clause (ii) of the said order that for the future examinations it would be open to the respondents to prescribe a higher percentage of aggregate marks in the written test.

16. We cannot lose sight of the fact that the object of the exercise undertaken by the respondents is to improve the quality of the Guides. The delay in holding the examination had prejudiced a large number of aspirants. It is in this context, balancing the equity, an endeavour was made that not only should examinations be held in the future but persons who had not had the opportunity to take the examination and time had passed should be judged on an earlier benchmark and not on the amended benchmark. Such an opportunity has undoubtedly been given to the appellants but they failed to make the minimum benchmark in 2005 examination of 40%. They have got another opportunity to take the examination in 2007 but that would have to be as per the fresh benchmark of minimum qualifying marks of 50%. We may also note that it is not disputed that all persons who had more than 40% in the written test in 2005 and were

called for interview were issued licences and thus no person was left out from this category.

17. The appellants cannot make any grievance in view of the aforesaid facts and circumstances and that being the only issue urged before us in the appeal, we find no reason to interfere with the impugned order.

18. Dismissed.

CM No.9784/2009

No further orders in the application is required since the appeal itself has been dismissed.

Dismissed.

SANJAY KISHAN KAUL, J.

AUGUST 24, 2009
gm

AJIT BHARIHOKE, J.