

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C).No. 8321 of 2013 (M)

PETITIONER(S) :

1. **GLEN ROY NASH**
AGED 46, S/O.J.B.NASH, ROY'S DEN, SASTHRI ROAD
VADUTHALA, KOCHI-682 023.
2. **PX.EUGINE GEVARGHESE**
AGED 43, S/O.P.R.XAVIER, C.C.NO.II/1433, PATTALAM ROAD
KOCHI-682 001.
3. **THOMSON D'CRUZ**
AGED 41, S/O.VARGHESE D'CRUZ,
PERUMPILLY HOUSE, C.C.XI/623 A2
MACKENZI GARDEN, PATTALAM,
KOCHI-682 001.

BY ADV. SRI.M.A.ASIF

RESPONDENT(S) :

1. **UNION OF INDIA**
REP. BY SECRETARY,
MINISTRY OF TOURISM,
NIRMAN BHAWAN, NEW DELHI-110 001.
2. **STATE OF KERALA**
REP. BY PRINCIPAL SECRETARY, DEPT. OF TOURISM
GOVERNMENT OF KERALA, GOVT. SECRETARIAT
THIRUVANANTHAPURAM- 695 001.
3. **DIRECTOR**
DEPT. OF TOURISM,
GOVERNMENT OF KERALA, PARK VIEW
THIRUVANANTHAPURAM-695 033.

4. DIRECTOR
KERALA INSTITUTE OF TOURISM AND TRAVEL STUDIES (KITTS)
RESIDENCY COMPOUND, THYCADU
THIRUVANANTHAPURAM-695014.
5. SUPERINTENDING ARCHAEOLOGIST
ARCHAEOLOGICAL SURVEY OF INDIA, THRISSUR CIRCLE
THOPPINMOOLA, ARANATTUKARA, THRISSUR-680618.
6. ASST. SUPERINTENDING ARCHAEOLOGIST
ARCHAEOLOGY MUSEUM, MATTANCHERRY PALACE,
KOCHI-682 002.

*ADDL. R7 TO R13 IMPEADED

- *ADDL.R7. GOPALAKRISHNAN
AGED 71 YEARS, S/O.VELAYUDAHN KOCHUPARAMBIL
(PRESIDENT, GOVERNMENT OF INDIA
APPROVED TOURIST GUIDES ASSOCIATION OF KERALA
DOOR NO.7/254, ABU SALEM ROAD, JEW TOWN
MATTANCHERRY, KOCHI -682 002)
RESIDING AT WEST-END ENCLAVE
NGO FLAT ROAD, THRIKKAKARA, KOCHI -682 021.
- *ADDL.R8. S.GOPALAKRISHNA NAIDU
AGED 60 YEARS, S/O.SANKARAYYA NAIDU
GNC NATIONAL ENCLAVE, 16/SIT B, P J XAVIER ROAD
W. KARUVELIPADY, KOCHI -682 005.
- *ADDL.R9. ROBERT JAMES
AGED 43 YEARS, S/O.CHACO PAILY, MADATHINAL HOUSE
KARIMANNOOR P.O., PALLIKAMURY, THODUPUZHA -685 581.
- *ADDL.R10. KOSHY M. JOHN
AGED 39 YEARS, S/O.M.C.JOHN, MULLASSERIL
OZHUKUPARAKAL P.O., AYOOR, KOLLAM - 691 533.
- *ADDL.R11. ANVAR SADIC T.K.,
AGED 34 YEARS, S/O.T.P.KHADER, THADATHIKUNNEL HOUSE
PALLARIMANGALAM P.O., KOTHAMANGALAM - 686 675.
- *ADDL.R12. SUSAN J. MANCHA
AGED 44 YEARS, D/O.JOHN THOMAS, L-I-G,
387, GANDHI NAGAR, KOCHI -682 020.

*ADDL.R13. GEORGE V.J.,
AGED 54 YEARS, S/O.V.T.JOSEPH, VADAKKEL
CHEMMALAMATTOM P.O., KOTTAYAM DISTRICT
PIN CODE - 686 508.

*ADDL. R7 TO R13 ARE IMPEADED AS PER ORDER DATED 12/04/2013 IN
IA 5530/2013.

R1 BY ADVS. SRI. N.NAGARESH, ASGI
ADV. SRI.T.SANJAY, CGC
R2 TO R4 BY SPL.GOV'T. PLEADER SRI. A.K. JOHN
R5 & R6 BY ADV. SRI.DINESH R.SHENOY, SC
ADDL.R7 TO R13 BY ADVS. SRI.S.M.PRASANTH
SMT.SMITHA GEORGE
SRI.T.C.SURESH MENON
SRI.P.S.APPU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24-07-2015,
ALONG WITH WPC. 8525/2013 & CONNECTED CASES, THE COURT
ON 05-08-2015 DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT-P1:** TRUE COPY OF THE G.O.(MS) NO.55/09/TSM DATED 28.2.2009.
- EXHIBIT-P2:** TRUE COPY OF THE PUBLIC NOTICE ISSUED BY THE 4TH RESPONDENT INVITING APPLICATION FOR STATE LEVEL AND LOCAL LEVEL GUIDE PROGRAMME 2009.
- EXHIBIT-P3:** TRUE COPY OF THE 1ST PETITIONER'S FINAL YEAR DEGREE MARK LIST.
- EXHIBIT-P3(a):** TRUE COPY OF THE 2ND PETITIONER'S FINAL YEAR DEGREE MARK LIST.
- EXHIBIT-P3(b):** TRUE COPY OF THE 3RD PETITIONER'S FINAL YEAR DEGREE MARK LIST.
- EXHIBIT-P4:** TRUE COPY OF THE 1ST PETITIONER'S LOCAL LEVEL TOURIST GUIDE LICENSE DATED 30.04.10.
- EXHIBIT-P4(a):** TRUE COPY OF THE 2ND PETITIONER'S LOCAL LEVEL TOURIST GUIDE LICENSE DATED 30.04.10.
- EXHIBIT-P4(b):** TRUE COPY OF THE 3RD PETITIONER'S LOCAL LEVEL TOURIST GUIDE LICENSE DATED 30.04.10.
- EXHIBIT-P5:** TRUE COPY OF COMMON JUDGMENT OF THE HON'BLE HIGH COURT OF KERALA DATED 21.10.2010 IN W.P.(C) NOS.25044/2009 AND 34416/2009.
- EXHIBIT-P6:** TRUE COPY OF THE GUIDELINES NO.7-TT.II (07)/2000-GD-VOL.II DATED 22.09.2011 FOR SELECTION AND GRANT OF GUIDE LICENSE TO REGIONAL LEVEL TOURIST GUIDES.
- EXHIBIT-P7:** TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONERS AND OTHER SIMILAR GUIDES BEFORE THE 3RD RESPONDENT ON 10.01.2012.
- EXHIBIT-P8:** TRUE COPY OF THE LETTER NO.P7(C5)-10109/2009 DATED 17.02.2012 OF THE 3RD RESPONDENT.
- EXHIBIT-P9:** TRUE COPY OF THE REPRESENTATION FILED BY THE 1ST PETITIONER BEFORE THE 5TH RESPONDENT ON 19.09.2012.
- EXHIBIT-P9(a):** TRUE COPY OF THE REPRESENTATION FILED BY THE 2ND PETITIONER BEFORE THE 5TH RESPONDENT ON 19.09.2012.

(Contd...)

- EXHIBIT-P9(b): TRUE COPY OF THE REPRESENTATION FILED BY THE 3RD PETITIONER BEFORE THE 5TH RESPONDENT ON 19.09.2012.
- EXHIBIT-P10: TRUE COPY OF THE CERTIFICATE DATED 08.10.2012 ISSUED BY THE 5TH RESPONDENT TO THE 1ST PETITIONER.
- EXHIBIT-P10(a): TRUE COPY OF THE CERTIFICATE DATED 08.10.2012 ISSUED BY THE 5TH RESPONDENT TO THE 2ND PETITIONER.
- EXHIBIT-P10(b): TRUE COPY OF THE CERTIFICATE DATED 08.10.2012 ISSUED BY THE 5TH RESPONDENT TO THE 3RD PETITIONER.

RESPONDENT(S)' EXHIBITS :

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- EXT. R5(a) PHOTOCOPY OF GAZETTE NOTIFICATION VIDE S.O. 73(E) DATED 21.1.2003 BY THE DIRECTOR GENERAL, ARCHAEOLOGICAL SURVEY OF INDIA, NEW DELHI.
- EXT. R5(b) PHOTOCOPY OF THE LETTER NO. 29/09/2002-M DATED 4.12.2003 ISSUED BY THE DIRECTOR (MONUMENTS), ARCHAEOLOGICAL SURVEY OF INDIA, NEW DELHI.
- EXT. R5(c) PHOTOCOPY OF GAZETTE NOTIFICATION DATED 20.5.2010 G.S.R. 429 (E).
- EXT. R5(d) PHOTOCOPY OF LETTER NO. D.O.NO.6-TT.1 (08)/2010 DATED 3.8.2010 OF ADDITIONAL DIRECTOR GENERAL, GOVERNMENT OF INDIA, MINISTRY OF TOURISM.
- EXT. R5(e) PHOTOCOPY OF LETTER D.O.NO.29/09/2010 DATED 17.8.2010 OF ADDITIONAL DIRECTOR GENERAL, ARCHAEOLOGICAL SURVEY OF INDIA, NEW DELHI.
- EXT. R5(f) PHOTOCOPY OF GUIDELINES NO. 7-TT.II (07)/2000-GD-VOL.II DATED 22.09.2011 ISSUED BY MINISTRY OF TOURISM, GOVERNMENT OF INDIA.

//TRUE COPY//

P.S. TO JUDGE

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K. VINOD CHANDRAN, J

W.P(C) Nos. 8321 of 2013, 8525 of 2013, 8565 of 2013,
8621 of 2013, 8872 of 2013, 9305 of 2013,
9407 of 2013, 13760 of 2013, 26462 of 2013,
29063 of 2013 & 29188 of 2013

Dated this the 05th day of August, 2015

J U D G M E N T

The writ petitions though raising conflicting contentions projects the identical issue of Tourist Guides entitled to guide tourists in the Dutch Palace at Mattanchery and St. Francis Church, Fort Kochi which are monuments covered under the Ancient Monuments and Archaeological Sites and Remains Act 1958 and the Rules 1959, (referred to as the Act and the Rules) . There is a three tire licensing system being the 'Regional Level' guide, the 'State Level' Guide and the 'Local Level' Guide. With the country divided into four regions; the guides at the Regional Level are issued licenses by the Ministry of Tourism Government of India. The State and Local Level Guides are issued license by the Director Tourism Department, Government of

Kerala.

2. The qualification of the two sets of guides differ insofar as the Regional Level guides being obliged to possess a graduation, while a Local Level guide has as an essential qualification, Matriculation.. The Local Level guides in the various writ petitions challenge Ext.P11 (produced in W.P(c) No.8565/2013) which restricts entry into the ancient monuments specified herein above; to only guides licenced by the Tourism Department, Government Of India. They also seek a declaration that the Local Level guides, also being licenced by the Tourism Department of Kerala, under the guidelines issued by the Ministry of Tourism, Government of India are entitled to enter such ancient monuments and guide the tourists within the ancient monuments. The two writ petitions filed by the Regional Level guides seek exclusive right to carry on such activity in ancient monuments covered under the Act and Rules.

3. The Local Level guides are persons who had undertaken the training conducted by the Kerala Institute of Travel and Tourism studies (KITTS). They have also been issued with licences issued by the Director, Department of Tourism Kerala. The Department of Tourism of the State has issued such licenses based on the guidelines applicable to the Regional Level guides approved by the Ministry of Tourism, Government of India. The Local Level guides also rely on the certificate issued under the Right to Information Act, by the officers under the Act and Rules who acknowledged their eligibility to carry on such activities within the protected monuments also.

4. The controversy arose insofar as new guidelines of 2011 issued by the Ministry of Tourism, Government of India. As per the earlier guidelines of 2003, a copy of which was handed over, across the Bar; the provision for State Level Guides and Local Level Guides are as under :

1(a)(2)(b):“State Level Guides: to be trained by the State Governments. However, in specific cases the Department of Tourism Government of India could organise these courses wherever the State Governments 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.

1(a)(2)(c):Local Guides: To be trained under the control of the State Governments/Local

Administration. The respective State Governments at their discretion, will decide their training programme, if any.:

5. With the introduction of the 2011 guidelines, produced as Ext.R3(f) in W.P(C)No.8621/2013, the eligibility of State Level Guides were as under:

3.1.5:“Eligibility of State Level Guides: The State Level guides under guidelines approved by any of the States/Union Territory Administrations would also be eligible to apply for licenses to work as Regional Level Guides provided they qualify (a) the common selection process based on merit as detailed above for the selection of various categories of RLGs and (b) the examination and viva voce after the training.”

6. The 2011 guidelines does not recognise the Local

Level guides and prescribe an additional requirement for the State Level Guides to acquire a licence by being put to the same rigour of qualification as the Regional Level Guides.

7. The petitioners contend that in fact, the issue of the new guidelines and the restriction brought in, on account of clause 3.1.5 was considered by the Hon'ble Supreme Court in Civil appeal No.4180/2015 and declared so:

“We, thus, find perfect understanding of the status of the State Level Guides by the Ministry of Tourism, Government of India, who are governed by the 2003 Guidelines and who were issued with the licences under the said Guidelines. When we consider the said stand made on behalf of the Ministry of Tourism with particular reference to Paragraph 3.1.5 of 2011 Guidelines, what emerges is that while under

Paragraph 3.1.5 the issuance of fresh licences as State Level Guides would depend upon the standards to be applied for issuance of such licences to work as Regional Level Guides, the same cannot be the criteria when it comes to the question of renewal of the licence under the 2003 Guidelines.:

It was also held so:

“Having regard to our above conclusion on the applicability of Paragraph 3.1.5 of the 2011 guidelines vis-a-vis the licences issued based on the guidelines of the year 2003 as well as 2007, we are convinced that the appellants' applications for renewal of their licences which were issued based on the 2003 Guidelines should be considered on its own merits and also

by applying the tests which the Archaeological Survey of India wants to update and furnish by way of comprehensive policy by publishing the same widely and by communicating it to the concerned authorities. It is stated that the appellants have already applied for renewal of their licences. We, therefore, direct respondent Nos.1 to 3 to consider the licences of the appellants for renewal keeping in mind the above observations as well as the prescriptions which are required to be taken into account based on the comprehensive policy to be furnished by the Archaeological Survey of India and pass orders within eight weeks from today.”

8. Hence the understanding of the Department conveyed to the Hon’ble Supreme Court, was that the rigour of

clause 3.1.5 of the 2011 guidelines will have only prospective application, but for the renewal of State Level guides being regulated by certain essential prescriptions to be garnered from the general policy framed by the Archaeological Survey of India.

9. The Regional Level guides would however rely on Rule 8(d) of the Rules which reads as hereunder:-

“hawk or sell any goods or wares or canvass any custom 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 archaeological officer.”

They contend that only on such a licence issued could guides be permitted to enter and carry on their activities within the ancient monuments as covered under the Act and Rules. In fact the

specific contention raised by the Regional Level guides is that there is an addition made to clause (d) of Rule 8 insofar as including “or the additional Director General, Department of Tourism, Ministry of Tourism Government of India to the extent of showing the visitor round”. The same is said to be based on Ext.P1 notification produced at Ext.R2(c) in W.P(C) No.8525/2013.

10. The Local Level guides however, urge that the same cannot have validity since any notification brought under the Act should confirm to clause (4) of Section 38 of the Act which requires that the same should be placed before each house of Parliament while it is in session for a total period of 30 days. It is also to be noticed that the Regional Level Guides have all been issued licences, by the Department of Tourism, Government of India and hence only if such gazette notification has been properly made in accordance with the Act, their licences also survive. The Local Level Guides also have a case that the guidelines issued in

2011 have no sanctity by virtue of the decision of the High Court of Rajasthan in Civil Writ Petition No.5607/2004, Civil Writ Petition No. 8221/2005 and Civil Writ Petition No. 7615/2005 dated 19.09.2008.

11. As it stands now, the challenge by the Local Level guides is against restricting them from entering into the monuments specified above and the Regional Level guides seek for a declaration that they alone are permitted under the Act and Rules. Ext.P11 which is challenged, has referred the matter to the Director General , Archaeological Survey of India, New Delhi for clarification. However, in the meanwhile , the Local Level guides have been restricted from guiding persons inside the Dutch Palace/St.Francis Church.

12. The practice of both the Local Level guides and Regional Level Guides, guiding tourists within the aforesaid ancient monuments, had been continued for long. The same was

also sanctioned by the guidelines of 2003. The understanding of the Department as conveyed to the Hon'ble Supreme Court, on introduction of the guidelines of 2011 was also that clause 3.1.5 of the guidelines of 2011 would only have prospective application. In such circumstances, when clarification is awaited from the Director General, Archaeological Survey of India, it is only proper that both the Regional Level Guides and Local Level Guides are permitted to guide, within these ancient monuments as per the established practice; till a decision or clarification is made by the Director General, Archaeological Survey of India.

13. Writ petitions are hence disposed of without answering the question on merit and leaving such decision to the Director General of Archaeological Survey of India. The two decisions referred to above as also the manner in which licences are issued by the respective Ministries of Tourism of the Union and the State; as also the guidelines issued from time to time shall

be dealt with and the Director General of Archaeological Survey of India shall reduce the same to writing after affording each set of guides an opportunity of hearing.

Writ petitions are disposed of with the directions as above, making it clear that till a decision is arrived at, both the Regional Level and Local Level guides shall be permitted to guide the tourists within the two ancient monuments specified hereinabove.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

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P.A to Judge