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

+ W.P.(C) 11088/2016 and CM Nos. 43347/2016, 10486/2017 & 24167/2017

BRIJESH GUPTA & ORS

..... Petitioners

Through: Ms Anjana Gosain with Ms Rabiya Jhakar, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr Manik Dogra, Advocate with Dr Sanjay Munjal, Director, ASI.
Ms Kamini Jaiswal and Mr Govind Jee, Advocate for R-4.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **17.07.2017**

1. The petitioners have filed the present writ petition, *inter alia*, praying as under:-

"(1) Issue a Writ of Certiorari or any other such direction(s) thereby ordering quashing and setting aside the notice dated 29.09.2016 being arbitrary, discriminatory and restrictive in nature and being in violation of Article 14 and 19 (1)(g) of the Constitution of India;

(2) Issue a Writ of Mandamus cancelling the illegal renewal of licenses being arbitrary, discriminatory and malafide."

2. The petitioners - 97 in number - are aggrieved by the notification dated 29.09.2016 issued by the Archaeological Survey of India (hereafter 'ASI') whereby ASI has granted permission for renewal of licences of those photographers who were working prior to the issuance of notification dated

20.01.2012. Consequently, the petitioners who claim to be earning their livelihood by working as photographers at the Taj Mahal, have been precluded from carrying on such work. The petitioner's claim that the decision to permit only those persons who held a licence more than four years ago is arbitrary, unreasonable and denies equal opportunity to the petitioners; thus is violative of Article 14 and 19(1)(g) of the Constitution of India

3. Briefly stated, prior to 20.01.2012 Rule 8(d) of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959 provided for prohibition of certain acts within protected monuments. No person could take photographs for monetary consideration, except under, the authority of, or under, and in accordance with a licence granted by an archaeological officer.

4. The said Rule 8(d) reads as under:-

"Hawk or sell any goods or wares or canvas any custom for such goods or wares or display any advertisement in any form or show a visitor round or take a photograph for monetary consideration, except under, the authority of, or under and in accordance with the conditions of, a licence granted by an Archaeological Officer."

5. In terms of the aforesaid rule, certain photographers and shop owners who were operating nearby the protected monuments were granted licences for carrying out commercial photography for visitors within centrally protected monuments and world heritage sites in Uttar Pradesh.

6. The aforesaid policy underwent a change on 20.01.2012 and

Rule 8(d) was amended and the "or take his photographs" was omitted.

7. With effect from 18.01.2012, persons carrying out the profession of commercial photography did not require any licence to carry on their profession within the precincts of a protected monument including the Taj Mahal. Such photographers could enter precincts of the protected monuments by simply paying the entry fee fixed for entering such monuments.

8. According to the respondents, over a period of time, several complaints were received mainly of harassments of visitors to such centrally protected monuments including the Taj Mahal. In view of such complaints, the respondents decided to once again curtail the number of photographers within monuments. Rule 8(d) of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959 was once again amended on 26.09.2016 to read as under:-

"(d) 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 or take his photographs for monetary consideration except under the authority of, or under, and in accordance with the conditions of, a license granted by an archaeological officer, or."

9. Although, the aforesaid Rule was amended and now licences were once again required to practice the profession of photography within the precincts of the monuments, the Respondents did not have any policy for issuance of such licences. Pending the framing of such policy, the respondents decided to renew the licences of those photographers who were

licensed prior to 20.01.2012 to practice photography within the confines monument on payment of certain license fees.

10. In terms of the aforesaid decision, the photographers who were licensed earlier were issued renewed licences on payment of the requisite fees. The case set up by the petitioners is that by virtue of the said interim policy, they are rendered jobless as they also have no opportunity to apply for the licences.

11. Ms Anjana Gosain submits that the said petitioners should also be placed on equal footing with the earlier licencees as they have been carrying on the profession of commercial photography along with other persons who were licensed earlier.

12. Mr Dogra, learned counsel appearing on behalf of respondents submits has handed over the policy adopted by the respondent. He also states on instructions that the policy shall be implemented within a period of five months from today and the respondents would issue licences by following procedure set down in the said policy.

13. Mr Dogra has also pointed out that there are only 200 photographers who are to be licensed for photography in Taj Mahal. Even the existing number of licences is much larger and would have to be reduced. In this regard, the decision of the ASI to limit the number of photographers cannot be challenged and it would be at the discretion of ASI to fix such number as they think fit.

14. The respondents decision to not permit photography without licences

and to limit the number of such licences, cannot be questioned. However, the respondents are obliged to issue licences in a transparent manner and ensure that there is no discrimination.

15. It is noticed that the notification dated 29.09.2016 was only issued as a matter of interim measure and was to continue only for a period of six months. However, the same was also extended subsequently. Clearly, the situation of the petitioners also need to be addressed. Although, there is much merit in the contention that since the time frame is very short, the respondents may not have the time to verify the credentials of the petitioners for awarding licences, however, the same cannot be a ground for completely shutting out the petitioners from practicing photography.

16. In the aforesaid circumstances, it is directed that the respondents consider the applications of these 97 petitioners and may verify their credentials. In order to do so, the petitioners shall submit their portfolios as well as their complete details in order to enable the respondents to seek the necessary verification from the police authorities. It is also clarified that the respondents still retain the discretion to reject the applications for cogent reasons, if they so desire.

17. This Court has also examined the detailed policy placed on record and the procedure specified therein is fairly allowable and no grievance in this regard can be made. This order is being passed in the peculiar circumstances, as the *ad hoc* interim measure adopted by the ASI for resurrecting the licenses that were made redundant four years ago, did leave room for a grievance of completely denying any opportunity of participation

to other professionals.

18. It is also clarified that the present order has been passed limited to the petitioners in this case and as an interim measure only for the reason that there is still a period of five months left before the new policy is implemented and thus, the petitioners may be able to function along with the other licensees for a period of two to three months.

19. The petition stands disposed of.

20. Order *dasti*.

JULY 17, 2017
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VIBHU BAKHRU, J