

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.17384 Of 2015

(Through hybrid mode)

Ashok Kumar Swain and others* *Petitioners

Mr. K.A.Guru, Advocate

-versus-

Union of India and others* *Opposite Parties

Ms. Jyotsnamayee Sahoo, CGC for O.P.1

Mr. C.Pradhan, Advocate for O.P.2(ASI)

Mr. L. K. Maharana, advocate
for O.Ps.5 and 16.

CORAM: JUSTICE ARINDAM SINHA

ORDER
05.01.2022

Order No.

22. 1. Mr. Guru, learned advocate appears on behalf of petitioners. He submits, his clients have applied for licence in terms of guideline no.29.2.2007-M, copy of which is annexure-2. He submits, in paragraph 11 of the petition there is clear averment that his clients have applied for issuance of licence under the guideline and thereafter made representation dated 17th May, 2007. Licences were not issued. It cannot be urged that these guidelines were superseded by notification dated 24th May, 2017 in Gazette of India published on 25th May, 2017. He points out from the guidelines of 2017, under Clause 2.5 regarding scope and effect of said guidelines, it has been stated that the guidelines

shall not have retrospective effect. As such, his clients claim relief of issuance of licences in terms of the 2007 guidelines.

2. Mr. Maharana, learned advocate appears on behalf of opposite party nos.5 and 16 and adopts submissions made by Mr. Guru. He adds, the applications have not been rejected by the authority. Hence, there should be direction for issuance of licence.

3. Mr. Pradhan, learned advocate appears on behalf of Archeological Survey of India (ASI). He submits, preliminary counter was filed to the misc. case, which is to be treated as counter to the writ petition as well. Position of his client is that the licences to be issued are to be in terms of the 2017 guidelines. On query from Court he submits, applications were received for issuance of licence under the old guidelines but the applications were not dealt with.

4. Issuance of licence for purpose of licensee being permitted to take photos of protected monuments is an administrative affair. Though petitioners had applied for licence under the old guidelines, their applications were not dealt with. Issuance of licence being an administrative matter there cannot be direction for issuing licence under the old guidelines when new guidelines are in place. In any event the new guidelines also provide regarding renewal of licence, obviously including those licences issued under the old guidelines. Therefore,

even if petitioners had got licences under the old guidelines, they would have had to come up for renewal under the 2017 guidelines.

5. Petitioners have liberty to apply under the new guidelines. In event petitioners apply within two weeks from date, their applications must be dealt with by opposite party no.2 within four weeks therefrom.

6. Mr. Guru points out there is interim order dated 29th August, 2017 passed by co-ordinate Bench, and it was operating. Said order is quoted below:-

“In the interim, it is directed that the Petitioners who have been granted licence by the Tourism Department, shall be allowed to perform their duties as Professional Photographers till the next date and any appointment made as per Annexure-A to the Misc. Case shall be subject to the result of the writ application.

Issue urgent certified copy as per rules.

A free copy of this order be handed over to the learned Asst. Solicitor General for the Union of India for compliance.”

7. This order will continue for six weeks from date.

8. The writ petition is disposed of.

(Arindam Sinha)
Judge

Prasant