

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.25176 Of 2021
(Through hybrid mode)**

Akshay Kumar Malik and others* *Petitioners

Mr. M.K.Dash, Advocate

-versus-

Union of India and others* *Opposite Parties

Ms. Jyotsnamayee Sahoo, CGC(O.P.1)

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

Mr. A.K.Sharma, AGA (O.Ps.6 to 10)

Mr. L.Maharana, Advocate for intervener

CORAM: JUSTICE ARINDAM SINHA

ORDER

05.01.2022

Order No.

- 05.**
- 1.** Petitioners' have joined praying for relief of strict compliance of rule 8(d) in Ancient Monuments and Archeological Sites and Remains Rules,1959.
 - 2.** Mr. Dash, learned advocate appears on behalf of petitioner and submits, his clients are licenced photographers. He draws attention to rule 8 (d), reproduced below.

“ 8(d) [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 his 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;]

He submits guidelines stand issued, *inter alia*, for purpose of grant of licence quoting the rule. The guidelines are made for enforcing the rule and it cannot be otherwise. He points out that by notification dated 17th July, 2018 there has been amendment to the 2017 guidelines by insertion, *inter alia*, Clauses 2.6 to 2.8. Opposite parties are to ensure compliance with the rule. They are not doing so and that is why Court has been moved.

3. Mr. Pradhan, learned advocate appears on behalf of Archeological Survey of India (ASI) and submits, every effort is being made to see that the rules and guidelines are complied with. On query from Court he submits, opposite party no.10 is relied upon for maintaining law and order on entry of visitors and others in precincts of protected monuments.

4. Mr. Guru and Mr. Maharana, learned advocates appear on behalf of applicants, who want to intervene. They submit, their clients had applied for licence under the old guidelines. Their writ petition **W.P.(C) no.17384 of 2015 (Ashok Kumar Swain and others Vs. Union of India and others)** was disposed of this day. Their clients are enjoying interim order in that writ petition, as made operative till six weeks from date. It is pursuant to such interim order their clients were entering precincts of protected monuments, to take photographs and

earn their livelihood. They will, in the meantime, apply for issuance of licence under the new guidelines. On query from Court, Mr. Guru submits, his clients take photographs of visitors, who visit the Sun Temple at Konark.

5. Mr. Sharma learned advocate, Additional Government Advocate appears on behalf opposite party nos.6 to 10.

6. For purpose of ascertaining whether the interim order in **Ashok Kumar Swain** (supra) permitted contravention of the rule, it is necessary to extract text of the said order dated 29th August, 2017.

“ 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. It will appear that the interim order is based on licence granted by the Tourism Department. No licence issued by the Tourism Department has been disclosed. Opposite parties including the Administration will ensure that all persons who claim entry to precincts of protected monuments in the State, by showing licence granted by the Tourism Department, will do so to carry out that which is permitted by

the licence. It follows that apart from tourists, only those who have valid licence for purpose of conducting photography in precincts of protected monuments are to be allowed to enter. This must be complied with by ASI with assistance of the Administration. The necessity for compliance cannot be over emphasised because the monuments are ancient and therefore need to be protected.

8. The writ petition is disposed of.

(Arindam Sinha)
Judge

Prasant

