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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 12313/2018 & CM APPL. 47728/2018****MATA PRASAD AND ORS**

..... Petitioners

Through: Mr. Taranpreet Singh, Advocate with
Mr. Dharm Prakash and Mr. Mohd.
Shameem, Advocates.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Vikrant N.Goyal, Advocate with
Mr. Jeet Chakravarti and Ms.
Rituparna Sahoo, Advocates
Ms. Monika Arora, CGSC with Mr.
Subrodeep Saha and Ms. Prakriti
Bandhan, Advocates for UOI.
Mr. Rakesh Kumar, CGSC with Mr.
Sunil, Advocate.

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Date of Decision: 06th October, 2023**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MS. JUSTICE MINI PUSHKARNA****J U D G M E N T****MINI PUSHKARNA, J: (ORAL)**

1. The present writ petition has been filed seeking issuance of appropriate directions from this Court for quashing and setting aside Clause 2.7 of “The Policy for Archaeological Survey of India (“ASI”) Photographers to perform within Centrally Protected Monuments” (“ASI Photographers Policy”) notified by the ASI on 24th May, 2017, as amended on 17th July, 2018. By way of Clause 2.7 of the amended policy, the licences granted by ASI to photographers prior to 2012 are revalidated subject to the said photographers undergoing refresher courses with test conducted by the



ASI. The petitioners have worked as photographers within the ASI protected monuments since the year 2012. Since the petitioners are not covered by Clause 2.7 of the amended policy as they do not have any previous licence issued by ASI prior to 2012, and are required to take written test, practical/viva-voce for grant of fresh licence as photographers in terms of the amended policy, being aggrieved by the same, the present writ petition has been filed.

2. As borne out from the pleadings, licence was required to be taken to work as photographers within the ASI protected monuments before the year 2012. However, the ASI amended the Ancient Monuments and Archaeological Sites and Remains Rules, 1959 on 20th January, 2012. Thus, after the 2012 amendment, the photographers were allowed to work in the ASI protected monuments by purchasing entry tickets. In view thereof, the petitioners worked as photographers within the ASI protected monuments from the year 2012 till the year 2016 taking advantage of the amended Rule of 2012 by virtue of which they worked as photographers in ASI protected monuments by purchasing entry tickets.

3. Subsequently, the ASI in the year 2016 issued Draft Rules pursuant to which the ASI proposed renewal of licences granted to photographers prior to 2012. Thereafter, the ASI notified its policy for ASI photographers to perform within Centrally Protected Monuments on 24th May, 2017, which was further amended on 17th July, 2018. As per Clause 2.6 of the said amended policy, all persons who are interested to carry out photography at ASI monuments for monetary consideration shall have to obtain licence from Director General, ASI. For this purpose, a selection process has been prescribed which comprises of written test, practical and viva-voce. As



regards the photographers who had licence prior to the year 2012, they were required to take only a refresher course with test conducted by the ASI for revalidation of their licences, in terms of Clause 2.7 of the amended policy. Thus, the present writ petition has been filed challenging Clause 2.7 of the amended policy of the ASI.

4. On behalf of the petitioners, the following submissions have been made:-

4.1 The policy notified by ASI on 24th May, 2017 as amended on 17th July, 2018 has to be applied prospectively and not retrospectively in terms of Clause 2.5 of the said policy. Therefore, the said policy can in no manner be applicable to the petitioners. The petitioners cannot be subjected to various tests, written and practical/viva-voce for grant of fresh licences. It is submitted that the said policy under Clause 2.5 read with amended policy dated 17th July, 2018 mentions that the policy shall come into force from the date on which it is formally notified.

4.2 It is submitted that taking photography at the protected monuments is a mode of self employment for which the respondent ASI could always bring into place relevant Rules/Regulations. However, to prohibit such means of self employment or to favour a class and allowing them to work under the ASI protected monuments to the exclusion of others will not only amount to arbitrary state action, but would also seriously jeopardise rights guaranteed to the petitioners under Article 19(1)(g) of the Constitution of India.

4.3 The said exercise of allowing a class only to do photography at protected monuments seems to have been done without following due process of law in regulating such activity. It is submitted that Article



19(1)(g) of the Constitution of India cannot be curtailed in ordinary circumstances, as in the facts of the present case. The freedom as guaranteed under Article 19(1)(g) is valuable and cannot be violated on grounds which are not established to be in public interest.

4.4 The petitioners have been working as photographers in the ASI protected monuments since the year 2012 till 2016. They worked as photographers in the protected monuments at Agra, including Taj Mahal, Agra Fort etc. without any complaint of any kind. The petitioners over the years have professed photography as the only medium of livelihood and professed their job with passion. Therefore, it is prayed that Clause 2.7 of the Amended ASI Photographers Policy to the extent it revalidates licenses granted prior to 2012 to the exclusion of other photographers like the petitioners, be quashed and set aside. It is further prayed that directions be given to ASI to consider the case of the petitioners at par with pre-2012 licence holders and allow the petitioners to work as photographers within the Centrally Protected Monuments at Agra.

5. On behalf of the respondents, following submissions have been made:-

5.1 As per the notification dated 18th January, 2012, photographers were allowed to operate within the ASI Protected Monuments without taking any licence. However, several complaints were received by the ASI regarding misbehaviour and misconduct by such photographers or persons who by taking advantage of the notification of the year 2012, had started operating as self appointed photographers within the Centrally Protected Monuments as they did not have any licence at any point of time. Thus, in order to regulate the conduct of the photographers for the benefit of the visitors and



tourists, it was deemed necessary by the Central Government to restore the earlier rule position which existed prior to the 2012 amendment.

5.2 Fresh policy guidelines for regulating photographers within the Centrally Protected Monuments were prepared by the ASI and notified on 24th May, 2017, as amended on 17th July, 2018. As per the said policy, there shall be licences for purpose of taking of photographs of visitors.

5.3 It is submitted that Clause 5 of the ASI Photographers Policy prescribes the format of the written test, practical and viva-voce to test the skills of the photographers and to ensure that the best talent in the photography comes forward to cater to the monuments. The tests under Clause 5 of the policy are justified keeping in view the market requirements and improvement in technology. The steps have been taken by ASI to issue fresh licences following the due processes prescribed in the ASI Photographers Policy and also in larger public interest.

5.4 The ASI Photographers Policy notified and amended by the ASI acknowledges all old photographers having licences granted by ASI prior to 2012. Clause 7.6 of the said policy specifies that the licence granted by ASI prior to 2012 shall be required to be revalidated subject to the condition that the candidate has to undergo refresher course with test conducted by ASI.

5.5 The photographers who were granted license by ASI prior to the year 2012 were treated as separate class in terms of the order dated 26th September, 2018 passed by the Coordinate Bench of this Court in *W.P. (C) No. 5345/2018*, wherein it was directed that the said photographers would be permitted to work without undergoing various process of undertaking selection test etc. as envisages in the policy dated 17th July, 2018.

5.6 Petitioners are required to obtain licence from ASI in terms of the



selection procedure in view of the policy of the ASI.

6. We have heard learned counsel for the parties and perused the record.

7. In accordance with the notification dated 20th January, 2012 issued by the ASI, there was no necessity for any photographer to have a licence from 2012 onwards to operate within the Centrally Protected Monuments for the purposes of taking photographs of the visiting tourists. Thus, the petitioners are the photographers who started operating in the ASI Protected Monuments taking advantage of the 2012 policy under which no licence as photographer was required. Now, after the notification of the ASI Photographers Policy on 24th May, 2017 as amended on 17th July, 2018, all the persons who intend to operate as photographers in the ASI Protected Monuments are required to obtain a licence from the ASI.

8. The relevant clauses of the ASI Photographers Policy notified on 24th May, 2017 material for the present case are as follows:-

“3. Selection criterion.

3.1 Educational Qualification: following qualification is recommended.

<i>Educational qualification</i>	<i>Experience</i>
(a) Matriculate/10 th pass And (b) (i) One year diploma in photography from recognized institute required. OR (ii) Five years experience in photography in tourist places	Experience in Photography at tourist places. In absence of one year diploma five years experience in photography in tourist places is required.

4. Process of selection.

4.1 Applications shall be invited through open advertisement specifying the number of ASI licensed photographers with respect to specific monument or group of monuments.

4.2 Wide publicity shall be given while inviting applications for grant of license/s and sufficient time shall be given for submitting applications.

4.3 Candidates shall submit their application in the prescribed Form, as specified by the Archaeological Survey of India. The application should be accompanied by self-attested photocopies of all documents required as proof of their eligibility and in no case applicants shall be allowed to submit any additional document/s as such proof at a later stage. A declaration cum undertaking shall be submitted by an applicant in support of his application declaring that the information furnished by him is true and correct and in the event of any information being found to be false his license shall be liable to be cancelled



without prejudice to any other applicable law.

4.4 The process of selection shall comprise of written test, practical and viva voce.

4.5 ASI shall specify the nature, manner and mode of test to be conducted.

4.6 The entire process shall be conducted in a fair and transparent manner.

4.7 Individual may apply for only one license in respect of a specific monument or a group of monuments. Issuance of either category of license shall be a bar for issuance of license in the other category.

4.8 Individuals shall have to submit fee, as specified under order by ASI for the examination.

5. Written Test, Practical and Viva Voce

5.1 Examination for selection of required numbers of candidates for grant of licenses shall consist of written Test, Practical and Viva Voce.

5.2 Archaeological Survey of India shall formulate written test and Practical with a view to test the knowledge and skill of candidates on general awareness, photography, computer handling, etc.

5.3 Archaeological Survey of India shall conduct written test, practical and Viva Voce for selection of candidates.

5.4 The practical examination and Viva Voce shall be conducted through a committee comprising of not less than three members, out of them at least one should be from the field of photography as Archaeological Survey of India may deem fit and proper.

5.5 On completion of written test, practical and viva-voce, ASI shall publish a list of successful candidates for grant of licenses for monument specific and group of monuments specific photographers. Publication of the results of the examination shall not vest any right upon the successful candidates to be appointed as licensed photographers. License being in the nature of permission for photography in centrally protected monuments under the jurisdiction of ASI, it shall have the discretion to grant or not grant such license as it may deem fit keeping in view the interest of the monument or group of monuments.

6. Issuance of licenses

6.1 On completion of selection process, License shall be given to successful candidates by the Archaeological Survey of India.

6.2 Successful candidates shall be given license by the Archaeological Survey of India under Rule 8(d) of AMASR Rules, 1959.

6.3 All ASI licensed photographers shall be issued with appropriate ID cards."

9. The relevant clauses of the ASI Photographers Policy as amended on 17th July, 2018 are as follows:-

"2.6 Any person/candidate interested to carry out photography at ASI monuments for monetary consideration shall have to obtain licence under this policy from Director General, ASI.

2.7 Any Licences granted by ASI prior to 2012 shall have to be revalidated. Revalidation will be subject to photographer undergoing refresher courses with test conducted by ASI.

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7.5 All valid licences granted by ASI prior to 2012 shall be acknowledged under this policy subject to revalidation, wherever necessary.



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7.9 Archaeological Survey of India shall specify the manner, duration and place where the refresher course with test to be conducted."

10. Reading of the aforesaid manifests that all valid licences granted by ASI prior to 2012 are acknowledged under the aforesaid policy subject to revalidation. It is clearly stipulated that the licences granted by ASI prior to 2012 shall require to be revalidated subject to the condition that the candidates have to undergo refresher course with test conducted by ASI.

11. On the other hand, all the other candidates who do not have any licence granted by ASI prior to 2012 will have to apply for licence which shall be granted after following the due process of selection. Educational qualifications and experience criteria have been prescribed under the policy. The process of selection comprises of written test, practical and viva-voce.

12. From the reading of the policy notified by the ASI and pleadings on record, it is manifest that the ASI is the Regulating Authority in respect of Monuments of national importance which have been protected under the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958. Under the provisions of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959, the ASI is empowered to regulate the actions and activities within the premises of the protected monuments. Thus, as per the policy notified by the ASI on 24th May, 2017, as amended on 17th July, 2018, there shall be licences for purposes of taking of photographs of visitors. The licences are granted on the basis of various eligibility conditions like age limit, educational qualifications, undergoing selection process which includes written test, practical and viva-voce for the candidates who are applying for licence for the first time. As regards the



candidates who were granted licence prior to 2012, they have to undergo refresher courses with test conducted by the ASI for revalidation of their licence. Further, the educational qualifications are applicable only for fresh candidates who joined photography after 2012.

13. Thus, it is evident that the policy of the ASI requires the photographers who were granted licence prior to 2012 to undergo refresher course, with test conducted by the ASI for revalidation of their licence. In view of the said refresher courses being conducted by the ASI, the photographers who were granted licence prior to 2012 are sought to be updated on the latest photographic techniques with a view to bring them at par with new photographers, enabling them to compete with the new photographers. As put forth on behalf of ASI, the primary aim of the refresher course is to strengthen the knowledge of the old photographers working at ASI monuments in the light of advancement that has occurred in the field of photography, equipment and related techniques, digital mode etc. The refresher course is intended to upgrade all the old school photographers and enhance their knowledge and skill, as the digital technology has modified the entire process of camera and photographs. Further, with a view to bring in new photographers, it has been stipulated that licences shall be obtained by them after passing the due selection process.

14. Perusal of the aforesaid clearly shows that there is a reasonable classification that has been made by the ASI for revalidation of licences of the photographers who had licence prior to the year 2012 and grant of licence to the photographers who are the new entrants after 2012 who have no prior licence in photography from the ASI. This Court finds no fault with the aforesaid policy of the ASI which is reasonable and fair. There is



rationale in the said classification and categorization made on behalf of ASI, as the photographers having licence prior to the year 2012 constitute a separate class altogether. The photographers who are applying for licence for operating in ASI Protected Monuments for the first time are a different class and cannot claim to be at par with the photographers who had valid licences from the ASI prior to the year 2012 in terms of the then policy of the ASI.

15. Holding that equality does not connote absolute equality and that the rule of differentiation is inherent in the concept of equality, Supreme Court in the case of *State of Kerala and Another Versus N.M. Thomas and Others*, (1976) 2 SCC 310 has held as follows:

“31. The rule of parity is the equal treatment of equals in equal circumstances. The rule of differentiation is enacting laws differentiating between different persons or things in different circumstances. The circumstances which govern one set of persons or objects may not necessarily be the same as those governing another set of persons or objects so that the question of unequal treatment does not really arise between persons governed by different conditions and different sets of circumstances. The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position and the varying needs of different classes of persons require special treatment. The legislature understands and appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds. The rule of classification is not a natural and logical corollary of the rule of equality, but the rule of differentiation is inherent in the concept of equality. Equality means parity of treatment under parity of conditions. Equality does not connote absolute equality. A classification in order to be constitutional must rest upon distinctions that are substantial and not merely illusory. The test is whether it has a reasonable basis free from artificiality and arbitrariness embracing all and omitting none naturally falling into that category.”

16. It is settled law that Article 14 of the Constitution of India does not



forbid reasonable classification, which is founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out in the group. Thus, in the case of ***Confederation of Ex-Servicemen Association and Others Versus Union of India and Others, (2006) 8 SCC 399***, Supreme Court has held as follows:

“28. Again, in Budhan Choudhry v. State of Bihar [(1955) 1 SCR 1045 : AIR 1955 SC 191 : 1955 Cri LJ 374] after considering the earlier decisions, this Court stated : (SCR p. 1049)

“It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.”

(emphasis supplied)

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30. In our judgment, therefore, it is clear that every classification to be legal, valid and permissible, must fulfil the twin test, namely,

(i) the classification must be founded on an intelligible differentia which must distinguish persons or things that are grouped together from others leaving out or left out; and

(ii) such a differentia must have rational nexus to the object sought to be achieved by the statute or legislation in question.”

17. It is palpable that the ASI Photographers Policy has been notified by the ASI with an objective to regulate the photographers within the Centrally Protected Monuments and to ameliorate the condition and treatment of visitors and tourists in the said monuments. This Court finds that there is a reasonable nexus in the policy notified by the ASI wherein the photographers who were granted licence prior to 2012 are required to



undertake only a refresher course and elementary test for revalidation of their licence. Whereas, the photographers seeking licence from the ASI for the first time are required to take the selection procedure as laid down in the policy which includes written test, practical and viva-voce. The photographers who are applying for licence for the first time stand on a different footing and cannot claim to be at par with the photographers who had licences from the ASI prior to the year 2012.

18. The contention of the petitioners regarding their rights guaranteed under Article 19(1)(g) of the Constitution of India being jeopardised, is totally misplaced and liable to be rejected. Obtaining licence by following the due selection procedure laid down by ASI does not in any manner violate the right of the petitioners under Article 19(1)(g) of the Constitution of India. The policy mandating the obtaining of licence to work as photographers in ASI protected monuments has been notified by the ASI in larger public interest to regulate the quality and conduct of photographers for the benefit of visitors and tourist.

19. Holding that imposition of restrictions is a concept inbuilt into the enjoyment of fundamental rights, Supreme Court in the case of ***N.K. Bajpai Versus Union of India and Another, (2012) 4 SCC 653***, has held as follows:

“44. This judgment is relatable to the legal profession and we have already noticed the judgments of this Court relating to other professions. Imposition of restrictions is a concept inbuilt into the enjoyment of fundamental rights, as no right can exist without a corresponding reasonable restriction placed on it. When the restrictions are placed upon the carrying on of a profession or to ensure that the intent, object or purpose achieved thereby would be enhancing the purity of public life, such object would certainly be throttled if there arose a situation of conflict between private interest and public duty. The principle of private interest giving way to public



interest is a settled cannon not only of administrative jurisprudence, but of statutory interpretation as well.”

20. Likewise, holding that the fundamental rights enshrined in Article 19 of the Constitution are not absolute and unqualified, but are subject to reasonable restrictions, Supreme Court in the case of ***Sri Sri Kalimata Thakurani and Sri Sri Raghunath Ji and Others Versus Union of India and Others***, (1981) 2 SCC 283, has held as follows:

“17. The fundamental rights enshrined in Article 19 of the Constitution are not absolute and unqualified but are subject to reasonable restrictions which may be imposed under sub-clauses (4) and (5) of Article 19. Whenever a complaint of violation of fundamental rights is made the court has to determine whether or not the restrictions imposed contain the quality of reasonableness. In assessing these factors a doctrinaire approach should not be made but the essential facts and realities of life have to be duly considered. Our Constitution aims at building up a socialist state and the establishment of an egalitarian society and if reasonable restrictions are placed on the fundamental rights in public interest, they can be fully justified in law. The principles laying down the various tests of reasonableness have been very aptly enunciated in the case of State of Madras v. V.G. Row [(1952) 1 SCC 410 : AIR 1952 SC 196 : 1952 SCR 597] which is almost the locus classicus on the subject in question. In that case Shastri, C.J., speaking for the Court observed as follows:

“It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict.”

21. The contention of the petitioners that the ASI Photographers Policy is sought to be applied retrospectively by respondents and that it shall not be applicable to the petitioners, is totally misplaced. The aforesaid policy is



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being applied prospectively by the ASI and all those persons who seek to operate as photographers in ASI protected monuments are liable to obtain licence from ASI after participating in the prescribed selection process. Merely because the petitioners have operated as photographers without licence in the past owing to the policy in vogue at the material time that did not require licence, does not obviate the requirement of obtaining licence in terms of the policy that is prevalent now.

22. In view of the aforesaid detailed discussion, no merit is found in the present writ petition. The same is accordingly dismissed along with the pending application.

MINI PUSHKARNA, J

MANMOHAN, J

OCTOBER 6, 2023/au/ak/c