



WEB COPY



W.P.Nos.5378 & 5384 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.5378 & 5384 of 2021

and

W.M.P.Nos.5973, 5976, 5977, 5981 & 5983 of 2021

W.P.No.5378 of 2021

Tourist Guides' Federation of South India,
(Regd.as 303/2007)
Rep.by its Secretary M.Charles,
Plot No.37/2, Azeez Nagar, 1st Street,
Kodambakkam, Chennai-600 024.

...Petitioner

-Vs-

1.Union of India
Ministry of Culture
Rep.by its Secretary,
Room No.501 'C Wing',
Shastri Bhavan, New Delhi-110015.

2.Archaeological Survey of India,
Rep by Director General and Additional Secretary,
Department of Culture,
Dharohar Bhavan,No.24, Tilak Marg,
New Delhi-110001.

3.Union of India,
Ministry of Tourism
Rep.by its Secretary,
Transport Bhavan,
No.1, Parliament Street, New Delhi-110001.

4.The Assistant Director General (TT),



W.P.Nos.5378 & 5384 of 2021

Ministry of Tourism,
7th Floor, Chanderlok Building,
36, Janpath,
New Delhi-110001.

5.The Regional Director,
Ministry of Tourism,
No.154, Mount Road,
Chennai-600002

6.The Additional Director General,
Ministry of Tourism,
Transport Bhavan,
R.No.125, No.1, Parliament Street,
New Delhi-110001.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the 4th respondent dated 12.01.2021 in File No.TT-501/1/2020-TT (Office Memorandum) and quash the same so far as it relates to Regional Level Guides and consequently direct the 5th respondent to renew the license of all existing valid Regional Level Guide license holders of the members of the petitioner federation in terms of clause (d) of Rule 8 of the Archaeological Monuments and Site Rules, 1959, under Section 29(a) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958.

W.P.No.5384 of 2021

Tourist Guides' Federation of South India,
(Regd.as 303/2007)
Rep.by its Secretary M.Charles,
Plot No.37/2, Azeez Nagar, 1st Street,
Kodambakkam, Chennai-600 024.

...Petitioner



W.P.Nos.5378 & 5384 of 2021

-Vs-

1.Union of India
Ministry of Culture
Rep.by its Secretary,
Room No.501 'C Wing',
Shastri Bhavan, New Delhi-110015.

2.Archaeological Survey of India,
Rep by Director General and Additional Secretary,
Department of Culture,
Dharohar Bhavan,No.24, Tilak Marg,
New Delhi-110001.

3.Union of India,
Ministry of Tourism
Rep.by its Secretary,
Transport Bhavan,
No.1, Parliament Street, New Delhi-110001.

4.The Regional Director,
Ministry of Tourism,
No.154, Mount Road,
Chennai-600002.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the third respondent dated 11.01.2021 in No.TT-501/1/2020-(TT) “Modified Guidelines for the Incredible India Tourist Facilitator (IITF) and Incredible India Tourist Guide (IITG) Certification Programme” and quash the same so far as it relates to Regional Level Guides.

In both W.Ps

For Petitioner : No appearance
For Respondents : Mr.A.R.Sakthivel
Special Panel Counsel

COMMON ORDER



W.P.Nos.5378 & 5384 of 2021

These writ petitions have been filed challenging the modified guidelines dated 11.01.2021 so far as it relates to Regional Level Guides.

2. Heard the learned Special Panel Counsel appearing for the respondents. There is no representation for the petitioner. Therefore, this Court is inclined to pass orders on merits.

3. The petitioner is Tourist Guides Federation of South India with more than 100 members. They have been trained by the third respondent. IITTM is an autonomous organization under the third respondent offering education, training, research and consultancy in the domain of tourism and empowered by the third respondent to conduct refresher course for the Regional Level Guides in various parts of the country once in three years as mandated in the guidelines. As per the guidelines, the licence granted to the guides and it is renewable by every three years. The second respondent is responsible for issuance of licenses for guiding under clause (d) of Rule 8 of the Archaeological Monuments and Sites Rules, 1959. The third respondent is the nodal agency for the formulation of national policies and programmes and for the co-ordination of activities of various Central Government Agencies, State



W.P.Nos.5378 & 5384 of 2021

Governments/Union Territories and the Private Sector for the development and promotion of tourism in the country.

4. The requirement of licensing of guides became mandatory under the Rule 8(d) of Ancient Monuments and Archaeological Sites and Remains Rules, 1959. With regard to issuance of license Regional Level Tourism Guides, the fourth respondent had given clear cut mandate for development and promotion of tourism. The third respondent issued guidelines on 24.02.2003 for selection of grant of guide license in respect of Regional Level Tourist Guides. By virtue of direct interaction with the tourists, the guides are responsible for projecting the correct image of the country, giving factual information, looking to the safety and well being of the tourists and ensuring that the tourists visit is pleasant and satisfying. Subsequently, the second respondent issued fresh guidelines dated 31.01.2017 titled as 'the policy for Archaeological Survey of India Guides to perform within centrally protected monuments' to replace the earlier guidelines for Regional Level Tourist Guides. It was challenged before the Hon'ble High Court of Delhi in a batch of writ petitions in W.P.(C) No.3342 of 2017.



W.P.Nos.5378 & 5384 of 2021

5. In the meanwhile, the second respondent issued another amended guidelines dated 20.07.2018 to amend the policy dated 31.01.2017. Thereafter, the said policy notification dated 31.01.2017 and further amendment dated 20.07.2018 were withdrawn by Gazette Notification dated 05.02.2020. The third respondent deliberated the entire issues pertaining to guide license and it reached a conclusion that the tourism is all about 'experiences' and the eco system of tourism is much wider than the 'centrally protected monuments' of Archaeological Survey of India.

6. In this background, the concept of Tourist Facilitator has been launched. Their job is tasked with making tourist spots appealing, explaining intricate stories of history, mythology, culture, nature, cuisine, art, etc., eliciting interest and awe in the visitors about the country. They have to uphold the culture, traditions and heritage of the place being visited and also talk of social customs, heritage, myths and even local folklores. Therefore, the system provides basic, advanced and language course for tour facilitation and guiding.

7. The two categories of Incredible India Tourist Facilitators



W.P.Nos.5378 & 5384 of 2021

Certification Programme were introduced by different modules. The guidelines were superseded by the guidelines dated 28.02.2020 and subsequently modified on 11.01.2021. The category of Tourist Facilitators, who were divided in two categories being Incredible India Tourist Facilitators and Incredible India Tourist Guide, categorised as IITG (Heritage) and IITG (Adventure). The main difference between the allocation of work of IITFC and IITG is that IITG are allowed to do the guiding work within the Archaeological Survey of India protected monuments, while the IITF cannot do the same. Therefore, the refresher course is not a new introduction and it is always been an integrated part of the programme. The existing Regional Level Guides, having valid licenses, have also been integrated in the guidelines/certificate programme which was initially named as Incredible India Tourist Facilitator Certification (Advanced/Heritage) category. The intent of the guidelines is to enhance the tourism experience of the country and the eco system of tourism industry is much wider than the 'centrally protected monuments' under Archaeological Survey of India.

8. It is relevant to extract the comparative chart with regard to the guides under the erstwhile guidelines dated 22.09.2011 and the



W.P.Nos.5378 & 5384 of 2021

guidelines dated 11.01.2021, which is as follows :

Sl.No	Provision contained in guidelines dated 22.09.2011	Provision contained in modified/renamed guidelines dated 11.01.2021
1.	RLGs operational area was confined to a particular region – to say North South East West and North East	Now, RLG/IITG area of operation has been increased to Pan-India
2.	There was a provision of classroom refresher course for a period of two weeks conducted by IITTM and it was a paid course	Provision of offline refresher course has been introduced. The RLGs can undertake the course sitting at their home and as per their convenient time. Further, there is no fee for the Refresher Course.
3.	There was a provision of examination and only after successful completion Refresher Course, their license were renewed.	There is no provision of examination. Instead, there is a mechanism of internal assessment after reading the different chapter of the course module.
4.	RLGs license were renewed for a period of three years	Now, it is extended for 5 years
5.	RLGs were allowed to do the guiding work within the ASI protected monuments	They will continue to do the guiding work within ASI protected monument.
6.	There were no restrictions on RLGs not to undertake any other profession except the guiding work.	There is no such restriction RLG/IITG can undertake any profession and to the guiding work as well - even part time, depending upon their convenience.

9. The candidate once enrolled under the IITF Certification



W.P.Nos.5378 & 5384 of 2021

Programme, is required to go through the contents of the course which is divided into different modules. After completion of assignment/questionnaire, they would be granted certificate and they would be entitled to enroll for the IITG level category. Thereafter, they are required to go through the contents/modules of the course for IITG. Hence, the IITF certificate holder is as a feeder cadre to IITG. The RLGs are only required to undergo the IITF refresher course after which they are given the IITG certification, which would enable them to guide and facilitate the tourists at ASI protected monuments.

10. The very same guidelines were already challenged before the Hon'ble High Court of Delhi in W.P.(C) No.1284 of 2020 and the writ petition was dismissed. The relevant portion of the order is extracted hereunder :-

43. The introduction of such policies, which entails grant of license and prescribes the criterion for such licenses, is a policy matter. The scope of judicial review in this regard is limited. It is settled that the Court while exercising power under Article 226 of Constitution of India, does not interfere with the policy unless the same is arbitrary, discriminatory or is based on irrelevant consideration. It is for the policy makers to decide, which policy should be adopted after considering all the relevant aspects. Unless it is shown



WEB COPY



W.P.Nos.5378 & 5384 of 2021

that the policy infringes the Fundamental Rights, the Courts are not to interfere. A Court cannot substitute its own judgment for the judgment of the executive in such matters.

44. It has been held that minimal interference is called for by the Courts while exercising its power of judicial review in matters of policy. The policy is an outcome of deliberations of the experts in the field. The domain is best left to the discretion of the executive. Therefore, unless a policy is demonstrable capricious or arbitrary or suffers from the vice of discrimination and infringes the Fundamental Rights, the Court ought not to question the propriety of such policy. The Court is not concerned whether a more comprehensive decision could have been taken by the Government.

52. Therefore, the assumption that the un-equals have been treated equally is misconceived. The IITF is a feeder cadre for IITG and has been assigned a different role than IITG. It cannot be argued that the Government while exercising its executive functions cannot formulate a policy, which is considers best for a particular purpose. As obvious, much deliberation has gone into, in introducing a while new scheme for the purpose of enhancing the experience of the tourists visiting India.

53. The Court while exercising its power of judicial review is not required to get into the realm of policy making. The impugned policy does not appear to be arbitrary or discriminatory or violating the Fundamental Rights of the members of petitions' associations.

54. As noted above, the right of the members of petitioner associations to practice their profession has not been taken away and it does not foul of Article



19(1)(g) of the Constitution of India...

WEB COPY

56. *It is settled law that the Court cannot substitute legislative or executive policy with a judicial policy especially in matters wherein there is high possibility of conflicting claims. The judicial forms are held to be ill suited to entertain challenges to legislative policy and give its value judgments on efficacy and justifiability of the same....*

58. *It is not the domain of the Court to consider whether a particular public policy is wise or a better public policy can be evolved. Such exercise is best left to the discretion of the executive and legislative authorities. The challenge to the validity of such policy can only be considered if the same is found to be infringing the Fundamental Rights guaranteed by the Constitution of India. The Court is not to appropriate to itself the task entrusted to the legislative and the policy making which is function of experts. Similarly, the Court also cannot*

strike down a policy merely because it feels that another decision would have been fairer or logical or wise.

60. *It is also well-settled that the questions relating to the constitution, pattern, cadre, their creation/abolition, prescription of qualifications etc., pertain to the field of policy within the exclusive domain of the State. The Courts are not to substitute its view for that of the State. The State is well within its competence to change the rules relating to any service and alter or amend or vary the qualifications, eligibility criteria and other conditions of service as the exigencies may necessitate. Judicial wisdom in the challenge to such policy decisions is judicial restraint. No fault of the respondents can be found in the decision to reframe guidelines for grant of license to operate as a Guide as*



WEB COPY



W.P.Nos.5378 & 5384 of 2021

long as the right of the members of the petitioner association to practice and participate has been taken away.

61. In view of the above, we find no merit in the present writ petition and the same is, accordingly, dismissed.”

11. In view of the above, the contention that the un-equals have been treated equally is misconceived. The IITF is a feeder cadre for IITG and has been assigned in a different role than IITG. Therefore, it cannot be held to be violative of either Article 14 or Article 19(1)(G) of Constitution of India. By the above guidelines, the Government only tries to create more employment opportunities in the tourism industry. Therefore, this Court finds no infirmity or illegality in the impugned guidelines dated 11.01.2021. Thus the writ petitions are devoid of merits and are liable to be dismissed.

12. Accordingly, both the writ petitions are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

02.04.2024

Internet: Yes



W.P.Nos.5378 & 5384 of 2021

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

To

1.The Secretary,
Union of India
Ministry of Culture
Room No.501 'C Wing',
Shastri Bhavan,
New Delhi-110015.

2.The Director General and Additional Secretary,
Archaeological Survey of India,
Department of Culture,
Dharohar Bhavan,
No.24, Tilak Marg,
New Delhi-110001.

G.K.ILANTHIRAIYAN. J.

Lpp

3.The Secretary,
Union of India,
Ministry of Tourism
Transport Bhavan,
No.1, Parliament Street,
New Delhi-110001.

4.The Assistant Director General (TT),
Ministry of Tourism,
7th Floor, Chanderlok Building,
36, Janpath,
New Delhi-110001.

5.The Regional Director,



W.P.Nos.5378 & 5384 of 2021

Ministry of Tourism,
No.154, Mount Road,
Chennai-600002

6.The Additional Director General,
Ministry of Tourism,
Transport Bhavan,
R.No.125, No.1, Parliament Street,
New Delhi-110001.

W.P.Nos.5378 & 5384 of 2021

02.04.2024