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%09.03.2005

Present: Mr. Sumit Sharma for the petitioners.  
Mr. Suresh Kait for respondents.

+W.P.(C). 2125-2141/04

This petition is covered by the judgment delivered on 7<sup>th</sup> March, 2005 in WP(C) 4366/2001 titled Anuj Johri Vs UOI and Ors. It stands disposed of in terms thereof.

For orders see WP(C) 4366/2001.

07  
March 09 2005  
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Manmohan Sarin, J.

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HIGH COURT OF DELHI

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Date of decision: March 7<sup>th</sup>, 2005

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WP(C).4366/2001

# Anuj Johri

Petitioner

through

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Mr.Tarique Siddiqui and  
Mr.S.D.Kinra, Advocates

Versus

\$ Union of India & ors.

Respondents.

through

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Mr.P.P.Malhotra, Additional  
Solicitor General with  
Mr.Suresh Kait, Central  
Government Standing Counsel.  
Mr.Sanjay Jain, Amicus Curiae

Coram :

\* Hon'ble Mr.Justice Manmohan Sarin.

(1) Whether reporters of local paper may be  
allowed to see the judgment?

yes

(2) To be referred to the reporter or not?

yes

(3) Whether the judgment should be reported  
in the Digest ?

yes

\* Manmohan Sarin, J

1. By this common judgment, questions and issues  
raised in a batch of writ petitions numbering around 183

WP(C).4366/2001

page 1 of 42

filed by Tourist Guides, are being decided. The above petition has been taken as a lead case since it by and large covered grievances and concerns of the petitioners in the batch of petitions. Union of India was also permitted to file in this petition an additional affidavit.

During the course of hearing, Mr.G.D.Gupta, Sr.Advocate, Mr.Y.K.Jain, Sr.Advocate, Ms.Anjana Gusain, Mr.S.D.Kindra, Mr.Ajay Malviya, Mr.S.Q.Kazim, Mr.Falak Mohd and Mr.Tarique Siddiqui addressed the court on behalf of the petitioners. Counsel were also directed to file their synopsis of submissions. Interim directions were also given from time to time to which, I shall advert during the course of judgment later. Apart from Lead counsels addressing the court, an opportunity was also given to counsels in the batch of writ petitions to make submissions or file synopsis of submissions with regard to common issues being taken up for consideration in this petition.

2. Mr.Sanjay Jain had represented Union in these cases and subsequently due to change in Government panel

counsel, Mr.P.P.Malhotra, Additional Solicitor General and Mr.Suresh Kait, Central Government Standing Counsel represented the Union. Mr.Sanjay Jain who had been conducting the hearing as Union's counsel and had been interacting with Tourism Department on guidelines being framed, was asked to assist the court as and when required.

3. Petitioner Anuj Johri filed the above petition seeking a direction to the Union to conduct examination/tests every year for the grant of licence to work as Tourist Guide/Escort. Petitioner sought declaration that he was entitled to grant of licence having worked for the last several years and in the absence of any test being held since 1996. Petitioner claims to be working with travel agencies/foreign missions, who assigned him to take foreign tourists to various monuments, historical places in Delhi, Rajasthan, Varansi, Khajuraho etc. Petitioner is a graduate. He completed certificate course in Tourism Studies in 1995, from Indira Gandhi Open University. He did a certificate Course in Italian Language from Italian Embassy Cultural Central, New Delhi in 1996. He

completed Intensive Advance Diploma in Italian language in 1997 from Delhi University. Petitioner was a recipient of scholarship of Govt. of Italy and did an advance course in Italian Languages and Culture from the University of Stranieri Perugia, Italy. Petitioner claims that his assignment comprised receiving tourists at Airport, taking them to the hotels and thereafter to the monuments, historical places in northern region. Petitioner is well versed in the social, political and economic history of the country. Petitioner is also fully knowledgeable about architecture and history of various monuments as he had been escorting the tourists since 1988.

4. Petitioner avers that respondents conducted an examination and a course only in the year 1986 and thereafter in 1996. There was dearth of tourist guides and petitioner and others in the absence of examination, continued to work without any interference. Pursuant to the orders passed in WP(C) 741/1994 on 28<sup>th</sup> February, 2004, directions were given for holding of a test for grant of licences within three months. Tourists Guides were

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permitted to continue to work. Liberty was, however, given to take action in respect of those guides against whom there were complaints. Respondents submitted that under a mis-apprehension that some stay had been granted, they did not hold test since then. Petitioner also submitted that department had issued licenses to retired officers of the Department without going through any prescribed training or having any experience in handling tourists. Petitioner also submits that respondents, on the one hand, profess to take all measures to boost tourism to achieve 5 million tourists target in 2005, yet on the other hand, obstacles are sought to be created in the functioning of qualified, accomplished and experienced tourist guides like the petitioner. Reference is made to an advertisement taken out by the Ministry of Tourism in Hindustan Times on 27<sup>th</sup> September, 1998. It reads as under:-

*He may not have gone to college  
But he teaches history to the world*

He takes them around the tombs and  
monuments. Narrates tales of yore-battle won,  
kingdoms gained, sacrifices made. He shares with

tourists the legends of the land. Recreating history and keeping it alive, in the minds and hearts of all the tourists who listen to them spell-bound.

Thousand like him discover their calling-right in their towns and villages. Serving as guides, Travel Agents, Taxi drivers. Gift shop owners, Managers for hotels and restaurants...Working, Earning And Building a better life.

*Jobs are created.  
When people travel*

Come, discover the tremendous potential of Tourism.

5. Petitioner states that the Licenced Tourist Guides somehow wish to maintain their monopoly in taking foreign tourists to various historical places and are, therefore, creating obstacles. Hence the prayer to conduct examination/test for grant of licence to work as Tourist Guide/Escort and for a declaration that petitioner on account of his experience is entitled to grant of licence.

6. Mr.G.D.Gupta, Senior Advocate, submitted that Rule 8(d) of the Ancient Monuments and Archaeological Sites Remains Rules, 1959, hereinafter referred to as the AMSR Rules, did not provide any statutory basis or power to

restrict carrying out of the trade and profession of tourist guides. There was singular absence of law, seeking to prohibit or restrict the tourist guides from carrying on their profession. A prohibition or reasonable restriction on the carrying out of profession could only be put as per law, contemplated under Article 19(6) of the Constitution of India. He submitted that Section 18 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, hereinafter referred to as the 'Act', dealt with the right of access to the protected monuments. It runs as under: "Subject to any rules made under the Act, the public shall have a right to access to any protected monuments." Thus, the said Section confers a right of access which could only be restricted by rules made under the Act. Rule 8(d) of the AMSR Rules is in the nature of a supplement to Section 18. It does not provide any statutory basis or power to restrict carrying on of trade and profession of tourist guides. It is in positive terms to enable and authorize showing the visitor around the monuments. The conditions of a licence to be granted by ASI are to confer such an authority.



Mr.Gupta submitted that non-holding of the examinations all this while during which the tourist guides and escorts have continued to work, they should not be rendered jobless and left to fend for other vocations in the evening of their lives.

7. Mr.Y.K.Jain, Senior Advocate, submitted that Rule 8(d) is beyond the rule making power, as conferred under Section 38 of the Act. The object is preservation and protection of monuments. The present guidelines, as sought to be framed to restrict the carrying on of the profession of tourist guides, has no nexus with the object of the Act being protection of monuments.

Mr.Jain submitted that there has been a singular failure on the part of the respondents to frame a responsive policy and guidelines with regard to the tourist guides. Respondents have failed to hold the examinations from 1985, except for one year in 1996. In these circumstances, the tour operators and tourist guides should be permitted to continue till examinations are held and a clear cut policy framed. He submitted that there should be no age bar as the

age bar would result in debarring those carrying on the profession. Experienced tour operators are essential for promoting tourism.

He submitted that any attempt to arbitrarily fix number of guides would be infringement of the fundamental rights to carry on trade and profession. There could not be a fetter put on the right to carry on a vocation. He submitted that on the one hand respondents seek to promote tourism aggressively and actively, which would entail requirements for more guides, yet at the same time the number is sought to be restricted without any basis. He submitted that the State of Madhya Pradesh had admitted in the proceedings in a writ petition that Khaju Rao itself needed many more guides. He submitted that most of the petitioners are tour operators, who receive the tourists from the Airport and accompany them through out their trip, including taking them around the monuments. The tour operators were mostly graduates, proficient in foreign language, knowledgeable about the history and culture of the country and adept in the art of making their narration interesting to

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the tourists. He submitted that experience tour operators should not be debarred either on account of the age bar or not possessing requisite degree in education.

8. Mr.S.D.Kinra, Advocate, submitted that most of the petitioners, whom he is representing, in the batch of writ petitions, are post graduates, proficient in foreign language. He submitted that the respondents' action amounted to infringing the right to carry on trade and profession under Article 19(1)(g). Rule 8(d) did not confer power upon the respondents to hold an examination. He submitted that there was no requirement to weed out existing tourist guides. Petitioners are not opposed to licencing of tourist guides, subject to the same being done in a proper and orderly manner.

He submitted that the bureaucrats and executive should not be left with unfettered power. He pleaded for an independent body, other than Department of Tourism to avoid favouritism and nepotism. He appealed for framing a licensing policy taking care of needs and concerns of the tourist guides and industry. He submitted that a provision

should be made for grant of compassionate licences to sons/daughters of tourist guides, who die in harness, subject to fulfilling basic eligibility requirements. He submitted that tourist guides, who are licensed at the State or District level could enter a centrally protected monuments upon endorsement being made on the licence by ASI. Similarly, as a matter of reciprocity, regional guides could enter State and local monuments. He submitted that consensus with the entry was to have this practice continued. He submitted that the ex employees of tourism have been granted licences without any examination, training and unaffected by the age bar.

9. Mr. Ajay Malviya submitted that some of the petitioners, whom he is representing, had completed the two years co-ordinate training course, held by Indian Association of Tour Operators (IITM), Gwalior. This course had the blessings of the Department of Tourism. Petitioners also claim that on the same parity they should be granted licence and exempted from the proposed test or examination. He submitted that respondents themselves were responsible for

not holding of the examination every year. In the absence of any clear cut policy, petitioners, who had been operating as guides, should be permitted to so work. He submitted that there should be no ceiling on the total number of guides. He cited the analogy of Advocates to urge that restricting the number of Advocates by Bar Council would be violating Article 19(1)(g) and not protected by 19(6) of the Constitution of India. He submitted that there should be no age restriction. The age restriction proposed is irrational for different classes, such as, foreign language guides, English speaking guides and retired persons. Any restriction on total number of guides would be self defeating exercise and contrary to ground realities.

10. Mr.Tariq Siddiqui submitted that most of the petitioners, whom he is representing, are qualified graduates and eligible as per 1996 criteria to function as Regional tourist guides. He submitted that in Writ petition Nos.611/02, 2769/03, 7443-50/03, 693-99/04, right of local guides are raised. He also questions the clause in the proposed guidelines, providing for a period of 5 years before

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transfer is considered. He submitted that if a transfer had been sought under the 1996 guidelines, which were in operation, it should be governed by the said guidelines.

11. Mr.M.A.Niazi submitted that petitioners in writ petition Nos.2807/97, 1389/03 and 1992/03 completed 8 months course conducted by IITM, Gwalior, called Destination Management. The admission to this course was on the basis of All India Entrance Test. It was an extensive and comprehensive course. He submitted that accordingly, those who have qualified and completed this course, should be exempted from entrance test.

12. Ms.Anjana Gosain, Advocate, representing State level guides in the State of Rajasthan, submitted that petitioners are graduates with 15 years experience. She submitted that keeping in mind the fact that they are State level guides and duly recognised with considerable experience, they should be exempted from the screening test as well as open examination and Regional Level Guide Licence be issued to them.

13. A batch of writ petitions pertaining to Regional

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Tourist Guides, where the grievance was confined to entrance examination not being held since 1996 for appointment of Tourist Guides were disposed of on 20<sup>th</sup> September, 2004, on recording Union of India's undertaking that the examination would be held within a maximum period of six months. It was also made clear that only such persons, who were eligible, as per the norms to take the examination, would be entitled to take the examination.

14. Pursuant thereto, Department of Tourism had published an advertisement on 16<sup>th</sup> December, 2004, titled REGIONAL GUIDE TRAINING COURSE FOR THE NORTHERN REGION. By this advertisement, applications were invited from unemployed candidates to work as freelance tourist guides in the Northern Region. For facility of reference, the advertisement is reproduced as under:-

"Applications from unemployed candidates are invited by the India Tourism Office, New Delhi to work as Freelance Tourist Guides in the Northern Region. The eligibility requirements are as follows:-

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1. Educational Qualification:

a) Minimum: Graduate of a recognized university. OR Three year Degree Holder in Tourism/Hospitality from a recognised University/Institute, OR Diploma in Archaeology from the Institute of Archaeology under the Archaeological Survey of India, New Delhi or from any other recognised Institution/University.

b) Fluency in English language is essential.

c) Candidates proficient in any foreign language other than English and having sound knowledge of History and Culture will be given preference. They should have completed at least a six months regular course in the foreign language from a recognised University/approved tutions/ Embassy or Consulate or their cultural centres.

2. Age Limit:

The applicants shall be between the age of 20-65 years as on the date of the first advertisement appearing in the media.

Persons holding regular or part time employment till not be eligible.

Applications forms can be collected from the Indiatourism office, 88-Janpath, New Delhi-110011 from 09.30 hrs. to 17.30 hrs. Application complete in all respects should reach the Regional Director (North), Indiatourism Office, 88-Janpath, New Delhi-110011 with a Demand Draft for Rs.500/-



payable to 'Pay & Accounts officer, Ministry of Tourism, New Delhi' on or before 15<sup>th</sup> January, 2005. application forms can also be downloaded from the official Website [www.incredibleindia.org](http://www.incredibleindia.org) of the Ministry of Tourism, Government of India.

Davp8505(8)2004."

15. By a subsequent Corrigendum issued on 30<sup>th</sup> January, 2005, the last date of receipt of application was extended to 15<sup>th</sup> February, 2005.

16. During the course of hearing of the writ petition, petitioners had also made submissions regarding the injustice and prejudicial effect of the proposed guidelines, which had been filed by Union of India during the course of hearing. Certain anomalies, inconsistencies, difficulties and hardships likely to be encountered were pointed out during the course of hearing. Respondent Union of India had taken note of the concerns of the petitioners and had filed a draft of the revised guidelines 2003, which sought to redress the legitimate concerns of the petitioners. Learned counsel for the petitioners, as noted earlier, had made submissions and

prayed for certain directions to be issued by the Court to Union of India for considering certain exemptions and modification in requirement of educational qualification, experience, screening test/entrance test and open examination and training course in respect of Regional Guides, to which I shall advert during the course of the judgment later.

17. Let us first consider the plea of the petitioners that the guidelines, purported to be framed under Rule 8(d) of the Rules, are beyond the rule making power. The need for attracting foreign tourists and providing them with a good account of our history and heritage cannot be under scored. Rule 8(d) of AMSR Rules not only regulates the entry to the monument but also controls user of the monument. Reference is invited to the judgment of the Supreme Court in Rajeev Mankotia Vs. Secretary to the President of India and Ors. reported at (1997) 10 Supreme Court Cases 441, where in para 19, it was observed that *"similar efforts should also be made by the Government of India, in particular, the Tourism Department to attract foreign tourists and to give*

*them a good account of our past and glory of the people of India, as a message to other countries and territories."*

Reference may also be invited to the decision of the Allahabad High Court in M/s.Paramount Studio Vs.Union of India reported at AIR 1981 Allahabad 186 wherein the Court while repelling challenge to Rule 8(d) held as under:-

"We find that the provisions of Clause (d) of Rule 8 are in conformity with the object of the Act and they have been made with the purpose of regulating the access of the visitors to the monuments and the use of the precincts of the monuments by those visitors. No person can claim as of right that he shall carry on business at a place which is not for which he does not have the requisite permission. The rule in question not only regulates the actual entry in the precincts of the monuments but also controls the user of the monument. The Act and the rules in question raise the citizens' sense of responsibility in protecting and maintaining these monuments of national importance in their original form. This sense of responsibility develops to a real factor of social life which exerts its impact on official policy. The principal task, therefore, is to raise the safety measures and to provide safety regulation for protecting and maintaining the monuments including their compound. The provision in the impugned rule seems to be based upon ethic principle

of responsibility. It is a duty of every citizen to protect monuments of national importance in their original form. Hence special and personal factors pertaining to the photographers, if left unregulated or uncontrolled may lead them under the prevailing conditions to take irresponsible decisions for violation of that duty. So in order to avoid threats and hazards which may emerge in the different situations precautionary and safety regulations have been provided for by granting licenses subject to certain conditions. Adherence to those conditions guarantees that foreseeable hazards do not arise. Society by elaborating and introducing these legal provisions accepts responsibility that every thing necessary is done to guide the citizens by way of law to move about within the precincts of the monuments as also in their compound in a careful considerable and safe manner. The licence holders are also charged for any situation with easily fulfilled obligations which they can adhere to without any difficulty. Protection and maintenance of the monument like Taj Mahal and Forts at Agra, Fatehpur Sikri and Delhi as well as rational use thereof are typical tasks in our country. Starting from this position the legal provisions had to be created and the methods of legal regulation had to be determined. The law stipulates the rights, duties and responsibilities of all those persons who secure licence to do a particular business or profession within the precincts of the monuments in question. We hold the view that the legal provisions in question for the protection of the monuments have contributed towards more effectively

increasing the role of law in the administration and organization of the social relations in this sphere. They ensure rational utilization of the monuments by the enterprises, organs and citizens. The legal objective is to ensure that citizens, public authorities and professionals meet their legal duties with greater seriousness and consciousness in order to take into account the demands for protecting these monuments. The contention of the petitioners that R.8(d) is ultra vires of the Act is therefore, merit less and accordingly rejected."

Again in Deepak Theatre Vs.State of Punjab reported at 1992 Supreme Court 1519, the Court on the meaning and scope of word "Regulate" held:-

"3.... The question emerges whether the word regulation would encompass the power to fix rates of admission and classification of the seats. The power to regulate may include the power to licence or to refuse the licence or to require taking out a licence and may also include the power to take or exempt from taxation, but not the power to impose a tax for the revenue in rule making power unless there is a valid legislation in that behalf. Therefore, the power to regulate a particular business or calling implies the power to prescribe and regulations as may be deemed necessary to conduct the business in a proper

and orderly manner. It also includes the authority to prescribe the reasonable rules, regulations or conditions subject to which the business may be permitted or conducted.....

4. Article 19(1)(g) of the Constitution accords fundamental right to carry on any profession, occupation, trade or business, but would be subject to reasonable restrictions on the exercise of the said right imposed by a law, in the interest of the general public."

The Supreme Court again in a recent judgment in Civil Appeal No.2539/98 titled B.P.Sharma Vs.Union of India & Ors, while considering the validity of fixation of age beyond which the identity cards of guides were not being renewed, had the occasion to consider the provisions of Section 18 and 38 of the Act and Rule 8(d) of AMSR Rules. The Court held as under:-

"Now coming to Section 38, we find that the Central Government under clause (c) of sub-section (2) can make rules in respect of right of access of the public to a protected monument and the fee etc., which may be charged therefor. It is certainly referable to Section 18 of the Act. It may be that by implications the access to the protected monument may include the entitlement of the members of the public to know about the details of the monument, its historical

- background and other connected matters, which information they generally obtain through the guides. Therefore, it could be considered necessary to regulate the other related matters of right to access to monument eg. Matters pertaining to the profession of guides. The Central Government might like to see that the tourists are properly informed and not misguided or
- fleeced by unscrupulous guides or such element posing to be guides, though to engage a guide is optional on the part of the tourists. In this light we now advert to Rule 8 (d) of the Rules which provides certain prohibitions, saying that no person shall show a visitor around for monetary consideration except under the authority of conditions of licence granted by an archaeological officer. The purpose of rule 8 (d) is clear that the place may remain protected, be maintained and be kept neat and well and no person may charge a visitor for taking him around the place except one which is authorized as approved guide. His charges would be, as fixed."

18. In view of the foregoing judgments, petitioners' challenge to the validity and vires of Rule 8(d) of AMSR Rules being beyond rule making power and the guidelines framed thereunder, is held to be devoid of merit and not sustainable.

19. Even otherwise, petitioners during the course of

submission for all practical purposes had given up the challenge to Rule 8(d) and the guidelines framed thereunder and had prayed for equitable reliefs, so as to ameliorate the hardships and difficulties encountered by them in the wake of proposed amended guidelines laying the eligibility and examination system for grant of licences. As noted earlier, the respondents in the revised proposed guidelines filed, have attempted to remove difficulties and bottlenecks such as police verification and certification etc.

20. At this stage, let me consider the applications moved by the intervenors who questioned and assailed the power of the Court to alter the basic structure of the guidelines or to replace the guidelines with new guidelines which were not there in the Scheme. The petitioners and respondents have objected to the applications by questioning the locus standi of Intervenor as being premature. It has been urged that the application was premature since the Government itself had not finalised the guidelines, the Court as yet had not issued any direction to revise the guidelines or given any finding with regard to the



validity of any of the provisions. It has been urged that the said applications are premature and have been moved with a view to delay the conclusion of the case when arguments were going on and the case was ripe for closure. Intervention is sought to be made to protect the monopolistic hold of the licensed guides.

21. It is not necessary for me to pronounce on the legal objections raised or merits of the aforesaid plea of either the petitioner or the respondents for the following reasons. The respondents had filed the draft guidelines in Court on which the petitioners had expressed their concern. There is nothing wrong in the respondents considering and giving to the extent feasible, administrative redress in case they find the concerns of the petitioners to be legitimate. There is nothing in our judicial system or within the ambit of Article 226 of the Constitution which discourages resolution of disputes by consensus and the Court can act as facilitator for resolution of the disputes. Even in the present case the respondents have positively responded to the number of concerns and agreed to incorporate them in the revised

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guidelines. Accordingly, there has been no question of the Court altering the basic structure of the guidelines. The Court has only directed the Government to consider removal of certain inequities, difficulties and directed review by the Government in the light of certain observations so as to remove the inequities and provide a level playing field to the various classes of aspirants.

22. The court is not determining whether the minimum qualification prescribed or whether a particular course ought to be recognized or not.

However, within the broad parameters as the Supreme Court observed in Ajay Kumar Joshi & Ors. Vs. State of Rajasthan & Ors. reported in (2002) 6 SCC 239, the court can examine and pronounce on the decision making process:-

"That is not to say that such matters are not justiciable. In an appropriate case the court can examine whether the policy decision or the administrative order dealing with the matter is based on a fair, rational and reasonable ground; whether the decision has been taken on consideration of relevant aspects of the matter;

whether exercise of the power is obtained with mala fide intention; whether the decision serves the purpose of giving proper training to the candidates admitted or it is based on irrelevant and irrational considerations or intended to benefit an individual or a group of candidates."

23. The Court is acting within the above parameters in giving directions and its observations for review and consideration to ensure that there is nexus with the object sought to be achieved and directed review of anomalies and inequities.

In view of the foregoing the application of intervenors is misconceived and stands disposed.

24. The main grievance of the petitioners is that they were endowed with necessary skills and experience to work as Regional Tourist Guides in the Northern Region, but were unable to do so, since the Department of Tourism, Government of India, failed to hold the examination. This is an admitted position that the Government of India failed to hold examination after 1996, thereby preventing eligible persons from obtaining a licence and pursuing a profession of their choice. This was more so, particularly, when issuance

of licence did not amount to granting or guaranting employment, but was merely a licence to practice profession.

25. Another grievance of the petitioners is that respondent had been issuing licences to retired personnel of the Department and at the same time were not holding and conducting examination to grant licences to aspirants from general public. The age restriction for entry, compulsory exit from profession were unwarranted and unreasonably restrictive and in violation of fundamental rights of the citizens.

26. The Department of Tourism has on its own agreed to exclude the provision of granting licence to retired personnel of tourism department. As such, this grievance no longer subsists. Further, the provision regarding retirement age, following the judgment of the Supreme Court in B.P.Sharma Vs.Union of India (Supra), has been amended, permitting any person above the age of 21 to apply for and obtain the licence. This has substantially redressed the above concern.

27. There is however substantial justification for the

respondents to limit the number of licensed guides, as the same is imperative to have sustained development of tourism. In case, there are too many licensed guides to show people around the monument, it could lead to over crowding, chaos and unhealthy competition being detrimental for the industry and profession itself. A dissatisfied guide far from promoting tourism could adversely affect the tourism scenario and the image of the country. The requisite number of regional level guides to be licensed and assessed would also depend upon the tourists travelling to India and the profile of such tourists. Any detailed discussion on this aspect is not necessary, as the respondents have neither notified number of vacancies for tourist guides licences nor have limited the same as of now. The respondents while assessing and determining the number of licenced, guides required in the region would need to assess the flow of tourists, number of monuments, available licensed guides, growth potential and all other relevant factors. In case, the determination is done in an irrational or arbitrary manner or is disregard of the relevant

factors and criteria, it would be subject to challenge as arbitrary, irrational and not falling within reasonable restriction.

28. The question which the Court is presently confronted with is that the petitioners in these batch of writ petitions have without holding a licence continued to function as Regional level Tourist guides on the basis of interim directions and protection due to failure of the respondents to hold the examinations. Petitioners, apart from availing of the benefit of interlocutory orders do not have any vested or statutory right to claim preferential treatment. It is only from the perspective of balancing equity that the Court is examining these grievances and giving necessary directions, where required, to the respondents to consider and take appropriate decisions.

29. As per the estimates of figures worked out in 2002, there were 700 Regional level licensed tourist guides, As a result of the petitions filed in this court, it is estimated that more than 1000 persons are functioning as Regional level Tourist Guides on the basis of court protection. These

persons would be making inroads into the business and professional opportunities of 700 licensed holder Regional level Tourist Guides. Presently, the proposed procedure for grant of licence for Regional Level Tourist Guides may be summarized as under:-

Stage I: Screening of persons, as per qualifications criteria provided in the proposed amended guidelines.

Stage II: Eligible persons to appear in an entrance examination/ screening test comprising a written test and interview.

Stage III: Those who qualify the Entrance/screening test to be given a training course nomenclatured as Orientation/Training Programme at the expense of Union of India.

Stage IV: After completion of Orientation Programme, the participants would be required to undertake final examination, comprising written test and interview.

Stage V: After assessing the performance of participants in this final examination, licences would be granted to such persons, who attain the qualifying yardstick determined by the Department.

30. In the light of the foregoing, let us consider the grievances of the petitioners, as are sought to be agitated.

Minimum eligibility condition of being a graduate:-

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Under the 1996 eligibility criteria, a person did not have to be graduate, provided he had undergone basic education of 10+2 and a two year course in Foreign language from specified institutes. There can be no doubt with regard to the power of the Government to change the minimum eligibility criteria for grant of licences to Tourist Guides, especially, when such changes are forward looking and in keeping with the enhanced minimum educational requirements and are forward looking and not regressive. The change is aimed at ensuring that better educated persons become guides. Hence the challenge to increased educational qualification condition, as such, would not be sustainable. However, considering that the Government of India did not hold examination for the grant of licence, since 1996 and there is a sudden change in eligibility, which would affect all those who did not enrol or acquire the higher qualifications as they were eligible under the criteria prevalent in 1996, such persons would otherwise suffer for no fault of theirs. In these circumstances, it commends to the Court that Government as a one time exemption to



permit those, who were eligible, as per the 1996 criteria to take part in Stage II examination/ screening test and further examination. In case, such persons, qualify for the grant of licence, the same may be granted, subject to condition of their obtaining the requisite educational qualifications as per the eligibility criteria in 4-5 years.

31. The above would be in keeping with an earlier decision of the Division Bench of this Court in Tour Coordinator Association Vs. Union of India & Ors. reported at 1995 (35) DRJ (DB), wherein the Court carved out an exception for tourist guides by holding, "respondents shall issue necessary orders exempting those candidates from taking entrance examination for guide training course, who have successfully passed the course of tourist guides but with a specific direction that they would have to undergo three months' Guide Training Programme before they could be recognised as tourist guides." It may also be noted that changes in eligibility conditions should be known well in advance, so as to enable persons to obtain requisite educational qualifications. Similar directions have been

given by the High Court in case of non graduate or non-B.Ed school teachers in recognized schools. As per the order passed by Director of Education, no recognized school was to employ a non-graduate, non B.Ed teacher. Non-graduate teachers who had been employed by schools prior to recognition being granted to school or prior to order have been granted time to acquire the prescribed qualification.

32. Let us now consider the plea made on behalf of the State Tourists Guides licence holders. Based on their experience and qualifications, they seek exemption from appearing in the entrance examination/screening test. A plea is made that based on their qualification and experience, they should even be exempted from final examination. In case exemption from final examination is not be given then at least from the entrance examination/screening test. The justification sought to be advanced is that with the age, their ability to compete with younger persons reflex action and the speed gets affected. Younger persons have an inherent advantage over them. It has to be recognised that for a State Level Guide, licences

were issued based on the criteria prescribed by the States and on their knowledge of monuments and history of the monuments of State and not for All India Monuments or that of region. Besides, State Guide is not the feeder post for Regional Guides. It is also not a case of promotion from State Guide to Regional Guide. Any such general exemption granted to State Level Guides would also be discriminatory qua those eligible to become Regional Level Guides, but are now required to take the entrance examination not being entitled to the exemption. The root cause of the difficulty appears to be the apparent disadvantage to persons, who have attained a higher age and as such experience difficulty in competing with younger candidates, while they have been functioning as State Level Guides or operating as Guides under Court protection. Any such general exemption would be fraught with further difficulties and complications.

33. Looking at the syllabus as laid down in the proposed guidelines for Stage-II examination, it has three components:

(i) knowledge of monument, around the area 50 marks

- (ii) Questions of history
- (iii) General Knowledge

50 marks  
100 marks.

It would be seen that the questions of history as also knowledge of monuments around the area are essential for a Regional Tourist Guide and no compromise or exemption in this regard can be considered. Again as far as General Knowledge is concerned, the age factor cannot be said to have resulted in either diminishing or prejudicially affecting the same. Rather with passage of time, it should get accentuated. What the respondents may consider is that greater emphasis is laid towards making the Entrance/Screen test and Final examination, as far as possible, one with objective questions giving options of answers, in the absence of detailed descriptive answers, or a mix of objective and descriptive questions. This would enable those whose speed on account of the age has withered, to effectively compete with the younger lot. These are few of the measures which the respondents are directed to consider so that the persons attaining a higher age are not put to disadvantage by appearing in examinations as a

result of the non holding of examinations since 1996. I also direct it appropriate to direct the respondents to consider a provision in the Guidelines for grant of licence on preferential basis to the kins of those Licensed Guides who die in harness, if otherwise eligible.

34. There is yet another measure, which the respondents are directed to consider which would provide a level playing field to the unlicensed tourist guides, who are eligible to apply as also those tourist guides, who have been working for long, either under Court protection or otherwise to fairly compete and sit in the screening test at Stage II. This is holding of a preparatory course of 4 to 6 weeks duration, which could be a paid course to enable aspirants/candidates to brush up their knowledge and acquire requisite orientation to sufficiently equip them to take up the entrance examination. The said course is to be an optional course and the charges for the same should be reasonable and primarily confined to recovery of cost thereof. The respondents are accordingly directed to extend the examination date for the entrance examination at Stage-

II so as to absorb the period of the preparatory/ refresher course.

35. The above judgment decides the pleas of the petitioners in the batch of writ petitions which were made in this lead case. Some of the counsels had also made submissions with regard to their writ petitions on tourist guides who are either seeking a transfer from one region to the other. In some of the writ petitions prayer was made that the language course completed by them should be recognized as equivalent to graduation. I am of the view that said petitions should be individually dealt with, as the questions of individual entitlement for transfer from one region to the other as per the applicable transfer policy as also the question of recognition of the individual language course cannot be decided in a generalised manner. Such petitions and issues regarding entitlement to transfer and eligibility, based upon the particular course will have to be individually and separately dealt with.

36. For facility of reference the conclusions reached,

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directions given, observations made for review of Guidelines are summarized below:-

(i) Petitioners challenge to the validity and vires of Rule 8(d) of the AMSR Rules and to the framing of Guidelines for grant of Guide Licences to Regional Level (Guides) thereunder is held to be devoid of merit and fails. (para 18)

(ii) Even otherwise, petitioners during the course of proceedings for all practical purposes had given up the challenge to Rule 8(d) and framing of Guidelines for issuance of Guide Licences and prayed for equitable reliefs seeking amelioration of difficulties and hardships encountered by them in the wake of amended Guidelines, prescribing eligibility conditions and examinations. (para 19)

(iii) Power of Union to regulate and limit the number of licenced/Regional Tourist Guides upheld based on flow of tourists, number of monuments, available Guides, growth potential and other relevant factors. In case determination is done in an irrational manner or arbitrary manner in

disregard of relevant factors, it would be subject to challenge as not falling within reasonable restriction to practice profession. (para 27)

(iv) Revision in conditions of eligibility and qualifications for Regional Level Tourist Guides.

Government has the power to revise eligibility criteria for grant of licence to Tourist Guides including Enhancing educational qualifications to strive for better quality of guides. As no examination held since 1996 and the minimum requirement of being a graduate introduced by 2003 guidelines, it prejudices all those who did not enrol or acquire higher qualification because of being eligible under 1996 criteria of 10 + 2 with two years foreign language course. Such persons in the absence of tests from 1996 were not granted licence and now find themselves ineligible under 2003 Guidelines. UOI is directed as a one time exemption to permit those Guides eligible under 1996 criteria and carrying on profession to appear in Stage II examination/Screening test. In case, they qualify in



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Screening test and Final examination, licence be granted subject to their obtaining requisite educational qualification as per eligibility criteria in 4-5 years.

(v) Plea of State Level Licenced Guides for exemption from Screening test and final examination based on their experience and qualifications is not accepted. Criteria, qualifications prescribed by State are different from Regional Level Guides. State Level Guides are not feeder posts to Regional Level Guides. Difficulty is arising from competing with younger persons, slowing of reflexes etc. Syllabus prescribes History and General knowledge and knowledge of monuments around the area as essential. No case made out for general exemption. Respondents to consider emphasis on making entrance and screening test and final examination as far as possible with objective questions, giving options of answers or a mix of objective and descriptive questions. This would enable those who have withered with age to effectively compete with younger lot.

(vi) Government to hold a preparatory course of 4-6 weeks duration to enable refreshing knowledge and for

acquiring requisite orientation to sufficiently equip candidates to take up entrance examination. Such course to be a paid optional Course. Fee/charges based on recovery of cost. Respondents to extend the date of holding of examination at stage II so as to absorb period of preparatory refresher course.

(vii) Intervenors applications misconceived and not entertained for reasons set out in para 20-22.

(viii) Cases of transfer from one region to another- to be considered individually. Similarly cases of recognition of language courses-Tourist Guides training courses to be individually considered.

(ix) Petitioners grievance regarding licences being granted to employees of Tourism Department without examinations stands redressed- Provision excluded from Guidelines.

(x) Age restriction on entry and compulsory exit from profession were unwarranted. Following judgment in B.P.Sharma Vs UOI (Supra)- Provision amended. Any person above age of 21 years is eligible to get licence.

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(xi) Government may consider a provision in the Guidelines for grant of Licence on preferential basis to the kins of those Licensed Guides who die in harness, if otherwise eligible.

(xii) The interim protection granted by court to ensure to the benefit of the petitioners if they take the Screening test and Final examination and upto the declaration of result.

Writ petition stands disposed of with the above directions and observations.

March 7<sup>th</sup>, 2005  
ssb/aka.

*Manmohan Sarin*  
Manmohan Sarin, J

*fresh em 8096/06*