

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.11.2017
CORAM
The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.28321 of 2017
and WMP.Nos.30430 & 30431 of 2017

P.S.Prabu

.. Petitioner

vs.

1.Chennai Metro Rail Limited (CMRL),
rep. by its General Manager (P&BD),
Admin Building CMRL Depot,
Poonamallee High Road,
Koyambedu,
Chennai - 600 107.

2.The Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai- 600 003.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari, to call for the entire records of the first respondent and quash the tender document for licensing of Advertisement rights on piers and portals along the corridor I & II of phase 1 in CMRL network in BD/PIII/452/2016/1, July 2017 as the same is illegal and unsustainable in law, as the said tender is been issued without obtaining prior License under Sec.326-C of Chennai City Municipal Corporation Act, 1919 and Chennai City Municipal Corporation Licensing of Hoardings and Levy and Collection of Advertisement Tax Rules, 2003 from the competent authority namely the second respondent.

For Petitioner : Mr.V.P.Sengottuvel

For Respondents : Mr.V.C.Selvasekaran
for second respondent

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

In this writ petition, by way of public interest litigation, the petitioner is challenging the tender for licensing of advertisement rights on piers and portals

along the corridor I & II of phase 1 in CMRL network in BD/PIII/452/2016/1, July 2017.

2. The main ground of challenge is that prior license has not been obtained under Section 326-C of Chennai City Municipal Corporation Act, 1919 (hereinafter referred to as "said Act").

3. Before advertng to Section 326-C of the said Act, it would be pertinent to refer to Sections 326-B and 326-BB of the said Act, which are set out herein below for convenience:

"326-B. Prohibition for erection of hoardings.- (1) No hoarding shall be erected at any place, on or after the 23rd day of July, 1998 (hereafter in this section referred to as the said date) by any person without obtaining a licence from the Commissioner.

(2) Every person who has erected any hoarding without obtaining a licence and which is in existence immediately before the said date shall apply for a licence in accordance with the provisions of this Chapter within thirty days from the said date.

326-BB. Regulation of erection of digital banners and placards.- (1) No digital banner or placard for exhibiting any advertisement or information for a period not exceeding six days shall be erected by any person without obtaining prior permission from the Commissioner.

(2) Every application for permission under sub-section (1), shall be made, in writing, to the Commissioner fifteen days prior to the date of erection of digital banner or placard in such form, containing such particulars and with such fee, as may be prescribed.

(3) The permission for erection of digital banner or placard may be granted for such purpose and for such period, not exceeding six days and subject to such conditions as may be specified by the Commissioner.

(4) The Commissioner may refuse to grant permission for the reasons to be recorded in writing.

(5) Every person who has erected the digital banner or placard after obtaining the permission, shall, on expiry of such permission remove the same and dispose it, without causing any hazard to health or environment, in such manner as may be prescribed."

4. Section 326-C of the said Act provides:

"326-C. Application for licence.- (1) Every application for licence under this Chapter shall be made to the Commissioner in such form, containing such particulars and with such fee, as may be prescribed.

(2) The Commissioner may, after local inspection, grant a licence with such conditions or directions, subject to such rules as may be prescribed.

(3) The Commissioner may refuse to grant licence for reasons to be recorded in writing :

Provided that a licence shall not be refused unless the applicant has been given an opportunity of making his representation.

(4) Every licence granted under sub-section (2) shall be valid for such period as may be prescribed and may be renewed from time to time.

(5) The fee paid under sub-section (1) shall be credited to the Corporation account in such manner as may be prescribed."

5. Learned counsel for the petitioner has also referred to Section 326-J(1) of the said Act, which is also set out herein below:

"326-J. Prohibition of erection of certain hoardings, digital banners or placards. - (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or in any judgement, decree or order of any court, tribunal or other authority,-

(a) (i) Where any hoarding (other than traffic sign and road sign) visible to the

traffic on the road is hazardous and disturbance to the safe traffic movement, so as to adversely affect free and safe flow of traffic and which is in existence immediately before the date of the commencement of the Tamil Nadu Municipal Laws (Amendment) Act, 2000 (Tamil Nadu Act 26 of 2000) (hereafter in this section referred to as the amendment Act), the Commissioner shall by notice in writing require the licensee or any person in possession, of such hoarding, to remove such hoarding within such time as may be specified in the notice:

Provided that such time shall not exceed fifteen days from the date of issue of such notice ;

(ii) Where the hoarding referred to in sub-clause (i) is not removed within the time specified in the notice, the District Collector shall, without further notice, remove such hoarding and recover the expenditure for such removal as an arrear of land revenue.

(b)(i) Where the Commissioner is satisfied that the erection of any hoarding (other than traffic sign and road sign) visible to the traffic on the road is hazardous and disturbance to the safe traffic movement so as to adversely affect free and safe flow of traffic, he shall not grant any licence under section 326-C and no such hoarding shall be erected, on and from the date of the commencement of the amendment Act by any person ;

(ii) Where any hoarding is erected in contravention of subclause (i), it shall be confiscated and removed by the District Collector without any notice."

6. A perusal of the Act makes it patently clear that no hoarding is to be set up in contravention of the Act referred to above and without obtaining the requisite license. However, the petitioner has only challenged the notice inviting tenders. Hoardings have not been set up as yet. The tender documents clearly provide that the successful tenderer would within 90 days from the date of signing the license agreement be required to obtain approvals from the local civic bodies/authorities, failing which, the license agreement would stand cancelled.

7. The tender documents contemplate setting up of hoardings and banners in compliance with the requisite provisions of the Chennai City Municipal Corporation Act, 1919 and the Rules and Regulations framed thereunder. In granting license, the concerned Licensing Authorities would obviously ensure

compliance with Chennai City Municipal Corporation Licensing of Hoardings and Levy and Collection of Advertisement Tax Rules, 2003, including Rules 6, 9 and 10 thereof.

8. The judgment dated 30.10.2017 of the Division Bench of this Court in W.P.No.41289 of 2016 [Coimbatore Consumer Cause, rep. by its Secretary K.Kathirmathiyon v. State of Tamil Nadu and others) cited by the learned counsel for the petitioner is distinguishable on facts and not applicable in the facts and circumstances of this case.

9. In Coimbatore Consumer Cause (supra), the Court found that permission was granted contrary to the guidelines and policy relating to advertisements on National and State Highways.

10. As observed above, in this case, all requisite permissions and licenses have to be obtained in terms of the tender documents and in particular Clause 1.6.

11. The writ petition challenging the tender notice is premature and misconceived and the same is dismissed. No costs. Consequently, WMP.Nos.30430 & 30431 of 2017 are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To:

1.The General Manager (P&BD),
Chennai Metro Rail Limited (CMRL),
Admin Building CMRL Depot,
Poonamallee High Road,
Koyambedu,
Chennai - 600 107.

2.The Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai - 600 003.

+1cc to Mr.V.P.Sengottuvel, Advocate SR.No.79752 dt.10.11.2017

W.P.No.28321 of 2017

MR(CO)

sm:6.12.2017