

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.06.2017

Date of Decision: 14.06.2018

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P. No.10237 of 2017

Prime Way Advertising
represented by its Partner,
K.C.Chandrasekaran,
No.B-19, Kaashyap Court,
13-B, Velacherry Main Road,
Chennai-600 042. ... Petitioner

Vs.

- 1.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai-600 003.
- 2.The Collector of Chennai,
Singaravelar Maligai,
Chennai-600 001.
- 3.The Assistant Commissioner of Police,
Traffic,
EVK Sampath Road,
Vepery, Periyamet,
Chennai-600 007.
- 4.The Executive Engineer,
Zone XIV,
Unit Office-43, Corporation of Chennai,
I.I.T. Colony, Pallikaranai,
Chennai-600 100. .. Respondents

Prayer:Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, calling for the records of the first respondent which culminated in the impugned order bearing No.R.D.Na.Ka.No.G4/282/2017, dated

8.3.2017 and to quash the same and to grant license to the petitioner in pursuance of the application in Form-I dated 10.11.2016.

For Petitioner : Mr.A.S.Sriram
for M/s.A.S.Kailasam and Asso.

For Respondents: Mr.K.Venkataramani,
Additional Advocate General,
assisted by Mr.K.Soundararajan
Standing Counsel for RR1,3 and 4
Mr.R.Vijayakumar, AGP for R-2

ORDER

M.Sundar, J.

The writ petitioner before us is a partnership firm and it is represented by one of its partners.

2 It is the say of the writ petitioner that it is in advertisement business and it is specializing in outdoor advertisement. It is the further say of the writ petitioner that it has built a good reputation in this field of activity. It is the case of the writ petitioner that as part of its business activity, it has erected hoardings at various locations after obtaining necessary sanctions.

3 In the affidavit filed in support of the writ petition the writ petitioner has averred that it had submitted an application to the first respondent before us, i.e., Commissioner, Greater Chennai Corporation, Rippon Building on 10.11.2016.

4 From a reading of the above said affidavit of the writ petitioner, it appears that the said application has been made to the first respondent seeking permission for erecting a hoarding. However, intriguingly, the affidavit does not mention the place or venue where the writ petitioner wants to erect the hoarding for which permission was sought.

5 However, from the submissions at the Bar and from a perusal of the impugned order, we find that the location where the writ petitioner sought permission for erection of the hoarding is No.53, Kovalam Nagar (1st main road), Velachery Main Road, Pallikaranai, Chennai-600 100. We also find that the size of the hoarding is 24 x 12 feet. We proceed on that basis.

6 It is not in dispute that the application of the writ petitioner was rejected by the first respondent by an order dated 08.03.2017 (signed on 22.3.2017), bearing reference

No.Va.Du.Na.Ka.No.G4/282/2017 (hereinafter referred to as the 'impugned order' for the sake of brevity, convenience and clarity).

7 It is seen from the impugned order that the writ petitioner's application has been rejected on the ground that the building on which the hoarding was sought to be erected is 26 meters from the junction of Tambaram-Velachery road and Kovalam Nagar street and is, therefore, within 100 metres of the road junction.

8 The writ petitioner would contend that the prohibition of erection of a hoarding within 100 metres from a road junction is governed by Rule 10(ii) of the Tamil Nadu Urban Local Bodies Licensing of Hoardings and Levy and Collection of Advertisement Tax Rules, 2003 (hereinafter referred to as the 'said Rules' for brevity). We also notice that the impugned rules have been framed in exercise of powers conferred under Section 347 of the Chennai City Municipal Corporation Act, 1919 (hereinafter referred to as the 'said Act' for brevity).

9 Mr.A.K.Sriram, learned counsel appearing for the writ petitioner would contend that the above said rule 10(ii) of the said Rules has been read down by this Court in a reported judgment of this court, being K.Kanagaraj Vs. District Collector, Chennai and others [(2006) 4 MLJ 1033]. The learned counsel draws our attention to paragraph 23 of the said judgment, which reads as follows :

"23. Coming then to the provision of Rule 10, the first ground of attack is that sub-rule (ii) of Rule 10 is totally unworkable inasmuch as there is no road or street junction in the city of Chennai where a distance of 100 metres is available on either side of the junction free of any road corner or street junction. Learned Government Pleader fairly conceded that this is a correct position as far as the city of Chennai is concerned. Therefore, we are inclined to accept the argument of the petitioners and confine the applicability of sub-rule (ii) of rule 10 only to the corners of the road or street junctions. However, it is made clear that no hoarding shall be permitted within the distance of 100 metres unless it is in conformity with the provisions of the Act and the rules....."

10 It is also the contention of the learned counsel for the petitioner that this judgment was carried to the Supreme Court and the Supreme Court confirmed the judgment of the Division Bench of the Madras High Court. It is his say that the Supreme Court's judgment is also a reported judgment and it is

reported in (2008) 3 MLJ 1058 (SC) = (2008) 8 SCC 42 [Novva ADS Vs. Secretary, Deptt. of Municipal Administration and Water Supply and another].

11 Learned Additional Advocate General Mr.K.Venkataramani, leading Mr.K.Soundararajan, learned Standing Counsel for the Chennai Corporation (on behalf of respondent Nos.1,3 and 4) and Mr.R.Vijayakumar, learned Additional Government Pleader, for the second respondent would contend that a perusal of paragraph 23 of the above said judgment would make it clear that this Court has not read down the scope of Section 10(ii) of the said Rules, because in paragraph 23 itself, the Division Bench of this court has made it clear that no hoardings shall be permitted within the distance of 100 metres of a road junction unless it is in conformity with the provisions of the Act and the Rules. We have also perused the judgment of the Hon'ble Supreme Court referred to supra.

12 As per the reported judgment of this Court (2006) 4 MLJ 1033, which was placed before us, we find that the hearing of the main writ petition was fixed on another date. The last paragraph reads as follows :

"Hearing of Writ Petition Nos.7143 of 2006 and 24154 of 2003 is fixed as 11.10.2006 High on Board."

Therefore, we had doubts if the reported judgment is an interim order. Further more, the Supreme Court's judgment reported in (2008) 3 MLJ 1058 (SC) = (2008) 8 SCC 42, was in Civil Appeals No.2702 of 2008 with No.2715 of 2008 etc., (as found in the reported judgment) and we wanted to know if the civil appeals in the Supreme Court arise out of these writ petitions. We sought this clarification as the cause title as found in the Supreme Court judgment (in the reported journal) was different.

13 Both the learned counsel sought time to verify this aspect of the matter.

14 However, we verified the records in this Court as well as the Supreme Court website. We find from the records of this court that the judgment of the Division Bench of this Court dated 10.08.2006 reported in (2006) 4 MLJ 1033, was in a batch of writ petitions and the batch of writ petitions disposed of by this order are as follows :

"W.P.Nos.7143 of 2006, 18083, 24154, 19056, 19057, 19406, 20633, 20634, 20666 to 20668 and 21894 of 2003, 8427, 8515, 8658, 8774, 8816, 8894, 8944 to 8947, 8482 to 8484, 9257 to 9261 and 9296 to 9300, 9271, 10393, 10452, 10490 to 10493, 10494 to 10497, 12368 to 12370, 18020 to 18027, 23066, 23067 and 23394 to 23397/06"

15 We also find that the judgment of Hon'ble Supreme Court vide judgment dated 09.04.2008 reported in (2008) 3 MLJ 1058 (SC) = (2008) 8 SCC 42 was in Civil Appeal Nos.2715, 2574,

2575, 2576, 2577, 2580, 2581, 2582, 2583, 2584, 2585, 2623, 2624, 2625, 2626, 2628-2629, 2631-2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640 / 2008, Writ Petition (C) No.79 /2007, Civil Appeal Nos.2642, 2643, 2644, 2645, 2646, 2647, 2649, 2650, 2651-2654, 2655, 2656, 2657, 2658, 2659, 2660 / 2008, Writ Petition (C) Nos.124, 134, 158, 146, 149, 151, 152-53, 161-62 /2007, Civil Appeal No.2716 /2008, Writ Petition (C) No.165 /2007, Con.Pet.No.5 of 2007, Civil Appeal Nos.2661, 2662-2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2675, 2676, 2677, 2678, 2679, 2680, 2681, 2682, 2683-2687, 2688, 2689-2692, 2693, 2696, 2697 / 2008, Writ Petition (C) Nos.504, 512, 524, 525, 515, 526 / 2007, Civil Appeal Nos.2718 and 2717 / 2008.

16 We also notice that all writ petitions have been finally disposed of by the Madras High Court. Therefore, it can be safely inferred that the final order made by the Madras High Court in a batch of writ petitions was carried to the Supreme Court and the Supreme Court confirmed the orders of the Madras High Court.

17 Therefore, the pivotal question that falls for consideration in this writ petition is whether Rule 10(ii) of the said Rules had been read down by the Division Bench of this Court and if that Division Bench order of this Court has been upheld by the Supreme Court?

18 From a reading of paragraph 23 of the order of the Division Bench (extracted supra), we find that this Court has noticed that the 100 metres rule contained in Rule 10(ii) of the said Rules is unworkable as it was conceded by the learned Government Pleader that no road or street junction in the city of Chennai where a distance of 100 metres on either side of the junction is available. In this view of the matter, this Court has said that in appropriate cases, hoardings can be permitted to be erected even within 100 metres of a road or street junction if all other requirements in the Acts and the Rules are complied with. However, this Court has not said that Rule 10(ii) of the said Rules is not applicable at all. This Court has not struck down Rule 10(ii) of the said Rules. Therefore, what this Court has said is that in a given case / in an appropriate case, at the discretion of the licensing authority, license can be given for erection of the hoardings even within 100 metres from the road or street junction if it is otherwise in conformity with all other requirements under the Acts and the rules. At best, we find that the rigour of the rule has been reduced but with a note of caution.

19 The petitioner's contention that this position has been confirmed by the Supreme Court in (2008) 3 MLJ 1058 (SC) = (2008) 8 SCC 42 cannot be accepted for the simple reason that this issue was never raised before the Supreme Court. The petitioners, having been satisfied with the decision of the Madras High Court Bench regarding implementation of Rule 10(ii) never brought up that particular sub rule before the Supreme Court. Instead, the Hon'ble Supreme Court discussed Rule 10(iii)

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"54. So far as the question relating to enumeration in Rule 10 is concerned, the High Court has taken care of that problem by appointing a committee to identify the places, it was submitted that some of the directions need to be clarified. Though it is conceded that the directions are not wrong, it is submitted that they need clarification. It is open to the appellants if so advised to move the High Court if any clarification is necessary. But in our view the directions cannot be faulted. It is submitted that Direction 16 relates to forthwith demolition. It needs no reiteration that the High Court's order is clear to the effect that only after enumeration the demolition can be done. "

This is the only paragraph relating to rule 10 in the entire judgment and that also pertains to Rule 10(iii) and not (ii) of the said Rules. Therefore, it can be clearly inferred that the Supreme Court did not go into Rule 10(ii) of the said Rules for the simple reason that it was not raised by the petitioners, who with respect to that particular sub-rule, were satisfied with the decision of the Division Bench of the Madras High Court.

20 The next contention that has been raised by Mr. Sriram, learned counsel for the writ petitioners is that the writ petitioner has been denied a personal hearing. According to him, personal hearing was made compulsory by an order of this court dated 29.8.2016 made in W.P.No.19556 of 2015.

21 We have perused the above said order dated 29.8.2016 made by this Court in W.P.No.19556 of 2015. We are unable to agree or accept the contention of the learned counsel for the writ petitioner.

22 We are unable to persuade ourselves to hold that this Court has made the right of personal hearing compulsory in cases of this nature.

23 In the above said order, this court has merely extracted one paragraph from the counter affidavit of the State and noticed the same. In that extracted paragraph also, only the sequence of presentation of the application and processing of the same have been explained. We find that the first step is the applicant presenting his case, which only refers to the applicant's application and we do not read that as personal hearing. This Court has also not specifically said that a personal hearing should be afforded to the applicant. Even if it is to be construed that the applicant should be part of the committee, that is for removal of existing objectionable hoardings and that cannot be pressed into service in the instant case on hand.

24 We have also applied our mind independently to this aspect of the matter and we are unable to persuade ourselves to hold that a personal hearing should be given to the applicant in cases of this nature, as it may not require any elaborate

submissions on facts or elucidation of law.

25 However, while examining this aspect of the matter, independent of the earlier judgment (which pertains to removal of hoardings and not an issue of license), we have noticed the proviso to Section 326-C(3) of the said Act, which mandates that a licence shall not be refused unless the applicant has been given an opportunity of making his representation. We also notice that this provision, i.e., Section 326-C of the said Act is contained in Chapter XII-A of the said Act, which deals with hoardings, digital banners and placards. Therefore, in this case, as the licence has been refused, we hold that the writ petitioner should have been given an opportunity of making a representation. We hasten to add that this only an opportunity of making his representation and not a 'personal hearing' in that sense of the term. We, therefore, interpret proviso to Section 326-C(3) of the said Act to mean that a notice should have been issued to the writ petitioner, setting out the disinclination of the authority to accede to the request of the licensee and giving an opportunity to the writ petitioner to disabuse such disinclination and convince the authority to the contrary by making a written representation.

26 We have also noticed the submissions of the learned Additional Advocate General now in this case that it may be completely impractical to afford personal hearing to each and every applicant for erection of hoardings.

27 Another ground on which learned Additional Advocate General opposed the prayer of the writ petitioner is alternate remedy.

28 Learned Additional Advocate General drew our attention to Rule 11 of the said Rules and submitted that an alternate remedy is available for the writ petitioner qua the impugned order.

29 Considering the nature of the two questions the writ petitioner has raised in this writ petition (whether Rule 10(ii) of the said Rules was read down by this Court and whether personal hearing has to be granted), we are of the view that the existence of an alternate remedy by way of an appeal may not be a convincing ground in this case to relegate the writ petitioner to the appeal remedy. Therefore, we have examined the two questions raised by the writ petitioner and given our findings. In other words, we have given our view as to whether Rule 10(ii) of the said Rules was read down by this Court and as to whether the applicant will be entitled to a personal hearing.

30 Having answered these two questions, we now turn to the impugned order.

31 A perusal of the impugned order shows that the application of the writ petitioner was negatived on the ground that it is 26 metres from the road junction, namely, junction of Tambaram - Velachery Road and Kovalam Nagar Street, but there is no other discussion regarding whether the application was in conformity with the other requirements under the said Act and

said rules. More particularly, there is no discussion or nothing that is evident from the impugned order as to whether the authorities otherwise considered this location as appropriate / inappropriate.

32 Therefore, we find that it is a fit case to remand the matter back to the first respondent to consider the application of the writ petitioner keeping in mind the above said two findings and dispose of the application of the writ petitioner. Post remand, while examining the application of the writ petitioner, the first respondent shall follow the mandate of the proviso to Section 326-C(3) of the said Act, which has been alluded to supra by us in this order.

33 While disposing of the application in accordance with law, though obvious, we make it clear that the first respondent shall keep in mind the view of this court with regard to Rule 10 (ii) of the said Rules and an opportunity to make representation wherever applicable, i.e., wherever there is rejection of application for licence. Though obvious, we also further make it clear that the authorities shall dispose of the applications for erection of hoardings in future in accordance with the views expressed in this order regarding Rule 10(ii) of the said Rules and an opportunity to make representation wherever applicable, i.e., wherever there is rejection of application for licence.

34 We, therefore, set aside the impugned order dated 08.03.2017 and remand the matter back to the original authority, namely, first respondent before us, i.e., the Commissioner, Greater Chennai Corporation, Rippon Buildings, Chennai-600 003, with a direction to dispose of the application as set out supra, as expeditiously as possible and in any event, within four weeks from the date of receipt of a copy of this order. The writ petition is disposed of with the above directions. No costs.

Sd/-

Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

vvk

To

1.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai-600 003.

2.The Collector of Chennai,
Singaravelar Maligai,
Chennai-600 001.

3.The Assistant Commissioner of Police,
Traffic,
EVK Sampath Road,
Vepery, Periyamet,
Chennai-600 007.

4.The Executive Engineer,
Zone XIV,
Unit Office-43, Corporation of Chennai,
I.I.T. Colony, Pallikaranai,
Chennai-600 100.

5. The Section Officer,
Writ Section, High Court,
Madras.(With records)

+1cc to Mr.A.S.Kailasam Associates, Advocate SR.No.37379
+1cc to Government Pleader SR.No.37672

W.P.No.10237 of 2017

MR(CO)
GN(19/06/2018)



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