

HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN

AND

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

WRIT APPEAL No.1032 of 2018

Judgment: *(per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)*

We have heard the learned counsel for the appellant-writ petitioners, Sri L. Venkateswara Rao, learned Standing Counsel for the Greater Hyderabad Municipal Corporation for respondents 1 and 2 and the learned Government Pleader for Municipal Administration for the 3rd respondent.

2. The order under challenge before the learned Single Judge was Circular No. 115456/Advt/GHMC/2018 dated 13.7.2018 issued by the Commissioner, GHMC. The said Circular was issued on the basis of Memo No. 03/Prl Secy/2018 dated 12.7.2018 issued by the Principal Secretary to the Government of Telangana, Municipal Administration and Urban Development Department to the Commissioner, GHMC. That was not a document available before the learned Single Judge. The Writ Petition was filed challenging that the GHMC Circular dated 13.7.2018 putting restriction on the display of advertisements from 13.7.2018 to 14.8.2018 and directing to remove the existing display hoardings on the ground that it would result in deprivation of fundamental right to trade and business under Article 19(1)(g) of the Constitution of India. The learned Single Judge found that the relief sought for was not eligible to be granted in the light of the fact that the Circular impugned was issued on the basis of certain fact situations, as are reflected in the said Circular.

3. The learned counsel for the appellant-writ petitioners argued that the impugned Circular is one, which is based on unsupported facts and

has been issued without any due enquiry by the competent authority. It is also argued that the said decision has been taken without an opportunity for pre-decisional hearing, for which reason alone, the impugned Circular is one which ought to be treated as arbitrary, void and inoperative. It is also pointed out that the learned Single Judge was unjustified in taking the view that there is a contractual relationship between the GHMC and the appellant-writ petitioners and the quality of transactions between the appellant-writ petitioners and their clients are not entirely dependent upon any privity of contract between the appellant-writ petitioners and the GHMC. The alleged unreasonableness of the issuance of the Circular is attempted to be demonstrated by also making reference to the said Circular as fundamentally founded on the memo issued by the Principal Secretary, Municipal Administration and Urban Development, immediately the preceding day, ie, 12.7.2018.

4. As already noted above, the Principal Secretary's Memo dated 12.7.2018 was not before the learned single Judge. We, therefore, directed that a copy of that Memo be made available at the time of hearing of the appeal. That has been provided. We have perused the copy of that Memo. It reads thus:

"This refers to vinyl hoardings which are getting torn/hang precariously and flying in different directions after getting torn in the rains/hail/gale.

I had pointed it out earlier the need to ban them during July and mid/end August. I have sent you some illustrative ones as observed today. These may not only are obstructive from traffic point of view but may pose threat to human lives.

GHMC should initiate immediate action to ban such hoardings for a period as considered appropriate to prevent any mishap/damage to human lives immediately."

5. Reverting to the impugned Circular dated 13.7.2018, it could be seen that the GHMC Commissioner had taken cognizance of the facts

which have been communicated by the Principal Secretary, Municipal Administration and Urban Development Department. The Commissioner is seen to have applied his mind to the facts stated in the Principal Secretary's Memo.

6. We may now notice that though the Principal Secretary is attributed with lack of scientific materials before him or authority to deal on scientific materials, we do not see that the said authority is charged with any allegations of *mala fides or bias*. The Principal Secretary to Government is an Officer of high rank in the Government. The experience that one gains in the hierarchy of administration of a State, may be, after serving in different Districts, would necessarily lead us to presume due and adequate wisdom and efficiency in structuring one's modality of considering relevant facts and ability to decide on factors which would have a bearing on relevant issues. We say this in the context of the fact that, it is not the plea of the appellant-writ petitioners that precariously hanging hoardings/torn hoardings would not, by themselves, pose challenges to the movement of traffic and also could lead to the various situations reflected in the impugned Circular as well as the Memo of the Principal Secretary. Disaster management is a statutory duty of the State Government. It has a statutory duty to look for impending dangers and also to act accordingly, so that life and property do not get affected. To reasonably apprehend and comprehend impending dangers to life and property is, definitely, part of prudence in governance.

7. The question whether there were actual rains, hail, gale etc, during the season is not a matter of arithmetic precision which this Court would endeavour to ascertain on the basis of materiological inputs. We say this because the matter in hand is, firstly, one in the domain of the Executive. It would not be within our judicial domain to visit consideration of such issue by the Executive otherwise than in exceptionally exceptional situations of glaring perversity as would

amount to arbitrariness, to be held so in law and judicial review. We would prefer to accept the view that the GHMC Commissioner has followed the inputs from the Principal Secretary, Municipal Administration and Urban Development Department, both of whom cannot be treated as persons who are not aware of ground realities touching the geographical pattern and situation of the Greater Hyderabad Municipal region.

8. However, there is an incongruity in the last two paragraphs of the Circular. It is stated in the penultimate paragraph that the restriction imposed is from 13.7.2018 till 14.8.2018. However, the last paragraph of the Circular dated 13.7.2018 proceeds as if there is a restriction until further orders. We notice that a balance has to be struck in such situations where the State and its agents, including the GHMC have, in their wisdom, thought it appropriate to permit hoardings to be erected along side the roads; acceptability of which is not a matter to be commented upon by us. The meaningful way of resolving the assertion that the appellant-writ petitioners are entitled to be heard is to ensure that there should be an opportunity of hearing, extended to the appellant-writ petitioners forthwith. This would enable them to place their views for appropriate consideration by the GHMC while deciding on any extension of the restriction now created through the Circular dated 13.7.2018.

9. For the aforesaid reasons, while we affirm the decision of the learned Single Judge in refusing to interfere with the Circular dated 13.7.2018, it is directed that if the appellant-writ petitioners or any one of them make appropriate representation to the Commissioner, GHMC, immediately, the same will be considered and a decision shall be taken thereon before further extending the embargo created through Circular dated 13.7.2018.

10. The Writ Appeal is ordered accordingly.

Pending miscellaneous petitions, if any, shall also stand closed.

No order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

V. RAMASUBRAMANIAN, J

Date: 6th August, 2018

pnb

