

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1290 OF 2019**

V Krishnamurty	...Petitioner
<i>Versus</i>	
The General Manager, Western Railway, Churchgate, Mumbai & Ors	...Respondents

Mr Rajesh Gehani, *for the Petitioner.*
Ms Neeta Masurkar, *with Ms Nieyaati Masurkar, for the*
Respondents.

**CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ**
DATED: 12th June 2019

PC:- (Per GS Patel, J)

1. Heard Mr Gehani for the Petitioner and Ms Masurkar for the Respondents.

2. By this Petition under Article 226 of the Constitution of India, the Petitioner, conducting business as the sole proprietor in

the name and style of Meena Advertisers, challenges an order dated 12th April 2019 at Exhibit “S” at page 204 issued by the Divisional Railway Manager (Commercial), Mumbai Central. By the impugned order, the Divisional Railway Manager disapproved the new locations for commercial advertisement hoardings proposed by the Petitioner at Mahalaxmi Station.

3. The Respondents issued a Bulk Tender dated 1st November 2018 inviting bids for bulk advertising rights at Mahalaxmi to Prabhadevi Stations for a period of five years. The Petitioner was one of the bidders. His bid was accepted on 14th January 2019. On 28th January 2019, the Respondents issued a certificate confirming the bulk advertising rights granted to the Petitioner for five years for Mahalaxmi, Lower Parel and Prabhadevi Stations. The initial area covered was 5760 sq ft at all three stations combined. The Petitioner then applied for a change in location/dimension/upgrading of the sites. This was approved and the area allotted to the Petitioner was revised from 5760 to 6952 sq ft by a letter dated 8th February 2019.

4. Paragraph 3 of the tender document said that the licensee would display commercial advertisements at the tendered areas. The permitted media included boards, glow-signs, scrollers (if any) over the stations specified in Annexure “A” for the five-year term of the contract. The present Petition is concerned only with Mahalaxmi Station. Annexure “A” of the tender document said that the location at this station was at the level of roof purlins of platform 1 and platform 2/3. It seems that the Petitioner then proposed new locations measuring 20 ft x 10 ft at Mahalaxmi Station. On a consideration of this application, the authority found that these new locations ran along the western boundary wall above or along idle railway tracks. The glow signs proposed by the Petitioner were to be placed on scaffoldings or metal frame structures erected with a height of more than 12 ft and facing road traffic. The authority said there were restrictions on certain types of illumination, erecting structures along tracks and overhead electrical and high tension electrical lines, as also restrictions on the height and distance of the advertising structures from these electrical and high tension lines. There were also additional restrictions on the quality, coded life and

maintenance of the structures, and the prior approval of structural designs and drawings by the Railway Engineer was required. Since the Petitioner had already proceeded to erect the supporting framework or metal scaffolding-type structures, by the impugned communication, the authority directed the Petitioner to remove the structures immediately. He stated that the erected structures involved policy and clauses beyond the scope of the current agreement. The Petitioner was set at liberty to present to the office concerned alternative locations consistent with the contract.

5. Mr Gehani insists that he has a structural report that says that the offending structures are stable. That is wholly besides the point. His client's response of 12th April 2019 (Exhibit "T" pages 205 and 206) discloses that what affects the Petitioner is that the 12 ft height restriction prescribed. This is, according to the Petitioner, "impracticable". On an enquiry from the Court, Mr Gehani informed us that this height refers to the size of the hoarding and that the hoarding height that the Petitioner desires (or, in his words, considers 'practicable') is almost twice the height, i.e. around 22 ft.

6. We are familiar with the area in question. It is extremely congested. Traffic is dense. Vehicles are forced to crowd very close to each other. There is insufficient place to manoeuvre, and certainly pedestrian traffic is congested by the vehicular traffic. The slightest distraction can cause a mishap. The traffic police have had to make special arrangements to ensure the smooth flow of traffic. There is an signal and intersection at the crest of the bridge at Mahalaxmi Station, turning east towards the station entrance and then descending towards the Jacob Circle on the eastern side. It is apparent that a clear line of sight to the intersection and keeping it distraction-free is manifestly in the public interest.

7. The photographs that Mr Gehani shows us indicates that what is proposed are very tall steel or metal box scaffolding type of structures on which large advertising panels are proposed to be mounted. These supporting structures are embedded or anchored in the earth below the bridge i.e. along railway land. The impugned communication already states that this proposal would involve construction or erection of work on the western side of idle tracks

directly beneath the bridge. There is little purpose served by Mr Gehani asking us to hold that the distance between the foot of these tall metal framework structures and the actual railway lines is sufficient or is safe. That is not an opinion that we can form. That is beyond our remit in our limited jurisdiction under Article 226 of the Constitution of India. We have only to see if the decision-making process is vitiated by arbitrariness, perversity, mala fides or is contrary to law. Nothing of the kind is shown to us. We are emphatic that in a city like ours, there can be no compromise on the safety of motorists, pedestrians or commuters using the railway lines and the railway trains that pass beneath the bridge and go through Mahalaxmi Station. It hardly needs to be pointed out that a single mishap here, especially now that the monsoons are fast approaching and there are likely to be higher winds, will result in a complete disruption of the train services running south to north. These local train services are the lifeline of this city. It is for this reason that we are unprepared to accept Mr Gehani's contentions. It would mean that we accept some level of compromise on public safety and public interest for the commercial benefit of one private enterprise. In any

case there are also disputed questions of fact, and technical ones at that, regarding distance, stability, safety and so on. These cannot be properly examined in our writ jurisdiction.

8. We are not in agreement with Mr Gehani when he says that the restrictions placed by the impugned communication, and which are only in the context of new locations proposed by the Petitioner in excess of the original contract or tender, constitute any sort of infringement of any fundamental right of the Petitioner. The Petitioner's fundamental right to do business is not curtailed. All regulation or restriction is not an infringement of a Constitutionally guaranteed fundamental right. The right to carry on a profession or do business is subject to reasonable restrictions inter alia in the interest of the general public. That is precisely the ambit and tenor of the impugned communication. Public policy, public safety and the public interest demand that we do not exercise our discretion.

9. We do not find that the impugned communication is so perverse, arbitrary or violative of any law or any principles of natural

justice as would warrant the exercise of our limited jurisdiction under Article 226 of the Constitution of India.

10. The Petition is without merit. It is dismissed. There will be no order as to costs. It is sufficient to clarify that it is always open to the Petitioner to present any alternative to the authority concerned and which would be considered on its own merits.

(S.C. DHARMADHIKARI, J)

(G. S. PATEL, J)