



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.04.2019
PRONOUNCED ON : 02.08.2019

WEB COPY

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No. 21921 of 2018 &
W.P. (MD) No. 6295 of 2019 and
W.M.P. (MD) Nos. 19848 of 2018 & 5019 of 2019

W.P. (MD) No. 21921 of 2018

A.G. Satheeshkumar

... Petitioner

Vs.

1. The District Collector,
Theni District,
Theni.

2. The Commissioner,
Periyakulam Municipality,
Theni District.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in Na.Ka.No.2028/2018/F1 dated 27.09.2018 and quash the same as illegal and direct the second respondent to reconsider the application of the Writ petitioner for two wheeler parking license as per the provisions of the Tamil Nadu District Municipalities Act.

W.P. (MD) No. 6295 of 2019

A.G. Satheeshkumar

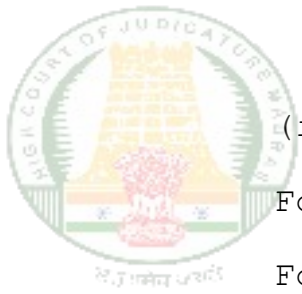
... Petitioner

Vs.

The Commissioner,
Periyakulam Municipality,
Theni District.

... Respondent

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in Na.Ka.No.2028/2018/F1 dated 11.03.2019 and quash the same as illegal.



(in both W.Ps.)

For Petitioner : Mr.P.Muthuvijayapandian

For Respondents : Mr.M.Karuppasamy Pandian,
Government Advocate.

WEB COPY

C O M M O N O R D E R

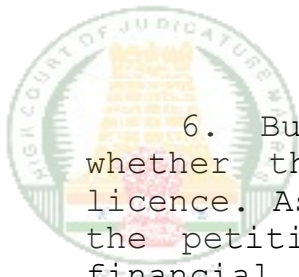
The petitioner herein had entered into an arrangement with one Sukumar who was owning the land opposite to the new bus stand at Periyakulam. The petitioner wanted to start a two wheeler parking stand. Since it requires licence in terms of Section 270(E) of the Tamil Nadu District Municipalities Act, the petitioner submitted an application to the Commissioner, Periyakulam Municipality. The petitioner's application was rejected by order dated 27.09.2018. The only reason assigned in the rejection order is that the Municipality had passed a resolution No.1843 dated 30.05.2005 to the effect that private parking stand should be not opened or permitted within 100 meters from the new bus stand. Such a resolution was passed so as to avoid financial loss to Periyakulam Municipality. Challenging the said rejection order, the petitioner filed W.P.(MD) No.21921 of 2018.

2. During the pendency of the Writ petition, the Commissioner of Municipality issued one more order dated 11.03.2019 calling upon the Writ petitioner to vacate the parking stand. Challenging the same, W.P.(MD)No.6295 of 2019 came to be filed.

3. Heard the learned counsel appearing for the petitioner and the learned Standing counsel appearing for the respondents.

4. The learned Standing counsel appearing for the Municipality would submit that the Municipality had opened a two wheeler parking stand inside the new bus stand and held a public tender. According to the learned Standing counsel, the Writ petitioner took part in the said auction. But then, he was not the successful tenderer. Therefore, he had chosen to open his own two wheeler parking stand at a proximate site. If the petitioner is permitted to open a two wheeler parking stand near the existing two wheeler parking stand, then the tenderer chosen by the Municipality would suffer a great loss. Since the Municipality had already passed a resolution dated 30.05.2005, the impugned orders are only in tune with the said resolution. He wanted this Court to sustain the orders impugned in these Writ petitions.

5. Section 270(E) of the Tamil Nadu District Municipalities Act 1920 states that no person shall open a new private cart-stand unless he obtains the licence from the Municipality. Section 270(E) (3) of the Tamil Nadu District Municipalities Act 1920 states that it is open to the council to grant or refuse the license.



6. But now the question that arises for consideration is whether the Municipal council can arbitrarily decline to grant licence. As rightly pointed out by the learned counsel appearing for the petitioner, no discretion can be arbitrarily exercised. The financial consideration of the Municipality cannot be a ground for denying license to the petitioner. The petitioner after all wants to run a two wheeler stand in a private place. The learned counsel pointed out that the two wheeler population had multiplied.

7. We are now in the age of liberalisation and that therefore the Municipality cannot be allowed to have a monopoly. The denial of license would be only an arbitrary exercise of power. I am in full agreement with the contentions of the petitioner's counsel.

8. In this view of the matter, the impugned order in W.P.(MD) No.21921 of 2018 is quashed. W.P.(MD)No.21921 of 2018 stands allowed, accordingly. No costs.

9. Of course the petitioner cannot run the two wheeler parking stand unless he has license. It is open to the licensing authorities to incorporate appropriate conditions while granting license. The petitioner states till date he has not been running the two wheeler parking stand. Therefore, the order impugned in W.P.(MD)No.6295 of 2019 is also quashed and the respondent/Municipality is directed to hold an enquiry by issuing notice not only to the petitioner but also to Thiru.Sukumar. If Thiru.Sukumar, the land owner affirms before the Municipality that he has no objection for the Writ petitioner herein to run a two wheeler parking stand, then the Commissioner is directed to issue the license sought for. This shall be done within a period of four weeks from the date of receipt of a copy of this order. W.P.(MD)No.6295 of 2019 stands allowed, accordingly. No costs. Consequently connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

1. The District Collector,
Theni District,
Theni.
2. The Commissioner,
Periyakulam Municipality,
Theni District.



+1 CC to M/s.P.MUTHU VIJAYA PANDIAN, Advocate (SR-79740[F] dated 05/08/2019)

WEB COPY

W.P.(MD)No.21921 of 2018 &
W.P.(MD)No.6295 of 2019 and
W.M.P.(MD)Nos.19848 of 2018 & 5019 of 2019
02.08.2019

JM/19.08.2019/4P/4C