BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.11120 of 2022 and
W.M.P.(MD)No.7969 of 2022

S. Dhanalakshmi Krishnan ... Petitioner

Vs.

1. The Commissioner,
   Municipal, Drainage and Water
   Administration Department,
   Chennai.

2. The Assistant Engineer,
   State Highways,
   Kodaikanal, Dindigul District.

3. The Commissioner,
   Kodaikanal Municipality,
   Kodaikanal, Dindigul District.

4. The Inspector of Police (Traffic and Law & Order),
   Kodaikanal Police Station,
   Kodaikanal, Dindigul District. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, restraining respondents 3 and 4 from interfering the petitioner's rights of let out her E-Motor Cycles on rent to the Tourist for seeing the Kodaikanal Lake at Kodaikanal, Dindigul District.

For Petitioner : Mr.R. Murugappan

For R-1,R-2 &R-4: Mr.M. Prakash,
Additional Government Pleader.

For R-3 : Mr.Mohammed Mohideen,
Standing Counsel.

* * *

O R D E R

Heard Mr.R. Murugappan, learned counsel appearing for the writ petitioner and Mr.M.Prakash, Additional Government Pleader appearing for respondents 1, 2 and 4 and Mr.Mohammed Mohideen, learned Standing counsel appearing for Kodaikanal Municipality.

2. The writ petitioner had purchased 15 numbers of e-motorcycles. She proposes to let them out on hire to the tourists who visit Kodaikanal lake. The petitioner's grievance is that the municipal authorities are preventing her from doing so. That led to the filing of this writ petition.

3. The Commissioner of Kodaikanal Municipality has filed a detailed counter affidavit. The learned Standing counsel took me through its contents. The stand of the local body is that the road laid around Kodaikanal lake is being maintained by the Municipality at considerable expenses and therefore any person who wants to put the same for commercial use will have to necessarily pay tax to the municipality. It is also stated that the municipality proposes to issue notification making it compulsory that only those who have been permitted by the municipality can use such e-motorcycles for commercial purposes. The learned Standing counsel submitted that in any event, the local body can demand payment of tax from the petitioner. He referred to the provisions of The Tamil Nadu Local Authorities Entertainments Tax Act 2017 and the provisions of The Tamil Nadu District Municipalities Act 1920. Unless the petitioner is brought under the assessment scheme, the request of the petitioner cannot be accepted. That is the stand of the contesting respondents.

4. I carefully considered the rival contentions and went through the materials on record.

5. The petitioner is definitely having the fundamental right under Article 19(1)(g) of the Constitution of India to let out e-motorcycles on hire to tourists. But this right cannot be absolute. It is open to the said authorities to regulate the same. The only point that arises for consideration is whether the respondent local body is justified in insisting that unless tax is paid, the petitioner cannot conduct such business.

6. I am of the view that the provisions of The Tamil Nadu Local Authorities Entertainments Tax Act 2017 may not have any application. Section 2(3) of the Act defines amusement is as follows:-

> “ 2(3) “amusement” means any amusement, for which persons are required to make payment for admission to any amusement arcade or amusement park or theme park or the like by whatever name called;

Section 2(8) of the said Act defines entertainment as follows:-

> “ 2(8) “entertainment” means a horse-race or cinematograph exhibition to which persons are

admitted on payment or television exhibition for which persons are required to make payment by way of contribution, or subscription, or installation or connection charges or any other charges collected in any manner whatsoever or an amusement or a recreation parlour where a game such as bowling, billiards, snooker or the like is provided or direct to home service or a cricket tournament like the Indian Premier League or the Champions League Twenty 20 cricket tournament conducted by the Board of Control for Cricket in India or any other sports tournament conducted by any person or body of persons for which persons are required to make payment for admission. ”

7. A careful reading of the aforesaid provisions will lead any one to the conclusion that the petitioner is not engaged in amusement or entertainment activities as statutorily defined. This is because particular expressions have been followed by a general expression “or the late”. The rule of ejusdem generis will have to be applied. If the petitioner is maintaining an amusement park or theme park, it would be a different matter. That is not the case. The hirers will be using the public road that belongs to the local body. The petitioner is only giving his vehicle for rent. Therefore, I cannot hold that the petitioner's proposed commercial venture will attract the provisions of the Tamil Nadu local Authorities Entertainment Tax Act, 2017.

8. However, there is considerable merit in the contention of the learned Standing counsel that the case on hand will fall within the four corners of Section 104 of The Tamil Nadu District Municipalities Act 1920. The said provision is as follows:-

> " **104. Power to require numbers to be affixed to bicycles, etc.—**
>
> (1) The executive authority may direct that a municipal number shall be affixed -
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> (a) to every carriage let out for hire within the Municipality; and
>
> (b) to every bicycle and tricycle kept or used within the municipality:
>
> Provided that no municipal number shall be

requisite in the case of carriages to which a number must be affixed under the provisions of any special Act.

(2) The numbers affixed under sub-section (1) shall be registered in the municipal office. ''

Section 3(5) of the Act defines carriage as follows:-

> *" 3(5) **'Carriage**' means any wheeled vehicle with springs or other appliances acting as springs and includes any kind of bicycle, tricycle, rickshaw and palanquin, but does not include any motor vehicle within the meaning of the Indian Motor Vehicles Act, 19l4; ''*

The e-motorcycles proposed to be let out on hire by the petitioner will definitely fall within the meaning of expression 'carriage' and hence the petitioner will fall within the sweep of Section 104(1)(a) of the Act. However, as on date no resolution has been passed by the local body. If any such resolution is passed by the local body, it will certainly apply to the case on hand. But citing the non-passing of resolution, the petitioner's right to let out the e-motor vehicles on hire to the tourists cannot be restrained. Leaving open the right of the local body to pass resolution to govern the petition mentioned business, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

30.06.2022

Index : Yes / No
Internet : Yes/ No

PMU

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G.R.SWAMINATHAN,J.

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