



W.P.No.15779 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	31.07.2023
PRONOUNCED ON :	30 .10.2023

CORAM :

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MRS. JUSTICE N.MALA**

**W.P.No.15779 of 2023
and WMP.Nos.15221, 15223 and 15224 of 2023**

M/s.Widener Advertisement
Rep by its Authorised Signatory
Ananda Kumar.A

... Petitioner

Vs.

1. The Assistant Commissioner,
Central Coimbatore Municipal Corporation
Coimbatore-641 001
- 2.The District Collector, Coimbatore
7/1, State Bank Road
Gopalapuram
Coimbatore-641 018
- 3.The Commissioner of Police, Coimbatore City
62, Old Post Office Road
Near Railway Station, Opp. Collector's Office
Gopalapuram
Coimbatore-641 018
- 4.The Southern Railways-Salem Division
Divisional Railway Manager (Commercial)
Southern Railways
Salem-636 005

..Respondents



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records culminating in Na.Ka.No.Special 12/2023/H.1(M) dated 10.05.2023 of the 1st respondent and quash the same and forbearing the respondents 1-3 from interfering with the hoardings sites erected by the petitioner in the 4th respondent premises and land.

For Petitioner : Mr.A.K.Sriram
for M/s.Kailasam Associates.

For Respondents : Mr.N.Umapathi
for R1 to R3
Mr.K.Srinivasamurthy for R4
Senior Panel Counsel for Central Govt.

ORDER

J.NISHA BANU, J.

This writ petition is filed challenging the order dated 10.05.2023 passed by the 1st respondent-Assistant Commissioner, Coimbatore Municipal Corporation, Coimbatore. The petitioner further seeks to forbear the respondents 1-3 from interfering with the hoardings sites erected by the petitioner in the 4th respondent-premises and land. The 1st respondent, by the impugned order directed his officials to remove the structures put up by the petitioner after having granted contract by the 4th respondent, Southern Railways in their lands.



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2. The petitioner is a registered partnership firm doing the business of outdoor advertisement and marketing services. The 4th respondent floated a E-Tender on 30.06.2021 for advertisement contract at Coimbatore Junction Railway station and premises for a period of 5 years. The scope of work stipulates to exploit spaces owned by Southern Railways in Coimbatore Junction Railways for displaying commercial advertisements. Petitioner submitted its bids on 27.07.2021 and it was awarded the contract and was declared as successful bidder by the 4th respondent. A Letter of Acceptance was issued by them on 08.12.2021. The petitioner also made payments in respect of licensee fee.

3. The petitioner would submit that it made representation to the 2nd respondent seeking instructions to obtain licence in the light of judgment of this Court in W.P.No.6913 of 2019 etc batch, whereby, this court directed the “Corporation to frame appropriate bye-laws or the substantive provisions in question or the Rules framed thereunder are suitably modified in tune with the guidelines that have already been formulated through the Government Order dated 05.06.2018.”



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4. The petitioner also submits that they approached the 2nd respondent-District Collector, Coimbatore, by letter dated 20.01.2023 requesting for permission to display advertisement hoardings in the 4th respondent's property.

5. The State Government published the rules under the Urban local bodies Act on 13.04.2023. Thereafter, the 1st respondent issued the impugned order dated 10.05.2023 directing the Officials of the Corporation to remove the hoardings, structures erected by the petitioner in the 4th respondent's property. According to the petitioner, the said impugned order is without show cause notice. No prior intimation was given to the petitioner and also the 4th respondent.

6. The learned counsel for the petitioner would submit that the 1st respondent after the issuance of the impugned order dated 10.05.2023, on the same day night at around 11 p.m., knocked down the structures and frames and caused threat to innumerable human lives.

7. It is the further submission of the learned counsel for the petitioner that without any show cause notice, such coercive measures have been taken by the 1st



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respondent officials. The 3rd respondent refused to take any complaint against the

1st respondent. On queries to the 1st respondent by the 4th respondent, it is informed that license has to be obtained as per the laws in force, failing which, such action has been taken.

8. The learned counsel for the petitioner placed reliance on the following citations and submitted that the Rules in force are not in confirmation to Central Acts.

1. Union of India Vs. Pune Municipal Corporation and Others.
2. Links Advertisers and Business Promoters Vs. Commr, Corporation of Bangalore. [1977 SCC (3) 204]
3. Eye Ball Media Pvt Ltd., Vs. Senior Division Commercial Manager and Others.
4. Union of India Vs. Municipal Corporation of Mumbai and Others.

9. The learned counsel would submit that in the above decisions, it was upheld that State Act and Delegated legislation should be in conformity to the Central Acts under Article 285 of the Constitution of India. The learned counsel would submit that validity of licensing of railway properties without obtaining permission from Central Government has also been subjected to challenge.



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10. The 1st respondent-Assistant Commissioner, Central Coimbatore Municipal Corporation, Coimbatore, filed counter affidavit. It is submitted that this court vide order dated 11.08.2015 in W.P.Nos.8661 of 2012 etc batch cases, decided that in view of Clause 13 and Clause 14 of the Permission Order for display of Advertisement at Railway Premises and in view of the interim orders obtained by the writ petitioners, the display would continue to enure for the benefit of the petitioners for some time to facilitate them to obtain permission from the Corporation/District Collector.

11. The 1st respondent would submit that the Commissioner, Municipal Corporation wrote a letter to the Divisional Railway Manager, Southern Railway, Salem, vide proceedings dated 29.10.2022 requesting to remove all unauthorized hoardings, flex boards in and around the Railway premises. The Commissioner also informed by proceedings dated 19.05.2023 regarding Tamil Nadu Urban Local Bodies Rules, 2023 as per which license for hoarding is compulsory. The proceedings also informed that unauthorized hoardings would be removed in the Railway premises. Even after such proceedings, since the Railway authority did not



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take any action to remove hoardings which was put unauthorizedly by the writ petitioner, in exercise of the power vested in the Commissioner under Section 117-O of the Urban Local Bodies Act, 1998, it took steps to remove the unauthorized advertisement hoardings erected in the Railway premises.

12. It is also submitted that in terms of Section 410-C of the Coimbatore City Municipal Corporation Act, 1981, every person intending to erect hoarding shall make the application to the District Collector in the prescribed form seeking for license. The Tamil Nadu Urban Local Bodies (Licensing of hoardings and levy of collection of advertisement tax) Rules, 2003 extensively deal with the procedure for applying and issue of licence. It is further submitted that the petitioner has not applied for license till date for the purpose of erecting advertisement hoardings either with the second respondent District Collector or before the Commissioner of City Municipal Corporation. Even though the petitioner is a successful bidder, they are required to adhere to the Rules and Regulations prescribed by the local authorities.

13. The 1st respondent would further submit that the petitioner has erected the advertisement hoardings from 05.05.2022, but sent an application dated



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24.01.2023 to the second respondent as regards the hoarding already put up by the petitioner in the 4th respondent railway premises.

14. The 1st respondent would further submit that the petitioner is required to make an application in the prescribed form to the appropriate authority before erecting any hoarding in terms of Section 410-A to 410-C of the Coimbatore City Municipal Corporation Act 1981 read with the Tamil Nadu Urban Local Bodies (Licensing of hoardings and levy of collection of advertisement tax) Rules, 2003.

15. Since the petitioner only sent an application dated 24.01.2023 to the second respondent District Collector, the petitioner is instructed to make appropriate application in the prescribed Form No.1 for the purpose of considering the same in accordance with law. In the present case, the subject hoardings are in such a nature that distracts the attention of the riders/drivers using that road causing great public harm. The data available with the Coimbatore City (Traffic) police of the present jurisdiction show that six numbers of accidents involving Sections 304-A, 337 of IPC have occurred in the subject road.



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16. The 1st respondent would also submit that hoardings can also be removed if the same cause any harm in such a nature that distracts the attention of the riders/drivers using roads causing great public harm.

17. As regards no show cause notice issued to the petitioner, it is submitted by the 1st respondent that the District Collector-2nd respondent on 15.03.2023 sent appropriate directions and instructions and no prior notice is required to be given in terms of Section 117-O of the Tamil Nadu Urban Bodies Act, 1998. It is mandatory for every person intending to erect hoarding on the land belonging to the Central Government, State Government, Local Authority or Private Land, to make appropriate application before the local authority before erecting any hoardings.

18. The 4th respondent-Southern Railways-Salem Division, filed counter affidavit. It is submitted that Railways has exclusive right and power to utilize its land and property. The Railway Board vide Commercial Circular No.4 of 2017 dated 10.01.2017 has advised Policy on Out of Home Advertising dated 22.03.2018. Based on the said decision of the Railway Board, tender was invited



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and contract at Coimbatore Junction Railway was awarded to Petitioner for a period of five years from 05.05.2022 to 04.05.2027 and an agreement was entered into between the petitioner and Railways. It is submitted that subject to restrictions Advertisements were allowed. According to the 4th respondent, the action taken by Coimbatore Corporation on 11.05.2023 midnight amounts to trespassing on railway premises under Section 147 of Railway Act 1989. The action of removal of hoardings by Corporation Officials adjacent to Railway track endangered the safety of Over Head Equipment, which has high voltage range and if any steel structure fall on railway line, it would have caused serious threat to safety of passengers and assets of Railways.

19. The 4th respondent would further submit that as per Section 185 of the Railway Act, 1989, Taxation on railways for advertisement, a railway administration shall not be liable to pay any tax to any local authority in respect of any advertisement made on any part of the railway unless the Central Government by notification declares it as liable to pay the tax.

20. It is also submitted that the judgment in W.P.No.6913 of 2019 dated 11.03.2020 held that the very issue of placing restrictions by the Municipal



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Corporation and the application for grant of licence and the process of licensing in respect of hoardings, are subject to bye laws to be framed.

21. The 4th respondent submits that the objective of the Railways is to serve people and the OOH licencees have incurred financial loss and it may cause huge loss to the exchequer of Railway's revenue. It is also submitted that the Tamil Nadu Gazette Order No.124 dated 12.04.2023 stipulates dual license fee in addition to the application fee for granting permission to erect hoardings inside Railway station or Railway land, which is not reasonable since the advertisers are already remitting license fee to Railways for displaying advertisement.

22. The 4th respondent would further submit that the Railway authorities have formulated the policy for regulating the hoardings on the railway properties after taking into consideration various statutory provisions, so as to ensure that the hoardings are not erected endangering safety of the citizens. Further, the advertisers are not willing to participate in OOH tenders which will affect the revenue of Railways. The 4th respondent thus submitted that the act of the 1st



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respondent in removing the hoardings inside railway station premises is bad in the eyes of law.

23. This court at the time of admission of this writ petition, granted interim injunction by order dated 18.05.2023. Thereafter, the matter is posted for arguments of both sides. We have heard the counsel for the petitioner and the respondents, and perused the written submissions and case laws relied in support of their contentions.

24. The contention of the learned counsel for the petitioner is that the advertisement hoardings is erected within the premises of Railways and therefore the letter dated 20.01.2023 will satisfy the order of this Court in WP. No. 6913 of 2019 etc batch. Accordingly they contended that the order dated 10.05.2023 of 1st respondent directing the officials to remove the hoarding put up by the petitioner is illegal.



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25. The 1st respondent on the other hand contended that in response to the letter dated 20.01.2023, the petitioner was instructed to file the proper application for license in Form I to set in process the inspection and issue of license as contemplated under the Coimbatore City Municipal Corporation Act, 1981 and the Tamil Nadu Urban Local Bodies (Licensing of Hoardings and Levy of Collection of Advertisement) Rules, 2003.

26. Considering the fact that the petitioner failed to file the application in proper form and that not holding a license and also considering the occurrence of six accidents in the road wherein the hoardings were put up by the petitioner, the impugned order dated 10.05.2013 was issued.

27. The 4th respondent had filed a counter affidavit highlighting the various provisions of the Railways Act, 1989 to drive home the point that they are sole authority for levy and collection of license fee from the advertising agents for use of the railway premises to erect hoardings and display advertisements. As such, they contended that the levy of license fees by the local body amounted to dual



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levy causing a setback to the prospective bidders that are a serious source of income for railways. They relied on the decision of the division bench of the Hon'ble High Court of Bombay in ***UOI vs Municipal Corporation of Mumbai & others reported in CDJ 2017 BHC 1831*** wherein, it is held that the Mumbai Municipal Corporation Act would not apply to Railways.

28. It was urged on behalf of Railways that the local bodies cannot levy taxes on any advertisements displayed through hoardings erected within the premises of Indian Railways unless on the publication of notification notifying such taxes by the Central Government. It was argued that the Railway administration had the exclusive right of governing its landed properties in terms of the Railways Act, 1989.

29. The case on hand in brief is that the petitioner is awarded a tender for installation of hoarding inside the premises of Coimbatore Railway Junction fronting the road. The contract valued Rs 4,88,51,995/- entered into between the Railways and the petitioner. The said contract requires the petitioner to assume full responsibility for obtaining necessary permissions/ NOCs from agencies like



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municipalities, Road Transport Authorities etc for erecting the hoardings and adhering to the rules and regulations prescribed by various organisations including the statutory organisations.

30. The Letter of Acceptance issued by the 4th respondent dated 08.12.2021 clearly stipulates conditions in respect of tender for “Display of out of home advertisement contract at Coimbatore Junction Railway station and its premises”. Condition No.13 reads as follows:-

“ Permission/NOCs – It is personal responsibility of the Licensee to take all kinds of permissions/NOCs from outside agencies like Municipality, Road Transport Authority etc before erection of hoardings. “

31. Admittedly, the petitioner had filed a letter dated 20.01.2023 to the 2nd respondent-District Collector seeking permission for the hoarding fronting the road. The District Collector, vide letter dated 15.03.2023 pointed out about the requirement of the petitioner to make an appropriate application in Form No I appended to the Tamil Nadu Urban Local Bodies (Licensing of Hoardings and Levy of Collection of Advertisement) Rules, 2003. However, the petitioner has not



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chosen to file the application for issue of license in terms of the above said Rules and the impugned order dated 10.05.2023 came to be issued. In such circumstances, the decisions relied on by the learned counsel for the petitioner is not applicable to the case on hand.

32. The issue that we are required to answer is, as to whether the permission to display advertisement on railway properties with permission of the railways would suffice or whether the permission is also required from the Municipal Corporation/District Collector (whoever is the authority concerned). This issue is fully covered by the decision rendered by the Honourable First Bench of this court passed in a batch of writ petitions in W.P.No.8661 of 2012 etc batch decided on 11.08.2015. Paragraphs 2 and 3 of the order reads as follows:-

*“2. It is pointed out that the issue is no more res integra, in view of the judgment of the Division Bench of this Court in **W.P.No.16751 of 2000 (Union of India, owning Southern Railway, rep. by its General Manager, Southern Railway, Chennai-3 v. Govt. of Tamil Nadu, rep. by its Secretary, Municipal Administration and Water Supplies Department, Chennai-9 and 3 others)**, decided on 23.03.2001 where the lone contention made by the Southern Railway pleading non-*



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requirement of such permission from the Corporation has been repelled. It was also pointed out by the learned Additional Advocate General that even the Format of the Southern Railways as well as the Permission Order for display of advertisements at Railway premises granting such permission, the relevant Clauses makes it abundantly clear. The relevant Clauses in Format M/C 37 136112 dated 10.02.2012 have been reproduced herein as under:-

'16.It shall be your responsibility to obtain Permission/Permit/Licence from the Municipal Corporation or any other Government or Local departments for display, if and as and when required, so as not to contravene any rule or law of the land.

17.You shall pay the municipal corporation or any to any other Government or Local Departments concerned requisite licence fees and corporation taxes or/and other local tax, advertisement tax or any other taxes/fees etc. directly where levied or become leviable on any or all advertisements. The Railway administration will not be liable for payment of any sum or reimburse any payment made in this behalf by the contractor.

Clause 13 of the Permission Order for display of Advertisements at Railway premises has also been reproduced hereunder:-



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13. It shall be your responsibility to obtain permission licence from the Municipal/Corporation or any other Government or local authorities for display, if and as and when required, so as not to contravene any rule or law of the land.

In Clause 14 of the Permission Order for display of Advertisements at Railway Premises, it has been inter alia provided as under:-

'Advertiser should obtain Permission from the Corporation for Road Facing Sites.'

33. Since the issue on hand is squarely covered by the decision of this court dated 11.08.2015 in W.P.No.8661 of 2012 etc batch [Eyeball Media Private Limited, rep. By N.R.Shailender, General Manager Vs 1.The Senior Divisional Commercial Manager, Southern Railway, Divisional Commercial Manager's Office, Chennai and 4 others] this writ petition is disposed of with the following directions:-

“ the petitioner is directed to apply for license in proper form as contemplated under the Tamil Nadu Urban Local Bodies (Licensing of Hoardings and Levy of Collection of Advertisement) Rules, 2003 within a period of 4 weeks



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[four weeks] from the date of receipt of a copy of this order.

Upon filing of the said application, the authorities are required to proceed in accordance with law.”

No costs. Consequently, connected miscellaneous petitions are closed.

(J.N.B.,J.)

(N.M.,J.)

30.10.2023

Index : Yes/No

Internet : Yes/No

Speaking order/Non-speaking order

Neutral citation : Yes/No

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To:

1. The Assistant Commissioner,
Central Coimbatore Municipal Corporation
Coimbatore-641 001

2.The District Collector, Coimbatore
7/1, State Bank Road
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Coimbatore-641 018



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Dated:
30.10.2023