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W.P.(MD)NO.7128 OF 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.7128 of 2024 AND

W.M.P.(MD)Nos.6588 & 6591 of 2024

M/s.Index Advertising,
Rep. by its Proprietor Praburam,
No.37, Kurinji Street, Maharani Avenue,
Vadavelli,
Coimbatore – 641 041.

... Petitioner

Vs.

1. The Commissioner,
Corporation of Madurai,
Madurai – 625 002.
2. The Deputy Commissioner,
Corporation of Madurai,
Madurai – 625 002.
3. The Assistant Commissioner Revenue,
Corporation of Madurai,
Madurai – 625 002.
4. The Assistant Engineer,
Zone II,
Corporation of Madurai,
Madurai – 625 002.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the proceedings A6/001602/2023 dated 16.03.2024 and quash the same further direct the respondents to allow the petitioner to carry on the



works following the order passed by the second respondent dated 01.03.2024 allowing the petitioner to erect advertisement panels(hoarding) in centre medians.

For Petitioner : Mr.K.M.Mohammed Ali

For Respondents : Mr.K.K.Kannan,
Standing counsel.

* * *

ORDER

Heard the learned counsel on either side.

2. The writ petitioner is an advertising agency. They applied to the Madurai Corporation seeking permission to advertise in the Central Median in Anna Nagar and K.K.Nagar 80 Feet Roads. The application was processed and permission was granted by the Deputy Commissioner of Madurai Corporation on 01.03.2024. The petitioner was called upon to make certain payments. The petitioner duly complied with the same. The grievance of the petitioner is that without giving any show cause notice and without any justification, the permission was cancelled. Vide communication dated 16.03.2024, the petitioner was called upon to take back the amount. Challenging the said communication, the present writ petition came to be filed.



3. The petitioner has also filed W.P.(MD)No.7055 of 2024 challenging the permission granted in favour of one Nyle Ads on the same day. The question that calls for consideration is whether the impugned cancellation order can be sustained. Though the learned Standing counsel appearing for Madurai Corporation as well as the learned counsel for Nyle Ads endeavour to sustain the impugned communication, I am not swayed by their submissions. Rule 328 of the Tamil Nadu Urban Local Bodies Rules 2023, authorises the Commissioner to confer right to any person or class of persons to display advertisements on the municipal properties. It reads as under:-

“328. Right to advertise in municipal property.— The Commissioner may grant right to any person or a class of persons or any institution or organization to display advertisements on properties belonging to, or vested with, the municipality on payment of a concession fee of fourteen per cent per annum on the guideline value of the land wherein the advertisement is displayed, in addition to the licence fee prescribed in rule 333.”

4. The moot question that calls for consideration is whether this conferral of right can be made by the Commissioner to any person who submits an application. Even though the aforesaid rule may not



contain any condition that the Commissioner must float tender or conduct an auction, I am clearly of the view that the provisions of the Tamil Nadu Transparency in Tenders Act, 1998 will have to be read into the rule. That alone will prevent arbitrariness. Otherwise, the Commissioner can grant license to certain favoured or chosen individuals.

5. Madurai Corporation does have its own dedicated website. The said website should be fully functional and user friendly. Any person should be able to access the same for information. The said website must contain a web page exclusively for issuing tender notifications. Before issuing license under Rule 328 of the Tamil Nadu Urban Local Bodies Rules 2023, the tender notification must be issued granting at least 15 days notice. Then only the license can be issued to the highest bidder. In this case, the writ petitioner as well as Nyle Ads were given licenses without floating any tenders.

6. M/s.Index Advertising submitted their application on 24.11.2023. Permission was granted by the Assistant Commissioner of Madurai Corporation on 27.02.2024. The petitioner paid a sum of Rs.2,52,450/- on 22.02.2024. Cancellation was done on 16.03.2024 by



the Deputy Commissioner. It is seen that the petitioner had also paid

GST to the tune of Rs.45,441/-. It is too obvious that the cancellation of the petitioner's license was not preceded by any show cause notice. Section 117-N of the Tamil Nadu Urban Local Bodies Act 1998 empowers the Commissioner to cancel or suspend the license. The said provision is as follows:-

“ 117-N. Power to suspend or cancel licence.—

(1) Without prejudice to any other penalty to which the licensee may be liable under this Chapter, the Commissioner may, at any time, by order in writing, cancel or suspend any licence granted or renewed under section 117-L, if-

(a) such licence has been obtained by fraud, misrepresentation or suppression of material particulars; or

(b) the licensee has contravened any of the provisions of this Chapter or the rules made thereunder or any of the condition, subject to which the licence was granted.

(2) Before cancelling a licence under sub-section (1), the Commissioner shall give the licensee, an opportunity of making his representation.”

7. Rule 329 is as follows:-

“329. Cancellation of licence.— (1) Where the Commissioner either *suo-motu* or on an application, has reason to believe that,—



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(i) a licence has been obtained by fraud, misrepresentation or suppression of material particulars ;
(or)

(ii) a licensee has violated or failed to comply with the conditions of the licence or has contravened any provision of the Act or these Rules, he shall call upon the licensee, by notice in writing, addressed by registered post to the address given in his licence stating the grounds, to show cause within seven days from the date of receipt of such notice as to why the licence should not be cancelled.

(2) On examining the reply received from the licensee within the time limit specified in sub-rule (1), the Commissioner may either cancel the licence or drop further action in the matter.”

8. On the ground that there has been breach of the principles of natural justice, the cancellation order dated 16.03.2024 is set aside.

9. It is open to the Commissioner of Madurai Corporation to re-visit the issue of grant of license in favour of M/s.Index Advertising in view of the direction given in this order. The Commissioner of course may have to take note of the fact that M/s. Index Advertising cannot be made to suffer any loss on account of the act of the Corporation. While it is open to the Commissioner of Madurai Corporation to set aside the order conferring license to the petitioner, it may have to ensure that M/s.Index Advertising does not suffer any loss. This writ petition stands



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allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

08.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU

To:

1. The Commissioner,
Corporation of Madurai, Madurai – 625 002.
2. The Deputy Commissioner,
Corporation of Madurai, Madurai – 625 002.
3. The Assistant Commissioner Revenue,
Corporation of Madurai,
Madurai – 625 002.
4. The Assistant Engineer,
Zone II,
Corporation of Madurai,
Madurai – 625 002.



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G.R.SWAMINATHAN,J.

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