



WP(MD)Nos.20905, 20906, 21137, 22945 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 27.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)Nos.20905, 20906, 21137, 22945 of 2015

and

MP(MD)Nos.1 (4), 2 of 2015

and

WMP(MD)Nos.19 to 22 of 2016

WP(MD)No.20905/2015:-

K.Karuppasamy

.. Petitioner

v.

1.The Divisional Engineer,
Highway Authority,
Construction and Maintenance,
Virudhunagar Highway Division,
Madurai Road,
Virudhunagar.

2.The Assistant Engineer,
Highway Department,
Construction and Maintenance,
Virudhunagar Highway Division,
Madurai Road,
Virudhunagar.



WP(MD)Nos.20905, 20906, 21137, 22945 of 2015

3.The District Social Welfare Officer,
Social Welfare Office Department,
Virudhunagar,
Virudhunagar District.

4.The Secretary to Government,
Highways and Minor Ports Department,
Government of Tamil Nadu,
Secretariat, Chennai.

.. Respondents

[R.4 *suo-motu* impleaded vide order dated 27.03.2024]

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari calling for the records of the impugned proceedings of the second respondent in Ku.No.42/2015/2.Po, dated 13.11.2015 and quash the same.

WP(MD)No.20906/2015:-

B.Arumugam

.. Petitioner

v.

1.The Divisional Engineer,
Highway Authority,
Construction and Maintenance,
Virudhunagar Highway Division,
Madurai Road,
Virudhunagar.



WP(MD)Nos.20905, 20906, 21137, 22945 of 2015

2.The Assistant Engineer,
Highway Department,
Construction and Maintenance,
Virudhunagar Highway Division,
Madurai Road,
Virudhunagar.

3.The Secretary to Government,
Highways and Minor Ports Department,
Government of Tamil Nadu,
Secretariat, Chennai.

.. Respondents

[R.3 *suo-motu* impleaded vide order dated 27.03.2024]

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari calling for the records of the impugned proceedings of the second respondent in Ku.No.42/2015/2.Po, dated 13.11.2015 and quash the same.

WP(MD)No.21137/2015:-

R.Balakrishnan

.. Petitioner

v.

1.The Divisional Engineer,
Highway Authority,
Construction and Maintenance,
Virudhunagar Highway Division,
Madurai Road, Virudhunagar.



WP(MD)Nos.20905, 20906, 21137, 22945 of 2015

2.The Assistant Engineer,
Highway Department,
Construction and Maintenance,
Virudhunagar Highway Division,
Madurai Road, Virudhunagar.

3.The Virudhunagar Municipality,
Through its Commissioner, Virudhunagar.

4.The Secretary to Government,
Highways and Minor Ports Department,
Government of Tamil Nadu,
Secretariat, Chennai.

.. Respondents

[R.4 *suo-motu* impleaded vide order dated 27.03.2024]

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records of the impugned proceedings of the second respondent in Ku.No. 42/2015/Oo.Po, dated 13.11.2015 and Ku.No.Permission/2015/Ee.Ni.Va., dated 13.11.2015, quash the same and consequently, directing the first respondent to renew the petitioner's license vide R.C.No.2208/2014/D4 dated 14.11.2014 for conducting a small sweet stall situated at Madurai Virudhunagar Road within Virudhunagar Municipality Limit adjacent to District Registrar Office Compound on the basis of the petitioner's application dated 11.11.2015.



WP(MD)Nos.20905, 20906, 21137, 22945 of 2015

WP(MD)No.22945/2015:-

WEB COPY

S.Jambu

.. Petitioner

v.

1.The District Collector,
Virudhunagar District.

2.The Divisional Engineer,
Highway Authority,
Construction and Maintenance,
Virudhunagar Highway Division,
Madurai Road,
Virudhunagar.

3.The Assistant Engineer,
Highway Department,
Construction and Maintenance,
Virudhunagar Highway Division,
Madurai Road,
Virudhunagar.

4.The General Manager,
Virudhunagar District Milk Producers Union Ltd.,
Kumarasamy Raja Nagar,
Virudhunagar District.

5.The Secretary to Government,
Highways and Minor Ports Department,
Government of Tamil Nadu,
Secretariat, Chennai.

.. Respondents

[R5 *suo-motu* impleaded vide order dated 27.03.2024]

5/22



WP(MD)Nos.20905, 20906, 21137, 22945 of 2015

WEB

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari calling for the records of the impugned proceedings of the second respondent in Ku.No.42/2015/Oo.Po, dated 13.11.2015 and the consequential proceedings of the third respondent in Ku.No.42/2015/Oo.Po, dated 28.11.2015 and quash the same.

For Petitioners : Mr.G.Mariappan
[In all WPs]

For Respondents : Mr.P.T.Thiraviam,
Government Advocate
[In all WPs]

Mr.M.Muthu Geethaiyan
for R.3 in WP(MD)21137/2015

COMMON ORDER

The petitioners are licensees, who run temporary stalls / shops in Virudhunagar Madurai Highways. The first respondent / Divisional Engineer, by his proceedings of the year 2010, temporarily permitted the petitioners to occupy the Highways land to have stalls / shops, subject to certain conditions and on payment of deposit amount. The petitioners were



WP(MD)Nos.20905, 20906, 21137, 22945 of 2015

also permitted to continue for several years. While so, the second respondent has initiated a proceedings, issued show cause notice and passed the impugned orders, cancelling the permission granted to the petitioners on the road margin, stating that they are causing nuisance to the traffic and also violated the terms and conditions. Aggrieved over the same, the petitioners have filed these writ petitions.

2.Learned Counsel for the petitioners attacked the impugned orders on the ground of jurisdiction of the second respondent. According to him, the Highway Authority is competent to issue and cancel the permission. Highway Authority is defined under Section 2(13) of the Tamil Nadu Highways Act, 2001 [hereinafter referred to as 'the Act'], as that of an Officer appointed under Sub-Section 2 of Section 5 of the Act. The Divisional Engineer, Highways Department, is the Highway Authority for the division as per Section 5(2) of the Act. The first respondent / Divisional Engineer is the designated Highway Authority for Virudhunagar Division. The order of permission was also issued by the first respondent / Divisional Engineer, the Highway Authority. While so, the impugned order



WP(MD)Nos.20905, 20906, 21137, 22945 of 2015

has been passed by the Assistant Engineer, who is not the Highway Authority.

3.Learned Counsel has also attacked the impugned orders on the ground of discrimination that it has been passed selectively as against the petitioners alone. He has also relied on certain photographs in the typed set of papers and further submitted that some of the petitioners are physically handicapped persons. Therefore, he prayed for appropriate orders.

4.Since an allegation has been made as against the respondents that the impugned orders have been passed selectively, this Court directed the respondents to file a report as to the number of such shops allotted in the Virudhunagar District and the conditions of the same.

5.Pursuant to the same, the second respondent /Assistant Engineer has filed a report and the same is extracted as under:-

"5. ... a) The number of shops permitted by this Division on the road side margin list is enclosed (99 shops).



b) *The shops are permitted by Highways Department from the recommendation of District Collector for the people of unemployed person below poverty line (through Monday petition) and handicapped person.*

c) *The aavin shops are run by the Government of Tamilnadu to encourage the sales of aavin milks and its products for the public as recommended by the General Manager, Virudhunagar District Cooperative Milk Producers Union Limited.*

d) *The Highways Authority, when granting such permission, No Objection Certificate obtained from the local bodies, Village Administrative Officer and Police Department.*

e) *Based on the site inspection of Assistant Engineer (H) / Assistant Divisional Engineer (H) the shop should be without any traffic harm and public hindrance that shops will be recommended for further one year temporary shop shall be renewed. In case if any traffic harm and public hindrance that shops are recommended to cancelled by the inspection of site verification.*

f) *At present total 99 shops are permitted from this Virudhunagar (H) C&M Division.*

- *Current year already renewed for one year temporarily installation shops given to the 17 persons based on the site inspection recommended by the Assistant Engineer (H) / Assistant Divisional Engineer (H).*



WEB COPY



WP(MD)Nos.20905, 20906, 21137, 22945 of 2015

- *At present, 23 shops are not functioned and it was removed from site.*
- *15 shops permission are cancelled due to traffic harm, public hindrance, widening of the existing road, etc.*
- *5 shops are under Court proceedings.*
- *39 shops are not renewed. Hence the action taken for removing the above shops are under process.*

g) The Highways Authority has not given any permission to accommodate the taxi stand and workshop near petitioners' shop in Madurai Kanyakumari [SHU-33] road side. The Highways Authority time to time remove unauthorized encroachment with the help of Police and Revenue Department.

h) As per the photos produced by the petitioners, it seems to hindrance to traffic and pedestrian, hence, it is necessary to remove the shops."

6.This Court considered the rival submissions made on either side and perused the materials placed on record.

7.These shops were permitted by the first respondent / Divisional Engineer as per Section 26 of the Tamil Nadu Highways Act. The shops are



allotted on a temporary basis in the Highways land in the year 2010 with certain conditions and the same is extracted as under:-

“1.The proposed installation of shop will be erected at km 43/4 of Madurai – Kanyakumari road.

2.The proposed shop will be erected at a distance of 7.875 m from the centre of the road & 6.0 m from the edge of the road.

3.A rent of Rupees 950/- shall be paid in advance by way of a demand draft drawn in favour of the Divisional Engineer (Highways), Virudhunagar Division payable at Virudhunagar.

4.The operation in the area of land to be occupied shall be carried out so as not to interfere with traffic on the highway or highway drainage.

5.The structure to be erected or work to be carried out so as not to interfere with traffic on the highway or the highway drainage.

6.The shop shall be erected in conformity with the plan approved by the Highway Authority and shall not be altered or extended without the prior written permission of the Highway Authority. It shall not be used for any purpose other than the one for which permission is granted.

7.The shop shall be maintained to the satisfaction of the Highway Authority.

8.No trees on the Highway land shall be removed, cut or damaged or highway accessories or materials removed or damaged without the prior written permission of Highway Authority.



9.The permission holder shall be solely liable for any loss or injury sustained by any person or property as a result of any carelessness, negligence or misconduct of the permission holder or any of his employees in the erection, setting up, repair or use of the structure on or over hanging the highway lane.

10.The permission holder shall be liable to pay all taxes, levies or assessments payable to Government or any local authority in respect of the highway land occupies or structure constructed.

11.The permission holder shall deposit an amount of Rs.9500/- with the Highway Authority as security. The security is liable for forfeiture in case of default in the payment of rent and other charges payable to Government or contravention of any of the conditions subject to which the permission is granted.

12.The permission shall not be transferred to any other person without the prior written permission of the Highway Authority.

13.The permission shall be valid upto 12.01.2011.

14.On the expiry of the period for which permission is granted, the land shall be restored to its original condition and handed over to the Highway Authority.

15.The Highways Authority reserves the right to cancel, or modify the permission granted."



8.Sub-Section 2(b) of Section 26 of the Tamil Nadu Highways Act enables the Highways Authority to put up a temporary Tent or Panthal or other similar erection or a temporary stall on any Highway. The relevant provision is extracted as under:-

“26. (1) No person shall occupy or encroach on any highway within the highway boundaries.

(2) Notwithstanding anything contained in sub-section (1), the Highways authority may, with the concurrence of the Collector and with due regard to the safety and convenience of traffic and subject to such conditions, and on payment of such rent or other charges as may be prescribed, grant permission, of a temporary nature, to any person-

...

(b) to put up a temporary owning or tent, pandal or other similar erection or a temporary stall or scaffolding on any highway.”

9.The very object of Section 26 of the Act is to prevent unauthorized occupation and encroachment on the Highway. However, by exploiting this provision u/s.26(2)(b) of the Act, indiscriminate permissions are granted by the Highways Authority on the road margins. The Section



WP(MD)Nos.20905, 20906, 21137, 22945 of 2015

enables for a temporary permission only. The orders of permission were also granted for a limited period, however, under the guise of this provision, the permissions, which were granted in the year 2010, were allowed to continue for several years.

10.If any permission is granted under Sub-Section 2(b) of Section 26 of the Act, it must be with the concurrence of the District Collector and with due regard to the safety and convenience of the traffic. Apparently, in none of the orders granting permission, there is no reference about the concurrence obtained from the District Collector or about the report of the respective Traffic Authority on the possibility of safety and convenience of traffic.

11.The road margins are meant for pedestrians and the users of the road. However, in the strength of this provision, permissions are being granted. In a similar issue, this Court, *in Chinnamasanam v. District Collector, Virudhunagar and Others* [WP(MD)No.20277 of 2017, dated 27.06.2023], has observed as follows:-



WEB COPY

“10.The Hon'ble Supreme Court time and again reiterated that footpaths or pavements are public properties which are intended to serve the convenience of the general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object of its existence. The margins of the road and streets are meant for the common use for the pedestrians. However, with the connivance of some officers, permissions are granted to put up shops on these margins, leaving the general public to walk on the roads, leading to causing inconvenience to the pedestrians as well as commuters on the road and leads to tragic accidents. The difficulties faced by the common man on account of these road side shops can be witnessed all over the state and even in city like Madurai such pathways are occupied by shops, for example the road margins opposite to omni bus stand Madurai, Rajaji hospital Madurai...,etc.”

12.Having observed so, the said writ petition was disposed of in the following terms:-

“1.The writ petitioner is not having any right or authority to establish a shop on a road margin of a Highway without getting any prior permission and therefore, he is not entitled for the relief sought for in this writ petition. However if he has suffered any loss on account of



permission granted by the General Manager, Virudunagar Co-operative Milk Producers Union, it is open to the petitioner to claim damages as against the General Manager of the Virudunagar Co-operative Milk Producers Union, in a manner known to law.

2.The Secretary to the State Highways Department and the Secretary to the Municipal Administration and Water Supply Department shall constitute a Committee and identify the number of shops permitted by the respective Departments all over the State and ensure the strict compliance of the relevant Acts and Rules on grant of license on road margins and ensure the convenience of the common public is not affected.

3.The State Highways Department and the Municipal Administration Department shall also frame guidelines for granting such licenses on a road margin in accordance with the the Tamil Nadu Highways Act, and the District Municipalities Act.

4. The respective departments shall also ensure that the pathways/sidewalks on the margin of roads/streets are not occupied or encroached for any other purpose."

13.It is pertinent to note that the area in which the permissions are granted are well within the Municipality limits. The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act has been



WP(MD)Nos.20905, 20906, 21137, 22945 of 2015

enacted in the year 2014. The urban street vendors and their vending activities are regulated under this Act. To implement the provisions of this Act, the respective State Governments were also directed to frame their own scheme under Section 38 of the Act. Accordingly, Tamil Nadu Street Vendors (Protection of Livelihood and Regulation of Street Vending) Scheme and Rules, 2015, was notified by the State of Tamil Nadu on 02.11.2015 vide G.O.Ms.No.159, Municipal Administration and Water Supply Department.

14.As per this Act and Rules and Scheme, the street vendors, the vending zones and the non-vending zones have to be identified. The street vendors have to be permitted only in the vending zones and that too, after enlisting the street vendors. A Vending Committee has to be constituted and this Vending Committee alone is competent to enlist the street vendors and also for identifying the vending zones.

15.Though the road belongs to the Highways Department, when it falls within the Municipality limits, the Highways Department ought to



WP(MD)Nos.20905, 20906, 21137, 22945 of 2015

have granted permission in compliance with the provisions under the Street Vendors Act also.

16.The photographs produced before this Court reveal that in view of the permissions granted on the road margins, the pedestrians are forced to walk on the roads, which would certainly endanger their life. Under the guise of helping some disabled persons, the respondents are not justified in taking risk on the life of pedestrians. If the Department is inclined to do some favour / help for the disabled persons, a scheme must be framed and all the disabled persons must be allowed to apply and there must be a fair procedure in identifying the persons who are eligible for allotment. It is not on the whims and fancies of a particular officer in granting such permissions.

17.From the report produced, it appears that in this District alone, 99 shops have been permitted by the Divisional Engineer. These permissions were said to have been granted after obtaining No Objection Certificate from the local bodies, Village Administrative Officer and Police

18/22



WP(MD)Nos.20905, 20906, 21137, 22945 of 2015

Department. However, the permission orders does not disclose any such No Objection Certificate granted by any of the authority. Considering the larger issue involved, this Court *suo-motu* impleads the Secretary to Government, Highways and Minor Ports Department, Chennai, as a party to this writ petition and Mr.P.T.Thiraviam, learned Government Advocate, is directed to take notice on behalf of the newly impleaded respondent.

18.The Secretary to Government, Highways and Minor Ports Department, shall look into this issue and frame certain rules / guidelines for allotment of shops in road margins, while ensuring the availability of road margin for pedestrians. The Secretary is expected to issue necessary Circulars in this regard.

19.Insofar as the present batch of cases are concerned, admittedly, the permission was granted by the Divisional Engineer / Highway Authority and the order of cancellation was passed by the Assistant Engineer. As rightly pointed out by the petitioners' Counsel, the Assistant Engineer is not defined as the Highway Authority. On this ground alone, the



WP(MD)Nos.20905, 20906, 21137, 22945 of 2015

impugned orders are set aside, however, with a direction to the Divisional Engineer to issue notice to the petitioners and thereafter, pass appropriate orders. The Divisional Engineer is also expected to review the conditions of the other existing shops in the District and proceed accordingly.

With the above observations and directions, these writ petitions stand disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
NCC : Yes / No
Internet : Yes
gk

27.03.2024

To

1.The District Collector,
Virudhunagar District.

2.The Divisional Engineer,
Highway Authority,
Construction and Maintenance,
Virudhunagar Highway Division,
Madurai Road,
Virudhunagar.

20/22



WP(MD)Nos.20905, 20906, 21137, 22945 of 2015

- 3.The Assistant Engineer,
Highway Department,
Construction and Maintenance,
Virudhunagar Highway Division,
Madurai Road,
Virudhunagar.
- 4.The General Manager,
Virudhunagar District Milk Producers Union Ltd.,
Kumarasamy Raja Nagar,
Virudhunagar District.
- 5.The Commissioner,
Virudhunagar Municipality,
Virudhunagar.
- 6.The District Social Welfare Officer,
Social Welfare Office Department,
Virudhunagar,
Virudhunagar District.
- 7.The Secretary to Government,
Highways and Minor Ports Department,
Government of Tamil Nadu,
Secretariat, Chennai.



WEB COPY



WP(MD)Nos.20905, 20906, 21137, 22945 of 2015

B.PUGALENDHI, J.

gk

WP(MD)Nos.20905, 20906, 21137, 22945 of 2015

27.03.2024