
(2012) 12 MAD CK 0040

In the Madras High Court

Case No : Writ Petition No's. 3165, 7322, 13849, 13850 and 27202 of 2012

Sri Ragavendra Ad Lab

APPELLANT

Vs

Senior Divisional Commercial Manager and Another

RESPONDENT

Date of Decision : 04-12-2012

Acts Referred:

Constitution of India, 1950 — Article 2(1)(d), 285, 285(1)
Madras City Municipal Corporation Act, 1919 — Section 326A, 326B, 326C, 326CC, 326D
Railways Act, 1989 — Section 185

Citation : (2013) 1 MLJ 455

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : T.R. Rajagopalan, for S. Rajendrakumar, for the Appellant; R. Thiyagarajan, for P.T. Ramkumar and P.H. Aravind Pandian, Additional Advocate General Assisted by G. Anantharangan, V. Ramajagadeesan and R. Arunmozhi, for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—The petitioners in these batch of writ petitions had granted permission by the Southern Railway authorities to erect

hoardings for display of advertisement in the Railway premises, on payment of licence fee. The Corporation of Chennai has sought to regulate

those hoardings by insisting that the petitioners shall obtain licence, otherwise those hoardings could be removed by them. In these circumstances,

the petitioners have filed these writ petitions seeking to forbear the respondent Corporation of Chennai from interfering with the hoardings put up

by them in the Railway premises. The issue that arises for consideration in all these writ petitions is as to whether the Corporation of Chennai can

regulate the hoardings that are put up in the Railway premises, by the private

parties, who are the petitioners herein.

2. Mr. T.R. Rajagopalan, learned Senior Counsel appearing for B.S.G. Firm, learned counsel for the petitioner in W.P. No. 7322 of 2012 has

submitted that since the hoardings are erected in the Railway premises, the petitioners cannot be asked to take licence in view of Section 185 of

the Railways Act, 1989. He also relied on Article 285 of the Constitution of India in this regard. He has relied on the following judgments in

support of his submission:

(i) Judgment of the Supreme Court in V Union of India Vs. Purna Miunicipal Council and others,

(ii) Judgment of the Supreme Court in Union of India (UOI) and Another Vs. Ranchi Municipal Corporation, Ranchi and Others,

(iii) Judgment of the Supreme Court in Municipal Corporation, Amritsar Vs. The Senior Superintendent of Post Offices, Amritsar Division and

Another,

(iv) Judgment of this Court in Union of India v. Commissioner (W.P. No. 13990 of 2012 -Decided On 30.7.2010)

(v) Judgment of this Court in Principal Accountant General v. Commissioner, Corporation of Chennai (2010) 5 MLJ 241

3. Mr. T.R. Rajagopalan, learned Senior Counsel has vehemently contended that neither Corporation of Chennai nor IT Expressway Limited, a

company owned by the Government of Tamil Nadu, has got power to regulate the hoardings put up by the petitioners in the Railway premises.

4. Mr. T.R. Rajagopalan, learned Senior Counsel has sought to distinguish the Division Bench judgment of this Court in The Tamil Nadu Outdoor

Advertising Association Vs. Government of Tamil Nadu and nine others upholding Acts 51 of 1998 and 26 of 2000 incorporating Chapter XII-A

to the Chennai City Municipal Corporation Act, 1919 containing Sections 326-A to 326-J and also the decision of the Supreme Court in P.

Narayana Bhat Vs. State of Tamil Nadu and Others, confirming the judgment of the Division Bench of this Court by contending that in those cases

the hoardings on the Railway premises was not under consideration.

5. Likewise, Mr. T.R. Rajagopalan, learned Senior Counsel has submitted that the judgment of the Division Bench of this Court in K. Kanagaraj v.

District Collector, Chennai and Others (2006) 4 MLJ 1033 upholding the Chennai

City Municipal Corporation Licensing of hoarding and Levy

and Collection of Advertisement Tax Rules 2003 and the judgment of the Supreme Court in Novva ADS Vs. Secretary, Deptt. of Municipal

Administration and Water Supply and Another, confirming the judgment of the Division Bench of this Court, do not consider the hoardings erected

in the premises of the Railway. Hence, the Corporation of Chennai lacks power to regulate the hoardings erected by the petitioners in the Railway

premises.

6. Mr. S. Rajendra Kumar, learned counsel appearing on behalf of the petitioners in W.P. Nos. 3165, 13849, 13850 and 27202 of 2012 adopted

the submissions made by Mr. T.R. Rajagopalan, learned Senior Counsel appearing for the learned counsel for the petitioner in W.P. No. 7322 of

2012.

7. On the other hand, Mr. R. Thiyagarajan, learned Senior Counsel appearing for respondent Railway has submitted that insofar as the display of

advertisement in the hoardings erected on Railway properties is concerned, the licence, if required, should also have to take appropriate

permission from the statutory authorities, as required by law for such display. That is, the Railway authorities have not supported the claim of the

petitioners as such and it is their submission that the statutory provisions will govern the situation.

8. The learned Additional Advocate General appearing for the Corporation of Chennai has submitted that the petitioners have failed to get prior

permission from the competent authority for putting up advertisement on the hoardings as per Chapter XII-A of the Chennai City Municipal

Corporation Act, 1919 and he relied more particularly on Sections 326A, 326B, 326C and 326-J of the said Act. In this regard, the learned

Additional Advocate General relied on a common order passed by this Court in Advies and Others v. Government of Tamil Nadu (W.P. Nos.

29239 of 2010 etc., batch decided on 28.6.2011) and the judgment of the Supreme Court in Links Advertisers and Business Promoters Vs.

Commissioner, Corporation of The City of Bangalore,

9. The learned Additional Advocate General also submitted that the constitutional validity of Chapter XII-A of the Chennai City Municipal

Corporation Act, 1919 that was incorporated by way of Act 58 of 1991 and Act 26

of 2000 was upheld by a Division Bench of this Court in

Tamil Nadu Outdoor Advertising Association v. Government of Tamil Nadu (supra) and the same was confirmed by the Supreme Court in its

judgment in P. Narayana Bhat v. State of Tamil Nadu (supra). It was submitted that the very purpose of introducing Chapter XII-A was in the

interest of public and thus, the hoardings could be regulated by the Corporation of Chennai, as per the provisions of Chapter XII-A of the Chennai

City Municipal Corporation Act, 1919. He produced various photographs and submitted that the hoardings and the advertisements thereon are

just adjacent to the busy OMR Road (Old Mahabalipuram Road).

10. The learned Additional Advocate General vehemently contended that the permission given by the Railway authorities to the petitioners to erect

hoardings in their premises is not sufficient to erect the hoardings and put up advertisement thereon without getting licence from the Corporation of

Chennai as provided under Chapter XII-A of the Chennai City Municipal Corporation Act, 1919. Since the petitioners did not obtain licence

before erecting the hoardings, those hoardings are unauthorised and illegal and are liable to be removed.

11. Mr. V. Ramajegadeesan, learned counsel appearing for IT Expressway Limited submitted that Rajiv Gandhi Salai (Old Mahabalipuram Road)

is being maintained by IT Expressway Limited, by way of a partnership and development agreement dated 23.2.2005 entered into between the

Government of Tamil Nadu and the IT Expressway Limited. As per Article 2(1) (d) of the said agreement, the said company has been authorised

to collect licence fee from the advertiser. The petitioners have erected hoardings alongside Rajiv Gandhi Salai contrary to the provisions contained

in Section 326-J of the Chennai City Municipal Corporation Act, 1919 and Rule-6 of the Chennai City Municipal Corporation Hoardings Rules,

2003 and without obtaining any valid licence from the Corporation of Chennai. He made similar submissions as made by the learned Additional

Advocate General.

12. I have considered the submissions made on either side.

13. The issue that arises for consideration in all these writ petitions is as to whether the petitioners can erect hoardings, without getting licence from

the Corporation of Chennai, for displaying advertisements on the hoardings, as

provided under Chapter XII-A of the Chennai City Municipal Corporation Act, 1919.

14. An ordinance to amend the laws relating to the Municipal Corporations and Municipalities in the State of Tamil Nadu to regulate erection of

hoardings was promulgated by Tamil Nadu Ordinance 2 of 1998. The said Ordinance was promulgated with a view to regulate the erection of

hoardings on the road side and over the buildings of the City of Chennai and in other urban areas of the State, without proper licence. The said

Ordinance was subsequently enacted as Act 51 of 1998. The same inserted Sections 326-A to 326-I of the Chennai City Municipal Corporation

Act, 1919 and also in other Acts governing the other Corporations and also in Tamil Nadu District Municipalities Act, 1920. Later, further

amendment was introduced by Act 26 of 2000 incorporating Section 326-J of the Chennai City Municipal Corporation Act, 1919.

15. Section 326-A of the Chennai City Municipal Corporation Act, 1919 defines the word "hoarding" and the same is extracted hereunder:

326-A. Definition. - In this Chapter, "hoarding" means any screen of boards at any place, whether public or private used or intended to be used

for exhibiting advertisement, including the frame work or other support, erected, wholly or in part upon or over any land, building, wall or structure,

visible to public wholly or partly.

The word "hoarding" is given the widest meaning. If advertisement is made on the hoardings, which is visible to public, wholly or partly, then such

hoardings comes under the definition u/s 326-A of the Chennai City Municipal Corporation Act, 1919. Thus, the Corporation of Chennai is

clutched with power to regulate those hoardings.

16. Section 326-B prohibits erection of hoardings without obtaining licence from the District Collector. Section 326-B is extracted hereunder:

326-B. Prohibition for erection of hoardings.- (1) No hoarding shall be erected at any place, on or after the 23.7.1998 (hereinafter in this Section

referred to as the said date) by any person without obtaining a licence from the District Collector:

(2) Every person who has erected any hoarding without obtaining a licence and which is in existence immediately before the said date shall apply

for a licence in accordance with the provisions of this Chapter within thirty days

from the said date.

17. Section 326-C is relating to application for licence.

18. Section 326-CC is relating to tax on advertisement on hoardings.

19. Section 326-D grants power to the District Collector to cancel or suspend any licence granted or renewed.

20. Section 326-E gives power to the District Collector to remove any unauthorised hoardings. Section 326-E is extracted hereunder:

326-E. Removal of unauthorised hoarding.-Any hoarding erected without a licence shall be confiscated and removed by the District Collector,

without giving any notice.

21. Section 326-F is also relating to removal of hoardings in certain other cases. While Section 326-E gives power to the District Collector to

remove hoardings that were erected without licence, Section 326-F gives power to remove hoardings, if the hoardings are erected contrary to the

conditions of licence and if the hoardings are retained after the expiry of the licence.

22. Section 326-G relates to exemption in certain cases.

23. Section 326-H provides for appeal to the Government against the order of the District Collector refusing to grant or renew or cancelling or

suspending a licence.

24. Section 326-I provides for penalty in the matter of contravention of the provisions of Chapter XII-A.

25. Section 326-J prohibits erection of certain hoardings. Section 326-J is extracted hereunder:

326-J. Prohibition of erection of certain hoardings. - Notwithstanding anything contained in this Act or in any other law for the time being in force

or in any judgment, decree or order of any Court, Tribunal or other authority,-

(a)(i) Where any hoarding (other than traffic sign and road sign) visible to the traffic on the road is hazardous and disturbance to the safe traffic

movement, so as to adversely affect free and safe of flow of traffic and which is in existence immediately before the date of the commencement of

the Tamil Nadu Municipal Laws (Amendment) Act, 2000 (hereafter in this Section referred to as the amendment Act), the District Collector shall

by notice in writing, require the licensee or any person in possession, of such

hoarding, to remove such hoarding within such time as may be specified in the notice:

Provided that such time shall not exceed fifteen days from the date of issue of such notice;

(ii) Where the hoarding referred to in sub-clause (i) is not removed within the time specified in the notice, the District Collector shall, without further

notice, remove such hoarding and recover the expenditure for such removal as an arrear of land revenue.

(b)(i) Where the District Collector is satisfied that the erection of any hoarding (other than traffic sign and road sign) visible to the traffic on the

road is hazardous and disturbance to the safe traffic movement so as to adversely affect free and safe flow of traffic, he shall not grant any licence

u/s 326-C and no such hoarding shall be erected, on and from the date of the commencement of the amendment Act by any person;

(ii) Where any hoarding is erected in contravention of sub-clause (i), it shall be confiscated and removed by the District Collector without any

notice.

26. As rightly contended by the learned Additional Advocate General appearing for the Corporation of Chennai and the learned counsel appearing

for IT Expressway Limited, Chapter XII-A has been upheld by a Division Bench of this Court in Tamil Nadu Outdoor Advertising Association v.

Government of Tamil Nadu (supra) and the same was confirmed by the Supreme Court in P. Narayana Bhat v. State of Tamil Nadu (supra).

27. Section 326-A defines the word "hoarding" in the widest possible terms. It includes hoardings put up "at any place". The word "at any place" is

used in Section 326-A. Section 326-A also makes it clear that the hoardings erected in public place or private place for exhibiting advertisement

comes under the said definition, if the same is visible to public, in whole or part.

28. It is not the case of the petitioners that the advertisements displayed in the hoardings that are erected in the Railway premises are not visible to

public wholly or partly. On the other hand, it is the case of the petitioners that since the hoardings are erected in the Railway premises, they need

not get licence u/s 326-C. I am not able to subscribe to the view canvassed by the petitioners. The hoardings erected in the Railway premises also

comes under the definition of Section 326-A. If I hold, otherwise, the same

would defeat the very purpose of the Act. The purpose of the Act was to regulate all the hoardings exhibiting advertisements that are visible to public.

29. While Mr. T.R. Rajagopalan, learned Senior Counsel has submitted that the judgment of a Division Bench of this Court in Tamil Nadu

Outdoor Advertising Association v. Government of Tamil (supra), which was confirmed by the Supreme Court in its judgment in P. Narayana Bhat

v. State of Tamil (supra) did not consider the hoardings erected in the Railway premises, the same was disputed by the learned Additional

Advocate General appearing for the Corporation of Chennai. The learned counsel appearing for IT Expressway Limited submitted that the some

of the hoardings in the batch of cases decided by this Court relates to the hoardings erected in the Railway premises. In the said judgment, there

was no argument advanced by the hoarders that the hoardings were erected in the Railway premises and therefore, they need not get licence.

30. In any event, I am of the view that Section 326-A of the Chennai City Municipal Corporation Act, 1919 does not exempt the hoardings put up

in the Railway premises from the purview of Chapter XII-A of the Act. In fact, the Railway administration has also filed an additional affidavit and

para 2 of the same is extracted hereunder:

2. ... I state that in so far as display of advertisements in the hoardings erected on Railway properties is concerned, the licence, if required, should

also have to take appropriate permission from the statutory authorities as required by law for such display.

31. Furthermore, as rightly pointed out by the learned Additional Advocate General and the learned counsel appearing for IT Expressway Limited

that in some of the orders of the Railways permitting the petitioners to erect hoardings, the petitioners were directed to get licence from the

concerned Corporation. The relevant clause in those orders are extracted hereunder:

14. 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.

32. Mr. T.R. Rajagopalan, learned Senior Counsel relied on Section 185 of the Railways Act, 1989 and Article 285 of the Constitution of India.

33. Section 185 of the Railways Act and Article 285 of the Constitution of India are extracted hereunder:

Section 185 of the Railways Act:

Taxation on railways for advertisement: (1) Notwithstanding anything to the contrary contained in any other law, 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 the railway administration to be liable to pay the tax specified in such notification.

(2) The Central Government may at any time revoke or vary a notification issued under sub-section (1).

Article 285 of the Constitution of India

Exemption of property of the Union from State taxation. - (1) The property of the Union shall, save insofar as Parliament may by law otherwise

provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any

property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as

that tax continues to be levied in that State.

Section 185 of the Railways Act exempts the Railway administration from payment of tax to any local authority on the advertisement. In this case,

the Railway administration is not complaining that they were directed to pay tax on any advertisement. Only in those cases, Section 185 of the

Railways Act could be attracted. On the other hand, the Railway administration has categorically filed a counter affidavit stating that the petitioners

shall obtain licence from the concerned Corporation.

34. Likewise, Article 285 of the Constitution of India exempts from all taxes imposed by State or any other authority within a State on the property

of the Union (including Railways). It is not the case relating to levying of tax and on the other hand, the petitioners were directed to comply with

Chapter XII-A of the Chennai City Municipal Corporation Act, 1919, in the case of erection of hoardings.

35. In all the judgments relied on by Mr. T.R. Rajagopalan, learned Senior

Counsel, the concerned Local Bodies sought to levy tax on the properties of the Central Government or the Railways, and issued demand notices. While the demand notices were sought to be questioned, the High Courts sustained the demand notices. When the matters were taken to the Supreme Court, the Supreme Court allowed those writ petitions referring to Article 285 (1) of the Constitution of India. In this case, we are not dealing with such a situation. On the other hand, the judgment of the Supreme Court.