

(2017) 12 MAD CK 0011
In the Madras High Court
Case No : 1340 of 2017

The Commissioner & Anr.

APPELLANT

Vs

B.Thiruloohana Kumari & Ors.

RESPONDENT

Date of Decision : 20-12-2017

Acts Referred:

[Tamil Nadu Open Places \(Prevention of Disfigurement\) Act, 1959](#),
Section 2(a)

Citation : (2017) 12 MAD CK 0011

Hon'ble Judges : Indira Banerjee, R.Hemalatha

Bench : DIVISION BENCH

Advocate : Indira Banerjee, R.Hemalatha

Judgement

1. This appeal is directed against an order dated 23 rd October 2017 passed by the learned Single Bench in W.P.No.23490 of 2017

(B.Thiruloohana Kumari v. The Commissioner, Corporation of Chennai, Ripbon Building, Chennai - 600 003 and others) to the extent the same in

effect prohibits the depiction of living persons on any banners, posters, hoardings, boards etc.

2. It appears that respondent No.1, Tmt.B.Thiruloohana Kumari filed the writ petition in this Court for a direction on the authorities pleaded as

respondents in the writ petition to remove the party board, banner and flag put up by one Mr.Mathi (Respondent No.4 herein) in front of the

petitioner's property at Door No.30-A, Navalar Street, Rani Anna Nagar, Arumbakkam, Chennai - 600 106, hereinafter referred to as ""property

in question"".

3. It was the case of the petitioner that the said Mr.Mathi had erected banners of a political party in front of the property in question and had

threatened the petitioner, when the petitioner had objected to the erection of the flag.

4. On 13 th April 2017, respondent No.1/writ petitioner sent a representation to the appellants being the Commissioner, Corporation of Chennai

and the Assistant Commissioner, Corporation of Chennai, Zone-VIII, complaining of encroachment in front of the property in question obstructing

ingress to and egress from the property in question and otherwise causing nuisance. As the appellants did not take any steps to redress the

grievances of respondent No.1/writ petitioner, the first respondent/writ petitioner was constrained to approach this Court.

5. It appears that in the course of hearing of the writ petition, the respondent Nos.1 to 4 in the writ petition submitted that all the banners and the

party flags, if not already removed, would forthwith be removed and that the said respondents would ensure that no such banners and party flags

were erected in front of houses in the City in future without the permission of the owners and/or occupants. If any banners or party flags were

erected, such banners or party flags would be removed forthwith.

6. The writ petition was disposed of recording the assurance given by respondent Nos.1 to 4 in the writ petition and directing the respondents to

ensure that no banners and/or party flags were erected in the residences of the citizens and in case such party flags and/or banners were erected,

the same forthwith be removed. The learned Single Bench made it clear that obstruction to removal of unauthorized banners, placards, posters etc.

would attract police/criminal action.

7. However, the Court further went on to direct that ""in order to maintain clean atmosphere in all the areas of the entire State of Tamil Nadu, and

to avoid unnecessary drawings on the walls of the buildings/residential places in the areas, this Court directs that the Chief Secretary to the

Government of Tamil Nadu to ensure that clean atmosphere is maintained in that regard in the Wards of the Town Panchayat/Panchayat

Union/Municipality/Corporation, etc. and shall also ensure that the provisions of the Tamil Nadu Open Places (Prevention of Disfigurement) Act,

1959, amended from time to time, are complied with"".

8. There can be no objection to the aforesaid direction except that the Chief Secretary to the Government of Tamil Nadu has personally been

directed to ensure compliance of the same.

9. The State is to ensure that no walls, whether of residential or non-residential buildings, including boundary walls, are defaced with wall writings,

drawings or posters and also ensure that the provisions of Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959 are complied with.

10. The appellants are aggrieved by the order under appeal insofar as the same directs that if at all any permission is given by the authorities

concerned for erecting banners, flex boards, sign-boards, etc., they shall ensure that photographs/pictures of such persons who are alive, shall not

be depicted by way of such banners, flex boards, sign-boards etc. To ensure that the photographs/pictures of persons were not depicted, the

learned Single Bench directed the Chief Secretary to the Government of Tamil Nadu to send Circulars to all the office bearers of the Wards of the

Town Panchayat/Panchayat Union/Municipality/ Corporation etc.

11. There is no reference at all in the order under appeal to any Statute, Rule, Regulation, By-law or even any Executive instruction, which forbids

erection of banners, flex boards or signboards containing the photographs and/or pictures of living persons.

12. Learned Advocate General appearing on behalf of the appellants has submitted, and in our view, very rightly that the virtual prohibition on

depiction of pictures and/or photographs of living persons in banners, posters, flex boards, sign-boards, display boards would adversely affect the

advertising industry and also reduce drastically the revenue earnings of the appellant Corporation. As rightly pointed out by the learned Advocate

General, advertisements in display boards and hoardings depicting film personalities, sports personalities, models, etc. are common.

13. With the greatest respect to the learned Single Bench, a ban on depiction of living persons is not only not supported by law, but also does not

serve any discernible purpose.

14. There can be no doubt that the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959 (hereinafter referred to as "the Prevention of

Disfigurement Act") and the Tamil Nadu Urban Local Bodies (Permission for Erection of Digital Banners and Placards) Rules, 2011 (hereinafter

referred to as "the Digital Banners and Placards Rules") are to be strictly enforced, as also the provisions of statutes relating to Municipal

Corporations and/or rules or regulations framed thereunder inter alia prohibiting obstructions in streets or pavements, or otherwise imposing

restrictions, either explicitly or by necessary implication, on the erection of hoardings, display boards, banners etc.

15. The definition of ""advertisement"" in Section 2(a) of the Prevention of Disfigurement Act includes any bill, notice, document, paper or other thing containing any words, signs or visible presentations. Objectionable advertisement includes any advertisement which is likely to obstruct pedestrian traffic.

16. Rule 3 of the Digital Banners and Placards Rules contemplates ""No Objection Certificate"" from the owner of the land, where digital banner or

placard is to be erected on private land or building. The expression ""placards"", in our view, includes banners, flags, flex boards and the like. The

authorities are bound to ensure that arches, placards and display boards, banners, which abut into the public streets and pavements and/or obstruct

free and safe movement of traffic or free and safe movement of pedestrians or obstructs the visibility of drivers of the vehicles are not erected.

17. There is no bar to setting up of hoardings etc. with the requisite permission as required in law, which do not abut the streets and pavements,

but run parallel to the streets and/or pavements on the edge of the streets or pavements without endangering traffic and/or movement of pedestrians

in any manner whatsoever and without causing obstruction of ingress to and egress from buildings or obstruction to any easement rights. There is

no bar in law to such hoardings, advertisement boards or banners depicting the pictures of living persons.

18. Learned Advocate General has cited the judgment of the Supreme Court in State of Uttar Pradesh and others v. Subhash Chadra Jaiswal and

others, reported in (2017) 5 SCC 163, where the Supreme Court, in effect, held that the High Court could not issue directions, which are in the

exclusive domain of the legislature. In the instant case, there was no challenge to any of the statutes, statutory rules or regulations relating to the

erection of banners, hoardings, boards, posters etc. In our view, the learned Single Bench, in effect, not only encroached into the exclusive domain

of the legislature or alternatively into the arena of delegatee delegated with the authority to exercise statutory powers, but also decided an issue that

was not raised in the writ petition.

19. Reference may be made to the following paragraphs of the judgment in Subash Chandra Jaiswal (*supra*):

12. In this context, we may refer to refer certain authorities in the field. In *Subrata Roy Sahara v. Union of India and others*, (2014)

8 SCC 470, it has been held that a Judge is to decide every dispute, in consonance with law. One is not free to decide in consonance

with his will, but must decide in accord with law. It has been further held that the concept of a Judge being an individual possessing

power and authority, is but a delusion.

13. In *Gurdev Kaur and others v. Kaki and others*, (2007) 1 SCC 546, it has been observed thus:

2. Judges must administer law according to the provisions of law. It is the bounden duty of judges to discern legislative intention in the

process of adjudication. Justice administered according to individual's whim, desire, inclination and notion of justice would lead to

confusion, disorder and chaos.

14. In *Census Commissioner and others v. R. Krishnamurthy*, (2015) 2 SCC 796, the three - Judge Bench was compelled to

observe as follows:

1. No adjudicator or a Judge can conceive the idea that the sky is the limit or for that matter there is no barrier or fetters in

one's individual perception, for judicial vision should not be allowed to be imprisoned and have the potentiality to cover celestial

zones. Be it ingeminated, refrain and restrain are the essential virtues in the arena of adjudication because they guard as sentinel so

that virtuousness is constantly sustained. Not for nothing, centuries back Francis Bacon had to say thus:

"Judges ought to be more learned than witty, more reverend than plausible, and more advised than confident. Above all things,

integrity is their portion and proper virtue. ... Let the Judges also remember that Solomon's throne was supported by lions on both

sides: let them be lions, but yet lions under the throne."

15. In the said case, a passage from Frankfurter, J. was reproduced which we think it apt to quote:-

For the highest exercise of judicial duty is to subordinate one's private personal pulls and one's private views to the law of which we

are all guardians- those impersonal convictions that make a society a civilised community, and not the victims of personal rule.

16. We have referred to the aforesaid authorities to sound a note of caution as sometimes one comes across certain orders where

directions are issued which do not directly arise from the case. In the instant case, as we notice, the controversy was absolutely

different but the High Court has generalised it and issued the directions.

17. A Judge should not perceive a situation in a generalised manner. He ought not to wear a pair of spectacles so that he can see

what he intends to see. There has to be a set of facts to express an opinion and that too, within the parameters of law." (emphasis

supplied)

20. We may quote the following passage from the State of U.P. v. Anil Kumar Sharma, reported in (2015) 6 SCC 716:

17. Quoting the observations in respect of policy-making by Lawton, L.J. in Laker Airways, (1977) 2 WLR 234, A.S. Anand, C.J.,

as he then was, reiterated the principle that the "role of the Judge is that of a referee. I can blow my judicial whistle when the ball goes

out of play; but when the game restarts I must neither take part in it nor tell the players how to play". Anand, C.J. added:

"The judicial whistle needs to be blown for a purpose and with caution. It needs to be remembered that court cannot run the

Government. It has the duty of implementing the constitutional safeguards that protect individual rights but they cannot push back the

limits of the Constitution to accommodate the challenged violation."

21. The order under appeal is set aside to the limited extent that the learned Single Bench has directed the concerned authorities to ensure that if

any permission is given for erecting banners, photographs/pictures of living persons are not to be depicted. The directions on the Chief Secretary to

the Government of Tamil Nadu are also modified by directing that the appropriate authorities shall ensure compliance with the order of the learned

Single Bench as modified by this Court, and the requisite Statutes, Rules, Regulations and Orders.

22. The appeal is disposed of accordingly. No costs. Consequently, CMP.No.18513 of 2017 is closed.