
(2006) 09 MAD CK 0060

In the Madras High Court

Case No : Writ Petition No's. 3889, 3924, 4057, 14771, 15302, 15719, 15720, 21607 and 34872 of 2003, 318, 355 and 356 of 2004 and W.A. No's. 328, 330 and 333 of 2004

White Horse Communication Network

APPELLANT

Vs

The Metropolitan Transport Corporation

RESPONDENT

Date of Decision : 05-09-2006

Acts Referred:

Madras City Municipal Corporation Act, 1919 — Section 203, 204, 205, 214(A), 220
Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959 — Section 129A

Citation : (2006) 4 MLJ 1297 : (2006) WritLR 976

Hon'ble Judges : V. Ramasubramanian, J; D. Murugesan, J

Bench : Division Bench

Advocate : K.S. Natarajan, for the Appellant; P. Ranganatha Reddy, for King and Partridge, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan. J.

1. The issue raised in all these writ petitions and writ appeals are common for the disposal of both the writ petitions and writ appeals. We refer the

averments made in the writ petition.

2. W.P. No. 318 of 2004 was filed by one Mr. K.S. Kumararaja, Sole Proprietor, City Advertising Systems, Chennai questioning the tender

notification published in Dina Bhoomi daily dated 31.12.2003. By the said tender notification, the Metropolitan Transport Corporation Limited,

Chennai the second respondent in the writ petition called for tenders from intending buyers for location of bus shelters on the road margins, within

the city of Chennai. The very same petitioner also filed W.P. No. 34872 of 2003, questioning the order dated 7.11.2003 of the Commissioner,

Corporation of Chennai, the first respondent informing the petitioner that the construction and maintenance of bus shelters in Chennai city is being

dealt with by the Metropolitan Transport Corporation and therefore, the petitioner was directed to approach Metropolitan Transport Corporation,

in this regard. The following few facts as averred in the affidavit filed in support of both the writ petitions are referable.

3. It has been averred that the obligation of providing bus shelters is on the Corporation of Chennai for the convenience of the commuters. Initially,

various bus stops were identified and allotted on first-come-first serve basis and consequently for the successful tenderer permission was also

granted to erect shelters under their Royalty Scheme. Petitioner submitted an application to the respondent for allotment of specified location for

establishment of shelters and the same did not evoke any response. Reminders were sent by way of various representations dated 18.07.2002,

6.8.2003 and 20.8.2003 respectively. Even thereafter, there was no response. Hence, the petitioner filed W.P. No. 26890 of 2003 seeking for a

direction to the Corporation of Chennai to consider the representation. By order dated 23.09.2003, this Court directed the Commissioner,

Corporation of Chennai to consider and pass orders on the representation within a period of one month from the date of receipt of a copy of the

said order. However, the said representation was rejected by the impugned order dated 7.11.2003 wherein the petitioner was informed as follows:

It is informed that the construction and maintenance of bus shelters in Chennai city is being dealt with by the Metropolitan Transport Corporation.

The respondent Corporation had also issued an advertisement in Dina Bhoomi daily dated 31.12.2003 calling for tenders for establishment of

shelters within the city of Chennai. Both the above orders are questioned by the writ petitioners basically on the ground that in terms of Section

285 of The Chennai City Municipal Corporation Act, 1919 hereinafter called as ""The Act"", the Metropolitan Transport Corporation (Chennai)

Limited would have no jurisdiction either to erect bus shelters on its own or to give permission to sponsors for erections. The first respondent

Commissioner, Corporation of Chennai has filed counter affidavit. It is the stand of the respondent that the Government in G.O.Ms. No. 14,

Municipal Administration and Water Supply Department dated 11.01.1983 had allowed the State Transport undertakings to provide bus shelters

for passengers and also to maintain them. The said Government Order reads as under:

ORDER:

The Expert Committee on Transport Sector constituted by the Government of Tamil Nadu in the G.O. Read above submitted its report.

2. The Recommendation No. 109 made by the Committee reads as follows:

109. Road maintaining Local Authority should provide Bus Bay Spaces. Shelter for passengers to be provided by STUs as infrastructural facilities

and they need to be maintained by STUs.

3. After careful consideration, the Government accept the recommendation and direct that wherever it is possible, the Municipal Corporations and

Municipalities should provide bus bay spaces on the municipal roads. The State Transport undertakings shall be allowed to provide shelters for

passengers and also to maintain them.

In view of the said Government Order, the petitioner was directed to approach the second respondent Transport Corporation for permission to

erect bus shelters.

4. Inasmuch as the petitioner has raised the issue as to whether the Metropolitan Transport Corporation would have jurisdiction to either erect bus

shelters or to give permission to sponsors on road margins, it shall be first considered. For the purpose of a decision as to the power of the road

margin certain provisions of the Act shall be referred.

5. As per Section 4(3) of the Act, for the efficient performance of the functions of the Corporation, there shall be a Constitution of authorities of

the Corporation, viz., a Council, the Standing Committees of the Council, the Wards Committee and a Commissioner.

6. Section 9 of the Act empowers the Commissioner and other officers of the Corporation of Chennai to exercise the power to carry out the

provisions of the Act and more particularly, to carry out the decision of the Council or the Standing Committee, as the case may be.

7. Insofar as the Power of the Corporation to deal with the streets including road margins are concerned, they are provided under Chapter IX of

the Act. Following Sections viz., 203, 204, 205, 214(A), 220, 223A and 285 are extracted as under:

Section 203: Vesting of public streets and their appurtenances in corporation:

(1) All public streets in the city not reserved under the control of the Central or State Government , with the pavements, stones and other materials

thereof, and all works, materials implements and other things provided for such streets, all drains, drainage works, tunnels and culverts, whether

made at the cost of the municipal fund or otherwise, alongside or under any street, whether public or private, and all works, materials, implements

and other things appertaining thereto and all trees not being private property growing on public streets or by the side thereof, shall vest in the

corporation.

(2) The State Government, may, by notification, withdraw any such street drain drainage work, tunnel, culvert, free from the control of the

corporation.

Section 204: Maintenance and repair of Streets:

The corporation shall cause the public streets to be maintained and repaired and make all improvements thereto which are necessary or expedient

for the public safety or convenience.

Section 205: Powers of authorities in regard to streets:

(1) The Commissioner may, subject always to such sanction as may be required under Chapter IV -

(a) lay out and make new public streets;

(b) construct bridges and sub-ways;

(c) turn, divert or with the special sanction of the council and the State Government, permanently close any public street or part thereof;

(d) widen, open, extend or otherwise improve any public street.

(2) Reasonable compensation shall be paid to the owners and occupiers of any land or buildings which are acquired for or affected by any such

purposes.

(3) In determining such compensation, allowance shall be made for any benefit accruing to the owner or occupier concerned, from the construction

or improvement made by the Commissioner.

Section 214-A: Power of the corporation to recover expenses caused by extraordinary traffic:

When by a certificate of an officer of the Government Public Works Department of a rank not below that of an Executive Engineer, it appears to

the Commissioner that having regard to the average expense of repairing roads in the neighbourhood, extraordinary expenses have been incurred

by the corporation in repairing a street by reason of the damage caused by excessive weight passing along the street or extraordinary traffic

thereon, or by any process of loading, unloading or depositing excessive weights thereon, the Commissioner may recover in the Civil Court, from

any person by or in consequence of whose order such damage has been caused, the amount of such expenses as may be proved to the satisfaction

of such Court to have been incurred by the corporation by reason of the damage arising from such weight or traffic as aforesaid:

Provided that any person from whom expenses are or may be recoverable under this Section may enter into an agreement with the corporation for

the payment to it of a composition in respect of such weight or traffic and thereupon the persons so paying shall not be subject to any proceeding

under this section.

Section 220: Prohibition against obstructions in streets:

No one shall build any wall or erect any fence or other obstruction or projection or make any encroachment in or over any street or any public

place, the control of which is vested in the corporation except as hereinafter provided.

Section 223-A: Power of council to set up hoardings and levy fees:

Subject to the provisions of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959 Tamil Nadu Act 2 of 1959 and Sections 129-A

to 129-F of this Act, the Commissioner may, with the sanction of the council, set up, for the exhibition of advertisements, hoardings, erections or

other things in suitable place owned by, or vested in the corporation and may permit any person to use any such hoarding, erection or thing on

payment of such fee as may be prescribed by regulations made by the council in this behalf.

Section 285: Provision of landing places, cart-stands, etc.

(1) The Commissioner may construct or provide public landing places, halting places, cart-stand, cattle-sheds and cow-houses and may charge

and levy such fees for the use of the same as the standing committee may fix.

(2) A statement of the fees fixed by the standing committee for the use of each such place, shall be put up in English and Tamil in a conspicuous part thereof.

(3) The commissioner may farm out the collection of such fees for any period not exceeding three years at a time, on such terms and conditions as he may think fit.

All public streets in the city except reserved under the control of the Central or State Governments as defined u/s 203 shall vest with the Corporation.

8. A combined reading of the above provisions show that in terms of Section 203 of the Act, all public streets and other appurtenances in the city

which were not reserved under the control of the Central or State Government shall vest with the corporation. The corporation shall maintain the

public streets as well to make all improvements as are necessary or expedient for the public safety or convenience. The Commissioner may also

sanction as may be required for laying out and to make new streets with the special sanction of the Council and the State Government extend or

otherwise improve any public street. The expenses for implementation of the decisions of the Council as well as the Commissioner shall be borne

by the Corporation in terms of Section 214A of the Act. The Council is empowered to make resolution empowering the Commissioner to manage

and control over the public street. A public street in Municipal Corporation shall vest in the Corporation for the purpose of managing and

controlling, as has been held by this Court in the judgment reported in K. Sudarsan and Others Vs. The Commissioner, Corporation of Madras

and Others, .

9. This Court also in the said judgment had discussed about a Division Bench judgment of the Allahabad High Court in a case that arose from

Municipal Board of Agra v. Sudarshan Das Shastri reported in ILR 1915 All 9 : AIR 1914 All 341 wherein, it has been observed as follows:

... in our opinion all the ground, whether metalled or not, over which the public had a right of way, is just as much the public road as the metalled

part. The Court would be entitled to draw the inference that any land over which the public from time immemorial had been accustomed to travel

was a public street or road, and the mere fact that a special part of it was

metalled for the greater convenience of the traffic would not render the unmetalled portion on each side any the less a public road or street

10. In the judgment reported in M.A. Pal Mohammed and Others Vs. R.K. Sadarangani and Others, a Division Bench of this Court while

considering the power of Municipal Corporation as to the maintenance and control of the public street has observed as follows:

...If regulatory measures are introduced, bearing in mind the requirements of the public of free access, public hygiene, public safety and the like,

they can also prosper and the general public thereby benefited. If specific plots are allotted and they are confined to those portions, there could be

no conceivable objection for such a lawful trade to be carried out, particularly when it would provide an honest livelihood for those who have

meagre capital but having a keen desire to carry on a trade. On regulatory measures introduced, it could never be a public nuisance. Hence, as on

date, under the Act, only in roadsides and street margins, which are so demarcated and declared by the first respondent, in public streets, Section

223(5) could be applied.

11. Inasmuch as the provisions of Section 203 is explicitly clear in its term directing that all public streets within the city shall only vest with the

corporation there can be reservation of a particular public street or road margins either on the Central Government or on the State Government u/s

203 of the Act and such reservation is restricted only either to Central Government or State Government and not to any other authority including

the transport corporation. Our attention was drawn by the learned Counsel for the respondent Corporation relying upon the Government order

dated 11.1.1993, to contend that the Government had directed the State Government undertakings to provide shelters for the passengers and also

to maintain them. In our opinion, we cannot read the said Government Order in the manner it was read. Firstly, the Government Order does not

contemplate or confer any power on the State Transport undertakings to enter into an agreement with the individual sponsors for erection of bus

shelters. If at all, the Government order is to be read, it can only be read in such a manner that power was given only to State Transport

undertakings to provide shelters to the passengers and to sponsor those shelters to third parties and that too on commercial venture.

12. That apart, the provisions of Section 285 of the Act is explicitly clear in its terms whereby a duty is cast upon the Commissioner to provide

public landing places, halting places, cart-stands, cattle sheds or cow house, etc. Under the Section, the Commissioner has no power to delegate

the duties to Metropolitan Transport corporation. In fact, only the Council can entrust such of those work to Metropolitan Transport Corporation

for administrative convenience. While that being the position, the Government by administrative instructions cannot confer any right on the

Metropolitan Transport Corporation to identify the places for location of bus shelters. None of the provisions of the Act empowers the

Government for issuing such directions.

13. It is well settled in law, any administration instructions or the Government Order in that regard, cannot have any overriding effect on the

provisions of the Act. For the said reasons, reliance placed on the Government Order, cannot be accepted. Once we come to the conclusion that

the road margin including the margins of public streets shall be controlled and managed by the Corporation of Chennai as they vest only in

Corporation of Chennai, the Metropolitan Transport Corporation has no jurisdiction to allow any sponsor either to erect or to illuminate the bus

shelters.

14. In view of the above conclusion, we are of the considered view that the impugned order in W.P. No. 34872 of 2003 directing the petitioner to

approach the Metropolitan Transport Corporation for grant of permission for establishing the shelter cannot be sustained. Accordingly, the said

impugned order is set aside and the writ petition is allowed.

15. For the same reason, the tender notification issued by the second respondent Metropolitan Transport Corporation also, cannot be sustained.

Accordingly, the impugned notifications in W.P. No. 318 of 2004 is quashed and the writ petition is allowed.

16. The petitioners in W.P. Nos. 3889, 3924 and 4057 of 2003 are holders of agreement with the Metropolitan Transport Corporation for

erection of bus shelters and also maintaining the same and have obtained a permission from the Metropolitan Transport Corporation to make

advertisements on the shelters. They have approached this Court for a writ of mandamus forbearing the transport corporation from providing the

existing arrangement with the petitioners.

17. The petitioners in W.P. Nos. 14771, 15719, 15720 and 21607 of 2003 are all again the sponsors who have initially obtained permission and

entered into contract for erection of such bus shelters on the road margins within the Chennai city and for maintenance and permission for

illumination, subject to certain conditions. Their allotment and agreements were cancelled by the impugned orders in those writ petitions and those

orders were questioned.

18. The petitioners in W.P. Nos. 355 and 356 of 2004 have again questioned the tender notification issued by the Metropolitan Transport

Corporation calling for fresh tenders for location of bus shelters. W.A. Nos. 328, 330 and 333 of 2004 are all filed by the Metropolitan Transport

Corporation challenging the interim orders restraining the appellant therein from interfering with the rights of the writ petitioners.

19. In view of our disposal of the earlier two writ petitions viz., W.P. No. 318 of 2004 and 34872 of 2003, we are not inclined to elaborate the

various details leading to the agreement between the sponsors and the Metropolitan Transport Corporation. There is no dispute that in view of the

G.O. Ms. No. 14 Municipal Administration and Water Supply Department dated 11.01.1983, the transport corporation had entered into

agreement with the above writ petitioners for erection of bus shelters at various points in the road margins within the Chennai City subject to

payment of the royalty to the transport corporation. We have already held that the said Government Order does not give any right for Metropolitan

Transport Corporation to give permission to any sponsors to locate the bus shelters, more particularly, to permit the illumination and enter into

contract on receiving Royalty. If at all, such an exercise is to be made, it must be made only by the Corporation of Chennai.

20. Our attention is not drawn as to any of the resolutions of the Councils authorising the Commissioner to permit Metropolitan Transport

Corporation to identify and locate, specify places for erection of bus shelters as well empowering the transport corporation to enter into agreement

with sponsors, as has been done in these cases. Our attention is also not drawn to the resolution of the Council directly authorising the

Metropolitan Transport Corporation to perform the above functions. In the

absence of such a decision/resolution, the Metropolitan Transport Corporation has no power to enter into agreement with the sponsors. Once, such a conclusion is arrived at, the relief of mandamus forbearing the Metropolitan Transport Corporation from terminating the existing arrangement with the writ petitioners cannot be issued. For the same reason, the impugned order of the transport corporation in cancelling the allotment made to the writ petitioners also cannot be interfered with as the transport corporation has no power either to grant or cancel the allotment. For the same reason, the transport corporation cannot also issue tender Notification calling for applications from sponsors. In that view of the matter all the writ petitions are dismissed. In view of the dismissal of the writ petitions, the writ appeals filed by the Metropolitan Transport Corporation questioning the interim order are also liable to be dismissed. Accordingly, the same are dismissed.

21. In view of the disposal of the writ petitions and the writ appeals and to safe guard the interest of both the Corporation of Chennai as well the writ petitioners, viz., the sponsors and more particularly, the commuters, we are inclined to issue the following directions:

(i) The Commissioner, Corporation of Chennai shall identify the road margins for erection of bus shelters and for the said purpose he can take the opinion/advise of the Metropolitan Transport Corporation;

(ii) On such identification of the location for erection of bus shelters, the Commissioner Corporation of Chennai shall call for tenders from intending sponsors;

(iii) The Corporation Council is also entitled to resolve to allow Metropolitan Transport Corporation to locate bus shelters and maintain the same and in such an event, the Metropolitan Transport Corporation would identify the locations and erect bus shelters on the basis of the terms and conditions imposed by the Council.

(iv) The above exercise, viz., to identify the location and advertise on its own or empower the Metropolitan Transport Corporation to erect the bus shelters, shall be implemented by the Corporation, on or before the end of December 2006.

(v) Till such time, the petitioners viz., the sponsors are entitled to continue their activities in relation to the shelters already established, subject to

payment of Rs. 49,500/- per shelter for one module of 20 x 4 size shelters and a sum of Rs. 99,000/- for the second module consists of 40 x 4 shelters.

(vi) The above said amount shall be paid to the Corporation of Chennai entirely in advance along with a copy of this order. On such payment, the

Commissioner, Corporation of Chennai shall allow the petitioners to continue their business till the end of December 2006.

(vii) It is made clear that the above arrangement is basically made only in the interest of the commuters as they must be provided with the shelter

and removal of the shelter will not be in the interest of either the writ petitioners or of the Metropolitan Transport Corporation or of the commuters

in general. Hence, the Commissioner should strictly adhere to the timings prescribed in this order for taking the decision, whether to go for an

advertisement on its own or leave the entire matter to the transport corporation. The respective claims both by the sponsors as well as the

transport corporation arising out of the Contract are left open to be resolved by them before the appropriate forum.

No costs. Consequently, the connected miscellaneous petitions are closed.