

CASE NO.:
Appeal (civil) 803 of 2001

PETITIONER:
P. NARAYANA BHAT

Vs.

RESPONDENT:
STATE OF TAMIL NADU & ORS.

DATE OF JUDGMENT: 16/04/2001

BENCH:
V.N. Khare & N. Santosh Hegde

JUDGMENT:

(With WPÂ©No.159/2001, CANo 2804/2001@SLPÂ©No 6412CC 2533/2001, CA No 2805/2001 @ SLPÂ©No 6413
CC 2543/2001, CA No 2806/2001 SLPÂ©No 6414
CC 2646/2001, CA No 2807/2001 @ SLPÂ©No.5840/2001, CA
No 2808-2820/2001 @ SLPÂ©No.5862-74/2001, CA No 2821-
2823/2001 @SLPÂ©No.5887-89/2001, CA No 2824/2001 @
SLPÂ©No.5899/2001, CANo 2825/2001 @
SLPÂ©No.6125/2001, CA No 2826-2827/2001@SLPÂ©No.
6180-81/2001, CA No 2828/2001 @ SLPÂ©No.6187/2001, CA
No 2829/2001 @ SLPÂ©No.6188/2001 and CA No 2830/2001
@ SLPÂ©No.6189/2001.)

J U D G M E N T

SANTOSH HEGDE, J.

Leave granted in all the SLPs.

Heard learned counsel for the parties.

L...I...T.....T.....T.....T.....T.....T.....T...J

The appellants in these appeals having been unsuccessful in their challenge before the High Court of Judicature at Madras to the validity of Section 326 of the City Municipal Corporation Act of the State of Tamil Nadu Act 51/1998 and Amended Act 2/2000 (for short the Acts) and consequential notices issued under the Acts, have preferred these appeals.

After hearing the parties concerned since we were at ad-idem with most of the conclusions arrived at by the High Court in its impugned judgment, we thought it appropriate to dispose of the appeals at this stage itself.

Before the High Court the appellants challenged the vires of Section 326(J) of the Act, inter alia, on the following grounds :-

(a) Advertisement by hoardings was a fundamental right of the appellants under Article 19(1)(a) of the Constitution;

(b) Power given to the Commissioner under the impugned Act to remove any hoarding which he felt was hazardous was arbitrary, unreasonable, hence, was violative of Article 14 of the Constitution.

(c) The limitation imposed under the Act for applying for licences could not be enforced in the absence of any Rules and Forms providing for application for existing hoarding owners.

The High Court rejected the said contentions of the appellants holding:

(i) that the writ petitions are not maintainable on behalf of the Association of Hoarding owners since such associations had no fundamental right which could be enforced in a court of law;

(ii) that the petitioners before it were only the owners of the hoardings and not advertisers, therefore, they could not claim any fundamental right under Article 19(1)(a);

(iii) that no guidelines were necessary in the exercise of the power to remove the hoardings under Section 326(J) in view of the interpretation given by it to the said Section;

(iv) the applications for licences had to be filed within one month period given by the Commissioner by means of an advertisement and such period could not be extended.

Before us, the very same grounds are urged and, as stated above, we are inclined to agree with the High Court that Section 326(J) of the Act is neither ultra vires of Article 14 nor Article 19(1)(a) of the Constitution, in view of the interpretation given by the High Court. However, we are inclined to take somewhat a different view in regard to certain observation made by the High Court as to the requirement of Section 326(J) as also with regard to the right of the appellants to have sufficient time to apply for grant of licence and renewals under the provisions of the impugned Amendment for the following reasons :

The High Court though rightly held that the principles of natural justice is fundamental in Administrative Law and these principles of natural justice even if not found on the face of the Statute, could be deduced from the object of the Act and the Rules, erred in coming to the conclusion that the authorities were duty bound to remove all the hoardings simply because they are visible to traffic and the authorities had no option but to remove all such the hoardings which are visible to the traffic. By this finding, the High Court came to the conclusion that mere visibility of the hoarding to the traffic was sufficient for either removing the hoarding or will be a sufficient ground to refuse to grant/renewal of a licence. This conclusion, in our opinion, is contrary to the very wording of Section 326(J) of the Act which reads thus :

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 flow of traffic x x x.

(emphasis supplied).

A plain reading of this Section shows that the authorities concerned are empowered either to refuse to grant licence/renewal or to remove the existing hoardings only if the same is hazardous and is a disturbance to safe traffic movement which, in turn, should adversely affect free and safe flow of traffic, unless these impediments are present in the hoardings, merely because the said hoardings are visible to the traffic, cannot be a ground for either refusing the grant/renewal of licence.

We are also of the opinion that in the facts and circumstances of this case, to comply with the principles of natural justice, there is a need to grant some reasonable time to the appellants to make necessary applications for applying for grant/renewal of the licences as contemplated under the Act because of the fact that there was some practical difficulty for the intending applicants to apply within the statutory period for such licences/renewals under the Act. It is to be seen that under the Act, an application for licence had to be made within 30 days of the Act coming into force (i.e. 23.7.1998) but the necessary procedure to be followed for complying with the said direction was not incorporated in the Act and the same came into force when the concerned Rules were notified which was done only on 10.8.1998. Because of this delay, we notice from the pleadings that the concerned authorities extended the said time to apply for licences by publishing such extension of time by notification in the newspaper, but for various reasons, we find many of the intending applicants had difficulties in applying for grant of licences, therefore, to do complete justice, we are of the considered opinion that such applicants should be given a reasonable opportunity of applying for licences.

We are also of the opinion till such extended time for applying for the licences/renewals and till such time as their applications are decided the Statusquo as existing on today should continue.

For the reasons stated above, while upholding the validity of the Act, we modify the order of the High Court and direct that such of the persons intending to apply for grant of licence/renewal should be permitted to do so within 30 days from today and in such an event, their applications will be considered by the concerned authorities in accordance with Section 326(J), as interpreted by us hereinabove, within a reasonable time and till such time as their applications are considered and disposed of, the existing hoardings shall not be removed. For the foregoing reasons, we modify the conclusions and directions issued by the High Court in Para 93 of its judgment as follows:-

(1) We hold that the provisions of Act 51/98 and Act 2/2000 are valid and intra vires of the Constitution. The persons desirous of obtaining a hoarding licence under the Act be given 30 days time from today to make the necessary application in the prescribed form and on payment of prescribed fee and on such applications being filed, the licensing authority shall consider the same in accordance with Section 326(J) of the Act, as interpreted by us.

(2) If no application for grant of licence is received within 30 days as stipulated by us hereinabove by any owner of the existing hoarding, the same shall be removed without

further notice and also if the application for grant of licence is rejected in accordance with law, the necessary consequences contemplated under the Act will follow.

The appeals are, thus, disposed of in above terms.

WP No.159/2001 :

In view of the order passed in the aforesaid Civil Appeals, this writ petition is also disposed of in similar terms.

JUDIS