

In the High Court of Judicature at Madras

Dated: 28/11/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No.38383 of 2002

and W.P.Nos.38384 to 38386 of 2002

and

WPMP.Nos.57404 to 57407/02 & WVMP.Nos.2114 to 2117/03 & 278 of 2003.

A. Dorairaj .. Petr. In WP.38383 of 2002

M.S. Oliver .. Petr. In WP.38384 of 2002

S. Venkatakrishnan .. Petr. In WP.38385 of 2002

A.K. Khader .. Petr. In WP.38386 of 2002

-Vs-

1. The Commissioner

Corporation of Coimbatore .. R.1 in WP.38383/02 &
Coimbatore. Respondent in other Wps.,

2. A. Balan

3. Kurshid Beggum

4. S. Fathima

5. A.K. Kadar Bai

6. C.V. Balu

7. K. Venugopal .. R.2 to R.7 in WP.38383/02

Petitions filed under Article 226 of the Constitution of India
praying for issuance of writ of mandamus as stated therein.

For petitioner : Mr. M. Venkatachalapathy, Sr. Counsel
for Mr. M. Sriram

For respondents: Mr. R. Sivakumar for R.1

Mrs. P.V. Rajeswari for R.3 to 7

No appearance for R.2.

:COMMON ORDER

The petitioner in WP.No.38383 of 2002, has prayed for
direction in the nature of writ of mandamus, directing the Commissioner,
Corporation of Coimbatore - first respondent to cancel the allotment of Shop
No.9 made in favour of the second respondent and consequently direct the first
respondent to allot the said shop to him, in compliance with the order of this
Court dated 08.01.1998 made in Contempt Petition No.509 of 1997.

2. In the other three writ petitions, the petitioners have prayed for direction to the Commissioner, Corporation of Coimbatore to allot one shop inside the bus stand, which is going to be located adjacent to Shop No.9 to them in preference to any other person, in compliance with the direction of this Court dated 08.01.1998 made in Contempt Petition No.509 of 1997.

3. There is no dispute that the petitioners are handicapped persons, eligible for allotment of shops of the Municipal Corporation, Coimbatore. Before considering the claim of the petitioners, it is relevant to refer the earlier writ petition filed by the Physically Handicapped Rehabilitation Association through its President A.M. Haniffa. The said Association filed W.P.No.2674 of 1991, for issuance of mandamus directing the first respondent- Commissioner Corporation of Coimbatore to allot Shop Nos.5 to 9, constructed on the western side of the public convenience at Gandhipuram Town Bus Stand, Coimbatore to the members of the petitioner Association. After hearing both parties, this Court, directed the first respondent Corporation to consider the claim of the members of the petitioner Association, if they were not already allotted shops by the Corporation. No doubt, in the said order, this Court also observed that, since the members of the petitioner Association are being handicapped persons, it is better for their livelihood, if they secure a shop within the bus stand, provided, shops are available. It is further seen that based on the said order dated 21.01.1997, a representation was made to the Commissioner, Corporation of Coimbatore on 08.09.1997. Since according to the petitioner therein, the direction issued by this Court on 21.01.1997 was not complied with, the Association filed Contempt petition No.509 of 1997. By order dated 08.01.1998, after referring all the factual details furnished by the Association as well as the Commissioner of Corporation, this Court dismissed the said contempt petition on 08.01.1998, with certain observations. In this regard, it is useful to refer the relevant portion from the order dated 08.01.1998.

"5. Taking note of all the above factual position, I am unable to accept the argument of the learned Senior Counsel for the applicants that the respondent has disobeyed the order of this Court. While disposing of the Writ Petition, this Court has expressed its intention that the petitioners / applicants being handicapped persons may be provided suitable shops in and around the bus stand in order to eke their livelihood. By virtue of the order of this Court, it is not open to them to command the respondent to provide shops according to their choice. As stated earlier, the respondent has to consider not only the grievance of the applicants but also the general public as well as the convenient use of the bus stand. Hence, I am satisfied with the explanation offered by the respondent and accordingly the contempt petition is liable to be dismissed. I make it clear that as and when any shop falls vacant in future in the bus stand and if any such representation is made by the applicants, their claim may be considered in preference to others. With this observation, the contempt application is dismissed. No costs."

4. It is true that the members of the Physically Handicapped Rehabilitation Association are to be allotted shops within the bus stand or in and around the bus stand, if shops are available. It is brought to my notice

that all the petitioners were allotted shops and their grievance is, since their shops are little/far away from the main bus stand, they are not getting good business. On this ground, they pray for a positive direction from this Court, for allotment of shop No.9 or adjacent to it.

5. Before considering the above request, it is relevant to refer the stand taken by the Corporation. It is seen from the counter affidavit filed by the Commissioner, City Municipal Corporation, Coimbatore that in order to give face lift to the bus stand and also to provide better public amenities, it was decided to demolish 14 temporary petty shops. Accordingly, except shop No.9, the remaining 13 shops were removed during the year 1995. Regarding shop No.9, one Saroja, filed a civil suit on the file of the District Munsif, Coimbatore in O.S.No.1839 of 1992 and obtained an order of status quo. The second respondent in WP.No.38383 of 2002, namely, A. Balan was also one among those persons, who vacated during 1995 and he was allotted a shop near R.V. Hotel. During 1997, another seven shops were constructed on the southern side of the exit point of the bus stand facing Dr. Nanjappa Road. The Commissioner further states that, the said seven shops were allotted to 7 out of 9 handicapped persons, who were evicted during 1995. The second respondent, namely Balan was the 8th person and one Venugopal was the 9th person. Subsequently, two more shops were also constructed along with those seven shops.

6. I have already referred to the fact that subsequent to the orders of this Court dated 21.01.1997 and 08.01.1998, the petitioners made a representation to the Commissioner, Corporation of Coimbatore, to allot the newly constructed shops (shop Nos.8 and 9) facing Dr. Nanjappa Road and also the shop which was undemolished. The said request was not accepted by the Corporation on the ground that they were already allotted shops and doing business. It is also stated by the Commissioner that out of these two shops, one was required by the then Tamil Nadu State Transport Corporation to have their Time Office and the another shop kept vacant, awaiting the decision in O.S.No.1839 of 1992. The said suit was also dismissed on 04.01.2000 .

7. It is further seen from the counter affidavit that thereafter, the entire matter was brought before the Taxation and Finance Committee of the respondent Corporation, for their further approval. The Committee, by its resolution No.19 dated 14.09.2001, had resolved to allot the shop No.8 and 9 to Jayaraman and A.M. Haniffa and the vacant shop within the bus stand to A. Balan - second respondent in WP.No.38 383 of 2002 , who was originally evicted during 1995 from Shop No.14. The issue was again brought to the discussion before the Council of the Coimbatore Corporation and the Council by their Resolution No.270 dated 17.09.2001, have resolved that the recommendation of the Taxation and Finance Committee may be accepted. Accordingly, these three persons were allotted respective shops on 08 .10.2001. It is also brought to my notice that after inspection by the Mayor with the Commissioner, it was resolved by the Council to permit the Aavin to put up a bunk shop. It is further seen that after leaving a gap of more than 15 feet from Shop No.9, and without any hindrance to the free flow of traffic, the Aavin was permitted to put up their temporary bunk shop with various conditions stated therein.

8. The Commissioner has also informed that there was a representation from many handicapped and destituted persons to allot some shop in and around bus stand area to earn their livelihood. It is also stated that

considering those representations, Corporation has decided to construct 10 more shops within the town bus stand with an estimated cost of Rs.3 .2 lakhs and the construction work is under progress.

9. It is also relevant to note that, it is not the petitioners alone are handicapped and eligible for an allotment of shops either within or in and around the bus stand. As a matter of fact, apart from the second respondent - A. Balan, 5 more persons (who are also physically handicapped) got themselves impleaded in WP.No.38383 of 2002, claiming similar relief and allotment of shop either within or in and around bus stand. Inasmuch as the handicapped persons are more in number, all the applicants cannot be provided with shop at one stroke. Though it is the duty and responsibility of the Government and Municipal Bodies like Coimbatore Corporation, to consider the representation of the petitioners, without knowing the available space / shops either constructed or under construction, there cannot be any further direction in the form of mandamus to the Commissioner, Corporation of Coimbatore to provide allotment of shops adjacent to Shop No.9.

10. As observed earlier, it is made clear that if the petitioners are not allotted shop either inside or in and around the bus stand, their claim may be considered preference to others. However, if they were allotted shop by the Corporation, they are not entitled further allotment in the prime locality merely on the ground that the existing place does not attract more public. Every one cannot claim a particular place, merely on the ground that if they are allotted, it would be possible for them to earn more. I am satisfied with the information furnished by the Commissioner, Corporation of Coimbatore with regard to number of handicapped persons, who applied for allotment, selection by Committee, Resolution and approval by the Council etc., In the absence of any arbitrariness or mala fide action, I am of the view that there cannot be any positive direction by this Court to the Commissioner, Corporation of Coimbatore as claimed by the petitioners. However, it is made clear that if there is any flagrant violation, it would be open to the petitioners to highlight the same before the Commissioner and if there is no positive response from him, thereafter they can approach this Court to vindicate their grievance. With this observation, the writ petitions are dismissed. No costs. Consequently, connected WPMPs., and WVMPs., are also dismissed.

Index:Yes

Internet:Yes

To

The Commissioner
Corporation of Coimbatore
Coimbatore.

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