

MC 1611/2007
BEFORE
HON'BLE JUSTICE B.K. SHARMA

Heard Mr. D. Saikia, learned counsel for the applicants as well as Ms. R . Chokraborty, learned State counsel. I have also heard Mr. B.c. Das, learned Sr . counsel representing the writ petitioner.

By means of this application, the applicant, i.e. Hojai Municipal Board, has prayed for vacation of the interim orders passed on 26.02.07 and 07.03.07 in the writ petition. By the said two orders, it was provided that the writ petitioner should not be disturbed from carrying out his business from the place in which he is presently running the same. In the writ petition it is the case of the petitioner that he has got valid license to run his travel agency from the particular place. According to him the infrastructure for running the travel agency is situated in his patta land and thus, the respondents cannot obstruct him from operating the travel agency.

The respondents have filed counter affidavit. In the affidavit refuting the allegation that other travel agencies are being allowed to run their business, but the petitioner has been obstructed, has been denied. It has been stated that two travel agencies, named in the writ petition have already shifted their business from the place in question. It has been stated that due to heavy congestion arising out of vehicular traffic with sound pollution, a policy decision has been taken to declare the area in question as 'no entry zone' to be operative during particular hours of the day.

In the application filed by Hojai Municipal Board it has referred to the resolutions adopted in the meeting held on 27.12.06. In the meeting certain resolutions were adopted towards regulating the vehicular traffic and parking of buses to tide over the chaotic situation in the particular road of the town. The resolution was forwarded to the S.D.O. (C) as well as S.D.P.O., Hojai. Upon consideration of the resolutions as well as the various reports submitted in this regard and also taking into account the own personal inspection, the S.D.O. (C), Hojai passed the order dated 13.01.07 towards regulating the vehicular traffic and parking of buses etc. In clause (C) of the order dated 13.01.07 it was provided that all travel agencies, transporters or operators both road side and otherwise, shall ply their buses only upto 9 a.m. in the morning and after 7 p.m. in the evening. Entry to the particular zone has been restricted during the hours other than the permitted hours.

The aforesaid order has further been modified as per which the hours of 'no entry' is now 9 a.m. to 6 p.m. The S.D.O. has passed further orders towards maintenance of the prohibitory order.

The action on the part of the S.D.O. is a regulatory one to avoid the chaotic situation which has been created by free flow of vehicular traffic and parking of buses etc. Although it has been argued by the learned counsel for the writ petitioner that since the infrastructure of the travel agency being located on the own patta land of the writ petitioner, there cannot be any restriction, such argument cannot be accepted in view of the fact that for the purpose of running the buses to and fro from the office, it will have to make use of the road, congestion of which is the concern of the authorities. Referring to Annexure-A letter dated 05.04.07 addressed to the petitioner by the Chairman of the Municipal Board regarding renewal of the license, Mr. Das, learned Sr. counsel for the writ petitioner submits that as per the condition imposed in the letter, the authorities have put further restriction on the free movement of the buses. By the said letter, the writ petitioner has been instructed to shift his office/counter to other acceptable places outside the 'no entry' territory so as to consider his case for renewal of the license.

Mr. D. Saikia, learned counsel for the Board on the other hand referring to the aforesaid clause (C) of the order dated 13.01.07, submits that only restriction imposed is not to enter the particular road from 9 a.m. to 6 p.m. treating the area as the zone of 'no entry'. According to him if the writ petitioner can operate his travel agency from the place where the same is presently located without violating the restriction imposed, there will be no difficulty in allowing the writ petitioner to run his office from the place where the same is presently located.

By the time the writ petition was filed, the decision of the Municipal Board as well as the civil authorities were very much available, but the writ petitioner without making any mention about the same, filed the writ petition with the sole contention that the respondents in a most arbitrary manner have sought to impose restrictions on the free movement of the buses being run under the banner of the travel agency belonging to the petitioner. To that extent, prima facie, there was suppression of material facts in moving the writ petition and obtaining the interim order on that basis. Be that as it may, since the restriction towards entry to the buses and the regulatory measures adopted by the respondents is to avoid the congestion of the road and the same is not founded on any malafide and/or arbitrary exercise of power, I am of the considered opinion that such regulatory measures cannot be faulted with. It is for the Board and the civil administration to decide as what measures would help to regulate the vehicular traffic. Needless to say that public place at the heart of the town and/or city, if utilized for parking of buses would naturally create the situation not conducive for vehicular and other traffic. In that view of the matter, if the Board and the civil authorities have taken a decision to apply the regulatory measures, the writ petitioner cannot claim any exception of the same.

In view of the above, the interim orders dated 26.02.07 and 07.03.07 passed in W.P.(C) No. 718/07 stand vacated. However, it is made clear that if the petitioner is otherwise eligible to ply the buses from his office avoiding the hours of restrictions and the buses can enter the office premises and go from there during the hours not under cover of 'no entry', the respondents shall allow to do so. They may also consider renewal of the license of the petitioner on that condition.

Misc. case stands disposed of.