

## **S. Loganathan Vs Chennai Metropolitan Development Authority and Corporation of Chennai**

**Court:** Madras High Court

**Date of Decision:** Jan. 12, 2010

**Acts Referred:** Tamil Nadu Specified Commodities Markets (Regulation of Location) Act, 1996 & Section 19, 2(14), 45, 46

**Citation:** (2011) WritLR 167

**Hon'ble Judges:** T. Raja, J

**Bench:** Single Bench

**Advocate:** S. Srinivasan, in W.P. Nos. 4150, 4153 and 4142/2010a and V. Manohar, in W.P. No. 4340/2010, for the Appellant; P.S. Raman, AG Assisted by, I. Paranthaman, AGP for R1, T. Mathi, for R2 and S. Silambanan, SC for C. Uma, for R3 in W.P.No. 4340/2010, for the Respondent

**Final Decision:** Allowed

### **Judgement**

@JUDGMENTTAG-ORDER

T. Raja, J.

As the facts leading to all the writ petitions are identical, they are disposed of by this common order.

2. The writ Petitioners, S. Loganathan, J. Adikesavan and S. Govindaraj in W.P. Nos. 4150, 4153 and 4142 of 2010 respectively are being the

farmers, cultivating various flowers like, Jasmine, Jathi and Mullai from their own agricultural lands at Kavanur Village, Arakonam Taluk, Vellore

District. After harvesting them, transported the same from Kavanur Village, Arakonam Taluk to Chennai for the purpose of selling the same to the

consumers. The Petitioner in W.P. No. 4142/2010 is the tenant in respect of shop portion in the premises bearing Door No. 6/1 and 18-B,

Badrian Street, Chennai -600 001 and selling his own agricultural produce of flowers from this premises. The Tamil Nadu Government, after

enacting the Tamil Nadu Specified Commodities Market (Regulation of Location) Act, 1996, to regulate the location of market areas and

wholesale markets in respect of specified commodities in the Metropolitan Planning Area, notified the Koyambedue Area as a special market as

per Section 19 of the said Act and all the wholesale traders of flowers, vegetables, fruits and other perishable goods were shifted to Koyambedue

market. In view of the shifting of the place from city area to Koyambedue area, some of the flower vendors filed a writ petition in W.P. No. 29809

of 2004 challenging the eviction drive of the Respondents, but the same was dismissed. Pursuant to the order passed by this Court on 27.11.2009,

a meeting was also conducted in respect of the members of the said association, who filed the writ petition, but the Petitioners being the non

member of the said association, no intimation was served on them by the Respondents herein. However, on coming to know the steps taken by the

Respondents herein for evicting the flower vendors from the Badrian Street, Chennai, the Petitioners gave a representation to the 1st Respondent

by speed post with acknowledgement card due, requesting them to give notice in the above said address in respect of the proposed eviction drive.

But, the 1st Respondent, by letter dated 12.02.2010, informed the Petitioner that he is a wholesale trader of flowers and as he is not directly selling

flowers to the consumers, the Respondent imposed ban from selling flowers with effect from 01.03.2010 from the premises at Door. No. 6/1 and

18-B, Badrian Street, Chennai and further, the Petitioner was warned not to sell the flowers in the said place, failing which, his scale and other

instruments including the vehicles transporting flowers, would be seized without any further notice to him. As the Petitioner was not wholesale

trader, but the primary producer, he sent another representation to the 1st Respondent requesting him to hold the proper enquiry and afford

reasonable opportunity to put forth his grievance, by clearly informing that he is selling his agricultural produce of all these years and thus, leading

his livelihood. But, thereafter, there was no response from the Respondents. However, the Petitioner has filed the present writ petition challenging

the order passed by the 1st Respondent dated 12.02.2010, as illegal, arbitrary and violative of the principles of natural justice.

3. Mr. S. Srinivasan, learned Counsel appearing for the Petitioners put forth three fold arguments. Firstly, it was pleaded that the 1st Respondent

did not issue any notice before passing the impugned order of eviction. Therefore, he was contended that the impugned order is liable to be set

aside for violation of the principles of natural justice. Secondly, it was pleaded that selling of agricultural produce by a primary producer will not

come under the definition of wholesale trader as per Section 2(14) of the Act 24 of 1996. Therefore, any action taken by exercising power under

the Act is unsustainable in law. Thirdly, it was also contended that the impugned order is non speaking order and it was stereo-typed and

cyclostyled order without any discussion about the nature of business carried on by the Petitioners and on that basis, prayed for quashing of the

impugned order dated 12.02.2010.

4. Mr. V. Manohar, the learned Counsel appearing for the Petitioner/Chennai Retail Flower Merchant's Welfare Association, in W.P. No.

4340/2010, also challenging very same impugned order dated 12.02.2010 passed by the 1st Respondent, contended to quash the impugned order

on the ground that the members of the Petitioner's association are the retail vendors of the flowers in the Badrian Street, George Town, Chennai

and they have got no other income for their livelihood as they are solely depending on the said business of retail vending of flowers on day to day

basis. When there was a wholesale business of flowers just opposite to their place, the said business was stopped by shifting to the Koyambedu

wholesale market. But the members of the Petitioner's association are no way coming under the category of the wholesale vendor, as they are

carrying on the business by purchasing their produce from the wholesale vendors located in the place meant for this. Therefore, he pleaded that

there is no question in comparing members of the Petitioner's association to that of the wholesale dealers. Hence, the Petitioners cannot be

removed, as they are all retail vendors, like removing the vendors carrying on wholesale business in flowers. However, without giving any

opportunity, when the Respondents had directed the members of the Petitioner's association to evict their business from their respective business

place, the Petitioner's association has filed a writ petition in W.P. No. 29809 of 2004 and 12909 of 2009 before this Court and this Court, by

order dated 27.11.2009, has passed a detailed order. In paragraph 24 of the said order, this Court has directed the Respondents to give notice

and further directed the CMDA to hold an enquiry by giving reasonable opportunity to those persons either individually or to a nominee of the

association and after hearing them, to pass appropriate order. Therefore, when this Court has already directed to give them proper notice to hold

an enquiry and to pass appropriate order, but, without complying the said order, the Respondent/CMDA has passed the impugned order, which is

not sustainable in the eye of law and on that basis, prayed for setting aside the impugned order.

5. Further, the learned Counsel appearing for the Petitioner in W.P. No. 4340/2010, has submitted that if the Respondent/CMDA has followed

the direction of this Court properly, all the members of the Petitioner's association could have availed the appeal remedy u/s 45 of the Act and

thereafter, the benefit of revision provided u/s 46 of the Act. Since the Respondent has not considered in passing the appropriate order dealing

with their cases, whether they are retail vendors or wholesale vendors, the impugned order without dealing their cases, has deprived of the appeal

as well as revision remedy as mentioned above.

6. Mr. P.S. Raman, learned Advocate General, appearing for the 1st Respondent submitted that the Chennai Metropolitan Development

Authority, after developing the wholesale market as per the provision of the Tamil Nadu Specified Commodities Market (Regulation of Location)

Act, 1996, at Koyembedue, directed the shifting of all the wholesale trade activities specified in the Act to the Koyembedue wholesale market

complex. Thereafter, the wholesale trade in flower has been prohibited in any other area within Chennai city except in the notified market place.

After the notification of the above said Act, some of the traders continued to do their wholesale flower business in Bathriyan Street, which again

caused heavy vehicular problems to the road users in that area and due to this traffic problems caused by them, the CMDA forced to initiate the

action to prohibit the wholesale flower business at Bathriyan Street. On that basis, when the action was taken, by issuing notices, the said

communication dated 07.10.2004 was challenged by way of filing writ petition in W.P. No. 12909/2009 and 29809/2004 and this Court, by

order dated 27.11.2009 directed to hold an enquiry by giving reasonable opportunity. In pursuant to the order passed by this Court, inspection

was conducted in the early hours to find out whether the wholesale business of flower is carried out in the Bathriyan Street. The Inspection Team

found that even in the early hours, the Petitioners herein have carried on their wholesale business, therefore, photographs were taken to evidence

their activities to show that they are all not retail traders, but wholesale dealers. Thereafter, notices were given to the members of the association.

On receipt of the notices by the office bearers of the association, they attended the meeting on 31.12.2009 at 11 a.m. at the office of the Chief

Executive Officer, Chennai Metropolitan Development Authority and further, as per the direction of this Court, the office bearers of the Chennai

Retail Flower Merchant Association, submitted a list of members and requested to grant some more time for furnishing the list of other members,

since the Pongal festival was nearing. Again, an enquiry date was fixed on 18.01.2010 and on that date, an enquiry was conducted. Thereafter, on

02.02.2010 and 03.02.2010, the Respondents officials as well as the corporation officials jointly carried out the survey to verify the business done

by the members of the association. When the said place was visited in the early hours, it was found that the members of the Petitioner's association

are all doing wholesale business, therefore, the impugned order came to be passed. Hence, as directed by this Court in the above said writ

petitions, reasonable opportunity was given and only after holding enquiry, the impugned order came to be passed. Therefore, there is no basis for

the Petitioner's association to challenge the impugned order on the ground of non-compliance of the principles of natural justice as well as direction

issued by this Court and on that basis, prayed for dismissal of the present writ petitions.

7. Heard the learned Counsel appearing on either side and perused the materials available on record.

8. The impugned order deals with the case of both primary producers of flowers in Bathriyan street as well as the retail vendors of flowers. Section

2(14) of the Tamil Nadu Specified Commodities Markets (Regulation of Location) Act, 1996, is extracted as under:

14. "Wholesale trade" means sale or purchase of any specified commodity for purposes other than direct consumption or use by the purchaser,

and shall include holding of stocks or warehousing of such specified commodity at any place in the market area (but does not include any sale or

purchase by any primary producer or retail trader, as the case may be, of such specified commodity); and any such seller, buyer, holder of stock

or warehouse-keeper shall be deemed to be a "wholesale trader".

A close reading of the above provision clearly excludes both the primary producers as well as retail traders from the scope of the Act. Therefore,

when the wholesale dealers carrying on the flowers from the Bathriyan Street are relocated to Koyembedu market, as per the notification of the

above said Act, the said claim of the Petitioners herein is that they are not the wholesale traders in the flower business, but being retail vendors and

primary producers from their own agricultural lands in Kavanur Village, Arakonam Taluk, Vellore District, they cannot be dealt with under the

same Act. However, whether they are retail vendors or primary producers have to be identified, for which, if I look at the impugned order, the

Respondent has not assigned any reason, on what basis, the Petitioners are identified as wholesale dealers. Therefore, when the order dated

27.11.2009 passed in W.P. Nos. 29809 of 2004 and 12909 of 2009 had clearly directed to give notice to Chennai Retail Flower Merchants

Welfare Association with registration No. 139/2000, represented by its President, Badrian Street, within one week, so as to enable the said

association to inform all its members to furnish a list of members with addresses to CMDA for enabling the CMDA to fix a date for enquiry,

though the record shows that notices were issued to some of the members, the case of primary producers, namely the Petitioners herein, have not

been discussed anywhere, which indicates that no reasonable opportunity was given as directed by this Court to the Petitioners herein. Though

notices were issued to the similar retail vendors like that of the Petitioners herein, there are no proceedings appeared to have been passed by the

Respondent/CMDA nor served upon them.

9. There are situations which demand the exclusion of the rules of natural justice by reason of diverse factors like time, place, the apprehended

danger and so on. The ordinary rule which regulates all procedure is that persons who are likely to be affected by the proposed action must be

afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending

upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the legislature

only in circumstances which warrant it. Such circumstances must be shown to exist, when so required, the burden being upon those who affirm

their existence. Even after the direction of this Court directing the Respondents to give an opportunity to those persons either individually or to

a nominee of the association and after hearing them, to pass an appropriate order, the Respondents in the impugned order has not dealt with the

case of the Petitioners individually mentioning whether they are not primary producers or retail vendors of flowers. It is settled law that an executive

action must be informed by reason. An unfair executive action can only survive for a potent reason. An action which is simply unfair or

unreasonable would not be sustained. Objective satisfaction must be the basis for an executive action. Even subjective satisfaction on the part of a

State is liable to judicial review.

When this Court in the earlier order dated 27.11.2009 passed in W.P. Nos. 29809 of 2004 and 12909 of 2009 has laid emphasis on reasonable

action on the part of the Respondents to give reasonable hearing and to pass an order, the impugned order must have reflected the compliance of

the direction issued by this Court mentioned above.

10. The Apex Court also in the case of *Swadeshi Cotton Mills Vs. Union of India (UOI)*, has held thus:

Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive

catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) *audi alteram partem* and (ii) *nemo iudex in re sua*. The audi

*alteram partem* rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be

sacrificed at the altar of administrative convenience or celerity. The general principle-as distinguished from an absolute rule of uniform application-

seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full

review of the original order on merits, then such a statute would be construed as excluding the *audi alteram partem* rule at the pre-decisional stage.

Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the

administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that

decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of

all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyze the administrative process

or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where

compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational

modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the

hearing must be a genuine hearing and not an empty public relations exercise.

11. In the light of the above settled position, when this Court in W.P. Nos. 29809 of 2004 and 12909 of 2009, dated 27.11.2009, had already

directed the Respondents to give reasonable opportunity to those persons either individually or to a nominee of the association and thereafter, to

pass an appropriate order, the Respondent/CMDA having not done the said exercise as directed by this Court, this Court directs the Respondents

to hold an enquiry by giving notice to all the members and pass orders in accordance with law.

12. With the above observations, the present writ petitions are allowed by setting aside the impugned orders. No Costs. Consequently, all the

connected miscellaneous petitions are closed.