

(2009) 11 MAD CK 0096

Madras High Court**Case No:** Writ Petition No. 6818 of 2009 and Miscellaneous Petition No's. 5 to 7 of 2009

Coimbatore Consumer Cause

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision: Nov. 23, 2009**Acts Referred:**

- Central Motor Vehicles Rules, 1989 - Rule 100, 106
- Tamil Nadu Motor Vehicles Rules, 1989 - Rule 343, 368

Citation: (2010) 1 MLJ 51 : (2010) WritLR 79**Hon'ble Judges:** S.J. Mukhopadhaya, J; R. Sudhakar, J**Bench:** Division Bench

Advocate: S. Sathia Chandran, for the Appellant; P.S. Raman, General assisted by Mr. D. Sreenivasan, Additional Government Pleader for R1 and R2, Kalyana Raman, for Jayesh L. Dolia, for R3 and Gnana Desikan, for T.S. Venkateshan, for R4 to R6, for the Respondent

Judgement

R. Sudhakar, J.

This Writ Petition is filed in public interest praying to issue a Writ of Mandamus directing the respondents to initiate appropriate action against the violation of Rule 343 of the Tamilnadu Motor Vehicles Rules with regard to the prohibition of advertisements on buses, both Government and private, in the entire State of Tamilnadu, within a time limit stipulated by this Court and issue appropriate orders to remove all such illegal advertisements.

2. According to the petitioner, the buses operated by State owned Corporations and private carriages are displaying advertisements on the exterior portion of the bus on all sides. The advertisements and display are in violation of Rule 343 of the Tamil Nadu Motor Vehicles Rules. It distracts the road users and the drivers of the other vehicles resulting in accident. For better appreciation of the issue, in the present case, it will be appropriate to refer Rule 343 of the Tamil Nadu Motor Vehicles Rules which reads as follows:

343. Advertisement:- (a) No illuminated or other advertisement shall be carried or displayed on any motor vehicle except with the permission in writing of, and subject to such conditions and restrictions as may be imposed by, the Transport Authority which has issued the permit in the case of a transport vehicle having valid permit or the Registering Authority in whose jurisdiction the vehicle is normally kept in the case of other motor vehicle;

Provided that any permission granted under this rule shall be without prejudice to Rule 106 of the Central Motor Vehicles Rules, 1989;

Provided further that no such permission is necessary if the vehicle does not carry or display the advertisement for hire or reward and the advertisement is not illuminated;

Provided also that in the case of stage carriage, no advertisement shall be carried, except inside the vehicle and rear portion of exterior body.

(b) Notwithstanding anything contained in Sub-rule (a), the Government may authorise the use of motor vehicle for carrying or displaying illuminated or non-illuminated advertisement for hire or reward on a specified route or routes or in a specified area within the State generally, or for any specified purpose and specified period.

(c) The fee for granting permission under Sub-rule (a) shall be as prescribed in the Table under Rule 368 for each advertisement for period not exceeding one year.

It is further submitted that no advertisement of any kind can be displayed on the front or back glass screens of the vehicles resulting in braking of light contrary to the rules. In this regard Rule 100(2) of the Central Motor Vehicles Rules 1989 has been referred to and it reads as follows:

(2) The glass of the windscreen and rear window of every motor vehicle shall be such and shall be maintained in such a condition that the visual transmission of light is not less than 70%. The glasses used for side windows are such and shall be maintained in such condition that the visual transmission of light is not less than 50% and shall conform to Indian Standards.

3. Learned Counsel for the petitioner brought to the attention of the court the advertisements that are carried or displayed on the motor vehicles contrary to the above stated rules. It is stated that the competent authority has not granted the permission in writing with or without conditions, restrictions for display of the advertisements. In any event, it is stated that in many of the vehicles run by the State and the private operators, the glass window screens are covered by advertisements which not only restricts the transmission of the light into the vehicle and is a source of major distraction to the other road users, particularly, drivers of the other vehicles. In this context, the present writ petition has been filed.

4. At the time of hearing of the case, the petitioner brought to the attention of the court the letter of the District Collector, Coimbatore in response to the information sought for under the Right to Information Act 2005 wherein it has been clearly stated that no permission was granted by the Regional Transport Office to the State owned or private bus to display advertisement on the exterior body. The petitioner also enclosed copies of news paper publications which have highlighted the danger caused to the road safety by display of catchy advertisement which are displayed in violation of the above stated rules.

5. In this background of the case, this Court passed the following order on 6.8.2009:

The first respondent-State of Tamil Nadu and the second respondent-Transport Commissioner having been impleaded as party-respondents to the Writ Petition, it is not necessary to implead the rest of the Transport Corporation as party-respondents, as third respondent-Tamil Nadu State Transport Corporation (Coimbatore) Ltd., is allowed to be impleaded as party-respondent vide - M.P. No. 1 of 2009, today and directions as may be given by this Court, are to be impleaded by all the Motor vehicle owners (Bus owners) irrespective of the Transport Corporations, and they are bound to follow the directions as may be issued by this Court to be implemented by the second respondent-Transport Commissioner.

The second respondent-Transport Commissioner and the third respondent-Transport Corporation are allowed time to file affidavit and state as to whether any of the Motor Vehicles, including the Buses, are violating Rule 343 of the Tamil Nadu Motor Vehicles Rules by displaying advertisement in the front or rear or side glasses of the respective vehicles.

The respondents 2 & 3 may file affidavit and give the time frame by which such advertisements, if any, displayed in one or other vehicle (Bus) shall be removed.

This was followed by another order dated 21.10.2009, which reads as follows:

Apart from the fact that there is nothing on record to suggest that the State Government has authorised for display of advertisement in different buses/vehicles, in terms with Rule 343(b) of Central Motor Vehicle Rules, 1989 and that no policy decision taken by the State Government as to what extent such advertisement can be displayed, it has been brought to the notice of the Court that many of the buses/vehicles running within the State are completely painted in all the sides, except front Wind Screen.

In the recent days terrorist activities have been noticed in different States and many cases, it has been found that the terrorists have come in vehicles likes bus, truck, car, etc. If all the sides of a vehicle like bus is painted, thereby not enabling the police officials to find out who are travelling in the bus, whether such painting of total body of the bus/vehicle will be in public interest or not, is another issue to be determined in this case.

For proper deliberation we direct the Special Secretary, Home Department, Transport Commissioner and Additional Commissioner of Police (Traffic) Chennai City to appear and assist the Court on the next date.

Another order was passed on 2.11.2009 and it reads as follows:

Pursuant to the order dated 21st October, 2009 Dr. Karuthiah Pandian, I.A.S., Special Secretary (Home), Mr. S. Machindranathan, I.A.S., Transport Commissioner, and Mr. Shekeel Akhthar, I.P.S., Additional Commissioner of Police, Traffic, are present before Court today. The matter has been discussed. The learned Advocate General on behalf of the Officers and the State submit that the State Government is seriously thinking of laying down some guidelines with regard to the display of advertisement board in the buses and other vehicles keeping in mind the recent terrorist activities which has been noticed in the recent days in different States. If so necessary it may amend the Tamil Nadu Motor Vehicle Rules.

2. In the facts and circumstances, we allow a week's time to enable the Special Secretary (Home), The Transport Commissioner and the Additional Commissioner of Police, Traffic, to hold a joint meeting and to lay down a tentative guideline which may be followed till a final decision is taken by the State and necessary amendment is made.

This was followed by another order dated 9.11.2009 which is as follows:-

An affidavit has been filed on behalf of the respondents showing therein the guidelines suggested to give effect to Rule 343 of the Tamil Nadu Motor Vehicle Rules. It is stated that if so necessary to carry out and notify the guidelines, necessary amendment be made in the said Rules. Learned Counsel for the respondents prays for and allowed one day's time to file affidavit and state as to what is their suggestion with regard to the existing agreement reached between the parties with the Transport Corporation, in the light of the guidelines suggested by the State.

6. In response to the various orders of this Court as above, the Special Secretary to Government, Home Department filed an affidavit dated November, 2009 setting out the policy decision taken by the Government with regard to display of advertisement on the vehicles and other corrective measures that are contemplated. The relevant portion is as follows:

8. It is submitted that the objectives of the policy on display of advertisements should be the following:

(a) Road Safety, which is ensured by enabling the driver to have a clear front rear and side view.

(b) Security of the passengers, by enabling police and enforcement officials to clearly see what is happening inside the bus.

(c) Revenue generation for the bus operators.

9. It is submitted that it will be necessary to evolve certain guidelines subject to the provisions of the Central Motor Vehicles Rules, 1989 in order to achieve the objectives. The following guidelines, therefore, are suggested and submitted before this Hon"ble Court, for implementation:

(i) There should be no advertisements in the front wind screen or rear window or side windows of the vehicles since this will be a contravention of the Central Motor Vehicles Rules, 1989.

(ii) Advertisements may be allowed inside the vehicle and rear portion of the exterior body of the buses as already provided under Rule 343(a) of the Tamil Nadu Motor Vehicles Rules, 1989.

(iii) Permission to display advertisements on the exterior side may be considered on body panel sheets. If there are glass panels above the windows on the sides of the vehicle display of advertisements on such panels may also be considered. To operationalise this new provision amendment is warranted to Rule 343 of the Tamil Nadu Motor Vehicles Rules, 1989.

(iv) The Transport Corporation/Bus operators should get proper permission from the Regional Transport Authority as per Rule 343 of the Tamil Nadu Motor Vehicles Rules, 1989.

(v) Regional Transport Authorities should ensure that advertisements are not offensive, obscene and are not a cause for major distraction to the other road users.

(vi) All the advertisements displayed in contravention of these guidelines should be removed by the operators. In case of continued violation, the permits of the operators may be suspended.

(vii) To carryout necessary amendments to the Tamil Nadu Motor Vehicles Rules, 1989 to enforce the above suggestions.

10. It is submitted that the Honourable High Court may please consider the above guidelines and issue necessary directions pending a full-fledged review and amendment of the Tamil Nadu Motor Vehicles Rules, 1989, by the Government.

7. The Tamil Nadu State Transport Corporation, Coimbatore and three Advertisement Agencies were impleaded on the applications filed by the said parties seeking permission of the court to be heard stating that they have been granted the right to advertise on the bus of the Transport Corporation, being the successful bidders in the tender called for, for this purpose. They are the beneficiaries of the licence granted by the Transport Corporation to display advertisements in one or other place on the bus belongs to the Transport Corporation.

8. The private advertisement agencies, the respondents 4 and 5 in the writ petition stated that they are beneficiaries of tender proceedings initiated by the transport corporation. In the case of the fourth respondent, M/s. Naveen Advertisers, it is stated that they have the licence and they have started to display on the bus at the rear portion of the exterior body. In the case of the fifth respondent M/s. Prakash Art (P) Ltd., it is stated that they have submitted the tender with earnest money deposit and the work order was issued. They have spent money and created infrastructure for the purpose of display of advertisement. However, in view of the present writ petition, they did not proceed further. In the case of the sixth respondent M/s. Chennai Digital Print Advertisement (P) Ltd., no affidavit has been filed.

9. Rule 343 of the Tamil Nadu Motor Vehicles Rules, specifically provides that no illuminated or other advertisement should be carried or displayed on any motor vehicle except with the permission in writing and subject to such conditions or restrictions as may be imposed by the Transport Authority for permit vehicles and in the case of other motor vehicles the permission of registering authority. In the case of stage carriage, the specific clause is that no advertisement shall be carried, except inside the vehicle and rear portion of exterior body.

10. In this case, as has been recorded by this Court in the order dated 21.10.2009, no permission appears to have been given by the competent authority. In this background, the official respondents, the respondents 1 to 3, have sought for time so as to take remedial steps and to formulate a policy and lay down some guidelines with regard to display of advertisement on bus and other vehicles inconsonance with the provision of Tamil Nadu Motor Vehicles Rules and the Central Motor vehicles Rules. The affidavit filed by the Special Secretary to Government, Home Department, which has already been extracted above, has clearly set out that there will be no advertisement in the front rear and side windows of the bus and advertisement will be permitted strictly complying with the Rule 343 of the Tamil Nadu Motor Vehicles Rules, 1989 and if required, suitable amendment will be made. Permission will be accorded by the competent authority in accordance with rules. The respondents 4 to 6, who participated in the tender for display of advertisement on bus, considering the above provision of law and in the interest of the road safety have filed an affidavit stating that the guidelines submitted by the State can be implemented. They, however, pleaded that suitable direction may be issued to the Government to rework the agreement with regard to display of advertisement.

11. The nature of advertisement as could be seen from the various newspaper advertisement and the photographs submitted before the court which is not disputed by the official respondents, it is clear that the advertisements are being put up on the glass panel of the vehicle thereby obstructing the visual transmission of the light into the vehicle. Many of the advertisements are likely to distract the attention of the other road users including the drivers of other vehicles, thereby

leading to road accidents. The Tamil Nadu Motor Vehicle Rules specifically provides for grant of permission by the competent authority and as has been stated no permission with or without restriction has been granted by the said authority to any one of the buses sporting and displaying such advertisement. Therefore, there is a clear violation of rules.

12. In any event, the display of reflective sticker type advertisement on the glass panel of the vehicles clearly obstruct the flow of light into the vehicle and it also affect the vision of the persons looking from outside the vehicle. This may lead to abuse or misuse by terrorists or such other persons who cause disturbance or damage to public and public vehicles. It conceals the vision of persons inside the vehicle and as stated earlier the law enforcement agency will find it difficult to assess the number of persons inside a vehicle unless the vehicle is stopped. This situation happened in the night of 26.11.2008 at Mumbai when the offenders driving in windscreen covered vehicles went around the streets of Mumbai shooting at will on the public and the police indiscriminately. The law enforcing authority will not be able to monitor the public service vehicles which are used by a large section of the public. The safety and security of the passengers inside the bus will be compromised, particularly, ladies, if they unfortunately happen to travel in the late hours. Keeping this in mind the rules provided for certain restrictions and permission by the competent authority. There is a clear breach of the above stated rules.

13. Road accidents inter alia happens due to lack of attention or distraction and this is attributed to "eye catchers" in advertising parlance. This has to be avoided in the interest of citizens who are victims and likely victims of road accidents and also in the interest of the State which spends a huge sum from its treasury for medical aid to accident victims which otherwise could have been used for welfare and development of State. The transport corporation is made to pay huge amount as compensation by way of motor accident claims. The respondents transport corporation which suffer huge compensation awards find it difficult to settle. An article highlighting the plight of transport corporations defaulting in settling motor accident compensation awards was published in a national daily recently. This Court is of the view that preventive measures of any kind, however, small can go a long way in ensuring safety to the life of individual citizens and save the state of unwanted expenses.

14. Distraction is diversion of attention and when the attention of the driver of one vehicle is diverted by an eye catching advertisement or display then it leads to a series of consequence. As could be seen from the few photographs placed on record, the whole windscreen contains advertisement relating to personal goods like jewellery, eatables, etc., and the eye catchers are men, women or children and the like. If this trend is allowed without control or regulation the time is not far off when the display and advertisement will extend to other items of personal use.

Furthermore, advertisement that are found in private circulation in magazines will be out in public domain and that may lead to disastrous consequence. If one obscene or vulgar display is allowed, than one advertiser will try to out do another. If reasonable restrictions are imposed by avoiding inappropriate eye catchers which may cause distraction and consequent accidents, the State will be saved of unnecessary expenditure and such preventive measures will save valuable life.

15. From the number of photographs shown by the petitioner, it is clear that there is a violation of rules relating to display on the glass panel of the vehicles. This will be contrary to the Rule 100 of the Central Motor Vehicles Rules. Furthermore, the competent authority has also not granted permission in terms of the Tamil Nadu Motor Vehicles Rules.

16. The law enforcements to say the least should not show any complacency in matters of security of State and loose interest in enforcing the law on the premise that public memory is short. There is a will to develop infrastructure for the welfare of citizens, but it has to be regulated, sustained and maintained, if the citizens are to enjoy its fruits. Till such time the guidelines are framed or amendments made the State is directed to ensure that reflective eye catchers displayed on vehicles which restrict the light into all motor vehicles in violation of Rule 100 of the Central Motor Vehicles Rules should be removed and the rule has to be enforced strictly.

17. The Tamil Nadu Motor Vehicles Rules and the Central Motor Vehicle Rules no doubt lay down certain guidelines. The world is now moving on a fast track and the electronic media including the advertisement sector is developing new concepts. The Rules and Regulation relating to Motor Vehicles should be alive to the changed circumstances and developing trends. The authorities will consider amendments as suggested in the affidavit and may also consider and be inspired by other enactments which are relatable to control or regulation of advertisements. The State Government is directed to consider the amendment of the Rules as suggested by the State before this Court.

18. Till such time the amendment as suggested is made to the rules, the respondents are directed to implement the following guidelines as suggested by State, in public interest:-

(i) There should be no advertisements in the front wind screen or rear window or side windows of the vehicles since this will be a contravention of the Central Motor Vehicles Rules, 1989.

(ii) Advertisements may be allowed inside the vehicle and rear portion of the exterior body of the buses as already provided under Rule 343(a) of the Tamil Nadu Motor Vehicles Rules, 1989.

(iii) Permission to display advertisements on the exterior side may be considered on body panel sheets. If there are glass panels above the windows on the sides of the

vehicle display of advertisements on such panels may also be considered. To operationalise this new provision amendment is warranted to Rule 343 of the Tamil Nadu Motor Vehicles Rules, 1989.

(iv) The Transport Corporation/Bus operators should get proper permission from the Regional Transport Authority as per Rule 343 of the Tamil Nadu Motor Vehicles Rules, 1989.

(v) Regional Transport Authorities should ensure that advertisements are not offensive, obscene and are not a cause for major distraction to the other road users.

(vi) All the advertisements displayed in contravention of these guidelines should be removed by the operators. In case of continued violation, the permits of the operators may be suspended.

(vii) To carryout necessary amendments to the Tamil Nadu Motor Vehicles Rules, 1989 to implement the above suggestions.

(viii) Existing agreement may be amended/or modified to comply with the direction aforesaid.

19. This Court in public interest and considering the provisions of the Central Motor Vehicles Rules and the Tamil Nadu Motor Vehicles Rules further directs as follows:

(i) The reflective light reducing display stickers including advertisement stickers, display stickers and the like, which are in violation of Rule 100 of the Central Motor Vehicles Rules shall not be permitted on the window panel of all motor vehicles.

(ii) The first respondent Secretary to Government, Home Department and the Secretary to Government, Transport Department is directed to issue suitable direction to all the law enforcing authority under their control as well as Police Department are directed to implement the above direction and the provisions of the Tamil Nadu Motor Vehicle Rules and Central Motor Vehicle Rules strictly.

20. Insofar as the respondents 4 to 6 are concerned, they are entitled to work out their agreement with the respective transport corporation or the authority concerned for relocating the advertisement in any other exterior part of the vehicle commensurate with the guidelines suggested and submitted before this Court by the Special Secretary to Government, Home Department in the affidavit dated nil November, 2009. The Government or the authority shall consider their claim for relocation in accordance with the guidelines submitted and such other guidelines as may be formulated.

21. The Court records its appreciation to the petitioner's forum for its able assistance to the Court in public interest. The Writ Petition is ordered as above. The miscellaneous petitions are closed.