

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

WP No.17234 of 2021

R.Muthukrishnan Petitioner

Vs

Chennai Metro Rail Limited
Rep by its Managing Director
Admin Building, CMRL Depot
Poomallee High Road
Koyambedu, Chennai- 600 107. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration declaring that the act of issuing by the Respondent the press Release P.R.No.02/04/2021 dated 10.04.2021 and there under collecting by the Respondent with effect from 11.04.2021 a fine of Rs.200 from every passenger if that passenger was found not wearing Face Mask inside the Metro Station preemies/while traveling in Metro Trains is void ab initio illegal and unconstitutional. (2) To issue an order obliging the respondent to remit the Tamil Nadu state Legal Aid Fund established by the Tamil Nadu state Legal services Authority the total amount of Rs.3 600 collected by the Respondent till 23.04.2021 from a total 18 passengers and any further amount collected thereafter, as fine under the impugned act of collecting fine by the respondent and other reliefs.

For the Petitioner : Mr.R.Muthukrishnan,
Party-in-person

For the Respondents : Mr.Jayesh B.Dolia

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The limited grievance of the petitioner in this public interest litigation pertains to a press release bearing PR-02/04/2021 dated April 10, 2021, issued by the Chennai Metro Rail Limited, imposing a fine of Rs.200/- on every person found not wearing a face mask inside any metro station premises or while travelling on any metro train.

2. The impugned press release refers to the necessity to control the spread of the pandemic and the advice by the Greater Chennai Corporation under the provisions of the Epidemic Control Act and Public Health Act for face masks being mandatory. The press release also refers to the Government of Tamil Nadu having ordered a spot fine of Rs.200/- on anyone found without a face mask in public. The operative part of the impugned press release provides as follows:

"1. A fine of Rs.200/- will be collected if a passenger is found not wearing a face mask or not properly wearing a Face Mask inside Metro Station premises/while travelling in Metro Trains.

2. The fine shall be imposed by respective Station Controllers/ CMRL staff deputed for this purpose at Metro Station

premises and by a flying squad on the Metro Trains, duly issuing a receipt from the Penalty Receipt booklet.”

3. According to the petitioner, in terms of the relevant press release, fines have been imposed on persons by the Chennai Metro Rail Limited from or about April 11, 2021 and a substantial amount in excess of Rs.87,000/- has been collected in such regard.

4. It is evident that the Health and Family Welfare Department of the State issued a notification published in the Tamil Nadu Government gazette on September 4, 2020 by which, in exercise of the power of the Government under Section 138-A of the Tamil Nadu Public Health Act, 1939, certain categories of offences were introduced together with respective fines therefor, apparently under Section 76(2) of the Act of 1939.

5. It is not necessary to go into the veracity of such provision or the ordinance or subsequent enactment introduced in such regard. Plainly, despite assuming that the ordinance or the subsequent enactment were and are valid, the authority to impose such a penalty could not have been appropriated by the Chennai Metro Rail Limited without the law governing the Chennai Metro Rail Limited expressly

conferring jurisdiction on such body to impose a penalty.

6. If at all, the State may have imposed such penalty, assuming that the ordinance and the subsequent enactment were and are valid by treating a metro station and metro coach as public places. However, merely because the State had the authority to impose the penalty would not imply that the Chennai Metro Rail Limited could draw therefrom or had the power or jurisdiction to issue the impugned press release, however well-intentioned the same may have been. There can be no doubt that the press release was issued in public interest and in furtherance of public health. However, whatever may have been the pious intention behind the move, when the action is confiscatory in nature as the imposition of a fine or penalty, it has to be backed by due sanction of law. The best-intentioned actions, not backed by the authority of law, cannot stand.

7. In the counter-affidavit filed by the Chennai Metro Rail Limited, it has referred to Sections 5 and 6 of the Metro Railways (Operation and Maintenance) Act, 2002. Elsewhere in the affidavit, Sections 59, 77 and 79 of the same Act have been referred to along with Section 27 thereof to suggest that the first respondent possessed due authority to issue the impugned press release.

8. Section 5 of the Act indicates the functions of the Metro Rail administration while Section 6 thereof confers certain powers. These powers are as are deemed necessary and expedient for the purpose of carrying out the functions under the Act as envisaged in Section 5 thereof. The first respondent relies on the residuary clause (i) under Section 6(2) of the Act to suggest that a fine could have been imposed under such authority conferred to "do all incidental acts as are necessary for discharge of any function conferred, or imposed, on it by Act." Ordinarily, a residuary clause in any provision has to be read *ejusdem generis* with the previous clauses. At any rate, such a residuary clause must have nexus with the activities referred to in the preceding clauses and cannot be interpreted to incorporate a matter which is alien or foreign to or far removed from the matters covered by the previous clauses.

9. The authority to punish or the authority to impose a fine or a penalty, which is confiscatory in nature, must be specifically conferred for a body to exercise the same. The power to do so may not be easily inferred by the court unless it is expressly provided for or such power may be reasonably inferred from any provision.

10. There can be no manner of doubt that none of the cited provisions of the Act of 2002 empowered the first respondent Chennai Metro Rail Limited to impose any fine that has been sought to be done by the impugned press release. Even though the first respondent has referred to the State Government's decision to impose a penalty, the issuance of the notification by the State Government could not have conferred any authority on Chennai Metro Rail Limited to adopt the same though it may have been open to the State to apply the same provision to metro rail premises in Chennai since such premises have to be considered as public places.

11. As a consequence, WP No.17234 of 2021 is substantially allowed by setting aside the press release dated April 10, 2021 insofar as it seeks to impose any fine or authorise any official to implement the same.

12. The minor matter that remains outstanding is how to deal with the money that has already been collected by Chennai Metro Rail Limited pursuant to the illegal imposition of fine. Since the quantum appears to be rather meagre, the first respondent is permitted to retain the amount and appropriate the same since it is well-nigh impossible to discover the persons on whom fines were imposed and

even such persons may no longer be interested in recovering the same.

13. Accordingly, the writ petition succeeds in part upon it being declared that the impugned press release dated April 10, 2021, insofar as it seeks to impose any penalty or fine is completely without authority.

14. There will be no order as to costs.

(S.B., C.J.) (P.D.A., J.)
11.11.2021

Index : no
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To:

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Chennai Metro Rail Limited
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AND
P.D.AUDIKEVALU, J.

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