

(2000) 04 AP CK 0047

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6151 of 2000

Asian Paints India Limited, Mumbai

APPELLANT

Vs

Additional Commissioner (Finance), MCH, Hyd.

RESPONDENT

Date of Decision : 25-04-2000

Acts Referred:

Hyderabad Municipal Corporation Act, 1955 — Section 420, 421(1), 596, 622(2)

Citation : (2001) 1 ALD 117 : (2000) 3 ALT 658

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Mr. C. Subba Rao, for the Appellant; Mr. G. Rama Rao, SC for MCH, for the Respondent

Judgement

1. The petitioner is a reputed company engaged in the manufacture of paints. The company filed the present writ petition for a writ of mandamus declaring the notice in Utter No.192/Advt/MCH/99-2000, dated 10-2-2000 issued by the respondent herein as being illegal and void and for a further direction to the respondent to desist from enforcing any demand arising out of the said notice.

2. By the impugned notice, the petitioner was requested to furnish the total list of the company's brand name advertisements displayed in the Corporation limits of Hyderabad along with advertisement fee. The company was also advised to file self-assessment return in connection with regularisation of unauthorised advertisements and payment of advertisement fee. A reading of the impugned notice discloses that many of the reputed brand names are advertised/displayed in the twin cities of Hyderabad and Secunderabad without taking prior permission from the Commissioner of the Corporation duly paying the advertisement fee as per Sections 420 and 421(1) read with Section 622(2) of the Hyderabad Municipal Corporation Act, 1955 ("the Act" for brevity). The advertisements, it is alleged, are therefore unauthorised and illegal and hence the Corporation issued public notice on 14-4-1999 to regulate the unauthorised advertisements by filing self declaration-cum-return/application for obtaining written permission from the

Commissioner. As the petitioner did not comply the public notice dated 14-4-1999, the respondent initially assessed the advertisement fee and EMD at Rs.96,350/- for 48 advertisements identified belonging to the petitioner's brand name and demanded the said amount.

3. The petitioner herein did not approach the respondent and file any return pursuant to the notice impugned herein. In the meanwhile, the respondent served notice dated 26-2-2000 u/s 421 of the Act demanding advertisement fee and EMD at the rate of Rs.1,000/- per unit and EMD of Rs.500/-. The notices u/s 421 of the Act served on (1) M/s. Sri Ganji Paints, Ameerpet and (2) Sai Corporation, Narayanaguda are filed along with the writ petition. The notice u/s 421 issued to Sri Ganji Paints reads as under:

"Rc.No.192/1/Advt./MCH/99/174 Dated 26-2-2000

Sub:-MCH-Advertisement Section -Regularisation of unauthorised Advertisements - Payment of advertisement fee-Reg.

It is noticed that the advertisement particulars furnished below have been erected, exhibited by you without obtaining prior permission from the Commissioner, MCH duly paying advertisement fee as required u/s 421 read with Section 622 of H.M.C. Act, 1955 and the Rules made thereon.

Code No.	Advertisement	Type	Advertisement Matter	Size of the Advt. in Sq-mtrs.	Unit Rate	EMD	Amount Payable
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11695	NEON/GLOW/SRI GANJI PANTS	6	1000	500	6500		
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ELECTRIC

DISPLAY/BAKLIT NON-HOARDING TYPE

Please note that the exhibition or display of any advertisement without the written permission of the Commissioner, MCH is an offence under the provisions of the Act and is punishable u/s 596 of H.M.C. Act, 1955.

The above advertisement fee has to be paid by cross demand draft drawn in favour of Commissioner, Municipal Corporation of Hyderabad, Hyderabad along with filled in Form-1(enclosed) has to reach the Advertisement Officer, MCH, 2nd Floor, within 7 days from the date of receipt of this letter, failing which action will be initiated as per the provisions of HMC Act, 1955."

4. At this stage, the petitioner company which has all India market has approached this Court challenging the notice/ letter dated 10-2-2000 by which the petitioner was required to file self-assessment return and pay the amount of Rs.96,350/-, which was assessed as advertisement fee for 48 advertisements.

5. The affidavit accompanying the writ petition discloses the following. There are two types of dealerships catering to two slightly different but distinct markets, which are identified by the colour pattern adopted by the company for all its dealerships. The first category called "Asian Paints" offer a non-computerised

standard paint tins manufactured at its factories located all over India and second type of dealerships known as "Asian Paints Colour World" offers computerised processing of base paint in different colours and in a range of thousand odd colours. The paints manufactured by computerised process are expensive and are offered to selected dealers. The products of the company and its brand name are highlighted in a "well networked process of advertisements" including the name board which serve the purpose of enabling the customer to identify and differentiate the shops in terms of their product range. The display by advertisement boards is not part of the scheme to advertise the product, but only to help the customer to identify the product. Therefore, the display boards for the purpose of identification are not advertisements and, therefore, the provisions of Sections 420 and 421 are not attracted. As a corollary, the petitioner states that the notice issued to the petitioner on 10-2-2000 is illegal and void and, therefore, the company seeks a direction to the respondent to desist from raising any demand arising out of the notice.

6. The learned Counsel for the petitioner, Sri Challa Subba Rao reiterated the same submission as contained in the affidavit. He invited the attention of the Court to Section 421 of the Act. Section 420 deals with the regulation of sky-signs. The expression "sky-sign" is defined (subsection (3) of Section 420) as to mean, any word, letter, model, sign, device or representation in the nature of an advertisement, announcement or direction supported or attached to any post, standard framework or other support wholly or in part upon or any land, building or structure which or any part of which sky-sign shall be visible from some point in any street and includes all and every part of any such post, pole, standard framework or other support. The expression shall also include any balloon, parachute or other similar device employed for the purpose of any advertisement, announcement or direction upon or over any land, building or structure. Section 421 deals with regulation and control of advertisements. It is useful to extract Section 421:

"421. Regulation and control of advertisements :--(1) No person shall without the written permission of the Commissioner, erect, exhibit, fix or retain any advertisement whether now existing or not, upon any land, building, wall, hoarding or structure :

Provided always that such permission shall not be necessary in respect of any advertisement which is not an illuminated advertisement nor a sky-sign and which--

(a) is exhibited within the window of any building;

(b) relates to the trade or business carried on within the land or building upon which such advertisement is exhibited or to any sale or letting of such land or building or any effects therein, or to any sale, entertainment or meeting to be held upon or in the same or to the trade or business carried on by the owner of any vehicle upon which such advertisement is exhibited;

(c) relates to the business of any railway administration;

(d) is exhibited within any railway station or upon any wall or other property of a railway administration except portion of the surface of such wall or property fronting any street.

(2) Where any advertisement shall be erected, exhibited, fixed or retained after three months from the enactment of this section upon any land, building, wall, hoarding or structure save and except as permitted or exempted from permission as hereinbefore provided, the owner or person in occupation of such land, building, wall, hoarding or structure shall be deemed to be the person who has erected, exhibited, fixed or retained such advertisement in contravention of the provisions of this section unless he proves that such contravention was committed by a person not in his employment or under his control or was committed without his connivance.

(3) If any advertisement be erected, exhibited, fixed or retained contrary to the provisions of this section after the written permission for the erection, exhibition, fixing or retention thereof for any period shall have expired or become void, the Commissioner may, by notice in writing, require the owner or occupier of the land, building, wall, hoarding or structure upon which the same is erected, exhibited, fixed or retained, to take down or remove such advertisement.

(4)(a) The word "structure" in this section shall include a tramcar, omnibus and any other vehicle and any movable board used primarily as an advertisement or an advertising medium; and

(b) the expression "illuminated advertisement" in this section shall not include an illuminated display of goods if such display--

(i) is of goods merely bearing labels showing the name of the article or of its manufacturer or of both; and

(ii) is made by lighting which is not, in the opinion of the Commissioner, more than is necessary to make the goods and labels visible at night".

7. The learned Counsel for the petitioner relies on the proviso to subsection (1) of Section 421 and clause (b) of sub-section (4) and contends that the illuminated advertisement board is supplied by the petitioner to the dealers so as to help the customer to identify the product and does not come in the purview of Section 421 and, therefore, the notice is illegal.

8. The submission, I am afraid, is wholly misconceived. As per the proviso to sub-section (1) of Section 421, the following advertisements can be erected, depicted or fixed without the written permission of the Commissioner:

(i) an advertisement which is exhibited within the window of any building;

(ii) an advertisement which relates to the trade or business carried on within the land or building upon which such advertisement is exhibited;

- (iii) an advertisement which relates to the business of any railway administration;
- (iv) an advertisement which is exhibited within the railway station or upon the property of railway administration.

9. The proviso further says that the exemption granted by it shall not extend to any of the above categories of advertisement if the advertisement is illuminated one or which is a sky-sign. Clause (b) of sub-section (4) lays down that the expression "illuminated advertisement" shall not include an illuminated display of goods if such display is of goods clearly bearing label showing the name of the article or of its manufacturer or both and such illuminated display is made by lighting which is not more than necessary in the opinion of the Commissioner.

10. The submission of the learned Counsel is that clause (b) of sub-section (4) read with proviso to sub-section (1) of Section 421 excludes the illuminated advertisement boards supplied by the petitioner company to its dealers in the twin cities of Hyderabad and Secunderabad. Therefore, the subsequent demand notices u/s 421 of the Act issued to the dealers being the notices arising out the impugned notice herein become unenforceable.

11. It is not denied that the petitioner company is supplying illuminated boards and that the respondent has issued a notice deciding that the illuminated advertisement boards of the petitioner come within the purview of Section 421 of the Act. This only shows that in the opinion of the Commissioner, as per sub-clause (ii) of clause (b) of sub-section (4) of Section 421 of the Act, the "illuminated advertisement boards of the petitioner company are more than necessary" and, therefore, they are non-excluded category of advertisements attracting rigour of sub-section (1) of Section 421. It has, therefore, to be held that the impugned notice cannot be held to be illegal on that ground.

12. It is to be noticed that as per subsection (2) of Section 421, the owner or person in occupation of land, building, wall, haording or structure shall be deemed to be person who has erected, exhibited, fixed or retained the advertisement. In this case, the respondent issued a notice on 10-2-2000 calling upon the petitioner company to pay an amount of Rs.96,350/-for 48 advertisement boards and also advised the company to file self-assessment return within seven days for other advertisements which might have been added after the survey conducted by the respondent after issuing public notice dated 14-4-1999. After waiting for the period mentioned in the notice, presumably the respondent issued notices u/s 421 of the Act to various owners of paints" shops levying advertisement fee at the unit rate of Rs. 1,000/ - per sq.mtr. and also an amount of Rs.500/- towards EMD. The owners of paints" shops have not challenged the notices before this Court. Therefore, the principle of "Jus Tertii" (nobody can plead the cause of another) applies and the petitioner herein is barred to invoke the jurisdiction of this Court. See: Jayanthipuram Gram Panchayat and Others Vs. The District Panchayat Officer and Others, . However, it is open to the petitioner to approach the respondent and submit explanation to

the notice dated 10-2-2000.

13. Accordingly, the writ petition is dismissed with the above observations. There shall be no order as to costs.