

(2004) 10 KAR CK 0021
In the Karnataka High Court
Case No : Writ Petition No. 53193 of 2003

Blue Nile Advertising Private Limited

APPELLANT

Vs

The Commissioner and Others

RESPONDENT

Date of Decision : 27-10-2004

Acts Referred:

Bangalore Municipal Corporation Act, 1949 — Section 367 (31)

Citation : AIR 2005 Kar 189 : (2005) 2 KarLJ 340 : (2005) 1 KCCR 343

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : S.V. Giridhar, for Kumar and Kumar, for the Appellant; Ashok Haranahalli, for Respondent-1 and B. Ramaswamy Iyengar and C. Ashwathappa for Respondents-2 and 3, for the Respondent

Judgement

Ram Mohan Reddy, J.—The petitioner a Company Limited, carrying on business of Advertising Agency, secured permission from the 1st respondent to display three hoardings on yearly basis on Jumma Masjid Road, located at the far end of Commercial Street in Bangalore City. The licences are said, to be currently in force. The petitioner states that it paid a hefty sum of money towards licence fee and demands of the 1st respondent. It is further stated that the location of one of the hoardings is at a vantage point i.e., without any obstruction to visibility for a person entering commercial street.

2. The petitioner further submits that the 2nd respondent is an association of traders in Bangalore, having no commercial activities and the 3rd respondent an Event Management Unit, not being a licensed advertiser, applied and secured a licence based on which, it erected temporary arches and banners across commercial street. It is the allegation of the petitioner that these banners and arches blocked the view of the hoardings of the petitioner, in support of which, the petitioner has produced the photographs Annexures-P, Q and S series. It is the further allegation of the petitioner that these arches and banners with advertisements, erected by respondents 2 and 3 are in violation to the Karnataka

Municipal Corporations Act, 1976 (for short, "the Act").

3. The petitioner states that on an earlier occasion, questioning the authority of the 2nd respondent herein, in erecting hoarding across Commercial Street, approached this Court in W.P. No. 42206 of 2003, which petition came to be dismissed by order dated 11-10-2003, as having become infructuous, however, reserving liberty to the petitioner to approach the 1st respondent in the event of any fresh breach of right of the petitioner.

4. It is the case of the petitioner that the 2nd respondent issued a circular dated 1-12-2003 in relation to a business promotion scheme which prescribing the charges for advertisement on the hoardings, to be paid to the 2nd respondent. It is said that although the petitioner had submitted two representations on 22-10-2003 Annexure-L and 6-12-2003. Annexure-M, the 1st respondent without considering the said representations permitted the 3rd respondent to put up banners and arches. Pursuant thereto, R2 and R3 have put up arches made of iron metal across Commercial Street, on 5-12-2003. Alleging that the said arches and banners put across the street as being illegal, without sanction or authority of law and being unable to prevent the illegal acts perpetuated by the 1st respondent in permitting the other respondents to continue to display advertisement banners and hoardings on the arches, to the detriment of the petitioner, has filed this petition.

5. The petition is opposed by the respondents by filing their statement of objections. The 1st respondent in its statement of objections dated 13-8-2004, inter alia contends that the writ petition is infructuous and not maintainable, since the permission under Annexure-R1, granted to the 2nd respondent being for a temporary period from 7-12-2003 to 6-1-2004, by order dated 10-12-2003, had since expired and arches removed. The 1st respondent would admit that the petitioner was granted permission to erect hoardings at Jumma Masjid Road. The 2nd respondent in its statement of objections dated 15-9-2004 admits of advertisements on the arches across Commercial Street, but contends that the same was permitted and duly licenced after payment of hefty licence fee, which was only during festival season in order to attract customers. In addition, it is contended that the banners and arches did not block the visibility of the hoardings put up by the petitioner. The 3rd respondent by its memo of objections dated 20-8-2004 contends, that the writ petition is not maintainable since as on the date of its filing there was neither a licence nor permission in force.

6. Sri S. V. Giridhar, learned Counsel for the petitioner would point out to the pleadings in paragraph 13 of the earlier W.P. No. 42206 of 2003 at Annexure-H to contend that although the petitioner had taken a plea that the grant of licence for temporary structures was under Bye-law No. 20 of the Bye-laws under City of Bangalore Municipal Corporation Act, 1949 (for short, "Bye-law No. 20"), the 1st respondent herein, the Bangalore City Corporation, the 1st respondent in the said writ petition took the plea that the alleged licence for erecting temporary structures was regulated by "Bye-law No. 20", while the licence was in fact

issued under the advertisement bye-laws framed under the Bangalore Municipal Corporation Act, 1949 (for short, "Advertisement Bye-law"). Having thus taken a contention, it is submitted that the 1st respondent in this writ petition should not be permitted to take a contrary stand that the licence in question, similar to the one granted earlier, was granted to respondents 2 and 3 in this writ petition under "Bye-law No. 20". In addition, it is contended that the advertisement Bye-law prohibits advertisement hoardings projecting beyond the building line in the street and that 2 mtrs. from the edge of the road is prescribed as building line by the Corporation in Table 33 to the Bangalore Mahanagara Palike Building Bye-laws, 2003 (for short, "Building Bye-laws, 2003") and therefore, the licence to erect advertisement hoardings across the street is impermissible.

7. Sri Ashok Haranahalli, learned Counsel for the 1st respondent would admit that the licence granted to respondents 2 and 3 subject-matter of proceedings in W.P. No. 42206 of 2003 related to temporary structures such as banners erected and advertisement hoardings displayed across commercial street. The subject licence in this petition also relates to erection of banners across Commercial Street and display of advertisement hoardings. It is the contention of the learned Counsel that although the licence granted on the earlier occasion was not under "Bye-law No. 20", but the licence Annexure-R1, herein, was granted in terms of "Bye-law No. 20". The learned Counsel would not dispute the correctness of the contention that licences for advertisement hoardings, in the City of Bangalore is controlled and regulated only under the advertisement Bye-law and that all advertisement hoardings shall have to be erected within the Building line prescribed by the Corporation, under the "Building Bye-laws, 2003".

8. In order to have a better understanding of the contentions advanced by the 1st respondent in its statement of objections in W.P. No. 42206 of 2003, the same is extracted and reads thus:

"The reliance placed by the petitioner on Bye-law No. 20 is misconceived. The said proviso refers to granting permission for eviction of pandal on the entire street. The erection of pandal is not the same as displaying advertisements in the street. In case of pandals, entire movement of street is affected but not so in case of erection of arches. A perusal of photographs makes it clear that the Bye-law No. 20 on which reliance is placed by the petitioner has no application to the facts of the present case. It is not correct to contend that the permission cannot be granted for a period beyond 15 days".

9. The parties are not at variance on the fact that the permission granted on earlier occasion such as the one in this writ petition relates to advertisement hoardings erected across Commercial Street which is evident from the photographs annexed to the writ petition.

10. Having heard the learned Counsels for the parties, the questions for determination in this writ petition are:

(i) Whether "Bye-law No. 20" permits the erection of display arches, banners and

cut outs on streets in the City of Bangalore?

(ii) Whether the "Advertisement Bye-laws", the "Building Bye-laws, 2003" and "Bye-law No. 20" of the Corporation of the City of Bangalore prohibits Advertisement hoarding across streets in the City of Bangalore?

(iii) Whether the licence Annexure-R1 issued in favour of respondent 3 under "Bye-law No. 20", permitted the erection of display arches, banners and cut outs on Commercial Street, as contended by the 1st respondent?

11. Certain facts are not in dispute, namely that on an earlier occasion, the licence granted to respondent 3, permitting the erection of banners and advertisement hoardings across commercial street, was questioned in W.P. No. 42206 of 2003 and in which the 1st respondent, in unmistakable terms contended that the said licence was not issued under "Bye-law No. 20". Though in this writ petition respondent 3, admittedly, having put up advertisement hoardings across Commercial Street, the 1st respondent-Corporation seeks to contend that the licence, Annexure-R1, issued under "Bye-law No. 20", did not permit respondent 3 to erect such hoardings. These contentions though not specifically averred in the statement of objections of the 1st respondent but are contended so in the submission of the learned Counsel for the respondent.

12. The grant of licence for pandals or temporary structures is governed by Clause 8 of "Bye-law No. 20" which reads thus:

"The petitioner submits that the grant of licence for temporary structures is regulated by provisions of Bye-law No. 20 of the Karnataka Municipal Corporations Act. Clause 8 (page 630) of the said Bye-law reads as under:

"II. Regarding the erection of pandals or other temporary structures on public streets--

8. No pandals or other temporary structures for marriage or other purposes shall be erected in any street, land or public thoroughfare, without the written permission from the Commissioner. On receipt of application for permission to put up such structures, specifying the situation, size and other particulars licence will be issued by the Commissioner if he sees no objection thereto, on such conditions as he may think necessary to provide for the public convenience and safety on payment of the following fees:

(i) For a pandal 6 feet broad by 12 feet long or not exceeding 72 Sq. Ft..... none.

(ii) For a pandal exceeding 72 Sq. Ft. and not exceeding 150. . . . 8 annas

(iii) For every additional 150 Sq. Ft. or portion 8 annas.

(a) No pandal shall ordinarily be allowed to stand for more than 15 days.

An extension of time may be granted on payment of one-half the original fee, but not so as to exceed a month from the commencing.

(b) If on the expiration of the time allowed in the licence, or the period granted in extension thereto on special application, the person that puts up the structure does not remove it. The Commissioner may issue a notice to the defaulter for its removal within such time as may be fixed by him in each case at the end of which time he may have it removed- and the cost of such removal shall be recoverable from the defaulter as a Municipal demand.

(c) Any breach of this Bye-law will, on conviction, subject the offender to a penalty not exceeding Rs. 5 for the first offence and Rs. 10 for each subsequent offence.

(d) Provided that in the case of pandal intended for purposes of charity, religion or public utility, permission may be granted free of charge, but the period of its existence shall not exceed 15 days" ".

13. From a plain reading of the aforesaid Clause 8, it is apparent that the Corporation will be well-within its rights to permit temporary structure or pandals to be erected in any street, land or public thoroughfare for a period of 15 days on payment of fee set out therein. Sub-clause (a) permits the extension of time by another 15 days, so as not to exceed a total duration of one month, on payment of one-half of the original fee. The fee as set out in Sub-clauses (i), (ii) and (iii) above is applicable only to pandals and not for temporary structures. These clauses do not permit temporary structures to be erected across the street.

14. The grant of licence for advertisement hoardings is regulated by the notification dated 21st July, 1956 and the Government Order dated 26th May, 1956 which brought into force the bye-laws framed by the Bangalore Municipal Corporation under Sub-section (31) of Section 367 of the Act, 1949 (for short, "Advertisement Bye-laws"). The objects of the bye-laws as set out in the preamble is for prohibition, control and regulation of advertisement in the city of Bangalore and for the purpose of securing cleanliness, safety and order.

15. Clause 1 of the bye-law reads thus:

"1. The Corporation may for the purpose of securing cleanliness, safety and order by notification.--

(a) prohibit the erection, exhibition, fixation, retention or display of all or any class of advertisements in any street, public road, or public or private place, public or private building, wall, hoarding, structure, tree, lamp post, polls in or adjoining or visible from or abutting any public place or road, or public path or part thereof or in any place of public resort; and

(b) regulate the erection, exhibition, fixation, retention or display of advertisements in any manner in non-prohibited areas".

16. The size of the advertisement hoardings is regulated by Clause 9(a) which reads:

"9(a) Advertisement hoarding:

(i) shall not be more than 30 feet height;

(ii) shall not project beyond the general line of buildings in the street or more than one foot beyond the building line in the streets for which a building line has been prescribed;

(iii) shall not be within 30 yards from any public park or pleasure promenade".

17. "Building line" is defined under Clause 2.11 of the "Building bye-laws, 2003", which reads thus:

" "Building line" means the line upto which the plinth of buildings may lawfully extend within the plot on a street or an extension of a street and includes the line prescribed, if any, or any scheme;

Building lines are prescribed under Schedule X to the building bye-laws" in particular Commercial Street at Sl. No. 37 to be 2 meters from the edge of the road".

18. A conjoint reading of the "advertisement bye-laws" and "Building Bye-laws, 2003" and "Bye-law No. 20" leaves no room for doubt that any and all kinds of advertisement hoardings cannot be erected anywhere and everywhere other than in terms of Clause 9(a) of the "advertisement bye-law" and well-within the "Building line" as defined in Clause 2.11 read with Schedule X of the "Building Bye-laws, 2003". The object of such regulations being the safety, cleanliness and order, it is ordinary prudence that the hoardings must conform to the provisions and prescription in the bye-laws and any infraction must be dealt with severely. Life and liberty are the fundamental rights guaranteed to each citizen of this Country. The safety of persons travelling on the streets, pedestrians on the footway, are primordial. Allowing advertisement hoarding on the street or across the streets is prejudicial and infringes upon the fundamental rights of freedom of life, and liberty of a citizen. It can be no different, in respect of a licence under "Bye-law No. 20" which does not permit any temporary structures in the form of arches, banners and cut outs across any street in the city of Bangalore. Points (i) and (ii) are answered in the negative.

19. The licence "Annexure-R1" issued in favour of the 3rd respondent, is said to permit the licensee to put up display archies, banners, cut outs and advertisement hoardings across Commercial Street. On the strength of the said licence, the 2nd respondent issued the circular dated 1-12-2003 relating to a business promotion scheme providing for display of advertisement hoardings on the arches across commercial street, on payment of certain charges. The licence "Annexure-R1", does not state that it is issued either under "Bye-law No. 20" or "Advertisement Bye-laws". According to the learned Counsel for the 1st respondent, the licence is said to be issued under "Bye-law No. 20". But, it cannot be so since - (a) the licence is not for erecting a pandal on commercial street; (b) the fee collected from the licence i.e., the 3rd respondent, is not as stipulated in Sub-clauses (i), (ii) or (iii) of Clause 8, but admittedly collected as

advertisement tax; (c) the period for which the licence was granted was from 7-12-2003 to 6-1-2004 which is beyond the period of 15 days nor extended by another 15 days, prescribed under Clause (a).

20. The licence "Annexure-R1" has to be read and interpreted as it is and not on the basis of improvements made by way of arguments before Court. In this connection, it would serve well to draw our attention to the observations of this lordship Vivan Bose, J., as he then was, in *Commissioner of Police, Bombay v. Gordhandas Bhanji*, which in the circumstances is apposite:

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

21. In short, the orders are not like old wine becoming better as they grow older. In the admitted facts and circumstances of this case the licence Annexure-R1 issued by the 1st respondent, in favour of the 3rd respondent cannot be held to be issued under the "Bye-law No. 20". Point (iii) is answered accordingly in the negative.

22. It is not in dispute that in the guise of the licence Annexure-R1 for erecting banners and cut outs, the 2nd and 3rd respondents perhaps, in connivance with the 1st respondent, erected advertisement hoardings across Commercial Street on arches, in total violation of the "advertisement bye-laws" as well as the "Building Bye-laws, 2003", impinging upon the fundamental rights of life and liberty of the citizens. The action of the respondents smacks of violation of the rights guaranteed under the Constitution. It is rather strange as to why the 1st respondent did not heed to the objections of the petitioner, when brought to its notice, that advertisement hoardings were erected across Commercial Street. This conduct of the 1st respondent, in "looking the other side" or "turning a blind eye" speaks volumes of the bureaucratic linkage enjoyed by the respondent 2, an Association of traders and respondent 3, the licensee. The grant of licences for erecting banners, etc., and their misuse, as noticed, coupled with the admitted failure of the authorities to take action against such misuse demonstrates that the 1st respondent is amenable to abuses and manipulations.

23. The action of respondents 2 and 3 in erecting the advertisement hoardings across commercial streets, by fixing metal arches, is illegal, contrary to the terms of licence, Annexure-R1, and the in-action on the part of the 1st respondent and its Advertisement Department in not taking any action against respondents 2 and 3, despite representations Annexure-L and M and notice in W.P. No. 42206 of 2003, in my considered opinion, needs to be deprecated.

24. The contentions of Smt. Radha, learned Counsel for the respondents 2 and 3

that the writ petition is misconceived and not maintainable since the period of licence had expired on the date of filing of the writ petition, cannot be countenanced. The infraction of the rights of the petitioner and that of citizens brought to the notice of this Court cannot go unnoticed and this Court cannot be passive and condone the illegalities or the pernicious practices of the respondents, causing serious threat to safety, in order to help respondents make economic gain. The erection of metal arches and advertisement hoardings across Commercial Street, a busy shopping area, was totally unsafe, not in the interest of public and in gross violation of law and terms of licence.

In the result, the writ petition is allowed in part, and it is hereby declared that neither "Bye-law No. 20", nor "Building Bye-laws, 2003" or "Advertisement Bye-laws" of the 1st respondent-Corporation permits the erection of banners, cut outs, arches, in the guise of temporary structures, or advertisement hoardings, across any street in the City of Bangalore. The relief of a direction to the 1st respondent to remove the arches and banners put up on Commercial Street having become infructuous, by passage of time and their removal, cannot be granted.

The Commissioner of the City of Bangalore is directed to initiate action against all the officials responsible and concerned with the regulation of advertisement hoarding and who had failed to take action against respondent 3, who had erected the hoardings across Commercial Street, under licence Annexure-R1. In addition, the 1st respondent is directed to take action against respondents 2 and 3 for having contravened the terms of the licence Annexure-R1. The 1st respondent is further directed to submit a report of the action taken and final outcome thereof with the Registrar General of this Court, within three months from the date of receipt of a certified copy of this order.