(2001) 03 BOM CK 0066

In the Bombay High Court

Case No : First Appeal No. 74 of 2001

Bombay Municipal Corporation and Another — APPELLANT

Vs

Daily Taj Private Ltd. — RESPONDENT

Date of Decision : 01-03-2001

Acts Referred:

Bombay Municipal Corporation Act, 1888 — Section 217
Telegraph Rules, 1951 — Rule 452, 453, 457, 458

Citation : AIR 2001 Bom 263 : (2001) 2 ALLMR 629 : (2001) 3 BomCR 715 : (2001) 2 BOMLR 1007 : (2001) 3 MhLj 21

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : Mr. K.K. Singhvi, Mr. J. Reis, Ms. S.J. Billimoria and Ms. Vidhya Khatufor Mr. N.V. Matai, for the Appellant; Mr. P. Chidambaram Mr. Paresh Shah, Ms. Vijayalaxmi Menon and Mr. Chetan Pandya, instructed by Shah and Sanghvi, for the Respondent

Judgement

R. M. Lodha, J.—This first appeal is at the instance of Bombay Municipal Corporation and the Assessor and Collector, aggrieved by the judgment and order dated 17th April, 2000 passed by the Additional Chief Judge, Small Causes Court whereby the appeal filed by the present respondent u/s 217 of the Bombay Municipal Corporation Act has been allowed and the Appellate Authority directed the present appellants to cancel or withdraw the letter dated 30th December, 1999 and further asked them to refund the amount of Rs. 37,08,000/- to the present respondent.

2. By way of an agreement entered into between the present respondent with the Mahanagar Telephone Nigam Limited (M.T.N.L.), the present respondent was given work of printing of the telephone directory. As per the agreement, the telephone directory was printed by the present respondent in four volumes. Out of these four volumes, first three volumes contain the residential address of subscribers of M.T.N.L. in Bombay and the fourth volume contains the alphabetically A to Z business entries only. Various consignments of said

directories were not allowed to enter within the jurisdiction of Bombay Municipal Corporation without payment of octroi. Though the respondent herein claimed that the said telephone directories are exempted from payment of octroi, the Assessors and Collector (appellant No. 2 herein) sent a communication to M.T.N.L. with a copy to the present respondent that the telephone directories are subject to octroi under Entry 32 of Schedule ''H'' appended to Mumbai Municipal Corporation Act, 1888 and therefore, they were advised to pay octroi on telephone directories which they intend to bring in Mumbai. It is the case of the present respondent that a sum of Rs. 37,08,000/- was paid by them to the appellants towards octroi under protest in respect of the said directories. The present respondent initially filed the writ petition before this Court and upon its dismissal carried the matter to Supreme Court in SLP but in view of the order dated 28.2.2000 passed by the Apex Court challenged the communication dated 30th December. 1999 and the recovery of amount of octroi by the appellants in appeal u/s 217 of the B.M.C. Act before the Appellate Authority. The Appellate Authority recorded the evidence and after hearing the parties, by the impugned order dated 17th April, 2000 held that the present respondent was able to prove that the telephone directories of the year 1999 printed by them were not covered under Entry 32 of Schedule ''H'' appended to the Act of 1888. The Appellate Authority thus held that the order passed by the appellant No. 2 herein holding that the telephone directories printed by respondent for M.T.N.L. are liable to octroi, is not sustainable. Accordingly, the Appellate Authority directed the present appellants to refund the amount of Rs. 37,08,000/- to the present respondent.

3. Assailing the order passed by the Appellate Authority, Mr. K. K. Singhvi, the learned senior counsel appearing for the appellants strenuously urged that telephone directories printed by the present respondent are covered under taxable Entry 32 of Schedule ''H'' on two counts viz. (i) because by the said telephone directories M.T.N.L. mainly publicise services for commercial purposes; and (ii) even otherwise, telephone directories are printed material analogous to annual reports, balance sheets etc. which are covered under Entry 32. Mr. Singhvi, submitted that telephone directory provides information relating to various services in about 45 pages. Many of the entries have been printed in bold and super-bold letters on extra charges from the subscribers and, therefore, it is nothing but a publication publicising services for commercial purposes. Mr. Singhvi also submitted that since the printed material such as annual reports, balance sheets give information regarding financial health of the Company, the printed material in the form of directory sets also provides information to the subscriber. According to him, the expression "books" appearing in entry 32 of schedule H1 which provides for articles free from payment of octroi is an expression of general nature but telephone directory, though book, is a publication publicising services for commercial purposes and is specifically covered by Entry 32 of Schedule ''H'' and, therefore, subject to octroi.

4. On the other hand, Mr. Chidambaram, the learned senior counsel appearing

for the respondent supported the view taken by the Appellate Authority and submitted that sets of telephone directory, by no stretch of imagination, can be termed to be publication mainly publicising goods or services or articles for commercial purposes. The learned senior counsel submitted that telephone directory is nothing but a telephone book containing an alphabetical list of names, addresses and telephone numbers of subscribers of M.T.N.L. and clearly falls in Entry 32 of exempted Schedule ''H1''. Mr. Chidambaram submitted that telephone directories published by the present respondent for the purpose of M.T.N.L. are not a printed material like annual reports or balance sheets as contended by Mr. Singhvi. According to him, the expression "as such" occurring in Entry 32 of Schedule ''H'' is an expression of limited meaning and the word "etc." has to be read in the context of the expression preceding the said word. Relying on the Telephone Rules, particularly 452, 453, 457 and 458 of the said Rules, Mr. Chidambaram, learned senior counsel for respondent submitted that telephone directory is an essential instrumentality in connection with the peculiar service which the M.T.N.L. provides and therefore, is not covered by taxable entry and is clearly covered by exempted Entry 32 of Schedule ''H1''.

5. There cannot be any doubt that telephone directory is a book. It is nothing but a telephone book giving particulars of subscribers i.e. their names, addresses and telephone numbers. In other words telephone directory is a book containing an alphabetical list of names, addresses and telephone numbers of telephone subscribers. Black''s Law Dictionary, seventh edition describes "directory", (1) A book containing an alphabetical list of names, addresses, and telephone numbers, esp. those of a city''s or area''s residents and businesses. (2) Any organization''s publication containing information on its members or business, such as a legal directory, etc.

6. Similarly. The Oxford Reference Dictionary, 1987 edition, explains ''directory'' a book with list of telephone subscribers, inhabitants of a district, members of a profession etc. with various details.

7. Prior to 21st July, 1998 Entry 1 of Schedule H1 which provided for articles free from payment of octroi read thus :

"Books and periodicals including almanacs, panchang and time-tables for passenger transport services, catalogue, all publications which publicize goods, services and articles for commercial purposes, race cards, account books, diaries, calenders, office files and documents, answer book (blank or use), tags, wedding cards, greeting cards, invitation cards, post cards, picture post cards, cards for special occasions, visiting cards, photo albums, stamps made of paper, playing cards, and newspapers."

8. By common notification dated 21st July, 1998, the said entry was bifurcated in two entries. One entry was incorporated as Entry 32 of Schedule ''H1'' by providing articles covered therein free from octroi which reads thus :

"Books, periodicals, panchangs, magazines-bound or unbound, used office files and documents, exercise and drawing books, answer book-blank or used, tags, postcards, newspapers, religious paper posters, painting and portraits."

The other entry was brought in as Entry 32 of Schedule ''H'' subjecting the articles covered therein to payment of octroi. The said Entry 32 of Schedule ''H'' reads as follows :-

"All publication which mainly publicise goods, services and articles for commercial purposes, catalogues, race cards, account books, diaries, calenders, printed material such as annual reports, balance sheets etc., application forms for different purposes, greetings, cards, invitation cards, humour post cards, picture post cards, card for special occasions, visiting cards, wedding cards, cards for punching machines, blanks of cards, photo albums, stamp albums, blank office files, playing cards, blanks share forms and cheque books, lottery tickets."

9. The question that falls for determination in this first appeal is whether the telephone directories printed by the present respondent for M.T.N.L. are covered under Entry 32 of Schedule ''H'' particularly the expression, "all publication mainly publicise goods, services and articles for commercial purposes ...." or "printed material such as annual reports, balance sheets etc." occurring therein and are, therefore, subject to payment of octroi.

10. Rules, 452. 453, 457 and 458 of the telegraph rules read thus : "452. Supply of telephone directories. A copy of the telephone directory shall be supplied free of charge for each telephone, extension or party line, rented by the subscriber from an exchange system or private branch exchange or a private exchange. A copy shall also be supplied free of charge for each extension (including extension) from an extension working from a public call office. Additional copies supplied shall be charged for at such rate as may be fixed by the Telegraph Authority from time to time.

453. Entries in telephone directories.-For each direct telephone line rented (i.e. for main connections, direct extensions and PBX Junction lines) ordinarily only one entry not exceeding one line will be allowed free of charge in the telephone directory to every subscriber. Such entry shall contain the telephone number, the initials, the surname and the address of the subscriber or user. No word which can intelligibly be abbreviated shall be allowed to be printed in full. Additional lines may be allowed by the Telegraph Authority at its discretion.

457. General.-Any telephone directory provided by the Department shall remain its exclusive property and shall be delivered to it on demand. The Department reserves the right to amend or delete any entries in the telephone directory at any time and undertakes no responsibility for any omission; and it shall not entertain any claim or compensation on account of any entry in or omission from the telephone directory or of any error therein.

458. Publishing of telephone directory.- Except with the permission of the

Telegraph Authority no person shall publish any list of telephone subscribers.

11. It would be thus seen that it is the statutory obligation of the M.T.N.L. to supply copy of telephone directory free of charge for each telephone. It Is further seen that any telephone directory provided by M.T.N.L. remains its exclusive property and has to be delivered back on demand. The telephone directory, as has been observed by the Apex Court in Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. and Ors., 1 is an essential instrumentality in connection with the peculiar service which the Union of India offers for the public benefit and convenience. The Apex Court further observed, "It is as much so as is the telephone receiver itself, it would be practically useless for the receipt and transmission of message without the accompaniment of such directories. The telephone service being a public utility service, the Telephone Authority has rightly been given powers under the Act and the rules to regulate the form and contents of the telephone directory". It can be thus said that the main objective of providing telephone directory by M.T.N.L. to its subscribers is to provide to each one of them the book containing an alphabetical list of names, addresses and telephone numbers of Its subscribers. Merely because there are some advertisements on the first page and last page of each volume of the directory or information in few pages about public utility services, the telephone directory does not loose its identity as telephone book containing alphabetical list of names, addresses and telephone numbers of its subscribers. By giving some information of public utility services in some pages and some advertisements, the publication of telephone directory cannot be said to be a publication by M.T.N.L. mainly publicising services for commercial purposes as contended by Corporation. The expression, "all publication which mainly publicise goods, services and articles for commercial purposes..." in the charging entry cannot be read to mean any publication which incidentally publicise some goods or services or articles for commercial purposes though the main purpose of such publication is other than these. It would not be out of place to mention here that in the year 1994 when Entry 1 in Schedule ''H1'' (un-bifurcated entry) was in existence, the appellant No. 2 informed the concerned authority of M.T.N.L. that the telephone directories are exempted from the payment of octroi since there are printed stationary and books which do not attract octroi. The position cannot be said to have been altered in so far as telephone directories are concerned on bifurcation of that entry because the telephone directories are nothing but telephone books containing alphabetical list of names, addresses and telephone numbers of subscribers which are not mainly published by M.T.N.L. publicising goods, services or articles for commercial purposes.

12. In my considered view the telephone directories are also not covered by expression, printed material such as annual reports, balance sheets etc. Though Mr. Singhvi, learned senior counsel appearing for the appellants strenuously urged that telephone directory is nothing but a printed material such as annual reports and balance sheets because annual reports, balance sheets etc. provide information regarding the financial health and other relevant information of the

concerned companies to the public and the telephone directories, similarly provide information in respect of its subscribers, he however, admitted that the word "etc." has to be read in the context of the expression preceding it viz. annual reports, balance sheets. In Royal Hatcheries Pvt. Ltd. etc. v. State of Andhra Pradesh and Anr., 1 the Apex Court relied upon the judgment of the House of Lords in Ambatielos v. Anton Jurgens Margarine Works, 1923 A.C. 175 and observed that the words "that is to say", "such as" are the words generally understood as words of limitation. Regarding the meaning of the word "etc.", it was observed that the said word has to be read having regard to the context and object underlying the said clause. Applying the said principle, the word ''such as'' occurring in the taxable Entry 32 of Schedule ''H'' which reads printed material such as annual reports, balance sheets etc. has to be given limited meaning to the printing material like or as that of annual reports and balance sheets and the word ''etc.'' has to be read in the context of annual reports and balance sheets and it cannot be said that the telephone directory is something like annual report or a balance sheet of the Company. Therefore, telephone directories printed by the respondent herein for M.T.N.L. cannot be made subject to payment of octroi by bringing them under the expression, "printed material such as annual reports, balance sheets etc."

13. The Appellate Authority, therefore, cannot be said to have committed any error in taking the view that publication of the telephone directories by the respondent herein for the purpose of M.T.N.L. falls in the exempted Entry 32 of Schedule ''H1''. The impugned order does not suffer from any error warranting interference by this Court.

14. First appeal accordingly, has no merit and is dismissed with no order as to costs.

15. Six weeks time is granted to the appellants for refund of the amount of Rs. 37,08,000/- to the respondent, failing which the appellants shall be liable to pay interest at the rate of 12% per annum on the said amount till the amount is paid back.

16. Certified copy expedited.

