

(2005) 03 DEL CK 0161
In the Delhi High Court
Case No : WP (C) 13106-07 of 2004

Capital Publicity Pvt. Ltd. and Another APPELLANT
Vs
NDMC RESPONDENT

Date of Decision : 22-03-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226
Delhi Urban Arts Commission Act, 1973 — Section 11, 11(1), 11(2), 12

Citation : AIR 2005 Delhi 383

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : A.S. Chandhiok, S.K. Maniktalla and Anita Sehgal, for the Appellant;
Valmiki Mehta and Arvind Shah, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—In this petition, under Article 226 of the Constitution, reliefs claimed include quashing of a decision taken by the New Delhi Municipal Corporation (NDMC) dated 22nd June 2004 whereby the petitioners request for permission to display two Unipoles advts. were declined. A consequential order has been sought against NDMC, for restraining it from interfering with the display of such Unipoles advts.

2. The petitioner avers that it entered into an agreement with the owner of property No. 2, commonly known as Masjid Kasturba Gandhi Marg, for display of two Unipole advertisements. measuring 20 x 20. These advertisements (hereafter called hoardings) were to be placed at a round about on Kasturba Gandhi Marg. The petitioner applied to NDMC for permission to put them up on 5th February 2004. It is claimed that the provisions of Bye laws framed in the year 1992, by the NDMC, required consideration and disposal of the application within 60 days, failing which the consequence prescribed was a deemed permission. The period of 60 days expired on 5th April 2004. The petitioner claims to have put up the Unipole on 10th April 2004. It is averred that on 28th

April 2004, the NDMC, started action by way of removing / pulling down Unipoles. This led to the filing of an injunction suit by the petitioner.

3. On 5th May 2004, this Court appointed a Local Commissioner, in the injunction suit. The Commissioner visited the site and submitted his report on 6th May 2004. The Court directed the parties to maintain the status quo. Eventually, the suit was disposed off on 27th May 2004 with a direction to NDMC to consider the application of the petitioner, afresh. It was also directed that the plaint in the suit was to be treated as the petitioner's application; an opportunity of hearing was also required to be granted to the petitioner.

4. Pursuant to the NDMCs communication, the petitioner appeared and filed a detailed representation on 10th June 2004. The NDMC, by its order dated 22nd June 2004, impugned in these proceedings, rejected the request/application. The order of rejection recorded the petitioners submissions to the effect that NDMC had permitted hoardings on public toilets, bus queue shelters as also putting up of Unipoles and protection screens of Railways in its area. It also recorded that the petitioner undertook to furnish an affidavit with regard to the stability of the Unipoles and made further representation about the permission by the NDMC for advts. on Kiosks, Unipoles and protection screens of Northern Railways, hoardings at Blind Relief Society Premises and Premises at Bal Sahyog Kendra.

5. The impugned order recorded following reasons for declining the petitioners application :-

i) The Unipoles in question were located on the round about; the Masjid itself is located at the round about and that advts. cannot be permitted at historical and religious places, as per directions of the Delhi Urban Arts Commission. The further reason in this regard was that such advts. would lower the importance of the religious placed.

ii) As per directions of the Supreme Court in M.C. Mehta v. Union of India, hoardings from the road side are to be discouraged on account of hazardous placements.

iii) As far as the permission being given to but Toilets, bus queue shelters etc. were concerned, NDMC recorded that advts. were issued because such public conveniences were allowed and that the operator in question earn some amount and meet the expenditure for the maintenance of but Toilets etc;

iv) As regards the permission granted to Railways and certain social organizations such as Bal Sahyog Kendra and Blind Relief Society etc. were concerned, the rationale was that the revenue generated by these, was to be utilized for the larger interests of the public or for the upliftment of the section of people which the organizations served.

6. The petitioner alleges that the impugned order, declining permission is arbitrary and unreasonable. It alleges that the bye laws in question do not prohibit putting up or display of hoardings on lands owned by private individuals.

The refusal of permission, it is submitted, is patently erroneous and based on irrelevant considerations; the reasons granted for rejection of the application, namely, that Unipoles are at a round about and also at a religious place is factually wrong and incorrect.

7. It is also submitted that the once the respondent-NDMC finds that the requirements of the bye laws are fulfilled, there is no question of any option or discretion remaining with it; permission has to follow.

8. The petitioner has also relied upon several documents including photographs to aver that the permission is being granted or refused in a discriminatory manner.

9. During the course of hearing, NDMC was, by an order dated 16th August 2004, was required to file an affidavit indicating as to how the hearing at the site proposed by the petitioner could be differentiated from the hoardings existing at two places, namely, near Gole Dakkhana (on the round about) and a Cathedral (namely a religious place). The requisite affidavit was filed on 9th September 2004, which indicated that the advertisements were placed parallel to the road due to which they and the other advts. of but Toilets would not distract Motorists view directly, has opposed to the proposed advts/Unipoles of the petitioner on the round about itself, located within the Masjid premises. It is also submitted that the hoarding within the Masjid premises would also lower the sanctity of the religious place. The other principal averment made in the affidavit is with regard to the advertisements on Kiosks; it is submitted that they measure 30 x 40 in size and are non illuminated, and, Therefore, do not cause obstruction to Motorists.

10. The NDMC has also relied on the provisions of the New Delhi Municipal Committee (Pasting of Bills & Advertisements) Bye Laws 1992, (the Bye laws) particularly, Regulation 3 and 10; as well as guidelines framed by the Urban Arts Commission regarding placements of hoardings in Delhi particularly, Para 2.

11. Regulation 3 and 10 of the 1992 Byelaws read as follows :-

3. Consideration of urban aesthetics and public safety -

(1) The Committee may regulate in the manner laid down hereinafter the pasting of bills and advertisements and determine the position, size, shape and style of any advertisement sign, including name-boards, sign-boards and sign-posts, keeping in view the consideration of the aspects of urban aesthetics, public safety, decency, morality and other relevant factors.

(2) Subject to the provisions contained in clause(6), every person who intends to erect, alter or display an advertising sign which is regulated by these bye-laws, shall make an application to the Committee on the form, as per Appendix to these bye-laws containing such particulars and such amount of advertisement tax as may be required. Such a form shall be signed by the applicant and by the owner of the site upon which such sign is or is to be situated.

(3) The Committee may on receipt of an application referred to above sanction with or without modification or sanction subject to certain conditions or refuse to sanction the erection, alteration or display of the sign, as may be deemed proper and shall communicate the decision to the applicant. If within sixty days of receiving an application, the Committee fails to intimate in writing to the applicant, the application shall be deemed to have been sanctioned.

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10. Traffic Control Interference -

(1) No advertising sign shall be erected or maintained which interferes with or is likely to interfere with any sign or signal for the control of traffic.

(2) No advertisement sign shall be placed particularly in bends and curves so as to obstruct the view of traffic at intersecting street.

12. The relevant guidelines formulated by the Delhi Urban Arts Commission are extracted below :-

With regard to the above, the following are the Commission's guidelines :-

(1) No Commercial hoardings, neon signs, or bill boards shall normally be allowed to be displayed by the local body/public agency in the following areas, buildings and structures :-

(i) Residential areas including major roads passing through residential areas.

(ii) Near road intersections or roundabouts.

(iii) In the vicinity of or on public buildings, (railway stations, bus terminus, airports and institutional buildings etc.)

(iv) Central Vista, including the entire bungalow area of Lutyen's New Delhi and other areas under the jurisdiction of the New Delhi Municipal Committee.

(v) Near or in front of parks and public gardens.

(vi) Riverfront and ridge areas.

(vii) Near or on all monumental buildings, archaeological monuments and religious buildings and buildings of National importance.

(viii) Over/under bridge (railway, pedestrian or vehicular) water tanks and communication towers or transmission towers.

Provided that the Commission may, however, allow Hoarding etc. to be put up in those areas in exceptional cases under a special appeal on the basis of a complete street picture prepared of these areas by the local body or the public agency concerned and submitted to the Commission for permission.

Proposals, if any, for allowing Hoardings in those areas, buildings or structures may be considered on the basis of a complete street picture prepared by the

local body or the public agency concerned, and submitted to the Commission along with a location plan, drawn to a scale of 1:5.

13. Mr. A.S. Chandhiok, learned senior counsel appearing for the petitioner submits that the impugned order is violative of Articles 19(i)(g) and Article 14 of the Constitution. According to him, a proper construction of the bye laws and the guidelines of the Urban Arts Commission nowhere prohibit the placements of adverts / Unipoles, proposed by the petitioner, at the location in question. He further submits that the present is a clear instance of discrimination and unreasonable behavior on the part of the NDMC. On the one hand, for the purpose of denying permission, the NDMC has insisted upon strict adherence to the bye laws and guidelines. He submits that in at least two instances, hoardings have been permitted near a religious place or at a round about. In other words, the permission to put up hoardings is sought to be justified with regard to the objective sub-served by the organization and the ultimate use to which the revenue is put to by such organization. That, he submits, cannot be the criteria. He alleges that the yardstick adopted by the NDMC is neither uniform nor consistent.

14. Learned counsel has also relied upon provisions of the Delhi Urban Arts Commission Act, 1973, particularly Sections 11 & 12. He submits that these provisions cannot be read in isolation and the entire emphasis of the enactment is to permit the Commission to have any integrated or overall picture when a particular building / engineering operation or development proposal, has to be examined. He submits that the enactment is not aimed at obstructing or creating a restriction on the powers of the NDMC with regard to the location of every proposal. It is lastly submitted that apart from being discriminatory and arbitrary, the impugned order is also unsustainable since it unduly interferes with the right of the petitioner to carry on its business activities, particularly, when the land owning private organization has expressed willingness and no objection as regards the location of the Unipoles / advertisements. He submits that the NDMC itself calls for tenders/bids for putting up hoardings in public lands. If such is the position and the NDMC earns revenue, there is no reason why it should deprive others the benefit of such revenue, generated from their own lands.

15. Mr. Valmiki Mehta, learned senior counsel for the NDMC, submitted that having regard to the provisions of the Urban Arts Commission Act and the guidelines formulated by the Commission, the NDMC was obliged to follow the policy. That policy, it is submitted, is specific, in that no advertisements or Unipoles were permissible on roundabouts and also at or near religious / historical places. In the present case, the Unipole proposed is at a roundabout as well as within the premises of a religious institution, namely, a Mosque. He submits that as far as the question of unreasonableness of the NDMC in not permitting Unipoles/advertisements on roundabouts is concerned, it is a matter of public policy. He submits that the location of hoardings/Unipoles at roundabouts tends to distract motorists, leading to concerns about the road safety. As

far as the issue of location of a hoarding on a religious place is concerned, that is a matter which is connected both with aesthetics as well as the sanctity of the Locale.

16. On the allegations of discrimination and unreasonableness, learned counsel for NDMC submits that the instances pointed out are not cases where advts. have been permitted at roundabouts. He relies upon the averments in the affidavit to the effect that the advertisements are on the road adjacent to roundabouts. It is submitted that in any event, the instances shown do not relate to case where NDMC had granted permission to put up hoardings at roundabouts or in religious places.

17. Before discussing the rival contentions, it would be also necessary to extract relevant provisions of the Delhi Urban Arts Commission Act 1973 (1 of 1974). Section 11 & 12 outline the functions and powers of the Commission. The same reads as follows :-

11(1) It shall be the general duty of the Commission to advise the Central Government in the matter of preserving, developing and maintaining the aesthetic quality of urban and environmental design within Delhi and to provide advice and guidance to any local body in respect of any project of building operations or engineering operations or any development proposal which affects or is likely to affect the sky-line or the aesthetic quality of surroundings or any public amenity provided therein.

(2) Subject to the provisions of sub-section (1), it shall be the duty of the Commission to scrutinize, approve, reject or modify proposals in respect of the following matters, namely :-

(f) under-passes, over-passes and regulations of street furniture and hoardings

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(12) Notwithstanding anything contained in any other law for the time being in force, every local body shall, before according approval in respect of any building operations, engineering operations or development proposals referred to in sub-section (1) of section 11 or intended to be undertaken in any area or locality specified in sub-section (2) of that section, refer the same to the Commission for scrutiny and the decision of the Commission in respect thereof shall be binding on such local body.

18. In two judgments of this Court reported as *Harsh Gupta v. New Delhi Municipal Council*, 1995 (3) AD 1001 and also *Advert Communications and another Vs. The Municipal Corporation of Delhi*, this Court had occasion to consider the provisions of the Act. The Court held, inter alia, that any proposal for street furniture and hoardings had to be placed before the Urban Arts Commission for approval. In the former decision, the need to promote cultural vitality of the environs and quality of surroundings within Delhi was emphasized. The Court also held that under sub clause (f) of Section 11(2) of the Act,

proposal for street furniture and hoarding had to be placed before the Delhi Urban Arts Commission. In the subsequent decision of Advert Communications (supra) while reiterating and following the judgment in Harsh Gupta (supra) , it was further held as follows:-

It is the duty of the civic bodies to strictly comply with the provisions of law relating to maintaining the beauty and the aesthetic quality of the capital city so that it cannot only boast of a glorious past but also of the present and the future. Besides so many display hoardings depicting various advertisements for promoting goods and services at one place can divert the attention of the motorists and drivers of heavy vehicles resulting in accidents. The civil authorities must regulate the erection of the hoardings and the fixing of advertisements thereon having regard to urban aesthetics, public safety, morality, public sentiments and other relevant factors.

19. In view of the above two rulings, I am of the view that a contrary view about the obligation of the NDMC, a local authority in the city of Delhi, to seek permission from the Urban Arts Commission, cannot be taken. These two decisions are categorical; they were rendered in the context of Sections 11. The plea of learned counsel that individual locations, or policies regarding placements of hoardings, etc, in the absence of a proposal for a development/ engineering work, cannot be examined as per the Commission's directives or guidelines, Therefore, has no substance; the NDMC, in terms of Section 11 and 12, had to give effect to the guidelines of the Commission.

20. The argument that the Byelaws have not been infringed, or that the NDMC has to give permission in a case like the present one, has to be examined in the light of the right of the petitioner, and obligations of the NDMC in that regard. A look at Bye-law 3 would show that clause (1) spells out the considerations relevant for deciding an application, seeking permission to put up an advertisement; they are

- i) shape and style of any advertisement sign, including name-boards, sign-boards and sign-posts,
- ii) keeping in view the consideration of the aspects of urban aesthetics, public safety, decency, morality and
- iii) other relevant factors.

Bye-law 3(3) enables the Committee to grant, or refuse permission. This power is discretionary; not compulsive, as is suggested by the petitioner. Discretionary, because the relevant considerations are as per Bye-law (1). Under these circumstances, as long as the NDMC keeps itself within the bounds of the Bye-laws and guidelines, the issue cannot be judged on merits. Hence, I am of the considered view that the petitioners contention about the NDMC not having any power to refuse permission, is without merit.

21. The next question is as to the NDMC's reasons for refusal of the petitioner's

application. The first reason, viz that the location of the Unipole is at a roundabout, is based upon the Commission's guidelines. Besides, the NDMC also relies upon certain directions issued by the Supreme Court. It cannot be said that these reasons are irrelevant or not germane to the issue concerned. The second reason is that the site is within a religious locale; Therefore, it tends to lower the sanctity of the religious institution. Learned counsel for the petitioner had submitted, in this context that when the owner of the premises was willing to exhibit the Unipole, the action of NDMC in denying permission, was an impermissible and unreasonable restriction on the petitioner's right to carry on its fundamental right to trade, occupation or business. The question is one of choice of a policy. The NDMC's byelaws as well as Sections 11 and 12 of the Urban Arts Commission Act mandate clearance by the Commission in regard to such matter by it. These are regulated by the guidelines, which clearly prescribe that no hoardings shall be permitted at or near religious or historical sites. These policies, embodied in the Bye laws, and the guidelines, incorporate a salutary consideration, of aesthetics. Every city Delhi being no exception- has its typical, visual character, with aesthetics that are unique to its culture, and heritage. The Bye-laws and the guidelines aim exactly at regulation of building, construction activity, and location of hoardings, etc, with that aim in mind. The guidelines, justifiably place restriction on placement of hoardings. Such guidelines cannot be characterized as unreasonable. The refusal of permission, cannot, in my opinion, be termed unreasonable, since it is based on the Bye-laws and the guidelines of the Commission. Importantly, the petitioner has not impugned the guidelines, or the bye-laws.

22. The next aspect is about the allegations of discrimination. The petitioners sought to rely on certain photographs to show that permission is granted or refused, in a selective manner; many hoardings are permitted on roundabouts, and near religious places. The contention advanced is that this amounts to discrimination. Learned counsel states that if the location proposed by the petitioner is not permissible, then in the absence of any contrary material, it was equally not open to NDMC to permit others in similar locales to put up Unipoles.

23. The issue arising for consideration is whether anyone can insist, in proceedings under Article 226 of the Constitution, that he should receive equal treatment with a person who is not entitled to, but has been granted, benefit under an executive policy.

24. It has been held in several judgments by the Supreme Court that equality is a positive concept, and cannot be enforced in a negative manner. In *State of Bihar and Others Vs. Kameshwar Prasad Singh and Another*, the Court held as follows:

When any authority is shown to have committed any illegality or irregularity in favor of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly wrong judgment passed in favor of one individual does not entitle others to claim

similar benefits.

25. Having regard to the above, I am of the opinion that the petitioner can succeed, if at all, on the basis of his claims, and the materials placed in their support. It cannot seek advantage of orders or actions which are not in the court, have not been challenged, or even if such action is impermissible.

26. In view of the foregoing discussion and conclusions, I am of the view that no infirmity can be found in the order impugned by the petitioner. The petition is Therefore dismissed, with no order as to costs.