
(1996) 05 DEL CK 0080

In the Delhi High Court

Case No : C.M. No. 13 of 1996 in C.C.P. No. 115 of 1996

Delhi Outdoor Advertisers Ass.

APPELLANT

Vs

M.C.D.

RESPONDENT

Date of Decision : 22-05-1996

Acts Referred:

Citation : AIR 1997 Delhi 43 : (1996) 4 DLT 63

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : P.P. Rao, with R.P. Sharma, for the Appellant; Shiv Kr., for the Respondent

Final Decision : Allowed

Judgement

1. By this application the petitioners" seek restoration of status quo ante as on 27-3-1996 by directing the respondent-MCD to permit display of advertisement hoardings on the Municipal land. This application has been opposed by the respondent on the ground that the petitioners have no right to display advertisement hoardings on the Municipal land without obtaining licences under the DMC Act.

2. Brief facts leading to filing of this application are that the petitioners have filed the Civil Writ Petition No. 1288/96 in this Court challenging certain amendments proposed to be incorporated in the existing bye-laws to regulate the trade of advertisement hoardings. Along with the writ petition the petitioners also filed an application (CM 2445/96) for interim relief. After hearing the parties, following order was passed by this Court on 27-3-1996:

"CW 1288/96

Notice to the respondent to show cause as to why rule nisi be not issued. Learned counsel for the respondent accepts notice and seeks time to file reply. Let that be done within four weeks with an advance copy to the learned Counsel for the petitioner. Rejoinder, if any, to be filed within one week thereafter.

Adjourned to 31-7-96.

CM 2445/96p2

Notice. Learned counsel for the respondent accepts notice and seeks time to file reply. Let that be done within four weeks with an advance copy to the counsel for the petitioner.

The bye-laws proposing amendment in the existing bye-laws to regulate the trade of advertisements have not yet attained finality. In order to carry on the business in question, a license is required under the Delhi Municipal Corporation Act. In the instant case, licences granted to various advertising agencies are expiring on 31st March, 1996. In view of the decision rendered in *Raj Restaurant and Another Vs. Municipal Corporation of Delhi*, it would be appropriate to direct the respondent/corporation to proceed according to law before taking any decision resulting in refusal to renew the licences. The interim order made by this Court shall remain in operation till the Corporation takes its fresh decision.

Liberty is granted to either party to seek modification/vacation of the interim order on completion of the pleadings.

Adjourned to 31-7-1996"

3. Thereafter, on 4-4-1996 the Additional Deputy Commissioner, Central Zone, Delhi (Respondent No. 3) issued the following order (Annexure P-III) directing removal of advertisement hoardings from the municipal land.

No. PA/AEC/Con. Zone"96121p2

Dt. the 4th April, 1996

"A meeting was held in the office chamber of Commissioner, MCD today which was attended by all ADCs/ZACs including the undersigned. Following directions were issued to all ADCs/ZACs for immediate compliance:--

1. All hoardings in Central Zone whether on private properties or on Municipal land be removed forthwith.
2. All hoarding stands unauthorised w.e.f. 1-4-96. as their display contracts have not been renewed. Accordingly, all hoardings need to be removed.
3. Priority should be given to the intersections of main road, sites of main roads particularly the roads on which heavy vehicular traffic passes through.
4. Private labourers, gas cutters be hired for removing those hoardings.
5. While removing the hoardings video film be prepared along with the data.
6. Continuous action be taken w.e.f. today itself and there shall be no let up during the ensuing holidays. Maximum impact should be generated within the next 3 days.

7. All these hoardings which cannot be removed due to some practical problem such as their being erected on private properties or due to paucity of time shall be defaced by black paint.

It is needless to emphasize that prompt action is needed to remove all hoardings. Accordingly it is directed that all hoardings along with their structure be removed using hired gas cutters. The labour of building deptt along with equipments and truck shall also be engaged exclusively for removal of these hoardings during the next 3 holidays. Daily report giving details of hoarding removal along with their size and location in a tabular form shall be sent to Asst. Commissioner/Advt. both on telephone and in writing. This office shall remain open for this action during the next 3 holidays.

Sd/- Addl. Deputy Commissioner

Central Zone.

4. Reference may now be instructively made to the following observations of the Supreme Court *Raj Restaurant and Another Vs. Municipal Corporation of Delhi*, :--

"Where in order to carry on business a license is required, obviously refusal to give license or cancellation or revocation of license would be visited with both civil and pecuniary consequences and as the business cannot be carried on without license it would also affect the livelihood of the person. In such a situation before either refusing to renew the license or cancelling or revoking the same, the minimum principle of natural justice of notice and opportunity to represent ones case is a must".

5. In view of the Court's order dated 27-3-1996 the respondent MCD was under a duty to issue show cause notices to the petitioners before issuing the impugned order dated 4-4-96. Admittedly, the petitioners' licences had expired on 31-3-1996. In such a situation before either refusing to renew the license or cancelling the same, the minimum principle of natural justice of notice and opportunity to represent one's case ought to have been observed by the respondent MCD. A person who has been dealing with the Govt. in the matter of trade has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality. It has to be borne in mind that the Govt. is a Government of laws and not of men. The activities of the Government have a public element and, Therefore, there should be fairness and equality. A duty to act fairly can be interpreted as meaning a duty to observe certain rules of natural justice. Reference may, in this connection, be made to the decision of the Apex Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, . It has been observed by their Lordships that (at p. 1636, para 10):

"It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be

informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affectation of some right or denial of some privilege."

As stated above, it has been held in the case of Raj Restaurant (supra) that; where in order to carry on business a license is required, obviously refusal to give license or cancellation or revocation of license would be visited with both civil and pecuniary consequences. In Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , their Lordships of the Supreme Court have observed that "Civil consequences undoubtedly cover infraction of not merely property or personal rights but of civil liberties material deprivations and non pecuniary damages. In its comprehensive connotation everything that affects a citizen in his civil life implicit a civil consequence". In such a situation the respondent MCD was bound to give the petitioners who were affected by its decision an opportunity of making representations before issuing the impugned order. Keeping in view the said principles of law, this Court has directed the respondent MCD to proceed according to law before taking any decision resulting in refusal to renew the licences of the petitioners. This Court has further directed that the said interim order shall remain in operation till the MCD takes its fresh decision. I may also add here that specific reference of the decision in Raj Restaurant (supra) was made in the Court's order dated 27-3-1996 and thus the respondent-MCD was obligated to issue notices to the petitioners before issuing the impugned order dated 4-4-1996, which has resulted in civil consequences. It is not disputed that the minimal requirement of issuing a show cause notice to the petitioners and affording them an opportunity to make their representations against the proposed action has not been observed. On the contrary the respondent No. 3 arrogated to himself the power to act without notice and as such the impugned action of the respondents smacks of arbitrariness. In this view of the matter, I have no option but to hold that the impugned order dated 4-4-1996 is not only vitiated by the failure to observe the principle Audi Alteram Partem but also is clearly vocative of the order dated 27-3-1996 passed by this Court.

6. The petitioners have filed this petition under Articles 215 and 225 of the Constitution of India read with Sections 2, 11, 12 and 14 of the Contempts of Courts Act. I need not cite any authority for the proposition that it is of high importance that the orders of the Court should be obeyed and a contemner ought not to be permitted to enjoy and/or keep the fruits of his contempt. Delhi Development Authority Vs. Skiper Construction Company (P) Ltd. and another, . It has been held by Their Lordships that it is the duty of the Court, as a policy, to set the wrong right and not allow the preparation of the wrong doing and no technicality can prevent the Court from doing justice in exercise of its inherent powers. In the facts and circumstances of the case, this Court will have to put back the parties in the same position as they stood immediately prior to the issuance of the impugned order which means that the impugned order dated 4th

April, 1996 would have no effect whatsoever qua the petitioners.

7. In this view of the matter, I am of the opinion that the CMP should be allowed. Accordingly the status quo ante as on 27-3-1996 is restored and it is declared that the parties are put back in the same position as they stood immediately prior to the issuance of the impugned order dated 4th April, 1996 which means that the order dated 4th April, 1996 would have no effect whatsoever qua the petitioners. This order will remain in force till the MCD proceeds according to law before taking any decision resulting in refusal to renew licences of the petitioners. It is, however, clarified that any observation made above will not be construed as an expression of opinion on the merits of the case and the same will not come in the way of disposal of the contempt petition on merits. The respondents are directed to remain present before this Court on 8-8-1996.

8. Petition allowed.