

(2007) 07 MP CK 0028
In the Madhya Pradesh High Court
Case No : W. P. No. 5958 of 2006

Mohd Farooq

APPELLANT

Vs

Municipal Corporation, Bhopal and Another

RESPONDENT

Date of Decision : 06-07-2007

Acts Referred:

Citation : (2007) ILR (MP) 1109 : (2008) 1 MPLJ 251

Hon'ble Judges : A.K. Patnaik, C.J.;Ajit Singh, J

Bench : Division Bench

Advocate : Girish Shrivastava with Vijay Raghavsinh, for the Appellant;
Ravindra Shrivastava with Shekhar Sharma and Prem Francis and A.M. Mathur
with Aditya Sanghi, for the Respondent

Judgement

A. K. Patnaik, C. J.

The Petitioner is a resident of Bhopal and has filed this writ petition as Public Interest Litigation. He has stated in the writ petition that the Municipal Corporation, Bhopal, Respondent No. 1, has adopted a resolution to install 50 gantries and 200-road signages at different locations in the city of Bhopal. He has further stated that these gantries and road signages are to be installed by private agencies, which will be allowed to place advertisements on such gantries. The Petitioner apprehends that such advertisements placed on the gantries will divert the concentration of the vehicle drivers while driving and consequently will cause road accidents. The Petitioner has accordingly prayed for a direction to the Respondents not to erect such gantries either directly or through any private advertising agencies.

On 2-5-2006, the Court while issuing notice in the writ petition passed an interim order that in the meanwhile, the Respondents shall ensure that no reception gate (gantry) for the purpose of advertisement will be erected on the main roads. Thereafter, M/s Shreenathjee Infrastructure Investments filed I. A. No. 3749/2006 to intervene in the writ petition and also filed I.A. No. 3750/2006 for vacating the interim order. On 18-5-2006, the Court passed orders allowing the

application for intervention of. the intervener and observed that until the replies are filed by the Municipal Corporation, Bhopal, and the State Government, the interim order dated 2-5-2006 should not be vacated. In the order passed on 18-5-2006, it was also clarified that gantries may be erected by the intervener and signages may be placed on the gantries, but no advertisement will be put up on the gantries for commercial purposes.

After return was filed by the Municipal Corporation, Bhopal, Respondent No. 1, the Court heard the learned Counsel for the parties and passed an order on 13-7-2006 directing the Chief Secretary, Government of M. P., to constitute an Expert Committee with the Principal Secretary of Transport Department of the Government of M. P. as the Chairman to go through the writ petition and the replies filed by the Respondent No. 1 and the intervener and submit a report to this Court after deliberations whether the installation of proposed gantries in Bhopal city would increase the chances of road accidents.

Pursuant to the order dated 13-7-2006, of the Court, the Chief Secretary Government of M. P., constituted an Expert Committee and the Expert Committee submitted a report suggesting that gantries/road signages if erected on the roads in densely populated areas would cause hindrance to traffic and that advertisements displayed on such gantries are likely to disturb the concentration of the drivers of motor vehicles and increase the possibility of road accidents. On 3-1-2007, the Court directed the Respondent No. 1 to remove all advertisements from the gantries/road signages in the light of the report of the Expert Committee.

When the writ petition was taken up for final hearing, Mr. Girish Shrivastava, learned Counsel for the Petitioner submitted that as reported by the Expert Committee, advertisements on the gantries across the road are likely to disturb the concentration of the drivers of motor vehicles and increase the possibility of road accidents and, therefore, the Court should direct the Respondents not to allow advertisements on the gantries. He cited the order in *M.C. Mehta Vs. Union of India (UOI) and Others*, , in which the Supreme Court has observed that hazardous hoarding visible to the traffic on the road is a disturbance to safe traffic movement and has refused to modify its earlier order dated 20-11-1997 directing the authorities to remove all hoardings which are on roadsides and which are hazardous and a disturbance to safe traffic movement.

Shri A. M. Mathur, learned Counsel for the intervener, submitted that the Expert Committee has ignored the findings of the Committee of the inspectors who had submitted a report to the Expert Committee that gantries/road signages would not normally divert the attention of the drivers of motor vehicles and are not likely to cause any road accidents. He cited the decision of the Supreme Court in *5 M and T Consultants, Secunderabad Vs. S.Y. Nawab and Another*, , in which the Supreme Court has referred to its earlier decision in *G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others*, , wherein it was observed that a project, otherwise legal, does not become any the less permissible by the mere

reason that the local authority had entered into an agreement directly with a developer for its financing and execution. He submitted that in the aforesaid case of *5 M & T Consultants, Secunderabad v. S. Y. Nawab and another*, (supra), the Supreme Court had also found that the materials on record substantiated the absolute need and necessity to undertake works of the nature executed by the Appellant in furtherance of great public interest and for larger public and common good. He argued that the erection of gantries have been entrusted by the Bhopal Municipal Corporation to the intervener and such gantries would have road signages on the front side and advertisement at the back side and drivers driving motor vehicles on the roads will not normally see the advertisement at the back side of the gantry. Mr. Mathur, further submitted that the intervener had undertaken this work at his own cost and without any payment from the Bhopal Municipal Corporation and as per scheme, the intervener will raise the cost of the project from the advertisements on the back side of the gantries.

Mr. Ravindra Shrivastava, learned Senior Counsel appearing for the Bhopal Municipal Corporation, referred to the R.F.P. document for providing, fixing, constructing/erecting of different road signages at various locations in Bhopal Municipal Corporation Limits on the basis of Build, Operate and Transfer (BOT). He submitted that the document will show that interested parties will have to build, maintain and later hand over the assets to the Corporation and in lieu of this the parties can be given advertisement rights on these road signage poles. He submitted that the document will also show that the basic purpose of the scheme is to give traffic directions to the commuters. He referred to the general conditions in the document to show that the project will be executed through private participation and the private entrepreneur is expected to recover his total capital outlay, including project cost, interest on project cost, overheads, profit and other incidental expense through the display of advertisements. He referred to Clauses 4.02 and 4.03 in the document, which state that these schematic drawing of the signages would be as enclosed in Appendix-2 and the entrepreneur has to adopt necessary precautionary and effective methods so as to not to disturb the flow of routine traffic during the execution of work of the project. He also referred to Clause 4.04 of the document in which it is stipulated that the entrepreneur shall not display any banned, illegal or obscene matter in the advertisement. He pointed out that in Clause 4.06 of the document, the entrepreneur is required to ensure that all the necessary environmental clearance from the concerned departments of the Corporation/State Government are made available prior to the commencement of the execution of the project. He submitted that all these clauses in the documents will go to show that the entrepreneur will not have a free hand in erecting the gantries and placing the advertisements thereon and the Bhopal Municipal Corporation will exercise necessary control in the interest of the general public. He also referred to the bye-laws of the Bhopal Municipal Corporation to show the control that Municipal Corporation will have on the advertisements on the gantries.

Mr. Shrivastava cited the Division Bench judgment of this Court in *M/s Sagardeep*

Advertising v. Municipal Corporation, Jabalpur and others, ILR 2007 M.P. 450, in which this Court has observed that the Municipal Corporation has power to regulate advertisements and that with the immense importance that advertisement has assumed in the commercial field, advertisements have become a major source of revenue and Municipal Corporation cannot be prevented from deriving benefits from the same. He submitted that considering the costs involved in putting up the gantries for road signages, which are necessary for giving direction to the public, the Municipal Corporation, Bhopal has taken a decision to execute the project through private entrepreneurs who will be entitled to put up advertisements on the back side of the gantries to meet the costs of the project. He cited the decision in P. Narayana Bhat Vs. State of Tamil Nadu and Others, , and submitted that unless the hoardings are found to be hazardous and are disturbing to the safe traffic movement which, in turn, would adversely affect the free and safe flow of traffic, the authorities could not take action u/s 326-J of the City Municipal Corporation Act of the State of Tamilnadu.

We have considered the submissions of the learned Counsel for the parties. This Public Interest Litigation was entertained by the Court because of an apprehension expressed by the Petitioner that road signages and advertisements if put on gantries across the road may distract the concentration of the drivers in motor vehicles and cause road accidents. In other words, the Court was concerned with the danger to the life of the common man on the road, which is guaranteed under Article 21 of the Constitution of India. It is for this reason that on 13-7-2006, the Court after observing that earning of revenue should not be at the cost of life of the people using different roads in the city of Bhopal, passed an order that some Expert Committee should examine and report whether installation of proposed gantries in Bhopal city would increase the chances of road accidents.

The Expert Committee, therefore, was required to examine in depth whether gantry with road signages and advertisements would really lead to road accidents endangering the life of people on the road. The Expert Committee has submitted a report expressing an opinion that gantry with road signages and advertisements if erected on roads are likely to disturb the concentration of the drivers of motor vehicles and increase the possibility of road accidents. But on reading of the report of the Expert Committee, we do not find that sufficient reasons have been given by the Expert Committee to come to the conclusion that gantry with road signages and advertisements if erected on roads would cause road accidents. Moreover, the Expert Committee appears to have ignored the report of the inspectors that such road signages and advertisements are not likely to cause accidents on the roads.

Under Madhya Pradesh Municipal Corporation Act, 1956, Municipal Corporations have got sufficient powers to permit erections on roads. In M/s Sagardeep Advertising v. Municipal Corporation, Jabalpur and Ors. (supra), cited by Mr.

Ravindra Shrivastava, a Division Bench of this Court has considered at length the provisions in the Municipal Corporation Act, 1956 particularly Sections 322, 323, 335 and 366 and has observed that the Corporation has the power to regulate advertisements but no statutory procedure or manner has been prescribed or framed to regulate them by the Jabalpur Municipal Corporation. The Division Bench has further observed in the said case that with the immense importance that advertisement has assumed in the commercial field, advertisements have become a major source of revenue and the Municipal Corporation cannot be prohibited or excluded from deriving benefits from the same. Thus, so long as the M. P. Municipal Corporation Act, 1956 or any other law does not prohibit the Municipal Corporations to allow erection of gantries/road signages and advertisements, the Court cannot restrain the Municipal Corporations from erecting gantries with signages and advertisements except for the purpose of ensuring that such gantries with road signages and advertisements do not affect the right to life guaranteed by Article 21 of the Constitution.

Road signages on the gantries are essential for giving directions to the general public on the road and in particular in a city like Bhopal where a person is likely to lose his way if he does not get the direction for his destination. Road signages are also not normally considered as distractions for the drivers of the motor vehicles plying on the road. Advertisements on the gantries may divert the concentration of the driver driving the vehicle on the road but not all advertisements but some advertisements, which distract the drivers driving the vehicles on the road. It is for this reason that in the *M. C. Mehta v. Union of India and Ors.* (supra), cited by Mr. Girish Shrivastava, the Supreme Court has not directed that all hoardings which are on the roadside have to be removed, and instead has only directed that hoardings on the roadsides which are hazardous and disturbing to safe traffic movement have to be removed.

Similarly, in *P. Narayana Bhat v. State of T.N. and Ors.* (supra), cited by Mr. Ravindra Shrivastava, the Supreme Court took the view that the authorities concerned are empowered u/s 326-J of the Tamilnadu City Municipal Corporation Act to either refuse to grant licence/renewal or to remove the existing hoarding only if the same is hazardous and is a disturbance to safe traffic movement which, in turn, should adversely affect free and safe flow of traffic. We are thus of the view that while road signages and advertisements on the gantries can be permitted, advertisements on the gantries which would be hazardous and disturbing to the safe traffic movement and may cause road accidents should not be permitted by the Corporation, so as to ensure that the right to life of the people on the road guaranteed under Article 21 of the Constitution of India is to be protected.

For the aforesaid reasons, we dispose of this writ petition with a direction to the Bhopal Municipal Corporation to ensure that advertisements on the gantries, which would be hazardous and disturbing to the safe traffic movement in the roads of Bhopal city and are likely to cause road accidents, are not to be put up

on the gantries. The interim orders passed in this case are vacated. The security amount deposited by the Petitioner be refunded to the Petitioner.

Order accordingly.