
(2010) 04 AHC CK 0287
In the Allahabad High Court
Case No : C.M.W.P. No"s. 373 and 511 of 2010

Taj Advertising and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-04-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19(1)

Uttar Pradesh Municipal Corporation Act, 1959 — Section 172, 192, 193, 196, 199

Citation : (2010) 4 AWC 3851

Hon'ble Judges : Rajes Kumar, J;Pankaj Mithal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajes Kumar and Pankaj Mithal, JJ.—All the petitioners in both the writ petitions are advertising companies/firms engaged in the business of advertising by placing and erecting hoardings on the public land either of the municipal corporation or the development authority or of the public works department as well as on certain private properties. They have challenged the notified dated 24.12.2009 which is said to have been published in the extra-ordinary Gazette notifying the Uttar Pradesh Municipal Corporation (Assessment and Collection of Tax on Advertisement) Rules, 2009 which have been enforced w.e.f. 1.4.2010.

2. We have heard Sri B. D. Mandhyan, senior advocate, Sri Sanjeev Kumar, learned Counsel for the petitioners in one of the writ petitions, Sri C. K. Parekh, learned Counsel for the Municipal Corporation and Sri K. Zaidi. for the Agra Development Authority. Learned standing counsel has appeared for the State of U.P.

3. The contention of learned Counsel for the petitioners is that they have a fundamental right to carry business of advertising. The impugned Rules, infringe their above right and as such are ultra vires. Secondly, the procedure prescribed under Sections 199 to 203 of the U.P. Municipal Corporation Act, 1959 (hereinafter referred to as an "Act") has not been followed in enacting the

aforesaid Rules.

4. The respondents have defended the aforesaid Rules on the ground that they are only restrictive in nature and does not completely oust the petitioners from carrying on the business of advertisement. The Rules have been framed in due exercise of powers conferred upon the State Government u/s 540 read with Sections 550, 219 and 227 of the Act, after considering the objections received.

5. A holistic reading of the said Act reveals that municipal corporation are empowered to impose taxes as provided u/s 172 of the Act and tax on advertisement (not being advertisement published in the newspaper) is one of them. Section 192 of the Act provides that where such tax on advertisement is imposed every person who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding or structure any advertisement or who displays any advertisement to public view in any place whether public or private, shall be liable to pay advertisement tax calculated at such rates and in such manner and as may be prescribed under the Rules subject to exemptions provided therein. The procedure of imposing such tax by corporations has been laid in Sections 199 to 206 of the Act. Further, Section 227 authorises the State Government to make Rules for the purposes of carrying out the effect of the provisions of Chapter IX dealing with the taxes of the Corporation and particularly, the matters referred to in Section 219 which permits framing of Rules as to assessment, collection, composition, prevention of evasion, refund of taxes and other matters relating to taxes. The procedure for framing such Rules has been provided in Section 540 of the Act.

6. It is trite to state that a subordinate legislation like the Rules in question are open to challenge primarily on the following grounds:

(i) legislative incompetence;

(ii) being ultra vires to the provisions of the Act under which they have been framed or the Constitution of India;

(iii) being in conflict with any other statutes; and

(iv) being arbitrary and violative of Articles 14 and 16 of the Constitution.

7. The legislative competence of the State Government to frame the aforesaid Rules is not disputed nor it is alleged that the said Rules are in conflict or repugnant to any other statute. The validity of the aforesaid Rules is being questioned only on the ground that they are ultra vires to Article 19(1)(g) of the Constitution of India.

8. A quick glance at the offending Rules demonstrates that they provide for obtaining permission of the corporation for erecting, exhibiting, displaying, sticking, posting, writing, drawing or hanging an advertisement or hoarding on any site which is to be granted on the application submitted in a prescribed form with fee on the recommendation of the allotment committee either by public

auction or by inviting tenders and to levy tax thereon. This is in consonance with Section 193 of the Act which prohibits advertisement without written permission of the Municipal Commissioner and Section 196 which empowers the municipal corporation to remove unauthorised advertisement.

9. The first submission that the licence for advertising cannot be given by public auction, is being mentioned only to be rejected. The Apex Court in *Ram and Shyam Company Vs. State of Haryana and Others*, as well as in *Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others*, has held that public officer entrusted with the care of public properties are required to show exemplary vigilance and public properties are only be disposed of by adopting the best method that may be public auction and not private negotiation. Similar view has also been expressed by the Supreme Court in *Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another*, The Courts have thus, accepted public auction as the most transparent means of disposal of public property. It also avoids favouritism.

10. The purpose of public auction is to fetch maximum revenue as public interest is paramount. Awarding a contract of sale or leasing out property of a Government or a public authority for a consideration less than the highest competitive amount is not in public interest. Therefore, obviously, the procedure provided under the Rules for granting permission for advertising through public auction or by inviting tenders cannot be said to be suffering from any vice of unreasonableness.

11. No case for any socio-economic need to deviate from the above settled position has been canvassed.

12. The submission that the Rules tends to create monopoly in favour of big advertising companies and would result in driving out small advertisers like the petitioners from the business is also of no substance inasmuch as the Rules framed in no way prohibit or restrict the participation of any advertising company/firm, big or small, for the purposes of seeking licence from the municipal corporation.

13. Another submission that the requirement of giving undertaking of the owner of the premises or building where the advertisement is to be displayed to the effect that in default on part of the advertising company/firm to pay the tax he himself would be liable for the same is unfair and unreasonable as no person would be ready to give such an undertaking also has no force and is devoid of any merit. The said Rule is to ensure recovery of tax dues. It imposes primary liability upon the advertising company/firm to pay advertisement tax and thereafter on its failure to pay the liability shifts upon the owner of the building who is supposed to have allowed it to be used for advertising purposes. We fail to comprehend how such a Rule which tends to protect the revenue of the corporation can be said to be arbitrary. The procedure prescribed or the restriction so placed under the Rules as such is neither arbitrary nor

unreasonable.

14. No specific Rule has been placed before us which tantamounts to infringe the right of the petitioners to carry their business of advertisement.

15. None of the aforesaid Rules to our mind offends the fundamental right of the petitioners to carry business of advertisement. The said Rules ex facie are only procedural and restrictive in nature which we do not consider to be violative of the fundamental rights guaranteed under the Constitution of India.

16. As far as the second aspect that the procedure laid down in Sections 199 to 203 of the Act has not been followed and as such the Rules are invalid, is also misconceived and is of no substance. Admittedly, the aforesaid Rules have been framed by the State Government in exercise of powers u/s 540 of the Act read with Section 227 of the Act. Both the above provisions confer upon the State Government a right to frame Rules for the purposes of the Act specially with regard to collection of taxes. The aforesaid Rules have not been framed by any individual corporation. The procedure prescribed under Sections 199 to 203 of the Act is the procedure which has to be followed by the corporation in imposing tax and as such is not applicable where the Rules are framed by the State Government.

17. It is not the case of petitioners that the State Government has not followed the procedure laid down in Section 540 of the Act in framing and publishing the aforesaid Rules rather the notification itself recites that the Rules were previously published by the Government Notification dated 27.2.2008 and it is only after considering the objections and the suggestions received that the Government is pleased to make the present Rule. In this view of the matter, the second argument advanced on behalf of the petitioners also has no force at all and fails.

18. Various authorities cited viz., *Sodan Singh and Others Vs. New Delhi Municipal Committee and Others*, and the like are of no avail as there is no second opinion on the proposition of law that footpaths or pavements are for public convenience and the hawkers have no fundamental right to hawk at a particular place. Thus, they need no elaborate discussion.

19. No other point was pressed before us.

20. In view of the aforesaid facts and circumstances, we do not find any merit in the petitions. They accordingly, fail and are dismissed. No order as to costs.