
(1995) 05 DEL CK 0009

In the Delhi High Court

Case No : Interim Application No. 10796 of 1994 and Suit No. 2834 of 1994

Vasudeva Publicity Service

APPELLANT

Vs

New Delhi Municipal Committee

RESPONDENT

Date of Decision : 01-05-1995

Acts Referred:

Citation : (1995) 3 AD 292 : (1995) 59 DLT 227 : (1995) 33 DRJ 589 : (1995) RLR 444

Hon'ble Judges : Jaspal Singh, J

Bench : Single Bench

Advocate : Mukul Rohatagi, S.K. Manaktala and B.B. Gupta, for the Appellant;

Judgement

Jaspal Singh, J.

(1) The dispute revolves mainly around the effect of Bye-laws made by the New Delhi Municipal Committee relating to pasting of Bills and Advertisements framed u/s 188(n) of the Punjab Municipal Act, 1911. However, let me first bring forth the factual canvass.

(2) The plaintiff firm is engaged in the business of outdoor publicity/ advertisement, inter alia, by way of display of hoardings etc. in Delhi and other places. It says that it applied by registered post to the New Delhi Municipal Committee for grant of permission to its advertisement hoardings at two places, one within the premises of the National Stadium at the India Gate round-about and the second on the land allegedly belonging to the Northern Railways at Safdarjung Fly over and as the New Delhi Municipal Committee failed to intimate its decision in writing to the applicant within sixty days of receipt of the application, the same was deemed to have been sanctioned as per Bye law 3 of the Bye-laws and consequently the hoardings were erected and advertisements displayed. The grievance of the plaintiff firm is that the New Delhi Municipal Committee is threatening to remove, deface and damage the said hoardings. Hence its suit for permanent injunction and an application under Order 39 rules 1

and 2 of the CPC for grant of interim relief.

(3) On December 15, 1994 notice of the application under Order 39 was ordered by a learned single Judge to be issued for February 17, 1995 and, in the meanwhile, the New Delhi Municipal Committee was restrained from removing, defacing, damaging or interfering with the two advertisement hoardings in question.

(4) The New Delhi Municipal Committee has contested the suit and has sought vacation of the interim order. It contends that no application was received, that the postal A.D. card is a forgery, and that even if sanction is deemed to have been granted, it must be taken to be limited to the advertisements originally displayed and as such the plaintiff firm cannot keep on displaying different advertisements without first obtaining sanction with regard to them too. In support reliance is sought to be placed on the Bye-laws.

(5) There is nothing on the record to lend support to the assertion that the postal A.D. card is forged. For the present thus, we may simply brush aside this argument.

(6) I may as well mention that as per the learned counsel for the Committee it were some other documents which were received by registered post. I am not inclined to accept, not for the present at least, this argument as well. The reasons are two. Firstly, this is not pleaded and secondly when pointedly asked by me to produce the documents which were actually received, the learned counsel preferred to become evasive.

(7) Prima facie, the plaintiff firm did apply for sanction. Admittedly, the Committee did not intimate its decision in writing to the applicant within sixty days of the receipt of the application. What is its effect? Bye-law 3(3) says:

"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 of 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."

(8) Consequently thus, prima facie, the application is to be taken as having been sanctioned. However, this does not end the matter here.

(9) The contention of the learned counsel for the respondent Committee was that even if the application be taken to have been sanctioned such sanction cannot be utilised for all types of "advertisement signs". If I understand the contention correctly it means if sanction is accorded say for advertisement sign of company "A" depicting an apple falling from a tree, it cannot be utilised for advertisement sign of company "B" depicting say Adam, Eve and a serpent under an apple tree. Is it so ? The answer is provided by the Bye Laws. Let me thus have a look at them. Bye-law 2(a) which defines "advertisement sign" is as under:

"2(A)"ADVERTISINGsign" means any surface or structure, with characters, letters of illustrations applied thereto and displayed in any manner whatsoever out of door for purposes of advertising or to give information regarding or to attract the public to any place, person, public performance, article or merchandise whatsoever, and which surface or structure is attached to, forms part of or is connected with any building, or is fixed to a tree or to the ground or to any pole, screen fence or hoarding or displayed in space;"

(10) Chapter I under the head "Regulation of Advertisement Signs" contains Bye-law 3 part of which has already been reproduced by me above. It is time to reproduce its sub by-laws (1) (2) and (4) also. They read as under:

"3.CONSIDERATIONof 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 or 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. (4) When a sign has to be altered, information only on such plans and statements, as may be necessary, shall be included in the form. However, the changing of movable parts of a sanctioned sign that is designed for such changes, shall not be deemed an alteration, if the conditions of the original sanction are not violated."

(11) What is the cumulative effect of the above-noted Bye- laws? They show that since an advertising sign means any surface or structure "with characters, letters of illustrations applied thereto", the New Delhi Municipal Committee has the power to regulate such advertisements and that while exercising this power it has to keep in view "the consideration of the aspects of urban aesthetics, public safety, decency, morality land other relevant factors". It is because of these and similar considerations that, as per the Appendix the Application Form must contain besides other things, the type of the sign and so also the details of the sign including the "manufacturer"s name and address." I say, and I hope correctly, that the only conclusion which can be drawn from these Bye-laws is that the Application Form must necessarily contain such particulars of the proposed Advertisement sign which would enable the Committee to consider the aspects of urban aesthetics, public safety, decency, morality etc. and that it must also contain the "manufacturers name and address". If that be so, surely, the sanction of the application must necessarily be taken to be confined to the Advertisement sign of a particular manufacturer whose name and address is supplied and must further be taken to be confined to that particular sign only

which has not been found to be abhorrent to urban aesthetics, and against public safety, decency, morality etc. In short thus the sanction would be limited one, limited to a particular manufacturer and confined to a particular advertisement sign. It cannot, in other words, be made available to unnamed and unspecified manufacturers or to such advertisement signs also whose particulars and contents had not been supplied and approved.

(12) Unfortunately, in the present case, the application in question did not contain any of the particulars as detailed in the preceding paragraph. It was thus an incomplete application. It could perhaps be rejected on this score alone but then the New Delhi Municipal Committee sat over the matter and allowed sixty days to pass by giving ground to the petitioner to seek the benefit of Bye-law 3(3). But then, can the application be deemed to have been sanctioned for Advertisement signs of all hues and of unspecified manufacturers? Or, will this deemed sanction be taken to have invested the petitioner with unlimited and unchannelled discretion with regard to choice of manufacturer and choice of design and content of the Advertisement signs? Surely, this would lead to absurd as well as unhealthy and undesirable results.

(13) How to proceed with the matter then? It appears that after the petitioner took the application as having been sanctioned it put up Advertisement signs at the respective sites. One related to Raymond's and the other which was near to the sign board of Sports Authority of India was with regard to Home Theatre. This is borne out from Annexure E. Admittedly at present Advertisement sign of The Pioneer appears at the Safdarjung Flyover whereas at the second site the Advertisement sign of BPL-TV is being displayed. Under the circumstances the best course would be to treat the application as deemed to have been sanctioned only with regard to the two advertisement signs which are at present being displayed at the said sites and to which reference has been made by me above. The order of December 15, 1994 is thus modified accordingly and shall be treated as confined to the said two advertisement signs only. This, however, is subject to the condition that the petitioner, without prejudice to the rights of the parties, pays all the dues to the New Delhi Municipal Corporation within two weeks from today. It is, however, made clear that nothing said in this order shall be read as an expression of opinion on the merits of the case.