

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 28.09.2010
Judgment delivered on: 24.12.2010

W.P.(C) 19941/2005

M/S.H.T.MEDIA LTD.

.....Petitioner

Through: Mr.Sandeep Sethi, Sr. Advocate with
Mr.D.S.Chadha and Mr.Nikhil Bhalla,
Advocates.

Vs.

MUNICIPAL CORPORATION OF DELHI

.....Respondent

Through: Ms.Usha Saxena, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

KAILASH GAMBHIR, J.

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1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks a restraint order against the respondent MCD from challaning or prosecuting the petitioner for display of its boards in front of various Group Housing Societies containing the name/trade name of the petitioner. The petitioner also seeks directions to restrain the respondent/MCD from removing such boards from various sites of display of such boards.

2. The case of the petitioner as set out in the writ petition is that the petitioner was approached by a number of citizens and residents of various Group Housing Societies/Multi-storied Buildings to provide display boards indicating the names of their Societies and agreeing to such requests of various Societies, the petitioner for the last several years has been providing such display boards. The petitioner has also stated that the individuals in the Group Housing Societies and Multistoried Buildings lose interest and do not spend any amount towards the costs of display boards and their maintenance and, therefore, the petitioner has come forward

to incur such costs with a view to guide and help the visiting strangers. The petitioner has further stated that since the petitioner has been sponsoring the names and addresses of these Societies/Multistoried Buildings, therefore, along with such boards, the petitioner has also displayed the name of its trade name. The petitioner has also stated that it is not doing any advertisement and, therefore, it is not required to obtain any license from the respondent/MCD just for the display of its trade name along with the name of the Society/Multistoried Building. The petitioner has also challenged the public notice dated 16.08.2005 published by the respondent thereby prohibiting such advertisements without written permission of the Commissioner of the MCD. The petitioner has also given a list of about 114 sites where it has displayed its trade name along with the names of the Group Housing Societies and Multistoried Buildings.

3. The respondent, on the other hand, has taken a stand that that through a public notice dated 16.08.2005, the general public including the Residents Welfare

Associations/Cooperative Group Housing Societies have been advised not to allow display of any advertisement in public view in any manner whatsoever at any place within Delhi, including the entry/exit gates or outer walls of their respective residential complexes in contravention of Section 143 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the DMC Act). The respondent has also disputed the fact that display of the name of the petitioner on the outer gates of these Group Housing Societies/Multistoried Buildings is not an advertisement in terms of Section 142 of the DMC Act. The respondent has also stated that under the garb of display of name of the residential complexes/multistoried buildings, the petitioner has been advertising its own trade name in utter violation of provisions of the DMC Act.

4. Mr.Sandeep Sethi, the learned senior counsel appearing for the petitioner submitted that the term 'advertisement' has not been defined in the DMC Act and under Section 142(1) of the said Act, only the form of advertisement has been defined. Learned counsel placed

reliance on proviso (d) of Section 142 which the counsel stated is a gateway to the kind of advertisement, as has been displayed by the petitioner in the present case. Counsel further stated that the name of the petitioner outside any building would not amount to advertisement as has been envisaged under Section 142(1) of the DMC Act. Counsel also submitted that by such display the petitioner has not been advertising any of its goods or services. The case of the petitioner, according to the counsel, does not fall within Explanation 2 of Section 142 as such an explanation has been envisaged in relation to tax which must be for the purpose of advertisement and not for display of name simplicitor, so long as such display of name does not advertise the name of goods or services of the petitioner. The counsel also submitted that any information displayed outside any building or society just giving the description of such building by itself would not amount to advertisement. Counsel further submitted that Section 142 is a taxing provision and it has to be construed strictly unless the

advertisement to be taxed falls within the four corners of such Section.

5. In support of his arguments, learned senior counsel placed reliance on the following judgments.

- (1) *M/s. Brooke Bond (India) Pvt Ltd. Vs. NDMC and Ors.* ILR (1973) II Delhi 661,
- (2) *Lahori Mal and Another Vs NDMC* 52(1993) DLT 395,
- (3) *ICICI Bank and Anr. Vs. Municipal Corporation of Greater Bombay and Others* (2005) 6 SCC 404,
- (4) *NDMC Vs. Allied Motors Pvt. Ltd.* 1995 Supp (4) SCC 150.

6. Ms.Usha Saxena, counsel appearing for the respondent on the other hand refuted the submissions made by the learned senior counsel for the petitioner and contended that the display of trade name by the petitioner on outer gates of the group housing societies/ multistoried buildings is an 'advertisement' covered within the definition of Section 142 of the DMC Act and such boards are being displayed by the petitioner with commercial motive to publicize its trade name.

7. I have heard counsel for the parties at considerable length and have given my thoughtful consideration to the contentions put forth by them.

8. At the outset, it would be pertinent to reproduce the provisions and bye laws of the Delhi Municipal Corporation Act which are relevant for deciding the present petition as under:-

“42. Obligatory functions of the Corporation. – [Subject to the provisions of this Act and any other law for the time being in force, it shall be incumbent] on the Corporation to make adequate provision by any means or measures which it may lawfully use or take, for each of the following matters, namely:-

(a)
...

(q) the naming and numbering of streets and premises.....”

“142. Tax on advertisements. – (1) Every person, who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle any advertisement or, who displays any advertisement to public view in any manner whatsoever, visible from a public street or public place (including any advertisement exhibited by means of cinematographs), shall pay for every advertisement which is so erected, exhibited, fixed or retained or so displayed to public view, a tax calculated at such rates not exceeding those specified in the Fifth Schedule as the Corporation may determine:

Provided that no tax shall be levied under this Section on any advertisement which –

- (a) relates to a public meeting, or to an election to Parliament or the Corporation or to candidature in respect of such election; or
- (b) is exhibited within the window of any building if the advertisement relates to the trade, profession or business carried on in that building; or
- (c) relates to the trade, profession or business carried on within the land or building upon or over which such advertisement is exhibited or to any sale or letting of such land or building or any effects therein or to any sale, entertainment or meeting to be held on or upon or in the same; or
- (d) relates to the name of the land or building upon or over which the advertisement is exhibited, or to the name of the owner or occupier of such land or building; or
- (e) relates to the business of a railway administration and is exhibited within any railway station or upon any wall or other property of a railway administration; or
- (f) relates to any activity of the Central Government or the Corporation.

(2) The tax on any advertisement leviable under this section shall be payable in advance in such number of instalments and in such manner as may be determined by bye-laws made in this behalf.

Explanation 1. – The word “structure” in this section includes any movable board on wheels used as an advertisement or an advertisement medium.

Explanation 2 – The word “advertisement” in relation to a tax on advertisement under this Act means any word, letter, model, sign, placard, notice, device or representation, whether illuminated or not, in the nature of and employed wholly or in part for the purposes of advertisement, announcement or direction.

“143. Prohibition of advertisements without written permission of the Commissioner. – (1) No advertisement shall be erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall be displayed in any manner whatsoever in any place within Delhi without the written permission of the Commissioner granted in accordance with bye-laws made under this Act.

(2) The Commissioner shall not grant such permission if –

(a) the advertisement contravenes any bye-law made under this Act; or

(b) the tax, if any, due in respect of the advertisement has not been paid.

(3) Subject to the provisions of sub-section (2), in the case of an advertisement liable to the advertisement tax, the Commissioner shall grant permission for the period to which the payment of the tax relates and no fee shall be charged in respect of such permission.

“145. Presumption in case of contravention. – Where any advertisement has been erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or displayed to public view from a public street or public place in contravention of the provisions of this Act or any bye-laws made thereunder, it shall be presumed, unless and until contrary is proved, that the contravention has been committed by the person or the persons on whose behalf the advertisement purports to be or the agents of such person or persons.”

“DELHI MUNICIPAL CORPORATION

TAX ON ADVERTISEMENTS (OTHER THAN ADVERTISEMENT PUBLISHED IN NEWSPAPERS) BYE-LAWS, 1996

1.

2.
3.
4. Prohibition of erection, exhibition, fixation, retention or display of advertisement in without written permission of the Commissioner – No person shall erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post, kiosk/Bill Board (to be displayed on electric pole) or structure or upon or in any vehicle, any advertisement or display any advertisement to public view in any manner whatsoever in any place within the jurisdiction of the Corporation without the prior written permission of the Commissioner.”

9. As would be manifest from above, under Section 42 of the DMC Act, it is the obligatory function of the Corporation to make adequate provisions to undertake various measures to regulate the civic life of the citizens of Delhi and one amongst them is naming and numbering of streets and premises. To simply name any premises under no circumstances can constitute an advertisement to attract tax as envisaged under Section 142 of the DMC Act unless such display of name of premises contravenes any of the specifications laid down by the MCD under its bye laws. The fate of the entire case of the petitioner rests on the question that :

“Whether the display of the trade name of the petitioner (Hindustan Times) can be construed as an “advertisement” attracting tax in terms of Section 142 of DMC Act or call for a written permission of the Commissioner of the MCD as envisaged under Section 143 of the DMC Act prior to erection, exhibition or fixation of the same on the outer gates of the group housing societies and multistoried buildings?”

10. The term ‘advertisement’ has been defined in various dictionaries as under:-

Black’s Law Dictionary, 8th Edn.

Advertising.-1. The action of drawing the public’s attention to something to promote its sale. 2. The business of producing and circulating advertisements.

Law and Commercial Dictionary

Advertisement – Notice given in a manner designed to attract public attention. (Edwards v. Lubbock County) Information communicated to the public, or to an individual concerned, as by handbills, newspaper, television, billboards, radio. (First Nat. Corp’n v. Perrine)

New Encyclopaedia Britannica, Vol. I

Advertising – the techniques used to bring products, services, opinions, or causes to public notice for the purpose of persuading the public to respond in a certain way towards what is advertised. Most advertising involves promoting a good that is for sale, but similar methods are used to encourage people to drive safely, to support various charities, or to vote for political candidates, among many other examples.

Collins' Dictionary of the English Language

Advertisement – any public notice, as a printed display in a newspaper, short film on television, announcement on radio, etc., designed to sell goods, publicise an event, etc.”

Also, in explanation (2) of Section 142, the word ‘advertisement’ in relation to tax has been defined to mean any word, letter, model, sign, placard, notice, device or representation, whether illuminated or not, in the nature of and employed wholly or in part for the purposes of advertisement, announcement or direction.

11. ‘*The Hindustan Times*’ is a popular trade name of the petitioner. The newspaper Hindustan Times with the name ‘*The Hindustan Times*’ has a very wide circulation in the capital of the country and various parts of India and to a common and unwary person the trade name Hindustan Times is well identified only with one of the national dailies. Therefore, display of name ‘Hindustan Times’ at any place would connect and co-relate the said name with its newspaper alone and not with any other product, goods or services. It is not the case of

the petitioner that it is discharging charitable services to various group housing societies/multistoried buildings so as to facilitate them to display the name of their societies/multistoried buildings at their outer gates. The petitioner has also not placed on record copy of any such request made by these societies where the petitioner has displayed their names. This Court also cannot turn a blind eye to the fact that the petitioner is a commercial organization and the circulation of its newspaper '*Hindustan Times*' and the advertisement of its trade name is one of the methods to increase its circulation amongst the public. As per the list filed by the petitioner itself, at 114 places, the petitioner has put up its advertisement through the display of boards outside these group housing societies and multistoried buildings. Had the petitioner been involved in any philanthropic pursuit, then certainly it would not have been interested in display of its own trade name along with display of boards indicating names of such group housing societies/multistoried buildings.

12. Counsel for the petitioner placed reliance on various judgments of the Apex Court and this Court in support of the contention that the said act on the part of the petitioner cannot be termed as an advertisement. In ***M/s. Brooke Bond India Pvt. Ltd. Vs. NDMC*** (*supra*) where the Court was confronted with an issue whether the name (Brooke Bond) painted on the right and rear panel of a van would amount to advertisement attracting tax under the NDMC Act or not, the Court held as under:-

“In my opinion the advertisement, in order to attract levy of the advertisement tax, must relate to the business and commercial activity and must propagate ideas with regard to the goods or the services rendered by the party and mere display of the name of the party, without reference to the goods or services rendered will, ordinarily, not constitute an advertisement unless the displayed name happens to be the trade mark or trade name under which the goods are sold. In certain circumstances, if the display of the name is so closely associated and prominently displayed with the goods that the connection between the two is obvious, it must also constitute advertisement. However, in the instant case, it has not been suggested that Brooke Bond is the trade mark or trade name of the petitioners and there are no words in the impugned advertisement inviting attention of the public to the goods manufactured or sold by them. To a person who knows that the petitioner-company manufactures tea, the name “Brooke Bond” does not add to the information and advertisement as a means of communication is

redundant, while if a person does not know this fact already, the display of the mere name of the company does not convey any meaning and it cannot be said to be directed to create awareness in potential customers. Mr.Daphtary has suggested that the painting of the name of the petitioners in the instant case is similar to the one found on wagons and bogies of the Indian Railways or buses of the Airlines and Transport Undertakings. The counsel for the respondents contested the suggestion. There is force in the submission of the counsel for the respondents that prominent display of the name of the petitioners in large letters on three sides of a motor van is certainly not necessary or intended to innocently intimate merely the name of the owners to whom the vehicle belongs. However, in any view of the matter, this display of the name on three sides of the van falls short of constituting an advertisement, since it does not have any relation to giving information or propagating any ideas with regard to the goods manufactured or sold by the petitioners and it does not help to mould the image of the product of the petitioners or to create any awareness in potential customers, nor does it induce sales with any effectiveness. As a result, I hold that the mere display of the name of the petitioners (unless it be a trade mark or trade name) does not amount to advertisement within the meaning of the bye-law under consideration and it does not attract the levy of advertisement tax."

The above mentioned judgment is distinguishable on facts with the present case as there the Court was dealing with the writ petition filed by the Brooke Bond (India) Pvt. Ltd. challenging the recovery of advertisement tax levied by the NDMC on the advertisement displayed on the vans and hand

driven carts of the said company. In the said case the name of the company i.e. Brooke Bond was painted on the vans and on the hand driven carts and construing them as advertisement the NDMC levied advertisement tax thereon. The Court in the said case was concerned with bye-law No.7, which permits the traders to display the name boards on their own premises provided the same is purely a name board and it does not contain any item of advertisement. The petitioner in the said case also placed reliance on one of the resolutions passed by the committee which permits display of names on the panels of vehicles unless the same is done in a manner which tantamount to advertisement. It is in the background of these facts that the Court took a view that mere display of the name of the petitioner company (unless it be a trademark or trade name) does not amount to advertisement within the meaning of the bye-law under consideration and the same will not attract the levy of advertisement tax. The said judgment is thus clearly distinguishable and is not applicable to the facts of the present case as in the present case the petitioner has

advertised its trade name and that too not on its own premises but at different premises of various group housing societies and multi storied complexes.

13. The Apex Court in the case of **ICICI Bank and Others** (*supra*) was also confronted with a somewhat similar issue where a challenge was made by the ICICI Bank to the action by the Municipal Corporation of Greater Bombay holding the sign boards fixed by the ICICI Bank above their ATM Centres amounting to advertisement. The Court there was dealing with similar provisions of Sections 328 and 328A of the Bombay Corporation Act, 1988 and after examining the issue in depth, held as under:-

"18. The context in which the word advertisement has been used in Section 328-A of the Corporation Act and in the commercial and ordinary parlance it must have direct or indirect connection with the business, trade or commerce carried out by the advertiser. It must have some commercial exposition. The advertisement would be for the purpose of directing or soliciting customers to the product or service prominently shown in the advertisements. If ordinary parlance meaning is not given to the word advertisement in Section 328-A it will create anomalous position, inasmuch as a simple name board put on the house to indicate who is residing in the premises, would also be an advertisement; a name board or signboard of a trader visible to the public or identifying the place of business would also be an advertisement. In

our considered opinion advertisement within the meaning of Section 328-A of the Corporation Act must primarily have a commercial purpose and should be indicative of business activity of the displayer with a view to attract the attention of people of its business.

19. *In the present case the appellant has put up an illuminated ATM board at various sites and as per the appellant it has been put only to tell the existing customers and others about the location of the ATM centres, which in itself is in the interest of public at large and not to attract new customers for opening the bank account. Normally, the ATM centres enable the customers to carry out the banking activities or transactions at any time, day or night and even on gazetted holidays. They are in the nature of public service as they enable the customers to do away with the need to keep large sums of cash in their house; they are able to have access to the money in their account even on holidays and emergency. The ATM centres have a signboard over them that are illuminated and tell about the fact that there lies the ATM centre of the Bank in that premises. The fact that there is an ATM centre in the premises tells that the appellant Bank is providing automatic teller machine service there and hence the service provider is clearly identified. The communication in this is directed to the account-holders and also to prospective account holders. The kind of information supplied of the location of the service provided may also be construed of commercial exploitation indirectly, as the signboards may not aim at the existing customers only but they may also affect the decisions of the prospective customers. They tell the prospective customers that the service of the ATM round the clock is being made available by the appellant Bank which would influence the prospective customers to make a decision about which service provider he or she has to choose – The signboard also helps the people to find out which bank is offering better services as compared to the other bank. The fact that a bank has more ATM centres than the other banks, in the competitive trade and business, provides the incentive to the people to choose that bank. The fact that one bank has an ATM centre in the given location helps them to get more account-holders in that area. This also serves the commercial interest of the bank. Whether particular action is an advertisement or not would depend on whether the person wants to promote directly or indirectly his product*

or service. If by any communication, the communicator tries to influence the people to buy his product or service or attract towards his product or service then it would be a guiding factor to identify whether a particular communication of the communicator tantamount to be an advertisement.

20. From the aforesaid analysis, in all fact situations and circumstances, at the outset it cannot be said that the signboards indicating ATM centres cannot have commercial interest but would only tell about the location of the ATM centres to the existing account-holders only. Whether signboard of an ATM centre tantamount to be an advertisement or not would depend upon the facts of each case, depending on the number of ATM centres established by a particular bank in a particular locality or place or even city, to have the flavour of commercial or business interest of the service provider. In the present case no exercise was undertaken by the Municipal Authorities or the Bombay High Court before the High Court had reached to the conclusion that the signboards of the ATM centre put up by ICICI Bank at different locations would be an advertisement within the meaning of Section 328-A of the Corporation Act. In fact the notices issued by the Corporation to the appellant are under Sections 328, 328-A of the Corporation Act. The reach, ambit and scope of these sections are quite different and they operate in different fields. They do not completely overlap. In the circumstances, it was appropriate for the Corporation to issue notices to the appellant either under Section 328 or under Section 328-A of the Corporation Act and notice should not have been issued under both sections for the same signboard. The Bombay Municipal Corporation Authorities seem to be in a state of doubt and hence the notices clearly do not specify under which section they propose to take action. We have made it clear that in the present case the signboards of ATM centres, which are not sky-signs, are not covered under the provisions of Section 328 of the Corporation Act, the notices issued shall be deemed to have been issued under Section 328-A of the Corporation Act and the Corporation shall decide the question of advertisement under Section 328-A of the Act after indicating to the Bank a fresh date of hearing."

In the aforesaid case, the decision of Municipal Corporation of Greater Bombay levying tax on the sign boards advertised by the ICICI bank above the ATM centres was in question and the Court took a view that in all fact situations and circumstances, it cannot be said that the signboards indicating ATM centres cannot have commercial interest and whether signboard of an ATM centre tantamount to be an advertisement or not would depend upon the facts of each case depending on the number of ATM centres established by a particular bank in a particular locality or place or even city, to have the flavour of commercial or business interest of the service provider. Directions thus issued by the Court to the Corporation that the notices issued shall be deemed to have been issued under Section 328-A of the Corporation Act and the Corporation shall decide the question of advertisement under Section 328-A of the Act after indicating to the Bank a fresh date of hearing. The said decision in its own peculiar facts of the case is also not applicable to the facts of the present case.

14. A Division Bench of this Court in **Lahori Mal and Another (supra)**, on which reliance was placed by the petitioner, also took a view that mere sign board displayed by a trader outside the shop in the nature of name board or name plate by the residents would not be regarded as advertisement. Relevant paragraph of the same is reproduced as under:-

"9. The learned single Judge emphasizes the fact that if the contention of the Committee was accepted then there would be a heavy workload on the Secretary. He would be required to consider applications for setting up of name-boards, sign-boards set up by shopkeepers or house owners and there would be unnecessary increase in the work of the NDMC. With respect, the learned single Judge overlooked the explanation to bye-law No.7, which would also be applicable to bye-law No.6 wherein the word 'advertisement' has been defined to mean word, letter, model, sign etc. in the nature of any employed wholly or in part for the purpose of advertisements, announcements or directions. A mere sign board displayed by a trader outside the shop in the nature of a name-board or a name plate by a resident would not be regarded as an 'advertisement' within the meaning of the said expression. Informing a person as to where he lives by putting up a sign board or indicating the name of a shop with the help of a small board, for which no tax is payable under bye law No.7, is not advertisement. Be that as it may, even if it be assumed that every sign-board or name plate did tantamount to an advertisement that would not render the bye-laws to be ultra vires merely because the result of the same may be an overload of work for the NDMC."

This judgment is also not applicable to the facts of the present case as there the Court was dealing with the issue as to whether the NDMC could impose a ban on the display of hoardings, display of sign boards and other advertisements within its jurisdiction and whether any prior permission is necessary before the said advertisements are put up.

15. The Apex Court in yet another case in ***NDMC vs. Allied Motors Pvt. Ltd.*** (*supra*) dealt with a similar issue where the question whether the boards displayed by the petitioner are not advertisement boards but merely sign boards of the items in which the petitioner deals and answered as under:-

“7. The case of the respondents being that they use neon-lights to display the names of commodities they sell would fall since those advertisements cannot be called name-boards or even as identifying the name of any object in which the trader was doing his business that being barely descriptive of the commodity. It would be more apt to say that the name-board relates to the object and not to the subject. This marked distinction takes out the case of the respondents from seeking exemption under Clause (a) of Bye-law 7. The Division Bench of the High Court apparently was misled to discover separate meaning of the word 'name' and then of the word 'board' whereafter to put them into a combination, assigning a meaning to 'name-board' as if covering trade description of commodities offered for sale and granted relief to the

respondents on that basis. This in our view was a wrong approach leading the Judgment to be vulnerable.

8. The respondents did not claim any exemption under Clause (e) of Bye-law 7. The said provision has been adverted to earlier in passing. It is to be seen that advertisements as relating to the trade profession or business carried on within the land or building upon or over which such advertisement is put are to be exempted. Equally exemption is claimable for such advertisements relating to any sale or letting of such land or building or any effects therein. Like-wise advertisements relating to any entertainment or meeting to be held on or upon or in the same is to be exempted; provided that exemption is valid to the owner or agent for one board. Thus advertisement which has nexus with the trade profession or business would qualify for exemption if relating to the named activities. The respondents succeeded before the Letters Patent Bench of the High Court only on the basis of Clause (a) of Bye-law 7. The bench when called upon by the present appellant to give favourable interpretation to Clause (a) of Bye-laws 7 on the basis of Clause (e) observed that it appears to them that Clause (e) would apply to those advertisements which relate (only) to the trade, profession or business or something more than mere name boards. The respondents herein (the appellants there-at) did not build their case on the evil of Clause (e) of Bye-law 7 and any attempt herein, in the absence of the views of the High Court, would negate proper handling. We would therefore leave the matter at that. This course is all the more necessary when there is an amendment in Clause (a) of Bye-law 7 effective from 19-2-1.971 whereunder a name-boards remains as such displayable by the traders on their own premises provided they do not add any item of advertisement thereto other than the name of the trade that may be carried out at the premises. But, as said before, we are concerned with the period prior to that requiring us not to give a positive opinion."

In the above mentioned case the Court was dealing with clause (a) of Bye-law (7) of the NDMC which before amendment from 19.2.1971 permitted display of name boards

by the traders on their own premises provided they do not contain any item of advertisement. Facts of this case are also clearly distinguishable as in the present case this Court is not dealing with such an issue where the display of trade name of the petitioner in its own premises is in question.

16. Hence, the aforesaid judgments cited by the learned Senior Advocate for the petitioner would not help the case of the petitioner.

17. Coming to the facts of the case at hand, the petitioner in the present case has carried out the advertisement of its trade name (Hindustan Times) at 114 sites outside various group housing societies and Multi-storied complexes. Therefore, the case of the petitioner does not fall under proviso (d) Section 142 of the DMC Act as proviso (d) of Section 142 deals with those cases where the display relates to the name of the land or building upon or over which the advertisement is exhibited, or to the name of the owner or occupier of such land or building. The petitioner certainly

neither is the owner /occupier of such buildings nor is '*The Hindustan Times*' the name of any land or building. A trade name is a means of identifying business or its products or services and is a name under which any company runs its business. The newspaper in the name of Hindustan Times is a household name so far the newspaper industry is concerned and, therefore, to say that the display of trade name by the petitioner at various places is not an advertisement to promote its commercial product or services would be an argument totally unfounded. By such a display of the trade name, the only objective of the petitioner is to promote and publicize its newspaper '*Hindustan Times*'. Merely because it has not mentioned the name of its product i.e. newspaper along with '*Hindustan Times*', that by itself would not lead to infer that the petitioner has some social or philanthropic motive in the display of such boards. The question then arises is that if the petitioner had no such objective to achieve then where was the need to display its own name outside such group housing

societies and multi-storied complexes along with the respective names of these societies.

18. In today's time of cut throat competition and increasing pressure of achieving sales targets, advertisement has gained unsurmountable importance. It is basically a method to communicate with the customers and lure them to buy a particular product. The newspaper 'Hindustan Times' is already a well circulated trade name, but putting the trade name on various display boards of housing societies and multistoried buildings, it is a kind of a reminder advertisement to keep the trade name always fresh in the mind of the target consumers. Thus, advertising has become indispensable to thrive and more so to survive in the market where there are so many players and is a means of attaining brand loyalty of the product and like in the present case, display of trade name at common places is to engrain in the psyche of the consumer the reverberations of the product.

19. In the light of the above discussion, this Court is of the considered view that the display of its trade name by the petitioner outside various Group Housing Societies/Multi Storied buildings along with the said name of the societies is only with a view to promote and publicize its product i.e. the newspaper with which alone the said trade name is identified amongst the public at large and the same has been done with the sole objective to increase its circulation and such display of boards amounts to 'advertisement' and is in contravention of Section 143 of the DMC Act and bye-laws framed there under.

20. In the event of the foregoing, there is no merit in the present petition. The same is hereby dismissed.

December 24, 2010

KAILASH GAMBHIR, J