

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21st July, 2010.

+ W.P.(C) 4779/2010 & CM No.9470/2010 (for interim relief)

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SHASHVAT ADVERTISING PVT LTD

..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. Manish K. Bishnoi, Advocate.

Versus

MCD AND ORS.

..... Respondents

Through: Ms. Mini Pushkarna, Advocate for
MCD.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioner an advertising agency made an offer to the respondent MCD for putting up "wall wrap" at Shop No.7, CSC, Masjid Moth, New Delhi (South Zone) . Along with the said offer a photograph of the proposed site and wall wrap was also submitted. The respondent MCD vide its letter dated 9th July, 2010 to the petitioner and with the subject as under:-

"Sub:- Offer for grant of permission/NOC for display of advertisement through one wall wrap of the size 24'X12' (288 sq.ft.) at shop No.7, CSC, Masjid Moth, New Delhi (South Zone)."

inter alia intimated to the petitioner as under:-

“In case the rate of fee and terms & conditions are acceptable, you may deposit the security amount, equivalent to three months’ licence fee, one month’s advance licence fee calculated @ Rs.120/- per sq.ft. of the display area, per month, advance advertisement tax and execute an Affidavit and an Agreement, as per the enclosed formats, within seven days of receipt hereof, to enable this department to issue formal permission letter for putting up wall wrap, failing which it will be presumed that you are not interested in the permission.”

2. It is the case of the petitioner and not controverted by the counsel for the respondent MCD appearing on advance notice that in pursuance to the letter dated 9th July, 2010 (*supra*) the petitioner submitted to the respondent MCD on 12th July, 2010, self signed Agreement as well as banker’s cheques for the charges demanded by the respondent MCD and complied with the other formalities required to be so completed. The petitioner who claims to have entered into an Agreement with the owner of the shop aforesaid then, without waiting for issuance of “formal permission” by the MCD installed the advertisement by erecting scaffolding on the terrace of the shop aforesaid.

3. The respondent MCD issued a letter dated 16th July, 2010 to the petitioner averring that the petitioner had erected a huge structure of a size beyond the size permitted and extending beyond the roof-level/height of the building. The respondent MCD contending the structure so put up by the petitioner to be in contravention of the guidelines of the Outdoor

Advertisement Policy, 2007, while calling upon the petitioner to remove the same immediately, withdrew the offer given to the petitioner vide the letter dated 9th July, 2010 (supra).

4. Aggrieved therefrom the present writ petition was filed impugning the said letter and seeking directions to restrain the respondent MCD from interfering with the advertisement already put up by the petitioner. The photographs of the advertisement already put up were filed along with the writ petition.

5. The writ petition came up before this Court first yesterday when on the first call a passover was sought on behalf of the petitioner. The matter reached after passover beyond 1630 hours and as such on urgency expressed by the senior counsel for the petitioner was ordered to be listed for today. The senior counsel for the petitioner yesterday only had sought a direction to the respondent MCD not to interfere with the advertisement already installed by the petitioner. On the contrary the counsel for the respondent MCD yesterday also appearing on advance notice had contended with support of the photographs that as of yesterday morning there was no advertisement hoarding and the passover was sought intentionally only to put up the advertisement which had been put up by the time matter was called again yesterday. In the circumstances no orders were made yesterday.

6. The senior counsel for the petitioner today at the outset submitted that the respondent MCD has in the morning of today removed the

advertisements put up by the petitioner. Photographs to the said effect have been handed over. The counsel for the respondent MCD does not controvert that the respondent MCD today in the morning removed the advertisement put up by the petitioner by yesterday afternoon. The counsel for the respondent MCD however states that the offer given to the petitioner having been withdrawn and the advertisement installed being contrary to the offer, the MCD was fully entitled to remove the same.

7. As far as the merits of the case are concerned, it was at the outset put to the senior counsel for the petitioner as to whether any “formal permission” letter for putting up the wall wrap had been issued to the petitioner in furtherance of the letter dated 9th July, 2010 (supra). The senior counsel for the petitioner contends that no such formal permission letter has been issued but the same are never issued. It is stated that the letter dated 9th July, 2010 was a letter of offer and upon the petitioner complying with all the terms thereof, the same stood accepted and a binding agreement came into existence between the parties and there was no necessity for issuance of a formal permission letter. It is further urged that as a matter of practice, no such letter and not even copies of the agreement which the petitioner had in response to the said letter, self signed by itself had submitted to the respondent MCD are ever given by the MCD to the parties concerned. Reliance is also placed on the Division Bench judgment of this Court in ***Bimlesh Tewari Vs. The Food Corporation of India*** 113 (2004) DLT 563.

8. The facts in *Bimlesh Tewari* (supra) were different. There the owner of land had in pursuance to the contract, as evidenced from the correspondence exchanged with the FCI, constructed godowns and put the FCI into possession thereof. It was in that context that the Division Bench held a concluded contract to have come into existence notwithstanding the correspondence providing that a formal lease deed shall be executed and the same not having been executed. The facts in the present case are entirely different. The relationship of the petitioner with the MCD is not purely contractual. The matter of outdoor advertising is statutorily controlled and has been the subject matter of litigation and the Policy aforesaid was finalised as per the directions of the Supreme Court. Section 143 of the DMC Act prohibits installation of such advertisement without written permission of Commissioner MCD. Section 430 provides the manner in which the written permission is to be granted. Admittedly written permission in the manner prescribed in Section 430 has not been granted. Thus the analogy of contract will not apply. Thus it cannot be said that permission to install advertisement stood granted to the petitioner. The petitioner till the grant of permission was not entitled to install the advertisement and the MCD was entitled to withdraw the offer.

9. As far as the ground for withdrawal of offer is concerned, the petitioner having installed the advertisement without permission, that alone constitutes good enough ground for withdrawing the offer.

10. The senior counsel has also drawn attention to Section 430(3) of the DMC Act, 1957 to contend that in the present case no show cause notice has been given. The said provision however comes into play only when a license or written permission is granted. However, in the present case, as aforesaid, no licence or written permission was given. The counsel for the respondent MCD however in response has drawn attention to Section 144 whereunder the permission or licence, if any granted becomes void *inter alia* on contravention of any bye-law under the Act or any material change being effected by the advertising agency and contends that written permission even if any stood annulled on petitioner installing the advertisement of a size much bigger than approved.

11. The senior counsel for the petitioner contends that the scaffolding erected by the petitioner for installing the advertisement is of the dimensions permitted and does not contravene the same. The counsel for the respondent MCD controverts. This Court cannot go into this factual controversy. It shall however be open to the petitioner to represent to MCD in this regard and it shall be open to MCD to, if satisfied grant permission to the petitioner.

12. However before parting with the case, another important aspect of the matter may be considered. The permission was granted for a “wall wrap”. Though no definition of “wall wrap” is shown, ordinarily a wall wrap should be understood as wrap around an existing wall. However, in the present case from the photographs attached to the proposal given by the petitioner, it

appears that there was no wall behind the proposed advertising site. The proposed site also was way above the terrace level of the shop. The senior counsel for the petitioner has pointed out that in the photographs, three other advertisements also projecting above the terrace level of the said shop. If this Court's understanding of a wall wrap is correct then the three advertisements, also hanging in the air above the level of the terrace of the shop and not wrapping or covering any wall, would also not qualify as wall wraps. However this Court does not have the material to see whether the other advertisements were permitted as wall wraps or as Bill boards. However, even if they are permitted as wall wraps, the said illegality would still not entitle this Court to permit the petitioner also to indulge in the same. The Apex Court in *Gursharan Singh Vs. NDMC* (1996) 2 SCC 459 has held that if an illegality or irregularity has been committed in favour of any individual or a group of individuals, the others cannot invoke the jurisdiction of the High Court or the Apex Court, that the same irregularity or illegality be committed by the State or an authority so far such petitioners are concerned on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner; such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law. The counsel for the respondent MCD states that the show cause notice has already been issued with respect to the

three other advertisements close to the proposed site.

13. A perusal of the Outdoor Advertisement Policy aforesaid shows that it recognizes advertisement devices of several categories viz. Billboards/Unipoles/Bipoles, Trivision, Railway Bridge Panels, Flyover Panels, Building Wraps, Banners, Posters, Vehicle advertisements etc. and lays down which is permitted in what areas. Thus a Billboard may not be permitted where a building wrap is permitted. Prima facie it appears that the proposal of the petitioner which was approved was for a Billboard, though approved as a Building Wrap (there is no mention of wall wrap in the Policy). It appears that the advertisement policy is being violated. The said policy is in public interest and notices that hazardous hoardings disturb the safe traffic movement and are detrimental to city aesthetics. This Court is concerned that the policy framed as per directions of the Supreme Court should not be violated. However since the counsel for the respondent MCD has no instructions in this respect, it is deemed expedient to direct the Commissioner MCD to enquire into the said aspect and to report as to the distinction being carved out between Billboards and Wall or Building Wraps and as to why in the name of Wall/Building Wraps, advertisements projecting above the height of the building are being approved and whether the same qualify as billboards or hoardings and not as Building/Wall Wraps. If it is found that in the name of Wall/Building Wraps, billboards/hoardings have been sanctioned, then the Commissioner MCD to also report whether

in terms of the Policy, the Billboards are permitted at these sites. Needless to add that if not so permitted, the same should be removed. The Commissioner MCD to submit report in this regard to the Public Interest Litigation Committee of this Court within three months.

14. The petition is thus dismissed *in limine*. However the Registry is directed to forthwith communicate this order to Commissioner MCD and to also forward a copy of the same to the PIL Committee constituted by Hon'ble the Chief Justice, for further action, if any, required.

CM No.9471/2010 (for exemption)

Allowed, subject to just exceptions.

**RAJIV SAHAI ENDLAW
(JUDGE)**

21st July, 2010
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