

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

Reserved on: 27th November, 2015
Date of decision: 03rd December, 2015

+ W.P.(C) No.2980/2015

M/S. ARC OUTDOOR MEDIA LTD. Petitioner

Through: Mr. Karan Sharma, Advocate.

versus

EAST DELHI MUNICIPAL CORPORATION & ANR. Respondents

**Through: Ms. Biji Rajesh with Mr. Mrinal
Beri, Advocate for R-1.**

**Mr. Anuj Aggarwal, Advocate for
R-2.**

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGEMENT

1. By way of present petition, the petitioner seeks directions to respondent No.1 to enforce the allotment of contract dated 09.03.2015 for display of electric pole kiosks on East Delhi Municipal Corporation roads and reinstall the electric pole kiosks removed by the respondent No.2. The petitioners further seeks quashing of letter dated 16.03.2015 issued by respondent No.2/PWD.

2. Succinctly stating the facts germane to the present petition are that vide notice dated 27.11.2014 tenders were invited by respondent No.1 for allotment of contracts for display of advertisement through Street Light Pole Kiosk on the roads coming under the jurisdiction of respondent No.1

including all PWD maintained roads. The petitioner participated in the tender process and vide letter dated 02.01.2015 respondent No.1 communicated the offer of allotment of contract for display of advertisement for a period of two years extendable for one year to the petitioner with directions to deposit one month's advance license fee together with applicable taxes. Subsequently, on successful completion of all formalities contained in the offer letter, vide letter dated 09.03.2015 respondent No.1 awarded the contract for display of advertisement (illuminated/ non-illuminated) through kiosks on street light poles in favor of the petitioner for a period of two years on a monthly license fee of Rs.22,20,000/-. The petitioner vide letter dated 10.03.2015 communicated its acceptance of allotment letter of contract and started the work of erecting pole kiosks. The pole kiosks installed by the petitioner were removed by respondent No.2 on 10.03.2015. Petitioner wrote letters dated 11.03.2015 and 12.03.2015 to respondent No.1 and respondent No.2 respectively and also filed police complaint alleging that action of respondent no.2 was illegal. Respondent No.2 vide its impugned notice dated 16.03.2015 denied permission to install electric pole kiosk on PWD maintained roads to the petitioner. Aggrieved by the action of respondent No.2, the petitioner has filed the present writ petition.

3. Learned counsel for the petitioner urged that not only the action of respondent No.2 in removing the legally installed poles from the sites installed by petitioner is unjustified but also the impugned notice dated 16.03.2015 issued by respondent No.2 is arbitrary and illegal due to want of jurisdiction. He also submits that the role of respondent No.2 is

confined only to maintenance of the roads in Delhi and the same does not create any power or jurisdiction to remove the erected poles.

4. Learned counsel for the petitioner further contended that the petitioner has not only paid the entire requisite license fee and security deposits as per the conditions specified in the offer of allotment letter to the respondent No.1 /EDMC but has also made huge investment on the electric pole kiosks and thus such unwarranted act of the respondents is resulting into irreparable loss and injury to the petitioner.

5. *Per contra*, learned counsel for respondent No.1 submitted that Section 298 of Delhi Municipal Corporation Act, 1957 gives MCD the jurisdiction over all public street in Delhi and further MCD alone is the sole authority to allow display of advertisement at any place in Delhi and no advertising rights over public streets vests with respondent No.2. She also submits that the power of respondent No.1 to maintain, control and regulate public streets as envisaged under Section 2 sub clause 44 of the DMC Act encompasses the power to grant permission for placing unipoles / advertisements/hoardings on such public streets in accordance with the byelaws. She further submits that the petitioner's advertisements are in conformity with the 'Delhi Outdoor Policy'.

6. Mr. Anuj Aggarwal, learned counsel for respondent No.2 urged that none of the advertisements alleged to have been removed by officials of respondent No.2 have been so removed. He placed reliance on the notification F.No.13(02)/UD/MB/2011/593-599 dated 10.01.2012 issued by the Govt. of NCT Delhi, Urban Development Department whereby the Govt. Of NCT Delhi has been vested with powers of maintenance of

roads having Right of way (ROW) of 60 feet and above belonging to East Delhi Municipal Corporation.

7. I have heard learned counsel for both the parties and have also carefully gone through the material on record.

8. Before examining the merits of the present case, it is necessary to consider the relevant provisions of the Delhi Municipal Corporation Act, 1957 (DMC Act), Section 298 of DMC Act reads as under:-

“298. Vesting of public streets in [a Corporation].— (1) All streets within the jurisdiction of each Corporation constituted under sub-section (1) of Section 3 of this Act which are or at any time become public streets, and the pavements, stones and other materials thereof shall vest in such Corporation.

Provided that no public street which immediately before the commencement of the Delhi Municipal Corporation (Amendment) Act, 2011 vested in the Union, shall, unless the Central Government with the consent of the concerned Corporation so directs, vest in such Corporation by virtue of this sub-section.

(2) All public streets vesting in [a Corporation] shall be under the control of the Commissioner and shall be maintained, controlled and regulated by him in accordance with the bye-laws made in this behalf.

(3)

299. Functions of Commissioner in respect of public streets. – (1) The Commissioner shall, from time to time, cause all public streets vested in [a Corporation] to be leveled, metalled or paved, channeled, altered or repaired, and may widen, extend or otherwise improve any such street or cause the soil thereof to be raised, lowered or altered or may lace and keep in repair fences and posts for the safety of foot-passengers:

Provided that no widening, extension or other improvement of a public street, the aggregate cost of which will exceed five thousand rupees, shall be undertaken by the Commissioner except with the previous sanction of [a Corporation].

(2)

9. Section 143 of DMC Act prohibits placing of advertisement on any land building, structure, etc. without prior permission of the Commissioner, which reads as under: -

“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)

(3)

10. The “public street” is defined in sub-section (44) of Section 2 of the DMC Act, which reads as under: -

“2(44) “public street” means any street which vests in [a Corporation] as a public street or the soil below the surface of which vests in [a Corporation] or which under the provisions of this Act becomes, or is declared to be, a public street;”

Sub-section (57) of Section 2 of the DMC Act defines the “street” as under: -

“2(57) “street” includes any way, road, lane, square, court, alley, gully, passage, whether a thoroughfare or not and

whether built upon or not, over which the public have a right of way and also the roadway or footway over any bridge or causeway”

11. A combined reading of above provisions makes it clear that that as far as ‘public streets’ and their pavements in the areas to which DMC Act applies are concerned, the power and jurisdiction to maintain, control and regulate such public streets lies with the concerned Municipal Corporation. Further, the Corporation has power to grant license in respect of erection, exhibition, fixing or retention of advertisements on public streets as defined in Section 2(44) of the Act. However, no permission can be granted by the Commissioner for exhibited, fixing or retaining any advertisement on any land, building, wall, structure, etc. if such permission would contravene the provisions of the bye-laws made in this regard.

12. In so far as the public streets and their pavements in the area to which the Delhi Municipal Corporation Act, 1957 applies are concerned, the same vests solely in the concerned Municipal Corporation and are required to be maintained, controlled and regulated by them. Under the provisions of the DMC Act, the Corporation has the power to maintain, control and regulate public streets which include the power to grant permission for placing unipoles/ hoardings on such public streets.

13. Reverting back to the facts of the present case, it is an admitted fact that the advertisement boards installed by the petitioner falls under the category of ‘public street’ as the notice inviting tenders dated 27.11.2014 issued by respondent No.1 categorically states that the agreement is in respect of display of advertisement through Street Light pole kiosk

existing on EDMC roads including PWD maintained roads. The power to grant permission for placing unipoles/ hoardings on the PWD maintained public streets vest solely with respondent No.1 in accordance with the byelaws under the provisions of DMC Act. Further, it is not disputed by respondent No.2 that the petitioner's advertisements are not in conformity with the Delhi Outdoor Advertisement Policy 2007.

14. The said outdoor advertisement policy 2007 was approved by the Apex Court in '**M.C. Mehta vs. Union of India**', W.P.(C) No.13029/1995 and the learned counsel for the MCD stated that the contracts are being granted strictly in accordance with the said policy and the relevant bye-laws.

15. A similar issue was dealt by this Court vide its judgment dated 10.09.2013 in W.P.(C)No.5118/2013 titled, '**M/S Brite Neon Signs Pvt. Ltd. v. Public Works Deptt. & Anr.**' (Supra) wherein this Court *inter alia* held:

“5. In my view, so long as unipoles/ hoardings sought to be installed on public streets, section 2 of sub section 57 of Delhi Municipal Act, 1957, PWD can have no objection to such installation and would have no legal right to remove any unipole, hoardings, etc which conforms to the licence granted by MCD in this regard. To this extent, the grievance of the petitioners is fully justified.”

16. Reliance placed by learned counsel for respondent No.2 on the notification dated 10.01.2012 issued by the Government of NCT of Delhi, Urban Development Department is misconceived and misplaced as

perusal of the same clearly shows no mention of jurisdiction or power to grant license in respect of erection, exhibition, fixing or retention of advertisements on public streets on the Government of NCT of Delhi. It only suggests that Govt. of NCT of Delhi has been vested with the powers to ensure proper maintenance and upkeep of roads. The display of electric pole kiosks has been pursuant to a legal, valid and binding contract with the MCD, which alone has the jurisdiction over hoardings by virtue of Section 142, 143 and 298 of DMC Act.

17. In view of the foregoing observations, this Court finds no infirmity in the letter of allotment dated 9th March, 2015 issued by respondent No.1 awarding contract for display of advertisement to the petitioner. Consequently, the letter dated 16.03.2015 issued by respondent No.2 is set aside and respondent No.2 is directed to stop removing the electric pole kiosks of the petitioner from the sites allotted by the respondent No.1.

18. The writ petition stands disposed of accordingly. No order as to costs.

C.M. Appl. Nos.5334/2015, 8325/2015, 9090/2015 & 15973/2015

The applications are dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

DECEMBER 03rd, 2015
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