

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 20.02.2015

+ **W.P.(C) 3941/2011**

DELHI WASTE MANAGEMENT LIMITED

..... Petitioner

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr P.S. Bindra and Ms Shweta Priyadarshini.

For the Respondent : Ms Mini Pushkarna with Ms Yootika Pallavi.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner impugns a notice dated 25.05.2011 (hereafter 'impugned notice') calling upon the petitioner to remove four advertisements displayed on two Waste Storage Depots - *Dhalaos* (structures constructed for collection of waste) situated opposite Okhla, New Delhi and near Sant Nagar, New Delhi. The petitioner was also called upon to pay damage charges of ₹2,07,000/- for the month of May 2011 with respect to the aforesaid advertisements. The petitioner also impugns a letter dated 11.11.2010 (hereafter 'impugned letter') calling upon the petitioner to deposit monthly licence fees at the rates indicated therein in respect of advertisements displayed by the petitioner at various *Dhalaos*.

2. The petitioner contended that neither the damage charges as

indicated in the impugned notice nor the licence fee as demanded by the impugned letter are payable as such demand is without authority of law.

3. According to the petitioner, the advertisements were permitted by virtue of a Concession Agreement entered into between the petitioner and the Municipal Corporation of Delhi on 31.01.2005 (hereafter the 'Concession Agreement'). The petitioner contended that by virtue of the Concession Agreement, the petitioner is entitled to undertake any form of commercial advertisements or display advertisements on the sites of Waste Storage Depots (also referred to as '*Dhalaos*'). The respondent disputed the same and contended that the Concession Agreement only contained a general permission to display advertisements. However, display of advertisements was subject to all applicable laws which would also include the Delhi Municipal Corporation Act, 1957 (hereafter the 'DMC Act') as well as the outdoor advertisement policy. Thus, it was incumbent upon the petitioner to seek a special permission in respect of each site from the Commissioner, MCD in terms of Section 143 of the DMC Act and no advertisement could be displayed contrary to the outdoor advertisement policy.

4. It was next contended that by virtue of Clause 4.12 of Schedule B of the Concession Agreement, the petitioner was required to take prior permission of the MCD with respect to the size, design, colour, contents etc. Since the petitioner had not taken any such permission, for display of advertisements, the petitioner was in breach of the Concession Agreement. It was further contended that the petitioner had displayed advertisements even on *Dhalaos* which were not operational and the same was contrary to

the Concession Agreement. It was lastly contended that the advertisements displayed were also not in conformity with the Concession Agreement inasmuch as the hoardings were much larger than the walls of *Dhalaos* and further they were also placed higher than the walls of *Dhalaos*.

5. The controversies that need to be addressed are: (a) whether the petitioner is entitled to display advertisements at the sites in question? (b) Whether any further permission is required as per Section 143 of the DMC Act? and (c) Whether any charges are payable for the use of *Dhalaos* for displaying advertisements by the petitioner?

6. The issue whether MCD could levy any licence fee/damage charges for display of advertisements is covered by the decision of this Court in *Sports and Leisure Apparel Ltd. v. MCD and Anr.*: W.P.(C) 4436/2010, decided on 18.11.2014. Undisputedly, the petitioner is entitled to display commercial advertisements on the sides of Waste Storage Depots. This is expressly recorded under Clause 5.21 of the Concession Agreement which reads as under:-

“5.21 Advertisement

The Concessionaire shall be entitled to undertake or permit any form of commercial advertising or display on the sides of the Waste Storage Depots and in consideration thereof, receive amounts from Persons interested in advertising as aforesaid.”

7. The contention that the petitioner would still be obliged to pay additional charges for the same as per MCD policy is clearly not sustainable. The MCD has granted the petitioner the right to use the outer walls for display of advertisements and this forms an integral part of the

Concession Agreement between the petitioner and the MCD. In the circumstances, it is not open for the MCD to now insist any other charges/licence fees, which are not a part of the Concession Agreement. The impugned letter also recognised that the advertisement rights had been granted by the MCD to the petitioner. This is clearly evident from the noting that reads as under:-

“There is huge loss of revenue to the MCD on account of grant of such advertisement rights and as such, no fresh contracts with advertisement rights, may be allotted or renewed for further period, on expiry of the term of the existing contracts, in terms of the circular issued by this department on the issue, with the approval of competent authority, vide No. OSD(Advtt.)/2010/D-2400 dated 29.03.2010.”

8. In terms of Concession Agreement, the petitioner was granted the concession to *“(i) collect Municipal Solid Waste from Persons generating such waste within the Concession Area from the street corner bins and Waste Storage Depots, in accordance with Applicable Laws and to segregate, transport and deliver segregated waste at the Landfill Site. (ii) investigate, study, design, engineer, procure, finance, modify, construct, operate, maintain and transfer the Project Facilities and (iii) exercise and/or enjoy the rights, powers, benefits, privileges, authorisations and entitlements as set forth in this Agreement (“the Concession”).”*

9. Clause 1.1 of the Concession Agreement, *inter alia*, defines ‘Project Facilities’ to mean the existing project facilities and the new project facilities. Schedule B to the Concession Agreement provided for the construction requirement with respect to the existing project facilities.

Article 4 of Schedule B of the Concession Agreement relates to Waste Storage Depots. By virtue of Clause 4.2 of Schedule B of the Concession Agreement, the petitioner was required to identify the number and specific location of Waste Storage Depots that would be utilised by the petitioner for the project. Clause 4.5 of Schedule B of the Concession Agreement required the petitioner to reconstruct, modify or renovate the civil structure of the Waste Storage Depots planned to be utilised so as to ensure that there are no visible cracks or broken walls and proper security mechanism is in place to impede any unauthorised access. Clause 4.7 of Schedule B of the Concession Agreement provided that the Waste Storage Depots should be designed so as to be *“Aesthetic; Covered and with adequate natural light & ventilation; Allow for convenient and safe dropping of waste by generators of MSW; Allow for easy cleaning & disinfections operations; Not allow stray cattle, other animals and birds to have access to the waste; To allow for easy monitoring by Independent Consultant/MCD officials.”*

10. Clause 4.12 of Schedule B of the Concession Agreement enabled the concessionaire to utilise the outer portion of the walls for advertisement. However, it was specifically agreed that before advertising, the petitioner would separately take prior permission of the MCD with respect to size, design, colour, contents etc. of the advertisement. The said Clause 4.12 of Schedule B of the Concession Agreement is quoted below:-

“4.12 The Concessionaire can utilize the earmarked outer portion of the faces of walls of the Waste Storage Depots for advertising. However, before advertising the Concessionaire would separately take prior permission of the MCD with respect of its size, design, color, contents etc.”

11. Clause 4.13 of Schedule B of the Concession Agreement specified that the maximum height allowed for construction of the Waste Storage Depots would be 14ft.; Clause 4.14 of Schedule B of the Concession Agreement recorded the agreement that 70% of the total outer surface of each face wall could be utilised for advertisement and 15% of the adjoining surface of each face would be reserved for a social message to be given by MCD which would be constructed and maintained by the petitioner. Clause 4.14 of Schedule B of the Concession Agreement is quoted below:-

“4.14 The Concessionaire can utilize the upper 70% of the total outer surface of each face of wall of the Waste Storage Depot for advertisement. 15% of the adjoining surface of each face shall be reserved for a social message to be given by MCD which shall be constructed and maintained by the Concessionaire.”

12. It is clear from the above that the petitioner was required to take a specific permission in respect of the advertisements intended to be displayed. In addition, the area of advertisement was specifically agreed to be 70% of the outer surface of the walls. The petitioner was also obliged to utilise 15% of the adjoining surface for social messages to be given by the MCD. Concededly, none of these aforesaid terms have been complied with. The petitioner has not sought any specific permission of MCD for displaying the advertisements. The photographs of the advertisements produced by the MCD also indicate that the advertisements displayed are not in conformity with Clauses 4.12 and 4.14 of Schedule B of the Concession Agreement. The hoardings are placed on angles anchored on the structure of the Waste Storage Depots. This is clearly contrary to the agreement as reflected in the above quoted Clause 4.12 of Schedule B of

the Concession Agreement; indisputably, the petitioner could only use the earmarked outer portion of the faces of walls of the Waste Storage Depots for advertisement. Thus, it was not open for the petitioner to anchor a separate structure for display of advertisement. Further, only 70% of the outer surface of the wall could be utilised for display of advertisements. This term has also been breached by the petitioner. In the circumstances, the directions issued by the MCD for removing the advertisements cannot be interfered with. However, it would be open for the petitioner to take specific permission of the MCD with respect to advertisements by indicating the size, design, colour and contents thereof. In terms of Concession Agreement, the petitioner can only utilise the surface of the wall of Waste Storage Depots for display of advertisements.

13. It is also relevant to note that by virtue of Section 143 of the DMC Act, permission of the Commissioner, MCD is required for display of advertisements. The Concession Agreement would not exempt the petitioner from following the statutory provisions of the DMC Act. In addition, the Concession Agreement also provides that specific permission would be taken by the petitioner from the MCD for display of advertisements.

14. It is also relevant to mention that in terms of Clause 5.17 of the Concession Agreement, the petitioner is obliged to procure the applicable permits. This would, obviously, also include permission from the MCD to display advertisements on the Waste Storage Depots.

15. In my view, compliance with Clause 4.12 of Schedule B of the

Concession Agreement would also meet the requirement of Section 143 of the DMC Act.

16. I also find force in the respondent's contention that the Waste Storage Depots, which are not in operation, cannot be used for the purposes of advertisements. Even according to the petitioner, the right to advertise on Waste Storage Depots was granted to enable the petitioner to defer the cost incurred in providing the service. The intended purpose of the Concession Agreement was participation of a concessionaire in constructing and maintaining the project facilities. The right to advertise was granted to the petitioner as a part of the concession and it, thus, stands to reason that only the facilities that were being used and maintained could be used for display of advertisements.

17. In terms of Clause 5.21 of the Concession Agreement, the petitioner is entitled to display advertisements on the sides of 'Waste Storage Depots', which is defined as under:-

““Waste Storage Depots” shall mean receptacles conforming to Construction Requirements, utilised by the Concessionaire to deliver segregated Municipal Solid Waste, prior to transfer of the same to the Landfill Site.”

18. It is apparent from the above definition that *Dhalaos* which are not utilised by the petitioner to deliver segregated Municipal Solid Waste, would not be available to the petitioner for display of advertisements as they would fall outside the definition of Waste Storage Depots as provided under the Concession Agreement. Although it has been contended by the petitioner that the MCD has unfairly reduced the number of *Dhalaos* in use

and has consequently, reduced the area for display of advertisements. I am not inclined to entertain this controversy in this petition as the same would be a commercial dispute and can be resolved by the alternate dispute mechanism agreed to by the parties under the Concession Agreement. Further, sufficient foundation for the said controversy has also not been laid in the petition.

19. In view of the aforesaid, while the levy of damage charges/licence fees as demanded under the impugned notice and impugned letter cannot be sustained, no interference is called for with the direction of MCD to remove the display of advertisements. However, if the petitioner applies to the respondent for permission to display specific advertisements, the same would be considered in terms of the Concession Agreement as well as Section 143 of the DMC Act within a reasonable period but no later than two weeks from the receipt of such application.

20. The writ petition is disposed of with the aforesaid directions.

VIBHU BAKHRU, J

FEBRUARY 20, 2014
RK