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

% *Date of judgment: 02.09.2016.*

+ W.P.(C) 5977/2015 & C.M. No.10839/2015

M/S DELHI OUTDOOR ADVERTISERS ASSOCIATION (REGD)

..... Petitioner

Through Mr. Anand Mishra and Mr. Hamant
Kumar, Advs

versus

SOUTH DELHI MUNICIPAL CORPORATION & ORS

..... Respondents

Through Mr. Sanjay Poddar, Sr. Adv. with Mr.
Mukesh Gupta, Ajjay Arora, Mr.
Kapil Dutta and Mr. Govind Kumar,
Advs. for SDMC.

Ms. Sunieta Ojha, Adv for R-3.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The petitioner before this Court is Delhi Outdoor Advertisers Association. The submission of the petitioner is that illegal and arbitrary action of the respondent Corporation (through its Department of Advertisement) is an action which is clearly in violation of laws and norms of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the DMC Act). The rights of the petitioner are prejudicially affected under Article 19 (1)(g) of the Constitution of India. The Outdoor Advertisement

Policy (OAP) could be implemented by the respondents only after the implementation of the provisions of Section 480 (2) and 481-A of the DMC Act in the absence of which the Outdoor Advertisement Policy of the respondent being violative of the provisions of the DMC act has to be struck down. The prayer in the writ petition is that the Outdoor Advertisement Policy of the year 2007 be struck down.

2 Further averments in the writ petition disclose that the petitioner Association was formed in the year 1996. It was carrying out the activities of commercial outdoor advertisement. In the year 2007, the Apex Court had directed the implementation of Delhi Outdoor Advertising Policy (OAP) to regulate the outdoor advertising. License fee was being charged on the private builders. Imposition of this license fee was challenged in W.P. (C) No.7884/2009 titled V.V. Gupta Vs. MCD and Another. The circular of the respondents charging neon fee on advertisement was also challenged in W.P. (C) No.4913/2010 titled as Number One Advertising and Marketing Co. (Reg.) Vs. MCD. The circular of the Department imposing damages on advertisers in contravention of their cryptic orders was again challenged in W.P. (C) No.6622/2011 titled Number One Advertising and Marketing Co. (Reg.) Vs. MCD. Property tax imposed upon hoardings being used by the petitioner was the subject matter of challenge in W.P. (C) No.678/2013. Submission being reiterated that OAP of the petitioner being illegal and violative of the statutory provisions of the DMC Act as also the provision of Sections 480 (2) and 481-A not having been followed, it is liable to be set aside. This is especially in view of the fact that fundamental rights of the petitioner under Article 19 (1)(g) of the Constitution of India have been

jeopardised. The petitioner in support of his submission has placed reliance upon an order passed by the Apex Court in the case on 12.10.2007 of M.C. Mehta Vs. Union of India & Others (I.As. No.321/2016 and 322/2016). Submission being that the Apex Court had directed the East Delhi Municipal Corporation to reconsider the reports of 2008-2009 relating to Outdoor Advertisement Policy. These reports had been submitted by the Environment Pollution (Prevention and Control) Authority (EPCA). Submission being that till the decision is taken on the aforementioned reports, the Policy of the year 2007 which is not being implemented but is being enforced upon the petitioner be stayed. Reliance has been placed upon (2014) 2 SCC 401 J. Jayalalithaa and Others Vs. State of Karnataka and Others to support his submission that where the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same; Section 480 (2) and Section 481-A of the Act have not been followed; rules, Byelaws and Regulations of the Act have also been flouted. Attention has been drawn to the definition of 'byelaw' and 'regulation' as defined in Section 2 (4) and 2 (48) of the DMC Act. Learned counsel for the petitioner has also placed reliance upon a judgment of the Single Judge of this Court reported in W.P. (C) No.4436/2010 titled Sports and Leisure Apparel Ltd Vs. MCD and Another on 18.11.2014; submission being that Outdoor Advertisement Policy even otherwise has only laid down the basic frame work under which the Policy had to be implemented. Submission being that in LPA No.78/2015 South Delhi Municipal Corporation Vs. Sports and Leisure Apparel Ltd. (in appeal against the order of the Single Judge), the Court had noted that no rule or

regulation had permitted the Corporation to impose any fine by issuing executive orders.

3 A counter affidavit has been filed. It is stated that the present petition is an abuse of the process of the Court as it was the Apex Court in W.P. (C) No.13029/1985 on 12.10.2007 in M.C. Mehta Vs. Union of India & Others which had granted liberty to the MCD to go ahead with the Outdoor Advertisement Policy. The Division Bench of this Court in W.P. (C) No.3367/2015 titled Col. Shivraj Kumar Vs. SDMC in its order dated 30.09.2015 had noted this fact that i.e. OAP, 2007 has been approved by the Supreme Court and the same should be implemented. Submission being that this Policy now being implemented has attained an approval from all Courts i.e. Apex Court as also the Division Bench of this Court. The argument of the petitioner seeking to lay a challenge to this Policy is thus an argument which has to be rejected. Further submission being that Section 480 (2) and 481-A not having been followed by the respondents is also a misunderstood argument as the OPA is being implemented in terms of the directions of the Apex Court in W.P. (C) No.13029/1985 on 12.10.2007 in M.C. Mehta (supra). Learned senior counsel for the respondent has placed reliance upon AIR 2010 SC 1338 PTC India Ltd. Vs. Central Electricity Regulatory Commission through Secretary to support a submission that the law comes into existence from three sources; not only from the Legislature but also there is a Judge made law. Submission being that the orders of the Apex Court asking the Corporation to implement the OPA, 2007 had to be implemented as it is a direction of the highest Court of the land. Learned senior counsel for the respondents further places reliance upon a judgment of

the Single Bench of this Court in W.P. (C) No.901/2016 Visible Media Through Mr. Sameer Tripathi Vs. New Delhi Municipal Council & Anr to support his submission that the OAP is a Policy which has been drafted under the aegis of the Supreme Court and having been approved by the Supreme Court would be a law under Article 141 of the Constitution of India. Learned senior counsel for the respondents has also placed reliance upon 219 (2015) DLT 473 (DB) Anil Bhatia and Others Vs. Government of NCT of Delhi and Others wherein it had been noted that unregulated posters/banners/hoardings is a public nuisance which required to be regulated under law and Article 19 (2) of the Constitution of India; even otherwise the Constitution pre-supposes reasonable restrictions upon the fundamental right of a citizen.

4 Submissions and counter submissions have been noted.

5 The prayers in the writ petition read herein as under:-

“(a) Issue a Writ, Order or Direction in the nature of prohibition and/or in any other nature thereby directing the respondents to act strictly within the ambit of law and not to jeopardize the rights of the members of the petitioner to carry on their trade or business as guaranteed under Article 19 (1)(g) of the Constitution of India and not to impose any arbitrary and illegal restrictions beyond article 19 (6);

(b) Issue a Writ, Order or Direction in the nature of prohibition and/or in any other nature thereby directing the respondents to get the

Outdoor Advertisement Policy, 2007 approved by the Government in terms of Ss. 480 (2) and 481-A of the DMC Act;

(c) Issue a Writ, Order or Direction in the nature of prohibition and/or in any other nature thereby directing the respondents to frame the ground rules, regulations and setting down well-defined parameters relating to the implementation of the vision document/policy; and

(d) Pass any other Order (s)/direction (s) as may be deemed fit and proper in view of all the facts and circumstances of the case in the interest of justice in favour of the petitioner and against the respondent to render complete justice to the petitioner. ”

6 This Court is of the view that these prayers made in the present petition have already been answered by a series of writ petitions upon which reliance has been placed upon by the learned senior counsel for the respondent. The contention of the petitioner that the Policy of 2007 cannot be implemented as the provisions of Sections 480 (2) and 481-A of the DMC act have not been adhered to is an argument without force as admittedly this Policy of 2007 had been formulated under the aegis of the Apex Court. It was the Apex Court while disposing of I.A. No.229 in W.P. 13029/1985 on 12.10.2007 had passed the following order:-

“Pursuant to the order passed by this Court, the Environment Pollution (Prevention and Control) Authority for the National Capital Region has prepared a report regarding the Outdoor Advertisement Policy. The matter was examined in detail and report

has been submitted before us. The various parameters have been laid down as to how the bill-boards hoardings can be fixed the city roads within the jurisdiction of the M.C.D. Certain objections have been raised by some persons who intend to file applications i.e. those who have put up hoardings in the roof top of their house or buildings. They contended that these hoardings were permitted to be put under the earlier policy and if this proposed policy is implemented, they will not be allowed to put hoardings on their buildings and this would cause serious prejudice to them by the implementation of the policy. If any such persons are aggrieved by the implementation of the proposed policies, they would be at liberty to challenge the same.

MCD would be at liberty to go ahead with the policy and the persons who feel aggrieved may file appropriate application before this Court and appropriate orders would be passed. The MCD may go ahead with the implementation of the policy, notwithstanding any order passed by any court.”

7 The go ahead for the implementation of this Policy of the year 2007 had been granted by the Apex Court itself and being a direction of the Apex Court, it necessarily had to be followed by the Corporation and as such the submission of the petitioner that the statutory provisions i.e. Section 480 (2) and 481-A of the DMC has not been adhered to is an argument without force as this direction having been passed under Article 141 of the Constitution of India had the force of a mandate direction i.e. a force of law. Prayer No. (c) necessarily had to go as rules and regulations for the implementation of the Policy have to be adhered to only if a legislative enactment is being

pronounced which is not so in the instant case. Prayer No. (a) that the rights of the member of the petitioner to carry out their trade or business is guaranteed under Article 19 (1)(g) of the Constitution of India has also been answered to in a series of writ petitions and the right of the respondent Corporation to impose reasonable restrictions which is contained in the Constitution itself is a right within the domain of the Corporation. The Division Bench in the judgment of Anil Bhatia (supra) had also observed this. The Court had noted that there can be no absolute right through the medium of posters to ask for votes in an election and the right of speech has to be regulated.

8 Even otherwise, the entire body of the petition as narrated above clearly shows that all these averments are general observations made by the petitioner Association. It is not as if that the individual right of any person has been effected. The petitioner association has while quoting orders of various Court in various petitions referred to supra stated that the acts of the Corporation are illegal. At the cost of repetition, it is noted that there is no individual who is directly affected by this OAP of 2007 in this petition. This has been put to the learned counsel for the petitioner but the petitioner insists that he wants an adjudication on merits on this writ petition.

9 This Court is of the view that the OAP which is being implemented under the aegis and the directions of the Apex Court in terms of the judgment of M.C. Mehta (supra) and the Single Bench of this Court also having noted in Visible Media (supra) that such a direction has a force of law under Article 141 of the Constitution of India; this Court is of the view that adjudication on this OAP, 2007 has already been carried out; the question of

resorting to the provisions of Section 480 (2) and 481-A of the DMC Act would not arise.

10 This petition has no merit. Dismissed with costs quantified at Rs.25,000/-.

INDERMEET KAUR, J

SEPTEMBER 02, 2016

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