THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No.12499 of 2013

ORDER:

Heard.

2. The present Writ Petition came to be filed questioning the action of the respondents in issuing notice dated 06.03.2013 in Lr.No.1889/Advt/GHMC/2013.

3. The petitioner-Company is incorporated under Companies Act with its registered office at Muthoot Chambers, Opp.Saritha Theatre Complex, Benerji Road, Ernakulam, Kerala, doing finance business with 50 branches in Hyderabad and 64 branches in Secunderabad region. It is stated that the boards displayed by the petitioners-company and its branch offices are not in the nature of advertisements and hence would fall within the exception covered by proviso to Section 421(1) of the G.H.M.C.Act. Further, it is stated that the petitioners undertake a separate advertisement campaign and pay the applicable fee and taxes in respect of such advertisements. Hence the action of the respondents in issuing the impugned notice demanding the petitioners to submit returns in Form-I along with requisite fee, in order to continue to display advertisements, without any prior notice to the petitioners, lead to filing of the present writ petition.

4. From a reading of the averments made in the affidavit filed in support of the writ petition, it is clear that without issuing any prior notice to the petitioners, the impugned notice is passed imposing advertisement fee in the form of tax. Learned counsel for the petitioners would submit that the action of the respondent-authorities in imposing tax is without any jurisdiction and the impugned notice is illegal in view of the judgment

of this Court in W.P.No.23332 of 2010. The same is opposed by learned Standing Counsel for GHMC.

5. In order to appreciate the rival contentions, it is useful the extract relevant portion of the order passed in W.P.No.23332 of 2010, which reads as under:

> "....Suffice for the present to observe that even if the advertisement board put up by the writ petitioners or any one concerned therewith is found to be objectionable, not being compatible to the provisions contained in the Act, the same can be ordered to be pulled down or removed only by issuing a notice in writing and thereafter considering the objection filed in response thereto, but not otherwise.
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> Therefore, without expressing any opinion on the merits of the controversy at issue, I direct the respondents not to remove any advertisement boards or hoardings either put up by the writ petitioners, their retailers or distributors or any other commercial establishments, which are similarly placed to that of the writ petitioners herein, without putting such persons on notice, as is required in terms of sub-section (3) of Section 421 of the Act and affording him an opportunity to put forth his defence thereto. It is needless to observe that the respondents are required to consider the objection raised and pass appropriate order in accordance with law thereafter and without passing any such final order, the advertisement boards or hoardings shall not be unilaterally removed".

Since the case on hand is identical to the one referred to above and having regard to the facts and circumstances of the case, the writ petition is allowed permitting the petitioners to make a representation stating their objections within a period of three (03) weeks from today, in which event, the respondent-authorities shall consider the same and pass orders in accordance with law, at the earliest. The petitioners are at liberty to seek for refund of the amount, if any paid and if they are entitled to, in which event the same shall be dealt with, in accordance with law. There shall be no order as to costs.

6. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

12.04.2017
vhb