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

% *Judgment reserved on : 11.01.2017.*

Judgment delivered on : 19.01.2017

+ W.P.(C) 5274/2016
M/S OUTDOOR ASSOCIATES

..... Petitioner

Through Mr. Rakesh Kr. Khanna, Sr. Adv with
Mr. Anand Mishra, Ms. Mahima Rathi
and Mr. H.S. Sachdeva, Advs.

versus

SOUTH DELHI MUNICIPAL CORP (SDMC)

..... Respondent

Through Mr. Sanjay Poddar, Sr. Adv. with Mr.
Mukesh Gupta, Mr. Govind Kumar
and Mr. P.S. Jha, Advs.

CORAM:

HON'BLE MS. JUSTICEINDERMEET KAUR

INDERMEET KAUR, J.

1 The petitioner before this Court is a registered category C Outdoor Advertiser; he was registered in the year 2013. On 05.10.2015, the petitioner had made a request to the respondent/South Delhi Municipal Corporation along with all his requisite documents seeking permission to display advertisement through wall-wrap (of size 40'X10'-400 square feet) at building bearing No. 302 (32), Satkar Building, 79-80, Nehru Place, New Delhi.

2 On 02.12.2015, the petitioner submitted a clarification regarding the exact address of the site along with a reiteration of his request to display the advertisement through wall wrap; this was accompanied with a 'No Objection Certificate' (NOC) from the owner of the property. The prescribed period of 30 days for deciding such an application elapsed on 18.12.2015 (as per the bye laws of the Corporation); the petitioner was not intimated about the fate of his application.

3 The petitioner was constrained to file a writ petition (W.P. (C) No.1222/2015) seeking a direction to decide his application dated 05.10.2015. This writ petition was disposed of on 23.12.2015. The respondent was directed to dispose of the said application of the petitioner within a period of 30 days and the decision was to be communicated to the petitioner.

4 The grievance of the petitioner is that even after expiry of three months, the petitioner did not receive any response from the respondent. He was accordingly constrained to file a Civil Contempt Case (Contempt Case No. 318/2016). The same was listed before the Court on 01.04.2016. One day prior to the Court hearing i.e. on 31.03.2016, the petitioner received a response from the Department informing him that his application seeking

display of advertisement stood rejected. The order passed by the respondent on 31.03.2016 inter-alia reads as under:-

“On inspection of the site by AI/CS on 12.02.2016, it was found that a large space is covered by a white fabric on the facade of the above said premises which creates problems/obstruct in smooth ventilation/light of the entire premises/floor. Thus it is in violation of the OAP-2007 which states that ‘No on Premises Advertising Device’ shall be in any form or manner interferes with openings required for light and ventilation.”

5 Permission was refused to the petitioner.

6 On 05.04.2016, the Contempt Petition was disposed of as not pressed.

7 This petition has impugned the order dated 31.03.2016.

8 Learned senior counsel for the petitioner, at the outset, submits that the grounds on which the application of the petitioner was rejected relates to advertisements falling under category Four and to advance this submission, he has drawn attention of this Court to the Outdoor Advertising Policy for category Four. This inter-alia reads as under:-

“4.1 Category On premises signs and Miscellaneous Fascia Sign: For ”

<i>Four</i>	<i>signs (Advertisement pertaining</i>	<i>self advertising</i>
	<i>To own product/services/shops</i>	<i>only”</i>

9 The case of the petitioner falls under category One. Attention has also been drawn to the Outdoor Advertising Policy for category One wherein Note 2 has been highlighted; the relevant extract reads herein as under:-

“Note 2: Building wrap or large format advertisement may be permitted strictly in commercial areas (mixed land used areas are omitted). However, the revenue charges by the corporation on such building shall be decided by MCD Commissioner or the authorized committee on year to year basis, and shall be based on the 8 different property tax zone identified in the city.”

10 Attention has also been invited to Clause 1.8 of the Policy which as per the petitioner is applicable in his case. It reads as:-

	<i>Summary for</i>	<i>Category One</i>	
<i>S. No.</i>	<i>Description of device</i>	<i>Status</i>	
		<i>Permitted subject to general and Specific permission criteria</i>	<i>Not permitted.</i>
<i>XX</i>	<i>XX XX XX XX XX</i>	<i>XX XX XX XX XX XX</i>	<i>XX XX XX X</i>
<i>1.8</i>	<i>Building wraps</i>		
<i>(i)</i>	<i>Commercial area</i>	<i>Permitted</i>	
<i>(ii)</i>	<i>Recreational areas</i>	<i>Permitted</i>	

11 Submission of the learned senior counsel for the petitioner is that the extract of the impugned order (supra) clearly makes a reference to “On Premises Advertising Device”; this ‘On premises’ relates to category Four as has been enunciated in the aforementioned category; it does not apply to advertisements under category One. The case of the petitioner which is advertisement by display through building wrap is covered under category One. The summary for category One (1.8) permits building wraps in commercial areas and display through such building wraps is permitted. Clause 1.8 (i) of the summary for category One has been highlighted.

12 Submission is that the impugned order rejecting the request of the petitioner suffers from an infirmity as interference with openings for the purposes of light and ventilation are not a hurdle in the way of wall-wrap advertisements which fall under category One; this hurdle would apply only for advertisements under category Four. The rejection letter is premised as if the petitioner had applied under category Four which is not the case of the petitioner.

13 Learned senior counsel for the respondent has refuted these submissions. His submission is that all advertisements including wall-wrap display falling in category One are “subject to a general and specific

permission criteria” which has been noted for category One (supra) and which has been highlighted by the petitioner. Learned senior counsel for the respondent has also drawn attention of this Court to the health conditions applicable to outdoor advertising device wherein at serial No.1, the following condition has been enunciated:-

“Health conditions: Safeguarding Health Conditions is essential to well being of the city. No sign must block opportunities for natural light or ventilation in buildings or across open spaces.”. He has also placed on record photographs of the aforementioned building; attention has been drawn to facade of the building; submission being that if this building wrap is permitted to be affixed in the manner in which the petitioner seeks to do so, all light and ventilation of the building would be blocked and this is against the OAP; it is not permitted; the rejection letter suffers from no infirmity.

14 Learned senior counsel for the respondent has placed reliance upon a judgment of a Division Bench of this Court reported as 219 (2015) DLT 473 Anil Bhatia & Others Vs. Government of NCT of Delhi & Others; submission being that the right of the Department to impose reasonable restrictions is unfettered; the obstruction of light and ventilation is a reasonable restriction which can be imposed by the Department. Reliance

has also been placed upon a judgment passed by a Bench of this Court in W.P. (C) No.5977/2015 titled M/s Delhi Outdoor Advertisers Association (Regd.) Vs. South Delhi Municipal Corporation & Others; submission being that the OAP of 2007 has to be followed and the right of the Corporation to impose a reasonable restriction is well within the domain of the Corporation. The rejection letter thus suffers from no infirmity.

15 In rejoinder, learned senior counsel for the petitioner submits that there is no dispute to the proposition that the OAP of 2007 has to be followed; the petitioner has in fact applied under the OAP of 2007. He has placed reliance upon a judgment of a Single Bench of this Court in W.P. (C) No.4436/2010 titled Sports and Leisure Apparel Ltd. Vs. MCD and Anr dated 18.11.2014 wherein in para 37.5, the Single Judge had noted that the Outdoor Advertising Policy of 2007 is spelt out on pages 8 to 22 and the remaining part of the report is the guidelines and strategy for the implementation of the Policy; it is not strictly the Policy. Submission on this count being that the health conditions highlighted by the respondent showing that no sign must block opportunities for natural light or ventilation in buildings or across open spaces is not a part of the Policy.

16 Arguments have been heard. Record has been perused.

17 A perusal of the first photograph which has been placed on record depicts the facade where the petitioner wants to affix the wall wrap; this is on the 19th floor of Satkar building. The petitioner admittedly is a registered outdoor advertiser; it is also admitted that he has a no objection certificate from the owner of the flats in front of which the wall wrap has to be affixed i.e. flats No. 301-302. The wall wrap would be about 400 square feet i.e. 40'X10' square feet. The photograph depicting the facade measures 700 square feet. This position is admitted. The proposed wall wrap would be thus much smaller both in height and in width. Learned senior counsel for the petitioner while relying upon this photograph has rightly pointed out that this wall wrap when affixed in front of the building would not really block the light and ventilation as there is gap of almost about 4-5 feet between the building and the proposed wall-wrap and this is clear from the manner in which the air-conditioners have been affixed upon the windows of the said flats.

18 A perusal of this photograph does advance this submission made by the learned senior counsel for the petitioner. The photographs and particularly the second photograph shows the distance between the air-conditioners affixed on the wall of the flat and the wall wrap; there is a

distance and the submission of the petitioner that this distance is almost 4-5 feet in length appears to be correct. Thus if the wall wrap is permitted on the front facade of the aforementioned flat, it would not prevent the windows and the doors of the flat from opening; they would still get the outside light and ventilation. The position is quite clear.

19 This Court thus endorses this submission of the learned senior counsel for the petitioner. This Court also notes that this argument is the alternate argument of the learned senior counsel for the petitioner. His first argument is premised on the submission that his permission to display advertisement through building wall wrap falls in category One and would not be governed by the obstacle of light and ventilation. The rejection letter of the respondent (dated 31.03.2016) clearly makes a reference to 'On Premises Advertising Device' which is a advertising device which falls in category Four for which alone the obstacle of light and ventilation is required to be met.

20 The fact that the case of the petitioner falls under category One is evident from a reading of clause 1.8 which permits the building wrap in commercial areas and which in turn contains no such rider.

21 This Court notes that the Single Bench of this Court in Sports & Leisure Apparel (supra) had noted that the actual policy (OAP) is contained

in pages 8 to 22 and the pages prior thereto are only guidelines for the implementation and working of the Policy. Thus the reliance by the learned counsel for the respondent on the health conditions i.e. this blockage of natural light and ventilation would not apply to advertisement through the device of a building wrap.

22 This Court is also of the view that this Court, at this stage, need not go any further into the depth of the matter i.e. as to whether case of the petitioner falls in category One or in category Four as even presuming the submission of the learned senior counsel for the respondent that the hurdle of light and ventilation has to be adhered to by all advertisers as this is a reasonable restriction which has been imposed upon the petitioner in terms of its OAP of 2007, this Court is of view that this hurdle has also been met with by the petitioner. This is clear from the photograph which has been relied upon by the respondent. At the cost of repetition, this Court notes that while permitting the building wrap on the facades of the building, there would be still a distance of about 4-5 feet between the windows of the aforementioned flats and the building wrap; this would allow access to outside light and ventilation. The objection of the respondent on this count is really not sustainable.

23 At this stage, this Court also notes the photographs (2) placed on record in fact show that in the adjacent flat a building wrap of a similar nature (as proposed by the petitioner) has been permitted to “Industrial Blowers Limited”. This fact has been brought to the notice of the learned senior counsel for the respondent who submits that this is probably an error which has been committed by the respondent for which the respondent will take appropriate action.

24 Be that as it may, this Court is of the view that the rejection letter (31.03.2016) suffers from an infirmity. It has been premised on a wrong fact; the device, if permitted to the petitioner would in no manner interfere with the requirement of light or ventilation. This being the only objection taken in the rejection letter, the rejection letter is liable to be set aside. It is accordingly set aside.

25 This Court also notes the admitted position that the erstwhile owner/advertiser had been permitted to display his advertisement through building wrap of a bigger size i.e. of 700 square feet on the same site. The fact that such a permission had been accorded by the Department to the earlier owner is an admitted fact.

26 Permission is accordingly granted to the petitioner to display his wall wrap at premises No. 302 (32), Satkar Building, 79-80, Nehru Place, New Delhi.

27 Petition disposed of.

INDERMEET KAUR, J

JANUARY 19, 2017

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