IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

COCP No.1558 of 2018 (O&M)
Date of Decision:16.5.2018

M/s Rainbow Advertising Company and **others** ...Petitioners

Versus

Sh.Karnesh Sharma and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Vijay K.Jindal, Advocate for the petitioner

RAJIV NARAIN RAINA, J. (Oral)

The petitioners are Advertising agencies operating in the State of Punjab. In *Aradhana Drinks and Beverages Pvt. Ltd. vs. State of Punjab and others,* AIR 2012 Punjab & Haryana 20, a Division Bench of this Court held in paragraph 29 as follows:-

> "[29]For the reasons afore-stated, we hold that so long as the trade, profession or business being carried on within the land, building, shop or outlet etc. also includes the trade, profession or business in the goods, services and/or any other taxable activity in relation to which the advertisement board has been erected, exhibited fixed or retained upon such land, building, shop or outlet, no Advertisement Tax can be levied in view of the proviso (c) to Section 122(1) of the Act. Since it is the categoric case of the petitioner on facts that the Dealer Boards have been erected or displayed by it on the outlet, shops or buildings where one of the activity of the 'business' or 'trade' carried on includes the sale of the products marketed or distributed by the petitioner, no Advertisement Tax is leviable on such Dealer Boards. This declaration of ours, however, is subject to the caveat that wherever the Municipal Corporation is able to establish that the business carried on within the land, building, shop or outlet where the Dealer Boards have been erected or displayed does not at all include the sale of the

> products marketed or distributed by the petitioner-Company, the Corporation shall be at liberty to call upon the petitioner for assessment of the advertisement tax with specific reference to such Dealer Boards and proceed further in accordance with law."

The question in the aforesaid case was whether the Municipal Corporation is able to establish that the business carried on within the land, building, shop or outlet where the Dealer Boards have been erected or displayed doe not at all include the sale of the products marketed or distributed by the Company, then the Municipal Corporation shall be at liberty to call upon the petitioner for assessment of the advertisement tax with specific reference to such dealer Boards and proceed further to process cases in accordance with law.

The petitioners were not parties to the Aradhana Drinks and Beverages Pvt. Ltd., but instituted an independent writ petition bearing CWP No.18838 of 2013 which was disposed of by the learned Single Judge of this Court vide order dated 18.12.2014 with the following directions:-

> " CM-15391 of 2014
>
> This is an application for placing on record Annexures P-9/1 to P-9/5.
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> Application is allowed subject to all just exceptions.
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> CWP-18838 of 2013
>
> This writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ of prohibition restraining respondents No.3 and 4 from recovering tax on account of installation of dealer board on the premises of the dealers of various products. Refund of already recovered amount has also been prayed for.
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> In affidavit of Dr. Amit Mahajan, Sub Divisional Magistrate-cum-Joint Commissioner, Municipal

> Corporation, Pathankot, it is stated that the Municipal Corporation had appointed a contractor i.e. respondent No.4 for the period from 10.12.2012 to 30.06.2013 for charging advertisement tax/fee on account of display boards put up on the various types of buildings etc. enumerated in the affidavit. It is further stated that the Municipal Corporation is not directly charging advertisement tax and the contractor is not authorized to charge any such tax after 30.06.2013 i.e. expiry of his contract. Learned counsel for the petitioner submits that in spite of the affidavit filed by the Municipal Corporation that they are not charging any advertisement tax/fee, the said contractor is collecting advertisement tax/fee against receipts. Since the statement has been made by the Municipal Corporation by way of the affidavit dated 4th December, 2014 if the contractor is still recovering the tax beyond his terms of contract then <u>the petitioner will be at liberty to avail the remedies available to him in accordance with law and the Municipal Corporation shall also look into the factum of unauthorized charging of tax and take appropriate action including recovery of amount charged unauthorizedly</u>.
>
> Disposed of in above terms.
>
> No costs.” (emphasis added)

A reading of the aforesaid order makes it plain that if the petitioners are aggrieved by any action of the Municipal Corporation, they will be at liberty to avail their remedies in accordance with law. Meaning thereby only regular remedies as afforded by law. Contempt is not a regular remedy.

In my considered view, contempt even remotely is not made out in this case arising out of the order dated 18.12.2014. Not only does this contempt petition deserve to be dismissed for want of sufficient ingredients for invoking contempt jurisdiction of this Court, but the action brought after elapse of time is also barred by limitation as per Section 20 of the Contempt of Courts Act, 1971.

The issue would depend on determination of facts in each case, which exercise does not fall within the scope of contempt jurisdiction for the contempt court to make such an enquiry. I can hardly see any wilful disobedience of the orders of this Court for which the respondents can be held guilty of contempt.

Consequently, the contempt petition is dismissed in limine.

(RAJIV NARAIN RAINA)
16.5.2018 **JUDGE**
MFK

Whether speaking/reasoned *Yes*

Whether Reportable *No*

Md. Firoz Khan
2018.05.21 12:30