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

Reserved on:- 06.07.2018.

Date of Decision:- 20.08.2018

+ W.P.(C) No.8578/2017 & CM APPL. Nos. 35278/2017,
46886/2017

SANJEEV K. SAROHA & ANR.

..... Petitioners

Through : Mr. Amit Sibal, Senior
Advocate with Ms. Meenakshi Midha,
Mr. Kapil Midha, Mr. Narendera S.
Sagwan, Mr. Bhavya, Advocates.

Versus

NDMC

.... Respondent

Through : Mr. Sri Harsha Peechara,
Standing Counsel for NDMC with
Mr. Aditya Vikram Singh and Ms. Vidhi
Jain, Advocates.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

JUDGMENT

1. The Petitioners, owners of the freehold commercial property bearing no. F-7, Shankar Market, New Delhi, have filed the present writ petition under Article 226 of the Constitution of India *inter alia* seeking quashing of the notice dated 19.09.2017, whereby the Respondent has cancelled their permission letter dated 21.05.2015 to display a building/wall wrap on the said property. The Petitioners also seek a direction to the Respondent to permit them to continue displaying a wall wrap on the aforesaid property in terms of the permission letter dated

21.05.2015, and to reconsider their request for a waiver of the requirement to share the revenue generated from the said wall wrap with the Respondent.

2. The facts emerging from the record, as are necessary for deciding the present petition are that the Petitioners, on 08.11.2010, made a representation to the Respondent seeking permission to display a building wrap on their self-owned commercial property bearing no. F-7, Shankar Market, New Delhi (hereinafter referred to as the “Commercial Property”). The representation remained unactioned at the end of the Respondent. Being aggrieved by the Respondent's failure to respond to their request for permission to display a wall wrap on the Commercial Property, the Petitioners approached this Court by way of a writ petition being *Sanjeev K. Saroha and Anr v. NDMC [WP(C) No. 6004/2013]*. This Court, vide its order dated 30.04.2015, directed the Respondent to consider the said writ petition as a representation/application made on behalf of the Petitioners and dispose of the same by passing a speaking order thereon after giving the Petitioners an opportunity of being heard.

3. In compliance with this Court's order dated 30.04.2015, the Respondent after giving the Petitioners an opportunity of being heard, vide its letter dated 21.05.2015 granted them permission to display a building wrap on their aforesaid Commercial Property, subject to the following conditions:

1. The applicant has to comply with the terms and stipulations as contained under Delhi Outdoor

Advertising Policy, 2008. In case of any violation thereof, the permission shall be withdrawn immediately.

2. This permission is subject to the final decision by the Council regarding revenue sharing method/formula.

3. The Applicant shall enter into an agreement for revenue sharing as may be decided by the Council.

4. In the interregnum, the applicant may submit Rs.5 lakhs per annum, as provisional fee and also execute an affidavit regarding compliance of the above terms and conditions.

4. After the Petitioners started displaying a wall wrap on their Commercial Property and also paid the prescribed fee of Rupees Five Lakhs per annum to the Respondent in accordance with the permission letter dated 21.05.2015, the Respondent, by this Court's order dated 16.03.2016 passed in *Colonel Shivraj Kumar versus South Delhi Municipal Corporation and Ors. [WP(C) No. 3367/2015]*, was directed to take action against all those advertisements which were found to be in violation of the orders passed by the Court. It is the Respondent's case that, pursuant to this Court's aforesaid order dated 16.03.2016 as also a complaint dated 26.03.2014, the Petitioners' Property was inspected on 18.04.2016 and it was *inter alia* found that the advertisement put up by them measured 35 feet x 15 feet as opposed to the maximum permissible dimensional limit of 20 feet x 10 feet, prescribed under Clause 6.1 of the Delhi Outdoor Advertisement Policy 2008 (hereinafter referred to as "DOAP 2008"), under which policy the Respondent vide letter dated

21.05.2015 had granted permission to the Petitioners to display a wall wrap on the said Property. Consequently, the Respondent issued a show cause notice dated 09.05.2016 (hereinafter referred to as the “First Show Cause Notice”) to the Petitioners, wherein it pointed out the following alleged violations in respect of the building wrap displayed on the Commercial Property:

- a) The size of such display was found 35' X 15' instead of the maximum limit of the area (6m X 3m) comes to 20' X 10' when converted into feet for category-1 device.*
- b) The required certificate of the experienced and practicing Structural Engineer about the design and structure has not submitted to the NDMC.*
- c) The name of the Advertising Device license holder is not placed in a conspicuous position on the device.*
- d) The electrical test certificate about the electrical connections and components in the advertising device is not made available to the NDMC.*
- e) No arrangement is made to promote conservation of electricity and to draw power from alternate renewable resources like solar power.*
- f) Allotment to the advertiser should be made on tender basis. No such information is given to the NDMC so far.*
- g) A licensee/sign owner/applicant is required to indemnify the NDMC for the designated Advertising Device against all actions, proceedings, claims, demands, costs, losses, damages and expenses which may be brought against or made upon the NDMC which arise as a*

*result of the installation of an advertising device.
No such indemnity is furnished to the NDMC so far.*

h) No evidence of public liability insurance of the advertising device is given to the NDMC.

5. The Petitioners, on 11.05.2016, preferred a detailed reply to the Respondent's First Show Cause Notice dated 09.05.2016. Upon receipt of this reply, the Respondent proceeded to issue another show-cause notice dated 20.07.2016 (hereinafter referred to as the "Second Show Cause Notice") to the Petitioners, directing them to comply with Clause 6.1 of DOAP 2008 and ensure that the wall wrap displayed on the Commercial Property was confined to the maximum permissible dimensional limit of 6 meters x 3 meters, i.e., 20 feet x 10 feet, prescribed thereunder. For the sake of ready reference, the relevant portion of the Second Show Cause Notice dated 20.07.2016 is reproduced herein below:

This is with reference to display of wall wrap at your freehold property No.7, Shankar Market, New Delhi. As per para 6.1 of the guidelines under Delhi Outdoor Advertisement Policy 2008, the maximum size that can be permitted for building wraps is 6m X 3m.

You are directed to conform to the above guidelines with regard to display of wall wraps on your property. Non compliance shall lead to withdrawal of permission.

6. The Petitioners then preferred a reply dated 28.07.2016 to the Respondent's Second Show Cause Notice dated 20.07.2016. On receipt

of this reply from the Petitioners, the Respondent on 28.02.2017 now proceeded to issue a third show cause notice to the Petitioners, on the ground that the wall wrap displayed on the Commercial Property was bigger than the maximum dimensional limit allowed under DOAP 2008. The third show cause notice, which was the final show cause notice issued to the Petitioners, went on to state that, even otherwise, wall wraps were permitted in the NDMC area only in respect of those who substantially support social and charitable causes in the discretion of the NDMC. For the sake of ready reference, this final show cause notice dated 28.02.2017 is reproduced hereinbelow:

1. This is with reference to provisional permission given to you vide letter dated 12.05.2015 for displaying the advertisement through wall wrap/building wrap at F-7, Shankar Market, Connaught Circus, New Delhi. The provisional permission was granted subject to the condition that in case of any violation, the permission shall be withdrawn immediately.

2. Subsequently, the issue was examined pursuance to the directions of the Court in the matter of “Col. Shivraj Kumar v. SDMC”. It is noticed that as far as permissibility is concerned, the guiding principles are enshrined under Delhi Outdoor Advertising Policy 2008. Under this policy, 4 categories of advertisements have been allowed, which are as under:

“Category 1: Large format advertisements mainly fixed on billboards/unipoles and bridge and flyover panels.

Category 2: Advertisements mounted on public amenities like public toilets garbage condition point etc.

Category 3: Fleets and transport related infrastructure.

Category 4: Advertisement devices for self-advertising in commercial areas”

3. The wall wraps, billboards, unipoles etc. come within the category of Category-1.

4. Permissibility of advertising devices in various categories is summarized at table 5.1 and table 6.1a of Delhi Outdoor Advertising Policy 2008 in the table 5.1 titled summary of category-1 devices, building wraps have been permitted as a matter of policy. However, the specific permission criteria was provided under table 6.1 under category-1 as per Delhi Outdoor Advertising Policy 2008, under this large size of billboards which includes wall wraps are not permitted in NDMC area other than which substantially support social and charitable activities in the discretion of NDMC.

5. As far as NDMC is concerned, in the recent Speaking Orders with respect to “Greenline” it was viewed that NDMC will not allow any commercial advertisement unless supported by social or charitable cause since it may create visual clutters.

6. Hence, the show cause notice is hereby issued as to why large format advertisement displayed at F-7, Shankar Market may not be removed as it is contrary to Delhi Outdoor Advertising Policy 2008.

7. In response to the Respondent's aforesaid final show cause notice dated 28.02.2017, the Petitioners on 09.03.2017 submitted a reply stating *inter alia* that they are fully compliant with the conditions on which they had been granted permission to display a wall wrap on the Commercial Property by the NDMC after it had thoroughly scrutinized their compliance with all the provisions contained in the DOAP 2008, including the size of the advertisement. On 22.03.2017, the Petitioners submitted an additional reply to the Respondent's final show cause notice, categorically stating therein that they were running a registered charitable trust named "Hindi Gyan Vigyan Kendra", which promotes Hindi language as the mother-tongue of the country, and therefore they were duly fulfilling the conditions stipulated under DOAP 2008 for exhibiting a wall wrap on the Commercial Property.

8. It further emerges that, after submitting their two replies to the aforesaid final show cause notice, the Petitioners on 19.06.2017 sent a letter to the Secretary, Blind Relief Association, New Delhi informing him that, should the Respondent exempt them from the annual advertisement tax of Rupees Five Lakhs, they would in addition to their existing support to the education of 29 blind students, commit the said exempted sum of Rupees Five Lakhs also to the Blind Relief Association. A copy of this letter was also marked to the Respondent for its consideration of the Petitioners' aforementioned request to be exempted from paying the annual advertisement tax levied on them in respect of the wall wrap displayed on the Commercial Property. The

Petitioners' letter dated 19.06.2017 to the Blind Relief Association, was also followed by their representation dated 10.08.2017 to the Respondent with an identical request to be exempted from paying the annual advertisement tax. It transpires that subsequently, the Petitioners also entered into a Memorandum of Understanding (hereinafter referred to as "MOU") with the Blind Relief Association on 24.08.2017, thereby committing to pay a sum of Rs. 2,17,000/- per year towards scholarships for 29 blind students for a period of five years from 2016 to 2021 with a further commitment to pay the Blind Relief Association an additional sum of Rs. 5,00,000/-, in the event the Respondent/NDMC exempted them from paying the annual advertisement tax of the same amount levied on them.

9. Having received no response to their representation dated 10.08.2017, the Petitioners preferred two further representations dated 04.09.2017 and 15.09.2017 to the Respondent, requesting it to waive their obligation to share 50% of the revenue generated from the wall-wrap as advertisement tax for the same, so as to enable them to use the said amount to support the Blind Relief Association. While the aforesaid representations remained unanswered, the Respondent on 19.09.2017, issued the impugned notice cancelling the permission granted to the Petitioners on the following grounds:-

- 1. Size of the impugned display is 35' X 15' instead of the maximum limit (6m X 3m) i.e. 20' X 10' prescribed under table 6.1 under category 1 of DOAP 2008.*

- 2. No substantial support in social and charitable activities has been done in the discretion of NDMC.*
- 3. Mislead the provision under DOAP 2008 in the term of "Building Wrap."*
- 4. Violating the provision of DOAP 2008 for constructing steel structure which can be termed as a bill board instead of wall wrap.*

10. Aggrieved by the Respondent's impugned cancellation notice dated 19.09.2017, the Petitioners have approached this Court by way of the present writ petition. When the matter was listed for preliminary hearing on 25.09.2017, this Court had, by way of an interim order stayed the impugned cancellation notice, which interim arrangement has continued to operate during the pendency of the present petition.

11. Having set out the facts hereinabove, I may now refer to the rival contentions of the parties.

12. At the outset, Mr. Amit Sibal, learned Senior Counsel for the Petitioners, contends that while the impugned cancellation notice was a consequence of the final show cause notice dated 28.02.2017, it cites several additional and cryptic grounds for cancelling the permission letter dated 21.05.2015 that did not find any mention in the said show cause notice, which alone was the basis for issuing the impugned cancellation notice. He contends that, although an objection to the size of the building wrap was initially taken in the first two show cause notices, the same was subsequently dropped by the Respondent in its final show cause notice dated 28.02.2017 upon being satisfied with the

Petitioners' reply dated 28.07.2016 in response to the Second Show Cause Notice dated 20.07.2016. Mr. Sibal's contention, thus, is that the Respondent could not have taken an objection to the size of the building wrap in the impugned cancellation notice dated 19.07.2017, since the show cause notice on which it was based (i.e., show cause notice dated 28.02.2017) did not mention the said ground, and further because the same had already been answered to the satisfaction of the Respondent vide the Petitioners' reply dated 28.07.2016 to the Respondent's Second Show Cause Notice dated 20.07.2016.

13. Taking his aforementioned plea further, Mr. Sibal submits that the Respondent could not have taken an objection to the size of the building wrap in the impugned cancellation notice as DOAP 2008, which is the policy under which both the permission letter dated 21.05.2015 and impugned cancellation notice were issued, for obvious reasons, does not provide for any dimensional restrictions in respect of wall wraps. He contends that, as the name suggests, wall wraps are advertisements that entirely wrap the wall on which they are displayed and, therefore, the sizes of such advertisements will necessarily vary with the sizes of the wall on which they are exhibited, thereby making the prescription of a uniform size for such advertisements impossible.

14. Without prejudice to his aforesaid contentions, Mr. Sibal submits that photographs of the building wrap displayed on the Commercial Property were annexed to the permission letter dated 21.05.2015 issued by the Respondent. He, thus, contends that the Respondent must not

only be deemed to have known about the size of the wall wrap at the time of granting permission to display the same but the said permission must be deemed to be granted specifically for the size of the said wall wrap/advertisement. In these circumstances, he submits, the Respondent cannot cancel the permission letter dated 21.05.2015 on facts that were specifically in its knowledge at the time it granted such permission.

15. Mr. Sibal further contends that the impugned cancellation notice has been issued wholly without application of mind, inasmuch as it is based on alleged violations that were neither prohibited by the permission letter dated 21.05.2015 nor DOAP 2008, which as noted above is the policy under which the aforesaid permission letter was granted. He submits that there was no requirement to provide substantial support to social and charitable activities in the discretion of the NDMC for displaying wall wraps, either under DOAP 2008 or the permission letter dated 21.05.2015. By placing reliance on Clause 6.1(a)(c) of DOAP 2008, he further submits that the requirement to provide substantial support to social and charitable activities is only applicable to billboards and, therefore, the Respondent cannot take the Petitioners' omission to comply with the same as a ground for cancelling their permission to display a *wall wrap*.

16. Taking his aforementioned plea further, Mr. Sibal contends that a perusal of the permission letter dated 21.05.2015 issued by the Respondent in itself shows that it did not require the Petitioners to provide any support to social and charitable activities, as is now sought

to be contended by the Respondent. By placing reliance on the permission letter dated 21.05.2015 as also the internal notes of the Respondent at the time of granting the said permission, he further contends that the same was granted solely on a revenue sharing basis and was not subject to the requirement of carrying out any social or charitable activities. Mr. Sibal's contention, thus, is that the requirement of providing substantial support to social and charitable activities in the discretion of the NDMC was neither a condition to the grant of permission to display a wall wrap on the Commercial Property nor a factor considered by the Respondent while granting such permission to the Petitioners and, therefore, the same cannot now be taken as a ground to cancel the said permission.

17. Mr. Sibal further submits that the issue pertaining to supporting social and charitable activities was raised for the first time only in the final show cause notice dated 28.02.2017. He contends that a bare perusal of the said Notice also reveals that even though there was no such requirement to provide substantial support to social and charitable activities under DOAP 2008, the said requirement had been necessitated only by recent speaking orders issued with respect to the case of 'Greenline'. Therefore, he submits, it was only after the final show cause notice was issued that the Petitioners were first made aware of the aforesaid "requirement" and they immediately took steps to comply with the same. In compliance with the aforesaid requirement, he contends, the Petitioners vide representations dated 04.09.2017 and 15.09.2017 not

only furnished documentary evidence of their existing support to 29 blind students but in view of their charitable activities, also requested the Respondent to waive off the annual Advertisement Tax/Revenue Share payable by the Petitioners. However, he submits, the Respondent *mala fide* issued the impugned cancellation notice despite having received the Petitioners' aforementioned representations dated 04.09.2017 and 15.09.2017.

18. Without prejudice to his aforesaid contentions, Mr. Sibal submits that the Respondent's requirement to provide "substantial" support to social and charitable activities "in the discretion of the NDMC" must be tested on the touchstone of existing constitutional principles. Firstly, he submits, the aforementioned requirement is vague insofar as there is no intimation whatsoever from the Respondent as to what constitutes "substantial" support to social and charitable activities. Secondly, he submits, the discretion conferred on the NDMC to determine what constitutes substantial support to social and charitable activities, must be interpreted in light of the mandate of Article 14 of the Constitution of India. By placing reliance on the decision of the Supreme Court in ***Kedar Nath v. State of Bihar [AIR 1962 SC 955]***, he contends that the Respondent cannot have unfettered discretion in deciding what constitutes "substantial" support as this would inevitably lead to the misuse of power. He further submits that in order to render its discretion constitutional, the NDMC must either lay down guidelines for the same or should have stipulated in their permission letter dated 21.05.2015

itself as to what "substantial" support the Petitioners were enjoined to provide as a condition for continuing to display a wall wrap on their Commercial Property.

19. Mr. Sibal further submits that similarly, the issue pertaining to the steel structures mounted on the Commercial Property was also raised for the first time in the impugned cancellation notice. Therefore, he contends, the Petitioners had no opportunity to show cause against the said ground before the impugned cancellation notice was issued to them. He submits that not only has the said ground been taken in complete violation of the principles of natural justice but, even otherwise, there is no bar under DOAP 2008 against affixing steel structures on walls to secure the building wraps on them, as is sought to be contended by the Respondent.

20. In response to the contentions regarding DOAP 2017 raised by the Respondent in its counter-affidavit, Mr. Sibal submits that notwithstanding the fact that DOAP 2017 had already been enforced vide the Supreme Court's order dated 03.08.2017 in ***M.C. Mehta v. Union of India [W.P.(C) No. 13029/1985]***, the Respondent had consciously issued the impugned cancellation notice on 19.09.2017 under DOAP 2008. Therefore, by placing reliance on the decision of the Supreme Court in ***Mohinder Singh Gill and Anr. v. Chief Election Commissioner, New Delhi and Ors. [(1978) 1 SCC 405]***, he submits that the Respondent, having found that the Petitioners are not in violation of DOAP 2008, cannot now rely on the provisions of DOAP

2017 to urge that the Petitioners are violating the latter policy, and subsequently improve upon its case as specified in the impugned cancellation notice. Even otherwise, he contends, no show cause notice under DOAP 2017 has been issued to the Petitioners till date. By placing reliance on the decision of the Supreme Court in *Nagarjuna Construction Company v. Government of Andhra Pradesh [(2008) 16 SCC 276]*, he submits that it was incumbent upon the Respondent to comply with the principles of natural justice and give the Petitioners an adequate opportunity of being heard with regard to any alleged violation under DOAP 2017, by at least issuing a show cause notice to them under DOAP 2017.

21. Without prejudice to his plea that the Petitioners were not given any opportunity to show cause regarding the alleged violations of DOAP 2017, Mr. Sibal submits that the Petitioners are not in contravention of DOAP 2017 and are, in fact, covered by the said policy. As per Clause 6.1(1.6) and Clause 7.1(c) of DOAP 2017, he submits, building wraps are allowed in malls, the airport area, cinema halls, and metro station buildings (except in the NDMC area), provided they substantially support social and charitable activities in the discretion of the NDMC. He contends that the Commercial Property, being situated in Shanker Market, New Delhi, is part of a renowned mall, which is one of the sites under DOAP 2017 where the exhibition of wall wraps is permissible. In support of his aforesaid plea, Mr. Sibal urges this Court to not contemplate the meaning of "mall" in terms of the multi-storied

buildings that have in the recent past come to be erected in many urbanized corners of the city. Instead, he places reliance *inter alia* upon the definition of "mall" in the Short Oxford English Dictionary (6th Edition) as a shopping precinct closed to vehicles, and submits that as per the said definition, Shanker Market is a mall within the meaning of DOAP 2017. Thus, his contention is that the Petitioners fall squarely within the scope of DOAP 2017 and, therefore, the Respondent has no case to even rely on the said Policy to support its impugned cancellation notice.

22. On the other hand, Mr. Sri Harsha Peechara, learned counsel for the Respondent, while opposing the petition, submits that the same is liable to be outrightly rejected as the Petitioners are in violation of DOAP 2017, which as on date is the only advertising policy of the Respondent applicable in the NDMC area. He submits that DOAP 2017 was implemented pursuant to the Supreme Court's order dated 03.08.2017 in *M.C. Mehta (supra)* and is now the new outdoor advertising policy binding not only on the Petitioners but also on the Respondent. According to Mr. Peechara, DOAP 2017 permits building wraps only in malls, the airport area, cinema halls, and metro station buildings (except in the NDMC area), and that too only if the revenue generated therefrom is used substantially to provide support to social and charitable activities in the discretion of the NDMC. He submits that neither is the Commercial Property located in any of the areas where building wraps are allowed to be exhibited nor do the Petitioners support

any social and charitable activities in the discretion of the NDMC. Therefore, he contends, the Petitioners do not fulfill the criteria stipulated under DOAP 2017 for grant or continuation of permission to exhibit a building wrap on the Commercial Property. Thus, his contention is that the Respondent cannot grant permission to the Petitioners or allow them to continue displaying a building wrap on the Commercial Property, when they do not fulfill the criteria for the same in terms of the policy now applicable, i.e., DOAP 2017.

23. Mr. Peechara further submits that the Petitioners' contention that the Commercial Property is located in a mall is wholly misconceived since the literal definitions of "mall", as relied upon by Mr. Sibal, render the expression practically otiose. He submits that if Shankar Market is deemed to be a mall, as is sought to be contended by the Petitioners, then every local market area in the NDMC area that is cordoned off to vehicles will be deemed to be a mall, thereby rendering the expression "mall" occurring in DOAP 2017 completely meaningless.

24. Mr. Peechara, while conceding that the Respondent had not issued any show cause notice under DOAP 2017 to the Petitioners, further submits that they were not in any way disadvantaged by the Respondent's omission to send such a show cause notice to them. He contends that even before the impugned cancellation notice was issued on 19.09.2017, the Petitioners had themselves sent a representation dated 15.09.2017 to the Respondent, clearly stating therein that they are in compliance with DOAP 2017 since their advertisement is on a

property in Shankar Market, which is a mall. He, thus, contends that the Petitioners' representation dated 15.09.2017 in itself shows that they were aware of the issues in respect of their advertisement on the Commercial Property, including the binding effect of DOAP 2017. He, therefore, submits that there has been no violation of the principles of natural justice, as it is not a case wherein the Petitioners did not have prior notice of the Respondent's case against them.

25. Without prejudice to his plea that the Petitioners are in violation of DOAP 2017 despite always being aware of the requirement to comply with the same, Mr. Peechara places reliance on the decision of the Supreme Court in *Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise and Ors.* [C.A. No. 4458-59/2015], in support of his contention that in cases where the omission to issue a show cause notice does not cause prejudice to the concerned party or would not change the result of the decision to be taken by the authority in question, the issuance of a show cause notice is not at all mandatory and would merely be an empty formality. He submits that, in the facts of the present case, it is evident that a wall wrap on the Petitioners' property is not permissible under DOAP 2017, as the same does not fall in the areas where wall wraps are permissible and, thus, the issuance of a show cause notice under DOAP 2017 to the Petitioners would have been and continues to remain an empty formality. He, therefore, contends that the Respondent's omission to issue a show cause notice under DOAP 2017

did not cause any prejudice to the Petitioners as they were already aware of the Respondent's case against them.

26. Mr. Peechara further submits that the Petitioners are in violation not only of DOAP 2017 but also of DOAP 2008, the outdoor advertising policy under which permission to display a wall wrap had been granted to them, as the very size of the wall wrap exceeds the maximum size of advertisements permissible under the latter policy. He submits that, while Clause 6.1(c) of DOAP 2008 clearly stipulates the maximum permissible size of building wraps as 20 feet x 10 feet, the Petitioners' wall wrap on the Commercial Property admittedly measures 35 feet x 15 feet. In these circumstances, he contends, the Respondent cannot be faulted for cancelling the Petitioners' permission letter dated 21.05.2015, when their advertisement was found to be in violation of not only the policy under which permission had been granted but also of the policy presently applicable, i.e., DOAP 2017.

27. Mr. Peechara further contends that the permission to display a wall wrap had been granted to the Petitioners vide letter dated 21.05.2015 only upon consideration of their representation dated 20.03.2015, wherein they had categorically represented that they were running a charitable institution named "Hindi Gyan Vigyan Kendra" and would use the revenue from the advertisement to further their charitable activities, which representation was patently false. He submits that after the grant of permission to them vide letter dated 21.05.2015, while the Petitioners promptly displayed the wall wrap on their property, they had

not submitted any evidence of their alleged social and charitable activities. Taking his aforesaid plea further, he submits that the documents filed with the present petition in themselves reveal that the first ever contribution made by the Petitioners towards social and charitable activities was in March 2017, i.e., after the issuance of the final show cause notice. His contention, thus, is that the Petitioners only started engaging in social and charitable activities subsequent to the issuance of the final show cause notice and that too only as an afterthought, making it evident that they were not carrying out any social and charitable activities despite having made a specific representation to the effect while seeking permission to display a wall wrap.

28. The final submission of Mr. Peechara is that the mere absence of some of the grounds forming the basis of the impugned cancellation notice in the final show cause notice cannot be fatal, as the Petitioners were well aware of all the violations set out in the cancellation notice, having been specifically put to notice in respect thereof through the earlier two show cause notices itself. He submits that the Petitioners' presumption that the grounds mentioned in the first two show cause notices had been given up by the Respondent was wholly without any basis and merely because the violations already mentioned in the first two show cause notices were not repeated in the final show cause notice, could not lead to the conclusion that they stood condoned or could not form the basis of the cancellation notice.

29. Having heard the learned counsel for the parties at length and considered their rival contentions, I find that the following issues arise before this Court:

- I. Whether the impugned cancellation notice dated 19.09.2017 can be said to be violative of the principles of natural justice, insofar as it mentions grounds that were not taken in the final show cause notice dated 28.02.2017?
- II. Whether there are any dimensional restrictions for wall wraps under Delhi Outdoor Advertising Policy 2008?
- III. Whether it was mandatory for the Petitioners to provide substantial support to social and charitable activities as a condition to display a building wrap under the Delhi Outdoor Advertising Policy 2008?
- IV. Whether the Respondent can be permitted to justify its impugned cancellation notice by placing reliance on the Delhi Outdoor Advertising Policy 2017?

30. The first and foremost fact which emerges from the record is that, while the impugned cancellation notice purports to be based on the grounds taken in the final show cause notice dated 28.02.2017, the Petitioners' reply thereto was not found to be satisfactory, it specifically mentions grounds not only as referred to in this show cause notice but also includes grounds not mentioned therein. While some of these additional grounds were initially taken in the first two show cause notices, some of them were never even mentioned by the Respondent in

any of the three show cause notices issued by it to the Petitioners. While this factual position has not been denied by Mr. Peechara, he has tried to justify the Respondent's action by contending that the Petitioners having been put to notice of the additional grounds by way of the first two show cause notices itself, the reliance by the Respondent on those grounds while passing the impugned cancellation notice cannot be faulted as the same were always within the knowledge of the Petitioners. He has further tried to justify the inclusion of new grounds in the impugned cancellation notice by contending that those grounds relate to violations of the provisions of DOAP 2008 as also of DOAP 2017, which are not only in the public domain but also within the specific knowledge of the Petitioners themselves, and thus it could not be urged by them that the principles of natural justice were violated.

31. In my view, as far as the grounds that were not taken in either of the three show cause notices dated 09.05.2016, 20.07.2016 and 28.02.2017 are concerned, there can be no doubt that they could not form the basis of the impugned cancellation notice since the Petitioners did not have any prior notice of them and, therefore, never had any opportunity to prefer any response to them. One of the most fundamental requirements of audi alteram partem, a cardinal principle of natural justice, is prior notice of the case that an authority has against a person, without which one cannot exercise his/her right to a fair and effective hearing. There is no gainsaying that an authority seeking to take action resulting in civil consequences against a person, must equip the affected

person with information that is necessary to enable him/her to prefer an informed representation against the proposed action. It is for this reason that I find that the ground pertaining to the erection of steel structures on the Commercial Property being violative of DOAP 2008, having never been taken earlier, could not form the basis of the impugned cancellation notice.

32. Similarly, the ground taken in the impugned cancellation notice, i.e., "*mislead the provision under DOAP 2008 in the term of "Building Wrap"*", having not been taken in any of the three show cause notices issued by the Respondents, cannot be held to be a valid ground for issuing the impugned cancellation notice. Even otherwise, this ground being absolutely cryptic, conveys no logical sense to the reader and flies in the face of the settled legal position that an effective notice issued by an administrative authority must adequately convey to its recipient the grounds for the same. It is obvious that a ground that does not convey its contents sufficiently and does not provide the information necessary for preferring an adequate reply, cannot be a legitimate basis for issuing a notice. Thus, even the aforementioned ground is wholly unsustainable and cannot be treated as a valid premise for issuing the impugned cancellation notice.

33. Now, I may refer to those grounds that were initially taken either in the First or Second Show Cause Notice but were subsequently dropped in the final show cause notice, and are still the basis of the impugned cancellation notice. In this regard, I am of the view that as a

corollary to adequate notice, a distinction needs to be drawn between grounds that one has been able to explain to the satisfaction of the concerned authority and of those that warrant the production of further explanations and evidentiary materials by such person. In the absence of such information, a person cannot be expected to build up his/her own case with certainty by preferring a determinate and adequate response to the show cause notice served on him/her by an administrative authority. Thus, in my opinion, any ground taken in the earlier two show cause notices but not mentioned in the final show cause notice, must necessarily be treated as condoned/dropped and, therefore, as a corollary thereof the same cannot legitimately form the basis of the impugned cancellation notice. The ground pertaining to the size of the advertisement, having admittedly not been taken in the final show cause notice dated 28.02.2017, could thus not be taken as a ground for issuing the impugned cancellation notice, especially when the impugned cancellation notice only refers to the final show cause notice dated 28.02.2017.

34. I may now proceed to examine whether the Petitioners are in violation of the Delhi Outdoor Advertising Policy 2008, under which policy they were granted permission to exhibit the wall wrap. In determining the aforesaid aspect, it would be necessary to first examine the relevant provisions of the Delhi Outdoor Advertising Policy 2008; violation whereof is attributed to the Petitioners. The relevant extracts of the policy read as under:-

5. Summary of permissibility of different category of advertising devices

5.1 Summary for Category 1 Devices			
S.No.	Description of device	Status	
		Permitted Subject to General and Specific Permission Criteria	Not Permitted
1.1	Billboards/Unipoles/ Bipoles		
<i>i</i>	<i>Industrial area</i>	<i>Permitted</i>	
<i>ii</i>	<i>Commercial area</i>	<i>Permitted</i>	
<i>xxx</i>	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>
1.2	Trivision		Not Permitted
1.3	Railway Bridge Panels	<i>Permitted</i>	
1.4	Flyover Panels	<i>Permitted</i>	
1.5	Building Wraps		
<i>I</i>	<i>Commercial area</i>	<i>Permitted</i>	
<i>II</i>	<i>Recreational areas</i>	<i>Permitted</i>	
<i>III</i>	<i>Other areas like residential area, industrial, institutional heritage, monument etc including mixed and use areas.</i>		<i>Not permitted</i>

6. Specific conditions for different category of advertising devices

6.1 Specific conditions: Category 1				
S.No	Type	General description -n	Description -n of device	Specific parameters

				Length	Width	Max Height	Min Ground Clearance
1.1	Category - one	Large format outdoor advertising device	Billboards/ Unipole	6m	3m	8m 14m for Railways * (*Not permitted in NDMC areas)	2.5m
1.2			Trivision	NA	NA	NA	NA
1.3			Railway Bridge panels	18m	3m	-	-
1.4			Flyover panels	18m	3m	-	-

6.1 a Specific Permission Criteria: Category 1		
a.	Lateral placement	xxx
b.	Longitudinal Placement	xxx
c.	Other placements	- In NDMC areas, unipoles will not be allowed along railway bridges. - In NDMC areas, no large size (category 1) billboards will be allowed, other than those billboards which substantially support social and charitable activities in the discretion of the NDMC. - In major arterial roads of the city, like Ring Road, with high traffic volumes and designed to promote speed of movement (without intersections), large size hoardings (category 1) will not be permitted. The decision on adding roads

		<i>will be taken jointly with the Delhi Traffic Police and the MCD.</i> <i>• The locations where large format outdoor devices are placed along the sides of the railway bridge, flyover than maximum height of the device from the road level shall be measured clearly from the top of flyover and centre of the flyover</i> <i>• Building wrap or large format advertisement (6m X 3m) will be permitted strictly in commercial areas.</i> <i>• Not permitted in residential areas</i> <i>• Not permitted within 75 m of another category 1 device.</i> <i>• Not permitted within 75 m of category 1 and category 2 devices.</i>
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35. What transpires from a perusal of DOAP 2008 is that Clause 5.1 while summarizing the various types of Category-I advertising devices, places billboards at serial no. 1.1 and building wraps at serial no. 1.5. In other words, DOAP 2008 treats building wraps and billboards as two separate types of advertisements within the same category (i.e., Category-I) of advertising devices. Furthermore, while laying down the specific conditions for displaying different types of advertising devices, Clause 6 stipulates certain dimensional restrictions on all Category-I advertising devices, except for trivisions and building wraps. In fact, Clause 6.1, which is the provision creating restrictions on the size of Category-I advertising devices, makes no mention of billboards at all. Thus, it appears that DOAP 2008 while imposing restrictions on the size of billboards, does not envisage any dimensional restrictions on wall

wraps. Though Mr. Peechara has, by placing reliance on Clause 6.1a(c), contended that both building wraps as also large format advertisements can at most measure 6 meters x 3 meters, I am of the considered view that it is Clause 6.1 and not Clause 6.1a(c) that specifically lays down the maximum permissible parameters for Category-I advertisements. All that the relevant portion of Clause 6.1a(c) stipulates is that large format advertisements measuring 6 meters x 3 meters as also building wraps, are only permitted in commercial areas. It does not in any way provide for the maximum permissible parameters of Category-I advertising devices, for which purpose one must turn only to Clause 6.1. Therefore, I find nothing in DOAP 2008 that creates dimensional restrictions on wall wraps, as a result of which even the ground objecting to the size of the wall wrap/advertisement in the impugned cancellation notice dated 19.09.2017 is wholly unsustainable.

36. Now, coming to the requirement to provide substantial support to social and charitable activities, which has allegedly not been fulfilled by the Petitioners, it may be noted that Clause 6.1a(c), which provides for support to social and charitable activities especially states that "*in NDMC areas, no large size (category 1) billboards will be allowed, other than those billboards which substantially support social and charitable activities in the discretion of the NDMC.*" Thus, it emerges that the use of the expression "category 1" in the context of support to social and charitable social activities is specifically qualified by the word 'billboards', making it evident that the aforesaid requirement

designedly refers only to large-size billboards falling in Category-I, and not to all types of advertising devices falling under the said category. When the policy itself does not impose any such condition on the exhibition of buildings wraps, it is unfathomable how even such a condition could have been a factor considered by the Respondent while granting permission to the Petitioners to display a building wrap on the Commercial Property, or consequently a ground for cancelling such permission. In the light of the aforesaid specific clause of the policy, I am unable to persuade myself to accept Mr. Peechara's contention that the permission letter dated 21.05.2015 was granted to the Petitioners on the basis of their representation dated 20.03.2015, wherein they stated their intention to use the proceeds from the advertisement to further the charitable activities of their institution "Hindi Gyan Vigyan Kendra".

37. At this stage, it may also be important to note that no objection to the Petitioners' social and charitable activities (or rather absence thereof) was taken by the Respondents in the First and Second Show Cause Notices, which itself appears to be attributable to the lack of any such precondition in the policy for the grant of permission to exhibit a wall wrap. It is only in the final show cause notice that the aforesaid ground was taken for the first time, a perusal of which Notice reveals that the condition had been imposed vide some recent speaking orders passed by the Respondent in relation to the case of 'Greenline', and had no basis in the statutory policy. There appears to be no reason to conclude that, as per DOAP 2008, the Petitioners were legally obligated to carry out

social and charitable activities in the discretion of the NDMC to display a building wrap on the Commercial Property. For the aforementioned reasons, I find that the Petitioners' lack of substantial support to social and charitable activities as a ground for cancelling the permission is not borne out from the requirements of DOAP 2008 and, therefore, could not also be a legitimate premise for issuing the impugned cancellation notice.

38. I may now move on to examine whether the Respondents can, at this stage, rely on DOAP 2017 to justify the impugned cancellation notice. What can be gathered from Mr. Peechara's stand before this Court is that the primary reason why the Petitioners cannot at this stage be allowed to exhibit a building wrap on the Commercial Property, is that they do not fulfill the criteria for the grant or continuation of such permission under DOAP 2017, which is admittedly the advertising policy now binding on the Respondent as also the Petitioners.

39. Even though Mr. Sibal has contended that the permission granted to the Petitioners has to be tested only in accordance with DOAP 2008, I am of the opinion that, although the impugned cancellation notice and the permission letter dated 21.05.2015 were no doubt issued under DOAP 2008, the Respondent would be entitled to cancel the permission incase it was found that the wall wrap of the Petitioners was in violation of the policy now applicable. The Petitioners cannot be permitted to continue displaying a wall wrap on the Commercial Property forever merely because they are not found to be in violation of the policy under

which permission was granted to them. It is evident that the grant of permission vide letter dated 21.05.2015, does not create any vested right in the Petitioners to continue displaying a wall wrap on the Commercial Property in perpetuity, and the same has to necessarily be subject to the changing laws of the land. It being an undisputed position that the DOAP 2008, under which permission was granted, is no longer in force, the right of the Petitioners to continue exhibiting the wall wrap has to be necessarily tested on the parameters prescribed in the DOAP 2017.

40. However, whether or not the Petitioners are compliant with the provisions of the new policy, i.e., DOAP 2017, still remains to be determined. In this regard, the first and foremost fact to be noted is that it is the Respondent's own admitted case that it had not given any notice to the Petitioners regarding their alleged non-compliance with DOAP 2017, before cancelling their permission letter dated 21.05.2015. In fact, even the impugned cancellation notice was issued to them on the basis of alleged infractions in respect of DOAP 2008, although DOAP 2017 had by then already been implemented on 03.08.2017. In my opinion, merely because the Petitioners on 15.09.2017 had submitted a representation to the Respondent stating that they are in compliance with DOAP 2017, it cannot be said that they already had adequate notice of the Respondent's case against them in respect of their alleged violations under DOAP 2017. I find nothing in the representation dated 15.09.2017 that reveals, by implication or otherwise, that the Petitioners knew that

their Commercial Property was not, as per the Respondent's case, a mall within the meaning of the expression under DOAP 2017.

41. Even though, Mr. Peechara has strenuously contended that the issuance of a fresh show cause notice under DOAP 2017 would be an empty formality, in my opinion, whether a party has been prejudicially affected by an authority's omission to issue a show cause notice cannot be put in a straightjacket formula and is a question of fact that needs to be determined in the context of a given case. Therefore, the issue which essentially needs to be considered is, whether in the facts of the present case, grant of an opportunity to the Petitioners to show cause in respect of the alleged violations of DOAP 2017 would be an empty formality or a necessary pre-requisite for taking any action against them.

42. From the rival contentions of the parties, it emerges that to test whether the Petitioners are in violation of DOAP 2017, the primary issue which would need to be determined is as to whether their Commercial Property is a mall or a type of property on which building wraps are permitted to be exhibited under DOAP 2017. In case, it were to be found that a wall wrap per se, is not permissible under DOAP 2017 on buildings of the type of the Petitioners' Commercial Property, the permission granted to the Petitioners would necessarily have to be cancelled after following due procedure. However, in the event it is found otherwise, only then the issue as to whether the Petitioners are compliant with the conditions imposed by DOAP 2017 on exhibition of wall wraps would arise. In these circumstances, I am unable to persuade

myself to accept Mr. Peechara's contention that in the facts of the present case, the issuance of a show cause notice under DOAP 2017 by the Respondent to the Petitioners would be an empty formality.

43. The Petitioners not having been given any opportunity to show that their property is one of the kinds of buildings on which wall wraps are permitted under DOAP 2017, it cannot be said that the Petitioners were not prejudicially affected by the Respondent's omission to issue a show cause notice to them in this regard under DOAP 2017. In fact, whether or not the Petitioners are in violation of DOAP 2017 is a question of fact that has to be determined by the Respondent only after duly complying with the principles of natural justice, including the issuance of an adequate notice to them. It is for this reason that the Court, at this stage, has refrained from examining the conditions imposed on displaying wall wraps under DOAP 2017, as also the question as to whether the Petitioners are in violation thereof.

44. For all the aforementioned reasons, the impugned cancellation notice is quashed. This would, however, not preclude the Respondent from taking action against the Petitioners, by unequivocally informing them of the grounds on which the permission to display a building wrap on the Commercial Property is sought to be cancelled, and taking further action as deemed necessary after following the principles of natural justice.

45. The writ petition is allowed in the aforementioned terms with no order as to costs.

AUGUST 20, 2018/ss/nm

(REKHA PALLI)
JUDGE

