

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3312 of 2009 (O&M)

Date of Decision: 04.03.2020

Municipal Council, Karnal and Another

... Appellant(s)

Versus

M/s Karnal Communication Network Private Limited, Karnal

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. R.S.Kundu, Advocate
for the appellants.

Mr. Aashutosh Jerath, Advocate
for the respondent.

Anil Kshetarpal, J.

The present regular second appeal has been filed by the Municipal Corporation, Karnal, challenging the correctness of the judgment passed by the learned first Appellate Court arising from a civil suit filed by the plaintiff/respondent. The issue which arises for consideration is that whether the Municipal Council is entitled to charge advertisement fee from a cable operator on the ground that the cable through which the advertisement is transmitted to reach the premises of consumers is supported by the pillars installed by the Municipal Council.

The plaintiff/respondent filed a suit challenging correctness of various notices including notice Ex.D5 dated 08.07.2004 and notice dated 27.07.2004. In the notice dated 08.07.2004, amount of ₹ 78,22,414/- was demanded, whereas in the subsequent notice, the amount was revised to

₹83,44,417. At this stage, it would be appropriate to notice that in exercise of powers, the State of Haryana has notified the Haryana Municipal (Control of Advertisement) Byelaws, 1976 (hereinafter referred to as “the Byelaws”). The term “Advertisement” has been defined under Clause 2(ii) of the Byelaws, which is extracted as under:-

“2 Definitions:- In these bye-laws, unless the context otherwise requires:-

(I) XXXX XXXX XXXX

(ii) “Advertisement” means any word, letter, model, sign placed, board, notice, device or representation on whether illuminated or not, in the nature, of an employed wholly or in part for the purpose of advertisement, announcement or direction”.

A fee on the advertisement is payable under Clause 8 which reads as under:-

“8. Fee on advertisement:-

(1) The fee payable on advertisement under these bye-laws shall be as given in the schedule to these bye-laws and shall be payable in advance after the Executive Officer or Secretary, as the case may be, has approved of the proposed advertisement.

(2) Where advertisements are to be displayed for part of a year, the fee payable shall be calculated as follows:

(a) For a month or fraction of a month Ten percent of the yearly fee.

(b) For more than one month but not exceeding a quarter of a year Twenty-five percent of the yearly fee

- (c) *For more than a quarter but less than two quarters of a year* Fifty percent of the yearly fee.
- (d) *For more than two quarters of a year but less than three quarters of a year* Seventy-five percent of the yearly fee.
- (e) *For more than three quarters of a year* Full yearly fee.

Provided that no fee shall be levied under these bye-laws on the following categories of advertisements:-

- (a) *Name boards of boards, displayed by the traders on their own premises; provided they do not contain any item of advertisements other than the name of the firm and of the trade that may be carried out at the premises;*
- (b) *Advertisement, which relates to a public meeting or to an election to Parliament or the State Legislature or the municipal election or the candidature in respect of such elections;*
- (c) *Advertisement, which is exhibited within the window of any building if the advertisement relates to trade, profession or business carried on in that building;*
- (d) *Advertisement which relates to the trade, profession or business carried on within the land or building upon or sale or letting of such land or building or any sale or letting of such land or building or any effects therein or any sale, entertainments or meeting to be held on or in the same, provided only one board is displayed by the*

owner or the agent;

- (e) Advertisement which relates to the name of the land or building upon or over which the advertisement is exhibited or to the name of the owner or occupier of such land or building;*
- (f) Advertisement which relates to the business of a Railway Administration and is exhibited within any Railway Station or upon any wall or other property of Railway Administration; and*
- (g) Advertisement which relates to any activity of the Central Government or State Government of Haryana or the local bodies in the State of Haryana or Red Cross Society”.*

The Schedule, prescribing the fee on advertisement other than advertisements published in the newspapers, is extracted as under:-

SCHEDULE

Fee on Advertisement other than Advertisements published in the Newspapers

Sr. No.	Particulars	Space		Rate per annum Rs.
1	2	3		4
1.	Non-illuminated advertisements on land, building, walls, hoardings, frame, posts, structures, electric poles etc.	(a)	Upto 1 Square meter	20.00
		(b)	Over 1 Square meter and upto 2.25 square metre	30.00
		(c)	Over 2.25 square metres and upto 5 square metres	50.00
		(d)	Over 5 square metres and upto 7.5 square metres	70.00
		(e)	Over 7.5 square meters and upto 10 square metres	90.00
		(f)	For every additional 2.5	30.00

Sr. No.	Particulars	Space		Rate per annum Rs.
			square metres or less	
2.	Non-illuminated advertisements carried on vehicles drawn by bullocks, horses or other animals, human being, cycle or any other device carried on any other vehicle or tramcar	(a)	Upto 2.5 square metres	99.00
		(b)	Over 2.5 square metres and upto 5 square metres	120.00
		(c)	Over 5 square meters and upto 10 square metres	210.00
		(d)	For every additional 5 square metres or less	90.00
3.	Illuminated advertisements boards carried on vehicles	(a)	Upto 2.5 square metres	120.00
		(b)	Over 2.5 square metres and upto 5 square metres	210.00
		(c)	Over 5 square meters and upto 10 square metres	300.00
		(d)	For every additional 5 square metres or less	120.00
4.	Non-illuminated advertisement boards carried by sandwich boardmen	(a)	Upto 1 square metre	25.00
		(b)	Over 1 square metre and upto 2.5 square metres	40.00
		(c)	For every additional 5 square metres or less	25.00
5.	Illuminated advertisement boards carried by sandwich boardmen	(a)	Upto 1 square metre	25.00
		(b)	Over 1 square metre and upto 2.5 square metres	40.00
		(c)	For every additional 5 square metres or less	25.00
6.	Illuminated advertisements on land, buildings, wall or boarding frame, post or structure etc.	(a)	Upto 0.20 square metre	24.00
		(b)	Over 0.20 square metre and upto 0.50 square metre	36.00
		(c)	Over 0.50 square metre and upto 1 square meter	41.00
		(d)	Over one square metre and upto 2.5 square metres	60.00
		(e)	Over 2.5 square metres and upto 5 square metres	
		(f)	Over 5 square metres and upto 7.5 square metres	
		(g)	Over 7.5 square metres and upto 10 square metres	
		(h)	For every additional 2.5	

Sr. No.	Particulars	Space		Rate per annum Rs.
			square metres or less	
7.	Advertisements exhibited on screen in cinema houses and other public places by means of lantern slides or similar devices.	(a)	Upto 0.50 square metre	40.00
		(b)	Over 0.50 square metre and upto 2.5 square metres	80.00
		(c)	Over 2.5 square metres and upto 5 square metres	120.00
		(d)	Over 5 square metres and upto 7.5 square metres	200.00
		(e)	Over 7.5 square metres and upto 10 square metres	80.00
		(f)	For every additional 2.5 square metres or less	80.00
8.	Non-illuminated advertisements suspended across streets	(a)	Upto 1 square metre	15.00
		(b)	Over one square metre and upto 2.5 square metres	30.00
		(c)	For every additional 2.5 square metres or less	30.00
9.	Non-illuminated advertisement boardings, standing blank but bearing the name of the advertiser or with the announcement “to be let” displaced thereon	(a)	Upto 1 square metre	10.00
		(b)	Over 1 square metre and upto 2.5 square metres	15.00
		(c)	For every additional 2.5 square metres or less	15.00
10.	Permission to auctioners to put up not more two boards of reasonable size advertising each auction sale other than those in the premises where the auction is held, or on a prominent site in locality and one on municipal lamp post	(Including the rent for exhibiting the board on municipal lamp post)		20.00

Note: The fee item 8 will be in addition to the space rent which will be chargeable according to the scale to be determined by the Executive Officer or secretary as the case may be.

This Court has heard learned counsel for the parties at length and with their able assistance, gone through the judgments passed by the Courts below and the record.

The plaintiff/respondent was granted license/permission to transmit signals of various television channels through cable network in the

year 1994, with condition to deposit the requisite license fee with increase of 10% every year.

The plaintiff filed the present suit for declaration to the effect that memo/notice dated 05.04.2001 vide which the cheque for license period of 2000-2001 was returned, memo/notice dated 12.04.2001, notice No. 1415/NPK dated 08.07.2004 and Notice No. 1577/NPL dated 27.07.2004 are illegal. The defendants contested the suit. The learned trial Court partially decreed the suit by declaring that notice dated 05.04.2001 and 12.04.2001 are illegal. However, notices dated 08.07.2004 and 27.07.2004 were upheld.

The learned first Appellate Court, on re-appreciation of evidence, declared notices dated 08.07.2004 and 27.07.2004 to be illegal, null and void.

Learned counsel appearing for the appellants, while referring to entry No. 7 in the Schedule, has submitted that the Municipal Council was well within its powers to charge advertisement fee at the rate specified with regard to advertisements transmitted through the cable network with help of the poles installed by the Municipal Council.

On the other hand, learned counsel for the respondent has submitted that entry No. 7 is concerning advertisements exhibited on-screen in cinema houses and other public places by means of lantern slides or other similar devices. He further submitted that cable network was not giving its own advertisements. The various television channels have been displaying the commercials/advertisements. However, the same would not fall within the scope of entry No. 7 of the Schedule.

This Court has carefully analyzed the arguments of learned

extracted above. It is apparent that the phraseology used in entry No.7 is referring to advertisements which are either exhibited on screen in the cinema houses and other public places by means of lantern slides or other similar devices. The advertisement on the television screens in the houses of the subscribers does not fall either within the meaning of words “advertisements exhibited on screens in cinema house or it falls in other public by means of lantern slides or other similar devices”. A house of a consumer/member of the cable network do not fall within the purview of cinema houses nor public places.

Keeping in view the aforesaid facts, there is no ground to interfere.

Dismissed.

The miscellaneous application(s), if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

March 04, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No