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

% Judgment reserved on: 04th March, 2022
Judgment delivered on: 04th July, 2022

+ **W.P.(C) 2515/2021 & CM. APPLS. 7388/2021, 17709/2021, 35700/2021**

M/S SAPPHIRE MEDIA SERVICES. ... Petitioner

versus

SOUTH DELHI MUNICIPAL CORPORATION (THROUGH ITS COMMISSIONER) & ORS. ..... Respondents

AND

+ **W.P.(C) 11574/2021 & CM. APPLS. 35703/2021**

SAPPHIRE MEDIA SERVICES. ..... Petitioner

versus

SOUTH DELHI MUNICIPAL CORPORATION &ORS ....Respondents

Advocates who appeared in this case:

For the Appellant: Mr. Rajive Bhalla, Senior Advocate with Mr. Yajur Bhalla and Mr. Arup Sinha, Advocates.

For the Respondent: **(In W.P. (C) 2515/2021)**

Mr. Sanjay Poddar, Senior Advocate with Ms. Beenashaw N.Soni, Standing Counsel with Mr. Govind, Mr. Yash Rawat and Mr. Bhupesh Pandotra, Advocates for SDMC.

Mr. Gautam Narayan, Additional Standing Counsel, GNCTD with Mr. Adithya Nair, Advocate for R-3 to R-5

(In W.P. (C) 11574/2021)

Mr. Sanjay Poddar, Senior Advocate with Mr. Tushar Sannu, Standing Counsel with Ms. Priyanka Tiwari, Advocate for SDMC.

Mr. Satyakam, Additional Standing Counsel, GNCTD for R-3 to R-5.

CORAM:
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner has filed W.P. (C) 2515/2021 seeking quashing of two letters, both dated 11.01.2021, whereby the respondent No.1, South Delhi Municipal Corporation (SDMC, for short) has threatened to remove the advertisements on the bus queue shelters displayed by the petitioner.

2. In W.P. (C) 11574/2021, petitioner seeks quashing of notice dated 15.09.2021, whereby petitioner has been directed to remove the advertisements displayed on top of the bus queue shelters.

3. At the time of hearing of the petitions, it was agreed that the disputes arising in W.P. (C) 11574/2021 would be dependent upon the decision in W.P. (C) 2515/2021 and as such no separate counter affidavit or rejoinder has been filed by the respondents to the said petition.

4. As per petitioner, invitation for proposal for display of advertisements on bus queue shelters was invited by respondent No.3, Delhi Transport Infrastructure Development Corporation (DTIDC for short). Petitioner submitted its proposal, which was accepted by DTIDC

and a letter of acceptance dated 27.11.2019 was issued. It is contended that the same was issued after following the prescribed procedure for submission of bids.

5. On 06.12.2019, a concession agreement for uplifting, cleaning and maintenance of 96 stainless-steel bus queue shelters was entered into. As a consideration, for uplifting, cleaning and maintenance of the bus queue shelters, advertisement rights vested into DTIDC were transferred to the petitioner.

6. On 24.01.2020, it is alleged that, the sites were handed over to the petitioner for commencement of work and display of advertisements.

7. On 11.01.2021, the letters impugned in W.P. (C) 2515/2021 were issued by respondent No.1, SDMC, threatening removal of the advertisements on the bus queue shelters on the ground that the allotment is in contravention of the Outdoor Advertising Policy, 2017. The letters were duly responded to by the petitioner contending that the petitioner has been duly allotted the bus queue shelters after following due process of tender allotment. Said action has been challenged in W.P. (C) 2515/2021.

8. Pending the said petition (W.P. (C) 2515/2021), another noticed dated 15.09.2021 was issued, directing the petitioner to remove the structures fixed on the roof top of the bus queue shelters, failing which it was threatened by the SDMC that they shall remove the advertisements displayed at the cost and liability of the petitioner. Said notice has been challenged in W.P. (C) 11574/2021.

9. The contention of the petitioner is that petitioner has been allotted the rights to advertise after following the due tender process by DTIDC, which had full right and authority to allot the said bus queue shelters for advertisement rights.

10. It is further contended on behalf of the petitioner that disputes, if any, between the SDMC and DTIDC are their personal disputes, which should be inter-se resolved by the two authorities and no liability can be placed on the petitioner qua the same.

11. Counter affidavit has been filed by DTIDC contending that the allotment had been made to the petitioner after following the due process. It is further contended that it was obligatory on the part of the petitioner to obtain necessary clearances from the MCD.

12. With regard to the Outdoor Advertising Policy, 2017, it is contended on behalf of respondent No.3, DTIDC that the policy is an outcome of a consultation process initiated by the MCD with Delhi Metro Rail Corporation (DMRC) and Indian Railways and DTIDC was never part of the consultation process.

13. It is submitted that a meeting had taken place on 19.12.2011 between the Commissioner, MCD and DTIDC, wherein it was agreed that DTIDC shall share 50% of the advertisement revenue with MCD on MCD roads and 25% on non-MCD roads. It is contended that pursuant thereto, revenue share is happening at the above rates.

14. The stand of the Municipal Corporation is that the Outdoor Advertising Policy, 2017 had been formulated pursuant to a direction issued by the Supreme Court in Writ Petition (Civil) 13029/1985, titled *M.C. Mehta Vs. Union of India*.

15. It is submitted that the Outdoor Advertising Policy, 2017 was formulated by Environment Pollution (Prevention and Control) Authority [EPCA] and submitted before the Supreme Court with its Report No.74 dated 26.07.2017. Said report and policy were considered by the Supreme Court and by order dated 03.08.2017, the policy was approved. It was directed by the Supreme Court that the Policy should be implemented forthwith.

16. It is contended on behalf of the MCD that the policy having been formulated under the orders of the Supreme Court and having been approved by the Supreme Court, has to be strictly implemented by all concerned. It is also contended that the Outdoor Advertising Policy, 2017, apart from determining revenue share, stipulates certain procedures and formalities to be complied with by all authorities/advertisers before permission for display of advertisements is granted.

17. It is submitted that in the instant case, the concession agreement entered into between the petitioner and respondent No.3/DTIDC is contrary to the Outdoor Advertising Policy as well as the directions issued by the Supreme Court. Consequently, the same cannot be given effect to and any advertisement placed contrary to the Policy is liable to be removed, unless,

the terms and conditions of the Outdoor Advertising Policy, 2017 is strictly adhered to. In view of the above, it is submitted that the notices that are impugned in the petitions have been issued.

18. For the purposes of determining the disputes that arise in the petitions, it would be necessary, at this stage, to examine the Outdoor Advertising Policy, 2017 as accepted by the Supreme Court by its order dated 03.08.2017 in Writ Petition (Civil) 13029/1985, titled *M.C. Mehta Vs. Union of India*.

19. The Outdoor Advertising Policy, 2017 was formulated by the EPCA for the National Capital Region. The background note appended to the report records that the Supreme Court has been monitoring the outdoor hoardings in the city since December 10, 1997 because of its concern regarding safety of road users and on the grounds that hoardings, if not regulated, could constitute a disturbance for traffic and lead to accidents.

20. The background note records that the Supreme Court directed EPCA to examine and file its opinion on the Outdoor Advertisement Policy prepared by the MCD. A report was filed by the EPCA after consultation with stakeholders. Representations were received from Indian Railways and DMRC. EPCA after consultations filed its final report.

21. Delhi Outdoor Advertising Policy, 2017, as accepted by the Supreme Court, is divided into several parts. It, *inter-alia*, specifies the basis of the Policy, guiding principles, role of municipal bodies, revenue sharing, commercial advertisement fee, general permission criteria for advertising

devices, implementation of policy etc.

22. With regard to the role of MCD, the Policy records that in the areas controlled by MCD/NDMC, the outdoor advertisement devices visible to the public are governed by the provisions of Sections 143 to 146, 430 of the Delhi Municipal Corporation Act and prior permission of the Commissioner is needed to display any advertisement to public view.

23. With regard to the revenue sharing and commercial advertisement fee, the Policy records that it applies to all advertisements irrespective of the jurisdiction of land. However, the revenue sharing model would differ in different cases.

24. The Policy, *inter-alia* provides, as under:-

> "***4. Revenue Sharing and Commercial Advertisement Fee***
>
> ***4.1 Revenue Sharing***
>
> *<u>The Outdoor Advertisement Policy 2017 will apply to all advertisements irrespective. The Outdoor Advertisement Policy 2017 will apply to all advertisements irrespective of the jurisdiction of land.</u> However, the revenue sharing model will differ in different cases.*
>
> *<u>All the Public View advertisements under the jurisdiction of respective corporations/Council, irrespective of jurisdiction of land, will be governed by the rules and regulations laid down for outdoor advertisements in Municipal Corporations of Delhi areas.</u> The only difference in case the land belongs to other organization will be in terms of sharing of revenue.*
>
> *In case land belongs to other organisations:*

Government Organizations/ PSUs/ Autonomous Bodies/Statutory Bodies/Registered Societies/Corporative Societies/ Private Limited Companies etc and the structure has been built/installed by them or the advertiser in their territory for display of advertisement and it faces the vehicular traffic plying on it or comes in public view in any manner whatsoever visible from a public street or public place (including any advertisement exhibited by means of cinematographs), the concerned organization or the advertiser with their permission will have to share revenue in the following proportion:

1. *Northern Railways will through the advertisers provide 25 per cent of the revenue earned through advertisement with respective Municipal Corporation of Delhi within their jurisdiction.*

2. *DMRC will share 35 per cent of the revenue earned through Advertisement with respective Municipal Corporations of Delhi within their jurisdiction.*

3. *Other concerned organizations will share 50 per cent of the revenue earned through Advertisement with respective Municipal Corporation of Delhi within their jurisdiction.*

For determining any case of remission or formulation/change of policy governing outdoor advertisement including award of contract, Commissioner Municipal Corporations of Delhi or his nominee will be a member of the committee/panel taking such decision, as it involve sharing of revenue between the two organisations.

It must be ensured that all the organization which are allowing/permitting advertisement displays (after taking written permission from the Commissioners of the respective Municipal Corporations space on their land/properties must *do it through tendering system or other transparent procedure only.*

The Minimum Reserve Price for Permission of Advertisement Display by the Organizations on their land/properties other than DMRC/Northern Railway shall be fixed with the consultation of respective Municipal Corporations.

It should also be ensured that the awarded contracts are not allowed to continue beyond the contractual period. Any contract which is in contravention to this policy should be allowed till the end date of the present contract.

4.2 Commercial advertisement fee for Category – 1, 2&3 devices

Every person, who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding, frame, post or structure or upon or any vehicle any advertisement or, who displays any advertisement to public view in any manner whatsoever, visible from a public street or public place (including any advertisement exhibited by means of cinematographs), shall pay for every advertisement which is so erected, exhibited, fixed or retained or so displayed to public view, an advertisement fee at such rates as decided/fixed by the Municipal Corporations of Delhi/New Delhi Municipal Council, from time to time.

No advertisement shall be erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall be displayed in any manner whatsoever in any place within the jurisdiction of Municipal Corporations of Delhi/New Delhi Municipal Council without written permission of Commissioner/Chairman of respective Municipal Corporation/New Delhi Municipal Council."

(underlining supplied)

25. Clause 4.1 stipulates that the Policy applies to all advertisements. The Policy further stipulates that for determining any case of remission or formulation/change of policy, Commissioner, MCD or his nominee is to be a member of the committee/panel taking such decision, as it involves sharing of revenue between the two organisations. It further stipulates that all organizations which are allowing/permitting advertisements displays (after taking written permission from the Commissioner) do it through tender system and other transparent procedure.

26. The minimum reserve price for permission of advertisement display is to be fixed with the consultation of respective municipal corporations. It further stipulates that the awarded contracts should not be allowed to continue beyond the contractual period.

27. The stipulation in the policy for fixing minimum reserve price in consultation with the Municipal Corporation has been explained in the background note to the effect that Corporation had found that there was under-cutting of rates, which was benefitting private advertisers and as such it was decided to include the said provision mandating that the minimum reserve price has to be fixed in consultation with the respective Municipal Corporation.

28. The revenue sharing clause 4.1 further stipulates that Northern Railways shall provide 25% of the revenue earned to the respective Municipal Corporation and DMRC shall share 35% of the revenue earned with the respective Municipal Corporation within their jurisdiction. With

regard to the other concerned organisations, the stipulation is that they shall share 50% of the revenue earned through advertisement. It is an admitted position that respondent, DTIDC fall in the third category i.e., "other concerned organisations".

29. The Policy further stipulates that it has to be strictly adhered to. For the purposes of achieving the objectives of the Policy, the municipal corporations have been obligated to impose enhanced penalties and check misuse through regular inspections.

30. The Policy has been made applicable to the entire city and all land holding agencies have been required to follow the provisions of policy and to take requisite permissions. The Policy stipulates that once in effect, all approvals have to be taken by the concerned in compliance with the provisions of the Policy. However, advertisement contracts already approved have been permitted to continue till the expiry of the contract period.

31. Clause 9 of the Policy dealing with procedure and terms for grant of permission, stipulates in sub-clause 6 as under:-

> "*6. Contracts of outdoor advertisement will be given for a maximum period of 3 years. In case there is an exception to this then the agency desirous of giving a contract for a longer period will be required to consult/ seek approval of the regulator namely Municipal Corporations of Delhi.*"

32. Sub-clause 6 of Clause 9 of the Policy dealing with procedure and

terms for grant of permission stipulates that the contract of outdoor advertisement would be given for a maximum period of three years and in case there is an exception to this, then the agency desirous of giving a contract for a longer period would be required to consult/seek approval of the regulator, namely, Municipal Corporation of Delhi.

33. It may be noticed that invitation for proposal for the subject concession agreement was issued on 22.10.2019, letter of acceptance was issued on 27.1.2019 and concession agreement has been entered into on 06.12.2019.

34. In the present case, the subject contract has been entered into between the petitioner and DTIDC after formulation of the Policy and as such had to adhere to the Policy.

35. The concession agreement entered into between the petitioner and DTIDC stipulates that the concession period is 20 years and further extendable for 5 years i.e., 25 years in total.

36. It is an admitted position that prior to entering into concession agreement, no consultation had taken place between DTIDC and the SDMC. No minimum reserve price was fixed in consultation with the respective Municipal Corporation. There was no nominee of the SDMC as a member of the Committee taking a decision with regard to the subject concession agreement, nor was any prior permission taken from the Commissioner, MCD.

37. It is also not in dispute that the concession agreement is beyond the permissible maximum period of 3 years as prescribed by the Policy. Further, no prior approval has been taken from the regulator i.e., Municipal Corporation of Delhi for carving out an exception for granting a contract for a longer period i.e., 25 years in this case in contrast to the maximum permissible period of 3 years.

38. The Municipal Corporation has, along with its counter affidavit, placed no record letters dated 12.06.2019 and 04.12.2019, informing the DTIDC that the proposed tender notice was contrary to the Outdoor Advertising Policy, 2017 and requested that the same be kept in abeyance.

39. It is noticed that despite the DTIDC being informed by the Municipal Corporation that the proposed advertisement inviting proposals for advertisement was contrary to the Outdoor Advertising Policy, 2017 as no prior permission was sought from the Commissioner, MCD or no consultation had taken place with the Commissioner or his nominee, DTIDC went ahead and entered into the concession agreement.

40. The submission made on behalf of the DTIDC that consultation was held with Indian Railways and the DMRC prior to fixing the revenue share and no consultation had taken place with DTIDC before formulation of the Outdoor Advertising Policy is of no consequence for the reason that the policy categorically stipulates that for all other organisations i.e., organisations other than the Indian Railways and DMRC, the revenue share has to be at 50%.

41. In case DTIDC was aggrieved by any of the stipulation in the policy on the ground that it had not been consulted prior to acceptance of the Policy by the Supreme Court, the remedy, if any, of DTIDC was to approach the Supreme Court and admittedly, DTIDC has not approached the Supreme Court qua the same.

42. Further contention that the consultation process between DTIDC and the SDMC is underway to find a resolution is also of no consequence for the reason that despite the pendency of the subject petitions and passage of substantial time, no resolution has been arrived at between the SDMC and DTIDC.

43. Further, reliance placed on the minutes of the meeting dated 19.12.2011, stipulating for a revenue share of 50% on MCD roads and 25% on non-MCD roads is also of no consequence, for the reason that the said minutes pertain to the revenue share prior to the formulation of the Outdoor Advertising Policy of 2017.

44. Any decision taken prior to implementation of the Policy by the Supreme Court would not be binding. After the implementation of the Policy, the revenue share would be governed by the terms of the Policy, unless mutually varied by the parties.

45. As noticed hereinabove, the letter of accepted dated 27.11.2019 and concession agreement dated 06.12.2019 are contrary to the terms and conditions of the Outdoor Advertising Policy, 2017 and have been entered into despite being so forewarned by the Municipal Corporation. As such the

same cannot be sustained.

46. Consequently, there is no ground to interfere with the letters dated 11.01.2021 and 15.09.2021, whereby petitioner has been directed to stop the illegal display of advertisements and remove the same and the challenge to the said letters is clearly not sustainable.

47. In view of the above, there is no merit in the Petitions and as such the writ petitions are dismissed.

SANJEEV SACHDEVA, J

JULY 04, 2022
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