

Before Adarsh Kumar Goel and Daya Chaudhary, JJ.

MOHINDER SINGH—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 4949 of 2008

6th August, 2009

Constitution of India, 1950—Art. 226—Punjab Municipal Corporation Act, 1976—Ss. 122 & 123—Advertisement contract allotted to private respondent—Corporation waiving its right to recover tax—Contract prohibiting private building owners from displaying advertisements on their own buildings even on payment of advertisement tax—Exclusive right of advertisement—Monopoly—Not permissible in law—Clause 4 of agreement creating monopoly of advertisement excluding any other advertiser held to be void and not sustainable in law.

Held, that the monopoly of advertisement has been transferred to the private party on principal to principal basis. The work of advertisement is not being carried out by the private respondent on behalf of the Corporation. Such a clause in the agreement is clearly void and there can be no estoppel against the Corporation if such a clause is annulled. Thus, clause 4 of the agreement is against law and cannot be sustained. It is, however, made clear that the right of the petitioner is subject to regulatory provisions under Sections 122 and 123 of the Act.

(Paras 17 & 18)

Vishal Aggarwal, Advocate, *for the petitioner.*

A.R. Takkar, Advocate.

Vishal Garg, Advocate, *for respondent No. 5.*

Suvir Sehgal, Addl. A.G. Punjab.

ADARSH KUMAR GOEL, J.

(1) This petition seeks quashing of allotment of work of advertisements of Rs. 18 crores to respondent No. 5 for 11 years.

(2) The challenge is on two grounds: (i) for want of transparency; (ii) creating monopoly in the field of publicity even to the extent of prohibiting private building owners from displaying advertisements on their own buildings on payment of advertisement tax and while complying all other regulatory legal requirements.

(3) Case of the petitioner is that tender notice dated 25th April, 2005 was issued for allotment of work of construction of bridge against advertisement rights for a period of 10 years. The work was not allotted on the conditions mentioned in the said tender notice but on negotiating terms. In the said tender notice there was no condition that the allottee will have exclusive right of advertisement in the city. The work was thereafter allotted to respondent No. 5, *vide* agreement dated 13th January, 2006 and in the agreement one of the conditions mentioned was that the Corporation will not allow any advertisement Boards/Hoardings on private or other department buildings in the first five years of this contract period. Contracts were also awarded for maintenance of street lights, green belts etc. on same pattern. The contract, thus, prohibits the petitioner or any other person from carrying on business of publicity be advertisement even on a private building. The Corporation has also waived its right to recover tax, which is attracted under Section 122 of the Punjab Municipal Corporation Act, 1976 (for short, "the Act").

(4) Replies have been filed on behalf of the State, Municipal Corporation as well as the private respondents. In the reply filed by the State, it is stated that the contract is within the purview of provisions of Sections 174 and 175 of the Act which allowed the Corporation to enter into any contract. The Corporation has power to exempt payment of tax. Section 123 provides that no person can display advertisement without prior permission of Corporation. In its reply, the Corporation has stated that it has never prohibited any advertisement on boards outside any establishment. Only restriction was on advertisement boards of other companies/products by installing huge bill-boards on the walls

or on the roof which would be defacing the walls. A Sub-Committee was constituted under the orders of the Local Government Minister, Punjab on 9th July, 2007 to find out whether the contract was in over all public interest and according to rules and regulations. The Sub-Committee decided to recommend annulment of the contract by Annexure R-3/1 and the matter was pending with the Government. The contract was given bona fide. Revenue generated in the five years was Rs. 10 lac per year, while it was much more after the contract. It is denied that any monopoly has been created in favour of respondent No 5.

(5) The private respondent in its reply has stated that son of petitioner in CWP No. 4949 of 2008, filed a suit on 20th December, 2007 and vide order dater 7th February, 2008, injunction was declined. In connected Writ Petition No. C.W.P. No. 6815 of 2008, the petitioner Harbhajan Singh filed a suit on the same cause of action and interim injunction was declined in that suit on 26th December, 2007. Similarly, petitioner Rajesh Kawal in CWP No. 6893 of 2008 also filed a suit on the same cause of action which is pending for hearing on stay application. Petitioner in CWP No. 15323 of 2007 filed a suit through M/s M.S.K. Project India Limited which was pending. The writ petition was filed after an in-ordinate delay. The work stands substantially executed.

(6) We have heard learned counsel for the parties and perused the record.

(7) We have disposed of CWP No. 15323 of 2007 (**M/s Add Junction and others versus State of Punjab and others**),—vide order dated 5th August, 2009 against the same contract. Though, this and other connected petitioners were heard alongwith the said petitions but the same were separated on request of counsel for the parties. Therein, main question, apart from transparency of procedure of allotment, was waiver of tax. Therein, it was concluded :—

“21. Thus, though we hold that Corporation ought to have advertised the terms on which contract was finally allotted, the work having been substantially carried out, we do not find any ground to interfere, subject to the State

Government taking an appropriate decision in accordance with law. Similarly, even in absence of formal order of exemption, we do not find any ground to interfere with the waiver of tax under the agreement, subject to the Government taking its decision on the issue pending before, it, in accordance with law.

(8) In the present petition, main question pressed is against monopoly of advertisement rights under Clause 4 of the agreement to the exclusion of any other advertiser.

(9) Before dealing with the merits, objection on behalf of the respondents as to maintainability of the petition on account of concealment of material facts may be dealt with.

(10) Learned counsel for the petitioner does not dispute that suit was filed in the matter as pointed out in the reply of the private respondent. Only explanation is that in the order dated 7th February, 2009 in Civil Suit No. 108 of 2007 (**Baljit Singh versus M.C. Jalandhar**) learned Additional Civil Judge (Sr. Division), Jalandhar, observed that the question was pending before this Court which was one of the reasons for not granting the injunction. It is submitted that the petitioners will not now pursue the remedy of suit. Learned counsel for the petitioners restricts relief in the petition to validity of clause creating monopoly.

(11) While it is true that a writ petition may be liable to be dismissed for misstatement, as held in **Prestige Lights Limited versus SBI** (1) but question of effect of misstatement or suppression has to be examined on facts of each case. In **Arunima Baruah versus Union of India**, (2) it was held that even where a complainant does not approach the Court with clean hands, cleanliness is required to be judged in reaction to the relief sought and the conduct complained of must have immediate and necessary relation to the equity sued for. Non disclosure of filing of the suit could be ignored in a given fact situation, though Court could not permit two parallel remedies to continue.

(12) We are of the view that having regard to facts of the present case, the issue raised ought to be gone into on merits, particularly when

(1) (2007) 8 SCC 449

(2) (2007) 6 SCC 120

petitioners have undertaken to abandon the remedy of suit and injunction was declined, *inter-alia*, on account of pendency of a connected petition. Non disclosure of filing of suit does not have effect on validity of creation of monopoly, in violation of constitutional rights of citizens.

(13) We now come to merits. The impugned Clause is as under :—

“After the signing of the contract/agreement, “Corporation” will not sanction any more advertisement rights to any other Person/Party/Agency and shall not call any more tenders for direct advertisement rights or on B.O.T. basis against the advertisement rights for first five years out of contract period of eleven years. It would mean that Corporation will not sanction Advertisement Boards/Hoardings in private or other department buildings etc. in first five years of this contract period. There will be however no bar on display boards etc. of shops/ commercial establishment etc. for their own use.”

(14) The above clause clearly has the effect of affecting fundamental right to advertise and creating monopoly in favour of private respondent which is not permissible in law.

(15) It is well settled that right to display advertisement is a part of fundamental right of speech and expression under Article 19(1)(a) of the Constitution of India, apart from rights under Articles 19(1)(g) of the Constitution of India. However, the said right is not absolute and can be regulated under the law.

(16) In **Novva Ads versus Secretary, Department of Municipal Administration and Water Supply and another**, (3) the Hon’ble Supreme Court considered the issue of right to advertise. It was observed that so far as public places are concerned, the State had full right to regulate them, as the same vest in the State as trustee for the public. As regards advertisement on private buildings, the same could be licenced and regulated as hoardings may be visible on public roads and public places of may be dangerous or hazardous to smooth flow of traffic by distorting traffic and their content may be obscene or objectionable. Even on a private building or land, right to advertise may be regulated on the ground of exercise of such right being dangerous

or hazardous. Subject to the regulatory power in accordance with the statutory provisions, a citizen had a right to advertise under Articles 19(1)(a) as well as 19(1)(g). Relevant observations are:—

- “29. So far as public places are concerned, the State has a full right to regulate them, as they vest in the State as trustees for the public. The State can impose such limitations on the user of public places as may be necessary to protect the public generally. (Saghir Ahmed v. State of U.P. 1955 SCR 707).
30. Hoardings erected on private places also require to be licensed and regulated as they generally abut on and are visible on public roads and public places. Hoarding erected on a private building may obstruct public roads when put up on private buildings; they may be dangerous to the building and to the public; they may be hazardous and dangerous to the smooth flow of traffic by distracting traffic, and their content may be obscene or objectionable. It is, therefore, not correct that hoardings on private places do not require to be regulated by licensing provisions.
31. Rule 6 of the 2003 Rules put restrictions on the size of hoardings, on their height, the spacing, etc. and the requirement of erection on steel frames. Rule 10 restricts the hoardings to be put on certain places such as educational institutions, places of worship, hospitals, corners of roads, in front of places of historical and aesthetic importance.
32. The power to license is not unfettered and is guided by the above considerations. Under Rule 11 an appeal lies to the State Government for refusing the grant or renewal of licenses. Section 326J of the Act empowers the District Collector to prohibit the erection of hazardous hoardings and hoardings which are hazardous and a disturbance to the safe traffic movement so as to adversely affect the free and safe flow of traffic. The

power under Section 326J is not arbitrary as held by the Supreme Court in *M.C. Mehta v. Union of India* (1998) 1 SCC 363) on an identical provision relating to case of hoarding in New Delhi. Any action taken under Section 326 J must be taken by observing the principles of natural justice and supported by reasons. An appeal against the order of the District Collector for action under Section 326J lies to the State Government under Section 326H. There cannot be a presumption of misuse of power merely because discretion is conferred on a public authority for the exercise-use of the power. In *Narayana Bhat's* case, this Court has negated the contention that the power of the licensing authorities is arbitrary and unguided.”

(17) In **M.I.Builders Pvt. Limited versus Radhev Sham Sahu and others.** (4) after referring to earlier judgment in **Akadasi Padhan, v. State of Orissa and others,** (5) it was held in para 61 that the monopoly could be justified only if the law so provides and the State acts directly or through its agent. In the case of an agency, deal should not be from principal to principal. In the present case the monopoly of advertisement has been transferred to the private party on principal to principal basis. The work of advertisement is not being carried out by the private respondent on behalf of the Corporation. Such a clause in the agreement is clearly void and there can be no estoppel against the Corporation if such a clause is annulled, as observed in para 66 of judgment in **M.I.Builders** (*supra*).

(18) We, thus, hold that clause 4 of the agreement is against law and cannot be sustained. It is however, made clear that the right of the petitioner is subject to regulatory provisions under Sections 122 and 123 of the Act.

(19) The petition is disposed of accordingly.

R.N.R.

(4) (1999) 6 SCC 464

(5) AIR 1963 S.C. 1047