

## CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

BATA SHOE COMPANY PRIVATE LTD.,—Petitioner.

versus

THE CHIEF ADMINISTRATOR, CHANDIGARH ADMINISTRATION  
UNION TERRITORY OF CHANDIGARH, AND OTHERS,—Respondents.

**Civil Writ No. 1101 of 1970**

December 18, 1970.

*Capital of Punjab (Development and Regulation) Act (XXVII of 1952)—Section 2(a)—Chandigarh Advertisements Control Order (1954)—Clauses 4 and 30—Putting up a name-plate on a business-house—Whether amounts to advertisement—Illuminated and non-illuminated name-plates—Distinction between—Whether has any rational basis—Fee charged for illuminated name-plates—Whether invalid for lack of quid pro quo.*

*Held*, that the putting up of a name-plate amounts to advertisement because it announces the place of business of the business-house to the intending customers. The name-plate is necessary to be exhibited for the guidance or direction of the customers who wish to buy goods from a particular business house. It is covered by the definition of "advertisement" as given in section 2(a) of the Capital of Punjab (Development and Regulation) Act, 1952, as well as by the dictionary meaning of the word. (Para 6).

*Held*, that under clauses 4 and 30 of the Chandigarh Advertisements Control Order (1954) promulgated under section 12 of the Capital of Punjab (Development and Regulation) Act, 1952, a name-plate, which is not an illuminated one, is exempt from the provisions of the Order, that is, neither any permission is required nor any fee is payable in respect thereof whereas in the case of an illuminated name-plate, the permission is required as well as fee has to be paid. There is no rational basis for this classification of name-plates into illuminated ones and non-illuminated ones. The purpose of both kinds of name-plates is to announce to the public the location of the place of business of a particular business house exhibiting its name-plate. The non-illuminated name plate serves the purpose during the day when there is natural light and illuminated name-plate serves the very same purpose during the period when there is no day-light and electric light or any other artificial light has to be used. The mere use of electric or artificial light, cannot provide basis for classification of the two name-plates into two different categories, one liable to permission and fee while the other is not. Both kinds of name-plates amount to advertisement and either both of them are to be exempted from the provisions of the Order or none. Since the non-illuminated name-plate is exempted from the provisions of the Order, the illuminated name-plate is also to be considered as exempted. Neither the permission of the Chief Administrator is necessary nor any fee is payable for exhibiting illuminated name-plates. (Para 7).

*Held*, that the name-plate of a business-house is exhibited outside the shop at the place specified for it and mere illumination of it at night casts no

liability on the Advertisement Department to render any service to the business-house, nor is there any occasion to do so. Merely because a separate department is maintained for the purpose of advertisements does not mean that any service is rendered by it to the business-houses in respect of the illuminated name-plates. Hence fee charged in respect of illuminated name-plates is invalid because of the lack of *quid pro quo*. (Para 8).

*Petition under Article 226 of the Constitution of India praying that a writ in the nature of Certiorari, Mandamus or any other appropriate writ, order or direction be issued declaring section 12 of the Act and clauses 4 and 30 and the schedule of the order ultra vires and directing the respondents not to levy or realise advertisement tax or fee from the petitioner and its various shops and further quashing the letters dated 10th June, 1969 and 6th November, 1969 and the summons dated 14th January, 1970, 7th January, 1970 and 14th January, 1970 issued by the Judicial Magistrate, Chandigarh.*

H. L. SIBAL, A. N. PAREEKH AND H. R. AGGARWAL, ADVOCATES, for the petitioners

ANAND SWAROOP, ADVOCATE WITH I. S. BALHARA, ADVOCATE, for the respondents.

#### JUDGMENT

B. R. TULI, J.—(1) The petitioner Bata Shoe Company Private Ltd., is a private company registered under the Companies Act with its registered office at Calcutta. It manufactures footwear and accessories at its factories at Batanagar in West Bengal, Faridabad (Haryana), and at Patna and Mokmaghat in Bihar. It has its own retail shops throughout India where it sells its products. Outside every shop the name plate 'Bata' is exhibited. The name 'Bata' is the registered trade name of the petitioner-company.

(2) The President of India, in exercise of the powers under section 3 of the Punjab State Legislature (Delegation of Powers) Act, 1951, enacted the Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter called the Act), wherein provisions were made for the development and regulation of the Capital of Punjab at Chandigarh. Section 12 of the Act is in the following terms:—

"12. *Control of advertisements.*—If it appears to the Chief Administrator that it is necessary or expedient to restrict or regulate the display of advertisements in Chandigarh, he may, by notification in the official Gazette, make an order (hereinafter referred to as the Advertisements Control Order) restricting or regulating the display of advertisements and such order may

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provide—(a) for regulating the dimensions, appearance and position of advertisements which may be displayed, the sites on which such advertisements may be displayed and the manner in which they are to be affixed to land or building ;

(b) for requiring the permission of the Chief Administrator to be obtained for the display of advertisements ;

(c) for enabling the Chief Administrator to require the removal of any advertisement which is being displayed in contravention of the order or the discontinuance of the use for the display of advertisements of any site which is being used for that purpose in contravention of the order ;

(d) for fees to be charged for advertisements at places specified in the order.”

(3) The Chief Administrator under this provision promulgated the Chandigarh Advertisements Control Order, 1954, clause (4) of which reads as under :—

“4. Regulation and control of advertisements—

(1) No person shall, without the written permission of the Chief Administrator, erect, exhibit, fix or retain any advertisement, whether now existing or not, upon any land, building, wall, hoarding or structure ;

Provided always that such permission shall not be necessary in respect of any advertisement which is not an illuminated advertisement nor a sky-sign and which—

(a) is exhibited within the show-case of any commercial building ;

(b) relates to the trade or business carried on within the building upon which such advertisement is exhibited provided it is exhibited on that part of the building which is specifically provided for the purpose in the building plan sanctioned by the Chief Administrator ;

(c) relates to any sale or letting of any land or building upon which such advertisement is exhibited; or to any entertainment or meeting to be held upon or in the same; or to the trade or business carried on by the

- owner of any tramcar, omnibus or other vehicles upon which such advertisement is exhibited ;
- (d) is exhibited on an enclosed land or a building not visible from outside the land or building ;
  - (e) is a name plate ;
  - (f) relates to the business of any railway company ;
  - (g) is exhibited within any railway station or upon any wall or other property of a railway company except any portion of the surface of such wall or property fronting street ; and
  - (h) is exhibited by the Departments of Electricity, Building, Roads, Road Transport, Sewage and Water Supply of the Punjab State Government, if such advertisement relates to the respective functions of such departments.
- (2) If any advertisement be erected, exhibited, fixed or retained contrary to the provisions of this Order, or after the written permission for the erection, exhibition, fixation, or retention thereof for any period shall have expired or become void, the Chief Administrator may, by notice in writing, require the owner or occupier of the land, building, wall, hoarding or structure upon which the same is constructed, exhibited, fixed or retained to take down and remove or modify, as the case may be, such advertisement, within the time not exceeding 30 days as may be fixed by him.
- (3) Where any advertisement shall be erected, fixed or retained after the coming into force of this clause upon any land, building, wall, hoarding or structure, save and except as permitted or exempted from permission as hereinfore provided, the owner or person in occupation of such land, building, wall, hoarding or structure shall be deemed to be the person, who has erected, exhibited, fixed or retained such advertisement in contravention of the provisions of this clause, unless he proves that such contravention was committed by a person not in his employment or

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under his control or committed without his connivance."

(4) Clause 30 of the said Order prescribes fees payable for advertisements as given in the Schedule thereto. Item 7 of the Schedule prescribes fees for fixed illuminated advertisement under which the petitioner-company was required to pay Rs. 30 per name plate per annum to the Chandigarh Administration. The petitioner-company has three shops in Chandigarh, situate in Sectors 17, 19 and 22 and for those three shops Rs. 90 per annum were demanded. The petitioner-company paid the fees in respect of the shop in Sector 17 up to June 30, 1969, for the shop in sector 19 up to September 25, 1969, and for the shop in sector 22 up to July 17, 1969. For exhibiting these name plates the petitioner-company was asked to take out a licence and get it renewed every year. When it refused to do so on the ground that no fee was leviable, the Estate Officer filed three separate challans against the three shops of the petitioner-company in the Court of the Judicial Magistrate 1st Class, Chandigarh, which led to the filing of the present petition wherein it has been asserted that no fee is payable by the petitioner company in respect of its name plates although they are illuminated ones.

(5) In the written statement filed by the Assistant Estate Officer on behalf of the respondents, it has been asserted that the fee of Rs. 30 per name plate is payable by the petitioner-company and for the non-payment thereof it was rightly prosecuted. The challans have, in the meantime, been dismissed by the Chief Judicial Magistrate for want of prosecution. It is, however, pleaded by the petitioner-company that the matter should be decided as it is a pure question of law, in order to avoid further harassment of the petitioner-company at the hands of the respondents. I, therefore, proceed to decide the controversy on merits.

(6) Section 2 of the Act defines 'advertisement' in clause (a) as under:—

" 'Advertisement' means any word, letter, model, sign, placard, board, notice, device or representation in any manner whatsoever, wholly or in part, intended for the purpose of advertisement, announcement or direction, and includes

any structure used or adapted for the display of advertisements.”

The first question for determination is whether the putting up of a name plate amounts to advertisement. In my opinion it does, because it announces the place of business of the business-house to the intending customers. The name plate is necessary to be exhibited for the guidance or direction of the customers, who wish to buy goods from a particular business house. It is covered by the definition of “advertisement” in the Act as well as by the dictionary meaning of the word and, therefore, it is futile for the petitioner-company to urge that the name plate does not amount to advertisement.

(7) The next question that arises for consideration is whether there is any reasonable classification of name plates into illuminated ones and non-illuminated ones. Under the Advertisement Control Order a name plate, which is not an illuminated one, is exempt from the provisions of the Order, that is, neither any permission is required nor any fee is payable in respect thereof, whereas in the case of an illuminated name plate, the permission is required as well as the fee has to be paid. In my opinion, there is no rational basis for this classification in respect of the name plates. The purpose of both kinds of name plates, illuminated and non-illuminated, is to announce to the public the location of the place of business of a particular business house exhibiting its name plate. The non-illuminated name-plate serves the purpose during the day when there is natural light and illuminated name plate serves the very same purpose during the period when there is no day-light and electric light or any other artificial light has to be used. The mere use of electric or artificial light cannot provide a basis for classification of the two name plates into two different categories, one liable to permission and fee while the other is not. Both kinds of name plates amount to advertisement and either both of them are to be exempted from the provisions of the Order or none. Since the non-illuminated name plate is exempted from the provisions of the Order, the illuminated name plate is also to be considered as exempted. In view of this conclusion, neither the permission of the Chief Administrator is necessary nor any fee is payable for exhibiting illuminated name plates. The petitioner-company, therefore, is right in asserting that it is not liable to pay any fee nor is obliged to take the permission of the Chief Administrator under the Advertisements Control Order, 1954.

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(8) The learned counsel for the petitioner-company has finally argued that the respondents are not entitled to charge any fee from the petitioner-company because there is no *quid pro quo* as no service is rendered by the respondents to the petitioner-company in respect of the illuminated name plate. The name plate is one and the same which remains there on the premises for all the 24 hours of the day. Only in the evenings, it is lighted up by electricity. It does not matter that the substance used is neon lights but the respondents have to do nothing with regard to this exhibition of the name plate of the petitioner-company. In reply to this allegation in the petition, the respondents have stated that there is *quid pro quo* because they have set up a separate department which is manned by a Sub-Inspector and a peon whose emoluments amount to more than Rs. 3,000, the amount which is collected on account of fees for advertisements. This Sub-Inspector advises the residents and the business houses how to advertise their names and goods and prosecutes those who contravene the provisions of the Advertisement Control Order. Merely because the respondents have maintained a separate department for the purpose does not mean that any service is rendered by them to the petitioner-company or other similar business houses. The name plate is exhibited outside the shop at the place specified for it and mere illumination of it at night casts no liability on the Advertisement Department to render any service to the petitioner-Company nor is there any occasion to do so. I am, therefore, of the opinion that there is substance in this submission of the learned counsel and the fee cannot be charged because of the lack of *quid pro quo*.

(9) For the reasons given above, this petition is accepted with costs and it is held that the petitioner-company is not liable to pay any fee or to seek any permission for the exhibition of its name plates outside its shops even if they are illuminated ones. The necessary writ is issued to the respondents commanding them not to recover any fee from the petitioner-company in respect of its name plates exhibited outside its shops in Chandigarh. Counsel's fee Rs. 300.

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K. S. K.