

(2012) 3 RCR(Civil) 494

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 17226 of 2009

Aradhana Drinks and
Beverages Pvt. Ltd

APPELLANT

Vs

State of Punjab and
Others

RESPONDENT

Date of Decision: Nov. 11, 2011

Acts Referred:

Constitution of India, 1950 " Article 243(W), 246#Punjab Municipal Corporation Act, 1976 " Section 122, 122(1), 123, 123(1), 124

Citation: (2012) 3 RCR(Civil) 494

Hon'ble Judges: Ranjan Gogoi, C.J; Surya Kant, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Surya Kant, J

1. By this order, we shall dispose of CWP Nos.17226 of 2009; and 4901 of 2010 as the questions of law and facts involved in these cases are

common in nature. For the sake of brevity, the facts are being extracted from CWP No.17226 of 2009.

2. Aradhana Drinks and Beverages Pvt. Ltd. seeks (i) a mandamus to declare that Section 123 read with Section 399(1)(H)(16) of the Punjab

Municipal Corporation Act, 1976 ultra vires Article 246 read with List-II and List-III of the Seventh Schedule, read with Article 243(W) and

Twelfth Schedule to the Constitution of India; (ii) to declare the Local Government/Municipal Corporation (Control of Advertisement) Bye-laws,

2003 as non-existent as they ultra vires the above-referred provisions of the Indian Constitution; (iii) a writ of certiorari to quash the notice dated

August 11, 2009 (Annexure P3) and the letter dated September 1, 2009 (Annexure P5) both issued by the Municipal Corporation, Ludhiana; and

(iv) a writ of prohibition to restrain the respondents from taking down, removing, dismantling, spoiling or defacing the Dealer Boards on the shops,

outlets and other premises bearing the "names" of such shop outlets, buildings as well as the Trademarks, Logo and other advertisements of the

products being distributed by the petitioner-Company.

3. To appreciate the issues involved suffice it to mention that the petitioner is a Company incorporated under the Companies Act, 1956 and is a

wholly owned subsidiary of the PepsiCo India Holdings Pvt. Ltd. The petitioner is engaged in the business of selling and distributing carbonated

and non-carbonated beverages, juices, juice-based drinks and packaged drinking water under the Trademarks ""Pepsi"", ""7-Up"", ""Mirinda"",

Tropicana"", ""Slice"", ""Aquafina"" etc. in the State of Punjab.

4. The petitioner-Company has erected or fixed "Dealer Boards" on various shops, outlets and other premises within the jurisdiction of Municipal

Corporation, Ludhiana which bear the Trademarks of the products sold and distributed by the petitioner in the State of Punjab, besides the name

or other identity description of the shop, outlet or premises where such Boards have been displayed.

5. The respondent No.2 -Municipal Corporation, Ludhiana served the petitioner with the impugned notice dated 11.08.2009 (Annexure P3)

calling upon it to provide a list of the number of boards carrying the advertisement of Pepsi Company along with their sizes, which were statedly

hung unauthorisedly in Ludhiana City. The petitioner was simultaneously advised to deposit the Advertisement Tax in the Municipal account failing

which the Boards were liable to be removed at the risk and cost of the petitioner-Company.

6. The petitioner responded to the above-stated notice vide its reply dated 14.08.2009 seeking clarification from the Municipal Corporation

regarding - (a) the details of the Notification authorising to levy the Advertisement Tax; (b) the Bye-laws, if any, framed under the Municipal

Corporation Act, 1976; (c) the period for which the Tax was demanded; (d) the rate of Tax; and (e) the types of advertisements which are

covered for the purposes of the Corporation/Advertisement Tax.

7. The Municipal Corporation, Ludhiana replied back vide its impugned letter dated 01.09.2009 (Annexure P5), informing that the petitioner was

liable to deposit the Advertisement Tax on the boards of the Pepsi products displayed within the Municipal limits and that (a) the Advertisement

Tax is to be paid after every three months under Clause (34) of the Local Government Department (Control of Advertisement) Bye-laws, 2003 (in

short, "the 2003 Bye-laws"); (b) a copy of the above-stated Bye-laws could be made available on the deposit of the assessed amount/charges of

Rs.100/-; (c) the Advertisement Tax for the current year commencing from 01.04.2009 was recoverable from the petitioner; (d) a copy of the

approved scheduled advertisement rates issued by the State Government was enclosed; and that (e) Sections 122 to 126 of the Punjab Municipal

Corporation Act, 1976 (in short, "the Act") and the 2003 Bye-laws spell out the kind of advertisements which are leviable to Advertisement Tax.

The petitioner was again advised to deposit the due Tax within a period of seven days.

8. The aggrieved petitioner has approached this Court, inter alia, contending that (i) the charging Section 122(1) of the Act is not attracted and no

Advertisement Tax is leviable on the petitioner in view of the proviso (c) thereto as the "trade" and "business" of products sold or distributed by

the petitioner is also being carried on within the outlets/shops/buildings where the Dealers Boards have been displayed; (ii) Section 123(1) of the

Act prohibiting advertisements without written permission of the Commissioner is beyond the legislative competence of the State Government; (iii)

Section 399(1)(H)(16) of the Act also lacks legislative competence of the State Government; (iv) the 2003 Bye-laws are non-existent in the eyes

of law and cannot be enforced unless notified in the Gazette as mandated by Section 401 of the Act; and (v) the Dealer Boards erected or fixed by

the petitioner do not fall within the purview of the expression ""Advertisement"" defined in the 2003 Bye-laws.

9. The petitioner, in support of its first contention, relies upon the view taken by three Hon"ble High Courts of Madras, Calcutta and Karnataka in

(i) V. Vasudeva Bhat v. The Revenue Officer, Corporation of Madras, 1963 MLJR 7 ; (ii) Writ Petition No.9039 of 2007 Hutchison Essar South

Ltd. v. Bruhat Bangalore Mahanagara Palike; (iii) Calcutta Soft Drinks Pvt. Ltd. v. Calcutta Municipal Corporation and Ors., AIR 2007 Cal 136 ,

respectively.

10. The State of Punjab has filed its counter-affidavit defending the powers of the Municipality contained in Sections 122, 123 & 399(1)(H)(16) of

the Act, for controlling and regulating the display of advertisements within the Municipal Area and has referred to in this regard the decision of the

Hon"ble Supreme Court in Novva ADS Vs. Secretary, Deptt. of Municipal Administration and Water Supply and Another, following Saghir

Ahmad Vs. The State of U.P. and Others, . The State Government has further explained that the 2003 Bye-laws were circulated amongst all the

Urban Local Bodies for adoption and the Municipal Corporation, Ludhiana also passed Resolution No.85 dated 29.01.2004 adopting the same

as ""Government Policy/Instructions"" instead of adopting in the form of ""Bye-laws"". Such an adoption is sought to be defended on the strength of

Section 405 of the Act which empowers the State Government to direct a Municipal Corporation to take measures to perform its duties under the

Act. An additional affidavit dated 26.02.2011 has also been filed explaining that a sum of Rs.14,98,200/-is recoverable from the petitioner

towards the Advertisement Tax.

11. The Municipal Corporation, Ludhiana through its Additional Commissioner (respondent Nos.2&3) has also filed its separate reply defending

the constitutional validity of the provisions of the Act and the 2003 Bye-laws. The Corporation draws support from the decision in Municipal

Corporation of Greater Bombay Vs. Bharat Petroleum Corporation Ltd., , to contend that a sign-board exhibiting the product of a specific

company amounts to promotion of sale of the product of that company and such a sign-board falls within the ambit of "advertisement". The

decision in New Delhi Municipal Committee v. Allied Motors Pvt. Ltd., (1995) 4 Supl.SCC 150 has also been pressed into aid. Respondent

Nos.2&3 maintain that the "2003 Bye-laws" though not notified but have been adopted by the Municipal Corporation vide Resolution No.85

dated 29.01.2004. A preliminary objection regarding availability of alternative remedy of appeal against the assessment order has also been taken.

12. Learned counsel for the parties were ad idem that if the petitioner's first contention that under the proviso (c) to Section 122(1) of the Act

there is a legal bar to levy tax on the advertisements succeeds, then it would not be necessary to go into the constitutionality of Sections 123(1) and

399(1)(H)(16) of the Act nor the issue regarding validity of the 2003 Bye-laws would survive. We have accordingly heard learned counsel for the

parties and gone through the relevant provisions and proceed, at this stage, to resolve the first question, namely, as to whether or not there is any

legal bar under proviso "C" to Section 122(1) of the Act to levy tax on the advertisements?

13. At the outset we clarify that for the purpose of answering the solitary issue under consideration, we proceed on the premise that the relevant

provisions of the Act are referable to Article 243(X) read with Article 276 and intra vires the Constitution.

14. For an effective answer to the core question, firstly reference need to be made to Sections 90(1)&(2), 122 and 123 of the Act which read as

follows:-

90. Taxes to be imposed by Corporation under this Act and arrangement of certain taxes collected by Government. - (1) The Corporation shall,

for the purposes of this Act, levy the following taxes:-

(a) taxes on lands and buildings;

(b) octroi;

(c) a tax on vehicles and animals;

(d) a tax on advertisements other than advertisements published in newspapers;

(e) a tax on buildings payable along with the application for sanction of the building plan; and

(f) a development tax on the increase in urban land values caused by the execution of any development or improvement work.

(2) Subject to the prior approval of the Government, the Corporation may, for the purposes of this Act, in addition to the taxes specified in sub-

section (1) levy,

(a) a tax on professions, trades, callings and employments; and

(b) any other tax which the State Legislature has power to impose under the Constitution;

Provided that no tax shall be imposed under this sub-section unless an opportunity has been given in the prescribed manner to the residents of the

City to file objections and the objections, if any thus received have been considered.

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122. Tax on advertisements. - (1) Every person, who erects, exhibits, fixes or retains upon or over any land, building, wall, boarding, frame, post

or structure or upon or in 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 cinematograph), shall pay for every advertisement which is so

erected, exhibited, fixed or retained or so displayed to public view, a tax calculated at such rates, as may from time to time, be specified by the

Government.

Provided that no tax shall be levied under this section on any advertisement which -

(a) relates to public meeting, or to an election to Parliament or Legislative Assembly or the Corporation or to candidature in respect of such

election; or

(b) is exhibited within the window of any building, if the advertisement relates to the trade, profession or business carried on in that building; or

(c) relates to the trade, profession or business carried on within the land or building upon or over which such advertisement is exhibited or to any

sale or letting of such land or building or any effects therein or to any sale, entertainment or meeting to be held on or upon or in the same; or

(d) 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; or

(e) relates to the business of a railway administration and is exhibited within any railway station or upon any wall or other property of a railway

administration; or

(f) relates to any activity of the Government or Union of India or the Corporation.

(2) The tax on any advertisement leviable under this section shall be payable in advance in such number of instalments and in such manner as may

be determined by bye-laws made in this behalf.

Explanation 1. The word ""structure"" in this section includes any movable board on wheels used as an advertisement or an advertisement medium.

Explanation 2. The word ""advertisement"" in relation to a tax on advertisement under this Act means any word, letter, model, sign, placard, notice,

device or representation whether illuminated or not, in the nature of and employed wholly or in part for the purposes of advertisement,

announcement or direction.

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123. Prohibition of advertisements without written permission of Commissioner. - (1) No advertisement shall be erected, exhibited, fixed or

retained upon or over any land, building, wall, boarding, frame, post or structure or upon in any vehicle or shall be displayed in any manner

whatsoever in any place within the City without the written permission of the Commissioner granted in accordance with bye-laws made under this

Act.

(2) The Commissioner shall not grant such permission, if -

(a) the advertisement contravenes any bye-law made under this Act; or

(b) the tax, if any, due in respect of the advertisement has not been paid.

(3) Subject to the provisions of sub-section (2) in the case of an advertisement liable to the advertisement tax, the Commissioner shall grant

permission for the period to which the payment of the tax relates and no fee shall be charged in respect of such permission.

(Emphasis applied)

15. There can indeed be no doubt that a Municipal Corporation is competent to levy a variety of taxes for which it is expressly empowered by the

source of taxes contained in sub-Sections (1) & (2) of Section 90 of the Act. A tax on "advertisement" other than those published in newspapers

can also be imposed by a Municipal Corporation u/s 90(1)(d) of the Act. Section 122(1) explains the incidence of tax on advertisements and it

says that every person who erects, exhibits, fixes or retains upon or over any land, building, wall, boarding, frame, post or structure or any vehicle

any advertisement or who displays any advertisement to public view in any other manner which is visible from a public street or public place

including those exhibited by means of cinematograph, is liable to pay tax for every such advertisement at the rates to be specified by the State

Government.

16. The proviso to Section 122(1) of the Act carves out an exception to the main provision and it excludes certain advertisements from the levy of

tax including those specified in clause [c] relating to the trade, profession or business carried on within the land or building upon or over which such

advertisement is exhibited.....". Section 123 of the Act prohibits erection, exhibition or fixation of an advertisement upon or over any land,

building, wall, boarding, frame etc. in any place within the city without the written permission of the Commissioner which cannot be granted unless

the Advertisement Tax has been paid and the advertisement to be displayed does not contravene any Bye-law made under the Act.

17. The precise case of the petitioner is that since the Dealer Boards have been erected or displayed only on those outlets, shops or buildings

where the trade or business pertaining to the products sold or marketed by it is also carried on, these boards relate to the "trade" or "business"

carried on within such outlets, shops or buildings and are excepted from the Advertisement Tax under proviso (c) of Section 122(1) of the Act.

The Municipal Authorities have apparently not undertaken any exercise to refute or admit the afore-stated fact based contention specifically raised

by the petitioner in para 2 of the writ petition and are heavily banking upon the principle of pre-dominance to urge that the protection of the

exemption clause is admissible only where an outlet, shop or building displaying the Dealer Board is in exclusive use for the trade or business of the

products sought to be advertised.

18. It is trite that while interpreting the fiscal laws the Courts strongly lean against a construction which renders a Statute redundant or defeats the

legislative intentment. When the clear, plain and unambiguous words of a Statute are reasonably susceptible to only one meaning, the Courts are

bound to give effect to that meaning notwithstanding the hardship, inconvenience or other consequences.

19. The principle of strict construction of a Taxing Statute, however, cannot be stretched to mean that where the subject falls clearly within the

letter of the law, the Court can soften the rigour through a restricted construction for the reason that the tax or penalty imposed is heavy or

oppressive. Where the intention to tax is unambiguous, even ambiguity in the phraseology cannot defeat it.

20. It is equally well-settled that the effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of

the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it. The substantive

provision levying the tax on the one hand and the proviso thereto which excepts certain incidences of tax on the other, need to be harmoniously

construed so that none out of the two becomes redundant and otiose. We may in this regard respectfully rely upon *Kedarnath Jute Manufacturing*

Co. Vs. Commercial Tax Officer, Calcutta and Others, .

21. Keeping these broad principles in mind if we advert to Section 122(1) of the Act, the plain legislative intentment to levy tax on all possible

modes of advertisements stands crystallised. So is the unambiguous intention to take out an advertisement from tax liability if it falls within the ambit

of Clauses [a] to [f] of the proviso to Section 122(1) of the Act. If an advertisement sought to be taxed u/s 122(1) of the Act can be proved to

have been erected, exhibited or fixed on a land, building, wall, boarding, frame or structure etc. where the trade or business in relation to the

advertised icon is also carried on, the proviso (c) excepts out the same from the levy of Advertisement Tax.

22. The plea that the "trade" or "business" carried on within the land or building upon or over which the advertisement is exhibited must be

exclusive in nature, as asserted by the respondents, cannot be accepted for two reasons. Firstly, the High Court of Judicature at Madras in

V.Vasudeva Bhat's case (supra) considered an identical provision contained in Section 129(A) of the Madras City Municipal Act and explained

that "trade" or "business" are words of wide import and it cannot be said that only if sales are exclusively carried on in particular good in a building,

it can be described as the "trade" or "business". The High Courts of Calcutta and Karnataka have followed the aforesaid view while examining the

similar worded-provisions of the respective State Acts. We see no reason to differ or take a contrary view as the interpretation given by the three

High Courts to pari materia provisions is otherwise the true and correct statement of law.

23. We re-iterate that the ""business"" is a very spacious expression and in fiscal statutes, it must be construed in a broad rather than restricted sense

to include anything which occupies the time, attention and labour of a man for the purpose of profit. The word ""trade"" also includes the exchange of

goods for goods or goods for money and in a secondary meaning it is any business carried on with a view to profit. Even a single transaction or

event falling within these parameters shall constitute "business" or "trade", as the case may be.

24. Secondly, if the plea put forth by the respondents is taken to its logical conclusion, it would amount to re-writing the clause [c] of proviso to

Section 122(1) of the Act by prefixing the phrases ""same"" or ""exclusive"" before the expressions ""trade"", ""profession"" or ""business"".

25. In Competition Commission of India Vs. Steel Authority of India Ltd. and Another, , it has been held that while interpreting the provisions of a

Statute it is not necessary for the Court to implant, or to exclude the words, or over-emphasize the language of the provision where it is plain and

simple and that the best norm would be to give literal construction keeping the legislative intent in mind.

26. In Collector of Central Excise, Kanpur v. Krishna Carbon Paper Co. (1989) 1 SCC 150, it was held that where in a taxing statute the phrase

used has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that the word must

be held to have been used, unless contrary intention is clearly expressed by the legislature.

27. The decisions relied upon by the respondents are in different context. In New Delhi Municipal Committee's case (supra), the Hon'ble

Supreme Court while interpreting the expression "Advertisements", drew distinction between the boards displaying the names of the commodities

on the one hand and the "name-boards" on the other. In Municipal Corporation of Greater Bombay's case (supra), the Apex Court rationalised

the meaning of "advertisement" to mean -to make an information known publicly by some device and to draw or attract attention towards such

information which need not necessarily be for sale only or solely for commercial exploitation. No such issue arises in the present case.

28. In Novva ADS" case (supra), the validity of Sections 326-A to 326-J of the Chennai City Municipal Corporation Act, 1919 and the Chennai

City Municipal Corporation (Licensing of Hoardings and Levy and Collection of Advertisement Tax) Rules, 2003 was unsuccessfully challenged

by the petitioner firstly before the Madras High Court and thereafter in the Hon'ble Supreme Court. As has been noticed earlier, we have not

delved into the Constitutional validity of the statutory provisions under challenge.

29. For the reasons afore-stated, we hold that so long as the trade, profession or business being carried on within the land, building, shop or outlet

etc. also includes the trade, profession or business in the goods, services and/or any other taxable activity in relation to which the advertisement

board has been erected, exhibited fixed or retained upon such land, building, shop or outlet, no Advertisement Tax can be levied in view of the

proviso (c) to Section 122(1) of the Act. Since it is the categoric case of the petitioner on facts that the Dealer Boards have been erected or

displayed by it on the outlet, shops or buildings where one of the activity of the "business" or "trade" carried on includes the sale of the products

marketed or distributed by the petitioner, no Advertisement Tax is leviable on such Dealer Boards. This declaration of ours, however, is subject to

the caveat that wherever the Municipal Corporation is able to establish that the business carried on within the land, building, shop or outlet where

the Dealer Boards have been erected or displayed does not at all include the sale of the products marketed or distributed by the petitioner-

Company, the Corporation shall be at liberty to call upon the petitioner for assessment of the advertisement tax with specific reference to such

Dealer Boards and proceed further in accordance with law.

30. Subject to the liberty granted hereinabove, the writ petition(s) is/are allowed to the extent that the impugned notice dated 11.08.2009

(Annexure P3) is hereby quashed at this stage. The subsequent letter dated 01.09.2009 (Annexure P5) is merely informative in nature and calls for

no interference. No order as to costs.