

(2006) 07 CAL CK 0044

Calcutta High Court

Case No: APO No. 528 of 2000 and W.P. No. 1914 of 2000

Calcutta Soft Drinks Private
Limited

APPELLANT

Vs

Calcutta Municipal Corporation
and Others

RESPONDENT

Date of Decision: July 31, 2006

Acts Referred:

- Calcutta Municipal Corporation Act, 1980 - Section 131(3), 203, 204, 204(1), 204(2)

Citation: (2007) 2 CHN 17 : 110 CWN 892

Hon'ble Judges: Tapan Mukherjee, J; Ashim Kumar Banerjee, J

Bench: Division Bench

Advocate: Abhijit Chatterjee and Suvradal Chowdhury, Jayauta Mitra and Jishnu Saha, for the Appellant; Aloke Ghosh, for the Respondent

Judgement

Ashim Kumar Banerjee, J.

Is the advertisement displayed on a shop selling, inter alia, Coca-Cola or Pepsi exempted from the Municipal Tax in terms of Section 204 of the Calcutta Municipal Corporation Act, 1980 (hereinafter referred to as "the said Act of 1980")?

2. This is the moot question which is required to be answered by us in this appeal. The question was answered in the negative by the learned Single Judge when he was approached by this soft drinks companies challenging the demand of the Corporation. Hence, this appeal.

3. Section 204 of the said Act of 1980 is quoted below:

204. Tax on advertisements.--(1) Every person, who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding, frame, post, kiosk or structure any advertisement or, 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 rate as the Corporation may determine by regulations or as the budget estimate shall state under Sub-section (3) of Section 131:

...

[Provided that] a surcharge not exceeding fifty per cent, of the applicable rate may be imposed on any advertisement on display in temporary fairs, exhibitions, sports events or cultural or social programmes.

(2) Notwithstanding the provisions of Sub-section (1), no tax shall be levied under this section on any advertisement which--

(a) relates to a public meeting or to an election to Parliament or the State Legislature 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 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 the Corporation.

(3) The tax on any advertisement leviable under this section shall be payable in advance in such number of instalments and in such manner as the Corporation may by regulations determine [or as the budget estimate shall state under Sub-section (3) of Section 131]:

Provided that the Corporation may under the terms and conditions of the licence u/s 203 require the licensee to collect and to pay to the Corporation, subject to a deduction of five per cent, to be kept by him as collection charges, the amount of tax in respect of such advertisements as are displayed on any site for which he is the licensee.

4. Section 204 Sub-section (1) provides for payment of Municipal Tax on any advertisement visible from a public street or public place, Sub-section (2) of Section 204, however, specifies certain advertisements exempted from the payment of tax under Sub-section (1).

5. In the instant case, admittedly there were advertisements displayed by the soft drink companies which were vulnerable to tax. They, however, claimed exemption under Sub-section (2)(c). Hence, Sub-section (2)(c) is to be carefully read and interpreted to find out whether they were entitled to an exemption under this sub-section or not.

6. The rule of interpretation as explained from time to time by the Court of Law including our Apex Court specifically stipulates plain and grammatical meaning of the provision and removal of ambiguity for the purpose of interpretation to find the clear intent of the legislature. To be more specific, the Court is to iron out the creases without changing the texture of the fabric. Court cannot enlarge the scope of legislation. Court will also reject the construction which would defeat the plain intention of the legislature. It is to discover the true legislative intent out of the said provision. If the words are clear, plain, unambiguous and reasonably susceptible to one meaning the Court must give that meaning irrespective of the consequences as the Court is not required to consider as to what would be the ultimate consequence. The Court is neither to sub-plant nor to add or ignore any of the words stipulated in the subject provision.

7. Learned Counsel for the parties cited before us as many as eight Apex Court decisions which are as follows:

- (1) [Commissioner of Income Tax, Patiala and Others Vs. Shahzada Nand and Sons and Others,](#)
- (2) [Renusagar Power Co. Ltd. Vs. General Electric Company and Another,](#)
- (3) [New Delhi Municipal Committee Vs. Allied Motors Pvt. Ltd. and others,](#)
- (4) [Gurudevdatla VKSSS Maryadit and Others Vs. State of Maharashtra and Others,](#)
- (5) [Nasiruddin and Others Vs. Sita Ram Agarwal,](#)
- (6) [Balram Kumawat Vs. Union of India \(UOI\) and Others,](#)
- (7) [State of Orissa and Others Vs. Joginder Patjoshi and Another,](#)
- (8) [Nathi Devi Vs. Radha Devi Gupta, .](#)

8. I, however, feel that the relevant head notes and/or paragraphs from three of the said decisions need be quoted:

- (1) [Commissioner of Income Tax, Patiala and Others Vs. Shahzada Nand and Sons and Others,](#)

In a Taxing Act one has to look merely at what is clearly said. There is no room, for any intendment. There is no equity to be implied. One can only look fairly at the language used. In a case of reasonable doubt, the construction most beneficial to the subject is to be adopted. But even so, the fundamental rule of construction is the

same for all statutes, whether fiscal or otherwise. The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the Court as to what is just or expedient. The expressed intention must guide the Court. The maxim "generalalia specialibus non derogant", means that when there is a conflict between a general and a special provision, the latter shall prevail. But this rule of construction is not of universal application. It is subject to the condition that there is nothing in the general provision expressed or implied, indicating an intention to the contrary. To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the whole Act to consider- 1. What was the law before the Act was passed? 2. What was the mischief or defect for which the law had not provided? 3. What remedy Parliament has appointed? and 4. The reason of the remedy.

(2) [New Delhi Municipal Committee Vs. Allied Motors Pvt. Ltd. and others,](#)

The respondents did not claim any exemption under Clause (e) of Bye-law 7. The said provision has been adverted to earlier in passing. It is to be seen that advertisements as relating to the trade, profession or business carried on within the land or building upon or over which such advertisement is put are to be exempted. Equally exemption is claimable for such advertisements relating to any sale or letting of such land or building or any effects therein. Likewise advertisements relating to any entertainment or meeting to be held on or upon or in the same is to be exempted; provided that exemption is valid to the owner or agent for one board. Thus advertisement which has nexus with the trade, profession or business would qualify for exemption if relating to the named activities. The respondents succeeded before the Letters Patent Bench of the High Court only on the basis of Clause (a) of Bye-law 7. The Bench when called upon by the present appellant to give favourable interpretation to Clause (a) of Bye-law on the basis of Clause (e) observed that it appears to them that Clause (e) would apply to those advertisements which relate (only) to the trade, profession or business or something more than mere name board. The respondents herein (the appellants thereat) did not build their case on anvil of Clause (e) of Bye-law 7 and any attempt herein, in the absence of the views of the High Court, would negate proper handling. We would, therefore, leave the matter at that. This course is all the more necessary when there is an amendment in Clause (a) of Bye-law 7 effective from 19.2.1971 where under a name board remains as such displayable by the traders on their own premisses provided they do not add any item of advertisement thereto other than the name or the trade that may be carried out at the premises. But, as said before, we are concerned with the period prior to that requiring us not to give a positive opinion.

(3) [Gurudevdatla VKSSS Maryadit and Others Vs. State of Maharashtra and Others,](#)

It is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according

to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning, irrespective of the consequence. It is said that the words themselves best declare the intention of the lawgiver. The Courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute.

9. The learned Single Judge came to the conclusion that the appellants were vulnerable to tax under Sub-section (1). His Lordship's principal reasonings in coming to such conclusion are, inter alia, as follows:

(i) The words "relates to" should be read in the context of trade and business carried on by the shop owner on whose shop or land or building the advertisement was being put up.

(ii) Such advertisement in terms of Clause (1) above should relate to his business or trade carried on by him.

(iii) If he carries business or trade in respect of various other items including the brand named in the advertisement such advertisement could not be exempted under Sub-section (2)(c).

(iv) The dominant purpose for which the section was introduced was to be looked into.

(v) The section provided for imposition of tax in terms of Sub-section (1) whereas Sub-section (2)(c) excluded the trader or business man from payment of tax displaying his trade name including the items for which he carried on business.

(vi) If there were more than one board displaying various items the section being silent it could be not interpreted by the Court in the way it was being done without a clear legislation. His Lordship, however, observed that such ambiguity, however, was absent in the case of New Delhi Municipal Committee Bye-Laws which came up for consideration in the case of New Delhi Municipal Committee (supra).

10. His Lordship ultimately answered the question in negative which resulted in two separate appeals filed by Coca-Cola and Pepsi Cola. The present appeal was by Calcutta Soft Drinks Pvt. Ltd. the manufacturer of Coca-Cola. The appeal filed by Pepsi Cola was dismissed by the Division Bench for want of prosecution as nobody appeared for the appellant. When this appeal was being heard by us Mr. Abhijit Chatterjee, learned Counsel for Pepsi, wanted to intervene. He contended that

hearing of this appeal should be adjourned to enable him to apply for restoration of his appeal. Since it involved an identical question of law we permitted Mr. Chatterjee to make his submission on the interpretation of the subject provision.

11. I have considered the Apex Court decisions. I, however, do not find any decision save and except in the case of New Delhi Municipal Committee (*supra*) dealing with the identical provision or any provision *pari materia* thereto.

12. In the case of New Delhi Municipal Committee (*supra*) prior to amendment of Bye-law one name board was allowed to be exempted from the mischief of the tax. In that case Clause 7 of the concerned Bye-law of the municipal committee was interpreted by the Apex Court. The relevant extract of Clause 7 is quoted below:

1. Every person who erects, exhibits, fixes, paints, carries or retains upon or over any land, building, wall, scores, boarding, structure or vehicle any advertisement within the limits of the New Delhi Municipal Committee and as mentioned in the Chief Commissioner's Notification No. F. 3(56)/56-LSG dated the 23rd January, 1958, shall be liable to pay advertisement tax on the same according to the schedule of rates appended to the said notification. This schedule of rates is reproduced in Appendix "A" to these Bye-laws.

2. *****

3 to 6 *****

7. The tax shall not payable on the following categories of advertisements

(Before 19.02.1971)

(After 19.02.1971)

(a) Name boards displayed by the traders on their own premises provided the board is purely a name board and it does not contain any item of advertisement.

Name boards displayed by the traders on their own premises provided they do not contain any item of advertisement other than the name of the trade that may be carried out at the premises.

(b) to (d) *****

(e) Advertisement which 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 any sale, entertainment or meeting to be held on or upon or in the same:

Provided that exemption under this item shall apply only to one board displayed by the owner or his agent.

(f) to (h) ***** _

Explanation.-- *****"

13. On perusal of the aforesaid clause quoted (supra) it would appear that prior to 1971 name board displayed by the traders without containing any item of advertisement was exempted. By virtue of the amendment of 1971 name board displayed by the traders without containing any item of advertisement other than the name of the trade that might be carried on at the premises was exempted. Sub-clause (e), however, provided that advertisement which related to the trade or profession carried on within the land or building over which advertisement was to be exhibited was exempted provided it was restricted to one board displayed by the owner.

14. The Sub-clause (e) is almost identical to Sub-section (2)(c) of Section 204 of the said Act of 1980.

15. In case of New Delhi Municipal Committee the exemption was to the extent of only one board whereas such provision is absent in the Act of 1980.

16. In the case before the Apex Court the concerned trader used eight boards each one carrying different brand name in which the trader was carrying on business. Considering that the Apex Court came to a conclusion that since the trader claimed exemption under Bye-law 7(a) and did not claim benefit of Clause (e) of Bye-law 7 the same was not relevant for consideration for that purpose. The Apex Court also observed that they were concerned with a period prior to 1971.

17. I could not get much support from the judgment of the Apex Court in the case of New Delhi Municipal Committee (supra) save and except the observation made in paragraph 8 quoted (supra).

18. Let us now come to the sub-section itself which is called in question herein. Sub-section (2)(c) provides for exemption on advertisement if relates to trade or profession or business carried on within the land or building upon or over which such advertisement is exhibited. In the instant case the advertisement boards were put up by the soft drinks companies admittedly wherein the name of the trader was put in a most inconspicuous place of the advertisement. It is an admitted fact that such advertisement was displaying the product of the soft drink company and not all the products the concerned trader was selling. It was contended before us that such advertisement was put for sale promotion of the product by and for the trader. I respectfully differ with such contention. A trader selling Coca-Cola or Pepsi-Cola at whose instance the soft drinks companies were putting up display board on their business place was either a pan shop or grocery shop or an eating house where soft drink was one of the items being sold. It was not the case of the soft drinks company

that the trader who was only selling their product was being charged under Sub-section (1). That was not the case made out by the petitioners before the learned Single Judge as I find from the writ petition. That was not the submission of the appellant as I find from the judgment of the learned Single Judge.

19. Lot of criticism were made before us to the user of the word "dominant purpose" by the learned Single Judge. I find that the learned Single Judge used such expression only to elaborate his view on the interpretation. It was contended before us that since it was fiscal statute it was to be construed rigidly and if there was any scope of ambiguity such construction must be beneficial to the assessee and not the Collector. Even if I accept such contention of the appellants I do not find any scope of ambiguity in the subject provision as it is clear and unambiguous. Oxford Dictionary meaning of the word "relates to" is "be supported". Hence, such advertisement under Sub-section (2)(c) should have a nexus with the trader.

20. The trader is carrying on his business from the same building where the advertisement was put up. A grocer can sell 100 items including one soft drink being manufactured by the appellant. In my view, the board while displaying the name of the trader as well as giving description of the trade or business being carried on there is exempted from any tax provided it is put up on his business place. Such board may contain the names of various items including the product of the appellant. However, if that board only displays and highlights the product of the appellant rather than the items being sold from the shop in question it cannot claim exemption under Sub-section (2)(c). To elaborate this, His Lordship might have used the word "dominant purpose". I do not find any mistake on that count committed by the learned Single Judge. The subject section, in my view, is clear and unambiguous. I, however, do not wish to comment on the observation of His Lordship wherein His Lordship as and by way of illustration observed that if there had been more than one board like the Delhi case the section being silent imposition of tax might be difficult. I feel that such observation of His Lordship was superfluous as the same was not required to be observed. The Court is only to give its verdict on the issue raised before it. It has no authority to deal with the subject on which it was not called upon.

21. I, therefore, hold that the advertisements put up by the appellants as pleaded in the writ petition did not attract the benefit of the exemption under Sub-section (2)(c) of Section 204 of the said Act, 1980.

22. In my view, the appeal should fail and should be dismissed.

Tapan Mukherjee, J.

23. I have the privilege to go through the well-versed judgment delivered by my learned Brother. However, I wish to approach the problem from a complete different angle.

24. The only point for decision in this appeal is whether the advertisement in question displayed on the shop selling soft-drinks Coca-Cola or Pepsi is exempted from the Municipal Tax in terms of Section 204 of Calcutta Municipal Corporation Act, 1980.

25. The fact remains that the advertisement is erected by the petitioner on the land or building from which the dealers or traders are selling soft-drinks. In other words, the advertisement about soft-drinks put up by the petitioner relates to the trade, profession or business carried on the land or building upon or over which such advertisement was exhibited. The advertisement of the petitioner thus has nexus with the trade or business or the trader or dealer. Under Sub-section (1) of Section 204 every person which erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding , frame, post, kiosk or structure any advertisement or 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 cinematography) shall pay for advertisement which is so erected, exhibited, fixed or retained or so displayed to public view, a tax calculated at such rate as the Corporation may determine by regulations detailed in proviso to Sub-section (1) of Section 204 of Calcutta Municipal Corporation Act. The Sub-section (1) of Section 204 speaks for payment of tax on advertisement. Sub-section (2) of Section 204 makes exemption from payment of such tax in certain cases. Clause (c) of Sub-section (2) of Section 204 of the Calcutta Municipal Corporation Act unequivocally lays down that notwithstanding the provision of Sub-section (1) no tax shall be levied u/s 204 on any advertisement which "relates to the trade, profession or business carried on within the land or building upon or over 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 in the same. So, no tax is leviable or payable on advertisement under Sub-section (2) Clause (c) of Section 204 of the Calcutta Municipal Corporation Act when such advertisement relates to the trade, profession or business or within the land or building upon or over which such advertisement is exhibited. In other words, such tax is not payable when advertisement has got nexus with the trade or business carried on within the land or building upon or over which such advertisement is exhibited. If, such advertisement has no nexus with the trade, profession or business carried on within the land or building upon or over which such advertisement is exhibited, no exemption under Clause (c) Sub-section (2) of Section 204 can be claimed. In this regard, reference can be made to the decision reported in [New Delhi Municipal Committee Vs. Allied Motors Pvt. Ltd. and others](#), relied by the Id. Lawyer for the appellant. In the case before the Apex Court the New Delhi Municipal Committee was the appellant and Bye-laws framed in exercising power under the provisions of Sections 188(v) and 199 of the Punjab Municipal Act, 1911 provided for control and regulation of advertisements came up for the consideration of the Apex Court. The said Bye-laws run as follows:

1. Every person who erects, fixes, paints, carries or retains upon or over any land, building, wall, scores, boarding, structure or vehicle any advertisement within the limits of the New Delhi Municipal Committee and as mentioned in the Chief Commissioner"s Notification No. F3(56)/ 56-LSG dated the 23rd January, 1958, shall be liable to pay advertisement tax on the same according to the schedule of rates appended to the said notification. This schedule of rates is reproduced in Appendix "A" to these Bye-laws.

7. The tax shall not be payable on the following categories of advertisements:

Before 19.2.1971

After 19.2.1971

(a) Name boards displayed by the traders on their own premises provided the board is purely a name board and it does not contain any item of advertisement.

Name boards displayed by the traders on their own premises provided they do not contain any item of advertisement other than the name of the trade that may be carried out at the premises.

(b) to (d) *****

(e) Advertisement which 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 any sale, advertisement or meeting to be held on or upon or in the same.

Provided that exemption under this item shall apply only to one board displayed by the owner or his agent.

26. It appears that Bye-law 1 is almost similar to Sub-section (1) of Section 204 of the Calcutta Municipal Corporation Act. Exemption as provided in Bye-law 7(e) is almost similar to the exemption of tax 011 advertisement provided in Clause (c) of Sub-section (2) of Section 204 of the Calcutta Municipal Corporation Act minus the proviso added to Bye-law 7(e). To be clear it must be placed on record that Bye-law 7(e) provides that advertisement which relates to the trade, profession or business carried on within the land or building upon or over which such advertisement is exhibited or put to any sale or letting of such land or building or any effects therein or any sale entertainment or made to be held on or upon or in the same is exempted. The proviso to said Bye-law provides that exemption under such item 7(e) shall apply to one board displayed by the owner or his agent. In the case covered by Clause (c) Sub-section (2) of Section 204 of the Calcutta Municipal

Corporation Act there is no such proviso limiting exemption to only one board displayed by the owner or his agent. In that case the respondents did not claim any exemption under Clause (e) of Bye-law 7 but the Apex Court observed that advertisement which has nexus with the trade, profession or business would qualify for exemption if relating to the hand activities. In view of the cardinal principle of interpretation of statute as laid down in the case reported in 2001 Volume 4 Supreme Court Cases at page 534 the words of a statute must be understood in this natural, ordinary or popular sense and construed according to their grammatical meaning, unless such constriction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prime facie be given their ordinary meaning. It is yet another rule that when the words of the statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning, irrespective of the consequences. In the case reported in [Commissioner of Income Tax, Patiala and Others Vs. Shahzada Nand and Sons and Others](#), Apex Court held that in Taxing Act one has to look merely that what is clearly said. There is no room for any intendment. There is no equity to be implied. One can only look fairly at the language used. In a case of reasonable doubt, the construction most beneficial to the subject is to be adopted. But even so, the fundamental rule of construction is same for all statutes whether fiscal or otherwise. The underlying principle is that the Court as to what is just or expedient must collect from the plain and unambiguous expression used therein rather than from any notions that may be entertained the meaning and intention of a statute. The expressed intention must guide the Court. Bearing the principles laid down by the Apex Court in the said decisions if we look at the provisions of Section 204 Calcutta Municipal Corporation Act including the exemption Clause (e) of Sub-section (2) of Section 204 of the said Act we shall see that the words mentioned in the said section including the Clause (e) are clear and unambiguous and the provision of Clause (e) of Sub-section (2) of Section 204 of the Act extends exemption of tax to advertisement when such advertisement has got nexus with the trade, profession or business carried on within the land or building upon or over which such advertisement is put. The said provision does not speak of any requirement of inserting the name of the trader or businessman. Even it does not speak of any requirement of mentioning the list of all the articles with which trade or business or profession is carried on in the place where advertisement is put up. The question whether the object of advertiser to advertise his commodity in the concerned business place is quite irrelevant if it is found that such advertisement has nexus with the trade or business carried on in the place or premises where such advertisement is put up. Even if, the advertisement relates to one of the items of trader or businessman still then such is exempted from tax under Clause (c) of Sub-section (2) of Section 204 of the Calcutta Municipal Corporation Act.

27. In my view learned Single Judge should not have dismissed the writ petition and should have allowed the writ petition.

Later:

28. Since we have expressed our respective views on the controversy and since we could not be ad idem, the matter be referred to the Hon"ble Chief Justice for referring the same to a third Judge for His decision.

29. Urgent xerox certified copy would be given to the parties, if applied for.