

(2002) 10 DEL CK 0115

Delhi High Court

Case No: CW No. 2579 of 2002

J.K. Industries Ltd.

APPELLANT

Vs

M.C.D. and Others

RESPONDENT

Date of Decision: Oct. 24, 2002

Acts Referred:

- Delhi Municipal Corporation Act, 1957 - Section 143, 143(2)

Citation: AIR 2003 Delhi 206 : (2003) 69 DRJ 32

Hon'ble Judges: Sanjay Kishan Kaul, J

Bench: Single Bench

Advocate: Anoop Bagai, for the Appellant; Anil Grover, for R-1 and Akshay Bipin, for R-2, for the Respondent

Judgement

Sanjay Kishan Kaul, J.
Rule.

2. Mr. Anil Grover, advocate, accepts notice of rule on behalf of respondent No. 1.

3. Mr. Akshay Bipin, advocate, accepts notice of rule on behalf of respondent No. 2.

4. The petitioner has filed the present writ petition seeking a "No Objection Certificate/Permission" from respondent No. 1 u/s 143 of the Delhi Municipal Act, 1957 (hereinafter referred to as the said act) in favor of the petitioner for displaying the company logo "JK TYRE DIAL-A-TYRE" on its vans/vehicles and for restraining respondent No. 2 from challenging the vans/vehicles of the petitioner for displaying the aforesaid logo.

5. It is stated in the petition that the petitioner company for the first time has introduced "The Tyre Delivery and Fitment Mobile Van Concept" promoted as DIAL-A-SERVICE, in terms whereof the petitioner delivers the tyres and related value added services at the doorstep of the customers while also educating them about the tyre care and there two such vans of the petitioner company presently assigned

for the said task. Each of the van is stated to be equipped with machines like Tyre Changer, Wheel Balancer, Wheel Aligner and Air Compressor.

6. The petitioner is aggrieved by the challans of respondent No. 2 stated to have been done on the ground of putting of the company logo "JK TYRE DIAL-A-SERVICE" on its vans is not permissible and in view thereof petitioner moved an application before the Commercial Officer, Advertising Department of respondent No. 1 corporation and requested for grant of No Objection Certificate for its vehicles to enable the petitioner company to continue its valued service. A reminder was sent on 1.3.2002 and even a formal application u/s 143 of the said Act was made. In the absence of any response the present writ petition has been filed.

7. In the counter affidavit filed by the MCD, it is stated that there is violation of the provisions of the said Act and the Delhi Municipal Corporation (Tax on Advertisements other than Advertisements published in Newspapers) Bye-laws, 1996 as also certain directions stated to have been issued by the Supreme Court. It is stated that in terms of Clause 9 of the bye-laws such advertisement is prohibited. The said bye-law is as under:

"9. No vehicle used for the purpose of advertisement shall display any advertisement in a manner, form or method different from that approved by the Commissioner."

8. It is further stated that the application of the petitioner was rejected vide letter dated 5.12.2001 since such advertisement is prohibited in terms of the interim orders in CW No. 2871/1993 on 16.2.1994.

9. The petitioner on the other hand has filed along with the rejoinder copies of various such vans which are doing delivery business including of Kinley Mineral Water, Coca Cola as also the advertisement displayed on the streets and on the DTC buses.

10. In order to appreciate the controversy in question it would be appropriate to refer to the provisions of Section 143 of the said Act which is as under:

"Prohibition of advertisements without written permission of the Commissioner: (1) No advertisement shall be erected, exhibited, fixed or retained upon or over any land, building, wall hoarding, frame, post of structure or upon or in any vehicle or shall be displayed in any manner whatsoever in any place within Delhi 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 the 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."

11. Learned counsel for the petitioner contends that in fact there is no advertisement as such taking place and it is only the vans which carry out the task of tyre delivery and replacement which display the same to notify to public about the van which deliver the said service. The purpose is only to enable the petitioner to continue with its valued service with the citizens of Delhi.

12. Learned counsel for respondent No. 1 fairly states that insofar as the MCD is concerned, once there is no advertisement being made, there is no question of license required for the said purpose since it is only a display of the name why the particular service being referred on the vehicle which delivers the said service. It is in these circumstances that the vans of the Kinley Mineral Water, Coca Cola etc. painted the name on the vehicles delivering the said product for which no licenses have been issued by the MCD.

13. I am of the considered view that since there is no question of advertisement, it is only the name of the service being provided which is displayed on such vans along with the name and company logo to identify the vehicle which is carrying on the important service so far as the vehicles are concerned who utilise the tyres of the petitioner, there will be no question of violation of any bye-laws or regulations for advertisement. In such circumstances, there will be no question of the grant of any license and thus respondent No. 2 cannot challan the said vehicles on the ground of display of the name of "JK TYRE DIAL-A-SERVICE" along with company logo on the vans.

14. A writ of prohibition is issued restraining respondent No. 2 from challenging these vans of the petitioner on this account.

15. Writ petition stands disposed of in the aforesaid terms leaving the parties to bear their own costs.