

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 19<sup>th</sup> February, 2015**

+ **W.P.(C) No.6711/2013, CM No.14566/2013 (for directions) & CM No.15413/2013 (u/O1 R-10 of the CPC).**

**ANIL BHATIA & ORS.**

**....Petitioners**

Through: Mr. Pranav Sachdeva, Ms. Shloka Rawat and Mr. Syed Musaib, Advs. for Mr. Prashant Bhushan, Adv.

Versus

**GOVT. OF NCT OF DELHI & ORS.**

**..... Respondents**

Through: Ms. Zubeda Begum, Standing Counsel for R-1.  
Mr. P.R. Chopra, Adv. for R-3/ECI.  
Mr. Anish Dayal, Adv. for Intervener in CM No.15413/2013.  
Inspr. Satyavir, P.S. Bindapur.

**CORAM:-**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**RAJIV SAHAI ENDLAW, J.**

1. The petitioners no.1 & 2 i.e. Anil Bhatia and Satyadev Solanki, being members / volunteers of petitioner no.3 Aam Aadmi Party, seek declaration that the Delhi Prevention of Defacement of Property Act, 2007 (hereinafter called Defacement Act) does not prohibit putting up of posters / banners, on one's own private property or house/building, or with the consent of the

owner of a private property or house/building. Alternatively, the petitioners impugn the said Act as being unconstitutional and violative of Article 19(1)(a) of the Constitution of India in so far as it prevents the individuals from making any alterations/modifications to their own privately owned property or prohibits them from putting up posters/banners on the same. The petition also seeks the consequential relief of restraining the respondents no. 1 to 3, being the Government of National Capital Territory of Delhi (GNCTD), Delhi Police and Election Commission of India from removing or pulling down posters/hoardings put up by individuals on their own private premises and properties or put up with the consent of the owner of the said private property.

2. Notice of the petition was issued. Counter affidavits have been filed by the GNCTD / Delhi Police and the Election Commission of India. The counsel for petitioner stated that no rejoinders are required to be filed thereto. An application for intervention has been filed by Col. Shivraj, Convenor of 'Poster Hatao Campaign' working to make citizens aware of the illegality of putting up commercial and political posters in unauthorized locations and to eventually make Delhi a cleaner and poster free city. We heard the counsels on 6<sup>th</sup> and 14<sup>th</sup> January, 2015 and reserved judgment.

3. The cause of action for the petition was the letter dated 17<sup>th</sup> October, 2013 of the Election Commission of India to the Chief Electoral Officer of NCT of Delhi in the context of the General Election to the Legislative Assembly of NCT of Delhi of the year 2013 *inter alia* clarifying that putting up banners/posters at homes of volunteers/supporters is prohibited under the Defacement Act. It is the contention of the petitioners that if such interpretation by the Election Commission, of Section 3 of the Defacement Act is correct then the same violates the right to freedom of expression in as much as placing posters and placards on one's own property is in exercise of such freedom of expression which is a Fundamental and Constitutional right and cannot be curtailed to the extent of prohibition, even by legislation. The petitioners plead that the petitioner no.3 being a new political party, without funding as available to the other older political parties, has to employ innovative and unique ways to propagate itself and its ideology to the masses and thus conceived voluntary display of its posters upon private properties i.e. houses of its supporters / volunteers; however the said posters put up by the petitioners no.1 & 2 on their houses were forcibly removed.

4. Before recording the other contentions urged, we may notice that prior to the Defacement Act which came into force on 1<sup>st</sup> March, 2009, the West

Bengal Prevention of Defacement of Property Act, 1976 had been extended to the Union Territory of Delhi on 28<sup>th</sup> September, 1983. The same described, i) defacement as including impairing or interfering with the appearance or beauty, damaging, distinguishing, disfiguring, spoiling or injuring in any other way whatsoever and, ii) property as including any building, hut, structure, wall, tree, fence, post, pole or any other erection, and provided for punishment with imprisonment for a maximum term extending to six months or with fine extending to one thousand rupees or with both for defacing any property in public view by writing or marking with ink, chalk, paint or any other material, except for the purpose of indicating the name and address of the owner or occupier of such property.

5. The definition of "defacement" and "property" in Section 2(a) and (c) respectively of the Defacement Act remains the same as in the earlier Act.

Sections 3, 6 & 7 of the Defacement Act now in force are as under:-

***“3. Penalty for defacement of property - (1) Whoever defaces any property in public view by writing or marking with ink, chalk, paint or any other material except for the purpose of indicating the name and address of the owner or occupier of such property, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both.***

*(2) When any offence is committed under sub-section (1) is for the benefit of some other person or a company or other body corporate or an association of persons (whether incorporated or not) then, such other person and every president, chairman, director, partner, manager, secretary, agent or any other officer or persons connected with the management thereof, as the case maybe, shall, unless he proves the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.*

*(3) The aforesaid penalties will be without prejudice to the provisions of Section 425 and Section 434 of the Indian Penal Code, 1860 (45 of 1860) and the provisions of relevant Municipal Acts.*

**6. Power of the Lieutenant Governor to erase writing, etc.** - *Without prejudice to the provisions of Section 3, it shall be competent for the Lieutenant Governor to take such steps as may be necessary for erasing any writing, freeing any defacement or removing any mark from any property.*

**7. Act to override other Laws** - *The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other laws for the time being in force:*

*Provided that the provisions of this Act shall not be applicable to advertisements displayed at duly authorised public spaces for advertising by appropriate authorities.”*

6. The petitioners further contend:-

- (i) that the Defacement Act cannot be applicable to one's own property as putting up a temporary poster on the walls of one's

own house/residence/property cannot be considered as defacement of the property in any way;

- (ii) that the Defacement Act is aimed at stopping individuals from defacement of others' properties;
- (iii) that the Defacement Act is applicable only to writings / markings on walls, whether it be in ink, chalk, print or any other material and not to posters and banners as is being interpreted by the respondents;
- (iv) that the members of political parties are allowed to carry posters and placards on their own person – they cannot be prohibited from similarly displaying the posters on the walls of their own private homes;
- (v) that the rule of construction of statutes is that where two interpretations are possible, one of which would preserve and save the constitutionality of the particular statutory provision and the other which would render it unconstitutional and void, the one which saves and preserves its constitutionality should be adopted and the other rejected and in this context reliance is

placed on *Union of India Vs. Tulsiram Patel* AIR 1985 SC 1416; and,

- (vi) that even as per the Clause 15.14 of the Model Code of Conduct for the Guidance of Political Parties and Candidates – 2009, putting up of such posters on one's own property is not prohibited.

7. The counsel for the petitioners during the hearing on 6<sup>th</sup> January, 2015 argued on the same lines and in addition referred to the judgement of the Supreme Court of Canada in *Ramsden Vs. Peterborough (City)* [1993] 2 SCR 1084 concerned with the constitutional validity of a Municipal By-Law prohibiting all postering on public property. The issue for consideration was whether the absolute ban on such postering infringed the guarantee of freedom of expression under the Canadian Charter of Rights and Freedoms, and if so whether such infringement was justified. It was held, (i) that postering conveys or attempts to convey a meaning, regardless of whether it constitutes advertising, political speech or art; (ii) no distinction can be made out between use of public space for leaflet distribution and use of public property for the display of posters; (iii) from absolute prohibition of postering on public property, though litter, aesthetic blight and associated

hazards are avoided but prevents the communication of political, cultural and artistic messages, and accordingly, the subject Municipal Bye-Law was held to be not justifiable.

8. We however on 6<sup>th</sup> January, 2015 drew the attention of the counsel for the petitioners to the ban in Delhi, under orders of the Supreme Court in W.P.(C) No.4677/1985 titled *M.C. Mehta Vs. Union of India*, on putting up of advertisements, and to the Outdoor Advertisement Policy finalized as per the directions of the Supreme Court and to the order dated 10<sup>th</sup> December, 1997 of the Supreme Court that the said Outdoor Advertisement Policy is required to be implemented, notwithstanding any other direction including stay orders / injunctions granted by any Authority, Court or Tribunal to the contrary and enquired as to how the political posters were any different from the advertisements and whether not the Rule as applicable to putting up of advertisements / hoardings on one's own property would equally apply to the putting up of political posters even if on one's own property.

9. The counsel for the GNCTD / Delhi Police also interjected to state that so was their plea in their counter affidavit.



10. A perusal of the said counter affidavit shows the GNCTD / Delhi Police to have opposed the petition, pleading:-

- (a) that the Defacement Act does not distinguish between public and private property; private property has not been exempted from application of the Defacement Act in any manner;
- (b) that from a reading of Section 3(1) of the Defacement Act it is clear that the same is applicable equally to the public and private property;
- (c) that the words “any property in public view” in Section 3 of the Defacement Act do not mean public property and relate to the visibility of the property and in fact broaden the scope of applicability of the Defacement Act;
- (d) that the only exception to the applicability of the Defacement Act is provided for in the proviso to Section 7 thereof;
- (e) that the right of the owner of the property to use and enjoy his own property and which includes power of management of property can be regulated by statutory provisions;

- (f) freedom of speech and expression is not absolute but subject to reasonable restrictions;
- (g) that no city or town can be allowed to become a jungle of posters / banners / hoardings / advertisements, without regard to any aesthetic sense or safety of the drivers of vehicles or of convenience of the pedestrians;
- (h) that the Defacement Act is in concurrence with and similar in objective to the Outdoor Advertisement Policy formulated pursuant to the orders dated 20<sup>th</sup> November, 1997 and 10<sup>th</sup> December, 1997 of the Supreme Court in *M.C. Mehta Vs. Union of India* (W.P.(C) No. 4677/1985) – the Supreme Court also did not make any distinction with respect to public and private premises;
- (i) that Clause 15.14 of the Model Code of Conduct supra is subject to the local laws permitting the same; the Defacement Act is such a local law;

- (j) that outer walls of every residence are covered by the words “any property in public view” and thus the Defacement Act is applicable thereto; and,
- (k) if every person is allowed to put up posters and banners on the outer / boundary walls of their residence, the resulting view would be nothing but an eyesore.

11. The Election Commission of India in its counter affidavit has generally opposed the petition.

12. The counsel for the petitioners on 6<sup>th</sup> January, 2015 took adjournment to consider all the aforesaid aspects.

13. On 14<sup>th</sup> January, 2015 the counsel for the petitioners argued:-

- A. that the judgment dated 20<sup>th</sup> November, 1997 of the Supreme Court in *M.C. Mehta Vs. Union of India* is with respect to advertisements / hoardings which are a hazard to the traffic and not with respect to posters on private houses abutting roads which are not main arteries of traffic in the city;
- B. that Article 19(2) of the Constitution of India permits law imposing reasonable restrictions on the right conferred by

Article 19(1)(a) of freedom of speech and expression, only "in the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence" and the Defacement Act is not a law falling in any of the said categories;

- C. that even the Outdoor Advertisement Policy supra does not place a total prohibition on advertising and only regulates the same; however the Defacement Act contains an absolute prohibition and is thus violative of Article 19(1)(a);
- D. that there is a difference between an advertisement and a political poster; and,
- E. that it will be ridiculous to hold that just like for putting up an advertisement on one's own property one is required to obtain the permission of the Municipality and to pay charges / taxes therefor, one is required to similarly approach the Municipality for putting up of a political posters which is but a facet of the occupant's freedom of expression.

14. Per contra, the counsel for the GNCTD / Delhi Police relied on:-

I. *Novva Ads Vs. Secretary, Department of Municipal Administration and Water Supply* (2008) 8 SCC 42 which was concerned with the challenge to the provisions 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, also on the ground of the same being violative of Article 19(1)(a) as well as Article 14 because private hoardings had been treated equally with public hoardings thereby treating unequals as equals; it was the contention of the challengers that the said law / rules resulted in restriction on use of private land and that display of information on hoardings, whether it was commercial, political or social, was permitted under Article 19(1)(a) and no restriction could be placed on the right to disseminate information on the purported ground of preventing obstruction or hazard to movement of traffic and the said law was not covered by Article 19(2) as public order was not affected;

The Supreme Court held:

- (i) that though very narrow and stringent limits had been set to permissible legislative abridgment of the right to free speech and expression but the impugned provisions were not restrictive but regulatory – there was no ban on advertisement / hoardings but obstructive and destructive ones were to be prohibited;
- (ii) 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 and the State can impose such limitations on the user of public places as may be necessary to protect the public generally;
- (iii) as regards the hoardings erected on private places, such hoardings are required to be licensed and regulated as they generally abut on and are visible on public roads and public places;
- (iv) hoardings erected on a private buildings, may obstruct public roads; 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;

- (v) the fact that the hoarding is on a private building or land does not take away any regulatory measures relating to hoardings;
- (vi) it is therefore not correct to say that hoardings on private places do not require to be regulated by licensing provisions.

II. ***P.A. Jacob Vs. The Superintendent of Police, Kottayam*** AIR 1993

Kerala 1 holding that right to speech implies the right to silence; it implies freedom not to listen and not to be forced to listen; free speech is not to be treated as a promise to everyone with opinions and beliefs to gather at any place and at any time and express their views in any manner and that the said right is subordinate to peace and order and that forcing someone to hear what he does not wish to will be an invasion of his right to be let alone.

III. ***In Re: Noise Pollution – Implementation of the Laws for Restricting***

***Use of Loudspeaker and High Volume Producing Sound Systems***

AIR 2005 SC 3136 approving the judgment aforesaid of the High Court of Kerala and holding that freedom of speech and expression are not absolute – nobody can claim fundamental right to create noise by amplifying the sound of speech with the help of loudspeakers;

while one has a right to speech, others have a right to listen or decline to listen.

IV. *Harry J. Lehman Vs. City of Shaker Heights* 41 L Ed 2d 770 where the US Supreme Court held that the Ohio city's Advertising Policy not permitting political advertising on transit vehicles did not violate the right of free speech and the city reasonably limited access to the advertising space.

15. The counsel for the petitioners rejoined contending that Section 3 of the Defacement Act contained an absolute prohibition and is thus bad. An application for intervention has been filed by Col. (Retd.) Shivraj as Convenor of 'Poster Hatao Campaign'.

16. We enquired from the counsel for GNCTD / Delhi Police whether she was willing to concede that the Outdoor Advertisement Policy was applicable to such political posters / advertisements.

17. She however stated that she will have to seek instructions.

18. Though we were inclined to adjourn the matter for the said purpose but the counsel for the petitioners contended that even if Delhi Government so conceded, the challenge by the petitioners was on the premise that no



such restriction can be imposed qua private personal properties and thus we should pronounce judgment. It was further stated that there was an element of urgency since elections to the Legislative Assembly of Delhi had again been scheduled on 7<sup>th</sup> February, 2015. Accordingly we concluded hearing.

19. The challenge by the petitioner to the Defacement Act, on the ground of the same being violative of Article 19(1)(a) and the Defacement Act being not a law within the meaning of Article 19(2) and on the ground of no such restriction as imposed thereby being permissible on private properties, in our view, is no longer *res integra* and is squarely covered by the judgments relied upon by the Counsel for the GNCTD / Delhi Police of the Supreme Court in *Novva Ads* and in *In Re: Noise Pollution* case. It has clearly been held that advertisements / hoardings erected on private properties also are required to be licensed and regulated as they generally about on and are visible on public roads and public places and that hoardings erected on a private building may obstruct public roads, 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 and it is therefore not correct to say that hoardings on private properties are not required to be regulated by

licensing provisions and there has to be a regulatory measure. In the light of the said judgments, the judgment of the Supreme Court of Canada relied upon by the counsel for the petitioners is of no avail.

20. We had during the hearing enquired from the counsel as to what is the difference between an advertisement hoarding/poster and a political hoarding/poster. In fact the Supreme Court in *Novva Ads* has dealt with both, whether it is commercial, political or social. Rather it appears that the hazard and other consequences of a political hoarding/poster may be far more than that of commercial hoarding/poster.

21. It is not as if the houses in a city like Delhi are isolated. They are generally abutting other houses, wall to wall. Though what a person may do within the four walls of his house may not concern others but the same cannot be said qua what a person does in the areas/portions of his house falling in the direct line of vision of others/neighbours. The argument of the petitioners that one has absolute freedom to do anything on one's own property is clearly fallacious. If that were to be allowed, there would be no need for town planning and all towns/cities would become slums, having haphazard growth, with each constructing on his property in the manner he may like. It is for this reason only that the municipal laws of all States/cities

provide for the layout plans of each colony to be sanctioned by the appropriate/municipal authorities and while sanctioning which various parameters including of aesthetics are taken into consideration. It is thus not as if a person is entitled to, within the boundaries of his land, construct in any manner in which he may desire. The right of owners to use their things as they see fit entails an obligation not to exercise that right in a manner that prevents neighbours from enjoying their own property. Because we live in society, each person must suffer the unavoidable annoyances resulting from this situation, but the sum of those annoyances must not be greater than is necessary to reconcile conflicting rights. Hence, the need for regulation. Proliferation of an unlimited number of posters in private, residential, commercial and industrial areas of the city would create ugliness, visual blight and clutter, tarnish the residential and commercial architecture, impair property values and impinge upon the privacy and special ambience of the community.

22. We are also of the opinion that no parallel can be drawn by the petitioners with the freedom of speech. Unlike oral speech, signs/hoardings /posters take up space, obstruct view, distract motorists, displace alternative uses for land, are a source of litter and all of which legitimately call for

regulation. It is also not as if there are no frontiers to freedom of speech. Free speech also, *inter alia* does not sanction intrusion into rights of others.

23. In the context of putting up of posters / billboards / hoardings if left unregulated, becoming an eyesore and a public nuisance, no distinction can be made between a public and a private property as the effect is the same. In fact, the Supreme Court in *N.K. Bajpai Vs. Union of India* (2012) 4 SCC 653 has held that imposition of restrictions is a concept inbuilt into the enjoyment of Fundamental Rights, as no right can exist without a corresponding reasonable restriction placed on it. It was also held that with the development of law, Courts are expected to consider, in contradistinction to private and public interest, the institutional interest and expectations of the public at large from an institution and that balancing tests have to be applied by Courts in the process of interpretation or examining of the constitutional validity of a provision.

24. We also do not find any merit in the contention that the Defacement Act is not a law in the interest of any of the subjects mentioned in Article 19(2). Article 19(2) takes within its ambit laws made in the interest of public order, decency or morality. Living in the houses situated in close proximity to other houses in the city, none can claim that others are not affected by

what he does in his own house. If the impact of an act done within one's own house falls on or is felt by others, the right of the others also comes into play. When the Supreme Court has held that one cannot use loudspeakers within one's own house and the noise wherefrom can be heard by others outside the house, certainly by the same logic one cannot be said to have an absolute right to put up posters on the exterior of one's own house which would be visible to others. Just like unauthorized/illegal construction within one's own property gives a cause of action to the neighbour/s to have the same demolished, similarly putting up of political poster on one's own house illegally and without taking the permissions under the Municipal Laws and which is visible to the others would give a cause of action to others to have the said illegality removed. The provisions of the Municipal Law discussed hereinbelow enable municipalities to whom the municipal governance has been entrusted and which governance includes taking measures to promote public safety, health, convenience and general welfare to take action for removal of such illegal advertisements.

25. The Supreme Court has from time to time been expanding the definition of the right to life assured in Article 21 of the Constitution of India and has in *State of M.P. Vs. Kedia Leather & Liquor Ltd.* (2003) 7

SCC 389 held that environmental, ecological, air and water pollution amount to violation of right to life assured by Article 21. Hygienic environment has been held to be an integral facet of healthy life. It was held that right to live with human dignity becomes illusory in the absence of humane and healthy environment. In *Chameli Singh Vs. State of U.P.* (1996) 2 SCC 549, it was held that in any organized society, right to live as a human being is not ensured by meeting only the animal needs of man but is secured only when he is assured of all facilities to develop himself, including a decent environment/surroundings. In our view, a right to live in humane and healthy environment is also violated by illegalities committed by others even if on their own property but impacting others.

26. The Division Bench of the High Court of Bombay, in *Sunil Pandharinath Jadhav Vs. State of Maharashtra* MANU/MH/0537/2010, dealing with the Bombay Provincial Municipal Corporation Act, 1949 and the Maharashtra Prevention of Defacement of Property Act, 1995, held that display of any poster / banner / hoarding which does not cohere with the surrounding is bound to have bearing on the appearance or beauty, in that case, of a public place, is an eyesore to the viewers, thereby causing public nuisance (reference was made to Section 268 of Indian Penal Code, 1860)

and violates Fundamental Right under Article 21 by robbing them of clean and beautiful environment and surroundings free from any defacement. Directions were accordingly issued for removal of all illegal posters / banners / hoardings / boards. We may notice that under the municipal laws of Delhi also, as discussed herein below, unauthorized putting up of posters etc. is a public nuisance.

27. We may notice that the Supreme Court of United States in *City of Ladue Et Al. Vs. Gilleo* MANU/USSC/0022/1994 held a similar Ordinance as the law under challenge before us to be violative of their First Amendment right of free speech. However, as reiterated by our Supreme Court in *Ramlila Maidan Incident Vs. Home Secretary, Union of India* (2012) 5 SCC 1, in contradistinction to the approach of the United States Supreme Court, under our Constitution the right of freedom of speech in Article 19(1)(a) is not free from any restrictions and is not absolute in terms and application. It was held that the expression “in the interest of” in Article 19(2) gives a wide amplitude to the permissible law which can be enacted to impose reasonable restrictions on the rights granted under Article 19(1)(a). It was held that “public order” is different from ‘law and order’; an issue affecting community or public at large was held to be relatable to public

order. It was yet further held that while some may be exercising their Fundamental Right under Article 19(1)(a), others may be entitled to protection of social safety in terms of Article 21 and the State may be called upon to maintain public order in discharge of its duties under the constitutional mandate and the requirements of Directive Principles. Thus, the requirement of taking police permission for holding dharnas/processions was held to be not unreasonable.

28. We are of the opinion that once unregulated putting up of posters / banners / hoardings even if on one's own property, is a public nuisance, a law regulating the same would be a law 'in the interest of' public order within the meaning of Article 19(2). Just like requirement of taking permission for dharnas/rallies/processions has been held to be not unreasonable, similarly the requirement of taking permission for putting up posters / banners / hoardings even on one's own property but visible to others and affecting the view of and becoming an eyesore for others, cannot be said to be unreasonable.

29. We cannot also be unmindful of the realities of today's life in the city as Delhi, where residents are on short fuse and altercations on issues, earlier treated as trivial, like parking, traffic accidents, often turn fatal. The



possibility of unregulated political posters becoming a similar cause, cannot be ruled out. The Supreme Court, as far back as in *Ramji Lal Modi Vs. The State of U.P.* AIR 1957 SC 620 held that if certain activity has a tendency to cause public disorder, a law penalizing such activity cannot but be held to be a law imposing reasonable restriction “in the interest of public order”. Not only so, the expression “decency” in Article 19(2) has in *Dr. Ramesh Yeshwant Prabhoo Vs. Prabhakar Kashinath Kunte* (1996) 1 SCC 130 been held to indicate that the action must be in conformity with current standards of behaviour and propriety. If the act of putting up posters, on own property but in view of others, is a public nuisance, it will be an indecent act. Thus, the subject law can be classified also under the said head of Article 19(2).

30. There can be no manner of doubt that putting up of such political posters on one’s own property, for selling to neighbours / passersby one’s own political party / ideology, does indeed make the façade of a building an eyesore. Plastering of façade walls even if of private properties and at the behest of the owners with posters is indeed an ugly sight and infringes the right to life of others who expect to see clean façade walls of private properties abutting the public streets. Today, the view from doors / windows

of most houses is of the outer walls of other houses. If such walls were to be permitted to be plastered with posters, a man, even if he desires, will not be able to even in his own house shut himself up with his own ideas.

31. We are of the opinion that the social and public interest in regulating putting up of posters / banners / boards, even if on one's own property but visible to others and thus in maintaining public order is greater than the right of candidates contesting elections and their supporters to canvass and propagate their views and we find the restrictions placed by the impugned law to be "in the interest of" public order and decency and to be reasonable.

32. Since the petitioners, in the relief para of the petition have referred to making of alterations/modifications to the façade of private properties, we may refer to Sections 305 to 307 of the Delhi Municipal Corporation Act, 1957 (MCD Act) ( as also to Sections 209 to 211 of the New Delhi Municipal Council Act, 1994 (NDMC Act)) which empower the Municipality to define a line on one or both sides of any public street in accordance with the Bye-Laws made in this behalf and to redefine the same at any time and to also provide for the necessary setback for the buildings in accordance with the regular line of the street. Section 319 (Section 223 of the NDMC Act) prohibits opening of doors, windows etc. on the street

without obtaining prior permission of the Commissioner, MCD and the criteria for grant of which permission is that the same should not obstruct the safe and convenient passage of the public along such street. Similarly, under the Delhi Building Bye Laws, at the time of obtaining sanction for construction, detailed drawings including of elevation and façade of the proposed building have to be submitted. It is thus not as if there are no restrictions on making alterations/modifications to the façade / elevation of a building, whether it be a private or a public one. The same are governed by the Building Bye-laws/regulations.

33. Mention may also be made of Section 113 of the MCD Act (Section 60 of NDMC Act) which empowers the MCD to levy *inter alia* a tax on advertisements other than advertisement published in the newspaper and to Section 142 which provides that every person who erects exhibits, fixes or retains upon or over any land, building, wall, hoarding, 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 the public street or public place, shall pay a tax calculated at such rates as the MCD may determine. However an exemption is carved out on any advertisement which relates to a public meeting or to an election to

Parliament or the Corporation or to candidature in respect of such election. Explanation 2 thereto provides that the word "advertisement" in relation to a tax on advertisement under the MCD 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. Section 143 prohibits any advertisement to be erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or to be displayed in any manner whatsoever in any place without the written permission of the Commissioner granted in accordance with Bye-Laws made under this Act. Section 146 empowers MCD to take down or remove advertisements erected, exhibited or fixed without obtaining the requisite permission. Similar provisions are to be also found in the New Delhi Municipal Council Act, 1994 (See Sections 88, 89 & 92).

34. 'Advertising' is defined in Black's Law Dictionary 8<sup>th</sup> Edition as the act of drawing public attention to something to promote its sale and informative advertising is defined as advertising that gives information about the suitability and quality of a product. The Shorter Oxford English Dictionary 6<sup>th</sup> Edition defines the word 'advertisement' as having its origin

in French and as meaning information/notification, a written statement calling attention to something, a public announcement in newspapers, on posters on television etc. We are thus of the opinion that the political posters which the petitioners have affixed/want to affix on their buildings/houses would fall within the meaning of advertisement and would also be governed by the Municipal Laws. The same prohibit putting up of posters/hoardings/billboards, as the petitioners want to put up, without obtaining permission of the Municipality and entitle the Municipality to collect tax thereon though there is an exemption from paying tax with respect to election to Parliament or Municipality. However permission would still be required. Section 397 of the MCD Act titled “Prohibition of Nuisances” under the Chapter “Public Safety and Suppression of Nuisances” prohibits affixing upon any building, wall etc., any bill, notice or other document without proper authority and defacement or writing on or marking any building, wall etc. and constitutes the same a public nuisance.

35. Putting up of posters / banners, as the petitioners desire to put, is thus subject matter, besides of the Defacement Act, also of the Municipal Laws. The petition has been filed without regard to the Municipal Laws and no challenge also to the municipal laws imposing similar restriction as

Defacement Act is made. The petition is liable to be dismissed on this ground alone. We may however record that the challenge to the said Municipal Laws contained in the Punjab Municipal Act, 1911 as earlier applicable to the NDMC area was negated by the Division Bench of this Court in *Lahori Mal Vs. NDMC* 52 (1993) DLT 395. To the same effect is the judgment of the Division Bench of Punjab & Haryana High Court in *Aradhana Drinks & Beverages Pvt. Ltd. Vs. State of Punjab* AIR 2012 Punjab & Haryana 20.

36. Thus, the contentions on which the petitioners have challenged the Defacement Act and claimed the consequential reliefs have no merit and the petition is liable to be dismissed. The counsel for the petitioners having expressly stated that even if the GNCTD were to concede that the Outdoor Advertisement Policy applies to the political advertisements and that political advertisements can indeed be put after obtaining permission and making payment if any therefor, the petitioners would not be satisfied, we are not required to return any finding on that aspect but having dealt with the subject feel it our duty to also deal with the said aspect.

37. We are also unable to agree with the petitioners' contention that the prohibition in the Defacement Act is absolute. The petitioners ignore the

proviso to Section 7 making the provisions of the Defacement Act not applicable to the advertisements displayed at duly authorized public spaces for advertising by appropriate authorities. Though by virtue of Section 7 the Defacement Act overrides the Municipal Laws and on first reading the proviso thereto appears to be carving out exception only in favour of public spaces vis-à-vis private places but the expression “public space” therein has to be read as a space open to public view. The proviso has to be read as permitting putting up of posters / banners whether commercial or political at spaces open to public view and for which authorization has been given by the local authority. Unless the proviso to Section 7 is so read, the Defacement Act would run the risk of being declared unconstitutional for discriminating between commercial and political advertisements without there being any reasonable basis therefor. If commercial advertisements are permitted on private buildings with the permission of the appropriate authorities we fail to see any reason as to why political advertisements should not be. No reason for absolutely prohibiting/banning political advertisements/banners/posters has been disclosed. As long as the law regulating putting up of posters/hoardings/boards is content neutral, the same will not run the risk of being branded as arbitrary or discriminatory.

We have already hereinabove held that there is no difference between the two. Even if as of today there is no policy for such political advertisements, such a policy will have to be devised. The petitioners in that respect are right to the extent that there can be no absolute ban on political advertisements, especially when there is no such ban on commercial advertisements. We find the Outdoor Advertisement Policy supra also to be permitting advertisements in residential, institutional and mixed land use areas with the approval of the MCD. The Defacement Act has but to be read harmoniously with the MCD Act and the Outdoor Advertisement Policy finalized as per the directions of the Supreme Court. We accordingly hold that the Defacement Act does not absolutely prohibit putting up of political posters/banners on private properties and that for putting up of political posters/banners, requisite permission under the municipal and other applicable laws has to be obtained. However without such permission, such posters cannot be put up on one's own private property also.

38. Since the petitioners are asserting a right to, through the medium of posters, express/propagate their political ideology during the time of elections, the thought of, there being no common law or Fundamental or general right to contest an election and the same being a statutory right only,



(as held in *N.P. Ponnuswami Vs. Returning Officer* AIR 1952 SC 64, *Jagan Nath Vs. Jaswant Singh* AIR 1954 SC 210, *Jyoti Basu Vs. Debi Ghosal* (1982) 1 SCC 691, *Javed Vs. State of Haryana* (2003) 8 SCC 369 and *Supreme Court Bar Association Vs. B.D. Kaushik* (2011) 13 SCC 774 and reiterated by the Apex Court recently in Civil Appeal No. 1478 of 2015 titled *Krishnamoorthy Vs. Sivakumar* decided on 5<sup>th</sup> February, 2015) has crossed our mind and we have wondered, whether there can be an absolute right to, through the medium of posters, ask for votes in an election. However, since the issue was not raised during the hearing, we do not deem it appropriate to render finding thereon. Mention may however be made of *Jumuna Prasad Mukhariya Vs. Lachhi Rani* AIR 1954 SC 686 where Section 123(5) and Section 124(5) of the Representation of People Act, 1951, constituting asking for votes on the basis of caste, a corrupt practice, were challenged as *ultra vires* Article 19(1)(a). It was held that the same merely prescribed conditions which must be observed if a candidate wants to enter Parliament. It was reiterated that the right to contest an election being not a common law right but a special right created by statute, to be exercised on conditions laid down by the statute, the Fundamental Rights Chapter has no bearing thereto. It was further held that since there is no Fundamental

Right to be elected, if one wants to be elected, he must observe the rules and that if he wants to exercise his right of free speech outside the Rules, he cannot insist on contesting. Following the said judgment, a Division Bench of the High Court of Karnataka in *H.A.K. Rao Vs. Council of the Institute of Chartered Accountants of India* AIR 1965 Kant 112 held that any right to canvass for votes in connection with election is incidental to the statutory right to contest the election and being an incidental right, can also be regulated. It thus appears doubtful that asking for votes and/or propagating political ideology during the time of elections would qualify as a Fundamental Right under Article 19(1)(a) of the Constitution. However, in *Desiya Murpokku Dravida Kazhagam Vs. Election Commission of India* (2012) 7 SCC 340, without noticing the earlier judgment, right to propagate political ideas was held to be within the ambit of Article 19(1)(a). We may also record that in *Hamdard Dawakhana Vs. Union of India* AIR 1960 SC 554 it was held that though advertisement is a form of speech but when it takes the form of commercial advertisement with an element of trade or commerce, it no longer falls within the concept of freedom of speech for the object is not propagation of ideas - social, political or economic or furtherance of literature or human thought. Though subsequently in *Tata*

*Press Ltd. Vs. MTNL* (1995) 5 SCC 139 it was held that commercial advertisements cannot be denied the protection of Article 19(1)(a) merely because the same are issued by businessmen but a Full Bench (on reference to 3<sup>rd</sup> Judge on some other aspect) of this Court in *Mahesh Bhatt Vs. Union of India* 147 (2008) DLT 561 (SLP No.8429-8431/2009 whereagainst has been granted and is pending) held that *Hamdard Dawakhana* supra has not been obliterated in *Tata Press Ltd.* supra.

39. Resultantly, the petition has to be dismissed. However, in accordance with our findings hereinabove, we direct the Municipal Corporations functioning under the MCD Act and the NDMC to, if do not already have a policy for granting permission for political advertisements, frame such policy within three months herefrom. A copy of this judgment be forwarded to the Commissioner of each of the Municipal Corporations functioning under the MCD Act as well as to the Chairperson, NDMC.

No costs.

**RAJIV SAHAI ENDLAW, J.**

**CHIEF JUSTICE**

**FEBRUARY 19, 2015/‘pp’**