

**IN THE HIGH COURT OF DELHI AT NEW DELHI
ORDINARY CIVIL ORIGINAL JURISDICTION**

C.M NO 13934 OF 2014
IN
CWP NO 3990 OF 2013

IN THE MATTER OF:-

Satish Saluja & Ors.	...PETITIONER
Versus	
Government of NCT of Delhi	...RESPONDENT

IN THE MATTER OF:-

iJustice – an initiative of Centre for Civil Society, through its President – Parth J Shah A-69, Hauz Khas New Delhi-110016	...APPLICANT
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**APPLICATION FOR IMPLEADMENT ALONG WITH AFFIDAVIT
ON BEHALF OF APPLICANT IJUSTICE UNDER ORDER 1 RULE
10 OF CIVIL PROCEDURE CODE (CPC) R/W S.151 OF CPC**

TO
THE HON'BLE CHIEF JUSTICE AND HIS COMPANION JUDGES
OF THE HIGH COURT OF DELHI AT NEW DELHI.

The humble application of the above named applicant.

MOST RESPECTFULLY SHOWETH:-

1. That the present Civil Writ Petition has been filed by the Petitioner against the Respondents under Article 226 of the Constitution of India being aggrieved by illegal and arbitrary *Guidelines on Display of Advertisement on Public Service Vehicle* issued by the Transport Department, Government of NCT of Delhi, under Rule 71 (2) of the Delhi Motor Vehicle Rules, 1993, whereby all public service vehicle owners are mandated to obtain approval from the Respondents for publishing of advertisements on their

respective vehicles, and conditions are prescribed under which such approval shall be granted.

2. That on 06.06.2013, the Delhi Government issued an order banning display of advertisements on public service vehicles, such as, auto rikshaws, taxis, buses, etc., without permission from the Respondent No. 1. The order stated that the Government will initiate a special drive from 15.06.2013, to prosecute those vehicles who display advertisements.

3. The aforesaid order was challenged before this Hon'ble Court, in *Satish Saluja vs Government of NCT of Delhi, W.P. (C) No. 3990 of 2013*. On 19.06.2013, this Hon'ble Court was pleased to stay the operation of the aforesaid order, dated 06.06.2013. A copy of the order, dated 19.06.2013, issued by this Hon'ble Court, in *Satish Saluja vs Government of NCT of Delhi, W.P. (C) No. 3990 of 2013*, is herewith annexed and marked as **Annexure P-1. Pg to** .

4. On 12.09.2013, this Hon'ble Court was pleased to reserve its judgment in the aforesaid matter. A copy of the order, dated 12.09.2013, issued by this Hon'ble Court, in *Satish Saluja vs Government of NCT of Delhi, W.P. (C) No. 3990 of 2013*, is herewith annexed and marked as **Annexure P-2. Pg to** .

5. On 16.05.2014, the Government of NCT of Delhi informed this Hon'ble Court that it was in the process of finalizing general guidelines for allowing advertisements on public service vehicles. A copy of the order, dated 16.05.2014, in *Satish Saluja vs Government*

of *NCT of Delhi, W.P. (C) No. 3990 of 2013*, is herewith annexed and marked as **Annexure P-3. Pg to** .

6. Soon thereafter, the Respondent issued fresh guidelines mandating all public service vehicle owners to seek approval from Respondent Nos. 2-5, for displaying advertisements on their vehicles. A copy of guidelines, dated nil, issued by the Respondent, is herewith annexed and marked as **Annexure P-4. Pg to** .

7. On 01.08.2014, the Government of NCT of Delhi, in the aforesaid matter, informed this Hon'ble Court regarding issue of the fresh guidelines. A copy of the order, dated 01.08.2014, issued by this Hon'ble Court, in *Satish Saluja vs Government of NCT of Delhi, W.P. (C) No. 3990 of 2013*, is herewith annexed and marked as **Annexure P-5. Pg to** .

8. That *iJustice* the Applicant is a public interest legal advocacy initiative incubated and supported by the Centre for Civil Society. It represents and assists individuals and groups across India to challenge violations of fundamental rights and the rule of law.

9. That Centre for Civil Society (hereinafter referred to as 'CCS') is an independent public policy think tank, registered as a Trust, advancing personal, social, economic and political freedoms. It aims to usher in an intellectual revolution that encourages people to look beyond the obvious, think beyond good intentions and act beyond activism.

10. That some of the prominent members of CCS are: Shri Ashish Dhawan (Founder and CEO of Central Square Foundation),

Shri Amit Kaushik (Former Director of Ministry of Human Resource Development), Shri Gurcharan Das (Former CEO of Procter and Gamble India), Dr. Parth J. Shah (President and Founding Trustee of Petitioner organization) and Ms. Premila Nazareth (Independent Consultant on Governance and Research).

11. That the Board of Advisor of CCS includes Luis Miranda (former Chairman, IDFC Private Equity), Ankur Shah (Interim India Director, Acumen Fund), Iris Madeira (COO, Madhav Desai Consulting), John Blundell (Ralph Harris Fellow, Institute of Economic Affairs), Leland Yeager (Professor Emeritus, Auburn University and the University of Virginia), Nitai Mehta (Founder and Managing Trustee, Praja Foundation), Praveen Chakravarty (Eisenhower Fellow and CEO, Anand Rathi Financial Services), Rakesh Wadhwa (author and entrepreneur), Reuben Abraham (Assistant Professor, Indian School of Business).

12. That the Board of Scholars of CCS includes Ajay Shah (Professor, National Institute for Public Finance and Policy), Deepak Lal (Professor, IDC, California), Isher J Ahluwalia (Chairperson, Board of Governors, ICRIER in New Delhi), Jagdish Bhagwati (professor/ Senior Fellow, Columbia University/ International Economics at CFR), Kirit Parikh (Emeritus Professor and Founder Director, IGIDR, Mumbai), Lord Meghnad Desai (Professor, London School of Economics), Nirvikar Singh (Co-director, SC Institute of IE), Shreekant Gupta (Professor, Delhi School of Economics), Surjit Bhalla (Managing Director, Oxus Research and Investments), Swaminathan Aiyer (Consulting Editor/ Research Scholar, Economic

times/ Cato institute), Urjit Patel (Expert, Economics and Public Finance in India).

13. That CCS was ranked 50th in the 2013 worldwide 'Go to Think Tanks' study, conducted by the Think Tanks and Civil Societies Programs at the University of Pennsylvania. The study analysed 6,826 think tanks from across the globe and came out with a comprehensive ranking. The Petitioner is the only Indian organization to feature in the top 100 think tanks worldwide for the fifth consecutive year. Additionally, the Petitioner ranked 15 amongst all think tanks in India, China, Japan and Korea.

14. That CCS started the Applicant initiative in 2013, with the aim of advancing laws promoting personal, social and economic liberties, and at the same time imposing limits on the powers exercised by the State, through strategic litigation and advocacy. Since its inception, the applicant has been working in the field of livelihood freedom, right to education, freedom of speech and governance related issues.

15. That CCS, through the Applicant, has been actively advocating for advancing the fundamental right to freedom of speech and expression in India. In pursuance of this, the applicant has brought out a publication, *Legal Guide to Freedom of Speech and Expression*, simplifying the legal framework around freedom of speech, particularly freedom of artistic expression, for the common man. The document is in the form of Frequently Asked Questions (FAQs) on the fundamental right to freedom of speech and related

laws. The Applicant, in association with Teamworks Arts, has conducted Free Speech Campaigns, at the Jaipur Literature Festival 2014 held at Diggy Palace in Jaipur, and the Sounds of Freedom Concert 2014 held at NSICS Grounds in New Delhi. The Applicant also ran an online campaign on www.change.org against censorship on the internet demanding amendments in Section 66A of the Information Technology Act 2000 and the Information Technology (Intermediary Guidelines) Rules 2011.

16. That the Applicant is acting in a bona fide manner, and does not have any direct or indirect interest in the present Litigation, and acting entirely in public interest, specifically for advertisers and consumers at large. The Applicant organization is committed to ensure the fundamental right to freedom of speech and expression to citizens at large. The Applicant has taken up this cause on behalf of the citizens in defence of their rights as a Public Spirited Organization. Therefore, the Applicant has *locus standi* to file the present application for impleadment in Public Interest. Therefore, it is just proper and necessary that the Applicant organization be allowed and/or permitted to be impleaded as a party petitioner to the present petition.

17. That the brief facts as mentioned in the main petition are reiterated here without repetition for the sake of brevity.

18. The present Application is filed challenging the Guidelines on Display of Advertisement on Public Service Vehicles issued by the Transport Department, Government of NCT of Delhi. The impugned guidelines mandate all public service vehicle owners to obtain

approval from the Respondents for publishing of advertisements on their respective vehicles, and prescribe conditions under which such approval shall be granted. This is challenged on the ground that firstly, the impugned guidelines are not in accord with the parent statute and hence are *ultra vires*; secondly, the impugned guidelines violate the right to freedom of speech recognized under Article 19(1)(a) and is not saved by Article 19(2); and thirdly, the impugned guidelines not only give arbitrary power to the Respondents, but also infringe upon the doctrine of reasonable classification, and hence violate Article 14 of the Constitution.

The said grounds are elaborated in detail below:

a. The Respondent No.1 has enacted the impugned guidelines in excess of the power granted under the parent Act, i.e., the Motor Vehicles Act 1988.

3.1 It is settled law that the power to make subordinate legislation is derived from the enabling Act and the delegate to whom such a power is conferred has to act within the limits of the authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. If a rule goes beyond the rule-making power conferred by the Statute, the same has to be declared *ultra vires*. If a rule supplants any provisions for which power has not been conferred, it becomes *ultra vires*. The basic test is to determine and consider the source of power which is relatable to the rule. Similarly, a rule must be in accord with the parent statute as it cannot travel beyond it. (*Union of India vs S. Srinivasan*, (2012) 7 SCC 683)

3.2 The impugned guidelines have been enacted under the Motor Vehicles Act 1988 and Delhi Motor Vehicles Rules 1993.

3.3 The Motor Vehicles Act 1988 was enacted to consolidate and amend the law related to motor vehicles. The main objective of the Act was to take care of the fast increase in commercial and private vehicles in the country, the need to encourage the adoption of high technology in the automotive sector, the greater flow of passenger and freight, the concern of road safety standards, pollution control measures, standards of transportation of hazardous and explosive materials, the parameters where the private and public sector can coexist and develop and for effective ways of tracking down traffic offenders. (*Ashwani Kumar vs Regional Transport Authority, (1999) 8 SCC 364*)

3.4 The aforesaid object of the Motor Vehicles Act is also evident from the various provisions of the Act, which provides for grant and regulation of driver's license and conductor's license, registration of vehicles, permits for stage carriage, contract carriage, goods carriage and private service vehicles, driving regulations, compensation in case of accidents, insurance against third party liability, etc.

3.5 The power of the State Government to make rules to regulate advertisements has been provided under Section 96(2)(xviii) of the Motor Vehicles Act, 1988. Section 96(2)(xviii) provides for "*regulating the painting or marking of transport vehicles and the display of advertising matter thereon, and in particular prohibiting*

the painting or marking of transport vehicles in such colour or manner as to induce any person to believe that the vehicle is used for the transport of mails.”

3.6 Rule 71(2) of the Delhi Motor Vehicle Rules, 1993, under which the impugned guidelines have been issued, provides for regulation of display of advertising material. Rule 71(2) reads as under:

“71. Painting/marketing and display of advertising material on Transport Vehicle.-

(1)...

(2) No advertising device, figure or writing shall be exhibited on public service vehicle, save as maybe permitted by the State Transport Authority by general or specific order.”

3.7 In keeping with the above and a plain reading of Section 96(2)(xviii), it is evident that the State Government is empowered to regulate the display of advertisement on transport vehicles, with a view to ensure road safety standards. Neither does the object of the Motor Vehicles Act 1988 nor Section 96(2)(xviii) mandate or provide for the regulation of the content of the advertisement.

3.8 In light of the above, the impugned guidelines, in so far as, it purports to regulate the content of advertisements (particularly *Para 3*) is *ultra vires*, because it is in excess of the power granted under the parent statute.

3.9 Secondly, *‘Delegatus non potest delegare’* is a well known maxim which means in absence of any power a delegate cannot sub-delegate its power to another person. The legislature can permit any statutory authority to delegate its powers to any other authority,

after the policy has been indicated in the statute itself within the framework of which such delegatee is to exercise the power. It is said that when Parliament has specifically appointed authority to discharge a function, it cannot be readily presumed that it had intended that its delegate should be free to empower another person or body to act in its place. (*Sahni Silk Mills (P) Ltd. vs ESI Corpn.*, (1994) 5 SCC 346)

3.10 Rule 71(2) of the Delhi Motor Vehicle Rules 1993 provide for permits to be made by Respondent No. 1, by general or specific order. Under *Para 2.1* of the impugned guidelines, Respondent No. 1 has delegated this function to Respondent Nos. 2-5. However, the Motor Vehicles Act nowhere empowers Respondent No.1 to sub-delegate its powers, expressly or impliedly, to another person or body. In light of this, the Respondent No.1 has enacted the said guidelines in excess of the powers granted under the parent statute.

b. The impugned guidelines violate the fundamental right to freedom of speech and expression under Article 19(1)(a).

2.1 Article 19(1)(a) of the Constitution of India accords to all citizens, the fundamental right to freedom of speech and expression. It has been recognized that this right lay at the foundation of all democratic organizations. This includes the right to publicly discuss ideas and problems, religious, political, economic and social.

2.2 Advertising as a commercial speech has also been recognized as a part of the freedom of speech and expression under Article

19(1)(a). (*Tata Press Ltd. vs Mahanagar Telephone Nigam Limited*, (1995) 5 SCC 139)

2.3 The freedom of speech is not absolute and can be curtailed, only under the authority of law, by imposing 'reasonable restrictions' under any one of the grounds provided under Article 19(2).

2.4 The Hon'ble Supreme Court has laid down certain parameters to determine the reasonability of a restriction imposed under Article 19(2). These are:

- i. There should be a direct and proximate nexus of the law laying down the restriction and the intended object.
- ii. The restriction should be least invasive, i.e., it should be imposed in a manner and to the extent which is unavoidable in a given situation.
- iii. The speech or expression sought to be restricted should be such as to create a clear and present danger that they will bring about substantive evils.
- iv. The test for judging a particular speech or expression should be that of an ordinary man of common sense and prudence and not of an out of the ordinary or hypersensitive person.
- v. All relevant facts and circumstances are to be taken into consideration, in deciding whether a restriction is reasonable.
- vi. Where the restriction is in the nature of prohibition, it must be satisfied that there was no lesser restrictive alternative available.

(a) *The impugned guidelines are arbitrary, excessive and do not satisfy the test of reasonability.*

2.5 The impugned guidelines, under *Para 3*, states that permission or approval will not be granted to advertisements that promote the following:

- i. The sale of alcohol or tobacco or cigarette or related products.
- ii. If they contain political, ethnic, religious or sectarian text.
- iii. Sexual or controversial text; display nude or semi-nude figures; or are likely to offend public taste; depict men, women or children as sexual objects.
- iv. The use of firearms, weapons and related items.
- v. Direct and immediate violence to anyone shown in the advertisement or observing it.
- vi. Refers to indecency or obscenity or use of obscene and distasteful language.
- vii. Racist or sectarian group or organisation which intends to promote such a group or such organisation and/or any of its activities.
- viii. Condone or provokes anti-social behaviour.
- ix. Lottery tickets, sweepstakes entries and slot machines related advertisements.
- x. Cruelty to animals.

2.6 In effect, the impugned guidelines impose blanket prohibition on any kind of advertisement that contains, amongst others, political, ethnic, religious or sectarian text, sexual and controversial text, representation showing infliction of direct and immediate violence,

promotion of any racist or sectarian groups and condoning or provoking anti-social behaviour.

2.7 It is submitted that Article 19(2) permits restrictions solely in the interests of the sovereignty and integrity of India, 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.

2.8 The impugned guidelines restrict speech of a political, ethnic, religious, etc. nature, irrespective of whether the said speech satisfies the parameters laid under Article 19(2). In doing so, the impugned guidelines do not take into account the circumstances or the context in which such speech or expression is being made, whether the speech imposes any clear or present danger or whether it has a direct and proximate nexus with the restrictions enumerated under Article 19(2). For instance, advertisements depicting violence to spread a message against domestic violence or advertisements promoting use of condoms to prevent sexually transmitted diseases or even advertisements merely calling to attend a political rally or a religious meeting will be prohibited under the impugned guidelines.

2.9 The impugned guidelines, by imposing a blanket prohibition, are disproportionate and violate the principle of least invasiveness. Moreover, it does not take into account that speeches leading to public disorder or obscene and indecent speech are already penalized under various provisions of the Indian Penal Code and

other laws. Hence, in the presence of lesser restrictive alternatives, such blanket prohibition does not satisfy the test of reasonableness.

2.10 The impugned guidelines do not comply with the principles of natural justice. It does not lay down the procedure for obtaining permit, does not provide an opportunity of hearing to the aggrieved person in the event the Respondents deny permit for publishing a particular advertisement and does not provide relief to a person aggrieved by the order of the Respondents. In light of this, it is submitted that the impugned guidelines are not only excessive but also bestow arbitrary power upon the Respondents to allow or permit display of advertisements on public service vehicles.

2.11 It has been held that where a law purports to authorize the imposition of restrictions on a fundamental right in language wide enough to cover restriction both within and without the limits of constitutionally permissible legislative action affecting such right, it is not possible to uphold it even so far as it maybe applied within the constitutional limits, as it is not severable. So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly unconstitutional and void. (*Romesh Thapar vs State of Madras, AIR 1950 SC 124*)

2.12 It is pertinent to note that the Hon'ble Supreme Court, in *NOVVA Ads vs Secretary, Department of Municipal Administration and Water Supply (2008) 8 SCC 42*, upheld Sections 326-A to 326-J of Chennai City Municipal Corporation Act, 1919 and the Chennai Municipal Corporation (Licensing of Hoarding and Levy and

Collection of Advertisement Tax) Rules, 2003, on the ground that the authority was not examining the content of hoardings, but the license was for putting up the hoardings and whether it is hazardous or creates any obstruction. On the contrary, in the instance case, the impugned guidelines examine the content of advertisements, the maintenance of cleanliness and also the type of material used for display of the advertisement.

2.13 In light of the above, it is submitted that the impugned regulations for display of advertisements are unreasonable and hence violates Article 19(1)(a).

(b) The impugned guidelines impose pre-censorship.

2.14 Pre-censorship is the anti-thesis of the freedom of speech under Article 19(1)(a). (*Union of India vs K. M. Shankarappa, (2001) 1 SCC 582; R. K. Anand vs Delhi High Court, (2009) 8 SCC 106; Prakash Jha Productions vs Union of India, (2011) 8 SCC 372*)

2.15 It is stated that the impugned guidelines, at *Para 2.3*, adopt and mandate the Code of Advertising Practice issued by the Advertising Standards Council of India (ASCI), which is a self-regulatory voluntary organization comprising of experts from the advertising industry, viz., advertisers, advertising agencies and the media. The said Code provides for self-regulation and control of the content of advertisements. It is worthy to note that the said Code has also been adopted under the Cable Television Network Rules, 1994.

2.16 Where an advertisement is made in violation of the Code of Advertising Practice, a complaint may be made to the Consumer Complaints Council of ASCI. If the complaint is upheld, the advertisement is either required to be modified or pulled out. Currently 100% of TV advertisements and over 80% print advertisements against whom a complaint is upheld by ASCI are modified or withdrawn as confirmation in writing received from the advertiser or its concerned advertisement agency.

2.17 There are also provisions under various statutes, such as the Indian Penal Code, etc. to control the content of advertisements and penalize content that promotes violence or public disorder or is considered obscene and indecent. If an advertisement is in violation of these laws, criminal proceeding can be instituted against the maker, publisher and distributor of the advertisement.

2.18 In light of this, it is submitted that the legal parameters within which an advertisement may be made and published is well defined and any action in breach of the legal bounds would invite consequences.

2.19 In view of the above, the impugned guidelines in so far as it imposes restrictions on the content of advertisements, in addition to the prevailing law, and requires prior approval to be taken by the Respondents, amounts to pre-censorship and hence violates Article 19(1)(a).

2.20 It is pertinent to note that the Nariman Committee, appointed by the Hon'ble Supreme Court in *Destruction of Public and Private*

Properties vs State of Andhra Pradesh (2009) 5 SCC 212, emphasized the need for choosing effective measures of supervision – supervision not control. It wholly endorsed the need for the formation of institutional arrangements of self-regulation. It further stressed on the need not to drift from self-regulation to some statutory structure which may prove to be oppressive and full of litigative potential.

c. The impugned guidelines violate the principles of rule of law and the doctrine of reasonable classification enshrined under Article 14.

2.1 It is settled law that Article 14 prohibits class legislation but permits reasonable classification of persons and things and embodies a guarantee against arbitrariness.

2.2 In order to pass the test of reasonable classification, two conditions must be fulfilled, namely, that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others left out of the group, and that the differentia must have a rational relation or nexus to the object sought to be achieved by the Act.

2.3 It is submitted that the impugned guidelines create a distinction between public service vehicles having GPS/GPRS system and those that do not. The former are eligible to apply for permits to publish certain advertisement while the latter are not, thereby altogether excluding them from displaying advertisements. Evidently,

it creates a distinction between the two kinds of public service vehicles.

2.4 The impugned guidelines are enacted with the objective of regulating the display of advertisement, as stated under Section 96(2)(xviii) of the Motor Vehicles Act 1988.

2.5 The distinction so created has no rational nexus to the object sought to be achieved by the parent Act, namely, regulation of display of advertisements. The Respondents are required to regulate the display of advertisements on all public service vehicles. There is no rationale for permitting one class of vehicles to display advertisements (subject to grant of approval) while completely excluding the other.

2.6 Such a distinction merely puts vehicles without GPS/GPRS system at a disadvantage in comparison with vehicles having a GPS/GPRS system. It is pertinent to note that it is largely low-end vehicles, such as auto rikshaws, which do not have a GPS/GPRS system installed.

2.7 In light of this, the distinction created under the impugned guidelines does not satisfy the test of reasonable classification. Consequently, the impugned guidelines amount to class legislation and hence are liable to be struck down under Article 14.

2.8 It is reiterated that the impugned guidelines prescribe no procedure for grant of permits by the Respondents, do not provide an opportunity of hearing to persons prior to rejection of approval

and do not provide any relief to persons aggrieved by the decision of the Respondents. Additionally, what constitutes political or ethnic or religious or sectarian or obscene or indecent, etc. advertisements has not been defined under the guidelines. It further empowers Respondent No.1 to revise and amend the guidelines without any liability to any party on cost incurred or revenue foregone. Evidently, the impugned guidelines give arbitrary power to the Respondents to permit display of advertisements and hence violate the rule of law enshrined under Article 14.

PRAYER:

In view of the facts & circumstances stated above, it is prayed that this Hon'ble Court in the interest of Justice may be pleased to: -

- i. Allow the Impleadment Application of the Applicant.
- ii. Strike down the impugned guidelines as *ultra vires* as it does not accord with the parent Statute, Motor Vehicles Act 1988;
- iii. Strike down the impugned guidelines as violating Articles 14 and 19 (1)(a) of the Constitution of India;
- iv. Pass order for costs of this petition; AND/ OR
- v. Pass such further and other orders as the Hon'ble Court may deem fit in the circumstances of the present case may require

AND FOR THIS KINDNESS THE PETITIONER AS IN DUTY
BOUND SHALL

EVER PRAY

APPLICANT

THROUGH

Shefali Malhotra and Prashant Narang

Advocate for the Applicant
A-69, Hauz Khas, New Delhi – 110016.

NEW DELHI

DATED: