

CASE NO.:
Appeal (civil) 5674 of 1994

PETITIONER:
MUNICIPAL CORPORATION OF GREATER BOMBAY

Vs.

RESPONDENT:
BHARAT PETROLEUM CORPORATION LTD.

DATE OF JUDGMENT: 02/04/2002

BENCH:
Doraiswamy Raju & Ashok Bhan

JUDGMENT:

RAJU, J.

The Municipal Corporation of Greater Bombay who lost before the learned Single Judge and the Division Bench of the High Court, is the appellant herein against the judgment dated 30.8.85 in Appeal No.167 of 1980 whereunder the Division Bench, while affirming the judgment of the learned Single Judge, restrained the appellant-corporation from taking any action against the respondent under Section 328 or 328A of the Mumbai Municipal Corporation Act, 1888 as amended (hereinafter referred to as "the Act") in regard to their sign boards of petroleum pumps. In order to appreciate the legal issues raised pertaining to the scope and purport of the statutory provisions noticed supra, it becomes necessary not only to advert to the nature of the activities of the respondent which are the subject-matter in issue but also the conclusions arrived at in the judgment under challenge as well as the reasons therefor.

The respondents are said to be successor-in-title of the company known as Burmah-Shell Oil Storage & Distributing Company Limited carrying on business inter alia as a distributor of petroleum products in various parts of the country. We are concerned in this proceeding with the distribution of petroleum products from various retail outlets of the respondents, known as petrol pumps in Bombay. Within the premises of those petrol pumps, it has erected a pole with a metallic board projecting on the pavement, which board displayed the symbol of a Shell, said to be the registered trade mark of the respondent's predecessor. The height of the pole is said to be 18 ft. and the diameter of the metallic board (on which appears the Shell symbol) is said to be 6 ft. Across the symbol of the Shell appear the words 'Burmah-Shell' in letters of 3" height. All the poles and the boards erected at the respondent's petrol pump are said to be identical and most of them are illuminated at night by a small light at the top. Though, prior to 1975 the respondent applied for requisite permission under the Act for the erection of such sign boards at its various petrol pumps, on the basis of subsequent advice said to have been obtained by them that those boards were not an advertisement requiring permission under the provision of the Act, noticed above, the respondent addressed letters dated 30.1.75 and 19.3.75 intimating their stand to that effect to the appellant-Corporation but the authorities of the Corporation by their letter dated 29.9.75 insisted that the permission was necessary for displaying such boards as they also constituted an announcement or direction. Since in spite of the same, the respondent stuck to its stand and did not obtain permission, the appellant-Corporation launched criminal proceedings for committing offence under Section 471 read with the provisions noticed above. The respondent at this stage filed Miscellaneous Petition No.1380 of 1976 seeking for appropriate writ directing the corporation to withdraw or cancel those

complaints and to forebear the corporation from taking any action against the respondent under Section 328 or 328A of the Act in respect of the boards erected by them as referred to above.

On a consideration of the submissions of the respective parties, the learned Single Judge of the Bombay High Court by his judgment dated 15.2.80 sustained the claim of the respondent by accepting the stand taken that the boards erected by the respondent do not amount to an advertisement and what the respondent was doing by such erection of boards was merely to give an indication or guidance to the motorists and the general public regarding the situation or location of their petrol pumps which are open all the 24 hours around. The learned Judge was of the view that since the motorist knew whose products he wanted to buy and all that is informed by such installation is of the location of the petrol pump, the signboards in question cannot be said to be an advertisement or in the nature of an advertisement and its function and purpose is to show the location of the respondent's petrol station where one may or may not enter at his own choice. Repelling the stand taken for the appellant-Corporation that the projection of the boards over the pavement and their position, angle and height of the boards and the object underlying the same attracted Section 328, it was held that they served only as an information to a motorist or a member of the public even from some distance as to the location of the petrol station more by way of a facility for the motorist and the public without any invitation for patronage of the respondent's products. An earlier decision in the case of M/s Glaxo Laboratories (India) Limited came to be distinguished on the facts and held to be not applicable to the case on hand. While construing the word 'announcement' it was held that a mere imparting of an information alone will not constitute an 'announcement' and by the mere indication and information provided in the case on hand to those interested as to the location of the petrol pump, the respondent made no announcement within the meaning of the said word used in the provision. Adverting to the word 'Direction', it was observed that anything, which does not convey an imperative and mandatory message, cannot be construed to mean a 'direction' and that what was conveyed by the signboard in the case on hand was a message, permissive or optional for the motorist or a member of the public to avail of or not the services rendered at the Petrol Pump. The view thus expressed was that providing an information does not constitute giving a direction to go to the petrol stations by way of enforcing any obedience. It was, therefore, held to be not a 'direction' and consequently the claim of the respondent came to be upheld by the learned Single Judge.

The Division Bench of the High Court, before which the matter was pursued by the appellant-Corporation, substantially agreed with the conclusions of the learned Single Judge, though a different approach was adopted as to the interpretation placed on the word 'advertisement' in the statutory provision. It was of the view that though the insignia such as the one in question tells the members of the public that what is sold at the petrol pump is not only the petrol but the petrol of a particular company, there being nothing for the consumer public to choose between petroleum products manufactured and sold by different companies, the installation does not constitute an advertisement within the meaning of the word as used in the statutory provision in question in the absence of any commercial exploitation underlying the same, which, according to the Division Bench, is the normal purpose of an advertisement. On the view that the primary or the dominant object of the signboard in question is only to indicate to the consumer the place where the product or service is available and to guide him to that place the sign will not amount to an advertisement and the mere fact that incidentally it leads to the sale of the product or service is not enough to make it an advertisement. The Division Bench was also of the view that since the words 'announcement' and 'direction' are general in their sweep and follow the word 'advertisement' which is particular in description and the three words are found in the company of each other, both according to the Rule of ejusdem generis and noscitur a sociis they only partake the nature of an advertisement, which, in the view of the Division Bench, as noticed earlier, the signboards in question do not constitute to be such.

Mr. Pallav Shishodia, learned counsel for the appellant-corporation, while reiterating the stand taken before the High Court, contended that the construction

placed by the High Court on the scope of Sections 328 and 328A and, particularly the words 'advertisement', 'announcement' and 'direction', does not constitute the correct and proper interpretation and suffer from serious infirmities to warrant interference in this appeal. The signboards put up on a pole of a particular height displaying the sign/emblem in a manner following outside the pavement and overhanging on the roads/streets so as to make it visible against the sky from some points renders it answerable and fall within the definition of 'sky-sign', as defined under Section 328 of the Act. Per contra, Mr. Dhruv Mehta, learned counsel appearing for the respondent, strenuously contended by adopting the reasoning of the judgments under challenge that having regard to the intent and object of the provision as well as scheme underlying the same, the signboards of the nature put up by the respondent cannot be held to attract the provision of Section 328 or 328A of the Act. According to the learned counsel those provisions should be construed as dealing with different forms of advertisement or any message in the nature of an advertisement and not an 'announcement' or 'direction', simplicitor in the nature of merely an information. It was also contended that the three words, noticed supra, were analogous to each other and must par take the colour and character of an advertisement, the intention of the legislation also being only to regulate 'sky-sign' in the nature of an advertisement and not an 'announcement' or 'direction', simplicitor. Taking clue from the use of the words 'Advertisement fees' in revised notification made available by the learned counsel for the appellant-Corporation, which contained the schedule of fees, the learned counsel for the respondent reiterated the stand that the contemporaneous understanding by the authorities of the Corporation also support the stand of the respondent that only advertisement or those in the nature of advertisement alone that are attracted by the provision contained in Sections 328 and 328A of the Act. This submission, in our view, only overlooks the use of both the words 'Advertisement' and 'Sky-sign' simultaneously meaning, perhaps the multiple purpose and use of these words - That apart, such notifications published with reference to the Head of Accounts, to which the collections were to be credited to for budgetary purposes, can be of no guide whatsoever in respect of the construction to be placed on these words.

Though, the relevant statutory provisions concerned are Section 328/328A of the Act, the issues raised before us have to be considered and decided mainly on the scope of the sub Section (3) of Section 328 of the Act, which reads as follows:

"(3). If any sky-sign be erected, fixed or retained contrary to the provisions of this section, or after permission for the erection, fixing or retention thereof for any period shall have expired or become void, the Commissioner may, by written notice, require the owner or occupier of the land, building or structure, upon or over which the sky-sign is erected, fixed or retained, to take down and remove such sky-sign.

The expression "sky-sign" shall in this section mean any word, letter, model, sign, device or representation in the nature of an advertisement, announcement or direction, supported on or attached to any post, pole, standard framework or other support wholly or in part upon or over any land, building or structure which, or any part of which sky-sign, shall be visible against the sky from some point in any street and includes all and every part of any such post, pole standard framework or other support. The expression "sky-sign" shall also include any balloon, parachute, or other similar device employed wholly or in part for the purposes of any advertisement, announcement or direction upon or over any land, building or structure or upon or over any street, but shall not include-

- (a) any flagstaff, pole, vane or weathercock, unless adapted or used wholly or in part for the purpose of any advertisement, announcement or direction;
- (b) any sign, or any board, frame or other contrivance

securely fixed to or on the top of the wall or parapet of any building or on the cornice or blocking course of any wall, or to the ridge of a roof:

Provided that such board, frame or other contrivance be of one continuous face and not open work, and do not extend in height more than three feet above any part of the wall, or parapet or ridge to, against, or on which it is fixed or supported;

(c) any word, letter, model, sign, device or representation as aforesaid, relating exclusively to the business of a railway company, and place wholly upon or over any railway, railway station, yard, platform or station approach belonging to a railway company, and so placed that it cannot fall into any street or public place;

(d) any notice of land or buildings to be sold, or let, placed upon such land or buildings."

The learned counsel appearing on either side invited our attention, at considerable length, to the judgments of the High Court wherein the dictionary meaning of the words required to be construed came to be adverted to from Encyclopedia Britannica and the Words and phrases: permanent edition of West Publishing Company and it is unnecessary to repeat them once again, herein. Reference has also been made to the portions of the judgments where observations came to be made about the principles underlying the doctrine of 'Ejusdem Generis and Noscitur A Sociis' and their relevance and application to the case on hand. The principle underlying 'Noscitur A Sociis' is that, two or more words which are susceptible of analogous meaning when are coupled together are to be understood as used in their cognate sense, taking, as it were, their colour from each other, that is, the more general is to be restricted to a sense analogous to the less general. The principle underlying 'Ejusdem Generis' is applied when the statutory provision concerned contains an enumeration of specific words, the subject of the enumeration thereby constituting a class or category but which class or category is not exhausted at the same time by the enumeration and the general term follows the enumeration with no specific indication of any different legislative intention. This rule which normally envisage words of general nature following specific and particular words to be construed as limited to things which are of the same nature as those specified, also requires to be applied with great caution and not pushed too far so as to unduly or unnecessarily limit general and comprehensive words to dwarf size. Dehors the doctrine or maxim concerned useful in the matter of construction of a statute or its provisions the intent of the legislature cannot altogether be ignored and a construction which really subserves the purpose of the enactment must only be adopted than one which will defeat it and thereby ensure in the process that no part of the provision is rendered surplus or otiose.

On a careful consideration of the approach and methodology of the construction adopted by the High Court, we are of the view that serious infirmity was allowed to be crept into the process due to unwarranted and unjust dissection of Section 328 (3) of the Act and import into the words meanings totally uncalled for and beyond their context, defeating to a great extent the very purpose and aim of enactment of the provision by the legislature. The statutory definition of the expression 'sky-sign' ordains it to mean, any word, letter, model, sign, device or representation in the nature of an 'advertisement', 'announcement' or 'direction', supported on or attached to any of the things specified upon or over any land or building or structure in a manner visible against the sky from some point in any street and to be also inclusive of all and every part of such pole, post, standard frame work or other support. It is also stipulated therein to include any balloon, parachute or other similar device employed wholly or in part for the purpose of any advertisement, announcement or direction upon or over any land, building or structure or upon or over any street. The main and salutary purpose of Section 328/328A is to regulate the

installation/construction of signboards of the nature defined and envisaged therein to keep road margins and space above such margins not indiscriminately meddled with so as to affect the free movement and free flow of traffic, preserve the ecology and environment by averting and regulation to the extent required, ensuring, in public interest, adverse physiological and psychological impacts either directly or indirectly due to the use of neon lights/illuminations used for the installations. The provision for licensing is incidental and necessarily required to properly and effectively enforce the regulations and the levy and collection of fee also ultimately seem to achieve the same purpose. The statutory provisions seem to have been thus enacted with a laudable public purpose and the definition is also not only inclusive in nature but the enumeration of the various nature of fixtures, the manner and methods adopted therefor, as also the obvious and ostensible object of such fixtures/installations found specified therein, under the scheme of things, are found to be with the intention of making the provision an all inclusive one to cover or rope in all possible things and not to operate in a manner to bring about any limitation on their scope, and that too to render the very provision otiose, redundant and meaningless.

Coming to the ordinary meaning of the words noticed by the High Court, 'Advertisement', 'Announcement' and 'Direction' used in the statutory provision under consideration, we find the High Court to have adopted a hyper-technical approach, altogether. In common parlance, 'advertisement' means to make publicly known an information by some device and to draw or attract attention of public/individual concerned to such information. It need not necessarily be to sell only or solely for commercial exploitation. Likewise, 'announcement' also normally means any and every effort or enterprise and attempts made to make known a thing or the existence of a thing openly or publicly. Similarly, the word 'direction' in the context of users of the road or motorists on the road should invariably only mean, to show the way or path towards an object or point or indicate the route for a destination. A direction in a particular context may even be an instruction simpliciter to guide and need not always mean a command to obey or carry out implicitly only the instruction. In construing the provisions of a statute or the words or language used, it has been always considered essential for the Court normally to give effect to the natural or ordinary meaning of the words, keeping in view the subject matter with reference to which the words are used, without ascribing to words used any absolute meaning as if in vacuo or without reference to the context, particularly when such normal or ordinary understanding or construction conforms to and is consistent with the purpose or object of the legislation. The principles of *Ejusdem Generis* / *Noscitur a sociis* have no relevance to the case on hand and seem to have been over deployed, unnecessarily under scoring the actual or real meaning of the words in the context and purpose of their use in the statutory provision of the Act.

The indication given above by emphasis supplied to some of the words used in the provision in question as well as the words 'in the nature of' an advertisement, announcement or direction would go to show that it is not a must to be that but is enough if its 'in the nature of' that which is specified. The three words required to be construed cannot be said to admit of any one particular meaning alone but capable of being understood by their general or interrelated meaning suitable for the context. Consequently, we are not persuaded to affix our seal of approval to the manner and method of construction adopted by the High Court both the learned Single Judge and the Division Bench. In view of the above, we allow this appeal. The judgment under challenge cannot be sustained and while setting aside the same, we order the dismissal of Misc. Writ Petition No.1380 of 1976 filed by the respondent in the High Court.

The consequences of our allowing the appeal and ordering the dismissal of the writ petition filed by the respondent would result in the restoration of the proceedings instituted before the Criminal Court for prosecuting the respondent under Section 471 of the Act or with a liberty to institute or pursue the same further. The fact that the respondent succeeded before the learned Single Judge and the Division Bench would at any rate go to show that the respondent had no culpable or guilty mind to violate or evade compliance and that the respondent seems to have entertained a genuine belief that they are not bound by the provisions contained in Section 328/328A of the Act. Therefore, instead of

allowing the restoration of the earlier launched criminal proceedings and/or before allowing the appellant-Corporation to pursue further action under Section 471 of the Act, taking into account the fact that the respondent is a public authority, which seemed to have seen vindicating its rights genuinely, we consider it just and proper to direct the appellant-Corporation to issue an appropriate notice intimating the respondent details as to the liability monetarily towards arrears of licence fees and to call upon the respondent not only to remit the same but also to make a formal application for ratification and approval of their installations within 30 days from the date of service of such notice by the appellant-Corporation on the respondent and thereafter pass orders determining the sum payable (the arrears of license fee alone) and intimate the sum so fixed to the respondent. The respondent shall remit the sum so determined within two months from the date of such intimation. On respondent making compliance with such directions of the appellant-Corporation pursuant to the liberty granted by us now, the appellant-Corporation will not pursue the prosecution of the respondent. Per contra, if the respondent commits any default or contravention of such directions, the proceedings already initiated against the respondent would revive and the appellant-Corporation shall be at liberty to take all such action as is permissible in law pursuant to our judgment, and as the circumstances may warrant to enforce the provisions of the Act against the respondent. No costs.

J.
[Doraiswamy Raju]

J.
[Ashok Bhan]

April 2, 2002.