

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

**IN
WRIT PETITION (CIVIL) NO. ____ OF 2021**

IN THE MATTER OF A PUBLIC INTEREST LITIGATION

DHRUV CHAWLA

...PETITIONER

Versus

GOVT. OF N.C.T.D & ORS.

...RESPONDENTS

MEMO OF PARTIES

DHRUV CHAWLA

...PETITIONER

VERSUS

1. **GOVT. OF N.C.T.D.
THROUGH ITS SECRETARY
DELHI SECRETARIAT
COMPLEX, 7TH LEVEL,
B-WING & 5TH LEVEL, A-WING, I. P.
ESTATE,
NEW DELHI-110002.**
2. **NEW DELHI MUNICIPAL COUNCIL
THROUGH ITS COMMISSIONER
PALIKA KENDRA PARLIAMENT STREET,
NEW DELHI, DELHI-110001**
3. **PEGASI SPIRITS PVT. LTD.
THROUGH ITS MANAGING DIRECTOR
LEVEL 3 SY NO. 33/1 DODDAKANNAHALLI
VILLAGE, HOBLI, VARTHUR,
BENGALURU, KARNATAKA-560037**

...RESPONDENTS

FILED BY

DHRUV CHAWLA
Advocate

PLACE: NEW DELHI

DATE: 27.04.2021

IN THE HIGH COURT OF NEW DELHI AT NEW DELHI**ORIGINAL CIVIL JURISDICTION****IN****WRIT PETITION (CIVIL) NO. ____ OF 2021****IN THE MATTER OF A PUBLIC INTEREST LITIGATION****DHRUV CHAWLA****...PETITIONER****Versus****GOVT. OF N.C.T.D & ORS.****...RESPONDENTS****LIST OF DATES**

15.09.2020	The Hon'ble Ministry of Information & Broadcasting (MIB) recently put out an advisory for private satellite TV channels to ensure that liquor, tobacco and other intoxicants are not advertised directly or indirectly on their channels in violation of existing law, i.e. the CTNR. The said advisory being NO.N-41011/28/2018-BC-III dated 15.09.2020 is annexed herewith and marked as ANNEXURE P/11.
March 2021	The Petitioner came across several hoardings, advertising the alcoholic beverage of Respondent No. 3, across the NCT region. Pictures of the said advertisements are annexed herewith and marked as ANNEXURE P/4 (Colly.)

29.03.2021	The Petitioner filed a complaint against the Respondent No. 3 with the Advertising Standard Council of India. A copy of the Complaint information and status is annexed herewith and marked as ANNEXURE P/5
30.03.2021	The Petitioner filed an RTI seeking information from the New Delhi Municipal Council as to sanction and permissions given to the Respondent No. 3 for the publishing of the hoardings under their Bye-Laws. A copy of the Online RTI Request Form Details is annexed herewith and marked as ANNEXURE P/6
08.04.2021	The Petitioner filed a Representation before the Hon'ble Ministry of Information & Broadcasting against the Respondent No. 3 impugning its illegal hoardings. A copy of the said representation dated 08.04.2021 is annexed herewith and marked as ANNEXURE P/7
09.04.2021	The said Representation was received at the Hon'ble Ministry on 09.04.2021. The proof of delivery is annexed herewith and marked as ANNEXURE P/8
09.04.2021	The Advertising Standard Council of India after examination of the Complaint, forwarded the same to the Respondent No. 3 to seek their response to the objections raised. A copy of the Email dated 09.04.2021

	sent by the ASCI, to this effect is annexed herewith and marked as ANNEXURE P/9
13.04.2021	The Petitioner observed that the Respondent No. 3, in furtherance of the notice received from the Advertising Standard Council of India, modified the said hoardings.
15.04.2021	The Petitioner received an email from the Advertising Standard Council of India acknowledging the modifications made by the Respondent No. 3. A copy of the said email dated 15.04.2021 by the ASCI is annexed herewith and marked as ANNEXURE P/10
	It may be pertinent to mention that even the modified advertisements are in contravention of the legal provisions. Hence, the present petition

SYNOPSIS

“Arbitrariness would not go unchecked, so long as the courts of the land do the duty as the Sentinel Qui Vive of the Constitution and the laws”

The Hon’ble Supreme Court has upheld the above position in a catena of Judgements and has in numerous matters come down strictly upon the Lower Courts for not adhering to the same.

The present petition emanates from such a situation where the Respondents' conduct is an outright violation of the principles enshrined in the Constitution of India, 1950 as well as the statutory provisions laid down in furtherance thereto.

Advertisers, for the longest period of time, have attempted to circumvent the law by employing numerous tactics in order to advertise their alcoholic products. The Respondent No. 3, being one such advertiser, put up its hoardings across the NCT region whereby its product, Pegasi, being an alcoholic beverage, was publicised. The Petitioner, on coming across the said hoardings, was shocked to see how such a patent error of law was caused by the relevant authorities in allowing such an illegal act to have been carried out on behalf of the Respondent No. 3. Accordingly, steps were taken by the Petitioner to rectify the same. To that effect, a complaint was filed in the Advertising Standard Council of India on 29.03.2021. In addition, a representation was also sent to the Hon'ble Ministry of Information & Broadcasting, intimating them of the present scenario.

It may be relevant to note that the Delhi Outdoor Advertisement Policy, 2008 drafted under the aegis of the directions of the Hon'ble Supreme Court in *M.C. Mehta v. Union of India* [Writ Petition (Civil) No. 13029/1985], under Clause 4.2. categorically states the city agencies may take action to modify or remove any Advertising Device that contravene the Advertising Industry's Code of Ethics. The list of negative advertisements has been provided under the said clause which includes "*Advertisement promoting drugs, alcohol, cigarette or tobacco items*".

The Respondent No. 3, in furtherance of the Complaint dated 29.03.2021, further has attempted to act cleverly by making certain alterations to the impugned advertisements. However, it has miserably failed to bring the same under the ambit of law since it continues to advertise its alcoholic beverage.

Hence, the Petitioner is filing the present Public Interest Litigation, with a humble prayer to this Hon'ble Court to take stern action against such perpetrators, as well as to lay down strict law to the effect that such advertisements may be not be permitted to be published under any circumstances.

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

IN

WRIT PETITION (CIVIL) NO. ____ OF 2021

IN THE MATTER OF A PUBLIC INTEREST LITIGATION

DHRUV CHAWLA

...PETITIONER

Versus

GOVT. OF N.C.T.D & ORS.

...RESPONDENTS

**PUBLIC INTEREST LITIGATION BY WAY OF WRIT PETITION UNDER
ARTICLE 226 OF THE CONSTITUTION OF INDIA, 1950**

MOST RESPECTFULLY SHOWETH:

1. The Petitioner is a public-spirited person and has no personal interest in the present litigation. The petition is not guided by self-gain or for gain of any other person/institution/body and there is no motive other than of public interest in filing the writ petition.
2. The Petitioner recently came across several hoardings across the NCT region advertising the brand of Respondent No. 3 (hereinafter referred to as the “impugned advertisements”). Interestingly, the Respondent No. 3, being aware of the fact that alcohol advertisement is illegal in India, had attempted to guise the impugned advertisements and indirectly endorsed its product which is an alcoholic beverage. A mere glimpse at the said advertisements

can easily make the viewer deduce what the product is. In fact, any prudent man with a reasonable sense of understanding can easily make out that the product that is being advertised is an alcoholic beverage.

3. The Petitioner, by way of the present Public Interest Litigation seeks to set right the gross violations of the legal setup in the NCT region carried out by the relevant authorities. As a consequence of the said violations, the general public of the NCT region are consuming such advertisements as have been specifically banned by law makers thereby, sending out a wrong message that provisions of law can be circumvented through such illegal means, in addition to the impugned advertisements causing health hazards.
4. Vide orders sought in the present petition, the Respondent No. 3, being the owner of the impugned advertisements, is likely to get affected. No other person, to the knowledge of the Petitioner is likely to get affected by the orders passed in the present Petition. The Petitioner, however seeks this Hon'ble Court's leave to implead any other Company/ Organization, advertisements of which the Petitioner may come across during the pendency of the present petition, to be made a party to this Petition.
5. The petitioner is a practicing advocate registered with the Bar Council of Punjab and Haryana and is a resident of New Delhi. He has been practicing in the NCT Region and has been regularly appearing before the Hon'ble Courts of Delhi for the last 2 years. The petitioner has the means to pay the costs, if any, imposed by this Hon'ble Court.

6. The petitioner, being a public spirited person, initiated efficacious action against the aforementioned violation. Accordingly, an RTI was filed by the Petitioner seeking information from the Respondent No. 2 as to the sanctions and permissions given to the Respondent No. 3 for publishing the impugned advertisements on 30.03.2021. The said RTI is still under process and the information has been forwarded to the concerned Public Information Officer. In addition to the above, the Petitioner sent a detailed Representation to the Hon'ble Ministry of Information & Broadcasting highlighting the violations of the legal provisions carried out by the Respondents. The said representation was received by the Hon'ble Ministry on 09.04.2021. There has been no correspondence in furtherance of the same since the time of its receipt at the Hon'ble Ministry.
7. The Petitioner also filed a complaint dated 29.03.2021 with the Advertising Standard Council of India (ASCI). The ASCI is a company registered with the Registrar of Companies under Section-25 of the Companies Act, 1956 having its permanent office in Mumbai. It is a not-for-profit company founded in the year 1985 as a voluntary self-regulating body for the advertising industry. Amongst its other functions, it looks into complaints received by consumers and offers its recommendations to bring the advertisement in conformity with law.
8. On 13.04.2021, the Petitioner observed that the Impugned Advertisements had been modified and new hoardings were put up by the Respondent No.

3. The said action had been carried out by the Respondent No. 3 in furtherance of the complaint filed by the Petitioner before the ASCI. However, unfortunately, even the said modifications cannot be said to be in conformity with law since the Respondent No. 3 has simply changed the verbatim, yet continues to advertise its alcoholic beverage.
9. It is submitted that advertising alcoholic beverages has been made illegal in India in furtherance of the directive principle stipulated under Article 47 of the Constitution of India, 1950 which directs the State to raise the level of nutrition and the standard of living and to improve public health as among its primary duties and, in particular, the State to endeavour to bring about prohibition of intoxicating drinks and drugs which are injurious to health.
10. In light of the same, several enactments have been made to ensure the prohibition of such advertisements. Advertisements within the NDMC area are regulated by the New Delhi Municipal Committee (Pasting of Bills and Advertisement) Bye-Laws, 1993 (hereinafter referred to as the “bye laws”).
11. As per Section 3(2) of the bye laws, every person who intends to erect, alter or display an advertising sign which is regulated by these bye-laws is required to make an application to the New Delhi Municipal Committee (hereinafter referred to as “the committee”). The Committee is then, required to regulate, in the manner laid down, the pasting of bills and advertisements keeping in view the considerations of the aspects of the urban aesthetics, public safety

and amongst other things, decency and morality as per Section 3(1) of the bye laws.

12. Further, attention of this Hon'ble Court may be drawn to the Delhi Outdoor Advertisement Policy, 2008 drafted under the aegis of the directions of the Hon'ble Supreme Court in *M.C. Mehta v. Union of India* [Writ Petition (Civil) No. 13029/1985]. The said policy under Clause 4.2. categorically states the city agencies may take action to modify or remove any Advertising Device that contravene the Advertising Industry's Code of Ethics. The list of negative advertisements has been provided under the said clause which includes "*Advertisement promoting drugs, alcohol, cigarette or tobacco items*".

13. It may be pertinent to mention that liquor companies in India have been finding creative ways to market their products to the public since 1995, when a blanket ban was imposed on the promotion of alcohol products in traditional media stipulated in the Cable Television Network Rules, 1995 (CTNR). Television advertisements for McDowell's No 1 Platinum Hit CDs and Bacardi's sponsorship of the NH7 Weekender music festival are just a few examples.

14. India's Ministry of Information & Broadcasting (MIB) recently put out an advisory for private satellite TV channels to ensure that liquor, tobacco and other intoxicants are not advertised directly or indirectly on their channels in violation of existing law, i.e. the CTNR. Under CTNR, satellite TV channels are prohibited from carrying out an advertisement that directly

or indirectly promotes sale or consumption of liquor, wine, cigarettes and tobacco products.

15. **GROUND**S

Therefore, raising grave concerns over marketing and advertising a liquor brand despite stringent rules and laws against the same, the petitioner is approaching this Hon'ble Court by filing the present Public Interest Litigation seeking to issue a writ of Mandamus inter alia on the following grounds:

A. BECAUSE the impugned advertisements are in direct violation of the Constitutional principles and goes against the policies and laws formulated by the State in furtherance of its directive principles enshrined therein. It may be reiterated that Article 47 of the Constitution of India, 1950, specifically provides for a direction that the State shall endeavour to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health. Thus, it is mandatory that a direction be issued to the Respondent No. 2, being the relevant authority, to remove the said advertisements.

B. BECAUSE the Respondent No. 2 acted in violation of Section 3(1) of the New Delhi Municipal Committee (Pasting of Bills and Advertisements) Bye-laws, 1992. The said provision clearly stipulates that the Committee is to regulate the advertisements keeping in view decency, morality, amongst

other relevant factors. Direct/indirect advertisement of liquor has been held to be as indecent and immoral and accordingly prohibited vide numerous enactments such as the Cable Television Network Rules, 1995 etc.

C. BECAUSE the impugned advertisements are in the teeth of the Advertising Standard Council of India Code. Chapter III.6 of the said code states that advertisements for products whose advertising is prohibited or restricted by law or by this code must not circumvent such restrictions by purporting to be advertisements for other products the advertising of which is not prohibited or restricted by law or by this code. The impugned advertisements, thus, while out rightly displaying a product, the advertising of which is prohibited in the country, as also in the NCT region, has violated the code and is thus liable to be taken down.

D. BECAUSE the impugned advertisements are contradictory to the provisions of the Delhi Outdoor Advertisement Policy, 2008 drafted in furtherance of the directions of the Hon'ble Supreme Court in *M.C. Mehta v. Union of India (supra)*. Chapter 4.2 of the said policy provides that the policy will rely upon self-regulatory controls within the advertising industry to enforce minimum advertising standards. It further states that notwithstanding this approach, the city agencies may take action to modify or remove any Advertising Device that contravene the Advertising Industry's Code of Ethics, (refer List of Negative Advertisements) or that otherwise causes a traffic hazard. The said "List of Negative Advertisements" has also

been set out there under wherein “advertisement promoting drugs, alcohol, cigarette or tobacco items” has been clearly listed down. Therefore, in view of specific directions from the Hon’ble Supreme Court, the Respondents were required to have taken suitable steps in order to disallow the publication of the impugned advertisements.

E. BECAUSE the Hon’ble Supreme Court directed in its order dated November 20, 1997 and then reiterated vide order dated 10.12.1997 in *M.C. Mehta vs. Union of India (supra)* that safety of road users is paramount. The Delhi High Court in its order, dated 26.03.2007 passed in the matter of *Court on its motion vs Union of India* reiterated the Hon’ble Supreme Court order of November 20, 1997. It made it clear that the officers of the government, who have taken a decision to permit hoarding in the teeth of the Hon’ble Supreme Court order, have “clearly misread” the direction and this “ex-facie amounts to violation of the orders of the court.” Thus, the Respondent No. 2 may be directed to take down the impugned advertisements, the same being in contravention of the orders of the Hon’ble Courts as aforementioned.

F. BECAUSE the aforementioned policy having been drafted under the aegis of the Supreme Court and having been approved by the Supreme Court would be the law under Article 141 of the Constitution of India. Hence, any violation of the provisions of the said policy would amount to a violation of law and thus, suitable directions may be issued to amend the said violation.

G. BECAUSE in light of Section 89(2)(a) of the NDMC Act, 1994, provisions of which are akin to Section 143(2)(a) of the DMC Act, 1957, the Commissioner of the Respondent No. 2 ought to have dismissed the permission sought by Respondent No. 3 for erecting the impugned advertisements. The said provisions may be reproduced hereinunder,

“89. Prohibition of advertisements without written permission of the Chairperson

(2) The Commissioner shall not grant such permission if—

(a) the advertisement contravenes any bye-law made under this Act;”

It is submitted that the relevant bye-laws, being New Delhi Municipal Committee (Pasting of Bills and Advertisements) Bye-laws, 1992, restrain the publication of indecent and immoral advertisements. Hence, the Respondent No. 2, through its commissioner, has acted in contradiction to the aforementioned provisions.

H. BECAUSE it is trite law that every provision provided and words used in an Act have been done so intentionally by the legislature. Thus, efforts should be made to give effect to such provisions and words instead of negating them.

I. BECAUSE the grant of permission by the Respondent No. 2 for the publication of the impugned advertisements amounted to dereliction of duties by the Respondent No.2 and failure to exercise its jurisdiction and power. The said action ought to be corrected by this Hon’ble Court.

16. JURISDICTION

This Hon'ble Court has the territorial jurisdiction to try and entertain the present proceedings in as much as a part of cause of action has arisen in Delhi as the advertisement which has been sought to be modified/withdrawn by the Respondents was being telecast throughout the country including Delhi and has been viewed by various persons in Delhi, within the jurisdiction of this Hon'ble Court.

PRAYER

Under the circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction in nature thereof as follows: -

- i. Direct the Respondents to remove the said advertisements since they are patently illegal and violative of legal framework applicable to the NCT region.
- ii. Issue any other appropriate writ, order or direction as the nature and circumstances of the present case may require; and
- iii. Pass such other or further orders/directions, as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

**AND FOR THIS ACT OF KINDNESS, THE PETITIONERS SHALL
AS IN DUTY BOUND, EVER PRAY.**

DRAWN BY: Dhruv Chawla

DRAWN ON: 27.04.2021

FILED ON: 27.04.2021

PETITIONER IN PERSON

Dhruv Chawla

PLACE: NEW DELHI

DATE: 27.04.2021