

SUPREME COURT OF INDIA

Business Link

Vs.

A. S. Advertising Company

C.A.No.2613 of 2003

(S. S. M. Quadri and Ashok Bhan JJ.)

01.04.2003

ORDER

1. Heard the learned counsel for the parties.
2. Leave is granted.
3. The order of the High Court of Judicature at Allahabad passed in Civil Miscellaneous Writ Petition No. 970 of 2000, dated December 01, 2000 is brought under challenge in this appeal.
4. The appellant and respondents 1 and 2 are competitors in advertisement business. On June 16, 2000, the third respondent, Meerut Nagar Nigam, proposed to auction the hoarding rights for purposes of advertisement, but the proposal was withdrawn. At that time, respondents 1 and 2 were licensees. Thereafter, the Meerut Nagar Nigam appointed a committee to supervise the proposed auction in respect of the hoarding rights. It appears that on July 13, 2000 and July 14, 2000, two advertisements were made inviting tenders for granting of hoarding rights. The advertisements were published in "Meerut Samachar" and "Dainik Hira Times". Twelve persons are said to have responded to the said advertisement out of which four persons fulfilled the pre-condition and participated in the auction. The appellant was found to be the highest bidder and in his favour an agreement was executed by the Nagar Nigam for a period of three years on July 27, 2000. Respondents 1 and 2 challenged the award of contract by the Nagar Nigam in favour of the appellant in Writ Petition No. 970 of 2000 before the High Court of Judicature at Allahabad. By the impugned order, the High Court set aside the award of contract and allowed the writ petition. It is against that order that the present appeal is filed.
5. Mr. V. R. Reddy, the learned Senior Counsel appearing for the appellant, contends that the basis on which the High Court set aside the contract is untenable and, therefore, the order under challenge needs to be set aside. Mr. Anil Kumar Sangal, the learned counsel appearing for the contesting respondents, on the other hand, submits that there was no publication of advertisement regarding auction of hoarding rights in the said papers and even if there was

any such advertisement, those two papers did not have any circulation, therefore, the High Court was right in setting aside the award of contract in favour of the appellant.

6. A perusal of the order under challenge shows that the High Court, on the basis of the contentions raised before it, recorded the following two findings:

(1) "We are not satisfied that Meerut Samachar and Dainik Heera Times are well-known newspapers having wide circulation."

(2) "In our opinion, advertisement in an unknown newspaper stands on the same footing as no advertisement at all since the purpose of the advertisement is that there should be wide publicity otherwise Article 14 of the Constitution will be violated.

7. The real controversy is: whether the said two newspapers had enough circulation so as to justify the publication of the advertisement therein by the Meerut Nagar Nigam.

8. It appears that along with the written submissions, the parties have filed certain documents. Our attention is invited to page 32 of the S.L.P. paper book. It is a letter written by the Circulation Officer to the Publisher, Meerut Samachar (Hindi Dainik) with regard to circulation of the said paper. A perusal of the letter shows that the said paper had a circulation of about 39,600 copies per day. With regard to the other newspaper, Hira times (Hindi Dainik), a letter dated May 19, 1997 was filed to show that the said paper had a circulation of about 30,000 copies per day. We may also note that the first-mentioned newspaper, Meerut Samachar, has been in circulation for about half a century though the second-mentioned newspaper, Hira Times, has been in circulation for about eleven years. Be that as it may, we are unable to find any support for the finding recorded by the High Court that the Meerut Samachar and Dainik Hira Times are not well-known newspapers having wide circulation. The High Court did not advert to the material placed before it. The first finding recorded by the High Court might as well adversely affect the newspapers so it ought not to have been recorded without relying upon sufficient material to justify the finding. The material to which we have adverted to above rebuts the finding so recorded. Further, the very fact that twelve persons responded to the advertisement suggests that the said two newspapers had wide circulation in Meerut City. Therefore, that fact militate against the first finding recorded by the High Court. If the first finding goes, the second finding cannot stand on its own.

9. Having regard to the fact that the contract was awarded for a period of three years and more than two and half years have already elapsed, it would not be appropriate for this Court to remit the matter to the High Court for fresh disposal.

10. Mr. Sangal has also urged that awarding of contract for three years is illegal. This point was not raised in the writ petition nor was it urged at the time of hearing of the writ petition. Inasmuch as it is a pure question of law, we permitted the learned counsel to raise the point before us but, he has not been able to place before us the relevant provisions of the Act and

the Rules which prohibit award of contract for three years. We make it clear that we have not pronounced on this point and leave the question open.

11. For the abovementioned reasons, we set aside the order under challenge.

12. The civil appeal is, accordingly, allowed.

13. There shall be no order as to costs.

Appeal allowed.