IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10684 OF 2018
WITH
INTERIM APPLICATION NO. 438 OF 2023
WITH
INTERIM APPLICATION NO. 7703 OF 2023

1. Manoj Madhav Limaye
2. Gautam Dalichand Baldota
3. Vijaykumar Shivram Gokhale ...Petitioners

v/s.

1. State of Maharashtra, through its
Principal Secretary, Urban Development Department,
2. Pune Municipal Corporation
3. The Municipal Commissioner,
Pune Municipal Corporation,
4. The Advocate General, State of Maharashtra. ...Respondents

WITH
WRIT PETITION NO. 9448 OF 2021

Balasheb Shankarrao Ganjve & Ors. ...Petitioners

Vs

State of Maharashtra & Anr. ...Respondents

WITH
WRIT PETITION NO. 6882 OF 2022
WITH
INTERIM APPLICATION (STAMP) NO. 14564 OF 2023

M/s. Pioneer Publicity Corporation Pvt. Ltd. ...Petitioner

Versus

The Municipal Corporation of Pune & Ors. ...Respondents

WITH
WRIT PETITION NO. 427 OF 2023

Ranjitsinha Pratprao Pawar & Anr. ...Petitioners

Vs.

State of Maharashtra through Principal Secretary & Ors. ...Respondents

WITH
WRIT PETITION NO. 9134 OF 2022

Ranjit Prabhakar Naik & Ors. ...Petitioners
Vs
State of Maharashtra & Anr. ...Respondents

WITH
WRIT PETITION NO. 1306 OF 2023

M/s. Global Vision Advertising Thr. Proprietor & Ors. ...Petitioners
Vs
Pune Municipal Corporation Thr. Municipal Commissioner ...Respondents

WITH
WRIT PETITION NO. 1364 OF 2023

Nalini Nikam & Ors. ...Petitioners
Vs
Pune Municipal Corporation thr. Municipal Commissioner ...Respondents

WITH
WRIT PETITION NO. 1365 OF 2023

Chavan Sankesh Mohan & Ors. ...Petitioners
Vs
Pune Municipal Corporation thr Municipal Commissioner ...Respondents

WITH
WRIT PETITION NO. 110 OF 2023

Real Value Advertisers Th. Partner Anuj Sanjay Lohade ...Petitioner
Vs.
State of Maharashtra thr. Principal Secretary & Ors. ...Respondents

WITH
WRIT PETITION NO. 2241 OF 2023

M/s. Digvijay Advertising & Ors. ...Petitioners
Vs.
Pune Municipal Corporation through
Municipal Commissioner ...Respondent

WITH
WRIT PETITION NO. 2126 OF 2023

Krushna Ads Thr. its Proprietor ...Petitioner
Vs
Pune Municipal Corporation ...Respondent

WITH
WRIT PETITION NO. 3021 OF 2023

M/s. Shubhangi Advertising ...Petitioner
Vs
Pune Municipal Corporation ...Respondent

WITH
WRIT PETITION NO. 9045 OF 2022

Makarand Patankar ...Petitioner
Versus
State of Maharashtra & Anr. ...Respondents

WITH
WRIT PETITION NO. 9046 OF 2022

Santosh Ganesh Ranade ...Petitioner
Versus
State of Maharashtra & Anr. ...Respondents

WITH
WRIT PETITION NO. 109 OF 2023

Asha Publicity Pvt. Ltd. Thr Director Chandrakant
Kudal & Ors ...Petitioners
Versus
State of Maharashtra Thr. Principal Secretary And Ors ...Respondents

WITH
WRIT PETITION NO. 5868 OF 2023
WITH
INTERIM APPLICATION NO.13267 OF 2023

Spectrum Advertising ...Petitioner
Versus
The State Of Maharashtra Thr Its Principal Secretary
Urban Development Dept. & Ors. …Respondents

WITH
WRIT PETITION NO. 1596 OF 2021

Supra Publicity Pvt. Ltd. Thr. Its Director
Mr. Paresh Bandiwadekar ...Petitioner
Versus
State of Maharashtra Through Its Principal Secretary,
Urban Development & Ors. ...Respondents

WITH
WRIT PETITION NO. 7309 OF 2023

Rushikesh Sanjay Nikam ...Petitioner
Versus
Pune Municipal Corporation Through
Municipal Commissioner ...Respondent

WITH
WRIT PETITION NO. 8503 OF 2022

M/s. Mangalmurti Advertising Thr. Partner
Yougesh U. Murkute ...Petitioner
Versus
Pune Municipal Corporation Thr. Municipal
Commissioner ...Respondent

WITH
WRIT PETITION NO. 11427 OF 2022

M/s. Shree Advertisers Thr. Proprietor Shrinivas
Sadashiv Paregaonkar & Ors ...Petitioners
Versus
Pune Municipal Corporation Thr. Municipal Commissioner ...Respondents

WITH
WRIT PETITION NO. 11476 OF 2022

Pranjal Advertising Thr Its Proprietor & Ors ...Petitioners
Versus
Pune Municipal Corporation Thr Municipal
Commissioner ...Respondents

WITH
WRIT PETITION NO. 10717 OF 2018
WITH

INTERIM APPLICATION NO. 437 OF 2023

Sixth Element Advertising Pvt. Ltd. Thru Director,
Mr. Chandrakant P Kudal & Ors. ...Petitioners
Versus
The State of Maharashtra Thru Urban Development
Dpt. Thru GP & Ors ...Respondents

WITH
WRIT PETITION NO. 14845 OF 2023

Rahul Outdoor Advertising & Ors. ...Petitioners
Vs.
Pune Municipal Corporation … Respondent

Mr. Sanjeev M. Gorwadkar, Senior Advocate with Mr. Niranjan Mogre for Petitioner in WP Nos.10684/2018 & 427/2023.

Mr. Sanjeev M. Gorwadkar, Senior Advocate with Mr. Mohommed Hussain B. i/b. Mr. Javed Patel for Petitioner in WP/1596/2021, WP/109/2023, WP/110/2023.

Mr. Mohommed Hussain B. i/b Javed Patel for Petitioner in WP/10717/2018.

Mr. Girish S. Godbole, Senior Advocate with Mr. Sumit Kothari, Mr. Aditya Shirke for Petitioner in WP/8503/2022, WP/11476/2022, WP/11427/2022.

Mr. Sumit S. Kothari for Petitioner in WP/1365/2023, WP/2241/2023, WP/8503/2022.

Mr. Ajay Panicker i/b Ajay Law Associates for Petitioner in WP/6882/2022.

Mr. Aditya P. Shirke for Petitioner in WP/3709/2023, WP/3021/2023, WP/1306/2023, WP/1364/2023, WP/2126/2023.

Dr. Birendra Saraf, Advocate General with Mr A.I. Patel, Additional Govt. Pleader a/w Smt. M.P. Thakur, AGP for State

Ms. Madhavi Tavanandi for R.No.3/PMPML in WP/6882/2022

Mr. Abhijit P. Kulkarni with Mr. Krushna Jaybhay for Respondent Pune Municipal Corporation in WP/10684/2018, WP/427/2023, WP/1306/2023, WP/1364/2023, WP/110/2023, WP/1365/2023, WP/109/2023, WP/11427/2022, WP/11476/2022, WP/10717/2018, WP/1596/2021, WP/9448/2021, WP/2126/2023, WP/9134/2022, WP/9045/2022, WP/9046/2022, WP/8503/2022.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

RESERVED ON : 8 May 2025
PRONOUNCED ON : 10 December 2025

JUDGMENT (Per G. S. Kulkarni, J.)

As this is a large batch of petitions, we have attempted to consolidate the bulk of pleadings and submissions, hence, for convenience, we have divided this judgment into parts. Some prolix was unavoidable.

Prologue

1. In this batch of petitions, the petitioners along with their association, have mounted a challenge to the levy of license fee by municipal corporations on sky-

signs and hoardings in grant and renewal of such licenses. It needs no elaboration that in the contemporary times, the landscape of sky-signs and hoardings has undergone a profound transformation. It is no more painted metal boards, the outdoor advertisement is now characterized by dynamic high resolution electronic screens, allowing an unprecedented campaign flexibility. Multiple advertisements on a single hoarding throughout the day have become the new norm, unlike a single advertisement of the bygone era. This transformation has induced significant changes in the regulatory control and the safety mandates, owing to the increasing scale and complexity of the sky-signs and hoarding structures. Such changes include special norms and conditions on structural stability requiring reports from certified engineers, a meticulous licensing regime, visual and traffic safety norms requiring varying 'luminance and size ratio' depending on the location of the sky-signs, the drivers' safety perspective, environmental and social impact, the burden on the city's energy consumption, carbon footprints, visual clutter and light pollution, affecting the mental concentration of the public at large. Thus, the control and regulation of sky-signs and hoardings in the modern times is a significant challenge for the municipal bodies who are caught between a balance to be brought about by such high technological advancements, in discharging their civic obligations coupled with the onerous responsibility of safeguarding and preserving public interest, which includes adhering to the safety norms, aesthetics, environmental norms and other sustainable practices, so as to ensure that the sky-signs integrate safely and

harmoniously into the urban landscape and not create a public torture and an eyesore. It is with such perspective, the regulation and control of sky-signs and hoardings assumes significant dimensions and responsibility of the municipal authorities.

2. On the aforesaid conspectus, as to what is before the Court in the present proceedings needs to be stated. The challenge in these petitions is to the demand/levy of fees for grant and/or renewal of licenses being issued by the municipal corporations(s) under Section 244 read with Section 386(2) of the Maharashtra Municipal Corporation Act, 1949 (for short **"MMC Act"**) [earlier titled as the "Bombay Provincial Municipal Corporation Act, 1949] for display of sky-signs and hoardings. The challenge is mounted primarily on the authority, power and jurisdiction of the Municipal Corporation to levy license fees *inter alia* on the ground that the license fee is in fact a tax being levied without authority of law. It is also on the ground that with the introduction of the Goods and Service Tax Laws, there is no authority to levy advertisement tax. Also, there are other grounds of challenge. The Municipal Corporations against whom these petitions are filed are primarily the Pune Municipal Corporation against whom twenty six petitions are filed and one petition each filed against Nashik, Thane and the Kolhapur Municipal Corporations.

3. As this batch of petitions raises similar questions of law and fact, hence, they are being decided by this common judgment.

4. We may also, at the outset, observe that against the respondent - Pune Municipal Corporation, twenty six writ petitions have been filed. Each of these petitions has reply affidavits. The bulk of the proceedings is substantially large. Although at the cost of some verbosity so as to deal with the case of the parties in a consolidated manner including on their pleadings, we have proposed not to deal with the writ petitions individually, however in some detail, we have referred to the case of the parties as the pleadings would reflect. This has certainly added to the bulk of the judgment, however, this was unavoidable, as the further discussion would unfold.

PART: A

Facts:-

5. For convenience, we note the factual matrix as cumulatively gathered from Writ Petition No. 10684 of 2018 (Manoj Madhav Limaye & Ors.), Writ Petition No. 9448 of 2021 (Balasaheb Shankarrao Ganjve & Ors.) and Writ Petition No. 6882 of 2022 (Pioneer Publicity Corporation Pvt. Ltd.) against the common contesting respondent, namely, the Pune Municipal Corporation. These petitions are argued as the lead petitions.

6. The petitioners in these petitions are engaged in the business of 'Outdoor Advertising' who install and operate all kinds of sky signs, hoardings, kiosks, name boards, tree guards, amenity hoardings, bill boards etc. within the territorial limits of the Pune Municipal Corporation. It is the petitioners case that the

outdoor advertising business in its various forms, is a regulated business under Sections 244 and 245 read with Section 386(2) of the MMC Act and the rules framed by the State Government. They contend that the Advertisers in the normal course of business are required to arrange for the advertising sites from the private owners, either on rent or by purchasing the same. The infrastructure for the hoardings, sky signs, kiosks etc. is arranged and made ready at the cost of the advertisers. It is contended that in most of such cases, the cost incurred for such purpose is substantial, considering the property prices prevailing in the area. It is contended that the license for exhibiting advertisements is issued by the Municipal Corporation for a "Fee". The rates of the license fees are unguided and have been left to the discretion of the Municipal Corporation. It is contended that the advertising sites are privately owned, for which the advertiser is required to pay rent or cost of the land to the owners, as also, the advertiser is required to incur expenses for the infrastructure, being made available on the site and in addition to it, the advertiser is also required to pay license fees to the Municipal Corporation in securing an annual license.

7. From the year 1984 to 31 March, 2001, the Municipal Corporation was charging license fee at Rs.6.48 per sq.ft. p.a as fees for illuminated hoardings and Rs.1.62 per sq.ft. p.a., as fees for non-illuminated hoardings. It is the petitioners case that from June 2006 to 2009, the Municipal Corporation was charging fees at the rate of Rs.35 per sq.ft. p.a as fees for non-illuminated hoardings and Rs.65 per sq.ft. p.a. for illuminated hoardings.

8. The State Government, in exercise of the powers conferred by section 244 and section 245 read with sub-section (1) of 456A of the MMC Act framed Rules and published such Rules in the official Gazette on 9 June, 2003, namely, the Bombay Provincial Municipal Corporation (Control of Advertisement and Hoarding) Rules, 2003 (for short **"2003 Rules"**). The 2003 Rules dealt with erection of sky signs, hoardings and sign boards etc. and pre-requisitions thereto. Such rules also contained provisions qua the structural specifications on the sizes, norms, obstruction to light, air, prohibited areas, licensing procedure, environment norms as well as delegations of the powers to the Municipal Corporation and other allied inter-related issues. Rule 4(7) of the said Rules provided that on the permission being granted or deemed to have been granted under sub-rule (6), the agency shall, within fifteen days thereof, pay rent and/or, as the case may be, the fees, or both, and if the agency fails to pay the same, the permissions granted shall stand cancelled after the expiry of the period of said fifteen days. Rule 4(8) provided that on the permission being granted, the Commissioner shall issue license in Form-C. Rule 4(9) provided that permission for advertisement at a particular location may be granted for a period not exceeding two years. The Rules also provided that the rental charges and/or fees shall be collected from the agency as per the rate decided by the Commissioner, from time to time, which shall be binding on the agency. The rent or fees are required to be paid to the Corporation by the agency in advance for six months. It is stated that the said rules, and more particularly Clause No. VIII contained in

Appendix 2 under Rule 4(5), provide that the rental charges and/or fees for the advertisements shall be collected from the agencies or advertising agencies as per "the rates approved by the Municipal Corporation" from time to time.

9. It is the petitioners case that in the absence of any reasonable basis, a regime of discriminatory and unreasonably high rates of "license fee"" was decided or approved by the General Body of the Municipal Corporation and as the petitioners had no choice, they were required to pay such fees at such higher rates. It is contended by the petitioners that neither the MMC Act nor the 2003 Rules provide any remedy or forum for redressal of such levy at the hands of the Municipal Corporation.

10. The petitioners and other advertisers were hence compelled to pay the prohibitive license fee to the Municipal Corporation in the fear of coercive action of demolition of the developed site on account of non-payment of such fees. It is the petitioners case that except for the permission on paper to put up advertisements, hoardings or sky signs, the Municipal Corporation does not provide any other service to the advertisers, except for a few inspections of the advertising sites. It is contended that the Municipal Corporation does not need any other administrative charges on such advertising supervision. Hence, the levy of such exorbitant, unreasonable and unguided charges in the name of license fee, was not what was intended by the Legislature and such demand of exorbitant license fee amounts to an unreasonable restriction on the business of

advertisement conducted by the petitioners in terms of what is provided under Article 19(1)(g) of the Constitution.

11. The petitioners assail the license fee also applying the principle of a *quid pro quo*, to the effect that administrative expenses for printing the licenses, inspection of advertising boards, sky signs and the salary of a few employees cannot be so high as to justify the levy. It is contended that the license fees on the hoardings and sky signs are unreasonably high, hence discriminatory. Even the property taxes based on rateable value, recoverable by the Corporation are not as high, as the license fee recovered from the advertisers.

12. The petitioners contend that the licenses issued for sky sign and hoardings are regulated under section 244 of the MMC Act, under which the legislature did not intend to earn revenue by levy of license fee at such exorbitant rates, as what was contemplated by the legislature was mere administrative charges as license fee and not otherwise. The reason being that the property on which the advertisements are displayed are already taxed under Section 127 of the MMC Act and it would be unreasonable to again tax the sky signs which are installed on such buildings. Section 244 and Section 245 of the MMC Act are not provisions for generating revenue, but only to regulate the "skyline of the city." In such context, it is the petitioners case that under Section 386 (2), the license fee could be recovered, only to cover administrative charges for regulation and not for revenue generation, hence, it is for such reason that it was necessary for the

State Government to prescribe a reasonable percentage of rateable value of the property as the License fee for display of advertisements.

13. On 6 January, 2009 and thereafter on 26 May, 2009, resolution no. 1837 and resolution no. 164 respectively, were passed by the Standing Committee, which considered the proposal for an increase in license fee submitted by the Municipal Commissioner. By the said resolutions, it was proposed by the Standing Committee, to simplicitor increase the license fee for the outdoor advertising without assigning any reason, also neither the amounts nor the percentage of such increase was fixed under the said resolution.

14. In the context of the aforesaid resolution of the Standing Committee, on 28 January, 2010, the Municipal Corporation passed a Resolution No.417 in its General Body meeting [*on the proposal of Standing Committee resolution no. 1837 dated 6 January, 2009 and resolution no. 164 dated 26 May, 2009*] whereby the General Body resolved that the sky sign license fee rates as applicable for the year 2008-2009 would be increased by 20% for next three years with effect from financial year 2009-10. It is thus the petitioners case that the sky sign rates for the years 2009-10, 2010-11 and 2011-12 were increased to Rs. 41 per sq. ft per annum (for non-illuminated hoardings) and Rs 82 per sq. ft per annum (for illuminated hoardings). Such enhanced rates were fixed qua the private sites, invested, erected and developed by the Advertisers at their own expenses.

15. The petitioners contend that although the rates fixed by the General Body on 28 January 2010 vide Resolution No.417 were applicable till March 2012, the Municipal Corporation suddenly proposed a new regime by General Body Resolution No.479 dated 18 February 2011. By such resolution, the city of Pune was proposed to be divided into "four zones" and exclusive monopoly rights to display advertisements in each zone were proposed to be granted to the single highest bidder, covering both private sites and PMC-owned sites. This policy framework was embodied in the "Pune Municipal Sky Sign Policy / Regulations, 2010" (**2010 Regulations**), which was approved by the Standing Committee and the General Body of the Municipal Corporation. It is however contended that the same was never approved by the State Government. It is stated that the said proposal sought to include within the bid amount, not only the license fee but site rent and utilization of infrastructure, thereby allowing the highest bidder to exercise control over all advertising sites in the zone including private properties, which according to the petitioners was wholly arbitrary and violative of their rights of trade and occupation of their choice.

16. Aggrieved by the General Body Resolution No.479 dated 18 February 2011, several advertisers invoked Section 451 of the MMC Act and approached the State Government. On such plea of the advertisers, the State Government by an order dated 09 August 2011 suspended Resolution No.479 till further orders. As a result of such suspension, Resolution No.417 dated 28 January 2010

continued to operate, and the Municipal Corporation could recover license fee only at the rates stipulated therein and not on the basis of any monopolistic bid amounts. The petitioners submit that this clearly contravened the fundamental right of the petitioners to do business with any person of their choice and violated their rights guaranteed under Article 14 and Article 19(1)(g) of the Constitution of India.

17. The petitioners contend that despite the stay orders granted by the State Government qua the resolution of the General Body dated 18 February, 2011, the Pune Municipal Corporation issued a public tender notice dated 26 June 2011 inviting bids for grant of exclusive advertisement rights in the four zones in terms of the said Pune Municipal Sky Sign Policy / Regulations, 2010, contrary to the 2003 Rules and without any authority of law. The petitioners contend that the PMC intended to offer and control even the privately developed sites under the said tender.

18. On the aforesaid backdrop, being aggrieved by the General Body Resolution No. 479 dated 18 February 2011 and the tender process undertaken pursuant thereto, the Pune Outdoor Advertising Association and several advertisers invoked Section 451 of the MMC Act by approaching the State Government, as also approached this Court. A writ petition being Writ Petition No. 3089 of 2011 was filed, in which this Court, by an order dated 12 July 2011 (corrected by order dated 26 July 2011 by speaking to the minutes), directed the

State Government to decide the appeal / representation under Section 451 on merits within six weeks, including the prayer for interim relief. On behalf of the Municipal Corporation, a statement was made that until the application for grant of interim relief was decided by the State Government, the tenders invited pursuant to the advertisement will not be finalized.

19. Pursuant to the said directions of this Court, the Urban Development Department by an order dated 9 August, 2011 suspended Resolution No. 479 till further orders. It is contended that such order is in operation till today. It is hence the petitioners case that PMC is entitled to recover license fees strictly as per Resolution No. 417 dated 28 January, 2010, i.e., by granting 20% increase on the earlier rates and not as per the bids received under Resolution No. 479.

20. It is stated that several other agencies and trade bodies filed similar petitions in this Court [i.e., M/s. Outdoor Elements v. State of Maharashtra & Ors[1] and connected petitions]. The PMC filed reply affidavits in the said Writ Petitions *inter alia* contending that unless the State Government approves Resolution No. 479, the PMC will not take any final decision and keep the entire process in abeyance. In view of the said affidavit, this Court disposed of the said petitions by a common order dated 21 September 2011 keeping the issues open.

21. The petitioners allege that despite the aforesaid clear position and the suspension of Resolution No. 479, the Corporation internally proceeded to

[1] WP No. 5055 of 2011

revive the zonal tender model. By letter dated 9 December 2011, the Assistant Commissioner (Encroachment) addressed the Municipal Commissioner of the Municipal Corporation, requesting that an agenda be approved by the Standing Committee and thereafter by the General Body, for dividing the city into four zones and inviting tenders for conferring absolute rights to collect fees, in anticipation of Government approval to the General Body Resolution No. 589 dated 18 November 2011 (relating to the 2010 policy).

22. On such backdrop, a meeting was held in the chamber of the Municipal Commissioner of the Municipal Corporation on 10 September 2012, the minutes of which were prepared on 14 September 2012. The petitioners state that their representatives attended the said meeting, but did not agree to any terms nor gave any promise as stated in the minutes.

23. It is the petitioners' case that the Standing Committee by Resolution No. 1196 dated 15 October 2012, rejected the proposal to levy Rs. 222 per sq. ft. p.a. on hoardings on private properties, noting that the rate of Rs. 222 per sq. ft. p.a. was linked to the tender process for granting composite rights in respect of PMC-owned properties and, therefore, was on the higher side. It was specifically resolved that it would be incorrect to levy fees at Rs. 222 per sq. ft. p.a. on hoardings on private properties, and that such hoardings would continue to attract fees at Rs. 42/85 per sq. ft. p.a., with an increase of 15%.

24. In the meanwhile, on 28 January 2012, the Additional Commissioner of the PMC put up a proposal for fixing fees at Rs. 222 per sq. ft. per annum for hoardings in relation, *inter alia*, to one Marvel Sigma Homes Pvt. Ltd. ("Marvel"), who had applied for putting up a hoarding in its own premises for advertising its own business and had expressed willingness to pay fees at Rs. 222 per sq. ft. per annum. Marvel was not engaged in the business of outdoor advertising but merely intended to advertise its own business on its own premises. This proposal came to be sanctioned by the Commissioner of the PMC on 14 February 2013 by Resolution No. 6/402.

25. The petitioners contend that despite the stay as granted by the State Government, the municipal corporation resorted to coercive recoveries, as by letter dated 25 April 2013, the Additional Commissioner (Estates) of the Municipal Corporation directed the Sky Sign Department to issue challans towards license fees for hoardings at Rs. 222 per sq. ft. per annum with effect from 1 April 2013, referring to Resolution No. 6/402 dated 14 February 2013. The petitioners contend that the municipal corporation officials also threatened removal of hoardings for non-payment. The petitioners further contend that the rate of Rs.222 per sq. ft. p.a. was derived from an illegal bid process and that such recovery was wholly without jurisdiction.

26. Further, by letter dated 10 June 2013 addressed to the Municipal Commissioner, the Pune Outdoor Advertising Association recorded that its

members were surprised to receive challans charging fees at Rs. 222 per sq. ft. p.a., despite the Standing Committee having approved only a 15% increase in license fees. It was stated that, as they were left with no choice, they had deposited fees for the period April 2013 to October 2013 at the rate of Rs. 222 per sq. ft. p.a. "under protest" and requested that fees be levied strictly as approved by the Standing Committee Resolution No. 1196 dated 15 October 2012.

27. The petitioners state that in such circumstances by a letter dated 18 January 2014, the Municipal Commissioner requested the State Government to suspend the Standing Committee Resolution No.1196 as it was causing financial losses to the Municipal Corporation. In response, the State Government by letter dated 25 March 2014 sought clarification whether Resolution No.1196 was placed before the General Body. The municipal corporation by letter dated 19 May 2014, addressed to the State Government informed that Resolution No.1196 was not placed before the General Body and further admitted that fees at Rs.222 per sq. ft. p.a. were being recovered only because advertisers were paying the same.

28. On 18 November 2014, one Mr. Dilip Vasant Joshi filed Writ Petition No. 11709 of 2014 before this Court, challenging Resolution No. 6/402 dated 14 February 2013, being the decision of Municipal Commissioner to levy as to what was alleged as an exorbitant license fees. The Pune Outdoor Advertising

Association intervened in the said petition. During the pendency of the said proceedings, the legal position regarding tax on advertisements, underwent a change upon the Constitution (One Hundred and First Amendment) Act, 2016, whereby Entry 55 of List II of the Seventh Schedule, pertaining to taxes on advertisements, was omitted with effect from 16 September 2016 and advertisements were brought under the Goods and Services Tax ("GST") regime. It is stated that GST at the rate of 18% is being recovered from advertisers, of which 9% goes to the State Government, who in turn compensates local bodies such as the PMC, thereby ensuring that there is no loss of revenue on account of abolition of advertisement tax and local body tax.

29. The petitioners contend that thereafter in the month of February, 2018, the Association of Advertisers also filed Civil Application No. 565/ 2018 for intervention in Dilip Vasant Joshi (supra) and supported the challenge to the exorbitant rate of Rs. 222/- per sq. ft. p.a. charged by the municipal corporation towards the sky sign fees from the advertisers.

30. On 2 April 2018, this Court disposed of Writ Petition No. 11709 of 2014, observing that since the Commissioner had resolved to await the General Body's decision on the proposal dated 19 May, 2014, no hoarding structures shall be pulled down for non-payment or non-renewal of increased license fees till such decision was taken.

31. It is the petitioners' case that the Commissioner, instead of placing before the General Body, the correct question regarding approval of Standing

Committee Resolution No.1196, unilaterally issued an agenda dated 03 May 2018 proposing retrospective fixation of sky sign fees at Rs.222 per sq. ft. p.a. with effect from 01 April 2013, which according to the petitioners was contrary to the directions of this Court and the State Government.

32. On 22 May 2018, the petitioners contend that the Commissioner issued challans at Rs. 222/- per sq.ft. per annum despite the order dated 2 April 2018 passed by this Court. On 28 July 2018, the advertisers received letters that permissions were being cancelled due to non-payment, leaving them with no option but to pay the fees at Rs. 222/- per sq.ft. per annum under duress.

33. The petitioners contend that the act of the respondent-Commissioner of demanding license fees at Rs. 222/- per sq.ft. p.a., which was not approved by the Standing Committee and the General Body of the respondent-PMC was totally arbitrary, irrational and without authority of law, hence, null and void and in breach of Article 19(1)(g) of the Constitution of India. That the Municipal Commissioner had acted contrary to the order dated 2 April 2018 passed by this Court which observed that the respondent-Commissioner in his affidavit had stated that the Municipal Corporation shall await the General Body decision with respect to the proposal contained in letter dated 19 May 2014 towards levy of license fees. The petitioners contend that the Commissioner could not have moved an agenda for levy of the sky sign fees at the increased rate of Rs. 222/- per sq.ft. p.a. that too with retrospective effect from 1 April 2013. It is the

petitioners case that the agenda ought to have been "to approve or not to approve serial number 3 of Resolution No. 1196 passed by the Standing Committee on 15 October, 2012 of a hike of 15% to the existing sky sign fees".

34. Thereafter on 28 September 2018, the General Body passed the impugned Resolution No.667 dated, sanctioning advertisement fees at the rate of Rs.222 per sq. ft. p.a. with retrospective effect from 01 April 2013. It is the petitioners' contention that such retrospective approval cannot validate an otherwise illegal levy and that recovery of fees at the enhanced rate without statutory sanction and despite subsisting judicial and administrative restraints was arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India.

35. On the aforesaid backdrop, the case of the petitioners is that levy or recovery of advertisement fees at Rs.222/- per sq. ft. pa., apart from being exorbitant, is illegal and is being imposed without authority of law. It is also the petitioners' contention that such levy would be in breach of the orders passed by the State Government dated 9 August 2011 as also the orders passed by this Court accepting the statement as made on behalf of the PMC, that till the General Body approves the levy of Rs.222/- per sq. ft. p.a., the fees at the rate of Rs.222/- per sq. ft. p.a. would not be recovered. It is also contended that the PMC would not have any authority in law considering deletion of Entry 55 in List II by the 101st Constitution Amendment Act, to levy fees/tax on advertisement, and even for such reason the levy is contrary not only to the

provisions of the Maharashtra Municipal Corporation Act but is also violative of the fundamental constitutional norms. In these circumstances, the petitions are filed.

36. We note the prayers as made in the lead petition, i.e., Writ Petition No. 10684 of 2018 (Manoj Madhav Limaye & Ors. vs. The State of Maharashtra & Anr.), which reads thus:

> "a. It may be declared that, Municipal Corporation is not competent to levy Fee for the Licenses or the Written Permission to be issued u/s. 244 of the Maharashtra Municipal Corporation Act, in view of deletion of Entry 55 from the State List of the VIIth Schedule of the Constitution of India;
>
> [*]aa. It may declared that in view of deletion of entry 55 from the State list in seventh schedule of the Constitution the provisions of Section 244 & 245 of the Maharashtra Municipal Corporation Act have been rendered void and inoperative.
>
> b. It may be declared that, the Commissioner and the Municipal Corporation are not competent to charge Fee u/s. 386(2) for the Permissions to be issued u/s. 244 of the Maharashtra Municipal Corporation Act.
>
> ALTERNATIVELY
>
> c. That the Respondent No.1 be directed to prescribe parameters for the determination of the License Fees under the BPMC (Control of Advertisement & Hoarding Rules, 2003) in order to avoid colourable exorbitant taxation in order to protect advertisers' Fundamental rights under Article 14 & 19 of the Constitution of India.
>
> d. Petitioners are also seeking directions to Respondent No.3 that until Respondent No.1 amends the Control of Advertisement & Hoarding Rules, 2003, Respondent No.3 should place the proposal of the Standing Committee dated 15.10.2012 bearing Resolution No.1196, in respect of the revision in license fee for the sky signs advertising, before the General Body of the Respondent No.2 Municipal Corporation in consonance with the undertaking of Respondent No.3 Pune Municipal Corporation as recorded by the Hon'ble Bombay High Court in the order dated 02.04.2018 passed in Writ Petition No.11709 of 2014 with Civil Application No.565 of 2018 and also in consonance with the directions of the State Government dated 21.03.2018.
>
> e. That the Respondent No.2 & 3 be prohibited from acting upon the discriminatory, arbitrary & *ultra vires* proposal dt. 03.05.2018 submitted by

[*]********** This prayer is not pressed

Municipal Administration for the enhancement of the Advertisement License fee with retrospective effect.

f. That the Respondent No.2 be directed to revise the advertisement license fees in accordance with the Bombay Provincial Municipal Corporation (Control of Advertisement and Hoarding) Rules 2003 prospectively and in accordance with law.

g. Pending the hearing of this Writ Petition, Respondent No.3 be directed to place Resolution No.1196, dt. 15.10.2012 of the Standing Committee of PMC before the General Body of Respondent No.2 & be directed not to consider proposal dt. 03.05.2018 for in respect of advertisement license fees.

OR

h. To direct the Respondent No.3 to place resolution no.1196 dated 15.10.2012 of the Standing Committee of the Pune Municipal Corporation before the General Body of Respondent No.2 as directed by the Hon'ble High Court in Writ Petition No.11709 of 2014 and as directed by the State Government on 25.03.2014 and prepare the agenda for the meeting of General Body accordingly and not to consider agenda dated 03.05.2018 on the subject of license fee for outdoor advertising.

i. In the event of the General Body of Respondent No.2 considering the agenda dated 03.05.2018 in respect of the subject of escalation of the license fee for outdoor advertising, and in the event of approving the said proposal for escalation of license fee, the said decision i.e. Resolution No.667 dt. 28.09.2018, be quashed and set aside;

j. Pending the hearing and final disposal of this petition, the Respondent No.3 may be directed not to place the agenda dated 03.05.2018 in respect of the license fee of outdoor advertising which is in breach of the direction of this Hon'ble Court and direction of the State Government dated 25.03.2014 before the General Body of PMC.

k. Ad-interim and interim relief in terms of prayer clause (d), (e), (f), (g), (h) & (j) be kindly granted;

l. Such other and further relief as this Hon'ble Court deems fit in the facts and circumstances of the present case;"

37. The second Writ Petition being prominently argued and contested on behalf of the Pune Municipal Corporation is the writ petition filed by Balasaheb Shankarrao Ganjve & Ors. vs. State of Maharashtra & Anr., being Writ Petition No. 9448 of 2021 in which substantially similar grievances are raised in the

context of the levy and collection of sky sign / advertisement fees by the PMC, with an additional challenge to the levy and collection of "scrutiny fee". It is pointed out by the petitioner that, by letter dated 8 April 2021, a proposal was put up before the Commissioner of the PMC for levy and collection of scrutiny fee at Rs. 5,000 per application per year for new hoardings and for renewal of existing licenses, expressly recording that there is no provision in Sections 244 or 245 of the MMC Act or under the 2003 Rules for such a charge, so as to justify the amount only on the basis of salaries of employees who would process such applications. By letter dated 30 April 2021, the Chief Law Officer opined that no approval of the Standing Committee or General Body was required for levy and collection of such scrutiny fees and that the same could be levied administratively by approval of the Commissioner alone. This was followed by another proposal dated 17 June 2021 and Resolution No. 6/230 of even date passed by the Commissioner of PMC, approving levy of scrutiny fees at Rs. 5,000 per application per year for new hoardings and renewal of existing licenses without reference to the Standing Committee or General Body. We also note the prayers as made in Writ Petition No. 9448 of 2021 (**Balasaheb Shankarrao Ganjve & Ors. vs. State of Maharashtra & Anr**.), which read thus:

> "a) This Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ or Order or a Declaration that the levy and collection of fee @ 222 per square foot per year as fixed by the Commissioner of Respondent No. 2 and its ex-post facto approval by the General body by Resolution No. 667 dated 28th September 2018, with effect from 2013-14 till date be declared to be arbitrary, excessive, baseless and without or in excess of Jurisdiction and without Authority of Law;

b) This Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ or Order or a Declaration to the effect that the increase in rate of fee at proposed by the Commissioner of Respondent No. 2 can only take effect from date on which General Body approves the same, if it is held by this Hon'ble Court that such rate of Rs. 222 per square foot per year is not arbitrary, excessive or baseless;

c) This Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ or Order or a Declaration quashing ex-post facto approval by General Body by its Resolution No. 667 dated 28th September 2018, of levy and recovery of fee as being without or in excess of Jurisdiction and without Authority of Law;

d) This Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ or Order or a Declaration that post 101st Amendment to the Constitution by which Entry 55 of the List II of the Seventh Schedule was omitted, levy and collection of fee / tax or any impost, as in the instant case, is without Jurisdiction and without Authority of Law;

e) This Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ or Order or a Declaration that the proposal to levy Scrutiny fee in terms of Resolution No. 6/230 dated 17th June 2021 and implementation thereof, without sanction of the General Body, is without Jurisdiction and without Authority of Law;

f) This Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ or Order or a declaration that sub-section 2 of Section 386 of MMC Act is violative of Article 243X of the Constitution of India and therefore is ultra-vires to Article 243X and be read down;

g) This Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ or Order or a direction to Respondents to refrain from taking any steps towards recovery of fee @ Rs. 222 per square foot per year and recovery of scrutiny fee of Rs. 5,000.00, and stay the implementation of Resolution No. 667 dated 28th September 2018 and Resolution No. 6/230 dated 17th June 2021, pending the final disposal of the instant Petition;"

38. Before we proceed further, we may observe that the petitioners have not pressed any challenge to the validity of provisions of Sections 244 and 245 of the MMC Act. The prayers in the other petitions are also on similar lines.

39. The third Writ Petition (No. 6882 of 2022) argued on behalf of **Pioneer Publicity Corporation Pvt. Ltd.**, which is also filed against the Pune Municipal Corporation. This Writ Petition was filed on 24 May 2022, in which similar

grievances are raised regarding the levy and collection of sky sign/ advertisement fees by the PMC, together with a further challenge to the exercise of authority of the Administrator, who according to the petitioner was acting simultaneously as Municipal Commissioner, Standing Committee, and General Body. The Petitioners contend that by proposal dated 09 December 2022, the Administrator, acting in the capacity of Municipal Commissioner, recommended a 10% retrospective increase from 2013–14 on the rate of Rs. 222 per sq.ft p.a., along with a further 50% increase said to be under Rule 20 of the 2022 Rules. The Petitioners contend that the base rate of Rs. 222 per sq.ft p.a., fixed under Resolution No. 667 dated 28 September 2018, is itself the subject matter of challenge in separate proceedings pending before this Court, and therefore could not have been adopted as the foundation for further retrospective enhancement. It is contended that thereafter, by Resolution No. 1253 dated 16 December 2022, the Administrator, acting as the Standing Committee, approved the said proposal, followed by Resolution No. 338 dated 28 December 2022, passed by the Administrator in the capacity of the General Body, revising advertisement fees retrospectively to Rs. 580, Rs. 640, and Rs. 700 per sq.ft per year for the years 2018, 2019, and 2020 respectively, and to Rs. 290, Rs. 320, and Rs. 350 per sq.ft per year for newly added village areas. It is contended that subsequently, by communication dated 22 February 2023, the Additional Municipal Commissioner issued a correction to Resolution No. 338, removing the reference to the 50% increase while retaining the 10% retrospective enhancement.

According to the Petitioners, the very need for such a correction would demonstrate that the impugned resolutions were arbitrary, procedurally irregular, and indicative of non-application of mind. In such context, the petitioner in this case has made the following prayer:

> "(a5) That it be declared that revised Advertisement fees fixed under the impugned Resolution dated 28th Dec. 2022 (Exhibit-FF) unilaterally by the Administrator of Respondent no.1 Corporation in his capacity as "Municipal Commissioner", "standing committee" and "general body" is in violation of Rule 20 of the Advertisement Rules, 2022, which prescribe that the fee should not exceed "reasonable limit of expenses" for issuing the license."

PART : B

Case of the Pune Municipal Corporation in the Reply Affidavit

40. The municipal corporation in contesting the first petition has filed a reply affidavit dated 1 October 2021 of Shri. Vijay Bhaskar Landge, Deputy Municipal Commissioner, Sky sign Department, Pune Municipal Corporation.

41. At the outset, the affidavit states that the petitioner has raised two-fold challenges; firstly, the competence of the municipal corporation to levy any fees for the licenses or written permissions towards the display of Sky Signs within the municipal limits, in view of the introduction of Goods and Services Tax laws, and more particularly in view of Entry No. 65, and deletion of Entry No. 55 from the State list of the Seventh Schedule of the Constitution of India; and secondly for directions in the alternative, for a reduction in the license fees considering the administrative expenses.

42. In regard to the first challenge, the reply affidavit contends that although the larger issue concerns the municipal corporations in the State of Maharashtra, in the absence of any specific provision / directions by either the Central or the State Government, towards the grant of exemptions, the petitioners' case cannot be accepted on mere presumptions. It is contended that it is a settled position in law that for deletion of any item from the levy of tax, charge and/or fee, express provisions made by the legislature are required to be followed, and hence, the petitioners' case ought not to be accepted on the first issue.

43. That similar issues were raised by the Sky Sign Associations in Writ Petition No.4538 of 2019 filed before the Gujarat High Court, which was finally dismissed, wherein it was held that the license fee for advertisement hoardings collected by the Municipal Corporation on the private properties is not a tax but is a "regulatory fee". It is next contended that the challenge raised in the said proceedings before the Gujarat High Court, was also to a Resolution No.928 dated 28 November 2018 and the Resolution dated 24 December 2018 passed by the Standing Committee of the Ahmedabad Municipal Corporation, approving the revised rates of license fees for advertising hoardings in private properties.

44. Article 243X and Article 243ZF and relevant entries in List II of the Seventh Schedule of the Constitution are required to be considered, as the provisions confer power on the municipal corporations to impose taxes, and funds of the municipalities.

45. In regard to the petitioner's contention that fees for advertisement and sky signs charged by the municipal corporation are not proportionate to the services etc, it is stated that it is a settled principle of law that strict fulfillment of *quid pro quo* is not necessary in such cases. It is stated that a portion of the funds collected by way of fees is utilized for the purpose of maintaining the regulatory machinery by the municipal corporation. Besides this, it is stated that funds can also be used for the purpose of discharge of other statutory duties / obligations of the municipal corporation towards the citizenry in general and the residents of the area within the jurisdiction of the municipal corporation. It is stated that the funds are also required for the purpose of infrastructural development which includes commercial development, thereby creating potential for exhibiting attractive advertisements / signboards. It is next stated that the companies which put up the advertisements can get maximum commercial benefits from such development being undertaken by the municipal corporation and the companies whose advertisements would be put up on such sky signs would be ready to pay hefty rentals only if they find that their advertisements are on such prominent places. It is next contended that the position in law distinguishing "tax" from "fee" is well-settled and that the amounts that are being charged and recovered from the petitioners are in the nature of 'Fee" and not "Tax", and hence the contention as raised by the petitioners on the assumption that the same is in the nature of tax is denied by the municipal corporation.

46. In regard to the contention of the petitioners of reimbursement to the State from the GST collection, it is stated that the municipal corporation had received a letter from the Urban Development Department of the State Government to submit its detailed report on the letter dated 4 September 2018 submitted by one of the Sky Sign Advertisers, M/s. Supreme Site. It is in such context, it is contended that in response to the said letter, the municipal corporation by its letter dated 27 December 2018 has stated that what is omitted due to deletion of Entry No. 55 are the taxes on certain advertisements but not the fees contemplated under Section 244 and Section 245 of the MMC Act. It is stated that for this reason the levy of such fees continues to be valid. It is next contended that the case of the petitioners, that while adopting or accepting the application of the GST Act in the State of Maharashtra, the State legislature has exempted or omitted the fees leviable under Section 244 and Section 245 of the MMC Act is misconceived, when various other taxes leviable were exempted even by the State Government or omitted on the application of the Goods and Services Tax Act. It is next contended that the service tax or such other taxes on the advertisements were omitted by deletion of the entries in List II of the Seventh Schedule of the Constitution, and not the administrative charges or fees levied under the MMC Act. It is stated that the MMC Act is a complete Code in itself, which provides for the powers and duties of the Municipal Commissioner and also lays down the procedure for implementation of the said provisions. In this context, a reference is made to Entry No.55 in the State List (List II of the

Seventh Schedule) which provides "Taxes on Advertisements" other than advertisements published in the newspapers (and advertisements broadcast by radio or television).

47. It is next contended that the Urban Development Department of the Government of Maharashtra by its letter dated 4 December 2018, also asked the Pune Municipal Corporation to submit the record and explanation as to whether the Pune Municipal Corporation gets any grant on account of the GST paid by the advertisers from the State Government and as to whether the Pune Municipal Corporation can charge GST after implementation of Local Body Tax **(LBT)** as well as the Goods and Services Tax Act. The said letter was replied to by the municipal corporation after taking the opinion of the Chief Account Finance Officer (Revenue), informing the State Government that the fee charged under Section 244 and Section 245 of the MMC Act is different from any direct or indirect tax, and that such charges are not included in any kind of taxes but are a separate source of income of the Local Self Government.

48. It is next contended that there is a distinction between 'a fee' and 'a tax', and the fees for license and fees for services rendered are contemplated as different kinds of levy. It is stated that fees for license are not intended to be fees for services rendered, which is apparent from the consideration of Article 110(2)* and Article 199(2)* of the Constitution. It is contended that, in other words, a

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********** Art. 110 : Definition of "Money Bills" (Part V The Union)

********** Art. 199 : Definition of "Money Bills" (Part VI The States)

distinction has to be made between fees for services rendered and fees which are regulatory.

49. It is hence, submitted that the municipal corporation's answer to the State Government by the letter dated 27 December 2018 was to the effect that, the fees are levied as per Section 244 and Section 245 of the MMC Act and it is not a tax or any tax that is exempted as contended by the petitioners. It is categorically stated that in the present case, the fees charged are not just for services rendered but they also have a large element of a 'regulatory fee', levied for the purpose of monitoring the activity of the licensees to ensure that they comply with the terms and conditions of the license and also observe the conditions of Hoarding Policy of the State contemplated under the 2003 Rules.

50. It is next contended that the case of the petitioners in regard to any retrospective levy of license fees at the rate of Rs.222/- per sq. ft. p.a. from the year 2013 is not correct, and is denied. In such context, it is contended that the Standing Committee Resolution No. 1196 dated 15 October 2012 was not acceptable to the administration of the Pune Municipal Corporation, and hence, such resolution was immediately referred to the State Government under section 451 of the MMC Act, invoking the State Government's power to suspend or rescind any resolution or order of the municipal corporation or other authority in certain cases. Such reference was made by the Municipal Commissioner by letter dated 18 January 2014. It is stated that even the proposed rate of Rs. 222/- per

sq.ft. p.a. was discussed with the members of the Pune Outdoor Advertising Association in the office of the then Municipal Commissioner, in the meeting held on 10 September 2012. It is stated that the Chairman, Vice-Chairman and Executive Committee members of the Pune Outdoor Advertisers Association were also present in the said meeting. The affidavit further states that the members of the said association accepted the said rate and conditions in the tender floated for different zones, which was in fact the subject matter of Writ Petition No. 5055 of 2011 and other connected Writ Petitions as well as the suits in which disputes relating to sky sign permissions were raised wherein the parties were not to precipitate any further. It is contended that such fact has been suppressed by the petitioners in the writ petition.

51. It is further stated that the petitioners have tried to take advantage of the subsequent Resolution No.1196 of the Standing Committee by which the rates of Rs. 85/- per sq. ft. p.a. with 15% rise every year instead of Rs. 222/- per sq. ft. p.a. was approved by the Standing Committee referring to the minutes of the meeting dated 14 September 2012.

52. That the letter of the municipal commissioner dated 18 January 2014 invoking Section 451 of the MMC Act was pending consideration of the State Government, during the pendency of the earlier Writ Petition No.11709 of 2014 filed by one Dilip Vasant Joshi (supra). It is stated that on such petition on 23 March 2018, an order was passed by the Division Bench of this Court, calling

upon the State Government to inform the Court about the status of such representation of the Municipal Commissioner. In such context, the State Government by its letter dated 21 March 2018 directed the Municipal Commissioner to place his proposal before the General Body and then revert back to the State Government. It is therefore submitted that the representation made by the Municipal Commissioner dated 18 January 2014 was pending before the State Government till 21 March 2018 and it was neither allowed nor rejected by the State Government, but the same was returned and/or remanded to the Municipal Commissioner for placing it before the General Body. It is therefore contended that the proceedings were pending and finally the rate implemented by the Municipal Commissioner continued to operate till its approval by the General Body of the municipal corporation on 28 September 2018.

53. It is next contended that as per the directions of the State Government dated 21 March 2018 (supra), a docket was placed by the Municipal Commissioner before the General Body of the municipal corporation with detailed explanation of the dates and events and the development from the year 2014 to 2018. Such proposal/request was made to the General Body of the municipal corporation for granting sanction to the proposal dated 18 January 2014 and for an *ex-post facto* approval to the amounts received at Rs.222/- per sq.ft. p.a. towards the advertisement fees, which was levied as per the mutual

consent of the members of the said association and the municipal corporation administration. On such backdrop, the reply affidavit of the municipal corporation contends that it was not correct on the part of the petitioners to say that the license fee is being charged retrospectively. It is stated that the record would show that the proceedings for approval of the rate at Rs.222/- per sq. ft. per annum were pending throughout and it is not the case that some new decision was taken by the municipal corporation and applied at any previous date directing its implementation and recovery after such decision, for the first time.

54. It is next contended that the present petitioners as well as other advertisers have paid the mutually agreed fees of Rs.222/- per sq. ft. per annum from the date of the meeting dated 10 September 2012 and 12 September 2012. It is stated that such circumstance has relevance as the rate of Rs.222/- per sq. ft. has also a bearing in view of the tender floated by PMC for four zones under the advertising policy framed in the year 2010. The PMC had received the offer of Rs.222/- per sq. ft. p.a. which was also made by the members of the said association only. It is hence contended that all the members of the association unanimously agreed for the said rate, however, insisted that resolution No.479 dated 18 February, 2011 passed by the General Body of the PMC be not implemented. Under such tender, only four authorized and successful bidders were allowed to display the sky signs all over the city. It is contended that all such information was placed before this Court in the proceedings of Writ Petition

No.3089 of 2011 (Pune Outdoor Advertising Association vs. The Pune Municipal Corporation & Anr.).

55. It is next contended that the 2003 Rules empower the Municipal Commissioner to decide the rate of license fees and / or fees to be collected from the agency from time to time. It is stated that since it was a policy decision in regard to the rates, the same was put up for approval of the General Body of PMC. In regard to the challenge to impugned resolution No. 667 dated 28 September 2018 passed by the General Body of the PMC, it is contended that the municipal corporation is competent to pass such resolution, which was binding on all advertising agencies, considering the applicability of Sub-Rule (9) of Rule 4 of the said rules. In such context, it is further stated that Chapter VIII of Appendix-2 of the 2003 Rules and sub rule (5) of Rule 4 thereunder provided that the license fees shall be collected from the agencies as per the rate approved by the Municipal Corporation from time to time. It is stated that the Commissioner has the authority to decide the rate and seek approval from the general body of the Municipal Corporation. It is stated that accordingly, the Municipal Commissioner arrived at a decision dated 18 September 2012 and fixed the rate at Rs. 222/- per sq. ft. per annum, however, in view of the subsequent Standing Committee Resolution dated 15 October 2012, the Municipal Commissioner was constrained to make a representation dated 18 January 2014 under Section 451, on which no decision was taken by the State

Government and it was kept pending till 2018 and finally the said decision was approved by the General Body of the Municipal Corporation on 28 September 2018. It is, therefore, contended that what was approved by the general body was the original decision of the Municipal Commissioner dated 18 September 2012. It is hence contended that the Municipal Commissioner had decided the rate of Rs.222/- per sq. ft. p.a. on 14 February 2013 which was approved by the General Body of the Municipal Corporation on 28 September 2018.

56. It is next contended that the petitioners' case in the additional affidavit claiming reimbursement of the license fees, if any, is not tenable as the levy is under Sections 244 and 245 of the MMC Act, as all advertising agencies were voluntarily paying the license fees as mutually decided with the members of the association in the meetings held on 10 September 2012 and 12 September 2012. Hence, there was no question of the petitioners claiming any reimbursement. It is stated that although very few petitioners have filed the present petition, the outstanding amount of license fees payable to the Municipal Corporation has gone up to an amount of approximately Rs.109 Crores, which is hampering the municipal corporation's projects of public interest. It is stated that the case of the petitioners that such amounts are not paid, as these vendors have not paid the same, cannot be a reason to default in payment of the license fees, which has brought about a situation that funds legitimately entitled to the municipal corporation in fact are being utilized by the private parties. It is contended that

there was no stay granted by this Court and that the concessional statement as made before the Court was for a very short period and that too only in respect of the petitioners and not others. Hence the petitioners and all the advertisers are bound to make the payment of dues of the license fees with statutory interest on amounts due as per provisions of law. On such case, it is prayed that the petitions be dismissed.

PART : C

Case of the Petitioners in the Rejoinder Affidavit

57. A rejoinder affidavit to the reply affidavit filed on behalf of the PMC is filed on behalf of the petitioners. It is contended that the municipal corporation in the reply affidavit has not dealt with the specific case of the petitioners in paragraph 5(B), (C) and (D) of the petition wherein the petitioners contended that neither the provisions of the MMC Act nor the 2003 Rules framed under the Act, permit the license fee for outdoor advertising. It is further stated that the Municipal Commissioner, staff and councillors are not experts in the advertising field for taking decisions about the determination of regulatory license fee. The petitioners' specific case is that the Commissioner has been given unguided power under the 2003 Rules to fix license fees, which has not been answered in the reply affidavit, thus the case of the petitioners to that effect is deemed to have been admitted by the municipal corporation. It is next contended that the petitioners' plea that the quantum of license fee was exorbitant, amounting to an

unreasonable restriction on the fundamental right of the petitioners to do business under Article 19(1)(g) of the Constitution, has not been dealt with by the municipal corporation. Further, the rejoinder contends that the comparison of computation of license fee for outdoor advertising with the computation of property taxes and computation of other license fees levied by the municipal corporation in respect of various other activities has not been dealt with by the municipal corporation. Hence, the case of the petitioners of unreasonably high quantum of the license fee for hoardings is admitted by the municipal corporation.

58. In regard to the case of the municipal corporation on the applicability of the provisions of the Constitution, the provisions of the MMC Act and the 2003 Rules is concerned, it is contended that only by an express provision in the legislation, can an exemption from the levy of Tax, Charge or Fee be claimed. It is stated that after the omission of Entry 55 in List II, by the 101st Amendment to the Constitution, the Municipal Corporation does not have authority to levy license fee on advertisement on hoardings. It is contended that after implementation of the GST laws, it is for the municipal corporation to substantiate that the municipal corporation is not being compensated by the State Government for the loss of advertisement license fee. It is next stated that after the omission of Entry 55 in list II, there is no question of the municipal corporation exercising any power to levy advertising fee. It is contended that the petitioners are in fact paying GST to State Government for outdoor

advertisement which is under the head "Sale of Other Advertising Space or Time".

59. Further the case of the municipal corporation placing reliance on the decision of the Gujarat High Court is denied by the petitioners to contend that the said decision confirms that the fees can be levied only after it is approved by the general body and not prior thereto as in the present case, the sanction was granted by the general body on 28 September 2018, whereas the enhanced fees have been recovered effectively from 2013 i.e. from the date of proposal to increase the license fee by the Commissioner.

60. It is next contended that the municipal corporation has failed to bring on record the basis and reason for the increase in the rate of license fees from Rs. 85/- per sq. ft. p.a. to Rs. 222/- per sq. ft. p.a., more particularly for increasing the rate for non-illuminated hoardings from Rs. 41/- per square feet per annum and for illuminated hoarding from Rs.85/- per square feet per annum to Rs. 222/- per square feet per annum which is approximately 440% and 161% respectively. It is contended that the municipal corporation has not come out with any data to demonstrate and justify as to how the rate of Rs. 222/- per sq. ft. p.a. has been arrived at. It is next contended that there are two types of hoardings depending on location, namely, (i) on municipal corporation's property and (ii) on private properties. In such context, the municipal corporation has failed to bring on record as to how the license fee for both types is the same. This,

according to the petitioners, is an arbitrary and unreasonable decision of the municipal corporation.

61. The case of the municipal corporation referring to the applicability of Articles 243X and 243-ZF of the Constitution of India is denied by contending that such articles do not enlarge the scope and powers conferred by entries in list II of the Seventh Schedule to the State Legislature.

62. On the case of the municipal corporation of a *quid pro quo* being not necessary for valid imposition of fee and that the amount being recovered from the petitioners was in the nature of fee and not tax, it is contended that even assuming that the contention of the Municipal Commissioner is that the strict fulfillment of quid pro quo is not necessary, it cannot be taken to mean that the municipal corporation is not required to prove any correlation between license fees and the services rendered or administrative costs incurred for monitoring and related services. It is contended that some co-relation has to be established by cogent evidence, even if exactitude is not to be established. It is next contended that even if license fees are not construed as Tax, nonetheless, it would be required to be shown to fit in the concept of "fee" as interpreted and repeatedly reiterated by the Courts.

63. In regard to the municipal corporation's case that entry 55 has been omitted which relates to tax on certain advertisements, however, stating that the levy of fee for permissions under Sections 244 and 245 of the MMC Act has not

been deleted and that such a position ought to be accepted as the correct legal position, it is the Court which would decide whether the amount collected from the petitioners is fee or tax. Also, the case of the municipal corporation that such amounts which would be collected from the advertisement fees would be available to the municipal corporation to be spent by the municipal corporation in discharging its other statutory duties and obligations towards the citizens, within the municipal jurisdiction is a position contrary to law. It is contended that revenue collection is not the purpose of imposition of fees. It is stated that it can be regulatory or for service rendered or for both. It is contended that from the reply affidavit it is also seen that the case of the municipal corporation, is that the amounts which are charged towards advertisement fees and for granting permissions under Section 244 of the MMC Act are in fact for revenue collection, hence such collection amounts to tax, which cannot be levied by the municipal corporation.

64. It is next contended that the permissions under Section 244 and 245 of the MMC Act are granted for a period of two years and therefore, during the pendency of the petition, the licenses of the petitioners became due for renewal, at which point of time, the municipal corporation decided to renew the licenses for a period of two years by charging reasonable scrutiny fee proportionate to the services rendered and expenses incurred by the municipal corporation. It is stated that accordingly on 08 April 2021, the Sky sign department through

Deputy Commissioner Vijay Landge had filed an affidavit in reply in this petition *inter alia* stating that a proposal was submitted to the Municipal Commissioner by proposing "one day pay of the concerned officers and of employees who are involved in licensing process as the "scrutiny charges" for grant or renewal of hoarding and sky sign licenses at Rs.5000/- to be paid as uniform renewal or license charges per year. It is stated that in such proposal, it was incorporated that on receipt of any application for renewal of license or for grant of new license, such application was being recorded in the inward register. It is stated that however, things have changed after one Yashwant Mane took over as the Deputy Commissioner, who filed reply affidavits in the companion petitions wherein he contended that the municipal administration incurs about Rs. 8592 crores every year in salary and it is not possible to sheer off all other factors and limit oneself to the licensing department or to one particular hoarding related activity of that department. He contended that licensing is a process of regulation which involved management approval and consistent supervision. The petitioners contend that this is not the correct contention as urged on behalf of the municipal corporation, the reason being that the Government of Maharashtra had already promulgated the Maharashtra Municipal Corporations (Regulation and Control of the display of sky signs and advertisement) Rules, 2022 on 09 May 2022. Hence, presently for determination of license fee or fee for renewal of license, Rule 20 is very much in the field. Rule 20 of such rules provides that a license fee or regulatory fee should be fixed by the Commissioner with the

sanction of the municipal corporation and the fee should not exceed the reasonable limit of expenses for issuing of license. It is stated that the reasonable limit of expenses for issuance of license would not include the expenses of salaries and wages of all the municipal employees as tried to be contended by the municipal corporation. Once the renewal fees for licenses were decided to be fixed at Rs.5,000/-, no further regulatory fees for license could be charged.

65. It is next contended that service tax and other taxes on advertisements being omitted by deletion of Entry 55 From List II of the Seventh Schedule of the Constitution, however the administrative charges or fee under the MMC Act being not deleted, does not mean that under the guise of administrative/regulatory charges, the legislature had permitted the municipal corporation to collect revenue in such indirect manner. It is next contended that the case of the municipal corporation that the rate proposed by the municipal Commissioner at Rs. 222/- per sq. ft. per annum for sky sign/hoarding licenses is arbitrary, as no decision was taken in the meeting dated 10 September 2012 and in fact, the minutes of the said meeting indicate that after collecting the necessary information it was to be decided as to whether advertisers should pay the license fee at the rate of Rs. 85/- per sq. feet p.a. or Rs. 222/- per sq. feet. p.a. It is stated that non-approval of the Corporation on account of hike in fees by the municipal corporation has brought about a situation, that the rate of fees was non-existent. It is stated that the proposal dated 25 April 2013 submitted by the Municipal

Commissioner was sought to be brought into effect without following the due process of law, prescribed in Section 386(2) requiring sanction of the municipal corporation, which was a mandatory requirement.

66. It is next contended that to secure renewal of license fee and to save their businesses, the petitioners under undue pressure, duress and threat of demolition were compelled to pay the license fee at the rate of Rs.222/- per sq. ft. p.a. from 01 April 2013. It is stated that the payment of license fee at the rate of Rs.222/- per sq. ft. p.a. thus was not by mutual consent. The license fee hence was being unauthorisedly recovered. For such reasons, the license fee paid by the petitioners is required to be reimbursed to them and they also deny the contention of the municipal corporation that the license fee at the rate of Rs.222/- per sq. ft. p.a. was by mutual consent. It is next contended that no amount of consent can validate illegal recovery of unreasonable and unauthorized regulatory fee. Even otherwise, due to the general body of the municipal corporation not having approved such fees, the same could be collected only from the date of approval of the general body i.e. with effect from 28 September 2018.

67. It is next contended that the municipal corporation's reliance on the decision of the Gujarat High Court in **Selvel Media Services Pvt. Ltd. vs. Municipal Corporation of the City of Ahmedabad**[2] is misconceived, as the levy even otherwise could have been effected only after the municipal corporation

[2] R/SCA/4538/2018

approved the rates. Hence, there was no question of retrospective ratification, as there is no provision under the MMC Act authorizing retrospective levy. It is next contended that the respondents have also failed to state any basis or any provision of law as to how the increase in fees can be effectuated from the date of the proposal of the Commissioner, when the Municipal Corporation approved the same after a long gap of several years. It is contended that if such course of action is approved, then it would create uncertainty in the applicable fee structure at a given point in time, hence such course of action is arbitrary. It is further submitted that the retrospective levy of fee can only be permitted by the express provision in the Act and not by any delegate functioning under the MMC Act. The petitioners contend that for such reasons, the Writ Petitions need to be allowed.

PART : D

Case of the Pune Municipal Corporation in sur-rejoinder

68. An affidavit in sur-rejoinder is filed on behalf of the Pune Municipal Corporation to the rejoinder affidavit filed by the petitioners (supra). The first contention as urged is to the effect that the petitioners have never challenged the authority of the municipal corporation to grant license, as also to change the fees prescribed under the 2003 Rules. It is further contended that the petitioners have "voluntarily paid" the license fees, charged by the PMC until 2018, by applying for grant/renewal of license as the case may be.

69. It is contended that the 2003 Rules clearly specify that the Municipal Commissioner can change such fees as approved by the municipal corporation, the rates of which are proposed by the Municipal administration after various considerations including the salaries of the employees from different departments involved in various works related to the sky signs, namely, site visits, structural stability, staff for particular ward officers, building permission, Development Plan, Assistant Commissioners; the Garden Superintendent; Ward Officers; Superintendents of Licenses; Deputy Municipal Commissioners; Legal department, Additional Municipal Commissioners, and so on. It is stated that various aspects have to be taken into consideration, namely, heritage, civil aviation, defence establishments, environment, encroachment and ecologically sensitive zones etc. the fire brigade and more and all such heads are required to be accounted for the municipal expenditures to be incurred. It is further stated that Writ Petition No. 10684 of 2018 has been filed as an afterthought only because the municipal corporation was considering the revision of fees on account of the fact that more than five years period has passed. It is contended that the escalation of the several prices, as reflected in the budget is also one of the considerations for the revision. It is hence contended that the petitioners allegation of any exorbitant increase of the license fees is factually without any basis. It is further stated that the petitioners are not considering the hike in prices, they charge to their customers in opposing the revision of license fees.

70. The petitioners' contention in para 5 of the rejoinder about the computation of property tax and license fees relevant for permissions sought for erecting sky sign sites on residential or commercial purposes etc. is misconceived. It is stated that the basic purpose of sky sign can never be compared with properties either residential or commercial. It is next contended that the license fee as levied by the Municipal Corporation is a regulatory fee, hence the *quid pro quo* principle has no application. License fee is altogether different from hoarding tax. It is further contended that as in the entire state of Maharashtra no tax on hoarding was levied, deletion of entry no 55 has no effect in the State of Maharashtra. Something which was not in existence cannot be deleted or exonerated.

71. It is next contended that, there has been no revision in the rates of license fee for a long period and that even in the present case, it can be seen that for the last few years the petitioners have not paid license fees and now the time for further revision is also over. It is contended that the petitioners are not referring to the escalation of cost while opposing the enhancement of license fees, is a vital factor, as Pune is the biggest metropolitan city after Mumbai and funds required by the municipal corporation for the functioning of the PMC need to be generated from the different sources for a planned development. It is stated that due to the planned development of the city, the population and businesses in the city have nourished well, which is resulting in demand for increasing services

from the local authority, and on comparing the rates of the PMC, they are much on the lower side i.e. 50-60% lesser.

72. It is next contended that the petitioners' case in regard to the scrutiny charges cannot be accepted as the scrutiny charges are levied even if the proposal is rejected and license fees are levied only when the proposal is approved and permission to erect sky sign is granted. It is next contended that the case of the petitioners that payment of scrutiny fee and renewal charges are the same is misconceived and untenable, as further the inspection being undertaken by the PMC is a regular process and is required to be undertaken throughout the period of license. It is stated that even at the time of renewal, for verifying the structural stability and other aspects in undertaking such construction are required to be followed in undertaking such construction, hence the petitioners cannot dispute the scrutiny and renewal fees.

73. It is next contended that the reply affidavit filed on behalf of the municipal corporation is based on the material available with the PMC and that while preparing the Budget, the activity of all the departments was taken into consideration. As regards the contention of the petitioners on the provisions of Rules of 2022, it is stated that regulatory fees are fixed within the proper limit of expenses for issuing the licenses. It is next contended that the licenses do not attract *quid pro quo,* hence, there is no bar on fixing the license fees which are in the nature of regulatory fees i.e. fixed by taking into consideration all the relevant

aspects. It is contended that the Rules do not prohibit the municipal authorities from taking into consideration such other aspects. It is therefore prayed that the writ petition is devoid of any merits and deserves to be dismissed.

PART : E

Case of the petitioners in the Additional Affidavit

74. An additional affidavit on behalf of the petitioners of Mr. Vijaykumar Shivram Gokhale, dated 24 February 2025 is filed *inter alia* contending that some developments have taken place during the pendency of the petition, which were necessary to be brought on record. It is stated that the Pune Outdoor Advertising Association, of which the petitioners were members, alongwith one member namely Santosh Ranade, had filed an appeal under Section 451 of the MMC Act seeking suspension/cancellation of Resolution No.667 of 2018 dated 28 September 2018. It is stated that the said appeal was filed with the State Government on 5 February 2019 and the same was pending before the State Government. It is stated that the petitioners had addressed reminders dated 14 October 2019, 22 November 2021 and 18 May 2022, to the State Government informing it of the pendency of the said appeal. It is stated that the State Government has not considered even the interim prayer made in the appeal. Also no date for hearing of the appeal was fixed till the filing of this affidavit. It is stated that since there is an interim protection in the group of writ petitions restraining the municipal corporation from taking coercive action against the

members of Pune Outdoor Advertising Association, the petitioners were not seriously prejudiced by the said inaction on the part of the State Government to decide the appeal.

75. It is contended that by a communication dated 24 March 2023 issued by the State Government, the Commissioner of Pune Municipal Corporation was directed to renew the licenses of the members of the Pune Outdoor Advertising Association by charging license fee at the rate of Rs.111/- per sq. ft. p.a. for the year 2023-24 and 2024-25. It is stated that in these circumstances, it was desirable that the appeal under Section 451 of the MMC Act is decided immediately and/or the prayer for interim relief is considered and decided before the fresh renewal date of advertisement licenses. It is stated that after the hearing of the present petition commenced, the petitioners have received documents, namely, a recent resolution passed by the Nagpur Municipal Corporation which has a direct bearing on the decision in the present matters. It is stated that considering the cost incurred by the Sky Sign & Licensing Department for issuing license and for the control and regulation of the outdoor advertising activities and considering the license fees levied by other municipal corporations in the State of Maharashtra, the Administrator decided to revise the license fee applicable on 1 April 2023, by enhancing it, and accordingly, the Administrator while discharging the functions of the Municipal Commissioner and that of the General body of the Municipal Corporation Nagpur, itself has passed a Resolution No.80 on 12 August 2024 for the financial year 2023-2024, with

retrospective effect from 1 April 2023 and the following enhanced rates of license fee for sky signs were provided for:

* For Advertisement on hoarding or wall posts or in the form of non-illuminated sky-signs – **Rs.86 for a space upto 1 sq.mtr**.

* For fixed illuminated sky-sign and advertisements-

Rs.130 for a space upto 1 sq.mtr.

* For fixed Lit/ Non-illuminated sky-signs Gantry Gate advertisement –

Rs.260 for a space upto 1 sq.mtr.

76. It is further contended that the members of Nagpur Advertisers Association protested and objected to the enhanced rates of license fee and the retrospective applicability by a letter addressed to the then Deputy Chief Minister, and Guardian Minister, Nagpur District. On the said protest letter, the Deputy Chief Minister directed the Municipal Commissioner, Nagpur Municipal Corporation, that the new rates of the license fee should be suspended, and the old rates of license fee should continue to be levied. It is stated that as per the said directions of the Deputy Chief Minister, the Nagpur Municipal Corporation passed a new resolution bearing Resolution No.107 dated 11 October 2024 and suspended its earlier Resolution No.80 dated 10 August 2024 prescribing enhanced rates of fee with the retrospective effect. It is stated that by such resolution, the old rates of license fee for the sky-signs which were prevailing before 1 April 2023 were revived. It is stated that further by the said resolution,

the Administrator granted approval for the adjustments of monies paid by advertisers as per Resolution No.80 against the fee for the subsequent period.

77. It is next contended that a similar representation/Appeal under Section 451 of the MMC Act was made on behalf of the Association of Advertisers in Pune against the retrospective resolution dated 28 September 2018 of the Pune Municipal Corporation enhancing / approving the license fee and the same was pending before the State Government. It is stated that as the validity of retrospective resolution has now been decided by the State Government in the Nagpur Municipal Corporation case, however, insofar as the Pune Municipal Corporation is concerned, the appeals are kept pending. It is stated that the charges demanded as well as illegally recovered by the Pune Municipal Corporation from the year 2012 are much higher than that of the Nagpur Municipal Corporation, and hence, it was necessary that the appeal of the petitioners needs to be decided, as there was discrimination against the Pune Advertisers. The affidavit also further states that in regard to the Resolution dated 10 June 2024 of the Sangli Miraj and Kupwad City Municipal Corporation, whereby the said municipal corporation has *inter alia* set annual fix fee of Rs.20000/- for existing hoardings with an escalation of 10% every three years, which is stated to be in line with the 2022 Rules which in effect prohibit Municipal Corporation from charging license fee/ regulatory fee exceeding reasonable limit of expenses of issuing of a license. It is thus necessary that Pune Municipal Corporation also adheres to the norms being followed by the Nagpur

Municipal Corporation and Sangli Miraj and Kupwad City Municipal Corporation. It is thus contended that the impugned decisions of the Pune Municipal Corporation purportedly under Section 386(2) of the MMC Act are unreasonable and arbitrary, as exorbitant rates of license fees are fixed and that too without the prior sanction of the elected general body, hence the same deserve to be quashed and set aside.

PART : F

Submissions on behalf of the petitioners

78. On behalf of the petitioners, lead arguments are advanced by learned senior counsels Mr. Gorwadkar, Mr. Anturkar, Mr. Godbole and learned counsel Mr. Joshi and Mr. Khandekar. To avoid any overlapping in noting their respective submissions, we find it convenient to record the overall submissions as made on behalf of the petitioners, as the challenge as urged on behalf of the petitioners, who are represented by these learned counsel is similar.

Primary challenge

79. At the outset, it is submitted that the first challenge is to the Resolution of the Pune Municipal Corporation No. 667 dated 28 September, 2018 granting an ex-post facto sanction for levy and recovery of the advertisement license fees from the petitioners, who are outdoor advertisers, with effect from 1 April, 2013 at the rate of Rs.222/- per sq.ft. per annum fixed as per the decision of the Municipal Commissioner dated 14 February, 2013 being arbitrary and illegal. The second

challenge being, that after the deletion of Entry 55 from List-II of the Seventh Schedule of the Constitution, the State Legislature and consequently the local authorities lost the authority to generate revenue by levying fees on the advertisements. Such deletion has also brought about an implied repeal of Sections 244 and 245 of the MMC Act. The Municipal Commissioner is hence not competent to generate revenue by levying license fees under Section 386(2) of the MMC Act for the licenses/written permissions to be issued under Section 244 of the MMC Act; and lastly, the Municipal Corporation has lost the competence to levy and recover fees for advertisement licenses in view of the introduction of GST laws w.e.f. 1 July, 2017, as the GST laws have subsumed the advertisement tax including under the Maharashtra GST Compensation to Local Authorities Act, 2017.

80. Having noted the broad contours of the challenge, we now refer to the submissions as urged on behalf of the petitioners. The propositions and submissions supporting each of the propositions are as under:

81. **The collection of license fees since 1 April, 2013 @ Rs.222/- per sq. ft. p.a. was *per se* illegal in the absence of prior sanction of the Municipal Corporation.**

81.1 It is submitted that Section 386(2) of the MMC Act read with Rule 4(9) of the 2003 Rules, authorizes the Municipal Commissioner to decide the rate of

fees for advertisement license from time to time only with the sanction of the Municipal Corporation. Thus, there is no authority for collection of license fees at a particular rate unless such rate of license fee is sanctioned by the Municipal Corporation before the collection of the fee. Hence, the collection/recovery of license fee since 1 April, 2013 at the rate of Rs.222/- per sq.ft. p.a. as per the order dated 14 February, 2013 of the Municipal Commissioner is without any authority of law and unlawful. There is no authority with the Municipal Commissioner to seek an *ex-post facto* sanction from the general body of the Municipal Corporation qua the illegal recovery of fees.

81.2 In such context, the Gujarat High Court in the case of **Selvel Advertising Ltd. vs. Ahmedabad Municipal Corporation** (supra) in paragraphs 32 and 33 has held that the license fee shall come into effect only after the sanction of the Corporation and not otherwise and further that the levy of fee to be charged for sky-signs/hoardings, on private properties does not become effective immediately when the Commissioner proposes such fees unless and until the same is approved by the Municipal Corporation and as prescribed by the provisions of the Municipal Corporation Act (in the said case Gujarat Provisional Municipal Corporation Act). For such reason, there is no scope to interpret Section 386(2) to allow the sanction of the Corporation to be retrospective or retroactive in any manner whatsoever. The sanction of the Corporation cannot relate back to the date of the proposal of the Municipal Commissioner. Similar view has been

expressed in the decision of the Supreme Court in **Patna Municipal Corporation & Ors. vs. Tribro Ad Bureau & Ors.**[3].

81.3 The license fees at Rs.222/- per sq.ft. p.a. ordered to be recovered by the Commissioner on 14 February, 2013 could not have been recovered from the advertisers/licensees until it was sanctioned by the General Body, which was only on 28 September, 2018 and thereafter.

81.4 Further on the date of the decision of the Commissioner dated 14 February, 2013, the undertaking given to this Court on 24 August, 2011 on behalf of the Corporation, in the proceedings of Writ Petition No. 5055 of 2011 and further considering an order passed by this Court in Writ Petition No. 2690 of 2011 that the rates in the tender would be kept in abeyance was holding the field. Hence, the decision dated 14 February, 2013 of the Municipal Commissioner based on the highest tender as received by the PMC was in breach of its undertaking and thus a nullity. The proposition is supported by placing reliance on the decision of the Supreme Court in **Noorali Babul Thanewala vs. K.M.M. Shetty and Ors.**[4]

81.5 On 14 February 2013 when the decision was taken by the Municipal Commissioner to enhance license fee to Rs.222/- per sq.ft. p.a., already the General Body by Resolution No. 417 dated 28 January, 2010 was in operation whereby the license fee was fixed at Rs.41/- and Rs.82/- per sq. ft. p.a., hence

[3] (2024) SCC OnLine SC 2874
[4] (1990) 1 SCC 259

there was no question of recovery of license fee at Rs.222/- per sq.ft. p.a. until the said rate was sanctioned by the General Body of the Municipal Corporation, which happened only on 28 September, 2018. Hence, the recovery of Rs.222/- between the period 1 April 2013 to 28 September 2018 was unauthorized.

82. **The impugned resolution of the Municipal Corporation No. 667 dated 28 September, 2018 purportedly granting *ex-post facto* sanction with effect from 1 April, 2013 to the collection of sky-signs license fee is null and void.**

82.1 An unauthorized concluded act of recovery of license fee cannot be validated "*ex-post facto*" by the General Body, as it does not have the power to take such decision so as to make it applicable retrospectively and/or to make the levy of license fees retroactively with effect from 1 April 2013. This would amount to validation of the illegal action of the Municipal Corporation. The MMC Act nowhere permits either the General Body or the Municipal Corporation to take any decision having retrospective effect or to validate *per se* illegal acts by purported *ex-post facto* sanction. Hence, Resolution No.667 dated 28 September, 2018 of the General Body of the Municipal Corporation is illegal and without any authority of law. On the basis of such resolution, collection of license fee at the rate of Rs.222/- per sq. ft. is illegal. This also considering the principle that once the law prescribes that a particular thing must be done in a particular manner, it must be done in the prescribed manner or not at all **(Taylor vs. Taylor[5]).**

[5] [LR] 1 ChD 426, 431

82.2 It is submitted that it is also a settled position in law that a delegate cannot act retrospectively nor retroactively. In such context, it is submitted that the Constitution permits the State Legislature to make laws on the Municipal Corporation in respect of its composition and powers and also authorizes the Municipal Corporation to levy taxes and fees. Hence, the Municipal Corporation acts as a delegate and being a delegate, it has no power to act retrospectively or take steps retroactively or to grant *ex-post facto* sanctions to any previous acts of the Municipal Commissioner, unless the legislature permits the same. This proposition is supported by placing reliance on the decisions of the Supreme Court in **Vice-Chancellor, M.D. University, Rohtak vs. Jahan Singh**[6]**; Mahabir Vegetable Oils (P) Ltd. & Anr. vs. State of Haryana & Ors.**[7] and **Kusumam Hotels Pvt. Ltd. vs. Kerala State Electricity Board & Ors.**[8]**.**

82.3 On the aforesaid proposition, it is submitted that Section 386(2) uses the word "sanction", whereas in Clause VIII of Appendix 2 of the 2003 Rules, the word "approval" has been used. It is submitted that the provision of the Act will always prevail, therefore, the word "sanction" is to be read in place of "proposal" in the 2003 Rules, which is made by the executives. It is submitted that when the word 'sanction' is used, it signifies a prior sanction, as sanction alone confers 'authority to act'. It is thus contended that the decision dated 14 February, 2013 is *per se* without jurisdiction and null and void and it could not have been

6 (2007) 5 SCC 77
7 (2006) 3 SCC 620
8 (2008) 13 SCC 213

validated by subsequent ratification. Such action can have no recognition under Article 265 of the Constitution.

82.4 Relying on the decision of the Supreme Court in **Sunny Abraham vs. Union of India & Anr.**[9] wherein the Supreme Court has followed the earlier decision in **Life Insurance Corporation of India v. Escorts Ltd.**[10] (Para 63) wherein it is held that the word 'prior' or 'previous' may be implied in the contextual situation or object and design of the legislation as may be demanded. It is further submitted that in **Ashok Kumar Das & Ors. vs. University of Burdwan & Ors.**[11], the Supreme Court has held that approval can be ex-post facto as well as also not made applicable.

82.5 The impugned sanction by the General Body of the Municipal Corporation of Resolution dated 28 September, 2018 for the enhanced rate of advertising fee, itself was without jurisdiction for the reason that on 16 September, 2016, the subject "advertisement" in Entry-55 of the List-II(State List) in the Seventh Schedule of the Constitution was deleted resulting in taking away of the competence of the Municipal Corporation to levy any advertisement fees. The advertisement fees have stood subsumed in GST as per Section 5 of the GST Compensation to States Act 2017 with effect from 1 July, 2017. Thus, the impugned resolution of the Pune Municipal Corporation dated 28 September, 2018 was a nullity for want of competence and the purported "ex post facto

9 AIR 2022 SC 336
10 (1986) 1 SCC 264
11 (2010) 3 SCC 616

sanction" granted by the said resolution to the proposal/decision dated 14 February, 2013 of the Municipal Commissioner itself was void.

82.6 During the pendency of these petitions, Resolution No. 80 was passed by the Nagpur Municipal Corporation dated 12 August, 2024 with retrospective effect from 1 April, 2023, which enhanced the advertisement license fee on the basis of which recoveries were sought to be made. On a representation of the members of Nagpur Advertisers against the retrospective revision of the fee, the then Deputy Chief Minister intervened and directed that the new retrospective rates should be suspended and the old rates should continue to be levied. Pursuant thereto, a new resolution was passed suspending the earlier retrospective Resolution No. 80 clarifying that the old rates be adjusted against the monies already paid by the advertisers as per the retrospective Resolution No. 80. A similar representation has been made by the petitioners' association against the retroactive resolution no. 667 of the Pune Municipal Corporation and although made to the State Government, no action has been taken.

83. **The unreasonable and disproportionately high "Regulatory Advertisement License Fee" is in reality a "Tax" for revenue making, which the local authority is incompetent to levy in the absence of legislative sanction.**

83.1 The Regulatory License fee could not have been used for revenue generation and the moment it is for revenue generation, the said impost becomes

a "Tax", which the State Government has not sanctioned in accordance with the procedure prescribed under Section 127 of the MMC Act, nor have any parameters been provided for its computation under the Act. In any event, after 1 July, 2017, the State Legislature and the local authorities are incompetent to levy fee or tax on advertisement sky-signs.

83.2 The stand of the Municipal Corporation being that the license fee is in the nature of a regulatory fee and therefore, it should be reasonable and its quantum should not be for revenue generation. In such context, it is submitted that the impugned resolution sets out the reason for enhancement of license fees, on the ground of 'augmentation of the revenue' of the Municipal Corporation and for prevention of the perceived financial loss. Such contention of the PMC is not correct, as the State gets reimbursement from the Union, which in turn reimburses Municipal Corporations in the GST regime. Hence, the admitted reason for the hike in license fee was to generate income from the fee, which itself is *ultra vires* and untenable.

83.3 The Municipal Corporation has accepted that the actual cost of issuing an advertisement/sky sign license is Rs.5,000/- per hoarding, which was based on one day pay of the municipal employees in the sky sign/ Advertisement Department. Hence, the fee exceeding such amount can only be for revenue generation, which is not permissible under the MMC Act and 2003 Rules.

83.4 The said impost, which is of a regulatory nature, cannot be meant for revenue generation. The regulatory fee is meant for covering reasonable administrative expenses incurred for the regulation.

83.5 The Municipal Corporation itself having admitted in the reply that the license fee charged from the advertisement was a revenue generating measure, such admission is relevant to interpret such impost as a tax, which the Municipal Corporation is not entitled to levy under the MMC Act.

83.6 The Advertisement License Fee being regulatory in nature cannot exceed reasonable limits. This proposition is supported by referring to the decision of the Supreme Court in **Calcutta Municipal Corporation & Ors. vs. Shrey Mercantile (P) Ltd. & Ors.**[12] wherein it is held that the main difference between fee and tax is on account of source of power, namely, the power to levy fee is a police power of the State in order to regulate, control and prohibit with the main object of giving some special benefit to a specific class. The cost of providing benefit to such class is a fee.

83.7 Also referring to a decision in **State of Uttarakhand & Ors. vs. Kumaon Stone Crusher**[13] **(Paras 178, 182)**, it is contended that whenever the Government intends to raise revenue, the imposition becomes or partakes the character of a tax, even though described as a "fee".

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12 (2005) 4 SCC 245

13 (2018) 14 SCC 537

83.8 It is well settled that if the fee is not based on the reasonable expenses of Regulation, the same would not survive the test of Article 14 of the Constitution. Supporting such proposition, reliance is placed on the decisions of the Supreme Court in **Commissioner of Central Excise, Lucknow, U.P. vs. Chhata Sugar Co. Ltd.**[14]**;** and **A.P. Paper Mills Ltd. vs. Government of A.P. and Anr.**[15]**.**

83.9 It is submitted that a close scrutiny of the MMC Act reveals that whenever the Legislature wants to authorize the Municipal Corporation to raise revenue for the local self government, the charging section for taxation coupled with specific legislative guidance and the basis of taxation and requisite parameters for calculating the tax, are provided in the law itself. Reference in this context is made to Section 127 of the MMC Act, which authorizes levy of several taxes. Thus, for levy of property tax, annual rateable value of the property has been made the basis in Section 127 of the MMC Act, which is a clear and predictable concept devised in rent legislation. The same parameters have been employed for other taxes in the said provision. However, such guidance and parameters are conspicuously absent in Section 386(2), which prescribes license fee determination for various Municipal licenses including permission under Section 244 of the MMC Act. In support of such submission, reliance is placed on the decision of Madhya Pradesh High Court in **Anil Kumar Gulati & Ors. vs. State**[16]**.**

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14 (2004) 3 SCC 466
15 (2000) 8 SCC 167
16 AIR 2004 MP 182

83.10 It is next submitted that the Legislature has deliberately not prescribed any parameters for levying fee, because a regulatory fee is intended to compensate or reimburse the reasonable administrative expenses for issuance of licenses and regulation of the activities. In collecting license fee, there cannot be any expectation of revenue generation. Thus, fixing of license fee at an unreasonably exorbitant rate with a view to generate revenue is baseless and not permissible in law.

83.11 The contention on behalf of the Municipal Corporation that the distinction between tax and fee based upon the element of *quid pro quo* has been effaced and is no more practically and constitutionally relevant, requires delving into the correct legal position. Referring to the decision of a seven Judge Bench of the Supreme Court in **Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt**[17], the Supreme Court has observed that the distinguishing factor between tax and fee is *quid pro quo.*

83.12 The said decision is good law as on date, hence it may not be correct to say that practically and constitutionally the distinction between tax and fee on the basis of *quid pro quo* has become irrelevant and that the distinction has been effaced. The decision in **State of West Bengal vs. Kesoram Industries Ltd. & Ors.**[18], which is a decision of three-Judge Bench of the Supreme Court, is required to be considered in the light of the law laid down in **Sri Lakshmindra**

17 (1954) 1 SCC 412
18 (2004) 10 SCC 201

Thirtha Swamiar of Sri Shirur Mutt (supra), which will prevail. The Supreme Court in **Jalkal Vibhag Nagar Nigam & Ors. vs. Pradeshiya Industrial and Investment Corporation & Anr.**[19] referred to the decision in **Southern Pharmaceuticals & Chemicals vs. State of Kerala**[20] as well as in **Gaurav Kumar vs. Union of India & Ors.**[21] would also be required to be read as not to be diluting, what has been held by the Supreme Court in both such decisions. Thus, in the alternative, the contention is that the distinction between tax and fee on the basis of *quid pro quo* is recognized and the judgment of the Supreme Court in **Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt** (supra) and the law laid down therein is not diluted.

84. **The Municipal Corporation is acting in a discriminatory manner in collecting the advertisement license fee in comparison to fee charged for other Municipal licenses.**

84.1 It is submitted that the Municipal Corporation issues multiple licenses and written permissions for carrying trade, business, commercial activities in the city. As per Section 386(2) of the MMC Act, a general power to levy license fee has been conferred on the Municipal Corporation. However, neither the said provision nor any other provision under the MMC Act gives any indication as to how these license fees are to be different for each license and for what purpose or reason. Therefore, there is no reasonable nexus for classification and

19 (2021) 20 SCC 657
20 (1981) 4 SCC 391
21 (2025) 1SCC 641

discrimination amongst the various Municipal licenses for determination of license fee. The order dated 14 February, 2013 of the Municipal Commissioner and the Resolution No. 667 dated 28 September, 2018 bring about an unlawful and unconstitutional discrimination, which is contrary to Article 14 of the Constitution. Such clear case of the petitioners in the memo of the petition has not been dealt with.

85. **The deletion of Entry-55 from the State List of the Seventh Schedule of the Constitution, the State legislature and consequently the local authorities have lost the power to generate revenue by levying "fee on advertisement".**

85.1 In such context, it is submitted that by the 101st amendment to the Constitution, the tax on advertisement has been deleted from the State List, therefore, the State Legislature has lost its competence to levy taxes on advertisements and to deal with the subject 'advertisement'. The Municipal Corporation has been denuded from its authority to levy fee on advertisements, as provisions pertaining to advertisements and sky-signs in Sections 244 and 245 of the MMC Act and Rules of 2003 have been impliedly eclipsed with effect from 16 September, 2016.

85.2 Further, there is an implied repeal of Sections 244 and 245 of the MMC Act. The MMC Act (earlier Bombay Provincial Municipal Corporation Act) was enacted by the State Legislature on 29 December, 1949 in exercise of the powers under Section 100(3) read with Entry-13 in List II of the Government of India

Act, 1935. After the deletion of Entry-55 from the State List, the subject 'advertisements' became a residuary power and it is not to be found in any of the three lists of the Seventh Schedule nor anywhere in the Constitution. Hence, as per Article 248 read with Entry-97 in the List I of the Seventh Schedule, the Parliament is empowered to make law on advertisements since 16 September 2016 and consequently on hoardings and sky signs.

85.3 Referring to the decision in **State of Orissa vs. M.A. Tulloch & Co.**[22], in the Constitution Bench judgment of the Supreme Court it is clearly held that if any subject matter in List II is taken over by the Parliament, then the said subject matter itself is subtracted/deleted from the State List to which fee can be levied. In the present case, a similar situation has arisen, that is, by deletion of Entry-55, the subject 'advertisements' has been taken over by the Parliament as a residuary subject as per Article 248 and Entry 97 of List I.

86. **The local authorities cannot justify generation of revenue by levying advertisement fee on the basis of Article 243-X read with Entry-5 and Entry-66 of List II of the Seventh Schedule of the Constitution.**

86.1 The case of the Municipal Corporation is that Article 243-X of the Constitution empowers the State Legislature to authorize Municipal Corporation(s) to impose taxes, duties, tolls and fees, without reference to Article 246(3) and List II of the Seventh Schedule of the Constitution. Hence, the

[22] AIR 1964 SC 1284

question posed by the Corporation is whether Article 243-X can save the implied repeal of Sections 244 and 245 of the MMC Act.

86.2 The MMC Act (formerly the Bombay Provisional Municipal Corporation Act) was enacted by the State Legislature on 29 December, 1949 as per Section 100(3) read with Entry-13 in List II of the Government of India Act, 1935. Thus, the legislative source of the MMC Act is derived from Section 100(3) read with Entry-13 of the Government of India Act, 1935 and license fee on advertisement was permitted as per Entry-48 read with Entry-54 of the List II under the 1935 Act. It, therefore, cannot be said that the said power was derived from Article 243-X of the Constitution, as Article 243-X was incorporated in the Constitution in the year 1993.

86.3 By application of Article 243-X, the legislative competence of the State Legislature does not get expanded beyond List II of the Seventh Schedule. Article 243-X is an enabling provision, which enables the State Legislature to make laws to authorize Municipal Corporation to levy taxes and fees. Article 243-X does not directly authorize the Municipal Corporation to make laws for providing taxes and fees on any and every subject as it chooses, disregarding the legislative fields prescribed in List II of the Seventh Schedule.

86.4 Article 246(3) confers exclusive power on the State Legislature with respect to any of the matter provided in List II of the Seventh Schedule and the said power is made subject to sub-clauses (1) and (2) of Article 246, which gives

legislative power to the Parliament to make laws in respect of matters in List I and III, hence it cannot be conceived that Article 243-X authorizes the State Legislature to make laws beyond its competence as prescribed in the Constitution. Therefore, while authorizing the Municipality under Article 243-X, the State Legislature cannot travel beyond Article 246(3) and List II and List III of the Seventh Schedule and render them nugatory.

86.5 The Constitution Bench in **M/s. Ujagar Prints & Ors. vs. Union of India & Ors.**[23] has clarified that the State can search for its legislative competence under multiple entries. It is a "rag-bag" act and that if the matter does not fall in any of the entries in List II & III, then necessarily it is covered by Article 246(4), Article 248 and Entry-97 of List I of the Seventh Schedule of the Constitution. It is submitted that the other Articles of the Constitution do not provide guidance and philosophy to make laws but the source of power flows from Part XI and especially Articles 245 and 246 to 248 of the Constitution. Hence, Article 243-X does not give any independent legislative power de hors Article 246(3) to the State Legislature to authorize municipalities to levy any tax and fees as they desire and on the subjects they desire.

86.6 Referring to the decision of the Supreme Court in **Bimolangshu Roy (Dead) through LR vs. State of Assam and Anr.**[24], it is submitted that the Supreme Court held that it is permissible to trace the legislative competence in

[23] (1989) 3 SCC 488
[24] (2018) 4 SCC 408

other Articles apart from Article 246 and the Lists in the Seventh Schedule. Referring to the decision of the Constitution Bench in **M/s. Ujagar Prints** (supra) and the decision of a Seven Judge Constitution Bench in **Synthetics and Chemicals Ltd. & Ors. vs. State of UP & Ors.**[25], it is held that the legislative competence of the State Legislature can be traced in the other different Articles. By applying the said yardstick, if any specific attempt is made to trace the legislative competence of the State Legislature on the subject 'advertisements', it is submitted that one cannot find such source or field anywhere in the Constitution. It is hence not permissible to overlook Article 246 and Article 248 read with Entry-97 of the List I of the Seventh Schedule of the Constitution, which gives absolute legislative competence to the Parliament on the matter which do not find place in any of the Entries in Lists II and III of the Seventh Schedule. In such situation, the State Legislature is completely divested of its legislative competence to make law on advertisements in any form.

86.7 In the context of Entry-5 of List II of the Seventh Schedule, it is submitted that though Entry-55 was deleted from List-II, Entry-5 for making laws about the constitution and powers of the local authorities still exists, as urged on behalf of the Municipal Corporation as also the State. Also that with the aid of Entry-66 in List II, an advertisement fee could be validly levied by the Corporation. Such contentions as urged on behalf of the Municipal Corporation are misconceived, as neither the State nor the Municipal Corporation can fall

[25] (1990) 1 SCC 109

back on Entry-5 of List II in order to justify "license fee on advertisements", after 16 September, 2016 when the Entry-55 was deleted by the 101st Amendment to the Constitution. It is submitted that Entry-5 of List II demarcates the legislative field for the State Legislature to make laws in relation to the Constitution and Powers of the Municipal Corporation for the purpose of local self-government. However, as per Entry-5 only those powers can be conferred on the Municipal Corporation which the State Legislature possesses within List II of the Seventh Schedule. In supporting such contention, reliance is placed on the decisions of the Supreme Court in **Ram Krishna Ram Nath vs. Janpad Sabha[26]; The Corporation of Calcutta & Anr. vs. Liberty Cinema[27]; State of West Bengal vs. Kesoram Industries Ltd. & Ors.** (supra) and decisions of the Bombay High Court in **Hirabhai Ashabhai Patel & Ors. vs. State of Bombay & Ors.[28]** and **Kisan Supdu Ingale vs. Bhusawal Borough Municipality, Bhusawal & Anr.[29].**

87. **No distinction can be made between the terms "Sky-sign" and "Advertisement" for the purpose of levying fee for the permission under Section 244 of the MMC Act in view of the specific inclusive definitions of "Sky-sign" and "Advertisements".**

87.1 It is submitted that to save the statutory provisions, an attempt has been made by the respondents to segregate the subject 'advertisement' from the term

26 AIR 1962 SC 1073
27 AIR 1965 SC 1107
28 AIR 1955 Bom 185
29 AIR 1966 Bom 15

"Sky-sign" employed in Section 244 of the MMC Act. Such contention is stated to be misconceived inasmuch as the specific statutory definition of "sky-sign" for the purpose of Section 244 and other relevant definitions make "advertisement" as an integral part of "sky-sign" (Rule 1 of Chapter XI of Schedule D of the MMC Act). Further, Section 245 deals with 'Advertisements' specifically. It is submitted that Entry-55 in List II of the Seventh Schedule demarcates the fields of legislation, on the subject 'advertisement' which is neither defined in the Constitution nor in the MMC Act, but it is defined in Rule 2(2) of the 2003 Rules to mean and include any representation in any manner such as announcement or direction by words, letters, models, signs. It is submitted that the word "hoarding" means any surface or the structure erected on ground or roof of the building or above the parapet for the purpose of advertising.

87.2 Further, the definition of "Sky-sign" necessarily includes an "advertisement" supported or attached to any structure or surface (Rule 1 of Chapter XI of Schedule D of the MMC Act). Clause 2(a) of Rule 1 makes it clear that unless used for the purpose of 'advertisement' the structural support would not be treated as a 'sky-sign'.

87.3 It is next contended that the definition of 'hoarding' in Rule 2(14) includes surface of structure with characters, letters, illustrations displayed for the purpose of 'advertising'. It is, therefore, submitted that the MMC Act and Rules clearly indicate that 'advertisements' are an integral part of 'sky-sign' and

'hoarding' and what is to be permitted or licensed is an 'act of advertisement' at a particular location and not otherwise. The contention is supported by relying on the decision of this Court in **Suswarajya Foundation, Satara & Anr. vs. Collector, Satara & Ors.**[30] and **Municipal Corporation of Greater Bombay vs. Bharat Petroleum Corporation Ltd.**[31].

87.4 It is next submitted that the legislative intent is made clear by the deletion of Entry-55. It is a positive act by which the Legislature has taken away the competence or legislative field on the subject of "Advertisement" from the State Legislature. In this context, reference is also made to Article 265 of the Constitution read with Article 366(28), which defines 'tax' or 'impost'.

88. **After 1 July, 2017 GST regime subsumes the Advertisement License Fee.**

88.1 The advertisement fee has stood subsumed in the GST as per Section 5 of the GST compensation to States Act, 2017. It is submitted that as per Section 9 of the Central GST Act 2017 read with Section 5(1)(g) of the Central GST (Compensation to States) Act, 2017, fee is leviable under Entry-66 read with Entries 52, 54, 55 and 62 of List II of the Seventh Schedule, which have been subsumed in GST.

88.2 It is submitted that as per Section 8 of the Maharashtra GST (Compensation to the Local Authorities) Act, 2017, the Legislature has imposed GST at 18% on the Advertisers which gets shared between the State Legislature

30 2017 SCC OnLine Bom 86
31 (2002) 4 SCC 219

and Local authorities proportionately. It is hence clear that since 1 July, 2017, the impost of "license fee" on advertisement stood subsumed in the GST and advertisers are not liable to pay any "license fee" for the advertisements to the local authorities or to the State Government, since 16 September, 2016 the said power exclusively vests in the Parliament.

<u>On the Rate of Rs. 222/- per sq. feet/per annum</u> :-

89. An amount of Rs.222/- was arbitrarily selected by the Municipal Commissioner only on the basis that the highest bid which was received when the Municipal Commissioner had divided the city as per its own policy and as per its own decision and had invited the tenders. The scheme of division of the city into four divisions was not accepted by the State Government, and therefore, the rate of the hightest bid of Rs.222/- per sq. ft. should not have been considered and accepted by the Municipal Commissioner and that too without approval by the General Body of the Municipal Corporation as mandated under under sub-section (2) of Section 386 of the MMC Act.

90. On the aforesaid submissions, the petitioners submit that the writ petitions need to be allowed.

<u>PART : G</u>

<u>Submissions on behalf of the Pune Municipal Corporation</u>

91. On the other hand, Mr. Kumbhakoni, learned Senior Counsel on behalf of the Municipal Corporation has made the following submissions:

91.1 At the outset, it is submitted that the municipal corporation would seek dismissal of all these petitions as also pray for award of "exemplary costs" to the municipal corporation, in addition to the litigation costs, especially in view of the huge amount of precious judicial time consumed by the petitioners to make out their case, albeit without even a shade of any substance.

91.2 In addition, a specific direction needs to be issued by the Court against all the petitioners to pay to the Municipal Corporation the balance amount of fees within the time that may be provided by this Court, with penal interest. This for the reason, that all the petitioners are businessmen, not laymen and have used for commercial purposes, the balance amounts of fees retained with them, as a result of the interim orders of this Court. It is submitted that the money that has been so withheld by the petitioners is public money.

91.3 That the edifice of the case of the petitioner is built on a non-existent basis/ground, as also every contention raised by each and every petitioner is unsustainable, both in law and on facts of the case. This apart, it is submitted that every proposition is un-statable as also frivolous.

91.4 On facts, a clear attempt is made to mislead this Court, more particularly, by producing an incomplete document on the decision making process i.e. the Municipal Commissioner deciding to fix the license fee at Rs.222/- per sq.ft. p.a. and the materials on which the same was approved by the General Body of the municipal corporation, by relying on such materials only during the oral

submissions made without any pleadings at all, though a complete copy of the very same document was placed on record by the municipal corporation.

91.5 There is a gross and inordinate delay caused in filing all these petitions, as none of the petitioners have made an attempt to explain the delay in filing of these petitions and there is no whisper in any of the petitions in this regard.

91.6 There is a complete waiver, acquiescence and estoppel on account of payments willingly made, at the impugned rates, without even raising an eye-brow, for several years. It is contended that each petition conveniently has ignored this aspect by suppressing from this Court the fact that such payments having been made by them and there is no whisper in any of the petitions in that regard.

91.7 Not only *prima facie* but *ex-facie* the litigation is in the nature of 'a chance-litigation'.

91.8 The most disturbing feature of the present group of matters has been that, during the course of oral submissions, everything and anything has been submitted, without even a whisper being made in that regard in the pleadings of the respective petition, as if the law of pleadings does not at all ever exist. This is clear from the comparison of the written submission with the pleadings contained in the petition and leaves anyone wondering about the requirement of mentioning the 'grounds' of challenge in the petition.

91.9 The present group impugns the levy of 'license fee' in issue relating to the period, which is prior to coming into the 2022 Rules being brought in force. It is submitted that Rule 31 of the 2022 Rules makes it explicitly clear that the 2022 Rules will not apply retrospectively, hence, the present submissions are limited to the period prior to 9 May 2022 (the date on which the 2022 Rules have come into force) as the regime prior thereto was governed by the Bombay Provincial Municipal Corporations (Control of Advertisement and Hoarding) Rules, 2003 i.e. the 2003 Rules.

91.10 Section 244 does not even remotely suggest that it deals with 'advertisement(s)' in any manner whatsoever. It is submitted that the plain reading of the provision makes it clear that it deals simply and exclusively with erection/fixation/retention of 'sky-signs'. It is submitted that various aspects such as the location, the extent of its user or non-user etc. relating to the sky-signs are distinct issues, for which the requirement for obtaining permission of the Commissioner for erecting/fixing/retaining any sky-sign thereunder remains. Further, even if the sky-sign is not at all used or is not used for the purpose of putting up any advertisement, still by operation of Section 244 the requirement of obtaining the 'written permission' of the Commissioner will continue to operate or hold the field. It is submitted that though sky-sign or hoarding is 'erected/fixed/retained for the 'purpose' of using it for 'advertisement', in fact it may not be 'actually/factually used" for that purpose at all and may be kept

blank/unused, even then the license fee will be payable under Section 244 read with section 386(2) of the MMC Act.

91.11 The 'license fee' payable for erecting or retaining a sky-sign is not at all related to the nature of advertisement displayed on it, which factor clearly demonstrates that there is no relation between the 'advertisement' that may or may not be displayed on the sky-sign and the payment of 'license fee' for its erection. Hence, a person after obtaining such a license, may use it exclusively for displaying social or philanthropic messages, and/or may not at all use it ever for commercial purpose, still like any other persons using it for commercial purposes, there is a requirement to pay the license fee, that too at the same rate as everyone else. It is submitted that it is of significance that it is not and cannot be the case of the petitioners that, without any permission from the Commissioner or the Corporation, a sky-sign or hoarding can be erected or retained, much less that such could be the legal right of the petitioners to erect and retain a sky-sign, without the permission of the Commissioner or the Corporation. In such context it is submitted that once it is an admitted position that for erecting/ fixing/ retaining any sky-sign or hoarding, permission contemplated by Section 244 is pre-requisite and mandatory, Section 386(2) is attracted and the person seeking such permission renders himself liable for payment of the 'license fee'.

91.12 It is an untenable proposition that, either a 'written permission' contemplated under Section 244 for erecting or retaining sky-signs or payment of

'license fee' under Section 386(2) for obtaining such permission or both, are linked to 'advertisement' or can be termed as a 'tax', so as to be any advertisement tax.

91.13 The petitioners endeavour to canvass that since Section 386(2) uses the word 'licence' and not 'written permission' as used in Section 244, both are different, is misconceived. In such context, it is submitted that a perusal of the relevant provisions of the MMC Act as also of the 2003 Rules, clearly demonstrates that, Commissioner's 'written permission' issued under Section 244 is in the form of or nature of 'a licence' or translates into issuance of a license. In such context, a reference is made to the Rule 4(8), Form C prescribed under Appendix 2, along with other provisions of the 2003 Rules, which according to the municipal corporation, require consideration in its perspective and harmoniously. It is hence, submitted that it is not a tenable proposition that, for issuance of the aforesaid 'written permission', the 'license fee' is not payable.

91.14 Rule 2(2) of 2003 Rules defines 'Advertisement' and Rule 2(14) thereof defines 'Hoarding', however, composite as also harmonious reading of the 2003 Rules, demonstrates that, the words "hoarding" and "advertisement" are used therein interchangeably and are treated synonyms similar to what Rule 8(c), Rule 4(5), Appendix 2, General Guidelines for Agency which provides for advertisement.

91.15 The principles of interpretation of statutes need to be appreciated in the light of the definition clause in Rule 2, which specifically clarifies: "unless the context otherwise requires". It is submitted that the only relation of 'advertisement' in this regard, is the one contemplated by Section 245, which relates to '*the regulation and control of the advertisement'* put up on any land, building, wall, hoarding or structure. It is submitted that the 2003 Rules are framed both, under Section 244 as well as Section 245 of the MMC Act. Hence, 'the fees' contemplated by 2003 Rules are not restricted for issuance of mere 'written permission' i.e. 'license' under Section 244, but also, relate to supervising the strict observance of the terms and conditions of such license by the license holder, at the ground level, during the entire period for which such license is granted, as also the 'regulation and control' of the manner of using the sky-sign, contemplated by the Section 245. Hence, the 'license fee' payable under Section 386 (2) read with Section 244 and Section 245 is clearly 'regulatory' in nature and is not at all 'compensatory'. It is next submitted that it is a settled principle of law that 'taxation' is not intended to be comprised in the 'main subject' in which, it might on an extended construction, be regarded as included, but is treated as a distinct matter for the purposes of legislative competence. In such context, general power of 'regulation and control' does not include power 'to tax' the very same activity/thing/subject/exercise for example 'conduct of lottery'.

91.16 That only because the municipal corporation is empowered or entrusted with the duty or power or jurisdiction or authority of 'regulation and control of

the advertisement', displayed within the Corporation limits, does not mean that the Corporation also has or is claiming to have, the legislative competence to tax the 'advertisement', which it is not. It is submitted that the converse is equally true, as merely because the Corporation does not have legislative competence to tax the 'advertisement' does not mean that the Corporation does not have the legislative competence of the 'regulation and control of the advertisement' displayed within the Corporation limits and further that the Corporation cannot impose 'a regulatory fee' in that regard.

91.17 None of the Corporations, including Pune Municipal Corporation has ever claimed that the legislative competence of the State Legislature empowering the Corporation for levying the license fee on erection or retention of sky-signs and, further, the 'regulation and control of the advertisement' displayed thereon within the Corporation limit, emanates only from Article 243X of the Constitution itself with effect from 24 April 1993 that is coming into force of the 73rd Constitution Amendment. It is submitted that the same is in addition to or to be read with Entry 66 read with Entry 5 of the List II of the Seventh Schedule of the Constitution.

91.18 It is a well settled position of law that the 'entries' from the three lists contained in the Seventh Schedule of the Constitution do not *per se* constitute the source of power to legislate hence, mere deletion of an entry from any of the three lists contained in the Seventh Schedule can never result into taking away or

loss of 'power to legislate'. It is far too well-settled that the ‘entries’ are only 'fields' of legislation and/or merely 'heads' of legislation, hence, the proposition that on account of the deletion of Entry 55 legislative competence is lost, is wholly untenable.

91.19 There are various Articles in the Constitution, which by themselves, even in the absence of any corresponding Entry in any of the three List from the Seventh Schedule of the Constitution, empower the Parliament and/or the concerned State Legislatures with legislative competence like as contemplated by Article 2, Article 3, Article 11, Article 326 etc., hence, it is fundamentally not a tenable proposition, that in the absence of any Entry in the List II or III of the Seventh Schedule of the Constitution, the State Legislature does not possess or cannot claim legislative competence in respect of the relevant subject.

91.20 On the contrary, the legislative competence of any legislature emanates from various sources, such as express text of the Constitution; by implication from the scheme of the Constitution, as an incident of sovereignty. The object and purpose of the three lists from the Seventh Schedule can never be remotely suggested to be 'the fountain head’ of the 'legislative competence of any legislature’, whether the Parliament or any State Legislature. It is submitted that Article 246 is only ‘declaratory' in nature which recognizes the legislative powers of the Parliament and/or the State Legislatures. The sub-heading of the part of the Constitution, which contains the Article 246 itself is 'distribution' and not

'conferment' of legislative powers. In such context it is submitted that the language employed by Article 243X of the Constitution may be appreciated in its proper perspective and the same demonstrates that the said Article itself, without reference to Article 246, empowers the State Legislature to authorize Municipal Corporation(s) to impose taxes, duties, tolls and fees. Alternatively, Article 243X needs to be read with Entry 66 and/or Entry 5 of the List II of the Seventh Schedule in that regard.

91.21 It is not an acceptable proposition both on facts and in law that by introduction of the new tax regime with the onset Goods and Service Tax from 1 July 2017, it has completely obliterated the liability to pay the impugned license fee and further that the same is subsumed in the levy of GST. It is submitted that thus the burden to prove that the fees for issuance of a license are subsumed into the GST, is squarely on the petitioners, who have miserably failed to discharge.

91.22 The new tax regime of the GST having brought into force has no consequence and relevance, in regard to the impugned 'license fee' payable under the Section 386(2) read with 244 and 245 of the MMC Act. The reason being that the petitioners are, mixing up two transactions concerning the Petitioners alone, which are independent of each other and separate, though both are related to the same sky-sign/hoarding. Both these levies are separate, unconnected and independent of each other. The Corporation is concerned with only one of these two transactions, namely, the license fee for sky-signs/ advertisements, etc. for

which no one, including the petitioners, are paying the GST. The corporation is not at all concerned, in any manner with the GST transactions.

91.23 The first transaction qua the license fee being paid by the petitioners to the corporation whereunder the petitioners obtain 'written permission that translates into issuance of 'license', for erecting/fixing/retaining the sky-sign, for which the petitioners need to pay the 'license fee' under Sections 244, 245 read with 386(2) of the MMC Act .

91.24 The second transaction the petitioners have, is with the person to whom the petitioners allow the use of the sky-sign so put by the petitioners, after obtaining the aforesaid 'license', with which the corporation is not at all concerned, for which there is requirement to pay the GST.

91.25 Hence there are two transactions taking place, although related to the same sky-sign and the same person/Petitioner, but with two different persons/ entities, at two different/independent/separate occasions, for which, obviously, there are two independent and separate 'incidence of levy' or 'charging events". These two transactions are totally and fundamentally unrelated to each other, from the point of view of 'incidence of levy' or 'charging events' and, therefore, cannot be intermixed for the purpose of levy of fee/tax.

91.26 The petitioners are required to pay the impugned 'license fee' towards obtaining the permission to erect/fix/retain the sky-sign and not towards permitting the user of such sky-sign by a third party. The Petitioner, therefore,

cannot deny the liability to pay the aforesaid fee on the ground that GST is being paid on a transaction completely unrelated to the exercise of grant of such license. It is submitted that this is clear from the the documents produced by the petitioners being proved in as much as in the vouchers raised or the receipts issued by the petitioners to their customers, to whom the petitioners are allowing the actual use of the sky-sign/hoarding erected/fixed/retained, by putting up an advertisement thereon, the Petitioner has added the amount of GST payable on the transaction, to which the Corporation is not even a party, in fact, with which the Corporation is not at all concerned.

91.27 Prior to the coming into force of the GST regime, 'service tax' was payable on the second transaction (supra), entered, between the petitioners and the third party and not the payment made to the Municipal Corporation. It is submitted that now with the advent of the GST regime, instead of the 'service tax' on the second transaction (supra), GST is payable.

91.28 Even prior to the coming into force of the GST regime, on the first transaction (Supra), between the Petitioner and the Corporation no service tax at all was payable at any point of time by any such person. The challans issued by the Corporation towards the payment of impugned license fee, (copies of some of which are produced on record) show that, as a matter of fact over and above the license fee, none of the petitioner has paid any additional amount, much less towards any service tax or other tax whatever. Therefore, there was no occasion for subsuming of such non-payable tax, relating to the aforesaid first transaction.

91.29 Even otherwise, it is pertinent to note that the aforesaid payment of GST is being made, not by the Petitioner, but by the person/entity to whom the Petitioner is allowing its licensed advertisement to be displayed on the sky-sign licensed by the Corporation. The Petitioner is only collecting the GST from such third parties with such independent contract and depositing it with the Government Treasury.

91.30 On a bare perusal of the Section 173 of the MGST act, which contains the list of Statutes that are repealed, demonstrates that the aforesaid contention of the Petitioner is *ex-facie* untenable, since it does not include any of the statutory provisions in terms of which the 'License fee' is being levied under the MMC Act, such as Sections 244, 245 read with 386(2) of the MMC Act. It is submitted that Section 173 of the MGST Act, 2017 repeals only the Maharashtra Advertisement Tax Act 1967, which was an Act to provide for the levy of tax on advertisements exhibited by 'cinematograph', at certain places of entertainment, in the State of Maharashtra and was not even remotely related to the impugned levy. Further, a perusal the Maharashtra GST (Compensation To Local Authorities) Act, 2017 which is brought into force in order to compensate the local authorities, for the loss of revenue caused on account of subsuming of taxes imposed by the local bodies into the GST, shows beyond any shade of doubt, that the contention of the Petitioner that the impugned 'license fee' is subsumed into the GST is wholly baseless. The said compensation Act covers the revenue loss caused to the local

bodies on account of subsuming of only the 'octroi' and the 'local body tax' into the GST.

91.31 Thus, considering the matter from every, possible angle, it is not even a statable proposition for the petitioners to contend that, with the advent of the GST regime, the impugned 'license fee' is subsumed into the GST, and further only because the petitioners have an obligation towards GST, on an independent contract with third parties, the petitioners are not absolved from paying the impugned 'license fee' to the Corporation.

91.32 In fact, the Municipal Corporation vide its communication dated 28 November 2016 has specifically informed the State Government, in the context of deletion of Entry 55 of List-II of the Seventh schedule to the Constitution, that the Corporation is not receiving any income as and by way of 'advertisement tax'. It is clarified that the Corporation is receiving 'license fee' towards sky-sign permissions.

<u>On Section 386(2) of the MMC Act</u> :-

92. On the application of Section 386(2) of the MMC Act, it is submitted that the MMC Act, while dealing with the aspect of 'grant of Sanction' uses different terms in different provisions, such as 'prior sanction', 'previous sanction', as against mere 'sanction'. Same is the case with the aspect of grant of 'approval'. Hence, on a perusal of several different provisions/sections of the same statute, it becomes clear that the legislature has been mindful of the need to clearly express

its intention by prefixing/qualifying the expressions 'sanction' or 'approval' or 'permission', with the requirement of 'previous' or 'prior' wherever the legislature thought that such 'sanction' or 'approval' or 'permission' is mandatorily required to be obtained 'in advance'. These provisions being S.19A(1), 13A(2), 31(2), 51(4), 53(1) proviso, 79 proviso (b) etc. all of which prefix or qualify the word 'sanction' with the word 'previous' or 'prior'. It is only in terms of these provisions that the 'sanction' is mandatorily required to be obtained 'in advance'.

92.1 It is hence submitted that in the absence of the prefix of the terms such as 'prior' or 'previous' to the term 'sanction' contained in Section 386(2) of the MMC Act, it decisively demonstrates that the legislature has not intended that the 'sanction' of the Corporation contemplated by Section 386(2) is required to be obtained mandatorily 'in advance' before bringing into force the rates fixed by the Commissioner, of the impugned 'license fee', in terms of Section 386(2). Thus, it is perfectly legal for the Commissioner to obtain the 'sanction of the Corporation for such rates fixed by the Commissioner even as and by way of '*ex-post facto* sanction".

92.2 It is thus, submitted that the contention of grant of such ex-post facto sanction amounts to retrospective application of the rates fixed by the Commissioner, is not even worthy consideration.

92.3 The significance of such qualifying word in one provision and its non-use in another provision in the very same Statute as designed by and intended by the

Legislature cannot be disregarded, as weightage needs to be given to ‘the use’ as well as to 'the omission use' of the qualifying words 'prior' or 'previous’ in the different provisions of the same Statute. It is submitted that in terms of the settled principles of interpretation of statutes, more particularly the fundamental rule of literal interpretation, the Court ought not to read in Section 386(2) the word 'previous’ or ‘prior' as a prefix to the word 'sanction' and resultantly qualify the sanction to be granted under Section 386(2) by the Corporation as 'previous' or 'prior'.

92.4 It is not the petitioners’ case that this Court while disposing of Writ Petition No. 11709 of 2014 (Dilip Vasant Joshi vs State of Maharashtra) vide order dated 2 April 2018 did not permit the Commissioner to place before the General Body of the Municipal Corporation the decision of the Commissioner fixing the rates of the impugned 'license fee'. If the contention is correct that, in law it was not permissible to obtain an ex-post facto sanction, this Court would not have permitted such exercise to be performed by the Commissioner, as was permitted by the aforesaid order and would have allowed the said Petition, resultantly quashing the impugned levy of the license fee as unauthorized and illegal. Having quietly suffered the said order and the resultant disposal of the Petition, now it is not permissible in law, for the Petitioners, to raise a contention that such a grant of *post-facto* sanction is not permissible and/or that such a sanction has to be in advance i.e. prior or previous. It is hence submitted that the levy of the impugned "license fee' at the rate at which it has been levied cannot

be faulted merely on the ground that the Municipal Corporation granted *ex-post facto* sanction to the rates fixed by the Commissioner, and/or that the Corporation had not granted 'prior' or 'previous' sanction to such rates.

92.5 In the aforesaid context, it is submitted that in fact, the Commissioner submitted a proposal with the Corporation dated 3rd May 2018 specifically seeking *post-facto* sanction of the Municipal corporation, for the rates fixed by the Commissioner, towards the impugned license fee, vide his resolution/decision No. 6/402 dated 14 February 2013 with effect from 1 April 2013. The Municipal Corporation by its Resolution No. 667 dated 28 September 2018 has, in no uncertain terms, granted specifically the *post-facto* sanction to the rates so fixed by the Commissioner. Such decision of the Commissioner bearing resolution/ decision no. 6/402 dated 14 February 2013 has been referred in various documents on record as the decision of the Commissioner, of course in terms of Section 386(2), fixing the rate of the impugned license fee w.e.f. 1 April 2013.

92.6 That some of the petitioners have raised a factual controversy in regard to the aforesaid decision of the Commissioner bearing no. 6/402 dated 14 February 2013. The petitioners have contended that the said decision was related to only an individual case and that it was not a decision that could have been or could be made applicable generally to every applicant seeking the license. Also the petitioners while asserting illegality or invalidity of the office order dated 25

April 2013 issued by the Additional Municipal Commissioner (Estate), contend that it misinterprets the said decision of the Commissioner as a decision having general applicability, in the absence of valid delegation, hence, it is illegal, being without authority of law.

92.7 In contesting the aforesaid contentions of the petitioners, it is submitted that such allegation is factual and is made in the absence of any pleadings to that effect. Hence such allegation/assertion of the petitioners ought to be simply neglected and not just rejected, since for the purpose of rejection thereof the same will have to be considered and the fundamental objection is to the consideration itself of these contentions, in the absence of any pleading whatsoever in that regard. It is submitted that the reason why none of the petitioners have ventured to make out such a case in the pleadings on record, is not far to seek. It is submitted that such omission to plead is deliberate and/or intentional, not accidental or due to oversight. If such case was to be pleaded, it was necessary for the petitioner(s) to state so on oath, which the petitioners could not have stated on something, which is false and not just 'not true', so as to depose on solemn affirmation, which could have certainly invited an action for committing the offence of perjury. It is hence submitted that the petitioners have chosen to mislead this Court by the submissions made without pleading.

92.8 The entire edifice of this factual controversy raised, albeit without any pleading in that regard is built up by annexing to the Petition an 'incomplete

document', and suppressing/withholding from this Court the most relevant page of the concerned document namely the original proposal, i.e. “Mool Prastav” dated 18 September 2012 which was put up before the Commissioner, by the Additional Municipal Commissioner (estate). Such proposal was accepted/ approved by him on 04/02/2013. It is seen that the decision taken by the Commissioner is "A approved as per original proposal”. Hence by deliberately suppressing from the Court the said page without any pleading, a factual controversy is sought to be raised by the petitioners. It is submitted that had the complete document been produced by the petitioners, it would not have been possible for the petitioners to deliberately mislead this Court, as sought to be done.

92.9 It is next submitted that such complete document, of course along with the missing page viz. the aforesaid original proposal, i.e., Mool Prastav, which was part of the relevant documents, which contained the portion marked by the Commissioner as "A", is produced in Writ Petition. No. 9448 of 2021. It is submitted that such missing page demonstrates that the decision numbered as 6/402 dated 14 February, 2013 taken by the Commissioner fixing the rates of the license fee is generally for everyone and not for an individual, as alleged.

92.10 Each and every member of the Advertiser's Association, till ad-interim/ interim order(s) were passed by this Court, was paying the license fee at the impugned rate willingly. It is contended that the first W. P. No. 11709 of 2014

was filed only on 18 November 2014, that too by one single individual in which some others tried to intervene on 22 February 2018. The said petition was disposed of by an order dated 02 April 2018 by noting that the decision of the Commissioner bearing resolution no. 6/402 dated 14 February, 2013, shall be placed before the General Body of the Corporation seeking its sanction. Accordingly, it was placed before the General Body on 03 May, 2018 and was granted *ex-post facto* sanction on 28 September, 2018 in no uncertain terms.

92.11 It is submitted that the conduct of the Petitioners all through out, since at least the month of April 2013, unmistakably demonstrates that each of the Petitioner was fully aware about the aforesaid decision of the Commissioner. There is only one letter issued by the Association dated 11 June, 2013 which itself was limited specifically for the period 1 April, 2013 to 30 September, 2013, to the effect that that the license fee at the impugned rates fixed by the Commissioner was being paid *'under protest without prejudice'*. There is nothing at all even to remotely suggest that till filing of Writ Petition No. 9448 of 2021, on or about 20 December, 2021, the members of the Association had any objection or protest to the payment of license fee at the impugned rates fixed by the Commissioner, vide resolution no. 6/402 dated 14 February, 2013.

92.12 The Association has conceded to the factual position vide its letter dated 6 January, 2018 that since 2013, i.e., for five (5) years continuously or uninterruptedly each one is paying the license fees at the rates fixed by the

Commissioner @Rs. 222/- per Sq. Ft per annum. Even this communication does not state that such payments were made under protest or without prejudice.

92.13 In the light of such conduct on the part of the members of the Association, even the delay caused in filing various Writ Petitions in this Hon'ble Court, impugning the license fee and/or its rates needs to be underscored, although the principle of estoppel does not operate against law. However, if the action of the Corporation is found to be in accordance with law, certainly, the principle of estoppel will apply with full force, when the petitioners are businessmen, and not layman. Moreover, the petitioners are invoking the jurisdiction of this Court which is fundamentally discretionary, in addition to being extra-ordinary.

92.14 The contention raised by the petitioners in respect of the 'office order dated 25 April, 2013 being issued by the Additional Commissioner is without authority in law and/or issued in the absence of delegation of power, is misconceived. It is submitted that the said document is just an office order issued towards the implementation of the decision of the Commissioner bearing No. 6/402 dated 14 February, 2013. The same also does refer to the "मूळ प्रस्ताव" dated 18 September, 2012 bearing no. 399, "mool prastav" (original proposal).

92.15 It is a well-settled position in law that, the Court in exercise of its writ jurisdiction would not delve on the aspects of the justifiability or otherwise of the extent or quantum of the impugned fee, while exercising Writ Jurisdiction. It is

however submitted that, without prejudice to this contention, the following factual aspects demonstrate the justifiability of the quantum.

(i) The best way to set the pulse of the market or decide reasonableness of any rate, cost, price, fee etc. is by inviting tenders or open bidding process. It is submitted that in the present case in response to the open tender floated by the PMC on 18 February, 2011, relating to the hoardings, the Corporation received the maximum rate of Rs. 222/- per sq. ft per annum. In fact, in order to prevent the Corporation from going ahead with the said process that would have severely adversely affected the businesses of the petitioners, the petitioners tried to bring about a win-win situation for both, the Corporation and the petitioners, by holding conciliatory meetings with the local representatives and the Commissioner, where the Association of petitioners through their office bearers agreed that they will make the payment of the fee at the aforesaid maximum rate of Rs. 222/- per sq. ft. p.a., received in the tender process, so that the Corporation's financial interest are secured and the petitioners' business interest is also protected.

92.16 It is submitted that accordingly, the petitioners, without raising an eyebrow have paid the license fee at the impugned rate of Rs. 222/- per sq.ft. p.a. In view of the aforesaid, on the principles of waiver, acquiescence and estoppel the petitioners cannot invoke the extra-ordinary Constitutional writ jurisdiction

that is fundamentally discretionary, to impugn the payment of the very same license fee that they not only agreed to pay but also, in fact, paid quietly for a long period of more than five years.

Submission on Tax or Fee :-

93. The petitioners' allegation that the impugned fee is in the nature of tax is misconceived, both in law and in the facts of the case. In such context, it is submitted that the legal position is well settled in several decisions. A reference in such context is made to the decision of the Division Bench of this Court in **Sesa Sterlite Vs. State of Goa**[32] which according to the municipal corporation, *inter alia* explains/holds : (a) the difference between 'tax' and 'fee'; (b) distinction between 'a compensatory' and 'a regulatory' fee; (c) for regulatory fee *quid-pro-quo* is not necessary; (d) for regulatory fee it is not necessary that service or benefit must be shown to have been rendered to the payee; (e) 'broad correlation' between the regulatory fee and the requirement for effective regulation, the adequate/sufficient to sustain the levy. It is submitted that none of the petitioners have ventured to distinguish the same or give any ground for not applying the principles laid down thereby to the controversy at hand.

93.1 Even if it is shown that some surplus is generated on account of levy of 'a regulatory fee', it is a settled position in law that, on such a ground the levy

[32] (2024) SCC OnLine Bom 90

cannot be faulted, unless it is shown to be excessive to the extent of the same being 'exorbitant' and 'prohibitive', not just being on 'higher side'.

93.2 The validity of levy of an identical fee for the Municipal Corporation for Greater Mumbai has been upheld by this Hon'ble Court vide reported decision delivered in the case of **Yog Advertising Vs. MCGM**[33]. It is submitted that the Municipal Corporation on affidavit has submitted appropriate justification in this regard, in the context of the regulatory measures the Corporation is required to take not only for granting permission contemplated by Section 244 but also for securing the due compliance of all the conditions of license, throughout the license period, and additionally complying with its statutory obligation of regulation contemplated by Section 245.

93.3 In such view of the matter, by no stretch of imagination can it be said that the impugned extent of fee/levy at the rate of Rs. 222/- per sq. ft/p.a. is excessive, much less 'exorbitant' or 'prohibitive' so that this Court interferes in its extra-ordinary constitutional writ jurisdiction.

93.4 The quantum of impugned fee has not at all been enhanced for last 12 years, i.e. since its fixation by the Commissioner vide his decision dated 14 February, 2013. The comparative table showing the figures of increase at the rate of 20% is self-explanatory.

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[33] (2016) SCC OnLine Bom 62

93.5 The submission is also that if such fees as prescribed by the Pune Municipal Corporation are compared with the fees prescribed by the MCGM for the identical period, it would demonstrate that the impugned rate of fees is, in fact, too much on the lower side, rather than on the higher side. In this regard, attempts, made by the Petitioner to compare the same with property taxes and/or other fees prescribed for 'explosive license' etc. are misconceived and untenable as that it amounts to comparing an apple with oranges'. Even otherwise, such comparisons are not even tenable.

93.6 No doubt that there is an increase in the total amount received by the Corporation towards the impugned fee, during the last several years, however, such increase is not only on account of increase in the number of hoardings erected in the Municipal Corporation limits, but also on account of the expansion of the area of the Municipal Corporation as a result of inclusion of adjacent villages. This also has the effect of increase in the workload of all concerned departments, men and machinery of the Corporation engaged in discharging their duties envisaged by Section 244 read with Section 245 of the MMC Act.

93.7 It is submitted that the Standing Committee does not have any role, strictly in terms of law, in regard to the fixation of the impugned fec. On a plain and simple reading of Section 386(2), there is no manner of doubt that it is the Commissioner, who is to determine the same and it is for the General Body of the Corporation to sanction the same, as determined by the Commissioner and not

by the Standing Committee. At the most, the Standing Committee plays a role that is recommendatory in nature. The rates suggested/recommended by the 'Standing Committee are neither binding on the Commissioner nor on the General Body of the Corporation.

93.8 It is not a statable proposition that the impugned fee despite Section 386 (2) in no uncertain and unambiguous terms stating the same to be "a fee", is to be treated as 'a municipal tax' and that a far-fetched and convoluted contention is raised to the effect that such 'a fee' is "an impost' to be treated firstly as 'a tax', then as 'a municipal tax' and, thereafter, by applying provisions related to sanctioning of budget etc. it is the Standing Committee that has to fix the rates of such 'fee' to be approved by the General Body. It is submitted that raising such contention is built on a non-existent basis that the impugned fee is not 'a fee', although specifically spelt out to be "fee" by the charging provision itself, namely, Section 386(2). In such context, it is submitted that, such action of placing the proposal before the Standing Committee, was only for its recommendation as and by way of administrative convenience and not as and by way of legal prerequisite, hence, such recommendation cannot either make the levy 'a tax' instead of 'fee', nor would it attract the entire legal gamut to be followed in terms of the legal provisions relating to the sanction of budget etc.

93.9 On the petitioners' contention on the 'retrospective' application of the impugned fee, the Constitution Bench of the Supreme Court in the case of **Life**

Insurance Vs. Escorts Ltd. (supra) has rejected such contention, in the light of the law relating to the grant of the 'ex post facto sanction'.

93.10 Even otherwise, in the present case the fee has been levied and paid since 1 April, 2013 at the rate of Rs.222/- per sq. ft. p.a. Hence, the Corporation is neither levying it retrospectively nor recovering it with retrospective effect. Thus, it is not a statable proposition both in law and in facts that the impugned levy is made retrospectively.

94. On the aforesaid submissions, it is prayed that the writ petition be dismissed.

PART : H

Questions for consideration

95. The dispute mainly revolves on the following questions which fall for determination in the present proceedings :-

i. Whether the municipal corporation has the authority in law to levy license fees in granting/renewing permissions for sky-signs, advertisement, hoardings under the provisions of Section 244, 245 read with 386(1) and (2) of the MMC Act?

ii. Whether such license fees collected by the municipal corporation amount to the levy of "fee" or "tax" ?

iii. Whether the said provisions of the MMC Act permitting the municipal corporation to recover license fees in any manner, stand

obliterated, by introduction of the 'goods and services tax' laws with effect from 01 July 2017?

iv. Whether the action of the Municipal Commissioner in proposing a hike in the license fee of Rs. 85/-(sic Rs.82.60) per sq.ft./per annum to Rs. 222/- per sq. ft. p.a. vide decision/resolution dated 14 February 2013 (Resolution No. 06/402) as sanctioned by the general body of the Pune Municipal Corporation vide its Resolution No. 667 dated 28 September, 2018, permitting the municipal corporation to recover license fees with effect from 01 April 2013 is legal and valid ?

PART - I

Analysis:

96. Before we proceed to determine the aforesaid questions, briefly, we note the contours of what is being essentially derived from the aforesaid facts.

97. In a nutshell, the facts reveal that license fee for the sky-signs, hoardings was being paid by the advertisers and recovered by the municipal corporation exercising powers under Section(s) 244, 245 read with Section 386(2) of the MMC Act and the 2003 Rules read with the provisions in Appendix-II. For a long period, i.e., from 1984 to 2001, the rates of license fees remained at Rs.6.48 per sq. ft. p.a. for illuminated hoardings and Rs.1.62 per sq. ft. p.a. for non-illuminated hoardings. From 2006 to 2009, the rate of license fees as revised were fixed at Rs.41.30 per sq. ft. p.a. for non-illuminated hoardings and Rs.82.60

per sq. ft. for illuminated hoardings. The Municipal Commissioner, after a very long lapse of time, i.e., in the year 2010, decided to revise the rates. Also a policy was also introduced, namely, the "Pune Municipal Sky Sign Policy/Regulations, 2010" in relation to the sky-signs and hoardings. In implementing the said policy, Pune was divided into 4 zones. It was decided that competitive bids be invited to contract sky-signs/ hoardings. Accordingly, an advertisement dated 24 June, 2011 was issued inviting bids, under which the highest bid received by the municipal corporation was of Rs.222/- per sq. ft. p.a. This triggered disputes between the advertisers and the municipal corporation on different issues leading to multiple proceedings before the different forums, as noted hereinabove. These bodies not only approached the municipal corporation but also the State Government, assailing the decision being taken to enhance the advertisement fees. It, however, appears that at the same time, some of the advertisers accepted the rate of Rs.222/- per sq. feet/per annum and later on even the Association accepted the same. It is, however, their contention that the license fee was being paid without prejudice to their rights and contentions. Be it so, the fact remains that the license fee for the period 1 April, 2013 onwards was required to be paid at the rate of Rs.222/- per sq. ft. p.a. and which was paid by many advertisers as also there are recoveries pending from those who under the guise of the litigation have not paid. Due to the interim orders passed by this Court, the Municipal Corporation could not recover the license fees by taking coercive actions.

98. On such labyrinth, the issues of disputes between the advertisers and the Municipal Corporation revolves around the powers of the Municipal Commissioner to enhance/levy higher fees of Rs.222/- per sq. ft. per annum, firstly on the ground of no sanction being taken by the Municipal Commissioner from the General Body of the Municipal Corporation and thereafter when the sanction was granted, the contention is that the same could not be granted with retrospective effect, there being no power with the General Body of the Municipal Corporation to grant a retrospective sanction, albeit that in the intervening period, the license fee was being paid at the enhanced rate of Rs.222/- per sq.ft./p.a. The next issue being raised by the petitioners is on the legal development having taken place in the year 2017, namely, by virtue of the 101st Amendment to the Constitution with effect from 16 September 2016, the Goods and Services Tax being implemented in a two tier form, namely, the CGST and the MGST Acts being brought into effect from 1 July, 2017, and the consequence brought about by the same, which the petitioners contend to have taken away the power and authority of the municipal corporation to levy license fees on Sky signs and advertisements. The argument of absence of power is also based on deletion of Entry-55 pertaining to 'advertisement tax' from the State List (List II), being subsumed in the GST laws with effect from 16 September, 2016. The conundrum is also on some discord between the Municipal Commissioner on one hand and the Standing Committee on the other hand and

in such context, the intervention of the Government as sought by the Municipal Commissioner, which ultimately was ironed out.

99. Such are the broad contours of the disputes between the parties, leading to the questions which fell for determination as framed and noted in paragraph 95 hereinabove. Although we have noted the facts as revealed from the pleadings, in the earlier part of this judgment, the facts need to be analysed, so as to structure the same to have a clear and coherent framework on the factual conspectus. Thus, at the cost of some repetition, which appears to be quite unavoidable and particularly considering the bulk of the record, we discuss the essential facts in the following paragraphs.

100. The PMC at all material times was exercising powers under Sections 244, 245 read with Section 386(1) and (2) of the MMC Act in licensing installation of advertising and sky signs by charging license fees. It is not in dispute that between the period 01 April 1984 to 31 March 2001, the license fees were charged by the Municipal Corporation at the rate of Rs.6.48/- per sq. ft. per annum for the sky sign for the illuminated hoardings and Rs.1.62 per sq. ft. p.a. as sky sign fees for the non-illuminated hoardings.

101. It is also not in dispute that in exercise of powers conferred under Section 244 and 245 read with sub-section (1) of Section 456A of the MMC Act [then the Bombay Provincial Municipal Corporations Act (BPMC Act, 1949)] the Government of Maharashtra framed the 2003 Rules (supra). These rules were

comprehensive rules *inter alia* providing for a definition clause, as also providing for the categories of hoardings, namely, hoardings on the municipal corporation lands; procedure for obtaining permission and renewal of permission; removal or demolition of unauthorised hoardings, etc.; penalty for contravention; powers of the Commissioner to regularise advertisements or hoarding and general conditions *inter alia* containing an 'Appendix' prescribing general guidelines for agency and other matters prescribing forms etc. At all relevant times, the 2003 rules were legal and valid and were being implemented by the municipal corporation.

102. Further from June 2006 to 2009 the municipal corporation was charging fees at the rate of Rs.35/- per sq. ft. p.a. as sky sign fees for non-illuminated hoardings and at the rate of Rs.65/- per sq. ft. per annum for the illuminated hoardings.

103. The Standing Committee of the Municipal Corporation on 06 January 2009 passed Resolution No. 1837 and thereafter on 26 May 2009, it passed Resolution No. 164 on proposal(s) dated 06 January 2009 for increase in license fees on the proposal of the Municipal Commissioner on the enhancement of license fees for the outdoor advertising. On 28 January 2010, Resolution No. 417 was passed by the General Body of the municipal corporation on the proposal made on the Standing Committee Resolutions No. 1837 dated 06 January 2009 and Resolution No. 164 dated 26 May 2009 whereby it resolved that sky sign fee

rates as applicable from the year 2008-09 shall be increased by 20% for next three years with effect from financial year 2009-10. Consequently, the sky sign fees were increased from Rs.35/- in respect of non-illuminated to Rs.41.30/- per sq. ft / per annum and from Rs.65/- per sq.ft./ p.a. to Rs.82.60/- per sq. ft./p.a. for illuminated sky-signs respectively with effect from financial year 2009-10. Thus, these sky sign rates for the years 2009-10, 2010-11 and 2011-12 were accordingly increased. There was no dispute that those seeking advertising license on its renewal were making payment of such fees.

104. In the year 2010, the municipal corporation issued its advertisement policy under the provisions of Section 454 read with Section 455 and the 2003 Rules namely "Pune Municipal Sky Sign Policy / Regulations, 2010" *inter alia* making several provisions in regard to the installation of sky-signs/advertisement, hoardings, including on the dimensions as contained in Table-1 annexed thereto. It prescribes transfer of the hoarding rights and the tendering procedure for inviting bids to auction the tender sites in different zones.

105. A policy decision in pursuance of which the municipal corporation had issued "Pune Municipal Sky-signs Policy/ Regulation 2010" (2010 Regulations) was approved by the Standing Committee which was further approved by the General Body Resolution of the municipal corporation No.479 dated 18 February 2011. By such Resolution the City of Pune was proposed to be divided into "four zones" and exclusive monopoly rights to display advertisements in each

zone were proposed to be granted to the single highest bidder, covering both private sites and PMC-owned sites.

106. In or about April 2011, the Pune Outdoor Advertising Association being aggrieved by Resolution No. 479 dated 18 February 2011 (supra) passed by the General Body of the municipal corporation, approached the State Government under Section 451 of the MMC Act praying for intervention of the State Government to stay such resolution.

107. In pursuance of the 2010 advertisement policy of the Municipal Corporation, a public advertisement dated 24 June, 2011 was issued to auction the sky signs in four different zones. The name of the work as advertised under the said tender notice was to the effect "*Selection of Hoarding Contractor/Entrepreneurs who would be paid monthly to PMC against the rights of Designing, Providing, Maintaining, Fixing, Constructing, Erecting, Hoardings/Sky signs as per the new PMC sky sign policy within the PMC limits in zone one for the maximum period of 3 years*" [*]. The contents in regard to other four zones were identically described as 'zone two, zone three, zone four'. Bids were received in response to the said advertisement. The date of the opening of the bid was notified in the advertisement as 22 July, 2011. The highest bid as received by the Municipal Corporation was at Rs.222/- per sq. ft./per annum.

[*******] Exhibit-D Page 66 in Writ Petition No. 10684 of 2018 (Manoj Madhav Limaye & Ors. vs. State of Maharashtra)

108. The Pune Outdoor Advertising Association also approached this Court in Writ Petition No.3089 of 2011 *inter alia* assailing the said General Body Resolution. On such petition, an order dated 12 July 2011 came to be passed by a Division Bench of this Court thereby directing that the appeal of the said petitioners (filed under Section 451 of the MMC Act) pending with the State Government since April 2011 be decided on its own merits and in accordance with law within a period of six weeks from the date of the communication of the said order, after granting an opportunity of hearing to the petitioners. Operative part of the said order is required to be noted which reads thus:-

> "5. On the backdrop of the above referred facts, since the appeal is pending with the Government since April, 2011 it will be appropriate to pass the following order:-
>
> > [i] Writ Petition is disposed of with direction to the State Government to decide the Appeal of the petitioner filed under Section 451 of the Bombay Provincial Municipal Corporation Act, 1949 on its own merits in accordance with law and procedures applicable in this regard within a period of six weeks from the date of communication of this order. Considering the issue involved, it will be appropriate to direct the State Government to consider the application of the petitioner for grant of interim relief on its own merits in accordance with law and procedure applicable in this regard on 26.7.2011 by giving reasonable opportunity to the parties to the Appeal. The petitioner and the respondent undertakes to appear before the State Government accordingly, learned Counsel for the Corporation states that till the application for grant of interim relief is decided by the State Government, the tenders invited pursuant to the advertisement dated 17.5.2009 (sic. 26 June 2011) shall not be finalized."

109. In view of the aforesaid order passed by this Court, the State Government in exercise of powers under Section 451(1) of the MMC Act, by a Government Resolution dated 9 August 2011 suspended the operation of Resolution No.479 dated 18 February 2011. Consequent thereto, although bids were received under

the tender process for the four zones, the contract for the sky sign licences were not awarded by the municipal corporation.

110. Thereafter, a batch of writ petitions were filed in this Court, being Writ Petition No. 5055 of 2011 (M/s. Outdoor Elements vs. State of Maharashtra & Ors.) challenging the actions of the municipal corporation *inter alia* to charge the enhanced license fees. The said proceedings came to be disposed of by an order dated 21 September 2011 passed by the Division Bench of this Court which reads thus:-

> "1. Heard the learned counsel for the respective parties.
>
> 2. Considered the contentions canvassed by the respective counsel and perused the additional affidavit dated 24th August 2011 filed on behalf of respondent no. 2. In paragraph 2 of the additional affidavit, following statement is made which reads thus:
>
> > "I further say that, in view of earlier statement made before this Hon'ble Court as well as suspension of G.B. Resolution No. 479 dated 18.2.2011, the P.M.C. will not take any final decision not will proceed further for implementation and said Resolution No. 479 dated 18.2.2011 and keep the entire process in abeyance. However, the same will be subject to outcome of final sanction of State Government that may be granted after publication in Official Gazette under Section 454 and 455 of B.P.M.C. Act, 1949. I further state that, the process kept in abeyance may review only after sanction of State of Maharashtra after following due process of law and also after removal of defect, if any, according to State of Maharashtra."
>
> 3. In view of the above referred statement made in the additional affidavit, we do not propose to keep the Writ Petitions pending at this stage. The same are disposed of accordingly.
>
> 4. At this stage, the learned senior counsel for the petitioner has prayed that issues raised in the petitions may kindly be kept open. In the circumstances, issues raise in the petitions are kept open.
>
> 5. In view of disposal of the Writ Petitions, the Civil Applications does not survive and the same are disposed of."

111. In regard to the tender process for assigning the advertisement rights as per the four zones of Pune City in accordance with the Pune Municipal Corporation Skysign Policy 2010, as set out in the subject of the said letter *inter alia* recording that the Standing Committee as also the General Body of the Municipal Corporation had accorded approval to the Pune Municipal Corporation Skysign Policy 2010. The proposal also sets out that a high response was received to the tender process (supra) as recorded by the Pune Municipal Corporation calling for the tender zonewise and considering the substantive revenue which would be received through the tender process, it would be appropriate that the tender process is initiated as also the New Advertisement Policy/Regulation, 2010 submitted to the Government as per the aforesaid Resolution No. 589, dated 18 November 2011, needs to be approved by the State Government.

112. The Pune Outdoor Advertisers Association, on such backdrop, on the ground that the advertisers would be required to pay renewal fees at the rates which were fixed under the 2003 Rules, namely, at Rs.85 (Sic. Rs.82.60/-) per sq.ft. p.a. (enhancement as per Resolution No. 1837 dated 6 January 2009 of the Standing Committee) or Rs.222/- per sq.ft. p.a., (as per the highest bid received under the tender dated 24 June 2011) approached the Municipal Commissioner. Accordingly, a meeting between the parties was held on 10 September, 2012 in the office of Municipal Commissioner, in which certain decisions were taken

including on an undertaking which was agreed to be submitted on behalf of the advertisers. Copy of the minutes of the meeting is part of the record. The official translation of which is required to be noted, which reads thus:

> "(Official Translation of a photocopy of MINUTES OF THE MEETING dated 10.09.2012, typewritten in Marathi).
>
> Additional Municipal Commissioner (Estates),
> Pune Municipal Corporation.
> Outward No. A.M.C. (E)/126.
> Date : 14.09.2012.
>
> MINUTES OF THE MEETING CALLED ON MONDAY, THE DATE 10.09.2012, BY THE MUNICIPAL COMMISSIONER, PUNE MUNICIPAL CORPORATION, AT THE CHAMBER OF MUNICIPAL COMMISSIONER.
>
> **On Monday, the date 10.09.2012, at 12:00 noon, the Municipal Commissioner, Pune Municipal Corporation, had convened a Meeting in his chamber. The Member of Parliament by name Sau. Vandana Chavan, Shri Subhash Jagtap, Leader of the House, Shri Ramesh Shelar, Deputy Commissioner (Encroachment), Shri Balasaheb Ganjve, Chairman, Shri Rajji Faqui, Vice Chairman, Shri Manoj Limaye, Secretary and the Executive Committee Members of the Pune Outdoor Advertisers' Association, attended the said meeting. The discussion on the below mentioned subjects was held during the course of the discussion held at the meeting.**
>
> 1) Shri Shelar, Deputy Commissioner (Encroachment) shall prepare an objective information along with Notings in respect thereof on the point viz. as to what is the present position of the renewal of Advertisement Licence within the limits of Pune Municipal Corporation.
>
> 2) What is the number of the defaulters – Advertisement Licence Holders and have they sought any relief from the Court of Law. As regards the subject of the Audit Sub committee, the concerned Advertisement Holders should immediately make available the documents that they have to the concerned Section Writer. The Section Writer concerned shall bring the said documents to the notice at the time of discussion on the said subject in the meeting of the Audit Sub-Committee. Support of the documents available with the Department shall be taken therefor. The Municipal Secretary shall forward the recommendation of the Audit Sub-Committee to the Standing Committee for taking a decision thereon. As regards all the Advertisers who have been charged 5 times the amount as a Compromise Fee, shall execute an Affidavit, verify with the Skysign Licence Department and if the Advertisers to whom the fine amount equal to 5 times is applicable, seek permission in writing about paying the same in installments, they will be permitted on checking the position.

3) It has been informed that the Pune Municipal Corporation gets approximately Rs. 10 Crores from the Advertisement Fee that is received through the medium of presently existing Skysign Licence Department. Therefore, it has been decided to gather information as to whether the Advertisers should pay the Skysign Licence Regular Fee as per the prevailing rate of approximately Rs.85/- per Sq. Ft. per year or as per the rate mentioned in the tender i.e. at the rate of approximately Rs.222/- per Sq. Ft. (per year) and to determine the same. **The rate of approximately Rs.222/- per Sq. Ft. per year which has been mentioned in the tender invited as per the Skysign Policy / Regulation 2010 does not include the ground rent for the usage of the Municipal Corporation's buildings and land. For last many years, the Land and Estate Department has not invited tenders for the usage of Electric Poles and other lands of the Municipal Corporation. Taking into consideration all these facts and the B.O.T. sites of the Municipal Corporation, the Chairman and the Representatives of the Advertisers' Association has informed that the Municipal Corporation can get approximately Rs.40 Crores for one year in view of the 2003 Rules, which has remained as proposed even as of today.**

4) While getting paid by the Municipal Corporation the amount offered by all the Advertisers, the Association has agreed and admitted to execute an affidavit on the below mentioned points.

A) The existing licence shall be valid only for the period the Government grants its approval to the Skysign Policy/ Regulation, 2010.

B) In view of the proposed Advertisement Control Regulations, 2003, it shall be the responsibility of the Advertiser to get all the hoardings repaired and to get fully corrected its measurements, distance etc. in accordance therewith within 30 days.

C) **The Advertisers insisted upon the Municipal Corporation to grant them a concession to pay the amount of fine, due and payable as per the objection raised in the Audit, in installments.**

D) Shri Balasaheb Ganjve, Chairman, Shri Rajji Faqui, Vice Chairman, Shri Manoj Limaye, Secretary and the Executive Committee Members of the Pune Outdoor Advertisers' Association gave a concrete assurance that the Association and all Advertisers, Individual Advertisers shall consider to withdraw all the cases that are remained pending in the Municipal Court, District Court and High Court etc. Courts.

E) Every Advertiser shall display a number plate showing the approval granted by the Municipal Corporation, on the Hoardings and it shall be binding on all Advertisers.

F) For carrying out rectifications in respect of all the above mentioned points and for taking an appropriate decision about withdrawing the cases pending in the Courts of Law, the Additional Municipal Commissioner (Estates) shall convene a joint meeting with

the Advertisement Association and its Advocate, Office of the Legal Advisor and Skysign and Licence Department and shall prepare a fact showing report and shall submit an agenda to that effect to the Standing Committee.

(Signature)
Municipal Commissioner,
Pune Municipal Corporation."

(emphasis supplied)

113. The role of the Standing Committee although appears to be recommendatory, the Standing Committee, in the meantime, passed a Resolution No. 1196 dated 15 October, 2012, in which the Standing Committee considered that the municipal corporation with effect from 1 October, 2010 had not accepted any fees from the advertising agencies for the reason that the Municipal Corporation was in the process of implementing Advertisement Policy 2010 and for such reason, there were outstanding amounts with the advertising agency payable to Pune Municipal Corporation. Considering the fact that there should not be any revenue loss being caused to the Municipal Corporation, and although the outdoor advertisers were ready and willing to make payment of the license fees, as noted above, the Standing Committee, however, considered it to be appropriate that the license fees of Rs.222/- per sq.ft. p.a. be not levied however, for the period post 2010, and an enhancement of the rates at 15% p.a. be implemented. The relevant extract of the said resolution is required to be noted, which reads thus:

"(Translated extract of the Standing Committee Resolution No. 1196 dated 15.10.2012)

The below mentioned contents should be included in place of the contents

of Point No.3 in the Agenda.

3) The average regular fee for the prevalent skysign licence is not Rs.85/- per sq. ft. per year, but the rate for non-illuminated hoardings is average Rs. 41.30 per sq. ft. per year and for illuminated hoardings is average Rs.82.60 per sq. ft. per year. This fee is for the hoardings located on the private premises. Besides this, as per the Municipal Corporation's Advertisement Policy, 2010, the Tender Holders will be awarded in monopolistic way, the advertisement rights in respect of Municipal Corporation's assets i.e. the land estate assets, e.g. (1) Unipoles on the Footpath, (2) Ad-pole on the road dividers, (3) Kiosks on the Sodium Vapour Electricity Poles, (4) Advertisements on Flyovers, (5) Bus Stops, (6) Advertisement on Balloons, (7) Mesh put up around the trees and therefore, the rates for advertisement mentioned in tender are maximum. It is not proper to charge the Sky-sign Fee for the hoardings on private premises at the Tender Rate i.e. at the rate of Rs.222/- and therefore, the fee for the future period should be charged by enhancing the prevailing rates by 15 per cent."

(**emphasis supplied**)

114. On the aforesaid backdrop, it appears that the Additional Municipal Commissioner (Estates), Pune Municipal Corporation placed the following note for consideration of the Municipal Commissioner:

[Translation of a xerox copy of a Letter typewritten in Marathi].

Office of the Additional Municipal Commissioner (Estates)
Pune Municipal Corporation,
Enclosed to Inward No. 2/2347,
dated – 28/01/2012 (Sic. 14/02/2013).

Subject-Regarding permission for signboard.

The matter involving the application of Shri. Vishwajeet Subhash Jhavar, Marvel Sigma Homes Pvt. Ltd. seeking permission for signboard has been submitted for passing order on the point as to at which rate the license fee should be charged for granting permission to the said signboard/ hoarding.

The rate of the amount of Rupees 222/- per sq. mtr. has been mentioned in the tender invited by the Department in view of the proposed policy of Hoarding. Pursuant to the order passed by the Hon'ble High Court, a new advertisement policy has been formulated under Sections 454, 455 of the Maharashtra Municipal Corporation Act, 1949 and after getting the approval from the General Meeting thereto, the said proposal has been forwarded to the State Government for granting further approval thereto.

In view of the letter bearing O. No. M.C./Encroachment/399, dated 18/09/2012, in respect of the renewal of Hoarding, when the above-noted subject was submitted before the Standing Committee, the price quoted by

the Advertiser in the tender is maximum. It is not appropriate to charge the skysign fee for hoardings on private premises at the rate quoted in the tender, i.e. at the rate of Rs. 222/-. Therefore, a resolution has been passed in the Standing Committee meeting on the sub-motion by the Members to charge the fee by increasing the same by 15% in the prevailing rate for the further period. However, the Department, in its say, has mentioned that the Applicant is ready to pay the fee as per the rate quoted in the tender i.e. at the rate of Rupees 222/-. The provision in respect of charging the advertisement fee has been made in Sections 4(2) and 9 of the Skysign Advertisement Regulation, 2003.

The Advertising Policy Regulations, 2003 are still in force and the process in respect of seeking approval of the Government for the Pune Municipal Corporation Advertising Policy 2010 as per the Orders of the Hon'ble High Court has not yet been completed. On taking into account all the above-mentioned background, if permission is to be given for advertisement in the present matter, it will have to be given as per the Advertisement Regulations, 2003 and while giving replies to the starred questions in supplementary questions in Legislative Council, it has been mentioned that charging the amount at the old rate of Rs. 222/- would be tantamount to compromising with the higher rate. Similarly, the amount of Rupees 222/- towards fee should have to be paid as per the willingness shown by the Applicant. Hence, it is requested that appropriate order may be passed in this regard.

(Signature)
04/02
Additional Municipal Commissioner
(Estates)
Pune Municipal Corporation."

(**emphasis supplied**)

115. Although the aforesaid proposal was a proposal in terms of what was agreed by one of the licencee Shri. Vishwajeet Subhash Zanwar, an "original proposal" ("मूळ प्रस्ताव") dated 18 September 2012 was prepared which along with note dated 5 February, 2012 of the Additional Municipal Commissioner which was placed for consideration of the Municipal Commissioner. The original proposal dated 18 September, 2012 which is annexed to the reply affidavit and not to the Writ Petitions reads thus:

"(Translation of a photocopy of a LETTER, typewritten in Marathi)

Pune Municipal Corporation,
Shivajinagar, Pune- 5.
Office of the Municipal Commissioner,
Outward No. C. M.(Encroachment)/399,
Date: 18th SEPTEMBER, 2012.

To,

THE MUNICIPAL SECRETARY,
PUNE MUNICIPAL CORPORATION

Subject :- Regarding renewal of Hoarding.

Respected Sir,

During the course of the meeting held on Monday, the date 10.09.2012, in the Chamber of the Municipal Commissioner on the abovenoted subject, Hon'ble Member of Parliament Sau. Vandana Chavan; Leader of the House Shri Subhash Jagtap; Head of the Department- Deputy Commissioner (Encroachments); Chairman, Vice Chairman, Secretary and the Members of the Executive Committee of the Pune Outdoor Advertisers Association, were present and for taking steps pursuant to the decision taken in the said Meeting, it is necessary to obtain sanction of the Standing Committee for the below mentioned items:-

1) As regards the Advertisers to whom the Compromise Fee is charged at five times, if all such Advertisers file affidavits and after ascertaining the facts from the Skysign License Department, make demand in writing to allow them to pay the fine charged at five times, in installments, then to verify the facts and to allow them to do so.

2) As regards the issue as to what is the number of the defaulters-Advertisement Licence holders and have they sought any relief from the Court of Law, before the Audit Sub Committee, the concerned Advertisers to produce the documents available with them through the concerned Officers at the time of discussion on the Items in the Meeting of the Audit Sub Committee and the Audit Sub Committee to place the recommendations for approval thereto before the Standing Committee.

3) **To take decision about paying the rate at an average of Rs.222/- per sq. ft. mentioned in the Tender for the Skysign, by the Advertisers, instead of paying the prevailing Skysign License regular fee at an average rate of Rs.85/- per sq. ft. per year.**

4) While getting paid by the Municipal Corporation the amount offered by all the Advertisers, to take affidavit from the Advertising Agency / Persons, on the below mentioned points as agreed to and admitted by the Association during the course of the meeting held on the date 10.09.2012.

A) The existing licence shall be valid only for the period the Government grants its approval to the Skysign Policy/ Regulation, 2010.

B) In view of the proposed Advertisement Control Regulations, 2003, it shall be the responsibility of the Advertiser to get all the hoardings repaired and to get fully corrected its measurements, distance etc. in

accordance therewith within 30 days.

C) The Advertisers shall pay, in installments, the amount of fine, due and payable as per the objection raised in the Audit, in accordance with the approval granted thereto.

D) The Association and all Advertisers, Individual Advertisers shall withdraw all the cases filed against the Municipal Corporation in the Municipal Court, District Court and High Court etc. that are remained pending there.

E) Every Advertiser shall display a number plate showing the approval granted by the Municipal Corporation, on the Hoardings and it shall be binding on all Advertisers.

Therefore, in order to grant approval to the aforesaid proposal, it is requested to place this Agenda before the Standing Committee.

May this be known.

Yours faithfully,
(Signature)

Additional Municipal Commissioner (Estates)
Pune Municipal Corporation."

(emphasis supplied)

116. It is in terms of the aforesaid original proposal as submitted by the Additional Commissioner, the Municipal Commissioner granted approval dated 14 February, 2013 in terms of his remarks "A', which is corresponding to paragraph 3 of the original proposal (supra) as highlighted by us. Thus, the Municipal Commissioner approved levy of rate of Rs.222/- per sq.ft. p.a. replacing the rate of Rs.85/- per sq.ft. p.a.

117. In pursuance of the decision taken by the Municipal Commissioner, the Additional Municipal Corporation (Estates) issued an office order dated 24 April, 2013 *inter alia* recording that different organizations of the advertisers had held a meeting on 20 April, 2013 to discuss the enhancement of the license fees to Rs.222/- per sq.ft. p.a. as also that the proposal for enhancement of Rs.222/-

per sq.ft. p.a. was on the basis on which licenses would be renewed, was forwarded to the Standing Committee by Outward No. 399 dated 28 September, 2012. In such context, the Municipal Commissioner passed Resolution No. 6/402 dated 14 February, 2013 to the effect that the proposed rate of Rs.222/- per sq.ft. p.a. is approved and hence, for renewal of license, such rate shall be charged. The office order issued by the Additional Commissioner (Estates) of the Municipal Corporation reads thus:

> (Translation of a photocopy of an OFFICE ORDER, typewritten in Marathi)
>
> EXHIBIT 'F-1'
>
> Additional Municipal Commissioner (Estates),
> Pune Municipal Corporation.
> Outward No. Addl. C. M.(E)/32,
> Date: 25.04.2013.
>
> OFFICE ORDER
>
> Subject:- Regarding the License fee by the Skysign and License Department.
>
> On the date 20/04/2013, a meeting with representatives of various Advertising Agencies was held at Savarkar Bhavan. In the said meeting, the representatives of the Advertising Agencies made enquiry as to whether the advertisement license of Rs. 222/- is per sq. mtr. or per sq. ft.
>
> Under Outward No. M. C./Encroachment/399, dated 18/09/2012, the Agenda regarding the renewal of the hoardings was placed before the Standing Committee, for approval. At Sr. No. 3 in the said Agenda, the rate of the amount of Rs. 222/- per sq. ft. was proposed.
>
> **Moreover, in the matter under subject, the Municipal Commissioner, vide Resolution No. 6/302/402 dated 14/02/2013, has granted approval to the fee proposed at the rate of Rs. 222/- per sq. ft., in the aforesaid Agenda. Therefore, the fee for hoarding renewal license should be charged at the said rates.**
>
> (Signature)
> Additional Municipal Commissioner (Estates)
> Pune Municipal Corporation."
>
> (emphasis supplied)

118. The Pune Outdoor Advertisers Association, being aggrieved by the rate of Rs.222/- per sq. ft. p.a. fixed by the Municipal Corporation, addressed a letter / representation dated 10 June 2013 to the Municipal Commissioner that the said enhancement was exorbitant and that for the period 1 April, 2013 to 30 September, 2013, unwillingly and under protest/without prejudice, the members of the association would be paying such rate for renewal of license fees. The representation also requested that an appropriate decision be taken and that the decision taken by the Standing Committee to grant increase at the rate of 20% from the rates of 2008-09 be adopted.

119. The Municipal Commissioner, on the backdrop of the Resolution No.1196 dated 15 October, 2012 of the Standing Committee, as also considering his decision dated 14 February, 2013 enhancing the license fee to Rs.222/- per sq.ft. p.a., addressed a communication dated 18 January, 2014 to the Principal Secretary, Urban Development Department, Government of Maharashtra requesting the Principal Secretary/State Government to suspend the decision of the Standing Committee dated 15 October, 2012 proposing 15% increase, which according to the Municipal Commissioner was not in the larger interest of the Municipal Corporation.

120. The State Government, in response to the said proposal received from the Municipal Corporation addressed a letter dated 25 March, 2014 to the Municipal Commissioner seeking further information whether the decision of the Standing

Committee was placed before the General Body of the Municipal Corporation. The said letter of the State Government was replied by the Additional Municipal Commissioner (Estates) by communication dated 19 May, 2014 *inter alia* stating that the decision of the Standing Committee was not placed before the General Body of the Municipal Corporation and that if the decision of the Standing Committee is implemented, it would result into decrease in the revenue of the Municipal Corporation. The said communication of the Additional Municipal Commissioner (Estates) dated 19 May, 2014 reads thus;

(Translation of a photocopy of a LETTER, typewritten in Marathi)

EXHIBIT 'F-5'

License and Skysign Department,
Pune Municipal Corporation,
Outward No.Addl. C. M.(E.)/ L/236,
Date: 19.5.2014.

To,
The Section Officer,
Urban Development Department,
Government of Maharashtra,
U. D./22, Mantralaya,
Mumbai.

Subject :- Regarding cancellation of Resolution No. 1196 dated 15.10.2012 of the Standing Committee of Pune Municipal Corporation.

References :- 1) Resolution No. 1196 dated 15.10.2012 passed by the Standing Committee of Pune Municipal Corporation.
2) Resolution No. 6/402 dated 14.2.13 passed by the Municipal Commissioner.
3) Office Circular bearing Outward No. M.C./E./1594, dated 18.2.13.
4) Outward No. M.C/L/1047, dated 18.1.14.
5) Letter bearing No. PMC/3014/M.No.110/ U.D./22 dated 25.3.14 from the Office of Urban Development Department, Mantralaya, Mumbai.

Sir,

The representation under the abovementioned Reference at Sr. No. 4 has been submitted for the cancellation of Resolution No. 1196 dated

15.10.2012 passed by the Standing Committee of the Pune Municipal Corporation. A Letter in respect thereof from your Office has been received under the abovementioned Reference at Sr. No.5 and pursuant thereto, the information is as under:-

As the rates for charging advertisement fee from License and Sky Sign Department of the Pune Municipal Corporation are to be increased, this proposal was submitted by the administration before the Standing Committee. However, the Standing Committee instead of accepting the said proposal as per the new rates as submitted by the administration, approved the same for charging fee by enhancing the old rates by 15%.

However, if the advertisement fee charged as approved by the Standing Committee, it will cause a financial loss to the Municipal Corporation and as the advertisers are ready to pay the fees at the new rate of Rs. 222/-, the Municipal Commissioner, vide Resolution No. 6/402 dated 14/2/2013, granted approval to charge the fee at the new rate of Rs. 222/- instead of implementing Resolution No. 1196 dated 15/10/2012 passed by the Standing Committee and accordingly, charging the advertisement fee has been started and from the date 1/4/2013, the advertisers are even paying the fee at the new rates.

On account of all the abovementioned facts, Resolution No. 1196 dated 15/10/2012 passed by the Standing Committee, was not placed before the General Meeting, for seeking approval thereto. Moreover, if the Resolution of the Standing Committee is implemented, then the same will result in a decrease in the income of the Municipal Corporation and will cause financial loss to the Municipal Corporation and therefore, instead of implementing the Resolution of the Standing Committee, the advertisement fee have been charged by the aforesaid approval of the Commissioner.

(Signature)
19/05/2014
Additional Municipal Commissioner (Estates)
Pune Municipal Corporation."

(emphasis supplied)

121. It clearly appears that after the aforesaid letter dated 19 May 2014 was addressed by the Additional Municipal Commissioner (Estate) to the State Government, no action was taken and insofar as the renewal of license fee is concerned. The Municipal Corporation was charging the licence fee at the rate of Rs.222/- per sq. ft./per year.

122. The aforesaid position prevailed from 2014 to 2018, i.e. for a period of more than four years, when on 21 March 2018 on behalf of the State Government, the Section Officer - Urban Development Department, addressed a letter to the Municipal Commissioner *inter alia* informing that under the 2003 Rules, fixing of the licensing rates for hoardings/advertisement, was a matter completely internal to the municipal corporation. It was recorded that in the event there is any proposal for enhancement of the rates, then as per the provisions of the MMC Act, it would be necessary to obtain an approval of the General Body of the Municipal Corporation. It was also stated that considering the correspondence it appeared that an approval of the General Body was not taken, hence the proposal for enhancement of the license fee dated 18 January 2014 was required to be placed before the General Body for an appropriate decision in that regard to be taken. The said letter of the State Government received from the Municipal Commissioner was placed on record on behalf of the State Government in the proceedings of the writ petition filed by one Dilip Joshi (Writ Petition No.11709 of 2014). In the said petition, while adjourning the proceedings, to enable learned Counsel for the Municipal Corporation to take instructions on the said position taken on behalf of the State Government, this Court on 23 March 2018 passed the following order:

> "1. Learned advocate appearing for the Pune Municipal Corporation was apprised of the communication from the Department of Urban Development, Government of Maharashtra dated 21st March, 2018. A copy of the communication from the State Government to the Commissioner, Pune Municipal Corporation dated 21st March, 2018, is taken on record and marked "X" for identification.

> 2. This communication to the Municipal Commissioner of the Pune Municipal Corporation specifically says that the provisions of the Maharashtra Municipal Corporations Control of Hoardings and Advertisement Rules, 2003, are self-explanatory. For displaying of any advertisement or hoarding within the Municipal limits, rates are to be determined by the Municipal Corporation. However, once the determination is done or there has to be a revision in the old rates, then, in terms of the Maharashtra Municipal Corporation Control of Advertisement and Hoarding Rules, 2003, require the permission/approval from the General Body. The communication from the Municipal Commissioner to the State Government dated 19th May, 2014, does not refer to any such approval/permission of the General Body. Therefore, the Municipal Commissioner is directed to place his proposal contained in the letter dated 18th January, 2014, before the General Body and then revert back to the State Government.
>
> 3. Mr. A.P. Kulkarni, appearing for the Pune Municipal Corporation presently has no instructions, though he does not deny the issuance of such a communication.
>
> 4. He, therefore, seeks time to speak to the Municipal Commissioner and revert back to this Court.
> 5. We place this petition for passing orders on 2nd April, 2018."
>
> (emphasis supplied)

123. On the aforesaid backdrop, the said writ petition was thereafter again listed before the Division Bench on 2 April 2018, when an order was passed disposing of the petition. In the said order, a statement as made in the reply affidavit filed on behalf of the municipal corporation, *inter alia* to the effect, that the Municipal Commissioner has now decided to await the decision of the General Body in regard to the rates as approved by him vide decision dated 18 January 2014. The Court also recorded that accordingly the said issue was placed for approval of the General Body of the Pune Municipal Corporation for fixing the rental or fees, as the case may be, for grant of advertisement permission in terms of 2003 Rules. In such context, a statement on behalf of the Corporation

was recorded that no sky sign or advertisements or hoarding structures will be disturbed by the municipal authorities. Accordingly, it was directed that the General Body shall take necessary decision in regard to the approval of revised rental fee. The said order is required to be noted which reads thus:

> "On March 23, 2018, we passed the following order:
>
> > "1. Learned advocate appearing for the Pune Municipal Corporation was apprised of the communication from the Department of Urban Development, Government of Maharashtra dated 21st March, 2018. A copy of the communication from the State Government to the Commissioner, Pune Municipal Corporation dated 21st March, 2018, is taken on record and marked "X" for identification.
> >
> > 2. This communication to the Municipal Commissioner of the Pune Municipal Corporation specifically says that the provisions of the Maharashtra Municipal Corporations Control of Hoardings and Advertisement Rules, 2003, are self-explanatory. For displaying of any advertisement or hoarding within the Municipal limits, rates are to be determined by the Municipal Corporation. However, once the determination is done or there has to be a revision in the old rates, then, in terms of the Maharashtra Municipal Corporation Control of Advertisement and Hoarding Rules, 2003, require the permission/approval from the General Body. The communication from the Municipal Commissioner to the State Government dated 19th May, 2014, does not refer to any such approval/permission of the General Body. Therefore, the Municipal Commissioner is directed to place his proposal contained in the letter dated 18th January, 2014, before the General Body and then revert back to the State Government.
> >
> > 3. Mr. A.P. Kulkarni, appearing for the Pune Municipal Corporation presently has no instructions, though he does not deny the issuance of such a communication.
> >
> > 4. He, therefore, seeks time to speak to the Municipal Commissioner and revert back to this Court.
> >
> > 5. We place this petition for passing orders on 2nd April, 2018."
>
> 2. Today, Mr.A.P. Kulkarni has tendered an affidavit of the Deputy Municipal Officer and Head of Sky Sign Department of Pune Municipal Corporation ("PMC", for short).
>
> 3. In paragraph No.6 of the affidavit, the Deponent states that the record indicates that the Standing Committee of the Pune Municipal Corporation has

not accepted the decision taken by the Municipal Commissioner of fixing the advertisement fees at Rs.222/- per square feet. The Pune Municipal Corporation administration thereafter had referred to the resolution of the Standing Committee, suggesting 15% increase in the previous rate, to the State of Maharashtra, under Section 451 of the Bombay Provincial Municipal Corporation Act/Maharashtra Municipal Corporation Act, 1949. The earlier communication, which is referred in the above order, has been expressly referred in paragraph 6 of this affidavit. Thereafter, there is an opinion recorded and possibly of the Municipal Commissioner with regard to which, presently, we say nothing. We are not required to make any observations, leave alone, render any final conclusion as to whether there is any power in the Municipal Commissioner to revise the rates or terms and conditions with regard to payment of fees for display of sky signs and advertisements on the hoarding structures.

4. For our purpose, the statement recorded in paragraphs 7 and 8 of the affidavit would suffice. The Municipal Commissioner has now decided to await the decision of the General Body, though his opinion is otherwise. The matter has now been placed for approval of the General Body of the Pune Municipal Corporation for fixing the rental or fees, as the case may be, for grant of advertisement permission in terms of the Rules of 2003. Till the approval is obtained, on instructions, Mr.Kulkarni states that no sky sign or advertisements or hoarding structures will be disturbed by the Municipal Authorities. Mr. Kulkarni clarifies that none of the structures/advertisements or the sky sign will be disturbed, leave alone, removed or pulled down only for the non–compliance by the applicant, as far as the payment of rental or fees, as proposed by the Municipal Commissioner are concerned. Merely because the increased rates have not been paid, the above acts, as apprehended by the petitioner or any concerned applicant, would not be carried out by the Municipal Authorities.

5. Once Mr.Kulkarni makes this statement, we have no reason not to accept it as an undertaking given to this Court. Equally, we direct that, until the General Body takes the necessary decision with regard to approval to the revised rental /fees, none of the structures, styled as "hoarding structures", displaying their advertisements or sky sign or otherwise, shall be pulled down or demolished only because the demand for such rental or fees has not been satisfied. Similarly, they shall not be pulled down or demolished only because the renewal of the permission has not been granted by the Municipal Corporation, solely on the ground of non-payment of such revised rates/fees and determined by the Municipal Commissioner.

6. This order does not in any manner prevent the Municipal Authorities from proceeding against these structures, if they violate the other terms and conditions of the applicable laws. In such case, the Municipal Authorities can proceed against them in accordance with law and this order shall not prevent them from doing so.

7. Needless, therefore, to clarify that, all contentions with regard to the powers of the Municipal Commissioner or the General Body with regard to the determination of rates or revision thereof, are kept open for being considered at an appropriate stage.

> 8. We dispose of the petition and the Intervention Application with these directions.
>
> 9. We also clarify that, the petitioner or such others, who are aggrieved by the revision in the rates, are free to challenge the same in accordance with law. All contentions in that regard of both the sides are kept open."
>
> (emphasis supplied)

124. In pursuance of the aforesaid orders and the specific communication from the State Government dated 21 March 2018, the Municipal Commissioner on 3 May 2018 moved a detailed proposal before the General Body of the Municipal Corporation setting out the entire backdrop of the issue and sought an approval to the Resolution No.6/402 dated 14 February 2013 taken by the Municipal Commissioner for enhancement of rate to Rs.222/- per sq. ft. per year "with effect from 1 April 2013". The General Body of the Municipal Corporation in terms of the Resolution No.667 dated 28 September 2018 granted an approval to the said proposal of the Municipal Commissioner, in which, it was resolved that the Resolution of the Standing Committee dated 15 October 2012 wherein the Standing Committee has resolved that 15% yearly increase be granted on the rate of Rs.85/- per sq.ft p.a., be not acted upon and the Resolution of the Municipal Commissioner No.6/402 dated 14 February 2013 levying advertisement fee at the rate of Rs.222/- per sq.ft. p.a. with effect from 1 April 2013 be granted an *ex post facto* approval. The said resolution reads thus:

> (Official Translation of a photocopy of RESOLUTION, typewritten in Marathi)
>
> EXHIBIT 'H-4'
>
> MUNICIPAL SECRETARY OFFICE
> PUNE MUNICIPAL CORPORATION

RESOLUTION OF THE MEETING OF MUNICIPAL CORPORATION

Meeting No.:- 53 Date:- 28.9.2018
Item No.:- 410

RESOLUTION NO.:- 667

Chamber:- Municipal Commissioner.

References:- 1) Letter bearing No. M. C./L./45, dated 03.05.2018 from the Municipal Commissioner.
2) Municipal Corporation Resolution No. 188 dated 19.07.2018.

Taking into consideration the grounds mentioned and the recommendation made in the letter of the Hon'ble Municipal Commissioner:-

Considering the Items mentioned on the Agenda of the Office of the Municipal Commissioner, as per the directions of the Section Officer, Urban Development Department, Government of Maharashtra and pursuant to the Order dated 02.04.2018 of the Hon'ble Bombay High Court, it is necessary to place the Resolution No.1196 dated 15.10.2012 passed by the Standing Committee, before the General Meeting for seeking approval thereto. However, considering the monitory interest of the Pune Municipal Corporation, it is necessary to grant ex-post-facto approval of the General Meeting for charging Advertisement fees that is being charged with effect from the date 01.04.2013 pursuant to the Approval/Resolution No.6/402 dated 14.02.2013 passed by the then Municipal Commissioner instead of the Standing Committee Resolution No. 1196.

Therefore, ex-post-facto approval is granted for charging Advertisement Fees at the rate of Rs.222/- per sq. ft. per year being charged with effect from the date 01.04.2013 pursuant to the then Municipal Commissioner's Resolution No.6/402 dated 14.02.2013 instead of charging Advertisement Fees by enhancing by 15%, the Advertisement Fees being charged at the rate of Rs.85/- per sq. ft. per year heretofore as mentioned in Clause No. 3 of the Standing Committee Resolution No. 1196 dated 15.10.2012.

(Signature)
Deputy Municipal Secretary
Pune Municipal Corporation."

(emphasis supplied)

125. On the backdrop of the General Body of the Municipal Corporation having taken a decision on 28 September 2018 by the impugned resolution permitting *ex-post facto* approval for levy of the rate of license fee at Rs.222/- per

sq.ft./per year with retrospective effect, the present batch of petitions came to be filed in this Court *inter alia* assailing the said levy on the different grounds as noted by us hereinabove.

126. In the meantime, the Municipal Commissioner on 8 April, 2021 took a decision to accept the processing fee / scrutiny fee of Rs.5000/- for grant/renewal of the licenses to be issued for the sky signs/hoardings. Such decision was finally approved on 17 June 2021. The stand of the Municipal Corporation is that there is no requirement of any approval of the Standing Committee or General Body in this regard.

PART - J

Relevant provisions

127. Having noted the aforesaid factual position surrounding the controversy, to answer the questions as set out in paragraph 95 of this judgment, insofar as the powers of the Municipal Corporation are concerned, at the outset, we refer to the relevant provisions of the MMC Act *inter alia* on funds of the Municipal Corporation and the relevant provisions on the issuance of license and levy of license fees. Such provisions are Sections 82, 127, 244, 245 and 386 also deliberated at the bar. The said provisions read thus:-

> "Section 82 - Constitution of Municipal Fund.—
>
> Subject to the provisions of this Act and the rules and subject to the provisions of section 44 of the Bombay Primary Education Act, 1947 -
>
> (a) all moneys received by or on behalf of the Corporation under the provisions of this Act or of any other law for the time being in force, or under any contract,

(b) all proceeds of the disposal of property by or on behalf of the Corporation,

(c) all rents accruing from any property of the Corporation,

(d) all moneys raised by any tax levied for the purposes of this Act,

(e) all fees and fines payable and levied under this Act or under any rule, by-law, regulation or standing order other than fines imposed by a Court,

(f) all moneys received by way of compensation or for compounding offences under the provisions of this Act,

(g) all moneys received by or on behalf of the Corporation from the Government or public bodies, private bodies or private individuals by way of grant or gift or deposit, subject, however, to the conditions, if any, attached to such grant, gift or deposit, and

(h) all interest and profits arising from any investment of, or from any transaction in connection with, any money belonging to the Corporation, shall be credited to a fund which shall be called " the Municipal Fund" and which shall be held by the Corporation in trust for the purposes of this Act, subject to the provisions herein contained.

Section 127. Taxes to be imposed under this Act.—

(1) For the purposes of this Act, the Corporation shall impose the following taxes, namely :—

(a) property taxes ;

(b) a tax on vehicles, boats and animals.

(2) In addition to the taxes specified in sub-section (1) the Corporation may for the purposes of this Act and subject to the provisions thereof impose any of the following taxes, namely :—

……

……

(c) a tax on dogs ;

(d) a theatre tax ;

(e) a toll on animals and vehicles, entering the City ;

(f) any other tax (not being a tax on profession, trades, callings and employments), which the State Legislature has power under the Constitution to impose in the State.

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), no tax or toll shall be levied on motor vehicles save as provided in section 20 of the Bombay Motor Vehicles Tax Act, 1958.

(3) The Municipal taxes shall be assessed and levied in accordance with the provisions of this Act and the rules.

(4) Nothing in this section shall authorise the imposition of any tax which the State Legislature has no power to impose in the State under the Constitution."

(Note : There is no provision for imposition of an "advertisement tax").

Section 244. Regulations as to sky-signs.

(1) No person shall, without the written permission of the Commissioner, erect, fix or retain any sky-sign of the kind prescribed by rules whether existing poster depicting any scene from a cinematographic film, stage play or other on the appointed day or not. [Where a sky-sign is a stage performance, such permission shall not be granted, unless prior scrutiny of such poster is made, by the Commissioner and he is satisfied that the erection or fixing of such poster is not likely to offend against decency or morality. A permission under this section] [may be granted or renewed for a period not exceeding two years) from the date of each such permission or renewal, subject to the condition that such permission shall be deemed to be void if,-

(a) any addition is made to the sky-sign except for the purpose of making it secure under the direction of the City Engineer;

(b) any change is made in the sky-sign, or any part thereof;

(c) the sky-sign or any part thereof fall either through accident, decay or any other cause;

(d) any addition or alteration is made to, or in, the building or structure upon or over which the sky-sign is erected, fixed or retained, involving the disturbance of the sky-sign or any part thereof;

(e) the building or structure upon or over which the sky-sign is erected, fixed or retained becomes unoccupied or be demolished or destroyed.

(2) Where any sky-sign shall be erected, fixed or retained after the appointed day upon or over any land, building or structure, save and except as permitted as hereinbefore provided, the owner or person in occupation of such land, building or structure shall be deemed to be the person who has erected, fixed or retained such sky-sign in contravention of the provisions of this section, unless he proves that such contravention was committed by a person not in his employment or under his control, or was committed without his connivance.

(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.

Section 245. Regulation and control of advertisement.

(1) The Commissioner may, by notice in writing, require the owner or the person in occupation of any land, building, wall, hoarding or structure to take down or remove, within such period as is specified in the notice, any advertisement upon such land, building, wall, hoarding or structure.

(2) If the advertisement is not taken down or removed within such period, the Commissioner may cause it to be taken down or removed, and

the expenses reasonably incurred on the taking down or removal thereof shall be paid by such owner or person.

(3) [Except in case of posters depicting any scene from a cinematographic film, stage play or other stage performance, the provisions of this section] shall not apply to any advertisement which,-

(a) is exhibited within the window of any building;

(b) relates to the trade or business carried on within the land or building upon which such advertisement is exhibited or to any sale or letting of such land or building or any effects therein, or to any sale, entertainment or meeting to be held upon or in the same;

(c) relates to the business of any railway administration;

(d) is exhibited within any railway station or upon any wall or other property of a railway administration, except any portion of the surface of such wall or property fronting any street.

Section 386. General provisions regarding grant, suspension or revocation of licences and written permissions and levy of fees, etc.

(1) Whenever it is provided by or under this Act that a licence or a written permission may be given for any purpose, such licence or written permission shall specify the period for which, and the restrictions and conditions subject to which, the same is granted and the date by which an application for the renewal of the same shall be made and shall be given municipal officer under the signature of the Commissioner or of a empowered under section 69 to grant the same.

(2) **Except as may otherwise be provided by or under this Act, for every such licence or written permission a fee may be charged at such rate as shall from time to time be fixed by the Commissioner, with the sanction of the Corporation**.

(3) Subject to the provisions of the proviso to sub-section (1) of section 378, any licence or written permission granted under this Act may at any time be suspended or revoked by the Commissioner, if he is satisfied that it has been secured by the holder through misrepresentation or fraud or if any of its restrictions or conditions is infringed or evaded by the person to whom the same has been granted, or if the said person is convicted of an infringement of any of the provisions of this Act or of any rule, by-law or standing order in any matter to which such licence or permission relates.

(4) When any such licence or written permission is suspended or revoked, or when the period for which the same was granted has expired, the person to whom the same was granted shall, for all purposes of this Act, be deemed to be without a licence or written permission, until the Commissioner's order for suspending or revoking the licence or written permission is cancelled by him or until the licence or written permission is renewed, as the case may be : Provided that, when an application has been made for the renewal of a licence or permission by the date specified therein, the applicant shall be entitled to act as if it has been renewed, pending the receipt of orders.

(5) Every person to whom any such licence or written permission has been granted shall, at all reasonable times, while such written permission or licence remains in force, if so required by the Commissioner, produce such licnece or written permission.

(6) Every application for a licence or permission shall be addressed to the Commissioner.

(7) The acceptance by or on behalf of the Commissioner of the fee for a licence or permission shall not in itself entitle the person paying the fee to the licence or permission."

(emphasis supplied)

128. Further, as noted hereinabove, the Municipal Commissioner, as also at a given point of time the advertisers, invoked the provisions of Section 451 of the MMC Act applying to the State Government to suspend or rescind resolution passed by the Standing Committee of the Municipal Corporation. Section 451 of the MMC Act reads thus:-

"**451. Power of State Government to suspend or rescind any resolution or order, etc. of Corporation or other authority in certain cases.**

(1) If the State Government is of opinion that the execution of any resolution or order of the Corporation or any other authority or that the doing of any act which is about to be done or is being done by or on behalf of the Corporation of such authority is in contravention of or in excess of the powers conferred by or under this Act or any other law for the time being force, or is likely to lead to a breach of the peace or to cause injury or annoyance to the public or any class or body of persons, or is likely to lead to abuse or misuse of or to cause waste of municipal funds against the interest of the public [or is likely to be against the financial interest of the Corporation or against larger public interest] the State Government may, by order in writing, suspend the execution of such resolution or order or prohibit the doing of any such act, for such period or periods as it may specify therein. A copy of such order shall be sent forthwith by the State Government to the Corporation and to the Commissioner or the Transport Manager.

(2) On receipt of a copy of the order as aforesaid, the Corporation or Commissioner or Transport Manager may, if it or he thinks fit, make a representation to the State Government against the said order.

(3) The State Government may, after considering any representation received from the Corporation or Commissioner or Transport Manager and where no such representation is received within a period of thirty days, either cancel, modify or confirm the order made by it under sub-section (1) or take such other action in respect of the matter as may in its opinion be just or expedient, having regard to all the circumstance of the case. Where any order

made under sub-section (1) is confirmed the State Government may direct that the resolution or order of the Corporation or its authority in respect of which suspension order was made under sub-section (1) shall be deemed to be rescinded.

(4) Where any order is made by the State Government under sub-section (3), it shall be the duty of every Councillor and the Corporation and any other authority or officer concerned to comply with such order."

(emphasis supplied)

129. In the context of the sky-signs as contemplated under Section 244 of the MMC Act, the provisions of Chapter XI of Schedule D to the MMC Act are required to be noted which read thus:-

"

CHAPTER XI

I. Sky-signs.

1. Interpretation of sky-sign.

(1) For the purposes of section 244 the expression" sky-sign" means 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 frame-work 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. It 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.

(2) A sky-sign 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 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 administration, and placed wholly upon or over any railway, railway station, yard, platform or station approach belonging to a railway administration 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."

130. As the Municipal Corporation was acting upon and implemented the Bombay Provincial Municipal Corporations (Control of Advertisement and Hoarding) Rules, 2003, i.e., the 2003 Rules, as framed by the State Government on advertisements and hoardings, the relevant provisions of the said Rules and the Forms thereof, also need to be noted which read thus:

Rule 2 Definitions

(I) In these rules, unless the context otherwise requires-

(1) .. … .

(2) "**advertisement**" means and includes any representation in any manner such as announcement or direction by words, letters, models, signs by means of any device or posters, hoarding boards, banners, temporary arches, illuminated signs, name boards, direction boards, small advertisement boards on existing poles, balloons, etc.; and the term "advertising" shall be construed accordingly;

(3) "agency" means a person, being an individual and includes a body of persons, whether incorporated or not, making application for advertisement:

4) "Appendix" means appendix to these rules;

(5) **"approved" means approved by the Commissioner:**
…….

(14) **"hoarding" means any surface of structure erected on ground or any portion of a roof of a building at, on or above the parapet, with characters, letters or illustrations applied thereto and displayed in any manner whatsoever, for purpose of advertising;**

Rule 4. Procedure for obtaining permission and renewal of permission

(1) No agency shall put up an advertisement without permission in writing from the Commissioner.

(2) Any agency intending to erect any type of hoarding, or an advertisement on rotaries and traffic island, guard rails, tree guards or sky-signs or balloons, shall make an application in the Form "A" or in case of renewal of permission in Form "B", in duplicate, together with such fees as may be determined by the Commissioner from time to time.

(3) The application shall be accompanied by the following documents, namely:-

(i) written permission of the owner of the land, where the land on which the hoarding is to be erected;
(ii) three copies of site plan showing location of advertisement or hoarding proposed to be erected;

(iii) design of the advertisement by a structural engineer except advertisement in case of banners or posters or balloons;

(iv) the No Objection Certificate from the Traffic Department of local Police shall be called by the Commissioner, if necessary;

(4) An applicant shall conform to the general guidelines described in Appendix 1.

(5) A separate application shall be necessary for each location and type of advertisement specified in Appendix 2.

(6) Every application received as per provisions of sub-rules (3) to (5), shall be acknowledged and the decision thereon shall be communicated by the Commissioner to the applicant in writing, within 45 days from the date of receipt of the application. If the decision on such application is not communicated to the applicant within the specified period, the permission shall be deemed to have been granted:

Provided that, while deciding the application the Commissioner shall be bound by the guidelines specified in Appendix 2.

7) On the permission being granted or deemed to have been granted under sub-rule (6), the agency shall within fifteen days thereof, pay the rent and or, as the case may be, the fees, or both. If the agency fails to pay the same, the permission shall stand cancelled after the expiry of the period of said fifteen days.

(8) On the permission being granted the Commissioner shall issue the licence in, Form-C.

(9) A permission for advertisement at a particular location may be granted for a period not exceeding two years. The rental charges and or fees shall be collected from the agency as per the rate decided by the Commissioner, from time to time, and shall be binding on the agency. The rent or fees shall be paid-by-the-agency to the Corporation, in advance for six months as advance to the Corporation.

Rule 7. Powers of the Commissioner to regularise advertisements or Hoarding

The Commissioner may, in his own discretion, and by an order in writing. regularise the installation of any hoarding that may have been installed without permission, by charging a compounding fee not exceeding five times of chargeable fee provided such hoarding or advertisement is in accordance with the provisions of these rules.

Rule 8. General conditions

The permission for advertisements shall be guided by the following guidelines and the same shall be treated as additional conditions and be part of a permission:-

(a) No substantial additions or modifications shall be permitted during the period of contract without prior permission therefor by the Commissioner.

(b) If the Commissioner, for reasons to be recorded in writing, requires removal of the advertisements, it shall be removed forthwith, failing which the Commissioner may get the advertisement removed at the risk and cost of the agency.

(c) The advertisement must be maintained in a clean, tidy and safe condition to the satisfaction of the Commissioner.

(emphasis supplied)

FORM A
[(See rule 4(2)]

Licence & Sky-Sign

Licence & Sky – sign Department No. …….
(Price - ……..)

Municipal Corporation of ……...
Application Form

[(See rule 4(2)]
(See section 244 in the B.P.M.C. Act, 1949)

To,

Municipal Commissioner,
Municipal Corporation of ……..

1. Name of the applicant (in full) ……..

2. Residential Address (in full) …….. Peth ….. House No. …...

3.	Location of the Sky – Sign	……..Peth/Village/Ward No…… Chowk…….. House No……... C.T.S. No. ……... Road ……...
4.	Details of business carried out at the space shown in Col. No. 3	
5.	Nature of advertisement (Please state whether the advertisement is with light or non-light)	
6.	Measurement of advertisement	
7.	Height of the Bottom of Sky-Sign from road level	
8.	Details of structure	
9.	Whether the application is made as individual or on behalf of company if so, details of company/ individual with full address.	
10.	The land where the structure is to be erected owned by the applicant or otherwise, (Give details of property with evidence)	
11.	If the land is owned by person other than applicant, details of name and postal address of landlord.	
12.	Whether the Landlord given the consent to erect the Sky-Sign (if so please attach original consent letter)	
13.	Whether the location of Sky-Sign is open space or populated area.	
14.	Date from which advertisement to be erected.	
15.	Period of advertisement	

Affidavit

I ……... Res. ……. solemnly affirm that the information given above is true and correct.

Date : Signature of Applicant

Part II
(For Office Use)

To,

The Competent Authority,
Sky-Sign Department

Inspector has inspected the site and measurement of Sky-Sign and noticed that the contents are correct as per affidavit.

Nature of Advertisement ……

No.	Size	Period	Rate of fees	Monthly fees	Total fees	Remark

The Advertisement is covered under the provisions of Section 244 of B.P.M.C. Act, 1949. Sanction may please be accorded for accepting the fee.

Inspector of Licence & Sky-Sign Chief Inspector of Licence and Sky-Sign
Municipal Corporation

Order

Sanction is hereby accorded to accept fee from the applicant and to grant permission.

Competent Authority
Municipal Corporation

Advertisement Fee Rs.

Challan No. …….. dated ……..

Licence No. …….. dated ……..

Register Page No. …….

Chief Inspector of Licence and Sky-Sign
Municipal Corporation

Inspector of Licence & Sky-Sign

FORM B
[(See rule 4 (2)]
Sky-Sign Department

Advertisement Licence

Form For Renewal

(1) Name of applicant and address : ……..

(2) Details of Advertisement :…….

(3) Place : ……

(4) Sanctioned size and type : …….

(5) Illuminated/Non-Illuminated : …….

(6) Upto which date last renewal is done : ……..

(7) Next period of renewal : ……

(8) Whether the property owner / has given No Objection for further renewal of sanctioned hoarding ……

Date : / /2025 Signature of applicant

(For office use)

Inspection report :

I have visited personally to the advertisement site mentioned in application. There are no changes in size as well as type or whatsoever. The hoarding structure is in safe and stable condition. Hence renewal of hoarding as mentioned in the application is recommended.

Date : / /2025

Licence Inspector Sanctioned

Chief Inspector of Licence and Sky-Sign Municipal Corporation

Municipal Corporation of ---

Licence fee Rs. …….

Total Rs. ……

Challan No. …….. Dated : / /202 is deposited in Municipal Treasury.

Licence No. ……. Dated : / /202 is allotted.

Register No. & Page No. ……. Date : / /202

Inspector of Licence & Sky-Sign

Chief Inspector of Licence and Sky-Sign Municipal Corporation"

131. The aforesaid provisions of the MMC Act, the rules thereunder, and the 2003 Rules framed by the State Government, demonstrates a complete statutory scheme in relation to the "regulation and control" of the sky signs, hoardings, etc., which clearly recognizes the powers of the Municipal Commissioner to levy license fees on sky-signs and hoardings and further powers to regulate them.

132. Having noted the effect of the relevant statutory provisions, considering the challenge as mounted by the petitioners, it is also imperative to note the relevant provisions of the Constitution of India in the context of the powers of the municipalities (Municipal Corporation) as conferred under Part IX-A of the Constitution of India as introduced by the Constitution (Seventy Third Amendment) Act, 1992 with effect from 1 June 1993 and more particularly the power of municipalities to levy and collect taxes, toll, fees etc. Also the relevant provisions of the Constitution qua the legislative powers of the Parliament and the State, in the context of the amendments brought out by the Constitution 101st Amendment Act of 2016, with effect from 16 September 2016, introducing the GST laws are required to be noted along with the relevant entries in List I and II of the Seventh Schedule to the Constitution. The relevant provisions being Article 243X, 246, 246A, 269A, 366, (12A), (28) and (29A) of the Constitution, which read thus:-

> "**Article 243X. Power to impose taxes by, and Funds of, the Municipalities.**
>
> The Legislature of a State may, by law,-
>
> (a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
>
> (b) assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
>
> (c) provide for making such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and
>
> (d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom, as may be specified in the law.

246. Subject-matter of laws made by Parliament and by the Legislatures of States

(1) Notwithstanding anything in clauses (2) and (3), P**arliament has exclusive power to make laws** with respect to any of the matters enumerated in List 1 in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) **Notwithstanding anything in clause (3), Parliament and subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List")**.

(3) **Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of** the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').

(4) **Parliament has power to make laws** with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

Article 246A. Special provision with respect to goods and services tax.

(1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have **power to make laws with** respect to goods and services tax imposed by the Union or by such State.

(2) **Parliament has exclusive power to make laws** with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce. Explanation. The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.]

269A. Levy and collection of goods and services tax in course of inter-supplies in the course State trade or commerce.-

(1) Goods and services tax on of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Explanation. For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

(2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.

(3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under article 246A, such amount shall not form part of the Consolidated Fund of India.

(4) Where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

(5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.]

366. Definitions. In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say-

(1) …….

(12A) "goods and services tax" means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption;

……

(28) **"taxation" includes the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly;**

…..

(29A) "tax on the sale or purchase of goods" includes -

(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c) a tax on the delivery of goods on hire-purchase or any system of payment by instalments;

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;]"

(emphasis supplied)

133. As seen from the aforesaid provision of the Constitution, Article 246 read with Article 246A defines the power of the Parliament and the State to make laws. Article 246 deals with distribution of legislative power between the Union and State Legislature with reference to the different list in the Seventh Schedule. It is one of the source of authority to legislate under the authority. It is well-settled that Article 246 does not provide for competence of the Parliament or the State Legislature, as may be understood, it merely provides for the respective legislative fields. It is also well-settled that each entry of the Seventh Schedule needs to be interpreted in a broad manner. We shall discuss the legal position in this regard when we discuss the petitioners contention on the effect of deletion of Entry-55 List II by 101st Constitutional Amendment Act with effect from 16 September, 2016 and the consequent introduction of GST Laws (Central/State GST Acts).

134. Having noted the relevant constitutional and statutory provisions, we proceed to deal with the questions which fell for determination.

<u>As to Question no.(i)</u>

135. It is clearly seen that installation of sky-signs and advertisements as defined by the 2003 Rules (supra) is a subject which is governed by the provisions of Section 244 of the MMC Act, which falls under the Chapter heading "Sky-Signs and Advertisements". Section 244 in no uncertain terms stipulates that no person shall, without the 'written permission' of the Commissioner, erect, fix or retain any sky-sign of the kind prescribed by rules. It

also prescribes that a permission under the said provision 'may be granted' or 'renewed' for a period not exceeding two years from the date of each such permissions or renewal. Further, Section 245 provides for regulation and control of advertisement thereby empowering the Commissioner to take action against a sky-sign/hoarding on any land, building, wall, hoarding or structure and order to take down or remove the same within such period as is specified in the notice. These two provisions indicate a complete control and regulation of the Municipal Commissioner over the erection, fixing and retaining of any sky-signs and hoardings.

136. In the context of the language of Section 244 using the words "no person shall, without the '*written permission'* of the Commissioner, erect, fix or retain any sky-sign", *ipso facto* attracts the provisions of Section 386(1) and (2) of the MMC Act, which is a general provision regarding the grant of suspension or revocation of license or written permission and levy of fees and etc. Sub-section (1) of Section 386 ordains that whenever it is provided by or under the MMC Act, that a license or a written permission may be given for any purpose, such license or written permission shall specify the period for which, and the restrictions and conditions subject to which, the same is granted, and the date by which an application for the renewal of the same shall be made and shall be given under the signature of the Commissioner or of the municipal officer empowered under section 69 to grant the same. Sub-section (2) of Section 386 is a vital provision in regard to the controversy involved in the present proceedings, which

ordains that, except as may otherwise be provided by or under the MMC Act, for 'every such license' or 'written permission' a fee may be charged at such rate as shall from time to time be fixed by the Commissioner, with the sanction of the Corporation. Coupled with the said substantive provisions of the MMC Act also the statutory rules, namely, the 2003 Rules clearly provide that a sky-sign/ hoarding can be put up only after written permission is granted by the Municipal Commissioner for displaying the advertisement, and that the Municipal Commissioner exercises control over such matters. It is thus quite clear that the Municipal Commissioner, acting on behalf of the Municipal Corporation, has the power to issue licenses or written permissions on payment of fees, which may be charged at such rates as are fixed by the Commissioner from time to time and as sanctioned by the Municipal Corporation. The power is not only to grant licences upon levy of fees, but also to renew such licenses on payment of fees as fixed from time to time and approved by the Municipal Corporation. There is no challenge to the constitutional validity of these provisions, under which the law authorizes the levy of license fees for grant and/or renewal of licenses. The petitioners contention that a distinction between the term sky-sign and advertisement for the purpose of levy of a license fee is wholly misconceived and in fact in the teeth of the Rules (supra). It is an unwarranted hair-splitting. The first question, therefore, would be required to be answered in affirmative that the Municipal Commissioner/Municipal Corporation has authority in law to levy fees for granting permissions/licenses.

As to Question (ii) and (iii)

137. The contention of the petitioners on the powers of the municipal Commissioner as conferred by the MMC Act being no more available, is twofold. The first contention is that the powers as conferred on the Municipal Commissioner under Section 244 read with Section 245 and Section 386(2) have been impliedly repealed by virtue of the promulgation of the Goods and Services Tax Act, with effect from 1 July, 2017. The second contention is that the legislature itself has lost the legislative power to levy a license fee in view of the deletion of Entry-55 in the State List (List-II) of the Seventh Schedule to the Constitution. Such contention is to the effect that the license fee, in fact, is a tax on advertisement, hence, in the absence of the legislative power available with the State Legislature by virtue of the deletion of Entry 55 of List II, the provisions under the municipal laws permitting levy of a tax on advertisement, would stand extinguished. Consequently, the provisions under Sections 244, 245 read with Section 382(2) are not available to be exercised by the Municipal Corporation. These are the issues which fall for discussion when we answer question nos. (ii) & (iii) as noted hereinabove.

138. First and foremost, applying the golden rule of interpretation to a conjoint reading of Section 244, Section 245 read with Section 386(2) of the MMC Act, it is clear that the legislature itself has regarded the fees to be charged for grant or renewal of sky-sign/hoarding license as a fee. Insofar as the provisions of MMC

Act are concerned, these provisions draw a clear distinction between the Municipal Corporation's power to levy taxes and its power to levy other charges or fees. On this basic premise, the provisions conferring powers to charge license fees do not fall within the ambit of the powers of the municipal corporation to levy tax. On the plain purport and applicability of the provisions of MMC Act, the levy of license fee as a tax is *per se* not recognized by the legislation. Thus, there is no intention of the legislature to label the license fee to be even remotely a tax. This is the position which is clearly reflected on the face of the legislation.

139. However, the contention of the petitioners is quite otherwise, i.e., to label the license fees as tax although *ex-facie* it is not what the legislation *per se* would accept. Such contention is on the basis, that the levy of license fee contributes to the revenue of the municipal corporation and by virtue of this the character of such levy from 'fee' changes to 'tax'. The proposition at first blush is attractive, however, a deeper scrutiny would reveal that it is untenable.

140. From the relevant provisions of the MMC Act as noted hereinabove, the legislative scheme of the MMC Act in such context, is quite compartmentalized when specific taxing provisions are created which empower the municipal corporation to levy different taxes. This is clear from the provisions of Section 127 (supra), which provides for taxes to be imposed by the municipal corporation under the MMC Act. A perusal of different sub-clauses of sub-sections (1) and (2) shows that there is no head of any tax on sky-signs/boardings and

advertisements. Thus, *per se* the charging section which empowers the Municipal Corporation to levy different taxes does not provide for any tax to be levied on advertisements/sky signs/hoardings etc.

141. It is difficult to conceive that the legislature would be unaware when it made such distinction between taxes and fees being levied under the MMC Act. Thus, it may not be permissible for the Court to *per se* add words in Section 386 different from what has been used by the legislature in sub-section (2), when the provision uses the word "fee", being permitted to be charged by the municipal corporation for the purpose of license to be issued for the installation of sky-signs/ hoardings.

142. Thus, having examined as to what is apparent from the relevant statutory provisions, we turn to the contention as urged on behalf of the petitioners, that the license fee being levied by the municipal corporation is in fact required to be regarded as a "tax" for the reason that there is no element of *quid pro quo* when advertisements / sky signs are erected, installed on private properties for which rent is in fact paid by the advertisers to the persons who own the private properties. It is hence contended that considering the settled principles of law as laid down in **Sri Shirur Mutt** (supra), **Hingir Rampur Coal Co. vs. State of Orissa** (supra), the levy of license fee must necessarily be regarded as a tax. It is contended that once the levy of license fee is regarded as "tax", the same would be rendered *per se* illegal, for two fold reasons; **Firstly**, that the charging provision

namely Section 127 of the MMC Act itself does not confer any authority for levy of a tax on advertisement as the advertisement tax is not one of the ingredients / included under the provisions of Section 127, which authorizes the municipal corporation to levy different taxes. **Secondly**, even otherwise, in view of the deletion of Entry 55 from List II of the Seventh Schedule, the legislature itself does not have any authority to legislate in regard to imposition of advertisement tax. Once such authority is not available with the legislature, Section(s) 244, 245 read with Section 386(2) stand impliedly repealed, hence, there would be no question of the municipal corporation insisting that it can nonetheless levy a tax on hoardings, sky signs and that too under the garb of license fee. The petitioners, however, may not be correct in such contention.

143. We may observe that although the principles of law in regard to "fee" and "tax" by now are well settled and more particularly referring to the decision of the Supreme Court in **Shirur Mutt** and other decisions as cited on behalf of the petitioners, however, the fact remains that such distinction would be relevant only when, in the present case, the fee is being collected by the municipal corporation as a source of revenue by virtue of which it ceases to retain its legal character as a fee and entrenches upon the character of a tax, so as to be purely a source of revenue.

144. The petitioners contention that the license fees being collected in fact is a levy of tax by the municipal corporation, is ill-founded for more than one reason. As noted above, the plain purport of the relevant provisions, namely, conjoint

reading of Section 244, 245 and 386(2) *vis-a-vis* Section 127 would not permit license fee to be a tax, hence, such contention cannot be accepted. Further, the intention of the legislature becomes clear when we read Section 82 of the MMC Act, which categorically provides that all monies including any money received by the municipal corporation towards license fee would form part of the municipal fund, with a specific incorporation and recognition of "fees" being collected by the municipal corporation, as recognized by Section 82(e). Section 82 which deals with municipal funds once takes within its ambit all such sources of revenue, which includes fees as also other charges, taxes etc. to form the revenue of the municipal corporation. Such being the intention of the legislature, namely, whichever be the source of such earning of the municipal corporation, it would form part of the revenue of the municipal corporation, it cannot be accepted that contrary to what has been provided under Section 386(2), a license fee be nonetheless regarded as tax. In our opinion, a contrary proposition being canvassed on behalf of the petitioners in drawing distinction between fee and tax as laid down in the decision of the Constitution Bench of the Supreme Court in **Shirur Mutt** (supra) is not tenable in the facts and circumstances of the present case.

145. In **Shirur Mutt**, the Supreme Court laid down the distinction between 'tax' and 'fee' *inter alia* to the effect that the characteristic of a tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax, as also that, the levy of tax is for the purposes of

general revenue, which when collected, forms a part of the public revenues of the State. It was also held that the object of a tax is not to confer any special benefit upon any particular individual, as there is no element of *quid pro quo* between the taxpayer and the public authority. Insofar as the 'fee' is concerned, it was held that a 'fee' is generally defined to be a charge for a special service rendered to individuals by some governmental agency, and that the amount of fee levied is supposed to be based on the expenses incurred by the Government in providing the service. It was also held that a fee is regarded as a sort of return or consideration for services rendered, and that it was absolutely necessary that the levy of fees should, on the "face of the legislative provision", be correlated to the expenses incurred by the Government in rendering the services. The Court held that if the money raised by levy of the contribution is not earmarked or specified for defraying the expenses that the Government has to incur in performing the services, it is the material fact in regard to the characteristic of a fee.

146. It is hence the petitioners' submission that the present levy in terms of what is received as license fee, being received/collected by the municipal corporation predominantly for the purpose of generating revenue, then applying the decision in **Shirur Mutt** (supra) it would be required to be held as 'tax'. It is contended that the decision in **Shirur Mutt** (supra) has been referred with approval in several subsequent decisions. Some of them being "**The Hingir-Rampur Coal Co. Ltd. & Ors. vs. State of Orissa & Ors.**[34], **Jindal Stainless Ltd.**

[34] 1960 SCC OnLine SC 60

vs. State of Haryana[35], **State of Uttarakhand Vs. Kumaon Stone Crusher**[36]; **Gaurav Kumar Vs. Union of India**[37].

147. The municipal corporation, however, has opposed the aforesaid contention as urged on behalf of the petitioners and submitted that such levy of license fee is not a tax, but a regulatory fee. In such context, we may observe that the principles of law in **Shirur Mutt** (supra) that the basic difference between a tax and a fee, being that "a tax" is a compulsory exaction of money by the State for public purposes and it is not payment for some specific services rendered, and insofar as the "fee" is concerned, it is a charge for a special service rendered by some governmental agency, was subject matter of consideration in several decisions. In **Vijayalashmi Rice Mills & Ors. Vs. Commercial Tax Officers, Palakol & Ors.**[38] the Supreme Court held that the earlier view to the effect that to sustain the validity of a fee, some specific service must be rendered to the particular individual from whom the fee was sought to be realized, had undergone a sea change. It was held that in regard to the concept of a fee, it was no longer regarded necessary that some specific service must be rendered to the particular individual or individuals from whom the fee is being realized, and what has to be seen is whether there is a 'broad and general co-relationship' between the totality of the fee on the one hand, and the totality of the expenses of the services on the other. It was held that a broad correlation between the two is

35 (2017)12 SCC 1
36 (2018)14 SCC 537
37 (2025)1 SCC 641
38 (2006) 6 SCC 763

sufficient to sustain the levy. The relevant observations are required to be noted which read thus:-

> "**15.** It is well settled that the basic difference between a tax and a fee is that a tax is a compulsory exaction of money by the State or a public authority for public purposes, and is not a payment for some specific services rendered. On the other hand, a fee is generally defined to be a charge for a special service rendered by some governmental agency. In other words there has to be *quid pro quo* in a fee vide *Kewal Krishan Puri* v. *State of Punjab* [(1980) 1 SCC 416 : AIR 1980 SC 1008] .
>
> **16. The earlier view of the Supreme Court was that to sustain the validity of a fee some specific service must be rendered to the particular individual from whom the fee is sought to be realised. However, subsequently in *Sreenivasa General Traders* v. *State of A.P.* [(1983) 4 SCC 353 : AIR 1983 SC 1246] , the Supreme Court observed: (SCC p. 380, paras 31-32)**
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> > "*31*. The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. If the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered. …
> >
> > *32*. There is no generic difference between a tax and a fee. Both are compulsory exactions of money by public authorities."
>
> **21. As already stated above, the concept of fee has undergone a sea change, and hence the writ petition is liable to fail on the mere ground that the writ petition was drafted under a total misconception about the legal position. As already stated above, the concept of fee has undergone a sea change, while the writ petition has been drafted in the light of the old concept of fee and not the new concept which was subsequently developed by the Supreme Court."**
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> (emphasis supplied)

148. In **State of West Bengal vs. Kesoram Industries Ltd. & Ors.** (supra) before the Supreme Court the proceedings had arisen from the orders passed by the Division Bench of the Calcutta High Court, wherein cess on coal bearing tea plantation land and cesses levied on brick-earth were struck down by the Division

Bench of the High Court. In considering the State's assail of the High Court's decision, the Supreme Court considered the questions centering around Entries 52, 54 and 97 in List I and Entries 23, 49, 50 and 66 in List II of the Seventh Schedule to the Constitution of India as also the extent and purport of the residuary power of legislation vested in the Union of India. In such determination, considering the provisions of the Seventh Schedule, it was held that the various entries in the three Lists are not 'powers' of legislation but 'fields' of legislation and in doing so, they must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. It was held that the words and expressions employed in drafting the entries must be given the widest possible interpretation. This is because the allocation of the subjects in the lists is not by way of scientific or logical definition but by way of a mere *simplex enumeration* of broad categories. It was held that a power to legislate, as to the principal matter specifically mentioned in the entry shall also include within its expanse the legislation touching incidental and ancillary matters. Applying such principles, the Court held that general power of 'Regulation and Control' does not include the power of taxation, thereby observing that it is too well settled by a series of decisions that the power of "regulation and control" is separate and distinct from the power of taxation. It was held that such principles have been applied in myriad situations in the context of statutes providing collection of fee. It was not necessary that the services rendered by the fee collected should remain confined to the persons from whom the fee has been collected. Further the

availability of indirect benefit and a general nexus between the persons bearing the burden of levy of fee and the services rendered out of the fee collected was held to be enough to uphold the validity of the fee charged. Thus, the petitioners contention that as there is no *quid pro quo* and hence, the license fee ought to be regarded as a tax is not well founded.

149. In such context, we may usefully refer to the judgment of the Supreme Court in **Sona Chandi Oal Committee & Ors. Vs. State of Maharashtra**[39] wherein the petitioners, who were licensed moneylenders, had challenged Section 9-A of the Bombay Money Lenders Act, 1946, being ultra vires the provisions of the Constitution insofar as it sought to levy 'inspection fee' for the renewal of moneylender's licence. The validity of the said provision was upheld by the High Court. The question which was posed before the Supreme Court was whether the impugned fees were in fact a tax under the guise of a fee, and whether it was excessive or unreasonable, so as to lose the character of fee. The Supreme Court held that levy of fee is required for renewal of license, and therefore, it was necessary for the State to undertake certain acts to satisfy the essential requirements in regard to whether money lending business was being carried out in accordance with the rules. It was held that only after satisfying itself that no irregularities had been committed, would the moneylenders be entitled to renewal of licence. Considering the nature of expenses required to be incurred by the State, the Supreme Court held that the traditional concept of *quid pro quo* in

[39] (2005)2 SCC 345

a fee has undergone considerable transformation and held that the fees being charged are 'regulatory fees' and that the levy does not cease to be a fee merely because there is no element of *quid pro quo*. In the present case, it is also the petitioners contention that the impugned fee is exorbitant. The following observations as made by the Supreme Court are required to be noted which read thus:

> "22. A three-Judge Bench of this Court in *B.S.E. Brokers' Forum* v. *Securities and Exchange Board of India* [(2001) 3 SCC 482] after considering a large number of authorities, has held that much ice has melted in the Himalayas after the rendering of the earlier judgments as there was a sea change in the judicial thinking as to the difference between a tax and a fee since then. Placing reliance on the following judgments of this Court in the last 20 years, namely, *Sreenivasa General Traders* v. *State of A.P.* [(1983) 4 SCC 353], *City Corpn. of Calicut* v. *Thachambalath Sadasivan* [(1985) 2 SCC 112 : 1985 SCC (Tax) 211], *Sirsilk Ltd.* v. *Textiles Committee* [1989 Supp (1) SCC 168 : 1989 SCC (Tax) 219], *Commr. & Secy. to Govt., Commercial Taxes & Religious Endowments Deptt.* v. *Sree Murugan Financing Corpn.* [(1992) 3 SCC 488], *Secy. to Govt. of Madras* v. *P.R. Sriramulu* [(1996) 1 SCC 345], *Vam Organic Chemicals Ltd.* v. *State of U.P.* [(1997) 2 SCC 715], *Research Foundation for Science, Technology & Ecology* v. *Ministry of Agriculture* [(1999) 1 SCC 655] and *Secunderabad Hyderabad Hotel Owners' Assn.* v. *Hyderabad Municipal Corpn.* [(1999) 2 SCC 274] **it was held that the traditional concept of *quid pro quo* in a fee has undergone considerable transformation. So far as the regulatory fee is concerned, the service to be rendered is not a condition precedent and the same does not lose the character of a fee provided the fee so charged is not excessive. It was not necessary that service to be rendered by the collecting authority should be confined to the contributories alone. The levy does not cease to be a fee merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have a direct relation to the actual service rendered by the authority to** each individual who obtains the benefit of the service. **<u>*Quid pro quo* in the strict sense was not always a *sine qua non* for a fee. All that is necessary is that there should be a reasonable relationship between the levy of fee and the services rendered. It was observed that it was not necessary to establish that those who pay the fee must receive direct or special benefit or advantage of the services rendered for which the fee was being paid. It was held that if one who is liable to pay, receives general benefit from the authority levying the fee, the element of service required for collecting the fee is satisfied</u>**."
>
> (emphasis supplied)

150. Applying the aforesaid principles to the facts of the present case, the municipal corporation has clearly brought about that there are large number of actions which are required to be taken in processing the application for grant / renewal of the license for sky-signs/hoardings, which clearly shows a reasonable relationship between the levy of fee and the regulatory services. Also, the law as laid down by the Supreme Court in **Sona Chandi Oal Committee** (supra) clearly recognizes that insofar as a regulatory fee is concerned, the services to be rendered are not a condition precedent and the same does not lose the character of a fee, provided that the fee so charged is not excessive. Hence, the principle of "regulatory fee" is one which needs to apply in the municipal corporation levying licence fees for the purpose of advertisement, sky-signs and hoardings, as rightly contended on behalf of the municipal corporation.

151. In **Jalkal Vibhag Nagar Nigam & Ors. vs. Pradeshiya Industrial and Investment Corporation & Anr.**[40], the Supreme Court was considering a challenge to the decision of the High Court before whom a writ petition filed under Article 226 of the Constitution instituted by the first respondent was allowed, directing the appellants to refund water and sewerage taxes levied and collected under the provisions of the Uttar Pradesh Water Supply and Sewerage Act, 1975. In such context, the Supreme Court examined two questions - (i) Whether the demand of water tax and sewerage tax is sustainable with reference to the provisions of the UP Water Supply and Sewerage Act; and (ii) Whether the

[40] (2021) 20 SCC 657

State Legislature had the legislative competence to levy the tax under the relevant provisions. In the context of examining the constitutional challenge, the Court examined the contention on tax and fee. In considering the submissions on behalf of the appellants that the tax which was imposed under the provisions in question was truly speaking of a fee, the Supreme Court referring to the decision in **Southern Pharmaceuticals and Chemicals, Trichur v. State of Kerala**[41] as also **Municipal Corporation of Delhi v. Mohd. Yasin**[42] made the following observations in the context of the distinction between a tax and fee being steadily obliterated:-

> **"61.** The distinction between a tax and fee has substantially been effaced in the development of our constitutional jurisprudence. At one time, it was possible for courts to assume that there is a distinction between a tax and a fee : a tax being in the nature of a compulsory exaction while a fee is for a service rendered. This differentiation, based on the element of a quid pro quo in the case of a fee and its absence in the case of a tax, has gradually, yet steadily, been obliterated to the point where it lacks any practical or constitutional significance. For one thing, the payment of a charge or a fee may not be truly voluntary and the charge may be imposed simply on a class to whom the service is made available. For another, the service may not be provided directly to a person as distinguished from a general service which is provided to the members of a group or class of which that person is a part. Moreover, as the law has progressed, it has come to be recognised that there need not be any exact correlation between the expenditure which is incurred in providing a service and the amount which is realised by the State. The distinction that while a tax is a compulsory exaction, a fee constitutes a voluntary payment for services rendered does not hold good. As in the case of a tax, so also in the case of a fee, the exaction may not be truly of a voluntary nature. Similarly, the element of a service may not be totally absent in a given case in the context of a provision which imposes a tax.
>
> **62.** The gradual obliteration of the distinction between a tax and a fee on a conceptual level has been the subject-matter of several decisions of this Court.
>
> **63.** In *Southern Pharmaceuticals & Chemicals* v. *State of Kerala* [*Southern Pharmaceuticals & Chemicals* v. *State of Kerala*, (1981) 4 SCC 391 : 1981 SCC (Tax) 320] A.P. Sen, J. speaking for the Court held : (SCC pp. 408-10, paras

[41] (1981)4 SCC 391

[42]

24-25)

"*24*. The distinction between a "tax" and a "fee" is well-settled. The question came up for consideration for the first time in this Court in *Commr., Hindu Religious Endowments* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* [*Commr., Hindu Religious Endowments* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, (1954) 1 SCC 412 : 1954 SCR 1005 : AIR 1954 SC 282] . …

25. "Fees" are the amounts paid for a privilege, and are not an obligation, but the payment is voluntary. Fees are distinguished from taxes in that the chief purpose of a tax is to raise funds for the support of the Government or for a public purpose, while a fee may be charged for the privilege or benefit conferred, or service rendered or to meet the expenses connected therewith. Thus, fees are nothing but payment for some special privilege granted on service rendered. Taxes and taxation are, therefore, distinguishable from various other contributions, charges, or burdens paid or imposed for particular purposes and under particular powers or functions of the Government. It is now increasingly realised that merely because the collections for the services rendered or grant of a privilege or licence, are taken to the consolidated fund of the State and are not separately appropriated towards the expenditure for rendering the service is not by itself decisive. That is because the Constitution did not contemplate it to be an essential element of a fee that it should be credited to a separate fund and not to the consolidated fund. It is also increasingly realised that the element of quid pro quo stricto senso is not always a sine qua non of a fee. It is needless to stress that the element of quid pro quo is not necessarily absent in every tax. We may, in this connection, refer with profit to the observations of Seervai in his *Constitutional Law*, to the effect : [H.M. Seervai, *Constitutional Law of India*, 2nd Edn., Vol. 2, p. 1252, paras 22 & 39.]

> 'It is submitted that as recognised by Mukherjea, J. himself, the fact that the collections are not merged in the consolidated fund, is not conclusive, though that fact may enable a court to say that very important feature of a fee was present. But the attention of the Supreme Court does not appear to have been called to Article 266 which requires that all revenues of the Union of India and the States must go into their respective consolidated funds and all other public moneys must go into the respective public accounts of the Union and the States. It is submitted that if the services rendered are not by a separate body like the Charity Commissioner, but by a government department, the character of the imposition would not change because under Article 266 the moneys collected for the services must be credited to the consolidated fund. It may be mentioned that the element of quid pro quo is not necessarily absent in every tax.'

Our attention has been drawn to the observations in *Kewal Krishan Puri* v. *State of Punjab* [*Kewal Krishan Puri* v. *State of Punjab*, (1980) 1 SCC 416, 425 : (1979) 3 SCR 1217, 1230] : (SCC p. 425, para 8)

> '*8*. … The element of quid pro quo must be established between the payer of the fee and the authority charging it. It may not be the exact equivalent of the fee by a mathematical precision, yet, by and large,

> or predominantly, the authority collecting the fee must show that the service which they are rendering in lieu of fee is for some special benefit of the payer of the fee.'
>
> To our mind, these observations are not intended and meant as laying down a rule of universal application. The Court was considering the rate of a market fee, and the question was whether there was any justification for the increase in rate from Rs 2 per every hundred rupees to Rs 3. There was no material placed to justify the increase in rate of the fee and, therefore, it partook the nature of a tax. It seems that the Court proceeded on the assumption that the element of quid pro quo must always be present in a fee. The traditional concept of quid pro quo is undergoing a transformation."
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> (emphasis supplied)

64. In *MCD* v. *Mohd. Yasin* [*MCD* v. *Mohd. Yasin*, (1983) 3 SCC 229 : 1983 SCC (Tax) 154] , O. Chinnappa Reddy, J., while speaking for two-Judge Bench of this Court, referred to the decision in *Southern Pharmaceuticals* [*Southern Pharmaceuticals & Chemicals* v. *State of Kerala*, (1981) 4 SCC 391 : 1981 SCC (Tax) 320] and observed : (*MCD case* [*MCD* v. *Mohd. Yasin*, (1983) 3 SCC 229 : 1983 SCC (Tax) 154] , SCC p. 235, para 9)

> "*9*. What do we learn from these precedents? We learn that there is no generic difference between a tax and a fee, though broadly a tax is a compulsory exaction as part of a common burden, without promise of any special advantages to classes of taxpayers whereas a fee is a payment for services rendered, benefit provided or privilege conferred. Compulsion is not the hallmark of the distinction between a tax and a fee. That the money collected does not go into a separate fund but goes into the consolidated fund does not also necessarily make a levy a tax. Though a fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere causal relation may be enough. Further, neither the incidence of the fee nor the service rendered need be uniform. That others besides those paying the fees are also benefitted does not detract from the character of the fee. In fact the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest. Nor is the court to assume the role of a cost accountant. It is neither necessary nor expedient to weigh too meticulously the cost of the services rendered, etc. against the amount of fees collected so as to evenly balance the two. A broad co-relationship is all that is necessary. Quid pro quo in the strict sense is not the one and only true index of a fee; nor is it necessarily absent in a tax."

65. In *Sreenivasa General Traders* v. *State of A.P.* [*Sreenivasa General Traders* v. *State of A.P.*, (1983) 4 SCC 353] , a three-Judge Bench of this Court held : (SCC pp. 280-81, para 32)

> "*32*. There is no generic difference between a tax and a fee. Both are compulsory exactions of money by public authorities. Compulsion lies in the fact that payment is enforceable by law against a person in spite of his unwillingness or want of consent. A levy in the nature of a fee does

> not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. It is now increasingly realised that merely because the collections for the services rendered or grant of a privilege or licence are taken to the consolidated fund of the State and not separately appropriated towards the expenditure for rendering the service is not by itself decisive. Presumably, the attention of the Court in *Shirur Mutt case* [*Commr., Hindu Religious Endowments* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, (1954) 1 SCC 412 : 1954 SCR 1005 : AIR 1954 SC 282] was not drawn to Article 266 of the Constitution. The Constitution nowhere contemplates it to be an essential element of fee that it should be credited to a separate fund and not to the consolidated fund. It is also increasingly realised that the element of quid pro quo in the strict sense is not always a sine qua non for a fee. It is needless to stress that the element of quid pro quo is not necessarily absent in every tax : *Constitutional Law of India* by H.M. Seervai, Vol. 2, 2nd Edn., p. 1252, paras 22 & 39."
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> (See also in this context, the decision in *Sirsilk Ltd.* v. *Textiles Committee* [*Sirsilk Ltd.* v. *Textiles Committee*, 1989 Supp (1) SCC 168 : 1989 SCC (Tax) 219] .)
>
> **66. In view of this consistent line of authority, it emerges that the practical and even constitutional, distinction between a tax and fee has been weathered down. As in the case of a tax, a fee may also involve a compulsory exaction. A fee may involve an element of compulsion and its proceeds may form a part of the Consolidated Fund. Similarly, the element of a quid pro quo is not necessarily absent in the case of every tax."**
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> **(emphasis supplied)**

152. The concept of regulatory fees now being well established is again evident from the recent decision of the Supreme Court in **Gaurav Kumar Vs. Union of India & Ors.**[43] in which an issue on regulatory fee was decided by the Supreme Court in the context of the validity of the enrollment fees charged by the State Bar Council. The Supreme Court considering several decisions including **Shirur Mutt** (supra) held thus:

[43] (2025)1 SCC 641

"(*v*) *Regulatory fees*

35. Article 110 of the Constitution, though in a different context, recognises that that fees imposed under the authority of law may include : (*i*) fees for licences; and (*ii*) fees for service. [Constitution of India, Article 110(2). It reads:

> "**110.** *Definition of "Money Bills".*—
>
> (1)* * *
>
> (2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes."] In *Commr., Hindu Religious Endowments* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* [*Commr., Hindu Religious Endowments* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, (1954) 1 SCC 412] , a Constitution Bench explained the concept of licence fees thus : (SCC pp. 452-53, para 47)
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> > "*47*. … In the first class of cases, the Government simply grants a permission or privilege to a person to do something, which otherwise that person would not be competent to do and extracts fees either heavy or moderate from that person in return for the privilege that is conferred. A most common illustration of this type of cases is furnished by the licence fees for motor vehicles. Here the costs incurred by the Government in maintaining an office or bureau for the granting of licences may be very small and the amount of imposition that is levied is based really not upon the costs incurred by the Government but upon the benefit that the individual receives. In such cases, according to all the writers on public finance, the tax element is predominant [*Seligman's Essays on Taxation*, p. 409.] , and if the money paid by the licence-holders goes for the upkeep of roads and other matters of general public utility, the licence fee cannot but be regarded as a tax."
>
> In *Shirur Mutt* [*Commr., Hindu Religious Endowments* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, (1954) 1 SCC 412] , it was held that a fee is money taken by the Government "as the return for the work done or services rendered" [*Shirur Mutt case*, (1954) 1 SCC 412, para 48] . Therefore, a fee was characterised by an element of quid pro quo between the payer and the public authority.

38. The principle which follows from the above discussion is that the State grants a licence to regulate a particular trade, business, or profession. [*Indian Mica Micanite Industries* v. *State of Bihar*, (1971) 2 SCC 236, para 14] **These regulatory activities entail a duty on behalf of the State or its instrumentalities to supervise, regulate, and monitor that particular trade,**

> business, or profession. Because such activities require the State to expend public resources, the State can charge licence fees to defray the administrative costs. The enrolment fee stipulated by Section 24(1)(*f*) of Advocates Act meets the characteristic of a regulatory fee."
>
> (emphasis supplied)

153. In **Yog Advertising & Marketing Services v. Municipal Corpn.** (supra), the issue before the Division Bench of this Court was a challenge to a circular issued by the municipal corporation of Greater Bombay leading to increase in the license fee, which resulted in the revision of the license fees charged from the owners of the advertising / hoardings. The prayer as made in the petition was for quashing of the resolution of the municipal corporation and a direction that it be withdrawn and for a further relief that the municipal corporation accepts the payment of license fee for advertisement and hoarding at the previous rate. Thus, the controversy in the said case was similar to the controversy in hand. On behalf of the petitioner, a contention was raised that the license fee was essentially regulatory in nature and not compensatory and for such reason, it was required that at least a broad correlation between the services rendered by the municipal corporation and the fees levied be established. The Division Bench repelled the challenge of the petitioner holding that there was sufficient correlation which was established, which may not be of mathematical exactitude. It was also observed that a holistic view is required to be taken and it is not wise for a Court to blinker itself from the everyday realities of public administration. Mr. Justice G. S. Patel (as His Lordship then was) speaking for the Bench observed thus:

> "27. It is in this jurisprudential context that we must assess the rival

submissions. There are, Mr. Sakhare says, not just one, but as many as 13 different departments involved at some level or the other in this regulation. To merely say, as the Petitioners do, that the fee is excessive is insufficient. There is no authority, Mr. Sakhare submits, and in our view rightly, that the attendant costs of ancillary or related departments, or the needs of increasing annual establishment expenditure, or even, for that matter, the 'provision of revenue', should be entirely disregarded. We agree with Mr. Sakhare that when Mr. Anturkar and Mr. Dhakephalkar seek to dissect the income earned from fees and set this against establishment expenses in so fine-grained and granular a manner, they are demanding that very mathematical exactitude that they agree is not required. … **… ..**

29. On the other hand, Mr. Sakhare's submission that the only surviving test today is one of reasonableness, determined by the demonstration of a broad correlation, is one that commends itself. We do not think it is either possible or wise for a Court to blinker itself from the everyday realities of public administration. The experience with budgets constantly in deficit and the recommendations of successive Pay Commissions themselves tell us enough about the constantly increasing costs and expenses of public bodies and authorities. We note, too, that the licensing departments deal with a multitude of licenses, not only the advertising and hoarding licenses with which the Petitioners are concerned. Mr. Sakhare is quite right, in our view, in throwing up his hands in helpless exasperation at the suggestion that manhours spent on advertising and hoarding licensing work between various departments be computed separately. What is this, he asks, and quite correctly, if not yet another attempt at establishing an exact arithmetical equivalence between the fee and the licensing cost? Apart from the license department, there are officers at the ward level, inspectors, commissioners at ever level of the hierarchy, and so on down the line. The process of licensing is one that has been described on affidavit. It is complex, and, with time, more and more departments are involved as municipal policies change and evolve. In fact we know this to be true *inter alia* because various PILs in this Court itself required the Municipal Corporation to take into account a multitude of factors (trees, line of sight, road safety, building regulations) that were not of the same level of importance earlier. Mr. Sakhare submits that the increase in expenses shown on affidavit is a sufficiently broad correlation to meet jurisprudential standards. We agree.

30. Is there enough material to say that there is absolutely no correlation between the rise in expenses and the one-time 80% fee? We do not think so. Conversely, we believe that there is more than enough material to justify it as a one-time fee. What of the proposed 10% annual increase? The challenge on this ground must also fail in our view. The increase is not extortionate or in any sense expropriatory. Given the general annual rise in cost of living, and, therefore, the increased annual burden to the municipal exchequer, the proposed increase is moderate. The impugned increases and the circular are not unreasonable or arbitrary."

(**emphasis supplied**)

154. In the context of the aforesaid proposition, reliance placed on the decision of the Supreme Court in **Calcutta Municipal Corpn. v. Shrey Mercantile (P) Ltd.,**[44] would not assist the petitioners. The issue before the Supreme Court in this case pertained to the demand of the mutation fee calculated on an ad-valorem basis under the 1989 Taxation Regulations of the Calcutta Municipal Corporation. It is in such context that the respondent had raised a contention that the mutation was merely a recording of change in ownership and no other services were rendered to justify the value based charge. The High Court had struck down the levy as unconstitutional. The decision of the High Court was challenged before the Supreme Court. The Supreme Court examined the issue as to whether the levy imposed for mutation can legally be treated as a "fee" or in substance, it amounted to a "tax", so that it could be levied on the value of the property. In such context, the Supreme Court held that the mutation involved only updating municipal records, and that such basis, on which such mutation fee was collected, in fact amounted to tax in substance, as it bore no rational nexus to any service rendered and was structured purely for revenue generation, when the mutation involved only updating of municipal records and in such context, the impost being ultra vires and invalid as held by the High Court came to be sustained. Certainly, the facts of the case are totally incomparable as in the present case. This more particularly, when the petitioners themselves have accepted an earlier rate issued on the basis of Resolution No.417 i.e. Rs.41.30/-

[44] (2005) 4 SCC 245

and Rs.82.60/- per sq.ft per annum respectively. Thus, the basis of the same was never disputed. What was disputed was only the enhancement of the license fees. The following observations of the Supreme Court, however, are required to be noted, which certainly would not assist the petitioners and in fact would support the Municipal Corporation.:

> 16. Therefore, the main difference between "a fee" and "a tax" is on account of the source of power. Although "police power" is not mentioned in the Constitution, we may rely upon it as a concept to bring out the difference between "a fee" and "a tax". The power to tax must be distinguished from an exercise of the police power. The "police power" is different from the "taxing power" in its essential principles. The power to regulate, control and prohibit with the main object of giving some special benefit to a specific class or group of persons is in the exercise of police power and the charge levied on that class to defray the costs of providing benefit to such a class is "a fee". Therefore, in the aforestated judgment in *Kesoram case* [(2004) 10 SCC 201] it has been held that where regulation is the primary purpose, its power is referable to the "police power". If the primary purpose in imposing the charge is to regulate, the charge is not a tax even if it produces revenue for the Government. But where the Government intends to raise revenue as the primary object, the imposition is a tax. In the case of *Synthetics & Chemicals Ltd.* v. *State of U.P.* [(1990) 1 SCC 109] it has been held that regulation is a necessary concomitant of the police power of the State and that though the doctrine of police power is an American doctrine, the power to regulate is a part of the sovereign power of the State, exercisable by the competent legislature. However, as held in *Kesoram case* [(2004) 10 SCC 201] in the garb of regulation, any fee or levy which has no connection with the cost or expense of administering the regulation cannot be imposed and only such levy can be justified which can be treated as a part of regulatory measure. To that extent, the State's power to regulate as an expression of the sovereign power has its limitations. It is not plenary as in the case of the power of taxation."

155. In **State of Uttarakhand & Ors. vs. Kumaon Stone Crusher**[45], the challenge before the Supreme Court had arisen from the decisions of different High Courts was in respect of levy of transit fees by the Divisional Forest Officer *inter alia* on all items of stone, i.e., stone grits, stone chips etc. from the bank of Sharda River, which were Forest Produce. The case of the respondent was that

[45](2018) 14 SCC 537

after taking the boulders to the crushing centre and undertaking the manufacturing process, boulders are converted into a commercial commodity and after it becomes a commercial commodity, it ceases to be a Forest Produce and no transit fee can be charged and recovered thereafter. It is in this context, the Court examined the issue in regard to levy, whether the levy of transit fee was lawful referring to several decisions including in the case of **Calcutta Municipal Corpn. v. Shrey Mercantile (P) Ltd.** (supra). The Supreme Court held that the crushing of stones, stone boulders into stone grits, stone chips and stone dust does not result into a new commodity different from forest produce. We are at a loss to perceive as to how the observations as made by the Supreme Court in such context would assist the case of the petitioners.

156. The view taken by the Division Bench in **Yog Advertising & Marketing Services** (supra) the case of the Mumbai Municipal Corporation, in our opinion, would squarely apply in the case of the Pune Municipal Corporation, which is not differently placed when it comes to the power and authority of the municipal corporation qua the licensing of sky-signs and hoardings. The present case is required to be considered on the touchstone of the principles as discussed hereinabove. It is not the case of the petitioners that no correlation whatsoever can be drawn in the municipal corporation levying license fee as permissible under the provisions of Section 244 and Section 245 read with Section 386(2) of the MMC Act. Apart from this, once the license is granted, the 2003 Rules as noted above, along with the other provisions as contained in the Appendix to the

MMC Act squarely become applicable. Thus, there is not a remotest doubt considering the legislative scheme in question of there being any illegality or there being no justification for the municipal corporation to fix and enhance the impugned license fees and levy the same for grant of license or for renewal of license. It may be true that the hoardings / sky signs are installed on private properties, however, considering the several actions to be taken by the Municipal Corporation, which imply regulation and control over the sky-signs and the hoardings, which is not a one time requirement but involving several facets of inspection and regulation throughout the license period, it cannot be said that there is no involvement of the municipal corporation once the license is granted. Thus, merely because the sky-signs/hoardings are installed on private properties, it cannot be said that there is no regulation of such private hoardings/ sky signs / advertisements at the hands of the Municipal Corporation. As noted by us in detail hereinabove, there are clear provisions including under the rules, which authorize the municipal corporation to exercise the powers to regulate the sky-signs and hoardings, which are not only in the interest of safety of the sky-signs and hoardings, but also, on several other public considerations. If such powers of regulation, which involves regular inspection of all kinds, are not to be recognized, a chaotic situation which could be brought about, is just to be imagined, i.e., when sky-signs, hoardings, advertisements are imagined to be displayed at the unfettered discretion of those who intend to install them. This is what the petitioners contend when they label the 'written permission'/license as

merely being granted on a piece of paper. Such is not the regime which is either permissible or which could at all be derived from the provisions of the MMC Act and the Rules. Thus, the contention of the petitioners that license fee ought not to be revised, or that it should be revised in the manner the petitioners seek to canvass, in our clear opinion, is wholly not recognized in law. We may also observe that it is not a case that suddenly the municipal corporation has started levying the license fees. The license fees were levied at all relevant times, and it is only when the Municipal Commissioner decided to increase the license fees on the basis of the rate which the market would offer, as taken from the highest bid received by the Pune Municipal Corporation, the petitioners started agitating the issues as if they have no chance to recover the fees from their customers. Further, it appears that the license fees were not enhanced for a substantial period of time, hence as seen from the rates of the other Municipal Corporations, it is not an unreasonable increase as sought to be contended by the petitioners. This aspect we would discuss hereinafter in some detail, Thus, in our opinion, there is no infirmity, much less illegality, in the decision taken by the municipal corporation.

157. We next deal with the petitioners contention based on deletion of Entry 55 from the State List (List II), i.e., the advertisement tax being subsumed in the Central/State Goods and Services Tax Act,2017, hence there being no authority with the State Legislature to levy any license fee. Such contention as urged on behalf of the petitioners cannot be accepted for twofold reasons, **firstly**, considering the Repeal contained in both Acts, the Repeal provision under the

Maharashtra Goods and Services Tax Act, 2017, namely, Section 173 does not in any manner repeal any of the provisions of the MMC Act, but repeals only the Maharashtra Advertisements Tax Act, 1967. Thus, there being no repeal in regard to any powers conferred under the MMC Act qua charging of licence fee in relation sky-signs and hoardings in no manner stands affected. It thus cannot be said that the municipal corporation would cease to have any power to levy. We may also observe that the Maharashtra Advertisements Tax Act, 1967 as clearly seen from the preamble of the said Act, was enacted for levy of a "tax on advertisements" exhibited by cinematographs at certain places of entertainment in the State of Maharashtra. The present case as also the relevant provisions (supra) subject matter of debate in the present proceedings neither are provisions connected with advertisement tax nor they are provisions something to do with or under the Maharashtra Advertisements Tax Act, 1967. For such reason, the petitioners contention that on deletion of Entry 55 from the State List (List II) of the Seventh Schedule, the power and authority of the municipal corporation to levy license fee is taken away, in our opinion, is a non-starter, for the simple reason that what is not repealed or subsumed would obviously continue to operate and remain legal, valid and subsisting.

Secondly, as observed hereinabove that the license fee for sky-signs/ hoardings as levied by the municipal corporation is a regulatory fee and not a tax under the MMC Act much less an "advertisement tax" falling under the erstwhile Entry-55 of List II. Also, as observed above, Section 386(2) of the MMC Act

itself provides that it is a license fee. When it comes to the field to legislate, being conferred on the State Legislature, the relevant entry in List II is Entry 66, which provides for "*Fees in respect of any of the matters in this List, but not including fees taken in any Court*". Certainly Entry 5 of the State List (List II) becomes relevant, when it defines the legislative competence of the State Legislature to enact laws on matters pertaining to and falling under Entry 5 of the State List (List-II), i.e., by "*Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, districts boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration*". Hence, for such reason also, the petitioners' contention, that as the municipal corporation is levying tax, falling within Entry-55 of List II of the Seventh Schedule, Section 386(2) which itself is not on the statute book for levying license fee, is untenable and would be required to be outrightly rejected.

158. In the aforesaid context, we may also refer to the decision of the Division Bench of Gujarat High Court in **Selvel Media Services Pvt. Ltd. VS. Municipal Corporation of the City of Ahmedabad**[46]. In such case, the issue before the Court had arisen from a challenge to the resolution of the Ahmedabad Municipal Corporation, approving the revised rates of license fee for the advertisement hoarding on private properties. The issue was similar to the issue in hand wherein, alike to the present case, the petitioners had sought declaration that after

[46] R/SCA/4538/2018

the introduction of the Goods and Services Tax with effect from 1 July 2017, in light of the 101st Amendment of the Constitution, the respondent Corporation had no authority to collect any license fees which was in the garb of tax on advertisement hoardings on private properties. Such challenge was repelled by the Division Bench. The Court held that the license fees levied for granting a license for placing advertisement hoardings on private properties were "fees and not tax". The Division Bench also rejected the petitioner's challenge that Section 386(2) of the Gujarat Provincial Municipal Corporation Act (**GPMC Act**), which is *pari materia* to the MMC Act, was in any manner ultra vires to Article 243X of the Constitution. We are in complete agreement with the observations and the view taken by the Gujarat High Court.

159. Again, in the very context, reliance on behalf of the Municipal Corporation on the decision of the learned Single Judge of the Karnataka High Court in **Hubballi-Dharwad Advertisers Association v. State of Karnataka**[47] is apt. The question before the Court in such proceedings was whether on coming into force of the Goods and Services Tax Act, 2017, the authority of the municipal corporation can levy advertisement tax/fee. While rejecting the petitioners contention that such authority no more existed with the municipal corporation or there was double taxation on account of both the GST Act and the advertisement tax, was rejected by the Court. The learned Single Judge held that even the incidence of tax which the advertiser would be collecting from parties who are

[47] 2022 SCC Online KAR 1877

offering advertisement by way of payment of GST on such contract, is in fact on the incidence of services rendered by the advertiser to its client and has nothing to do with the hoardings / advertisements which are permitted under the license granted by the municipal corporation. The relevant observations as made by the Court are required to be noted which read thus:

> "17. The GST as stated above is levied on any supply of goods or services. The petitioners carrying on advertisement business it is during the course of the said business that the petitioner is required to collect GST from any of its/their clients and remit it to the authorities. It is not that the petitioners are making payments of GST out of their own pockets. The petitioners supplying services and or goods, on the invoice that the petitioners were to raise on their respective clients the invoice amount would be required to be accompanied by a GST amount on the basis of the categorization of services and or goods under the GST Act. The said GST collected from the client of the petitioners, the amount is required to be remitted by the petitioners to the GST authorities.
>
> 18. In this transaction the petitioners are only a collecting agency who collects the GST payable on the service rendered and deposits the same with the authorities, the incidence of tax, i.e., GST being on the services rendered or goods supplied, the obligation of payment being on the person availing the service and or receiving the goods.
>
> 19. The incidence of GST is on the service rendered by the petitioner to its clients and has nothing to do with respondent No. 2-HDMC. The transaction with HDMC is the permission and or license granted by the HDMC to put up hoarding and or use a hoarding either on the land belonging to the HDMC and or on land belonging to a private party.
>
> 20. The incidence of advertisement tax or advertisement fee is on the license granted by HDMC permitting the petitioner to put up hoarding or make use of the hoardings, this incidence of advertisement tax or fee has nothing to do with supply or service or goods by the petitioner to its clients.
>
> 21. In view of the above there are two distinct transactions. The incidence of tax on both transactions are different.
>
> 22. The first transaction is the permission by respondent No. 2- HDMC to put up a hoarding or advertisement to use their hoarding for the purpose of advertisement, as regards which respondent No. 1-HDMC charges the fee or advertisement tax.
>
> 23. The second transaction is on the petitioners making use of the hoarding

> to display advertisements of its clients towards which the petitioners charge their client which is a supply of services or goods as regards which the GST is liable to be paid.
>
> 24. Both the transactions being independent and distinct the incidence of both the GST and advertisement fee being on two distinct transactions inasmuch as the GST not being charged by the respondent No. 1-HDMC and advertisement free not being charged by the GST authorities, though of course there may be GST charged on the Advertisement Fee charged by the HDMC, I am unable to accept the submission of Sri. Zameer Pasha that there is double taxation."

160. In the aforesaid context, we may also observe that in relation to Entry 5 of the State List (List II) of the Seventh Schedule of the Constitution, there is an explicit recognition of the power of the State Legislature by law to permit the municipalities to impose taxes "by, and funds of the municipalities". Further, Entry 66 empowers the State Legislature to legislate in respect of any matters in the State List (List II). Thus, once Article 243X read with Entry 55 and Entry 66 recognizes such field of legislation empowering the State Legislature to legislate on such powers of the municipal corporation and such entries being completely distinct and different from Entry 55 which stood deleted by the 101st Constitutional Amendment Act, with effect from 16 September 2016, the petitioners' contention based on deletion of Entry 55 cannot be accepted. In our opinion necessarily such entries are relevant in the context of Article 243X recognizing such powers to impose tax "by, and funds of the municipalities" more particularly in the context of Section 82 of the MMC Act. Section 82 of the MMC Act provides for constitution of municipal fund, which categorically observes that all moneys received by or on behalf of the Corporation under the

provisions of the MMC Act, and all fees and fines payable and levied under this Act or under any rule, bye-law, regulation or standing order, would constitute the fund. This issue has been completely overlooked on behalf of the petitioners, which as explicitly noted from the relevant provisions, finds explicit recognition not only under the provisions of Article 243X of the Constitution but also the MMC Act itself, providing a wholesome sanctity to the funds and taxes as collected by the municipal corporation to constitute municipal funds. Thus, the petitioners contention that the fee being collected by the municipal corporation in the absence of *quid pro quo* is for the purpose of revenue and would cease to be a fee, as it would partake the character of the Corporation's revenue, stands completely negated not only on the clear implication as brought about by Article 243X of the Constitution read with Section 82 of the MMC Act as all such amounts would constitute municipal funds and municipal funds are necessarily the revenue of the municipal corporation.

161. In the context of the aforesaid proposition, we deal with the decision of the Supreme Court in the case of **State of Orissa vs. M/s. M. A. Tulloch & Co.**[48]**.** This decision may not assist the petitioners inasmuch as the issue before the Constitution Bench in the said case was in regard to a State Legislation, namely, the Orissa Mining Areas Development Fund Act, 1952 and whether it continued in operation under which the levy in question, namely, exigibility of the fees leviable from mine-owners under the said enactment was the issue. The

[48]AIR 1964 Supreme Court 1284

respondents had filed writ petitions under Article 226 of the Constitution before the High Court, assailing the action of the State to recover the fees as a development fund under the said Act, assailing the notices issued under the State legislation requiring them to pay the fees assessed under the said Act. It is in such context, the Supreme Court considered the contention as to whether the "said State Act" was rendered ineffective in view of a subsequent central enactment, namely, the Mines and Minerals (Regulation and Development) Act, 1957 (Act 67 of 1957). The Court had held that on the Central Act being brought into force, the Orissa Act ceased to be operative by reason of the withdrawal of legislative competence by force of the entry in the State List, being subject to the Parliamentary declaration and the law enacted by Parliament. The High Court held that for this reason, the State Act should be deemed to be non-existent as and from June 1, 1958 for every purpose, with the consequence that there was lack of power to enforce and realize the demands for the payment of the fee at the time when the demands were issued and were sought to be enforced. It is in such context, the observations as made by the Supreme Court in this decision are required to be considered and more particularly when the Supreme Court delved on the issue of the power to levy a fee relevant to the subject matter. The following observations as made by the Supreme Court would assist the respondents, rather than the petitioners:-

> "16. It was next urged that under the scheme of the legislative entries under the Constitution, as previously under the Government of India Act, 1935 the power to levy a fee was an independent head of legislative power under each of the three legislative Lists and not merely an incidental power

> flowing from the grant of power over the subject-matter in the other entries in the List. From this it was sought to be established that even if the Union could levy a fee under the Central Act it would not affect or invalidate a State legislation imposing a fee for a similar service. This argument again proceeds on a fallacy. It is, no doubt, true that technically speaking the power to levy a fee is under the entries in the three lists treated as a subject-matter of an independent grant of legislative power, but whether it is an incidental power related to a legislative head or an independent legislative power it is beyond dispute that in order that a fee may validly be imposed the subject-matter or the main head of legislation in connection with which the fee is imposed is within legislative power. The material words of the Entries are:"Fees in respect of any of the matters in this List." It is, therefore, a prerequisite for the valid imposition of a fee that it is in respect of "a matter in the list". If by reason of the declaration by Parliament the entire subject-matter of "conservation and development of minerals" has been taken over, for being dealt with by Parliament, thus depriving the State of the power which it theretofore possessed, it would follow that the "matter" in the State List is, to the extent of the declaration, subtracted from the scope and ambit of Entry 23 of the State List. There would, therefore, after the Central Act of 1957, be "no matter in the List" to which the fee could be related in order to render it valid."

The petitioners' endeavour to draw an analogy from the aforesaid decision to the effect that by virtue of deletion of Entry 55 from List II of the Seventh Schedule by the 101st Constitutional Amendment Act, advertisement tax is no more the field of legislation available to the State and once such subject itself is not available, there is no question of applying the residuary entry, namely, Entry 66, or for that matter, Entry 5 would not be available, in our opinion, is not well founded. The reason being that when the license fee is levied on sky-signs and hoarding, as held by us it is not a tax but a regulatory fee. Hence, deletion of Entry 55 from the State List (List-II) is not relevant to the present issue, as the power of the State can be clearly derived from the other entries in list-II. Further while considering the issue of implied repeals, the Supreme Court observed that applying the principles on which the saving clause in Section 6 of the General

Clauses Act was enacted, namely, that every later enactment which supersedes an earlier one or puts an end to an earlier state of the law is presumed to intend the continuance of rights accrued and liabilities incurred, under the superseded enactment, unless the later enactment contains sufficient indications-express or implied showing an intention to completely obliterate the earlier state of the law. However, we do not find that such logic of the applicability of the doctrine of implied repeal, as sought to be canvassed on behalf of the petitioners, would in any manner be applicable in the present situation, as the MMC Act cannot be attributed limited to only Entry 55 of List II of the Seventh Schedule of the Constitution. In any event, the legislative source supporting the legislation to fix the fees is under Entry 66 read with Entry 5. It is not the petitioners' case that the Goods and Services Tax Act has extinguished the entire powers available with the municipal corporation to levy taxes and fees. The only contention, however, is that the provisions of Sections 244 and 245, read with Section 386(2), have been impliedly repealed following the deletion of Entry 55 from List II (State List).

162. Before we part with this issue, we may also observe that it is well settled that various entries in the three Lists which form part of the Seventh Schedule of the Constitution namely Union List (List I), State List (List II) and Concurrent List (List III) are not the powers of legislation but the fields of legislation, and that competence to legislate is tested to ensure that the legislature only legislates in the context of what is provided under Article 246 read with other Articles. The

entries in the list, being legislative heads, are enabling in character. It is a settled principle of interpretation that legislative entries are required to be liberally interpreted and none of the items in the lists are to be read restrictively and a general word used in an entry must be construed to extend to all ancillary or subsidiary items which can fairly and reasonably be held to be apprehended in it. Further, competing entries, if any, are required to be read harmoniously. It is well settled that each of the legislative entries should be given the widest scope. (See: **Dunichand Rataria vs. Bhuwalka Bros**[49] **and** ***Girnar Traders vs. State of Maharashtra***[50]). In such context, we find that the respondents' reliance on the decision of the Supreme Court in **Bimolangshu Roy (Dead) thr. LR v. State of Assam & Anr**[51] is well founded. The Supreme Court in regard to the interpretation of powers to legislate observed thus:-

> "23. The authority to make law flows not only from an express grant of power by the Constitution to a legislative body but also by virtue of implications flowing from the context of the Constitution is well settled by the various decisions of the Supreme Court of America in the context of American Constitution. A principle which is too well settled in all the jurisdictions where a written Constitution exists. The US Supreme Court also recognised that the Congress would have the authority to legislate with reference to certain matters because of the fact that such authority is inherent in the nature of the sovereignty. The doctrine of inherent powers was propounded by Justice Sutherland in the context of the role of the American Government in handling foreign affairs and the limitations thereon. [*United States* v. *Curtiss-Wright Export Corpn.*, 1936 SCC OnLine USSC 158 : 81 L Ed 255 : 299 US 304 (1936)]
>
> …...
>
> 29. It must be remembered that this Court repeatedly held [*Harakchand Ratanchand Banthia* v. *Union of India*, (1969) 2 SCC 166, Ramaswami, J. speaking on behalf of the Court, while dealing with the Gold (Control) Act (45

[49] AIR 1955 SC 182

[50] (2011) 3 SCC 1

[51] 2003 SCC OnLine Gau 57

of 1968), observed: (SCC p. 174, para 8)"*8.* … Before construing these entries it is useful to notice some of the well-settled rules of interpretation laid down by the Federal Court and by this Court in the matter of construing the entries. The power to legislate is given to the appropriate legislature by Article 246 of the Constitution. The entries in the three lists are only legislative heads or fields of legislation, they demarcate the area over which the appropriate legislatures can operate."*Union of India* v. *Harbhajan Singh Dhillon*, (1971) 2 SCC 779, SCC p. 792, para 22."*22.* It must be remembered that *the function of the lists is not to confer powers; they merely demarcate the legislative field*. The Federal Court, while interpreting the Government of India Act in *Governor-General-in-Council* v. *Raleigh Investment Co. Ltd.*, 1944 SCC OnLine FC 10 : (1944) 6 FCR 229 observed: (SCC OnLine FC)'… It would not be right to derive the power to legislate on this topic merely from the reference to it in the List, because the purpose of the Lists was not to create or confer powers, but only to distribute between the Federal and the Provincial Legislatures the powers which had been conferred by Sections 99 and 100 of the Act.'"(emphasis supplied)*Synthetics and Chemicals Ltd.* v. *State of U.P.*, (1990) 1 SCC 109: (SCC p. 151, para 67)"*67.* …*The power to legislate is given by Article 246 and other articles of the Constitution*. The three lists of the Seventh Schedule to the Constitution are legislative heads or fields of legislation. These demarcate the area over which the appropriate legislatures can operate. It is well settled that widest amplitude should be given to the language of the entries in three lists but some of these entries in different lists or in the same list may override and sometimes may appear to be in direct conflict with each other, then and then only comes the duty of the court to find the true intent and purpose and to examine the particular legislation in question. Each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it."(emphasis supplied)] that the entries in the various lists of the Seventh Schedule are not sources of the legislative power but are only indicative of the fields w.r.t. which the appropriate legislature is competent to legislate.

……..

32.1. Power to legislate is conferred by some of the articles by an express grant either on Parliament or the State Legislature to make laws with reference to certain matters specified in each of those articles but there is no corresponding entry in the corresponding list indicating the field of such legislation. For example, under Article 3 Parliament is competent to create or extinguish a State. There is no entry in List I of the Seventh Schedule indicating that Parliament could make a law with regard to the creation of a new State or the extinguishment of an existing State."

163. We may also refer to decision of the Supreme Court in **Ujagar Prints (2) v. Union of India,** (supra) wherein in such context the Supreme Court held as under:-

"53. If a legislation purporting to be under a particular legislative entry is assailed for lack of legislative competence, the State can seek to support it on the

> basis of any other entry within the legislative competence of the legislature. It is not necessary for the State to show that the legislature, in enacting the law, consciously applied its mind to the source of its own competence. Competence to legislate flows from Articles 245, 246, and the other articles following, in Part XI of the Constitution. In defending the validity of a law questioned on ground of legislative incompetence, the State can always show that the law was supportable under any other entry within the competence of the legislature. Indeed in supporting a legislation sustenance could be drawn and had from a number of entries. The legislation could be a composite legislation drawing upon several entries. Such a "ragbag" legislation is particularly familiar in taxation."

As to Question no. (iv)

164. We have considered the antecedents in regard to the levy and enhancement of license fee, which we have held it to be a regulatory fee. It cannot be that the license fee would always remain static for years together and more particularly, considering its nature for which it is required to be levied. In fact, the same position has been recognized qua municipal taxes in a recent decision of the Supreme Court. **(See: Akola Municipal Corporation & Anr. vs. Zishan Hussain Azhar Hussain & Anr.[52]).** Hence, regulatory fees need to remain static is quite unstatable. We have also noted in detail that for a long period, i.e., from 1984 to 2001, the fees remained at Rs.6.48 per sq. ft. for illuminated hoardings and Rs.1.62 per sq. ft. for non illuminated hoardings. The next enhancement was undertaken for the year 2006 to 2009, which was at Rs.35/- and Rs.65/- per sq. ft. p.a. respectively for the said categories. We have also seen that steps were taken to enhance the same to Rs.42.30/- and Rs.82.60 per sq.ft. p.a. in the year 2010. Further, in the year 2010, a policy was formulated, namely, Pune Municipal Sky Sign Policy/Regulations, 2010, in which the Pune city was

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divided into four zones for the purpose of license of sky-signs and hoardings and under which tenders were invited from the advertisers to bid for the four zones (**See: paragraph 105**). The highest bid which was received was of Rs.222/- per sq.ft. p.a. There were resistance proceedings before the State Government as also the litigation on such enhancement as noted by us hereinabove. It so happened that in the intervening period the Municipal Commissioner accepted the applications applying the license fees at Rs.222/- per sq. ft. per year and the same was in fact voluntarily paid by many and in some cases without prejudice to the rights and contentions of the advertisers. Also, as noted hereinabove, in this regard there were meetings held between the parties minutes of which were recorded, to which we have already made reference. Finally, by the impugned Resolution No.667 of the General Body of PMC dated 28 September 2018, the Municipal Corporation exercising powers under Section 386(2) retrospectively approved the levy of license fee at the rate of Rs.222/- per sq.ft. p.a.

165. In the facts of the case, thus once as per the provisions of sub-section (2) of Section 386 a decision to levy such license fee at Rs.222/- per sq. ft. p.a. stood approved and ratified by the General Body of the Municipal Corporation and that too with effect from 1 April 2013, there is no gainsaying for the petitioners to contend that such levy is illegal on the ground that it is a retrospective levy.

166. The petitioners contention that the levy was a retrospective levy, is not well founded considering the provisions of Section 386(2) of the MMC Act,

which provides that for every such license or written permission a fee may be charged at such rate as shall from time to time be fixed by the Commissioner, "with the sanction of the Municipal Corporation". Once the wordings of the Section is "with the sanction of the municipal corporation", the General Body of the municipal corporation needs to approve the decision of the municipal commissioner to levy the license fee, the implication is that even if it was retrospective, it would be required to be held to be a valid sanction. Such sanction apart from being retrospective, would also be required to be held to be retroactive, [more particularly as in the present case, the license fees are paid at the enhanced rate by the petitioners in seeking renewal of license]. This is clear from the plain meaning required to be attributed to the word 'sanction'. In such context, we may note that the wording of the provision, namely, Section 386(2) uses the word "sanction" which would mean ratification and not "prior sanction". The word 'sanction' as understood in the legal context is as follows:-

> (i) The **Stroud's Dictionary** defines "**sanction**" as under:
>
> "Sanction" not only means prior approval; generally, it also means ratification (***Re De La Warr, 16 Ch D. 587)***
>
> (ii) The **Webster's Dictionary** defines '**sanction**' as under:
>
> "Sanction" sancire, make sacred, establish as inviolable, ordain, ratify (pp. Sanctus, often as adj. Sacred, holy: cf. Saint, sanctity, and sanctum), akin to L. sacer, sacred, holy: cf sacre.) Authoritative permission; countenance or support given to an action; an official confirmation or ratification of some specific action. Law, a provision of a law which enacts a penalty for disobedience of that law or provides a reward for obedience to it; the penalty or reward. Binding force given, or something which gives binding force as to an oath; usu. pl. a method often adopted by a group of nations to force another nation to desist in its violation of some particular international law; as, sanctions of boycotting; - v.t. To ratify or confirm; as, to sanction a law or a covenant; to authorie, countenance, or approve."
>
> (emphasis supplied)

167. We may also observe that the wherever the legislature intended that an action can be valid only after "prior sanction", the legislature has categorically used the prefix "previous sanction" as clearly seen from the provisions of Section 19A(1), 31(2), 51(4), 53(1) of the MMC Act. We note the said provisions, which reads thus: which reads thus:

> **"Section 19A Honoraria, fees and allowances**
>
> (1) With the **previous sanction** of the State Government, the Corporation may pay each councillor such honoraria, fees or other allowances as may be prescribed by rules made by the Corporation under this section.
> … … ..
>
> **Section 31. Appointment of Ad hoc Committees.—**
>
> (1) .. … …
>
> (2) An ad hoc Committee appointed under sub-section (1) may, with the **previous sanction** of the Corporation, co-opt not more than two persons who are not councillors but who in the opinion of the Committee possess special qualifications for serving thereon :
>
> [Provided that such persons shall not be eligible to be elected as the Chairperson of such Committee and shall not have the right to vote at any meeting of the Committee.]
>
> .. … ….
>
> **Section 51. Number, designations, grades, etc. of other municipal officers and servants. — (1) .. … .**
>
> 4) No new posts of the officers and servants of the Corporation shall be created without the **prior sanction** of the State Government:
>
> **Provided that**, the decision of the Government on a proposal complete in all respects, received from the Corporation for creation of posts shall be communicated to the Corporation within ninety days from the date of the receipt of such proposal by the Government.
>
> **Section 53. Power of appointment in whom to vest.**— (1) The power of appointing municipal officers, whether temporary or permanent, to the posts equivalent to or higher in rank than the post of the Assistant Municipal Commissioner] shall vest in the Corporation:
>
> **Provided** that temporary appointments for loan works 3[to the posts equivalent to or higher in rank than the post of the Assistant Municipal Commissioner] may be made for a period of not more than six months by the Commissioner with the **previous sanction** of the Standing Committee on condition that every such appointment shall forthwith be reported by the Commissioner to the Corporation and no such appointment shall be renewed on the expiry of the said period of six months without the previous sanction of the Corporation."

(emphasis supplied)

168. Thus, in whichever provision the legislature intended for a previous / prior sanction / approval, the provision has used the word prior/previous. However, in a situation when the legislature has avoided to use the word 'prior' or 'previous' before the word sanction, then necessarily by taking recourse to the plain grammatical meaning which needs to be attributed to the words used, the provision would be required to be construed.

169. In such context we may refer to the decision of the Constitution Bench of the Supreme Court in ***LIC v. Escorts Ltd.*** (supra) wherein the Supreme Court in the interpretation of Section 29(1)(b) of the Foreign Exchange Regulation Act, observed that the Parliament deliberately avoided the qualifying word "previous" in Section 29(1). The following observations of the Supreme Court in the present context are apposite, which read thus:

> **"61.** From what has been narrated above, one of the principal questions to be considered is seen to be whether the Reserve Bank of India had the power or authority to give ex post facto permission under Section 29(1)(*b*) of the Foreign Exchange Regulation Act for the purchase of shares in India by a company not incorporated in India or whether such permission had necessarily to be "previous" permission.
> … …
> **63.** We have already extracted Section 29(1) and we notice that the expression used is "general or special permission of the Reserve Bank of India" and that the expression is not qualified by the word "previous" or "prior". While we are conscious that the word "prior" or "previous" may be implied if the contextual situation or the object and design of the legislation demands it, we find no such compelling circumstances justifying reading any such implication into Section 29(1). On the other hand, the indications are all to the contrary. We find, on a perusal of the several, different sections of the very Act, that the Parliament has not been unmindful of the need to clearly express its intention by using the expression "previous permission" whenever it was thought that "previous permission" was necessary. In Sections 27(1) and 30, we find that the expression "permission" is qualified by the word "previous" and in Sections 8(1), 8(2) and 31, the expression "general or special permission" is qualified by the word "previous", whereas

> in Sections 13(2), 19(1), 19(4), 20, 21(3), 24, 25, 28(1) and 29, the expressions "permission" and "general or special permission" remain unqualified. The distinction made by Parliament between permission simpliciter and previous permission in the several provisions of the same Act cannot be ignored or strained to be explained away by us. That is not the way to interpret statutes. The proper way is to give due weight to the use as well as the omission to use the qualifying words in different provisions of the Act. The significance of the use of the qualifying word in one provision and its non-use in another provision may not be disregarded. In our view, the Parliament deliberately avoided the qualifying word previous in Section 29(1) so as to invest the Reserve Bank of India with a certain degree of elasticity in the matter of granting permission to non-resident companies to purchase shares in Indian companies. The object of the Foreign Exchange Regulation Act, as already explained by us, undoubtedly, is to earn, conserve, regulate and store foreign exchange. The entire scheme and design of the Act is directed towards that end. Originally the Foreign Exchange Regulation Act, 1947 was enacted as a temporary measure, but it was placed permanently on the Statute Book by the Amendment Act of 1957. The Statement of Objects and Reasons of the 1957 Amendment Act expressly stated, "India still continues to be short of foreign exchange and it is necessary to ensure that our foreign exchange resources are conserved in the national interest". In 1973, the old Act was repealed and replaced by the Foreign Exchange Regulation Act, 1973, the long title of which reads:"An Act to consolidate and amend the law regulating certain payments, dealings in foreign exchange and securities, transactions indirectly affecting foreign exchange and the import and export of currency and bullion, *for the conservation of foreign exchange resources of the country and the proper utilisation thereof in the interest of the economic development of the country.*" We have already referred to Section 76 which emphasises that every permission or licence granted by the Central Government or the Reserve Bank of India should be animated by a desire to conserve the foreign exchange resources of the country. The Foreign Exchange Regulation Act is, therefore, clearly a statute enacted in the national economic interest. When construing statutes enacted in the national interest, we have necessarily to take the broad factual situations contemplated by the Act and interpret its provisions so as to advance and not to thwart the particular national interest whose advancement is proposed by the legislation. Traditional norms of statutory interpretation must yield to broader notions of the national interest. If the legislation is viewed and construed from that perspective, as indeed it is imperative that we do, we find no difficulty in interpreting "permission" to mean "permission", previous or subsequent, and we find no justification whatsoever for limiting the expression "permission" to "previous previous'" only. In our view, what is necessary is that the permission of the Reserve Bank of India should be obtained at some stage for the purchase of shares by non-resident companies."

170. The word 'sanction' would be required to be contextually understood, in the absence of which there is a likelihood of an absurd consequence in the present

context. Hence, the principles of contextual interpretation assume significance. The principle of law in this regard are well-settled. We may usefully refer to the following observations made by this Court in **Trammo DMCC (formerly Known as Transammonia) DMCC vs. Nagarjuna Fertilizers And Chemicals Ltd.**[53] wherein the Court was concerned with the contextual application of the provisions of the Arbitration and Conciliation Act, 1996, more particularly as to whether the effect of the proviso below sub-section (1) of Section 2 would apply in the context of the definition of Court defined under Section 2(1)(e)(ii)of the said Act. The following observations of the Court need to be noted:

> "19. Now the question remains is 'whether section 2(1)(e)(ii) when it defines "court" to mean the High Court having jurisdiction to decide the question forming the subject matter of the arbitration would create any impediment preventing the petitioner to invoke Section 9 before this Court. In my opinion, a cumulative reading of the amended provisions would not create such a hurdle for the petitioner to invoke the jurisdiction of this Court and maintain this petition. The reason being that Section 2 the definition clause begins with the words "In this Part, unless the context otherwise requires-". The definition of "Court" as contained in Section 2(1)(e)(ii), in the present context would create a incongruity to enforce the provisions Section 9 of the Act as made applicable by the 2015 Amendment Act. This inasmuch as the petitioner would be prevented to seek interim measures in enforcing the money award, when the money is lying within the territorial jurisdiction of the Courts only for the reason that it is not the subject matter of arbitration. This is opposed to the plain and clear intention of the legislature as incorporated by the 2015 Amendment Act as noted above. It cannot be conceived that on the one hand the legislature permits a party holding a foreign award to invoke Section 9 of the Act and further permit invoking of the provisions of Sections 47 to 49 of the Act to enforce the foreign awards, and for that matter to approach the appropriate court having jurisdiction to decide the question forming the subject matter of arbitral award, as if the same had been the subject matter of the suit as the explanation to Section 47 would provide. However, on the other hand at the same time, when it comes to adopting proceedings under Section 9 to secure the sums awarded being the money to secure the award is available within the jurisdiction of the Court, it would render the Court lacking such jurisdiction by application of Section 2(1)(e)(ii). This is surely not the intention of the legislature. Any interpretation which would defeat the intention of the legislature is required to be avoided. Thus, in

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my opinion, considering the amended provisions and in the facts of the present case when the petitioner is holding a foreign award and when the money is available within the jurisdiction of this Court as contained in the bank accounts of the respondent at Mumbai, the principles of "contextual interpretation" of Section 2(1)(e)(ii) would be required to be adopted considering the opening words of Section 2(1) "In this Part, unless the context otherwise requires—" and adverting to this principle of interpretation it would be required to be held that the "Court" as defined under the explanation to Section 47, would be the appropriate court when the petitioner is seeking interim reliefs under Section 9 of the Act pending the enforcement of the foreign award.

20. The above interpretation would be well supported by considering the law laid down by the Supreme Court in this regard. It is well settled that the statutory definitions will be required to be read subject to the qualification expressed in the definition clauses, which create them. In "Whirlpool Corporation v. Registrar of Trade Marks, Mumbai, the Supreme Court held that there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the words have used and that this would be to give effect to the opening sentence in the definition section namely "unless there is anything repugnant in the subject or context.' In this situation the Court is required not only to look at the words but also to look at the context, the collocation and the objection of such words relating to such matter and interpret the meaning intended to be conveyed by the use of such words under the said circumstances. The Supreme Court in paragraph 28 has observed thus:-

> "28. Now the principle is that all statutory definitions have to be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or context. That is why all definitions in statues generally begin with the qualifying words, similar to the words used in the present case, namely 'unless there is anything repugnant in the subject or context'. Thus there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word had been used and that will be giving effect to the opening sentence in the definition section, namely 'unless there is anything repugnant in the subject view of this qualification, the Court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under those circumstance". (See: Vanguard Fire and General Insurance Co. Ltd. Madras v. Fraser & Ross, AIR 1960 SC 971)."

21. Again in "TATA Power Company Ltd. v. Reliance Energy Ltd." the principles of contextual the Supreme Court considered interpretation in interpreting Section 23 of the Electricity Act, 2003. The Court observed thus:-

"Supply Contextual Meaning

96. It was submitted by the respondents that in any event the word 'supply' as used in Section 23 should be given the same meaning as is given to it in Section 2(70) of the Act i.e. the sale of electricity to a licensee or consumer. Accordingly by its very nature, supply would have a supplier and a receiver and any direction which is aimed at ensuring or regulating supply by its very nature would have to be directed to both the supplier and the receiver.

97. However, when the question arises as to the meaning of a certain provision in a statute, it is not only legitimate but proper to read that provision in its context. The legal principle is that all statutory definitions have to be read subject to the qualification variously expressed in the definition clause which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have some what different meaning in different sections of the Act depending upon the subject or context. That is why all definitions in statutes generally begin with the qualifying words 'unless there is anything repugnant to the subject or context'. [See Whirlpool Crporation v. Registrar of Trade Marks, Mumbai, (1998) 8 SCC 1; Garhwal Mandal Vikas Nigam Ltd. v. Krishna Travel Agency, (2008) 6 SCC 732 and National Insurance Co. Ltd. v. Deepa Devi, (2008) 1 SCC 414].

98. Accordingly the word 'supply' contained in Section 23 refer to 'supply to consumers only' in the context of Section 23 and not to supply to licensees. On the other hand, in Section 86(1)(a) 'supply' refers to both consumers and licensees. In Section 10(2) the word 'supply' is used in two parts of the said Section to mean two different things. In the first part it means 'supply to a licensee only' and in the second part 'supply to a consumer only'. Further in first proviso to Section 14, the word 'supply' has been used specifically to mean 'distribution of electricity'. In Section 62(2) the word 'supply' has been used to refer to 'supply of electricity by a trader'.

99. To assign the same meaning to the word "supply" in Section 23 of the Act, as is assigned in the interpretation section, it is, in our opinion, necessary to take recourse to the doctrine of harmonious construction and read the statute as a whole. Interpretation of Section indisputably must be premised on the scheme of the statute. For the purpose of construction of a statute and in particular for ascertaining the purpose thereof, the entire Act has to be read as a whole and then chapter by chapter, section by section and word by word. (See Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd., (1987) 1 SCC 424]; Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India, [(1992) 2 SCC 343] and National Insurance Co. Ltd. v. Swaran Singh, [(2004) 3 SCC 297].

100. Thus, in a case where interpretation of a Section vis-a-vis the scheme of the Act, the purport and object of the legislation,

> particularly having regard of the mischief it seeks to remedy; the chapter heading as also the marginal note, in our opinion, are relevant."
>
> **(emphasis supplied)**

171. In the context of the aforesaid propositions, we deal with some of the decisions relied on behalf of the petitioners -

(i) The principles as enunciated in the celebrated judgment of the Chancery Division in **Taylor vs. Taylor** (supra) would not be applicable in the present circumstances, in view of the above discussion and more particularly considering the statutory regime as prescribed under the provisions and the Rules (supra).

(ii) The decision in **Vice-Chancellor, M.D. University, Rohtak vs. Jahan Singh** (supra) relied on behalf of the petitioners to contend that the impugned resolution dated 28 September 2018 of the general body of the municipal corporation cannot have retrospective effect, is not applicable in the present facts considering our aforesaid discussion. In this case, the Supreme Court was considering an issue as to whether the University had the statutory power to issue retrospective amendments to its leave regulations i.e. whether the respondent was entitled to an increment even, when he was not in service after having applied for a foreign post. It is in such context, the Supreme Court observed that the university had no statutory power to issue such retrospective amendments to the leave regulations. It was held that the Executive Council's attempt to give retrospective effect to the regulation, [Regulation 26 (ii)(c)] was ultra vires the parent act, which did not authorize retrospective or immediate legislation. It was

therefore held that the respondent was not entitled to any increment while he was not in service and having accepted the foreign post.

(iii) Insofar as the other decisions are concerned, we may also observe that although the principles of law laid down by the Supreme Court in **Mahabir Vegetable Oils (P) Ltd. & Anr. vs. State of Haryana & Ors.** (supra), **Kusumam Hotels Private Limited vs. Kerala State Electricity Board & Ors.** (supra) and **Sunny Abraham vs. Union of India & Anr.** (supra) are well settled, in the facts of the present case, considering the interpretation we have placed on the conjoint applicability and effect of Sections 244 and 245 read with Section 386(2) of the MMC Act, the said decisions would not assist the petitioners to contend that this is a case of 'prior sanction' or that such prior sanction cannot operate retrospectively. We have specifically negated such contentions.

(iv) The decision in **Patna Municipal Corporation vs. Tribro Ad Bureau & Ors.** (supra) is relied on behalf of the petitioners to support the proposition that the license fee being imposed and recovered by the municipal corporation under the impugned resolution dated 28 September 2018 with effect from 01 April 2013 amounts to a retrospective levy which is illegal and not permissible. In such decision, the Supreme Court was concerned with the challenge to the decision of the Division Bench of the High Court which held that the appellant/Patna Municipal Corporation could not raise any demand of tax/fee/royalty on advertisement(s) since the same was without any legislative sanction and hence, was violative of Article 265 of the Constitution. The Division Bench also held

that all amounts recovered by the appellant/Patna Municipal Corporation on such count i.e., by way of 'tax' on advertisement(s), be refunded to the concerned parties and consequently no penalty could be recovered. The Division Bench had held that the appellant/Patna Municipal Corporation had no power to charge tax under the Bihar Municipal Act, 2007, since it was necessary to frame Regulations, and that in the absence of regulations, there was no authority in law to levy tax, as sought to be imposed by the Corporation. It was also held that although the regulations were framed in the year 2012, the regulations pertained only to licensing provisions and not taxing provisions. It was hence held that as the regulations were silent and did not speak of 'tax on advertisement', the same could not be levied by the appellant/Patna Municipal Corporation. It was further held that even the decision of the Corporation to auction-settle the right to collect advertisement tax from advertisers to private individuals was totally impermissible as the State/its instrumentalities cannot trade in taxation. The High Court also held that to levy, assess and raise any demand of tax was a sovereign function, which could not be auctioned-settled with private individuals. It is in such context that the question which fell for its consideration was whether the demand was by way of a tax/levy or simply in the nature of royalty for permission for advertising through hoardings within the limits of the corporation. The Supreme Court held that the imposition of royalty cannot be equated with imposition of tax/levy. It was held that in the said case, the advertising companies (respondent) had agreed in the year 2005 to pay a royalty

at the rate of Re.1 per square ft. to the Corporation for putting up hoardings/advertisements and only two advertising companies had moved the High Court. Further the enhanced rate of Rs.10/- per sq. ft. was complied by a majority of the advertising companies. The Supreme Court held that such revision of rate was within the power of the Municipal Corporation. However, such enhancement was not tax as royalty and tax were not one and the same. The Supreme Court refused to interfere with the Corporation's power to charge royalty on the ground that there was no question of the royalty being a tax. It was further held that, at first blush, the jump from Re.1/- to Rs.10/- per sq. ft., which appeared to be ten times high, however, it was held to be quite subjective and there was nothing canvassed to indicate that such rate was exorbitant or disproportionate. It is in such context, the Supreme Court also referring to the decision in **N Mani v Sangeetha Theatre**[54] in which it held to be a well settled position that if an authority has a power under the law merely because while exercising such power the source of such power is not specifically referred or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law. It is in such context, the Supreme Court held that payment of enhanced rate in the said case was not made retrospective by the Corporation and hence, there was no occasion to interfere in such demand. Although an observation was made that future enhancement, if any, in the rate of royalty,

[54] (2004) 12 SCC 278

cannot be made to operate and/or have effect retrospectively and although this was not an issue which fell for consideration before the Supreme Court so as to be inferred as the ratio, however, it needs to be noted that a provision akin to the provision as in the present case i.e., Section 386(2) of the MMC Act and the object and purport of such a provision, was not an issue for consideration before the Supreme Court. In any event, the judgment itself is in the context of royalty and it is not dealing with the specific licensing provisions as in the present case, namely, Sections 244 and 245 read with Section 386(2) of the MMC Act. The said decision hence, would not assist the petitioners.

172. The aforesaid discussion clearly implies that the petitioners' case that the levy of the license fee being retrospective, hence without authority of law is wholly untenable.

173. Thus, when by following the procedure known to law, license fee was revised and/or enhanced, the same would certainly be levied and collected. Although fixing of rates is not an issue which the writ court needs to delve into, as it is purely within the domain and expertise of the municipal corporation, for the sake of completeness we discuss this issue. The allegation of the petitioners on unreasonableness also cannot be accepted on two basic grounds, firstly, the rate of Rs.222/- per sq. ft./ per annum is fixed on an acceptable rationale, which was on the basis of the market response received by the municipal corporation in the tender as floated on 24 June, 2011, i.e., almost 14 years back. Secondly, even if the petitioners' contention of 15% increase per annum based on Standing

Committee Resolution No. 1196 dated 15 October, 2012 from the date of the last legitimate revision is to be considered, the following position as pointed out on behalf of the municipal corporation would clearly demonstrate that an amount of Rs.222/- as levied by the municipal corporation is more than reasonable, as clearly seen from the following statement:

PMC IF RATE IS INCREASED 20% PER YEAR

SR. NO.	YEAR	RATE PER SQ. FT. ANNUAL (FOE ILLUMINATED HOARDING)
1	01-04-2009 TO 31-03-2010	90
2	01-04-2010 TO 31-03-2011	108
3	01-04-2011 TO 31-03-2012	129.6
4	01-04-2012 TO 31-03-2013	155.52
5	01-04-2013 TO 31-03-2014	186.62
6	01-04-2014 TO 31-03-2015	223.94
7	01-04-2015 TO 31-03-2016	268.72
8	01-04-2016 TO 31-03-2017	322.46
9	01-04-2017 TO 31-03-2018	386.95
10	01-04-2018 TO 31-03-2019	464.34
11	01-04-2019 TO 31-03-2020	557.20
12	01-04-2020 TO 31-03-2021	668.64
13	01-04-2021 TO 31-03-2022	802.36
PMC IF RATE INCREASE 20% PER YEAR		

PMC if rate is increased by 20% per year

SR. No.	YEAR	RATE PER SQ. FEET (FOR ILLUMINATED HOARDING)
1	01-04-2009 TO 31-03-2010	85
2	01-04-2010 TO 31-03-2011	102
3	01-04-2011 TO 31-03-2012	122
4	01-04-2012 TO 31-03-2013	146
5	01-04-2013 TO 31-03-2014	175
6	01-04-2014 TO 31-03-2015	210
7	01-04-2015 TO 31-03-2016	252
8	01-04-2016 TO 31-03-2017	302

9	01-04-2017 TO 31-03-2018	362
10	01-04-2018 TO 31-03-2019	434
11	01-04-2019 TO 31-03-2020	521
12	01-04-2020 TO 31-03-2021	625
13	01-04-2021 TO 31-03-2022	750
14	01-04-2022 TO 31-03-2023	900
***RATE INCREASE 20% PER YEAR**		

174. Also the position of the rates as compared with the "Mumbai Municipal Corporation" would make things very clear as to the reasonableness of the fees:

SKY SIGN FEES COMPARATIVE CHART BETWEEN PMC AND BMC MUMBAI

Sr. No.	YEAR	EXAMPLE	BMC TOTAL ANNUAL FEE PER SQ.FT.	PMC TOTAL ANNUAL FEE PER SQ. FT.
1	2010	3.5 SQ METER (10 SQ.FT.) X 6.10 SQ.METER (20 SQ.FT.) TOTAL 18.605 SQ.METER (200 SQ.FT.)	489/-	90/-
2	2011	3.5 SQ METER (10 SQ.FT.) X 6.10 SQ.METER (20 SQ.FT.) TOTAL 18.605 SQ.METER (200 SQ.FT.)	538/-	90/-
3	2012	3.5 SQ METER (10 SQ.FT.) X 6.10 SQ.METER (20 SQ.FT.) TOTAL 18.605 SQ.METER (200 SQ.FT.)	592/-	90/-
4	2013	3.5 SQ METER (10 SQ.FT.) X 6.10 SQ.METER (20 SQ.FT.) TOTAL 18.605 SQ.METER (200 SQ.FT.)	652/-	222/-
5	2014	3.5 SQ METER (10 SQ.FT.) X 6.10 SQ.METER (20 SQ.FT.) TOTAL 18.605 SQ.METER (200 SQ.FT.)	718/-	222/-
6	2015	3.5 SQ METER (10 SQ.FT.) X 6.10 SQ.METER (20 SQ.FT.) TOTAL 18.605 SQ.METER (200 SQ.FT.)	790/-	222/-
7	2016	3.5 SQ METER (10 SQ.FT.) X 6.10 SQ.METER (20 SQ.FT.) TOTAL 18.605 SQ.METER (200 SQ.FT.)	869/-	222/-
8	2017	3.5 SQ METER (10 SQ.FT.) X 6.10 SQ.METER (20 SQ.FT.) TOTAL 18.605 SQ.METER (200 SQ.FT.)	957/-	222/-
9	2018	3.5 SQ METER (10 SQ.FT.) X 6.10 SQ.METER (20 SQ.FT.) TOTAL 18.605 SQ.METER (200 SQ.FT.)	1054/-	222/-

10	2019	3.5 SQ METER (10 SQ.FT.) X 6.10 SQ.METER (20 SQ.FT.) TOTAL 18.605 SQ.METER (200 SQ.FT.)	1159/-	222/-
11	2020	3.5 SQ METER (10 SQ.FT.) X 6.10 SQ.METER (20 SQ.FT.) TOTAL 18.605 SQ.METER (200 SQ.FT.)	1276/-	222/-
12	2021	3.5 SQ METER (10 SQ.FT.) X 6.10 SQ.METER (20 SQ.FT.) TOTAL 18.605 SQ.METER (200 SQ.FT.)	1341/-	222/-
13	2022	3.5 SQ METER (10 SQ.FT.) X 6.10 SQ.METER (20 SQ.FT.) TOTAL 18.605 SQ.METER (200 SQ.FT.)	1475/-	222/-

175. Thus, if the petitioners' contention of the percentage increase of what was proposed by the Standing Committee was to be accepted to be a legitimate increase for the period 1 April 2022 to 31 March 2023 the rate would be at Rs.900/- per sq.ft. p.a. Hence, the rate of Rs. 222/- per sq. ft. p.a. being levied by the municipal corporation can in no manner whatsoever be stated to be unreasonable.

176. In the aforesaid context, the petitioners' reliance on the decision of the Supreme Court in **A.P. Paper Mills Ltd. vs. Government of A.P. & Anr.**[55] and in the case of **Commissioner of Central Excise vs. Chhata Sugar Company Ltd.**[56] to contend that the license fees as fixed by the impugned resolution of the Municipal Corporation dated 28 September, 2018 is unreasonable and hence arbitrary, in our opinion, is not well founded. The petitioners have not placed any material on record and in fact there is contrary material on record, as seen from the figures of other Corporations. Further, the levy of fee and the levy

[55](2000) 8 SCC 167
[56](2004) 3 SCC 466

being undertaken for the first time after the rates were fixed in the year 2010 and revised in the year 2013 is not an action which is so unreasonable that the principles of law in such decisions to hold the levy to be totally arbitrary, can be applied.

177. The other contention as urged on behalf of the petitioners is in regard to the scrutiny fee of Rs.5000/- being charged by the PMC for processing the application for grant of license and/or for renewal of license. The contention as urged on behalf of the petitioners is that the scrutiny fee of Rs.5000/- was fixed in view of Resolution No.6/230 dated 17 June 2021 issued by the Municipal Commissioner on the basis of which license fee was being recovered. The petitioners have contended that the PMC has given an analysis as to how Rs.5000/- is arrived at considering various expenditures which includes cost of salary of the employees of the PMC, who will be involved in scrutiny of the application for new hoardings and renewal of existing licenses etc. The contention of the petitioners is that levy of scrutiny fee is arbitrary and more particularly, considering that once the scrutiny fee of Rs.5000/- is charged, there is no warrant for the PMC to levy license fee at the rate of Rs.222/- per sq.ft. p.a. Thus, a distinction is sought to be drawn by the petitioners in regard to the scrutiny fee of Rs.5000/- to be an actual fee to be charged and not Rs.222/- per sq.ft. p.a. In our opinion, such contention as urged on behalf of the petitioners is wholly misconceived to say the least. The purpose and object of the scrutiny fee is wholly administrative in nature. It is a fee for the purpose of processing of an

application. The application process admittedly involves paper work and several other steps to be taken like verification of sites and technical verification. Thus, necessarily there is a stage-wise scrutiny of the license applications by the municipal officers at different levels. On such conspectus for the petitioners to contend that when a commercial license is being applied by the petitioners and that too for hoardings and sky signs, an application fee of Rs.5000/- needs to suffice and not the license fee at the rate of Rs.222/- (supra) is preposterous to say the least. In our opinion, this is also an untenable argument looked from any angle. It is seen from the several provisions of the MMC Act as noted above that there is no dearth of power and authority with the Municipal Commissioner to levy fees. Thus, it cannot be said that power to levy fee of Rs.5000/- to process an application would be an arbitrary decision on the part of the Commissioner. Even to consider such contention, we cannot shut our eyes to the ground realities and the contemporary requirements of fair and transparent processing of applications by use of technology (i.e., computers etc.) apart from the different steps which are required to be taken to scrutinize and to verify any application. A converse position, that no scrutiny fee is levied in processing of the application cannot be imagined. It is not the petitioners' case that no machinery of the municipal corporation is put to work when applications for grant of license or for extension of license are required to be scrutinized. Thus, we do not find any substance in the contention of the petitioners that the scrutiny fee is in any manner arbitrary or illegal. It is imposed with the power and authority available with the municipal

corporation, as also the same being in the nature of administrative fees, it cannot be said that it is unjustified.

178. As noted above, the attempt of the petitioners drawing comparison between the PMC charging Rs.5000/- as scrutiny fee as the only fee the PMC needs to charge, on the basis, that once the PMC justifies the charging of Rs.5000/- as the application fee / scrutiny fee, there is no warrant for levy of license fee at the rate of Rs.222/- per sq.ft./p.a., is a wholly misconceived comparison, for more than one reason. The first reason being that the scrutiny fee which is in the nature of administrative fee can never be considered to be a license fee. The fundamental error on the part of the petitioners, hence is to compare the administrative fee of Rs.5000/- as a fee for issuance of a license, which the provisions of law itself would not permit as discussed in detail hereinabove. Such contention of the petitioners is also premised on the fact that as the municipal corporation has taken into account various expenditures being incurred for scrutinizing the application, hence recovery of scrutiny fee is towards the revenue of the municipal corporation, for such reason, the scrutiny fee itself needs to assume a character of license fee. Such comparison of the administrative scrutiny fee being collected on an application for grant / renewal of a sky sign / hoarding license, which is a one time payment, can in no manner form any basis for the municipal corporation to not exercise its authority and power to levy the license fee, as permissible under Section(s) 244, 245 read with Section 386(2) of the MMC Act. If such contention as urged on behalf of the petitioners is

accepted, it would amount to total misreading of the said provisions. We accordingly, reject the petitioners contention in regard to the scrutiny fee of Rs.5000/- either being illegal or such scrutiny fee being the only fee which the municipal corporation needs to charge.

179. In some of the Writ Petitions (Writ Petition Nos.6882 of 2022[57]; Writ Petition No.7309 of 2023[58]; Writ Petition No.9699 of 2023[59]), there is an additional challenge which is raised to the Municipal Commissioner exercising powers under Rule 20 of the Maharashtra Municipal Corporations (Regulation, Control of Sky Signs and Advertisements) Rules, 2022, which was brought into effect from 9 May 2022 and which superseded the 2003 Rules, whereby the Municipal Commissioner acting as an Administrator passed Resolution No.338 dated 28 December 2022 enhancing the rate of license fee to Rs. 580, Rs.640 and Rs.700 per sq.ft./p.a. for the years 2018, 2019 and 2020 and Rs.290, Rs.320 and Rs.350 per sq.ft./p.a. for newly added village areas, retrospectively. The contention of the petitioners in these petitions is that the Municipal Commissioner acting as an administrator, as appointed by the State Government, exercising powers under Section 452A of the Maharashtra Municipal Corporations Act, has no jurisdiction to enhance the levy, that too retrospectively. One of such grounds as raised in Writ Petition No.6882 of 2022 (supra) is required to be noted which is incorporated by amendment, which reads thus:

[57] M/s.Pioneer Publicity Corporation Vs. PMC
[58] Rushikesh Sanjay Nikam Vs. PMC
[59] Advertising Association of Pune Outdoor Vs. State of Maharashtra.

> "27-J. The Administrator then claims to have exercised the power of the 'General Body' and passed a resolution no.338 dated 28.12.2022 approving the proposal dated 09-12-2022 of MC and then resolution dated 16-12-2022 passed by the Standing Committee, by which, the fees for hoarding have been increased to Rs. 580-00 per sq. ft. per year for the first year of 2018, Rs. 640-00 per sq. ft. per year for the second year of 2019 and Rs. 700-00 per sq. ft. per year for the third year 2020. Similarly, even for the newly included villages Rate of Fee has been fixed at Rs. 290-00, Rs. 320-00 and Rs. 350-00 for First, Second and Third year respectively. These fees have been fixed with retrospective effect. Copy of the said purported resolution no.338 dated 28-12-2022 passed by Administrator in his alleged capacity as 'general body' published through his letter dated 01st March, 2023 along with its English translation is annexed and marked as Exhibit "GG".
>
> 27-K. The Administrator then claims to have further corrected this purported resolution no.338 dated 28-12-2022 through the letter dated 22-02-2023 of Additional Municipal Commissioner to omit the increase of 50% increase mentioned in the said resolution no.338. A copy of the said letter dated 22-02-2023 of the Addl. Municipal Commissioner is annexed hereto and marked as Exhibit-HH."

180. In such context, at the outset, we may observe that the 2022 Rules are not under challenge. Secondly, if such contention as alleged on behalf of the petitioners is accepted, it would nullify the provisions of Section 452A under which the Legislature confers a complete power to the State Government to appoint Government officer or officers to exercise powers and perform functions and duties of the Corporation under the MMC Act. The said provision reads thus:

> 452A Power of State Government to appoint Government Officer or officers to exercise powers and perform functions and duties of Corporation.
> (1) For every Municipal Corporation deemed to have been constituted or constituted for a larger urban area under sub-section (1) or sub- section (2) as the case may be, of section 3, the State Government may appoint a Government officer or officers to exercise all the powers and to perform all the functions and duties of Corporation under this Act:
>
> Provided that an Administrator appointed by the State Government before the 31st May 1994 under the provisions of this Act, as it existed immediately before the 31st May 1994, for a Municipal Corporation deemed to have been constituted for a larger urban area under sub-section (1) of section 3 who is in

> office on the said date, shall be deemed to be the Government officer appointed under this sub-section **to exercise all the powers and perform all the functions and duties of the said Corporation under this Act.**
> (2) The officer or officers appointed under sub-section (1) shall hold office until the first meeting of the Corporation or for a period of six months from the date of specification of an area as a larger urban area, under sub- section (2) of section 3, whichever is earlier :
>
> Provided that the Administrator deemed to have been appointed as the Government officer under sub-section (1) shall hold office until the first meeting of the Corporation.
>
> (3) The officer or officers appointed or deemed to have been appointed under sub-section (1) shall receive from the Municipal Fund such pay and allowances as may be determined, from time to time, by the State Government."
>
> (emphasis supplied)

181. We have already held that the municipal corporation has the power to levy license fee as it may deem appropriate. Further Section 452A of the MMC Act is legal and valid much less assailed by the petitioners. The Municipal Commissioner is functioning in dual capacity wearing two hats namely one as an administrator or Chief Executive Officer discharging the duties under the MMC Act and the second as the municipal corporation itself, appears to be the clear legal position. This is the consequence as desired by the legislation. We draw a similar analogy when we consider the powers of the Governor of the State as the Constitutional provisions may confer on the President's Rule being imposed in a State. In such situation, the Governor of the State functions as the "Executive" which is a similar position as that of the Municipal Commissioner qua the Municipal Corporation being appointed as an administrator on 3 March 2022 under Section 452A, who assumes the authority and power of the municipal corporation itself. In this context, we may usefully refer to the decision of the

learned Single Judge of this Court in **Manaj Tollways (P) Ltd. v. State of Maharashtra**[60], wherein this Court was considering the powers of the Governor who was discharging the function of the State Government when the President's Rule was proclaimed under a Presidential Notification. The relevant observations made by the Court are required to be noted which read thus:-

> 42. It is manifest from a plain reading of clause (a) of the Presidential Proclamation that the President assumed to himself all functions of the Government of the State and all powers vested in or exercisable by the Governor of the State, which in the normal course would vest with the Governor of the State as provided for in Article 154 of the Constitution. Sub-clause (c)(iii) of the proclamation amplifies as to what was provided, in clause (a), as it clearly provides that any reference in the Constitution to the Governor, in relation to the State be construed to be a reference to the President, in so far it relates to the functions and powers thereof. The proviso below clause (iii) also makes it clear that nothing contained in clause (iii) shall affect the provisions of Article 153, Article 155 to 159 (both inclusive), Article 299 and Article 361 and paragraphs 1 to 4 (both inclusive) of the Second Schedule, or prevent the President from acting under clause (i), to such extent as he thinks fit through the Governor of the State. Thus a cumulative reading of clause (a), clause (c)(ii) & (iii) along with its proviso, leaves no manner of doubt, that the powers of the Governor were to be indubitably exercised by the President through the Governor of the State."

182. The situation is not different when we consider the provisions of Section 452A of the MMC Act. Thus, the contention of the petitioners that the Municipal Commissioner had no power to assume the authority of the municipal corporation is wholly untenable as the same would render the provision wholly nugatory.

183. Considering the aforesaid discussion and reasoning and the comparative charts of the rates including as to what would have been the increase in the license fees by the Standing Committee resolution granting enhancement of 15%

[60] 2021 SCC OnLine Bom 303

per year, would demonstrate that such contention is also wholly untenable. It is rejected.

184. In the present proceedings we are dealing with an issue of grant of licenses by the municipal corporation. The Court cannot be oblivious to the statutory regime which we have discussed hereinabove, which has guided the municipal corporation in taking the decisions at all relevant times in regard to the levy of the license fees at different rates and at different times, as noted by us hereinabove. The municipal corporation is supposed to act in public interest. On such parameters, when the interference of the writ Court is called for, by applying the settled principles of law, the interference can only be to set aside palpable illegalities which are in the teeth of the provisions of law, apparent breach of the legal rights and when it comes to the fixing of rates, only when they are so unreasonable that no reasonable body of persons can take such decision. In the absence of any of these factors being present, the actions of the municipal corporation would be required to be held to be reasonable, legitimate calling for no interference of the Court. In the present case, the conditions of license, namely, the rates fixed, are not so excessive arbitrary or unreasonable so as to lead to an extinction of the business of the licensees. Hence, there cannot be any deprivation of fundamental rights to carry on business. Thus, considering such principles which are well-settled, in any event, no interference whatsoever is called for in the present proceedings.

185. In the context of the constitutional position of the municipal corporation and the powers the legislation would confer on the municipal corporation in the context of the very legislation namely the MMC Act, the Supreme Court in a very recent decision delivered two days back (dated 8 December 2025) in **Akola Municipal Corporation & Anr. vs. Zishan Hussain Azhar Hussain & Anr.**[61] was considering a challenge to the decision of this Court in regard to the relief sought by the respondents before the High Court that the revision of property tax by the appellant-Akola Municipal Corporation for the year 2017-18 to 2021-22 was contrary to law as the revision of property tax was made without following the due process of law. The High Court had set aside the revision on property taxes by allowing the writ petition. In such context, emphasizing the importance of autonomy of the Municipal Corporation under the Constitutional Scheme and the public welfare required to be achieved by the municipal bodies, which would not be possible without the generation of revenue, and noting that the cost of all such activities/functions of the municipal bodies with the passage of time have radically changed, it was held that the revision in the tax structure on a regular basis to match the rising costs was unexceptionable. Although the observations are in the context of tax to be recovered, however, the statement of law as the decision lays down, is of immense significance insofar as the issue which has fell for consideration in the present proceedings. The following are the significant observations made by the Supreme Court:

[61] 2025 INSC 1398

"6. It cannot be disputed that the tasks assigned to every municipal body includes urban planning, public health and sanitation, waste management, provision of essential services, upkeep of infrastructure of the cities/towns. These activities are vital for public welfare and for maintaining the standard of life of citizens in every city or town, which are fundamental to ensuring health and dignified living, core requirements of the constitutional obligations owed to the citizens. Any lapse in these duties/activities may cause chaos, spread of diseases and in general adversely affect the quality of life of the citizens, for the welfare whereof the municipal bodies are formed to work.

7. Without the generation of revenue, the municipal bodies cannot be expected to sustain all these functions and perform their statutory obligations. It cannot be denied that the cost of all these activities/functions rises with passage of time and hence, revision in the tax structure on a regular basis to match the rising costs is unexceptionable. If the taxes are not revised in keeping with the rise in cost of infrastructure, human resources, etc., that would make the municipal bodies defunct and non-functional.

8. Municipal bodies, being autonomous institutions constituted under statutes, are entrusted with extensive and multifaceted responsibilities that bear a direct and immediate nexus to the daily lives, welfare and safety of the citizens residing within their territorial limits. Their functional efficacy, financial stability and administrative independence are integral to the discharge of these statutory obligations. It is therefore imperative that such municipal bodies possess adequate and independent sources of revenue to sustain and strengthen their operational capacities. A municipal administration that is compelled to depend upon the State for grants, doles or other forms of financial largesse would be structurally weakened and rendered incapable of performing its statutory duties in a timely and efficient manner. The scheme of municipal governance envisages financial autonomy as a necessary concomitant of administrative autonomy; without such independent revenue-generation mechanisms, including periodic revision of taxes and charges as permissible in law, the very purpose for which these bodies are constituted would stand frustrated.

9. It is in these facts and circumstances, the respective Municipal Legislations and the Rules framed thereunder give powers/authorize the municipal bodies to take steps for revision in the rates of property taxes so that adequate revenue may be generated and the functioning of the municipal bodies may not be adversely affected for lack of funds. The fact that the tax structure in respect of properties falling within the jurisdiction of the appellant-Corporation had not been revised and the verification of the properties situated within its jurisdiction, had not been done from the year 2001-2017, by itself, depicts gross laxity on part of the authorities concerned.

…..

27. As an upshot of the above discussion, we are of the firm view that the appellant-Corporation having kept the taxes at a stagnant rate for almost 16 years was indeed justified and rather under a statutory obligation to revise the tax rates. Had the exercise been taken on regular basis, perhaps the

> **cumulative increase of tax rates by the appellant-Corporation in the year 2017 would have been much higher than 40% done under the subject exercise and the abrupt shock could have been avoided.**"
>
> **(Emphasis supplied)**

186. Although several judgments are cited on behalf of the parties, and the principles of law laid down in those judgments are well settled, however, in order to not to burden the judgment and avoid prolix, we have not discussed these judgments in detail.

187. The aforesaid discussion would make us conclude that the Municipal Corporation had complete legal authority to levy license fees in granting/renewing the sky-signs/hoardings licenses used for the purpose of advertising. Further, the collection of license fees since 1 April, 2013 at the rate of Rs.222/- per sq.ft. p.a. was legal and valid and in terms of stipulation under section 386(2) of the M.M.C. Act, as we have held that the Resolution No. 667 dated 28 September, 2018 of the Municipal Corporation granting a sanction to the said rates with effect from 1 April, 2013 to collect sky-signs/hoardings license fees was legal and valid. Further, the case of the petitioners that the license fee is unreasonable and disproportionately high *ex-facie* is held by us to be untenable. Further, promulgation of the GST laws in no manner whatsoever has affected either the legislative competence of the State Legislature in relation to the provisions of Section 244, 245 and Section 386 of the MMC Act read with rules thereunder as also the 2003 Rules. Further, the deletion of Entry 55 from the State List of the Seventh Schedule of the Constitution also in no manner

whatsoever would affect the power and authority of the Municipal Corporation to levy fee on advertisement. Further, Article 243-X read with Entry 5 and Entry 66 of List II of the Seventh Schedule of the Constitution of India is sufficient recognition of the legislative powers and for the said provision, to be legal and valid. The petitioners contention on any distinction between the sky-signs and hoardings is an unwarranted hair-splitting as all forms of sky-signs/hoardings used for the purpose of advertisement requiring license to be obtained as per the provisions of Section(s) 244, 245 read with Section 386 of the MMC Act. Thus, none of the contentions of the petitioner in assailing the validity of levy of license fees are untenable, as held by us.

PART -K

CONCLUSION

188. As an upshot of the aforesaid discussion, we hold that :-

(i) the municipal corporation has authority to levy license fee in granting permission to sky-sign / hoardings / advertisements under the MMC Act, including to enhance the fee under Section(s) 244, 245 read with Section 386(2) of the MMC Act;

(ii) that the license fee collected by the municipal corporation for such purpose is a regulatory fee;

(iii) the provisions permitting the municipal corporation to recover license fees do not stand obliterated by the Central/Maharashtra Goods and Service Tax Act, 2017 being brought into force;

(iv) the action of the municipal corporation in enhancement of the license fee from Rs.85/- (sic Rs.82.60) to Rs.222/- per sq. ft./per annum vide Resolution No.6/402 dated 14 February 2013 as sanctioned/ratified by the General Body of the municipal corporation vide Resolution No.667 dated 28 September 2018, validly permitted the municipal corporation to collect license fee from 1 April 2013. Consequent thereto the license fee collected by the municipal corporation between the period 1 April 2013 and thereafter at the said rate is legal and valid.

189. Writ Petitions accordingly do not deserve interference and are liable to be dismissed.

190. Before parting we may observe that, as rightly contended on behalf of the municipal corporation, the present proceedings are in the nature of a luxury litigation, which has taken enormous judicial time. It is also correct that many issues which were not specifically pleaded and no grounds being raised in the petition were urged, however, we have made an endeavour to address them as some of them are legal issues. It is difficult to conceive that any legal right of the petitioners, who are advertising agencies, much less the right guaranteed under Article 14, 19(1)(g), is in any manner violated. In our opinion, there is no prejudice whatsoever being caused to the petitioners in raising the challenges and pursuing these petitions inasmuch as it is not a case of the petitioners that they are paying the license fees to the municipal corporation for installation of sky-signs and hoardings from their pockets. Such fees/rates being paid to the

municipal corporation are certainly recovered by them from the clients / customers who are lending their advertisements to the petitioners under the independent contracts. There is not an iota of disclosure that the agencies entering into contracts with the licensees of the municipal corporation at any point of time had a grievance that the license fees were not acceptable to them. Thus, the whole intention of the petitioners appears to be nothing but to excessively enhance their profits, being purely a commercial motive in raising all such contentions as dealt by us. Further, even the GST amounts which they have paid on their independent contracts have not been disclosed in the petitions, which would show the quantum of amounts they are receiving for the very period they have been granted such licenses by the municipal corporation. We are thus quite surprised in regard to the variety of stands taken by the petitioners to assail the fee. We could not stop thinking of the sequel which the petitioners intended, which in our opinion, is quite interesting. The sequel would be that the petitioners have already entered into contracts with those, whose advertisements would be displayed on the sky-signs / hoardings / advertisements, which are licensed to the petitioners. Such contracts as noted above are independent contracts wherein money is required to be parted by the third parties on the basis of the terms and conditions set out by the petitioners to such third parties. We are not aware of the period of each of the advertisements under such contracts. Certainly, it cannot be said that the contractual amounts have not been appropriated by the petitioners. The Court is not informed of the contractual

amounts which each of these petitioners have received with effect from 1 April 2013. In these circumstances, the petitioners assailing the levy and that too belatedly, as rightly contended by the Pune Municipal Corporation itself is intriguing. The intention of these petitioners is clearly to have an unjust enrichment/profiteering, having already received the amounts from the contracting parties and thereafter seeking a bonanza from the municipal corporation to receive back such amounts by raising such challenge.

191. Writ petitions are accordingly dismissed. No costs.

192. Pending Interim Applications would not survive and are accordingly disposed of.

Epilogue

193. The aforesaid discussion clearly depicts a blend of what confronts the municipal bodies in regard to the regulation and control of sky-signs and hoardings, although the challenge of the petitioners being to the levy of license fees is untenable as held by us. We may however observe that as sky-signs and hoardings play a pivotal role in the public surroundings of the cities and more so in large cities, hence, any decision taken by the municipal bodies, on such issues, necessarily involves substantive and important consideration to the interest of the public at large, in regard to the impact sky-signs/hoardings bring about. On such count, any compromise on public interest is non-negotiable. For such reasons, when sky-signs and hoardings determine the skyline of modern cities, their

regulation and control in the best possible manner, facilitated by continuous research on the adversities, the dynamics of technology, use of high-dimension lighting and similar issues affecting the environment, public convenience, safety, etc., have assumed significant proportions. Thus, when the petitioners' impression is to the effect that the applications for grant/renewal of licenses in the context of pure licensing provisions, is a simple affair and/or a routine paper work, however, in reality it is certainly not so, as issues of immense public interest and societal welfare are required to be catered and achieved by the municipal bodies, in the process of licensing, which involves several considerations. There cannot be any myopic approach in this regard. Hence, the petitioners plea that the municipal bodies merely process the license applications, as if a ticket is purchased across the counter, as portrayed by the petitioners, is only a figment of imagination.

194. Also, apart from the licensing fees contributing to the municipal funds, the process involves a great deal of planning and vision on several factors, it requires the scrutiny on the involvement of technology and other resources. The modern licensing requirements are monumentally different from what was prevalent in the yester years, when the licenses were issued to sky-signs and hoardings, consisting of either tin boards or synthetic papers mounted on large iron frames, which was then the scene. This is certainly not the present norm as the dynamics of contemporary advertising business, certainly has an impact on variety of public concerns affecting the society at large. For such reasons, the regulation and

control as postulated by the provisions of the MMC Act, read with the Constitutional provisions guaranteeing autonomy to the municipal bodies under Part-IX-A of the Constitution, needs to be applied in a manner as expected in the contemporary times, while, at the same time, balancing the licensing rights of the advertisers. We may add that the MMC Act is a 1949 Act. The situation and perspective prevailing in the year 1949 (albeit amendments) certainly would vary in its application, in the present licensing regime. The relevant provisions, thus need to be interpreted also considering the paramount societal needs and interest of the present times. The applicability of the law itself needs to be progressive. The provisions would be required to be applied dynamically in ensuring that the object and intention of the municipal laws is fully achieved, ensuring robust applicability of the Constitutional vision as contained in its provisions. It is with such perspective, the municipal bodies, in our opinion, need to act in applying the relevant provisions and pave their way in meeting the contemporary challenges. So is our solemn hope.

[ADVAIT M. SETHNA, J.] [G. S. KULKARNI, J.]