

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.227 OF 2017**

1. Rushabh Outdoors, Thane]
2. Vandana Borse,]
Proprietor of M/s. Synnovation, Mumbai] .. Petitioners

Versus

1. The State of Maharashtra,]
2. Municipal Corporation of Greater Mumbai] .. Respondents

Mr. Navroz Seervai, Senior Advocate with Mr. Aseem Naphade, Mr. Akash Rebello, Mr. Jatin Sheth, Ms. Chaitra Rao and Ms. Meera Parmar, Advocates for the Petitioners.

Dr. Birendra Saraf, Advocate General with Mr. Milind V. More, Additional Government Pleader and Mr. Jay Sanklecha, "B" Panel Counsel for Respondent No.1-State of Maharashtra.

Mr. Suresh B. Pakale, Senior Advocate with Ms. K. H. Mastakar i/by Ms. Komal Punjabi, Advocates for Respondent No.2-MCGM.

**CORAM : SHREE CHANDRASHEKHAR, C.J. &
GAUTAM A. ANKHAD, J.**

Reserved on : 16th December 2025.

Pronounced on : 06th April 2026

JUDGMENT

Per, Shree Chandrashekhar, C.J. :

M/s. Rushabh Outdoors which is a partnership firm and represented through its partners, namely, Navnit Haria and Zaverben Liladhar Haria is joined by the proprietress of M/s. Synnovation, namely, Vandana Borse in laying a challenge to sub-section (2) of section 479 of the Mumbai Municipal Corporation Act, 1888¹. The petitioners are seeking a declaration that sub-section (2) of section 479 of the MMC Act is unconstitutional and liable to be struck down. They are aggrieved by Resolution No.999 passed by the Municipal Corporation of Greater Mumbai in its meeting held on 11th December 2009 by which a revision in the schedule of fees for the advertisement license issued under

¹ MMC Act

sections 328 and 328A of the MMC Act was approved and increased by 80 *percent* of the prevailing rate for one year and then it is to be increased by 10 *percent per annum* every following year. The petitioners have challenged the power of the Commissioner to fix the rates of license fees and it is in that context that they are raising a question to the constitutional validity of sub-section (2) of section 479 of the MMC Act.

2. The petitioners state that they obtain a license from the Municipal Corporation under sections 328/328A of the MMC Act on payment of license fees for carrying on the business of outdoor publicity. The Municipal Corporation proposed a revision in the license fees for the permissions granted under sections 328 and 328A and the said proposal contained in the letter dated 4th November 2009 was considered by the Law Committee and it was decided to take approval of the Municipal Corporation. The reasons for seeking a revision in the license fees are said to be the rising expenditure for the establishment of the Municipal Corporation, an increase in the wholesale price index and service costs, decline in the revenue of the Municipal Corporation from the license fees etc. However, the information received by them through the RTI is that the Municipal Corporation has reserves and surplus of Rs.47244.56 crores (excluding inter budget contributions) and its consolidated income far exceeds its expenditure. The petitioners have provided the details of the license fees collected by the Municipal Corporation for the period between 2007 to 2016 and endeavored to demonstrate that the total income of the Municipal Corporation from the advertising licenses constitutes about 69 *percent* of the total collection of the License Department. The petitioners blame the Commissioner for not applying his mind before proposing increase in the license

fees. They say that the Municipal Corporation also did not apply its mind and approved the proposal for increase in the license fees in a mechanical manner inasmuch as there was no discussion in the meeting of the Municipal Corporation held on 11th December 2009. They contend that the effect of 10 *percent* increase in perpetuity in the license fees is excessive, arbitrary and unreasonable and violates their fundamental rights under Articles 14 and 19 of the Constitution of India.

3. In the affidavit-in-reply, the respondents have narrated the procedure for granting permission for advertisement and claim that several high-ranking officers of different departments including the officers in the rank of Assistant Commissioner are involved in the entire process at different stages and it is not true that the License Department alone is involved in the whole process. The Municipal Corporation has taken a preliminary objection to maintainability of the writ petition on the ground of delay and laches on the part of the petitioners to challenge the impugned resolution dated 11th December 2009. It has set up an objection on the ground of constructive *res judicata* as a similar challenge made to the impugned resolution was dismissed in “*Yog Advertising and Marketing Services*”². It is pleaded that the impugned resolution has been in operation for more than eight years and the petitioners availed advertising rights under the said resolution on payment of license fees in previous years. Before “*Yog Advertising and Marketing Services*”, there was an increase in the license fees in the year 1996 and that was the subject matter of challenge in Writ Petition No.735 of 1997. There was again a revision in license fees in the year 2003 to the extent of about

2 *Yog Advertising and Marketing Services & Anr. v. Municipal Corporation of Greater Mumbai & Anr.* 2016 SCC OnLine Bom. 62

100% in the schedule of fees and that continued for about five years. Thereafter, a new guidelines for exhibiting sign boards and hoardings became operational on 10th January 2008 and the High Court passed an order in Writ Petition No.1132 of 2002 directing the Municipal Corporation to implement the new guidelines which entailed a complete study of the existing hoardings and about 225 hoardings were removed and 485 licenses were revoked. Since the last increase in the schedule of fees, there has been substantial increase in the expenditure of various departments of the Municipal Corporation. Similarly, there has been increase in the wholesale price index and costs of services which necessitated increase in the license fees and an annual increase by 10%. The Municipal Corporation has emphatically denied that there was no rationale for increase in the license fees and states as under: -

“14. I deny that the rationale given by the Corporation for the increase in the fee is incorrect. The decline in the revenues ought to be considered as compared to the expenditure of the various departments of the Corporation, the increase in the wholesale price index, the growing expenditure and the various services rendered. The comparison of the expenditure only towards the operative functioning of the license department from the revenue of the hoardings is misconceived and erroneous. Considering the increase in the license fees by 100% after a gap of 6 years and an annual increase of 10% can be no stretch of imagination and logical reasoning be considered to be unreasonable and unjustified. The cost of administering the municipal services has also increased year to year. In the year 2003-04, the cost of administering municipal services was 5366.26 Cr. In 2007-08, it was 10585 Cr. It recites that the cost of living has been rapidly increasing. The value of Rupee has also gone down substantially. Whilst the Petitioners earned substantial revenue from the hoardings that the Corporation believes substantially increased over the years, the hoarding owners are grudging a reasonable justified increase in the license fee charged by the Corporation. I deny that there is any unreasonableness in the Resolution dated 11th December 2009 or that the same, in any manner, is excessive or harsh.”

4. Mr. Navroz Seervai, the learned senior counsel for the petitioners submitted that sub-section (2) to section 479 confers an unguided, uncanalized and arbitrary powers on the

Commissioner for levying license fees on sky-signs and advertisements, and the delegation of such arbitrary powers on the Municipal Commissioner shall be an infraction of Article 14 of the Constitution. There is no policy laid down by the Legislature and no standard has been set down for guidance of the Commissioner to fix the rates of license fees and the manifest arbitrariness in conferring such unguided powers on the Commissioner cannot be covered up on the ground of a dormant or latent legislative policy. The Legislature must set limits of the power delegated by law through a clear guidance for those on whom the power to execute law has been conferred [*per*, “*Kishan Prakash Sharma*”³]. The learned senior counsel referred to “*Devi Das Gopal Krishnan*”⁴ and further submitted that the Legislature cannot efface itself in the matter of fixation of rates without giving any guidance. Rather, the Legislature must provide guidance for fixation of the rates of taxes when power to fix such rates is left to a body or authority and such guidance must flow from the statute [*per*, “*Liberty Cinema*”⁵]. It is no safeguard in the matter of fixation of the rate of license fees that the Municipal Corporation supervises the acts of the Commissioner. The impugned resolution does not provide any indication as to how the Municipal Corporation approved the proposal for increase in the license fees and the impugned resolution was passed mechanically without any application of mind.

5. *Per contra*, Dr. Birendra Saraf, the learned Advocate General submitted that Article 243-X is an enabling provision and it does not mandatorily require the Legislature of a State to enact a law authorizing the Municipality to levy, collect and appropriate taxes,

3 *Kishan Prakash Sharma & Ors. v. Union of India & Ors.:(2001) 5 SCC 212*

4 *Devi Das Gopal Krishnan v. State of Punjab:1967 SCC OnLine SC 108*

5 *Corporation of Calcutta & Anr. v. Liberty Cinema:1964 SCC OnLine SC 65*

duties, tolls or fees. There are certain provisions in Part IX-A of the Constitution of India such as Article 243-Q, Article 243-R, Article 243-S, Article 243-T, Article 243-U, Article 243-V, Article 243-ZA, Article 243-ZD and Article 243-ZF which are mandatory provisions. Whereas, Article 243-W and Article 243-X wherein the expression “the State Legislature may” has been used are the enabling provisions. It is the ordinary rule of interpretation that the word “may” is used to grant a discretion and not to impose a mandatory direction and no special circumstance has been shown by the petitioners to infer a mandatory direction in clause (a) of Article 243-X to the State Legislature to enact a law providing the procedure and limits to levy, collect and appropriate taxes, duties, tolls and fees [*per*, “*Sahodara Devi*”⁶]. Clause (a) of Article 243-X does not in any manner suggest that the Legislature of a State is under any obligation to lay down a procedure or to provide limits in the statute which authorizes the Municipality to collect license fees. The learned Advocate General further contended that the use of expression “as may be prescribed” leaves a discretion with the State Legislature to specify the procedure or limits for levying or collecting fees [*per*, “*Orient Paper Mills*”⁷]. Supporting him, Mr. Suresh B. Pakale, the learned senior counsel for the Municipal Corporation submitted that the license fees levied and collected by the Municipal Corporation can be in return for the services rendered by it, to defray the costs of administration and to increase the general funds of the Municipal Corporation.

6. At the outset, we may indicate that the objection raised by the respondents on the ground of delay and laches in raising the question of constitutional validity of sub section (2) to section 479

6 *Sahodara Devi (Smt) & Ors. v. Govt. of India & Anr.:(1972) 3 SCC 156*

7 *Orissa State (Prevention & Control of Pollution) Board v. Orient Paper Mills & Anr.:(2003)10 SCC 421*

of the MMC Act was rejected at the initial stage of hearing of this writ petition. A co-ordinate Bench of this Court rejected the technical objection based on the principles of constructive *res judicata* by referring to the decision in “*Amalgamated Coalfields Ltd.*”⁸, wherein the Hon’ble Supreme Court held that the constructive *res judicata* being special and artificial form of *res judicata* is generally not applied to writ proceedings under Article 32 or Article 226 of the Constitution. This Court further held that the writ petition may not be rejected on the ground of delay and laches wherever an infraction of the fundamental right is alleged *qua* a challenge to an enactment or its provision. The co-ordinate Bench referred to “*Basheshar Nath*”⁹, *Olga Tellis*¹⁰ and “*Re : Kerala Education Bill*”¹¹ and held that there can be no waiver of fundamental rights and a citizen cannot be said to have lost his fundamental rights on the ground that it was not exercised for a long time or not at all. Furthermore, the writ petition cannot be dismissed on the ground that the aggrieved party had been paying the tax without objection for years. The real test to determine whether a writ petition may not be entertained on the ground of delay is whether any parallel right was created in the meantime and the lapse of time is not attributable to any laches or negligence on the part of aggrieved party.

7. The question posed is whether section 479 of the MMC Act, which provides as under, suffers from excessive delegation:

“479. Licences and written permissions to specify condition etc., on which they are granted.—

(1) Whenever it is provided in this Act that a licence or a written

⁸ *Amalgamated Coalfields Ltd. & Anr. v Janpada Sabha, Chhindwara & Ors.*:1962 SCC OnLine SC 72

⁹ *Basheshar Nath v. Commissioner of Income Tax, Delhi & Rajasthan & Anr.*: 1958 SCC OnLine SC 7

¹⁰ *Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors.*:1985 (3) SCC 545

¹¹ *Re : The Kerala education Bill* :1957 AIR 1958 SC 956

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 shall be given under the signature of the Commissioner or of a municipal officer empowered under section 68 to grant the same.

(2) **Fees to be chargeable.**— *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 1 [Commissioner], with the sanction of the Corporation.*

(3) **Licences and written permissions may be revoked, etc.**— *Subject to the provisions of 2 [clauses (d) and (dd)] of section 403, any licence or written permission granted under this Act may at any time be suspended or revoked by the Commissioner, 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 regulation or by-law made hereunder in any matter to which such licence or permission relates.*

(4) **When licence or written permission is revoked, etc., grantee to be deemed to be without a licence or written permission.**— *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.*

(5) **Grantees to be bound to produce licence or written permission.**— *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 licence or written permission."*

8. In the context of the challenge to sub-section (2) to section 479 of the MMC Act, it is necessary to examine the ambit and scope of Article 243-X which is reproduced as under :-

"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."*

9. The Legislature of a State has wide powers to make laws. It has multiple duties under the Constitution but the Legislature in a welfare State cannot presumably conceive and contemplate all the details while formulating a particular legislative policy. It may enact a law to delegate its subsidiary or ancillary powers for carrying out the policy laid down in the statute. Therefore, the Legislature can reserve in itself the final control over subordinate legislation and delegate the ancillary powers of working out the details for executing the legislative policy. This is also no longer in the realm of doubt that the power to fix the rates of taxes and fees may be legitimately left to the executive. In "*Harishankar Bagla*"¹², the Hon'ble Supreme Court held that the Legislature must declare the policy of the law and the legal principles which are to control any given case and must provide a standard to guide the officials or the body in power to execute the law. The Hon'ble Supreme Court further held that the statements in the preamble to the Act may provide sufficient indication as to the legislative policy. "*Vasantlal Maganbhai Sanjanwala*"¹³ also clearly recognized the necessity and need to delegate subsidiary or ancillary powers to the delegates for carrying out the legislative policy laid down by the Legislature in the statute. The Hon'ble Supreme Court held that the inquiry whether the impugned delegation involves a delegation of essential legislative power should take into account

12 *Harishankar Bagla & Anr. v. State of Madhya Pradesh: (1954) 1 SCC 978*

13 *Vasantlal Maganbhai Sanjanwala v. The State of Bombay & Ors.:1960 SCC OnLine SC 27*

the statement in the preamble to the statute. The Court held that the statements made in the preamble itself would be sufficient to satisfy the requirements of the relevant tests if the statements made therein afford satisfactory basis for holding that the legislative policy and the principles have been enunciated in the preamble with sufficient accuracy and clarity. In such cases, the discretion can be left with the executive to determine the quantum of license fees and it shall not violate the provisions under Article 243-X or for that matter any constitutional provision including Part-III of the Constitution.

10. The Constitution (73rd Amendment) Act and Constitution (74th Amendment) Act infused a new life to the local self-bodies like the Panchayats and Municipalities which are constituted as the institutions of self-government. The object behind vesting certain powers and authority in the municipalities is to enable them to function as the institutions of self-government. Article 243-W envisages that the law made by the Legislature of a State may contain provisions for devolution of powers and responsibilities upon the Municipalities. The State Legislatures have enacted laws and made provisions for devolution of powers upon the Panchayats and the Municipalities for the social and economic development of the rural and urban areas. The functions of the Municipalities are, therefore, necessary to be borne in mind while interpreting the laws enacted by a State. The Mumbai Municipal Corporation Act, 1888 was enacted to replace the Bombay Municipal Act, 1872 which was amended in the year 1878 to regulate the municipal administration of the City of Bombay. The statement of objects and reasons appended to the Bill to enact the Bombay Municipal Corporation Act, 1888 records that the MMC Act consolidates the existing Municipal laws. The object was to

recast, to amend and to expand the provisions of the Bombay Municipal Acts, 1872 and 1878. At that time, there were nine minor enactments and other local statutes which dealt with the matters affecting the Municipal governance in the city. Except retaining certain parts of such enactments with necessary modifications, expansions and improvements, all those enactments were repealed. It is further indicated that the long experience of the working of the existing laws and other enactments in force elsewhere were taken into consideration to supply sufficient powers to the Commissioner for carrying out and enforcing such measures under the MMC Act as are necessary for achieving the object. The past experience also supported the wisdom of centering all authority and responsibility for executive action in the Municipal Corporation.

11. The Municipal bodies need flexibility to raise funds as per their budgetary needs and that may provide enough guidance and the delegation of taxing power cannot be held excessive or unconstitutional. In *“George Walkem Shannon”*¹⁴, the Privy Council rendered its opinion that the fees should be charged in order either to defray the costs of administering the local regulation or to increase the general funds of the province or for both purposes. If a levy is imposed with a view to provide a specific service and to recover expenses for maintaining the services then that would be in the nature of a fees and not a tax.¹⁵ In case of fees, the Government may do some positive work for the benefit of the persons but the fee is not always a return for the work done or services rendered. In *“Liberty Cinema”* it was held

14 *George Walkem Shannon & Ors. v. Lower Mainland Dairy Products Board & Anr:* 1938 SCC OnLine PC 52

15 *H. H. Sudhundra Thirtha Swamiar & Ors. v. Commissioner for Hindu Religious & Charitable Endowments, Mysore & Anr.:* 1962 SCC OnLine SC 188

that the word “fee” is sometimes used loosely and it is not always that fees can be charged only for the services. In that case, the Corporation of Calcutta was not required to provide any specific services to the cinema houses and levy of the fees was in reality a tax. It was held that as long as a local body has a budget and needs to raise funds, delegation of taxing power shall be valid even without providing a maximum limit. The Hon’ble Supreme Court further indicated that the fees for license and the fees for services rendered are two different kinds of levy contemplated in the Constitution. The fees for license cannot be equated with fees for services rendered and this is apparent on a bare reading of Articles 110(2) and 199(2) of the Constitution of India. This is an admitted position that the license fees charged by the Commissioner for granting advertisement permissions is a fee and not in the nature of a tax imposed in the guise of fees. Therefore, the general principles for examining the validity of the delegation of power to impose a tax or to fix the rates of taxes cannot be applied in this case.

12. Mr. Navroz Seervai, the learned senior counsel for the petitioners contended that the law enacted by the State Legislature authorizing a Municipality to collect appropriate taxes, duties, tolls and fees must lay down a procedure for collection and appropriation of such taxes etc. and must also provide such limits on the quantum of license fees that can be fixed over a given period of time. He contended that the word “procedure” for determination of the license fees and the word “limits” for fixing the quantum of the license fees must be given its full effect as no word or words in a statutory provision can be treated as superfluous [*per*, “Mithilesh Singh”¹⁶]. In our opinion,

16 *Mithilesh Singh v. Union of India & Ors.*:(2003) 3 SCC 309

it is however not correct to say that the Legislature of a State when decides to enact a law authorizing a Municipality to levy, collect and appropriate the license fees then it must specify a procedure and the limits to the license fees. There is no requirement in law to provide minimum or maximum rate of license fees and the power conferred on the Commissioner is not unguided or arbitrary. A delegation of power to fix the rate of license fees is not open to challenge on the ground that no procedure or limits has been provided. In *“The Western India Theatres Ltd.”*¹⁷, the Hon’ble Supreme Court held that the authorization to the Municipality to impose taxes for the purposes of Act shall furnish sufficient guidance for imposition of tax. In *“Delhi Race Club Limited”*¹⁸, the Hon’ble Supreme Court held that if there is some legislative policy for fixation of the rate of fees that by itself shall provide sufficient guidance to the delegate. The test whether any guidance, check, control or safeguard has been provided in the statute shall apply only to the cases of delegation of the fixation of rate of tax and not of the fees. It is also well settled that what should be the form of guidance that the legislative policy should lay down can be gathered from the preamble, object and reasons and the provisions of the statute.

13. The majority judgment in *“Vasantlal Maganbhai Sanjanwala”* which upheld section 6(2) of the Bombay Tenancy & Agricultural Lands Act, 1948 held that there was a legislative policy laid down by the Act in its preamble and relevant sections and that provided sufficient guidance to the government to fix a lower rate of maximum rents payable by the tenant in any

¹⁷ *The Western India Theatres Ltd. v. Municipal Corporation of the City of Poona*:1959 SCC OnLine SC 28

¹⁸ *Delhi Race Club Limited v. Union of India & Ors.*: (2012) 8 SCC 680.

particular area. The decision in "*Krishna Mohan (P) Ltd.*"¹⁹ deals with an entirely different fact situation and the power to fix the rate of license fees did not arise in that case. Similarly, the decision in "*Kishan Prakash Sharma*" was rendered in the context of the delegation of powers to frame general scheme for re-organization of the insurance business. Pertinently, this decision provides a valuable guideline and lays down the test for the validity of the delegated legislation. This decision held that if the preamble of the statute, the background facts leading to enactment of the statute, history of the legislation, complexity of the problems etc. provide guidelines then a particular legislation must be upheld. The provisions relating to imposition of tax are definitely guided by different considerations and the decision in "*Devi Das Gopal Krishnan*", which dealt with the amendment to section 5 of the Punjab General Sales Tax Act, 1948 do not avail any help to the petitioners. In "*Kandivali Co-Operative Industrial Estate*"²⁰, there was a 10% increase every year in the Trade Refuse Charges (TRC) which was held arbitrary and without any guidelines and the Corporation was directed not to recover the TRC at the hiked rate from the year 2009 without giving reasonable opportunity of hearing to the licensee or the persons liable to pay such increased TRC. The case projected by the aggrieved parties was that they did not generate any TRC and they were not liable to levy of the TRC upon them. The Hon'ble Supreme Court held that the Legislature can delegate its power to the statutory authority to levy tax or fees and fix the rates and the delegation of such power to the local body without providing a maximum rate of tax or fees does not by itself may render the

19 *Krishna Mohan (P) Ltd. v. Municipal Corporation of Delhi & Ors.*: (2003) 7 SCC 151.

20 *Kandivali Co-Operative Industrial Estate & Anr. v. Municipal Corporation of Greater Mumbai & Ors.*: (2015) 11 SCC 161

delegation excessive or invalid.

14. Mr. Navroz Seervai, the learned senior counsel next contended that the law made by the Legislature of a State vesting such powers and authority in the Municipalities as may be necessary to enable them to function as the institutions of self-government shall be subject to other provisions of the Constitution. In *“Shanti G. Patel & Ors.”*²¹, the Hon’ble Supreme Court held that Article 243-W of the Constitution of India is an enabling provision under which the State Legislature may endow by law the Municipality with such powers and authority, as may be necessary, to function as an institution of self government. In *“Shanti G. Patel”* the Constitutional validity of section 37(1-AA) of the Maharashtra Regional and Town Planning Act, 1966 was called into question on the ground that the Municipal Corporation was alone competent to make subordinate legislation as regards the town planning. The Hon’ble Supreme Court held that the State Legislature is not obliged to provide for a law empowering the Municipality with powers and authority to levy tax, toll fees etc. under Article 243-W of the Constitution of India. We are of the definite opinion that expression “subject to the provisions of this Constitution” puts a bar on the power of Legislature of a State to make law endowing the Municipalities such powers and authority which should not impinge upon the powers of other institutions or authority as to the matters enumerated under Article 243-W of the Constitution. The heading “Powers, authority and responsibilities of Municipalities, etc.” of Article 243-W of the Constitution of India makes it very explicit and provides as under:-

“Article 243-W. Powers, authority and responsibilities of Municipalities, etc.-

²¹ *Shanti G. Patel & Ors. v. State of Maharashtra & Ors.: (2006) 2 SCC 505,*

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to-

(i) The preparation of plans for economic development and social justice;

(ii) The performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.”

15. Except to the extent that the law made by the Legislature of a State must be in consonance with the constitutional mandate under Articles 14, 19 and 21 of the Constitution, we do not find any force in the aforesaid submission. The power to make a law to authorize a municipality to levy, collect and appropriate taxes, duties, tolls and fees under Article 243-X is subject to the limitations as afore-mentioned and nothing more. The Constitution (74th Amendment) Act does not contemplate that the existing laws would become non-operative and a vacuum would be created in the matter of enforcement of the existing laws. Article 243-X cannot be read in isolation and sub-section (2) to section 479 is not *ultra vires* to Article 243-X. The MMC Act has been in existence much prior to 74th amendment and any attack on the constitutionality of any provision thereof must be considered with special caution. Sub-section (2) to section 479 of the MMC Act is not inconsistent or repugnant with Article 243-X or any part of the Constitution and Article 243-ZF has no application to the MMC Act. The MMC Act is a pre-Constitution enactment and no provision thereof is inconsistent with Part-III of the Constitution of

India. The power conferred under sub-section (2) on the Commissioner to fix the license fees is not at all an unguided power and there are sufficient guidelines and safeguards for fixing of the license fees. We do not agree with Mr. Navroz Seervai, the learned senior counsel that no policy or principle has been enunciated by the Legislature and no guidance is provided to the Commissioner to fix the license fees.

16. There are two facets of an impost of the license fees. License fees can be regulatory or the fees for services. The license fees can be regulatory when the activities for which a license is given require to be regulated or controlled and an element of *quid pro quo* for the levy of such fees is not required [*vide*, “*Secunderabad Hyderabad Hotel Owners’ Association & Ors.*”²²]. The Municipal Corporation has to perform multiple task and provide a variety of services. But the fees in every services provided by the Municipal Corporation cannot be determined with mathematical exactitude. In “*Avinder Singh*”²³, the Hon’ble Supreme Court held that the Legislature can impose multiple taxes under different entries in the Constitution. For example; a bottle of liquor can be subjected to excise duty as well as a tax and also municipal tax. In “*Pandit Banarsi Das Bhanot*”²⁴, the Hon’ble Supreme Court held that the delegation of power to the executive to identify the persons on whom tax is to be levied or to decide the rates of tax to be charged on different class of goods or other ancillary subjects shall be a valid delegation so long as the Legislature retains or has the power of withdrawing or altering the power to tax. In “*Sreenivasa General*

22 *Secunderabad Hyderabad Hotel Owners’ Association & Ors. v. Hyderabad Municipal Corporation, Hyderabad & Anr.*: (1999) 2 SCC 274.

23 *Avinder Singh v. State of Punjab & Anr.*: (1979) 1 SCC 137

24 *Pandit Banarsi Das Bhanot & Ors. v. State of Madhya Pradesh & Ors.* 1958 SCC OnLine SC 25

*Traders*²⁵, the Hon'ble Supreme Court held that the co-relationship between the levy and the services rendered (sic or) expected is one of general character and not of mathematical exactitude and all that is necessary is that there should be a 'reasonable relationship' between the levy of the fees and the services rendered. The Hon'ble Supreme Court held as under :-

"7. It is not always possible to work out with mathematical precision the amount of fee required for the services to be rendered each year and to collect only just that amount which is sufficient for meeting the expenditure in that year. In some years, the income of a market committee by way of market fee and licence fee may exceed the expenditure and in another year when the development works are in progress for providing modern infrastructure facilities, the expenditure may be far in excess of the income. It is wrong to take only one particular year or a few years into consideration to decide whether the fee is commensurate with the services rendered. An overall picture has to be taken in dealing with the question whether there is quid pro quo i.e. there is correlation between the increase in the rate of fee from 50 paise to rupee one and the services rendered."

17. In "*Yog Advertising and Marketing Services*" the Division Bench of this Court held that there is a direct co-relation between the license fees and the services rendered and the proposed 10% annual increase in the license fees was justified. The surplus funds or the quantum of collection of license fees has no co-relation with the license fees for the advertisement promotions. It is not necessary that the services rendered out of the fees collected should be directly in proportion to the amount of fees collected or the services rendered in lieu of the fees collected should confine to the persons from whom the fees has been collected [*vide*, "*Kesoram Industries Ltd.*"²⁶]. In paragraph no.146 of the reported judgment the Hon'ble Supreme Court held as

25 *Sreenivasa General Traders & Ors. v. State of Andhra Pradesh & Ors.:* (1983) 4 SCC 353.

26 *State of W.B. v. Kesoram Industries Ltd. & Ors.:* (2004) 10 SCC 201.

under :-

“146. It is not necessary that the services rendered from out of the fee collected should be directly in proportion with the amount of fee collected. It is equally not necessary that the services rendered by the fee collected should remain confined to the persons from whom the fee has been collected. 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 is enough to uphold the validity of the fee charged. The levy of the impugned cess can equally be upheld by reference to Entry 66 read with Entry 5 of List II.”

18. The process of regulation and licensing of the hoardings, sky-signs and advertisements is not simple. It involves the officers at ward level and co-ordination between different departments. The municipal authorities including the Commissioner are charged with the duty to carry out the provisions of the MMC Act. The duties and powers of the municipal authorities are set out in different provisions of the MMC Act. The power to fix the license fees is exercised by the Commissioner while granting written permission to erect, fix or retain any sky-sign, advertisement etc.

19. Section 328 of the MMC Act regulates the sky-signs to the extent that a written permission of the Municipal Corporation is necessary to erect, fix or retain any sky-sign and such written permission shall not exceed two years from the date of permission or renewal so granted. It further provides that the Commissioner shall cause a scrutiny of the sky-sign which is in the form of a poster depicting any scene from a cinematographic film, stage play or other stage performance and he shall grant permission only if he is satisfied that the erection or fixing of such poster is not likely to offend against decency or morality. Similarly, the regulation and control of the advertisements vest with the Commissioner under section 328A of the MMC Act who may grant written permission to

erect, exhibit, fix or retain any advertisement upon any land, building wall, hoarding or structure. There are policy guidelines on the grant of permission for the display of sky-signs and advertisements. The last edition of such policy guidelines was issued on 10th January 2008. It is stated that there was a need for further regulation because of the complaints by the residents about (a) screening of light and ventilation by the residents due to discriminate erection of hoardings (b) dispute among the housing society members (c) dispute raised by the landlords of the building who claimed that they were not aware of the permission to the Agency (d) clandestine cutting of trees for the better visibility of the advertisement (e) hoardings causing obstruction to the visibility of other advertisements and other issues connected therewith. The area falling within the limits of Municipal Corporation has been divided into three zones and each zone consists of different wards. The standard sizes of the hoardings for each zone have been provided. It is further provided that tenders shall be invited whenever required by the Corporation for tri-vision backlit boards having certain size for the footpath with minimum width size of 15 feet on selected roads. This is also provided that the advertiser shall have to pay additional charges/premium as decided by the Commissioner for the backlit advertisement boards on BEST bus queue shelters.

20. There is a new guidelines under which several measures are indicated. A provision has been made for prohibiting the advertisement on moving vehicles, transfer of sign-boards on municipal lands and not to permit sign-boards on first search basis. There are several items under the license fees schedule which were excluded from the revised fees schedule. The various regulations relating to the advertisements, hoarding boards, sky-

signs etc. shall be part of the procedure for levying fees by the Commissioner. The policy guidelines provide the permissible colours of advertisement, bottom clearance of the hoarding board, maximum height of the hoarding board, minimum distance between two hoarding boards, alignment of hoardings, clubbing of hoardings, projection of hoardings etc. In our opinion, the parameters laid down thereunder shall provide sufficient guidelines to the Commissioner to adopt a procedure for levying the fees. There is a format of the application form under appendix "A" which requires definite information such as medium of advertisements applied for; illuminated and non-illuminated form of advertisement; temporary and non-temporary; application made by a charitable Trust-Institutions for display of free banner academic/religious/public awareness/health political and other purposes, name of ward offices, dimensions in length, width, height etc. and site location. Pertinently, Annexure-II appended to the guidelines provides the schedule of fees for advertisement permits issued under section 328 and 328A of the MMC Act for the advertisements under the business and non-business categories. We further find that Annexure-II provides the scale of fees and the rates of fees under different category. For the sake of clarity, we may reproduce a part of Annexure-II as under:

ANNEXURE-II
Group 'A' Advertisement other than Business Premises

Sr. No.	Description	Scale of licence fees	Rates of fees in Rs. (p.m.)		Rates of fees in Rs. (p.m.)
			A Category for Zone H1 & H2	B Category for Zone H3	
1.	a) Illuminated Advertisement on	i) For a space upto 1 sq. mt.	300	230	--

	hoardings or board/wall paintings or balloon or in the form of sky sign and illuminated hoardings or boards on vehicle	ii) For every additional 1 sq.mt. or part thereof	230	160	--
	b) Illuminated advertisement by means of computerized coloured/multi coloured graphic tricycle moving electronic display system.	i) For a space upto 1 sq.mt.	450	350	--
		ii) For additional 1 sq.mt. or part thereof.	320	240	--
	c) For display of pictorial advertisement	--	--	--	1/6 of admissible illuminated advertisement fees
	d) Non-illuminated Advertisement on hoardings or board/wall paintings or balloon or in the form sky sign and non-illuminated hoardings or boards on vehicle.	i) For a space upto 1 sq.mt.	120	90	--
		ii) For every additional 1 sq.mt. or less	70	54	--
	e) Advertisement fixed or suspended in streets and or footpath (such as cloth banners etc.) (Non-illuminated)	i) For a space upto 1 sq.mt.	--	--	90
		ii) For every additional 1 sq.mt. or less	--	--	54
2.	Advertisement on Auto Rickshaws & Taxis	-			As per C.R.No. 42 dtd. 21/06/02 the has been

					<i>revised</i>
	i) For illuminated advertisement boards.	i) For a space upto 1 sq.mt.	--	--	350
		ii) For additional 1 sq.mt.	--	--	350
	ii) For non-illuminated advertisement boards	i) For a space upto 1 sq.mt.	--	--	170
		ii) For additional 1 sq. mt.	--	--	170
3.	Temporary advertisement permit issued for commercial purpose.	--	--	--	150% of monthly normal fees
4.	Ground Rent as per guideline No.17B for First FINDER Scheme. (Hoardings on Municipal properties)	--	Rs.500/- per sq.ft. P.A.	Rs.250/- per sq.ft. P.A.	As per C.R. No.1370 dtd. 30/07/2001 the fees has been revised
5.	As per guideline 17C Ground Rent for hoardings on Municipal footpath. (Only projection)	--			
A)	1) Projected advertisement boards upto 3 fts. (running foot) on Municipal footpath.	--	--	--	15000 P.A.
	2) More than 3 fts. & upto 5 fts.	--	--	--	25000 P.A.
	3) More than 5 fts. & upto 7.5 fts.	--	--	--	40000 P.A.
B)	1) For the portion 1 ft. width & 20 fts. Length projected parallel on Municipal footpath.	--	--	--	20000 P.A.
	2) For the portion 1 ft. width & length more than 20 fts. Upto 40 fts.	--	--	--	40000 P.A.
	3) For the portion 1 ft. & 2.5 fts. width & upto 20 fts. Length	--	--	--	30000 P.A.

	4) For the portion 1 ft. & 2.5 ft. width & length more than 20 ft. Upto 40 ft.	--	--	--	60000 P.A.
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Group 'B' advertisement on Business Premises

1.	Non-illuminated advertisement forming sky signs.	i) For a space upto 1 sq.mt.	70	55
		ii) For every additional sq.mt. or part thereof.	50	35
2.	For illuminated name boards sky signs, Glow Signs & Neon Sign illuminated show cases, show rooms etc.	i) For a space upto 1 sq.mt.	180	140
		ii) For every additional sq.mt. or part thereof	150	120
3.	Transfer of permits			
	a) To legal heirs			500
	b) To other than legal heirs			2000

21. There is a reference of the previous resolution of the Municipal Corporation dated 10th September 2004 with reference to which the revised rate schedule was determined for certain categories. There is a foundation laid for increase in license fees by 80 percent for one year and then an increase by 10 percent for the further years. It is stated in the proposal moved by the Commissioner that there was increase in the cost of establishment, service charges and cost of other services provided by the Municipal Corporation in the last several years after the last rate schedule was approved on 13th January 2003. However, in view of the decision in “Yog Advertising and Marketing Services”, we need not further elaborate upon the submissions made by Mr. Navroz Seervai, the learned senior counsel that the increase in licence fees @ 10% p.a. is excessive or arbitrary. Sub section (2) of Section 479 of the MMC Act is valid and does not suffer from vice of excessive delegation and is *intra-vires* to the Constitution of India.

22. Mr. Navroz Seervai, the learned senior counsel submitted that a provision requiring the sanction of the Municipal Corporation on the rates fixed by the Commissioner is not an effective measure or safeguard for fixation of the license fees as the Municipal Corporation itself shall be deemed to have been exercising its executive power and not the legislative power. The Municipal Corporation is conceived under section 5 as the body corporate having perpetual succession and a common seal. It consists of 227 Councillors directly elected at ward election and 10 nominated Councillors having special knowledge and experience in municipal administration. The Municipal Corporation which consists of the persons who themselves shall be required to pay license fees shall definitely exercise greater control over the power of the Commissioner to levy license fees. Dr. Birendra Saraf, the learned Advocate General referred to the decision in "*Birla Cotton, Spinning and Weaving Mills, Delhi*"²⁷ and contended that this is an important circumstance that the Municipal Corporation is an elected body and responsible and answerable to the people. In our opinion, it is not correct to say that the Municipal Corporation cannot exercise an effective control and supervision over the exercise of powers by the Commissioner under sub-section (2) to section 479 of the MMC Act. There is an inherent democratic check on the exercise of powers by the Commissioner. The Municipal Corporation is a representative body and it takes decision on behalf of the public. The impugned resolution was examined by the representative body in Municipal Corporation and its decision symbolizes a good faith.

²⁷ *Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi & Anr.*: 1968 SCC OnLine SC 13.

23. In view of the aforesaid discussion, Writ Petition No.227 of 2017 is dismissed.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]

PRAVIN
DASHARATH
PANDIT

Digitally signed
by PRAVIN
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PANDIT
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