

(2011) 04 AHC CK 0056

In the Allahabad High Court

Case No : Misc. Bench No. 3336 of 2010 and Writ Petition No's. 3054, 2534, 7128, 2716, 2394, 2846, 2709, 2710, 2714, 3070, 3938 and 8210 All (M/B) of 2010

Anurag Bansal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 143, 16, 19
Loads, Forces and Effects of National Building Code, 2005 — Section 1
Municipal Corporation (Assessment and Collection of Tax on Advertisement) Rules, 2009 — Rule 10(1), 17, 19, 196, 24
Uttar Pradesh General Clauses Act, 1904 — Section 21
Uttar Pradesh Municipal Corporation Act, 1959 — Section 107, 112, 128, 138, 153

Citation : (2011) 5 ADJ 879 : (2011) 2 UPLBEC 1337

Hon'ble Judges : Fernido Inacio Rebello, C.J;S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

1. In pursuance to reference made by a Division Bench of this Court vide order dated 28.10.2010 passed in bunch of writ petitions, leading one of which is Writ Petition No. 2716 (M/B) of 2010, instant Full Bench has been constituted.

2. The bunch of writ petitions have been filed by the advertising agencies challenging the vires of the Municipal Corporation (Assessment and Collection of Tax on Advertisement) Rules, 2009 (hereinafter referred to as the Rules) mainly on the ground that the rule is ultra vires to the constitutional mandate enshrined under Article 19(1)(a) and 19(1)(g) of the Constitution of India. Rule has been also impugned being framed in contravention of statutory provisions contained in the U.P. Municipal Corporation Act, 1959 (hereinafter referred to as the Act.).

3. While making reference vide order dated 28.10.2010, the Division Bench of this Court at Lucknow had shown its disagreement to a judgment of another

Division Bench delivered at Allahabad whereby identical writ petition was dismissed. The case is reported in 2010 (4) ALJ 293 Taj Advertising and Ors. v. State of U.P. and Ors. It would be convenient to set out briefly at the outset the material facts on which the bunch of writ petitions were filed and the reference has been made to the larger Bench.

4. Petitioner No. 1 of Writ Petition No. 2716 (M/B) of 2010 is the advertiser having business of advertisement in various forms whereas the Petitioner No. 2 is the Secretary and Petitioner No. 3 is the President.

5. The State Government in pursuance to power conferred by Section 227 read with Section 192, 219, Sub-section (1) of Section 540 and Section 550 of the Act and Section 21 of the U.P. General clauses Act (hereinafter referred to as the General clauses Act) and in super session of all the previous rules and order with regard to advertisements had notified the impugned Rules on 27.2.2008 as required by Sub-section (2) of Section 540 of the Act.

The Rule has been enforced from the date of publication in the Gazette and has been extended to every Municipal Corporation of Uttar Pradesh. A plain reading of the rule shows that the purpose of the rule is to impose "advertisement tax" and provide the mode of recovery and initiate penal action in the event of contravention of rules by the advertising agencies as well as other related persons.

6. Under the definition clause the word advertiser, advertising sign, tax have been defined which makes it abundantly clear that all advertisements made through advertising sign by the advertiser shall fall within the domain of Rules. The meaning with regard to word "tax" is provided in Clause (h) of Sub-section (2) of Section 172 of the Act.

According to Rule 3, there shall be a Committee in every corporation to identify the proper and suitable sites for the advertisement or hoarding and to decide its size, height and aesthetic aspect under the Chairmanship of the Municipal Commissioner with other nine officers as its members. It provides that the application shall be invited by the Municipal Commissioner for granting permission on the sites identified by the Committee by advertising in at least two daily newspapers of repute. The advertisements and hoardings shall be approved only after the identification of the sites and recommendation of the Committee.

7. Under Rule 4 it has been provided that no person shall without written permission from the Municipal Commissioner previously obtained, erect, exhibit, display, stick any advertisement or any kind of information or picture. It further provides that no person owning or otherwise occupying any land or building within the time limits of the Corporation shall, without the written prior permission of the Municipal Corporation, erect, exhibit, display, stick, paste, write, draw or hand any advertisement or any part of such and or building nor shall permit any other person for the aforesaid.

8. Under Rule 5 application may be moved which shall be obtained from the office of Municipal Corporation on payment of Rs. 500/- for permission with regard to advertisement. Rule 5 further provides that every owner of land or building shall give undertaking in writing and in case of any default he will be liable to pay the tax. Rule 5 of the impugned Rule is reproduced as under:

(1) Every application for obtaining permission shall be made in the prescribed Form, specified in Schedule-1, which shall be obtained from Municipal Corporation office by paying Rupees five hundred or can be downloaded from the website of the Corporation, however, the receipt of the cost of application shall be submitted alongwith the application at the time of submitting the application.

(2) Every application, referred to in Sub-rule (1), shall contain detailed information about the land, building or place where the proposed advertisement or hoarding is sought to be erected, exhibited, displayed, stuck, pasted, written, drawn or hung alongwith the site plan of such land, building or place and shall include the following information:

(a) full specification showing the length, height, and weight of the sign, the location where it is to be erected, the manufacturer's name and address and where applicable, the number of lights and electrical details of the same;

(b) such Form shall be accompanied by a location plan indicating the position of the sign on site drawn to a scale of 1:500 and by full detail drawing drawn to a scale of 1:20 or an exact multiple thereof in ink or on prints including, if required by the Municipal Commissioner, an elevation showing the sign in relation to the facade;

(c) in the case of roof signs, projecting signs or ground signs supporting frameworks and anchorages, and, if required by the Municipal Commissioner, the necessary design calculations shall be furnished with the application;

(d) any other particulars as may be required by the Municipal Commissioner;

(e) in the case of balloons signs, necessary information as required by the Municipal Commissioner may be supplied;

(3) If the advertisement is sought to be exhibited or displayed on the side of any public road or in any private premises, by affixing any structure, then the following details shall also be furnished alongwith such application:

(a) the details of the advertisement and the size of the proposed structure;

(b) the efficacy report from a Structural Engineer duly approved by the Municipal Commissioner. The application shall be made through a Structural Engineer duly approved by the Municipal Commissioner alongwith necessary drawings and structural calculations. The wind load taken in the design calculations shall be in accordance with Part-4 "Structural Design, Section 1 Loads, Forces and Effects of National Building Code, 2005";

(4) If the advertisement or hoarding is sought to be erected, exhibited, displayed, stuck, pasted, written, drawn or hung on any private land or building or any part thereof and the applicant is not the owner of such land and building, then the application shall be accompanied by the written permission from the owner of such land or building;

(5) Every owner of the land or building referred to in Sub-rule 4, shall have to give an undertaking in writing that in case of any default, he will be liable to pay the tax due to the advertiser;

(6) In case any owner of the land desires to display an advertisement on his own land, he shall have to submit detailed information together with the application and take permission under these rules;

(7) If any person after obtaining permission to erect a tree guard exhibits or displays any advertisement on such tree guards, he shall be liable to pay tax under these rules;

(8) Permission shall be granted subject to such conditions as may be imposed by the Municipal Commissioner in the interest of public safety and decency;

(9) Every application shall be accompanied by the full amount of premium offered;

9. Under Rule 6 it has been provided that the permission so granted shall be effective only for the period for which it was granted, provided that tax or taxes with premium has been paid and deposited in the Municipal Fund. It further provides that the advertisers shall remove or wipe off the advertisement within one week from the expiry of the period for which the permission was granted and the advertiser shall abide by these rules and regulations laid down by the Municipal Commissioner.

Under Rule 7 it has been provided that the Municipal Commissioner shall fix the minimum premium amount for every site and the site for advertisement shall be decided by the allotment committee under the Chairmanship of Municipal Commissioner consisting of other members.

10. Power to reject application is conferred by Rule 9 and the payment of property tax is referred to in Section 172 of the Act. It further provides that no advertisement shall be made without the permission of Municipal Commissioner. Rule 17 of the impugned Rule is re-produced as under:

No advertisement on any shop shall without prior permission of Municipal Commissioner and prior payment of tax be exhibited by hanging card board, pasting stickers, painting, writing or displaying in any other manner. Explanation:

(i) If the name of the shop or the names of articles or goods to be sold have been displayed or exhibited by hanging a board, painting, or in any manner whatsoever, the same shall not be treated as advertisement and shall not be taxable under these rules, and

(ii) if there is mention of any article describing its qualities etc along with the name of shop or independently attracting the common public as advertisement, the same shall be under these rules.

11. Under Rule 26 it has been provided that annual tax specified in Schedule-II shall be payable in single installment. No hoarding or advertisement shall be erected until full payment is made. Rule 27 provides the Classification of areas for purposes of tax on advertisement. Rule 28 provides that the cost of removal or washing off an advertisement and Rule 19 contains punitive clause. For convenience Rule 26, 27 and 28 are reproduced as under:

Rule 26. The annual tax specified in Schedule-2 shall be payable in single installment. No hoarding or advertisement shall be erected until full amount is paid.

Rule 27. The classification of areas for purposes of tax on advertisements except prohibited areas shall be decided by the allotment Committee in the following classes:

(1) Super Class

(2) "A" Class

(3) "B" Class

(4) "C" Class

Rule 28. The cost of removal or washing off in advertisement or hoarding referred to in sub rule (1) of Rule 10, shall be as under:

(a) Cost of removal of an advertisement or Rs. 5000/- hoarding measuring 6.1 metre ? 3.05 metre or less.

(b) Cost of removal of an advertisement or Rs. 8000/- hoarding other than those referred to in Clause (a) above,

(c) Cost of washing off an advertisement or Rs. 2000/- hoarding.

(d) Cost of removal of an advertisement on Rs. 10000/- Private building (Roof Top)

12. Rate of tax on advertisements and hoardings has been defined in Schedule-2 of the Rule which is reproduced as under:

(1) For erection or display of advertisements and hoardings on land, walls and building public places and roads owned or controlled by the corporation:

Super Class : Rs. 2000/- per square meter per year

"A" Class : Rs. 1200/- per square meter per year

"B" Class : Rs. 1000 per square meter per year

"C" Class : Rs. 800 per square meter per year

(2) If such hoarding or advertisement is reflected by electrical or electronically controlled light devices (including L.C.D.) then the rate shall be fifty percent extra over and above the rate specified in article 1 above.

(3) (1) Advertisement on power driven four wheeler vehicle (Excluding road show)

Light vehicle Rs. 5000/- per year per vehicle

Heavy vehicle Rs. 20,000/- per year per vehicle

Road show at the following rates:

(1) Three wheeler : Rs. 50/- per day

(2) Four wheeler : Rs. 500/- per day

(3) Six wheeler : Rs. 1000/- per day

(4) Hoarding boards on Electric or other poles:

Super Class : Rs. 3000/- per square metre per year

"A" Class : Rs. 2000/- per square metre per year

"B" Class : Rs. 1500/- per square metre per year

"C" Class : Rs. 1000/- per square metre per year

(5) Posters : Rs. 300/- per hundred pieces

(6) Hand Bills : Rs. 600/- per thousand pieces

(7) Banners : Rs. 100/- per banner one time

(8) Glow sign with electric or electronic device/variable message signs. Super Class : Rs. 1200/- per square metre per year

"A" Class : Rs. 1200/- per square metre per year

"B" Class : Rs. 1200 per square metre per year

"C" Class : Rs. 1200 per square metre per year

(9) Balloons : Rs. 500/- per day

(10) Canopy : Rs. 500/- per day

(11) Unipole : as in article 1 above

Explanation:

(1) The rate of tax specified this Schedule shall be deemed to be enhanced by ten percent after the expiry of two financial years following the financial years in which these rules come into force. Thereafter, similar enhancements shall be

effective after the expiry of every two financial years.

(2) For the purposes of computation of enhancement of tax under Explanation (1) above, the fraction of a rupee shall be ignored.

(3) Subject to the provisions of Rule 24, the tax shall be payable in advance.

(4) If the period of advertisement in any financial year does not exceed six months, the rate of annual tax specified in the schedule shall be reduced to fifty percent.

(5) If any advertiser wants to display any advertisement for a period not exceeding three months, the Municipal Commissioner may direct that the tax be calculated on monthly basis but should be realized in one installment.

(6) All arrears of tax shall be recoverable in accordance with Chapter XXI of the Act.

(7) The rates of tax specified in this Schedule shall be applicable in Kanpur, Agra, Varanasi, Allahabad, Lucknow, Ghaziabad and Meerut Municipal Corporation. Rest of the Municipal Corporations shall charge at the rate of seventy five percent of the rates specified in this Schedule.

The vires of the Rules was subject matter of dispute before the Division Bench of this Court at Allahabad in the case of Taj Advertising (supra) (Hon''ble Rajes Kumar, J. and Hon''ble Pankaj Mithal, J.)

13. In Taj Advertising (supra) it was pleaded by the Petitioners' counsel that the State while making rules had not followed the procedure prescribed under Sections 199 to 203 of the Act, hence it is bad in law. It was further pleaded that the impugned rule infringes the right to carry on business of advertisement, hence it is violative of Article 19(1)(g) of the Constitution of India. On the other hand, the State defended the said Rules on the ground that they are only restrictive in nature and does not completely oust the Petitioners from carrying on business of advertisement.

14. Paras 3 and 4 of the Taj Advertisement judgment (supra) are reproduced as under:

3. The contention of learned Counsel for the Petitioners is that they have a fundamental right to carry business of advertising. The impugned Rules infringe their above right and as such are ultra vires. Secondly, the procedure prescribed under Sections 199 to 203 of the U.P. Municipal Corporation Act, 1959 (hereinafter referred to as an Act) has not been followed in enacting the aforesaid Rules.

4. The Respondents have defended the aforesaid Rules on the ground that they are only restrictive in nature and does not completely oust the Petitioners from carrying on business of advertisement. The Rules have been framed in due exercise of powers conferred upon the State Government u/s 540 read with Sections 550, 219, 227 of the Act after considering the objections received.

The legislative competence of the State Government to frame the impugned Rules is not disputed nor it is alleged that the impugned Rule is in conflict or repugnant to the Act or any other statute. A subordinate legislation like the Rules in question are open to challenge primarily on the ground, for want of legislative competence, being ultra vires to the provisions of the Act under which they have been framed or the Constitution or being in conflict with any other statutes or being arbitrary and violative of Articles 14 and 16 or 21 of the Constitution. But such pleas were not raised in the case of Taj Advertisement. The procedure laid down in Sections 199 to 203 have not been followed. The State Government has framed the Rules in exercise of powers u/s 540 read with Section 227 of the Act. It is held that the power has been conferred upon the State Government to frame Rules for the purpose of Act specially with regard to collection of taxes. Reliance placed by the Petitioners in the case reported in Sodan Singh and Others Vs. New Delhi Municipal Committee and Others, Sodan Singh v. N.D. Municipal Corporation is unfounded and dismissed the writ petition.

15. While filing the writ petition at Lucknow by the Petitioners, it has been pleaded that the provisions contained in the Rule is in conflict with the statutory provision under the Act and also constitutional mandate. It is also pleaded that the Rules are violative of fundamental rights of advertiser to carry on business of advertisement. The State could not have framed Rules u/s 540 of the Act in violation of Section 203 of the Act. Various cases have been referred by the Petitioners? counsel to advance their arguments challenging the validity of impugned Rule referred to by the Division Bench of this Court in its order dated 28.10.2010 (supra).

16. After hearing the learned Counsel for the parties at length, the Division Bench (Hon''ble Pradeep Kant, J. and Hon''ble Ritu Raj Awasthi, J.) has not found itself in agreement with the finding recorded in the Taj Advertising Case (supra) and after hearing, referred the matter to Hon''ble Chief Justice for constitution of a larger Bench and in consonance thereof, the present full bench has been constituted.

17. The Division Bench had referred, inter alia, the following questions to be considered and answered by the larger Bench.

(1) (1) Whether the State Government had legislative competence to frame the Rules, 2009?

(2) Whether the State Government in any case could have framed "Rules" in general for all the municipal corporations, that too without taking recourse to Section 206 of the Act?

(3) Whether delegation of power could be made under the Rules framed by the State Government to the Central Government?

(4) Whether the licence for putting hoardings/advertisements on public properties, owned by private owners, can be given by public auction? (5)Whether

the impugned rules are ultra vires to the provisions of Articles 14, 19(1)(a) and 19(1)(g) of the Constitution of India?

(6) Whether the Rules, 2009 are invalid, they having been framed without following the provisions of Sections 199 to 203 of the Act?

(7) Whether the provisions of the Rules, 2009, such as requiring the owner of the building, where the advertisement is to be set up, to give an undertaking that in the event of default by the advertising company/firm to pay the tax, the owner of the building concerned would pay the tax, etc. can be said to be unreasonable and unfair to be adhered to and are liable to be struck down?

(8) Whether vesting of all the powers (as discussed in this order in relation to putting of hoardings and as given under the Rules, 2009) on private properties, in special areas etc. and in "no hoarding zones" into the sole authority of the Municipal Commissioner, that too with no guidelines and without providing any superior forum of appeal/revision against his decision, suffers from the vice of excessive delegation and in any case absolutely arbitrary and unreasonable?

Apart from referring the questions referred to here-in-above, the Division Bench has opined that the writ petition in its entirety may be heard by a larger Bench to decide the aforesaid questions and the writ petition on merit.

18. After hearing the learned Counsel for the parties and going through the record, we are of the view that the questions may be decided only to the extent of conflict between the opinion expressed in the case of Taj Advertising (supra) and in the case of Purvanchan Advertising Association (supra) whereby the reference was made and in rest of the controversy or questions framed to the extent where no conclusive finding has been recorded or where there is no difference of opinion between two division benches, the issue may be left open and decided by the Bench in its original jurisdiction adjudicating the controversy on merit in the bunch of writ petitions. Hence, we proceed to decide issue Nos. 1, 2, 6 and 7.

19. While advancing the arguments, learned Counsel for the Petitioners had reiterated the arguments advanced before the Division Bench referred to in the reference order.

On the other hand, Shri J.N. Mathur, learned Additional Advocate General submitted that the Rules in question are only regulatory in nature not binding and the State Government has not usurped the power conferred by the Act to impose tax. It has further been stated that the Government is competent enough to make Rules to regulate the advertising business in public interest. It has also been submitted that the State Government is fully entitled to make Rules in question in pursuance to power conferred by Section 540 read Section 305 and 306 of the Act.

20. It shall be appropriate to have glance on the scheme provided under the Act. Entire Act has been divided into 25 Chapters dealing with containing provisions

with regard to various issues which falls within the domain of Corporation, which are as under:

Chapter I Definition Clause (II) Constitution and Governance of Corporation (III) Proceedings of the Mahapalika, Executive Committee, Development Committee and other committee (IV) Officers and Staff (V) Duties and Powers of the Corporation and Corporation Authorities (VI) Property and Contracts and Chapter VI-A-Finance Commission (VII) Corporation and other Funds (VIII) Borrowing Powers (IX) Corporation Taxation (X) Drains and Drainage (XI) Water supply (XII) Streets (XIII) Building Regulations)(XIV) Improvement Scheme (XV) Sanitary Provisions (XVI) Regulation of Markets, Slaughter-Houses, Certain Trades and Acts, Etc. (XVII) Vital Statistics (XVIII) Compensation (XIX) Penalties (XX) Proceedings Before Judge, District Judge, Magistrate and others (XXI) Recovery of Taxes and other Corporation dues (XXII) Control (XXIII) Rules, bye-Laws and Regulations (XXIV) Miscellaneous (XXV) Transitory provisions repeals and amendments.

21. u/s 2(1) of Definition Clause, advertisement has been defined which is as under:

"Advertisement" means any word, letter, model, sign, placard, board, notice, device, or representation whether illuminated or not, in the nature of and employed wholly or in part for the purpose of advertisement, announcement or direction and includes any hoarding or similar structures used or adapted to be used for the display of advertisement.

Under Section 2(11-A) definition of Corporation or Municipal Corporation has been given, which is as under:

Corporation" or "Municipal Corporation" means the Municipal Corporation constituted for a city under Sub-clause (c) of Clause (1) of Article 243-Q of the Constitution.

Under Section 2(39) of the Act meaning of the Municipal Commissioner has been given, which is re-produced as under:

Municipal Commissioner" means the "Municipal Commissioner appointed u/s 58 and includes an "Additional Municipal Commissioner appointed under the said section, a "Deputy Municipal Commissioner and a "Assistant Municipal Commissioner appointed u/s 107 while exercising powers and performing duties u/s 112.

22. According to Section 4 a Corporation shall be a body corporate and the Corporation Authorities means charged with carrying out the provisions of the Act. Sections 4 and 5 are reproduced as under:

4. Municipal Corporation to be a body corporate : A Municipal Corporation constituted under Sub-clause (c) of Clause (1) of Article 243-Q of the Constitution in accordance with Part IX-A thereof shall be known as the Municipal

Corporation of...(Name of the city) and be a body corporate.]

5. Corporation Authorities - The Corporation authorities charged with carrying out the provisions of this Act for each City shall be

(a) The Corporation;

4 (aa) the Ward Committees]

(b) an Executive Committee of the Corporation;

5 (bb) the Mayor]

(c) a Development Committee of the Corporation; (d) a Municipal Commissioner and one or more Additional Municipal Commissioners appointed for the Corporation under this Act; and

(e) in the event of the Corporation establishing or acquiring electricity supply or public transport undertaking or other public utility services, such other committee or committees of the Corporation as the Corporation may with the previous sanction of the State Government establish with respect thereto.

23. u/s 138 of the Act, State Government may make rules for the purposes of carrying into effect the provisions of this Chapter and similarly u/s 153 of the Act, the State Government has been conferred power to make rules with regard to constitution of corporation and other funds provided under Chapter VII of the Act. u/s 171 of the Act again the State Government has been conferred power to make rules with regard to Item provided under Chapter VIII of the Act.

24. The matter with regard to corporation tax has been dealt with under Chapter IX of the Act. Section 172 deals with the tax to be imposed under the Act conferred by the provisions contained in Chapter IX of the Act. Section 192 deals with the matter with regard to advertisement. Section 193 empowers the Municipal Commissioner not to grant any permission in case advertisements contravenes any bye-law made by the Corporation. Section 194 further provides that permission granted u/s 193 shall be void in case it contravenes any bye-law made by the Corporation. Section 195 further provides that for contravention of any provision contained in the Act as provided under Sections 192 and 193, the beneficiaries shall be held responsible for whom or whose purpose the advertisement has been erected.

For convenience, Sections 172, 173, 192, 193, 194, 195 and 196 are reproduced as under : Section 172. Taxes to be imposed under this Act:

(1) For the purposes of this Act and subject to the provisions thereof and of Article 285 of the Constitution of India, the Corporation shall impose the following taxes, namely:

(a) Property taxes;

(b) a tax on vehicles other than mechanically propelled vehicles, and other

conveyances plying for hire or kept within the City or on boats moored therein;

(c) a tax on helicopters or any other type of planes,

when they land on or take off from the helipads, airports, airstrips or places made for this purpose situated within the Corporation. The tax so imposed shall be paid by the airport authority or person or persons, or managers, or director or institution or department or agency involved in the maintenance, management and supervision of the airport, airstrip, helipad or the place as the case may be;

(d) a tax on trades and professions;

(e) a tax on deeds of transfer of immovable property situated within the city;

(f) a tax on vacant land situated within the city;]

(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:

(a) a tax on callings and on holding a public or private appointment.]

(b) [***]2

(c) [***]3

(d) [***]4

(e) a tax on dogs kept within the City;

(f) a betterment tax;

(g) [000]5

(h) a tax on advertisements not being advertisements

published in newspapers; (i) a theatre tax; and

(j) [***]6

[***]7

(3) The corporation taxes shall be assessed and levied in accordance with the provisions of this Act and the rules and bye-laws framed thereunder.

(4) Nothing in this section shall authorize the imposition of any tax which the State Legislature has no power to impose in the State under the Constitution of India:

Provided that where any tax was being lawfully levied in the area included in the City immediately before the commencement of the Constitution of India such tax may continue to be levied and applied for the purposes of this Act until provision to the contrary is made by Parliament.

Section 173. Property taxes leviable. - (1) For the purposes of Sub-section (1) of

Section 172 property taxes shall comprise the following taxes which shall, subject to the exceptions, limitations, and conditions hereinafter provided, be levied on buildings and lands in the City:

(a) a general tax which may be levied, if the Corporation so determines, on a graduated scale:

(b) a water tax [leviable in areas where water is supplied by the Corporation;]

(c) drainage tax leviable in areas provided with sewer system by the Corporation;

(d) a conservancy tax in areas in which the Corporation undertakes the collection, removal and disposal of excrementitious and polluted matter from privies, urinals and cesspools.

(2) Save as otherwise expressly provided in this act or rules made thereunder, these taxes shall be levied on the annual value of buildings or land as the case may be:

[Provided that the aggregate of the property taxes shall in no case be less than 22 per cent and not more than 32 per cent of the annual value of the building or land or both assessed to such taxes, so however, that the general tax shall not be less than 10 per cent and not more than 15 per cent, the water tax shall not be less than 7.5 per cent and not more than 12.5 per cent, the drainage tax shall not be less than 2.5 per cent and not more than 5 per cent and the conservancy tax shall not be more than 2 per cent of the annual value.]

Section 192. Tax on advertisements. - Where a Corporation imposes a tax mentioned in Clause (h) of Sub-section (2) of Section 172, every person who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding or structure any advertisement or who displays any advertisement to public view in any manner whatsoever, in any place whether public or private, shall pay on every advertisement which is so erected, exhibited, fixed, retained, or displayed to public view, a tax calculated at such rates and in such manner and subject to such exemptions as may be provided by the Act or rules made thereunder:

Provided that no tax shall be levied under this section on any advertisement or a notice:

(a) of public meetings, or

(b) of an election to any legislative body or the Corporation, or

(c) of a candidature in respect of such an election:

Provided also that no such tax shall be levied on any advertisement which is not a sky-sign and which:

(a) is exhibited within the window of any building, or

(b) relates to the trade or business carried on within the land or building upon or

over which 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, or

(c) relates to the name of the land or building upon or over which the advertisement is exhibited, or the name of the owner or occupier of such land or building, or

(d) relates to the business of any railway administration, or

(e) 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.

Explanation 1. The word "structure" in this section shall include any movable board on wheels used as an advertisement or an advertisement medium.

Explanation 2. "Public place" shall, for the purpose of this section mean any place which is open to the use and enjoyment of the public, whether it is actually used or enjoyed by the public or not.

Section 193 - Prohibition of advertisement without written permission of Municipal Commissioner--(1) No advertisement shall, after the levy of the tax u/s 192 has been determined upon the Corporation, be erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding or structure within the City or shall be displayed in any manner whatsoever in any place without the written permission of the "Municipal Commissioner".

(2) The "Municipal Commissioner shall not grant such permission if,

(i) the advertisement contravenes any bye-law made by the Corporation under [Clause (48) of Section 541, or (ii) the tax, if any, due in respect of the advertisement has not been paid.

(3) Subject to the provisions of Sub-section (2) in the case of any advertisement liable to the advertisement tax, the "Municipal Commissioner shall grant permission for the period to which the payment of the tax relates and no fee shall be charged in respect of such permission:

Provided that the provisions of this section shall not apply to any advertisement erected, exhibited, fixed or retained on the railway premises or relating to the business of any railway administration.

Section 194. - Permission of the "Municipal Commissioner to become void in certain cases. The permission granted u/s 193 shall become void in the following case, namely:

(a) if the advertisement contravenes any bye law made by the Corporation under [Clause (48) of Section 541;

(b) if any addition to the advertisement be made except for the purpose of

making it secure under the direction of the "Municipal Commissioner;

(c) If any material change be made in the advertisement or any part thereof;

(d) if the advertisement or any part thereof falls otherwise than through accident;

(e) if any addition or alteration be made to, or in the building, wall or structure upon or over which the advertisement is erected, exhibited, fixed or retained if such addition or alteration involves the disturbance of the advertisement or any part thereof; and

(f) if the building, wall or structure upon or over which the advertisement is erected, exhibited, fixed or retained be demolished or destroyed.

Section 195--Beneficiary from advertisement to be deemed responsible : Where any advertisement shall be erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding or structure in contravention of the provisions of Section 192 or Section 193 or after the written permission for the erection, exhibition, fixation or retention thereof for any period shall have expired or become void, the person for whom or for whose purposes the advertisement has prima facie been so erected, exhibited, fixed or retained shall be deemed to be the person who has erected, exhibited, fixed or retained such advertisement in such contravention 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.

Rule 196 - Removal of unauthorized advertisements : If any advertisement be erected, exhibited, fixed or retained contrary to the provisions of Section 192 or Section 193 or after the written permission for the erection, exhibition, fixation or retention thereof for any period shall have expired or become void, the "Municipal Commissioner may, by notice in writing require the owner or occupier of the land, building, wall, hoarding or structure upon or over which the same is erected, exhibited, fixed or retained to take down or remove such advertisement or may enter any building, land or property and have the advertisement removed.

25. Chapter IX also contains the provision with regard to procedure which is to be adopted for imposition of tax, for framing of proposal and subsequent procedure which is to be adopted after framing of proposal, confers power on the State Government to reject, sanction or modify the proposal.

Power has been conferred on the State Government to modify, abolish or decline the proposal of the Corporation with regard to imposition of tax. State Government has been conferred power u/s 206 of the Act to require Corporation to impose taxes.

For convenience Section 199, 200, 201, 202, 203, 204, 205 and 205 of the said Act are re-produced as under:

Section 199--Framing of preliminary proposals.--(1) When a Corporation desires to impose a tax specified in Sub-section (2) of Section 172 it shall by resolution

direct the Executive committee to frame proposals specifying:

(a) the tax, being one of the taxes described in Sub-section (2) of Section 172 which it desires to impose;

(b) the persons or class of persons to be made liable, and the description of property or other taxable thing or circumstances in respect of which they are to be made liable, except where and in so far as any class or description is already sufficiently defined under Clause (a) or by this Act;

(c) the amount or rate leviable from each such person or class of persons;

(d) Any other matter referred to in Section 219 which the State Government requires by rule to be specified.

(2) Upon a resolution being passed under Sub-section (1) the Executive Committee shall frame the proposals and also prepare a draft of the rules which it desires the State Government to make in respect of the matters referred to in Section 219.

(3) The Executive Committee shall, thereafter, publish in the manner prescribed by rule the proposals framed under Sub-section (1) and the draft rules framed under Sub-section (2) alongwith a notice in the form to be prescribed by rule.

Section 200--Procedure subsequent to framing proposals--(1) Any inhabitant of the city may, within two weeks from the publication of the said notice, submit to the Corporation an objection in writing to all or any of the proposals framed under the preceding section, and the Corporation shall take any objection so submitted into consideration and pass orders thereon by special resolution.

(2) If the Corporation decides to modify the proposals of the Executive Committee, or any of them the "Municipal Commissioner shall publish the modified proposals and, if necessary, revised draft rules along with a notice indicating that the proposals and rules (if any) are in modification of proposals and rules previously published for objection.

(3) Any objection which may be received to the modified proposals shall be dealt with in the manner prescribed in Sub-section (1).

(4) When the Corporation has finally settled its proposals, the "Municipal Commissioner shall submit them along with the objections (if any) made in connection therewith to the State Government.

Section 201. Power of State Government to reject, sanction or modify proposal
Upon receipt of the proposals and objection under the preceding section the State Government may either refuse to sanction the proposals or return them to the Corporation for further consideration or sanction them without modification or with such modification not involving an increase of the amount to be imposed, as it seems fit.

Section 202. Resolution of Corporation directing imposition of taxes : (1) When

the proposals have been sanctioned by the State Government, the State Government, after taking into consideration the draft rules submitted by the Corporation, shall proceed forthwith to make such rules in respect of the tax as far the time being it considers necessary.

(2) When the rules have been made the order of sanction and a copy of the rules shall be sent to the Corporation, and thereupon the Corporation shall by special resolution direct the imposition of the tax with effect from a date to be specified in the resolution.

Section 203. Imposition. - (1) A copy of resolution passed u/s 202 shall be submitted to the State Government.

(2) Upon receipt of the copy of the resolution the State Government shall notify in the official Gazette, the imposition of the tax from the appointed date, and the imposition of tax shall in all cases be subject to the condition that it has been so notified.

(3) A notification of the imposition of a tax under Sub-section (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act.

Section 204-Procedure for altering taxes.-The procedure for abolishing a tax, or for altering a tax in respect of the matters specified in Clauses (b) and ? of Sub-section (1) of Section 199 shall, so far as may be, be the procedure prescribed by Sections 199 to 202 for the imposition of a tax.

Section 205-Power of State Government to remedy or abolish tax(1) Whenever it appears, on complaint made or otherwise to the State Government, that the levy of any tax is contrary to the public interests or that any tax is unfair in its incidence, the State Government may, after considering the explanation of the Corporation concerned, by order require such Corporation to take measures within a time to be specified in the order, for the removal of any defect which it considers to exist in the tax or in the method of assessing or collecting the tax.

(2) Upon the failure or inability of the Corporation to comply, to satisfaction of the State Government, with an order made under Sub-section (1), the State Government, may by notification, suspend the levy of the tax, or of any portion thereof, until the defect is removed, or may abolish or reduce the tax.

Section 206 : Power of State Government to require Corporation to impose taxes : (1) The State Government may, by general or special order, published in the official Gazette, require a Corporation to impose any tax mentioned in Sub-section (2) of Section 172 not already imposed, at such rate and within such period as may be specified in the notification, and the Corporation shall thereupon act accordingly.

(2) The State Government may require a Corporation to increase, modify or vary the rate of any tax already imposed and thereupon the Corporation shall

increase, modify or vary the tax as required.

(3) If the Corporation fails to carry out the order passed under Sub-section (1) or (2), the State Government may pass suitable order imposing, increasing, modifying or varying the tax and thereupon the order of the State Government shall operate as if it had been a resolution duly passed by the Corporation.

26. Under Chapter IX, Section 219 provides that the Rules shall be framed to regulate the matter with regard to assessment, collection or composition of taxes. Section 220 deals with the composition of tax and Section 221 deals with exemption from tax. Section 225 empowers the Corporation with regard to supplementary tax and Section 227 deals with the power to make rules.

For convenience Sections 225 and 227 are re-produced as under:

Section 225 : Any tax imposable under this Act may be increased or newly imposed by way of imposing supplementary taxation : Whenever the Corporation determines to have recourse to supplementary taxation in any financial year, it shall do so by increasing, for the unexpired portion of the said year, the rates at which any tax imposable under this Act is being levied, subject to the limit and conditions for such tax prescribed in this Act or in the order or sanction of the State Government or by levying, with due sanction, a tax imposable under this act but not being levied at the time being.

Section 227 : Power to make rules : (1) The State Government may make rules for the purposes of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power such rules may provide for:

(a) matters referred to in Section 219;

(b) maintenance and inspection of register regarding taxes on vehicle, boat and animal;

(c) [***]3

(d) [***]4

(e) advance payment of taxes;

(f) summary disposal of objections to distress and attachment;

(g) the conditions on which exemptions and refunds of taxes shall be allowed;

27. Chapter XII deals with the Construction, Maintenance and Improvement of Streets and Section 272 relates to vesting of public streets in Corporation and Sections 305 and 306 deal with the making of Regulation for sky-signs and control of advertisements. Section 314 deals with the power of State Government to make Rules for the purpose of carrying into effect the provisions of this Chapter.

For convenience, Sections 305, 306 and 314 are re-produced as under:

Section 305 : Regulation as to sky-signs : (1) No person shall, without the written permission of the "Municipal Commissioner, erect, fix or retain any sky-sign of the kind prescribed by rules whether existing on the appointed day or not. Such written permission shall be granted, or renewed, for any period not exceeding two years from the date of each such permission or renewal, subject to the conditions 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 "Municipal Commissioner;

(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 "Municipal 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 306 : Regulation and control of advertisements : (1) The Municipal 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 "Municipal Commissioner may cause it to be taken down or removed, and the expenses reasonably incurred on taking down or removal thereof shall be paid by such owner or person.

(3) 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 314 : Power to make rules : (1) The State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing powers such rules may provide for:

(a) manner in which the Corporation shall sanction the closing of any public street and the disposal of the site of such street u/s 273;

(b) manner in which the sanction of the Executive Committee to prescribe a fresh street line in place of any existing line shall be given u/s 279;

(c) manner in which a person shall give notice of his intention to sell, let, etc. land for building purposes or to lay out a private street u/s 287 and the procedure to be adopted by the "Municipal Commissioner in dealing with such notice including, asking for more information or authenticated plan, etc.

(d) steps to be taken u/s 301 by the Municipal Commissioner for safety and convenience of the public when any work in or near to streets is in execution.

28. The Chapter XXIII deals with the power to make Rules, bye-Laws and Regulations. Under this Chapter, Section 540 deals with the Power of State Government to frame Rules and Section 541 deals with the Power of Corporation to frame bye-Laws. For convenience, Section 540 and the relevant portion of Section 541 are reproduced as under:

Section 540 : Making of rules by State Government" (1) In addition to the power conferred upon the State Government under the preceeding Chapters of this Act to make rules the State Government may make rules to carry out the purposes of the Act and may also make model rules for the guidance of a Corporation in any manner connected with the carrying out of the provisions of this or any other enactment.

Explanation. The power conferred by this sub-section includes the power to make rules regulating the holding of meetings of the Corporation and its Committees and the conduct of business at such meetings till bye-laws are framed under the

Act for the purpose.

(2) The power of the State Government to make rule under this Act shall be subject to the condition of the rules being made after previous publication and of not taking effect until they have been published in the official Gazette.

(3) Any rule made by the State Government may be general for all Corporations or may be special for any one or more Corporations to be specified.

Section 541 : Bye-laws for what purpose to be made : The Corporation may from time to time make bye-laws, not inconsistent with this Act and the rules with respect to Fixing of fees for any licence, sanction or permission to be granted by or under this Act, regulating the charges for services rendered by any municipal authority and prohibition and regulation of advertisements.

29. While defending the impugned rules, much emphasis has been given by Shri J.N. Mathur, learned Additional Advocate General with regard to power conferred on the State by Section 540 of the Act. Section 540 of the Act provides that the State Government may frame rules for the purposes of Act or may frame model rules to be adopted by the Corporations of the State. However, while interpreting Section 540 of the Act, learned Additional Advocate General seems to have lost his sight to other provisions of the Act. It is settled law that while interpreting statutory provisions or sections meaning should be given to each and every word and section of the Statute as a whole.

30. Maxwell in his famous treatise on the interpretation of Statutes (12th edition page 36) observed as under:

A construction which would leave without effect any part of the language of a statute will normally be rejected. Thus, where an Act plainly gave an appeal from one quarter sessions to another, it was observed that such a provision, though extraordinary and perhaps an oversight, could not be eliminated.

31. The Supreme Court in *Grasim Industries Ltd. Vs. Collector of Customs, Bombay*, held that while interpreting any word of a statute every word and provision should be looked at generally and in the context in which it is used and not in isolation.

32. In *Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda*, Supreme Court has held that a statute to be read in entirety and purport and object of Act to be given its full effect by applying principle of purposive construction.

33. In *Pratap Singh Vs. State of Jharkhand and Another*, the Supreme Court held that Interpretation of a statute depends upon the text and context thereof and object with which the same was made. It must be construed having regard to its scheme and the ordinary state of affairs and consequences flowing therefrom must be construed in such a manner so as to be effective and operative on the principle of "*ut res magis valeat quam pereat*". When there is two meaning of a

word and one making the statute absolutely vague, and meaningless and other leading to certainty and a meaningful interpretation are given, in such an event the later should be followed.

34. In *Deewan Singh and Others Vs. Rajendra Pd. Ardevi and Others*, the Supreme Court observed that while interpreting a statute the entire statute must be first read as a whole then section by section, clause by clause, phrase by phrase and word by word the relevant provision of statute must thus read harmoniously.

35. In *Snehadeep Structures Private Limited Vs. Maharashtra Small Scale Industries Development Corporation Limited*, Supreme Court observed that definite and clear meaning should be given while interpreting the statutory provision irrespective of its consequences.

36. In *Securities and Exchange Board of India Vs. Ajay Agarwal*, with regard to Social welfare legislation, Supreme Court ruled that it is the duty of High Court to accord an interpretation which promotes purpose of law and if possible, to eschew the one which frustrates it.

Accordingly, while considering the provision contained in Section 540 of the Act, the Courts have to consider other provisions related to right, duties and liabilities of the Corporations vis-a-vis the State in context to manage the affairs for public goods.

37. Amendment in the Act and other Statutes dealing with the matters of local bodies were made by the 73rd amendment of the Constitution which came into force w.e.f. 24.4.1993 by adding Part IX in Chapter VI of the Constitution of India. The another amendment was done in the constitution by the 74th Amendment which came into force from 1st June, 1993 by adding Part IX-A in Chapter VI of the Constitution of India. Article 243-P contains definition Clause, Article 243(Q) relates to constitution of municipalities and Article 243(ZE) relates to constitution of committee for metropolitan planning.

The three Articles (supra) are reproduced as under:

Article 243P : Definitions : In this Part, unless the context otherwise requires:

- (a) "Committee" means a Committee constituted under article 243S;
- (b) "district" means a district in a State;
- (c) "Metropolitan areas" means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area for the purposes of this part;
- (d) "Municipal area" means the territorial area of a Municipality as is notified by the Governor;
- (e) "Municipality" means an institution of self-government constituted under

Article 243-Q;

(f) "Panchayat" means a Panchayat constituted under Article 243B;

(g) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published;

Article 243Q : Constitution of Municipalities : (1) There shall be constituted in every State:

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area.

(b) a Municipal Council for a smaller urban area, and

(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, "a transitional area" "a smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

Article 243ZE : Committee for Metropolitan Planning : (1) There shall be constituted in every Metropolitan area, a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole.

(2) The Legislature of a State may, bylaw, make provision with respect to:

(a) the composition of the Metropolitan Planning Committees;

(b) the manner in which the seats in such Committees shall be filled:

Provided that not less than two-thirds of the members of such Committee shall be elected by and from amongst the elected members of the Municipalities and Chairpersons of the Panchayats in the Metropolitan area in proportion to the ratio between the population of the Municipalities and of the Panchayats in that area;

(c) the representation, in such Committees of the Government of India and the Government of the State and of such organizations and institutions as may be deemed necessary for carrying out the functions assigned to such Committees;

(d) the functions relating to planning and coordination for the Metropolitan area which may be assigned to such

Committees;

(e) the manner in which the Chairpersons of such

Committees shall be chosen.

(3) Every Metropolitan Planning Committee shall, in preparing the draft development plan-

(a) have regard to-

(i) the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;

(ii) matters of common interest between the Municipalities and the Panchayats, including coordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(iii) the overall objectives and priorities set by the Government of India and the Government of the State;

(iv) the extent and nature of investments likely to be made in the Metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise;

(b) consult such institutions and organizations as the Governor may, by order, specify.

(4) The Chairperson of every Metropolitan Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

38. The constitution was amended to the extend more autonomy and self rule to the local bodies and corporations. The purpose was sharing of power by the common people at the lower strata of democratic polity so that it may be convenient to deal with the local problems and provide a system which may suit to local inhabitants of the cities or urban area.

39. Under definition clause, the Corporation or Municipal Corporation has been interpreted as Corporation constituted under Sub-clause C of Clause 1 of Article 243Q. Section 4 of the Act provides that the Municipal Corporation constituted under Article 243Q of the Constitution shall be a body corporate. Article 243(Q) itself provides that the Municipal Corporation shall be constituted for an urban area. Some of the Corporations of Metropolitan Cities are attracted by Article 243(ZE) of the Corporation. Article 243(ZE) speaks for the Constitution of Metropolitan Planning Committee to prepare the plans for the development which includes financial matters.

40. The word "Corporation" in ENCYCLOPAEDIC LAW DICTIONARY by Dr. A.R. BISWAS, page 366 has been defined as under:

"Corporation" - "Corporation" means the municipal authorities of a town or city; a body formed and authorized by law to act as a single person although constituted by one or more persons and legally endowed with various rights and duties including the capacity of succession owning properties etc.

A corporation aggregate has been defined as a collection of individuals united into one body under a special denomination, having perpetual succession under an artificial form, and vested by policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and immunities in common, and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation or at any subsequent period of its existence. HALSBURY'S Laws of England, 3rd ed. vol. 9 p. 4. A company registered under the Companies Act, 1956, is a corporation aggregate.

A corporation sole is a body politic having perpetual succession, constituted in a single person, who, in right of some office or function, has a capacity to take, purchase, hold and demise lands, tenements and hereditaments as also to take and hold personal property. HALSBURY'S Laws of England, 3rd ed. vol. 9 p. 7. The Administrator General u/s 5 of the Administrator-General's Act, 1918, is a corporation sole.

41. In STROUD'S JUDICIAL DICTIONARY OF WORDS AND PHRASES : SEVENTH EDITION, Page 570 the word Corporation has been defined as under:

"Corporation" "Corporation" is that which the civilians call universitatem, or collegium, and is a body politick authorized to take and grant, having a common seal, &c. These are constituted either by prescription, by Letters Patent, or by Act of Parliament" (Cowel; see also Termes DE LA Ley; JACOB). They are either (1) spiritual, e.g. bishops, deans with their chapters, parsons and vicars; or (2) temporal, e.g. municipal corporations, and companies incorporated by charter or Act of Parliament; or (3) mixed, i.e. composed of spiritual and temporal persons, as in some colleges and hospitals. Again, they are either (1) sole, e.g. bishops, parsons and vicars; or (2) aggregate, e.g. deans with their chapters, municipal corporations, and incorporated railway, water, gas, or trading, companies. Cp. BODY CORPORATE; BODY UNINCORPORATE.

The powers of a corporation, created by Act of Parliament, are limited to those which are expressly conferred by the Act, or which by necessary implication (see NECESSARY) are included in the express powers.

42. In BLACK'S LAW DICTIONARY, NINTH EDITION, Page, 391, the word Corporation has been defined as under:

Corporation, n. (15)c An entity (usu. a business) having authority under law to act as a single person distinct from the shareholders who own it and having rights to issue stock and exist indefinitely; a group or succession or persons

established in accordance with legal rules into a legal or juristic person that has a legal personality distinct from the natural persons who make it up, exists indefinitely apart from them, and has the legal powers that its constitution gives it, - Also termed corporation aggregate; aggregate corporation; body corporate; corporate body. See Company [Cases: Corporations incorporate, vb.-incorporate, adj.

43. The NEW LEXICON WEBSTER'S DICTIONARY OF THE ENGLISH LANGUAGE COPYRIGHT (year 1987) Lexicon Publication, INC, Page 218, the word "Corporation" has been defined as under:

Corporation a body or society entitled to act as a single person, esp. a body of municipal authorities (law) an artificial person created by charter etc.,. Made up of many persons (corporation aggregate) or one (corporation sole) [fr. L. corporatio (corporationis, action of incorporating)].

44. Thus, in view of reading the definition given in various dictionaries (supra) it is evident that the corporation is a body of municipal authorities entitled to act as a single person and discharging its obligation in accordance with the statutory powers conferred by the Act of Parliament or State Legislature as the case may be. Thus the Corporations have got autonomy to some extent to manage their affairs within four corner of law under the power conferred by statutory provision. That is why the Constitution has used the word "body corporate" or "corporate body"

45. The Stroud's Judicial Dictionary (supra) defines "body corporate" as " Every body politic, or corporate, and person and persons include parishes.

46. In the case of *Devi Dayal Marwah Vs. The State of Andhra Pradesh*, the Hon'ble Supreme Court held that one of the tests to find out whether an institution is a corporation or a department of the Government is to enquire whether the undertaking functions as a responsible independent organization and not as part of any department of the State. Another test would be to see whether it is endowed with the capacity of contracting obligations, and of suing and being sued.

47. The Supreme Court in a case reported in *Virendra Kumar Srivastava Vs. U.P. Rajya Karmachari Kalyan Nigam and Another*, held that the Corporation is not engaged in any State function of vital importance making available daily needs of the Government servants which is an activity like any other commercial activity.

48. In one another case reported in (2003) *Union of India and Another Vs. Azadi Bachao Andolan and Another*, the Supreme Court held that a "Corporation" has administrative activities, directors and managers who reside, meet and take decisions in one or several places. It has activities and carries on business.

From the scheme given in the Act, it is evident that various duties have been assigned to the officers of municipalities headed by Municipal Commissioner and ultimate policy maker is the municipal body containing its members.

49. In one other case reported in 2005 III LLJ 1077 Agarwala P.C. v. Payment of Wages Inspector, the Supreme Court observed that a "Corporation" is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the "corporation".

50. The Bombay High Court in the case reported in State of Maharashtra Vs. Dr. Rustom Franroze Hakim, held that the Corporation is a body corporate and is not the same as the State Government.

51. Madhya Pradesh High Court in the case reported in 2001 II LLJ 1679 Food Corporation of India v. Employees of FCI held that the Corporation is a public utility establishment.

52. Throughout the government system, it has often been found convenient to confer corporate power on a particular body that performs public functions. According to Professor H.W.R. Wade (Administrative Law Tenth Edition) to quote: "whenever Parliament is willing to grant a sufficient measure of autonomy, the public corporation is commonly employed. It has a legal existence of its own, and can be given statutory functions which can operate outside the normal organization of the service of the Crown. It offers scope for many kinds of governmental experiment, under which central control, local control, particular expertise and independence can be blended in the desired proportions".

Learned author further observed that there is a wide range of other public corporations of a governmental character, mostly with regulatory functions, which operate independently (supra). It has further been observed that when the question arises whether a public authority is acting lawfully or unlawfully, the nature and extent of its power or duty has to be found in most cases by seeking the intention of Parliament as expressed or implied in the relevant Act. The principles of administrative law are generalised rules of statutory interpretation. Thus, the dominating source of power is Parliament i.e. constitution. The local authorities enjoy a wide "incidental" power under the Local Government and they may do anything "which is calculated to facilitate, or is conducive or incidental to the discharge of any of their functions.

53. A Corporation or the local body constituted in pursuance to constitutional mandate and statutory provision by Act of Parliament or State Legislature may have difference to some extent. In the word of Professor Wade (supra) in England the corporation was incorporated by royal charter in the year 1627 in the reign of King Charles I. The fact that it is incorporated by royal charter is of importance, because a corporation so constituted stands on a different footing from a statutory corporation. The difference being that the latter species of corporation can only do such acts as are authorised directly or indirectly by the statute creating it, whereas the former can, speaking generally, do anything that

an ordinary individual can do.

54. In the Administrative Law by I.P. Massey the statutory public corporation has been defined as an agency created by an Act of legislature, operating a service on behalf of the government, but as an independent legal entity with funds of its own and largely autonomous in management. The learned author incapsuled the ingredients with regard to statutory corporation, (page 437) as under, to quote:

Statutory corporation is a creature of a statute which lays down its rights, duties and obligation. Therefore, a corporation can have those rights and exercise those functions only which are authorised by the statute either expressly or by necessary implication, provided it is not expressly prohibited. Actions of a corporation outside the authorised area of operation are ultra vires and cannot bind the corporation. Such ultra vires acts cannot be ratified and the doctrines of estoppel or acquiescence do not apply in such cases.

It has a separate legal entity and, therefore, can sue or be sued in its corporate name. It can hold and dispose of property by such name.

Depending on the provisions of the statute of its creation a corporation is largely autonomous in finance and management. It has funds of its own.

It operates an activity on behalf of the government which may be regulatory, benefactory, commercial or development.

The statute may delegate rule making power to a corporation; such rules and regulations are binding if they are within the authority, made in the manner laid down by the statute and do not violate any provision of the Constitution.

A statutory corporation is a "State" within the definition of the term in Article 12 of the Constitution, and therefore, is subject to the writ jurisdiction of the Supreme Court and high Courts under Articles 32 and 226 of the Constitution.

55. Keeping in view the constitutional provisions (supra) and definition of word "corporation", there appears no doubt that though the corporations discharge their obligations in pursuance to statutory provisions contained in the Act but that too subject to only limited interference of the State Government. The government may issue appropriate guidelines, frame rules or regulations without substantially affecting the autonomy of the corporations and also without interfering day-to-day business. Otherwise the purpose of 74th amendment of the Constitution shall frustrate. In any case it is not permissible for the government to treat the local bodies and corporations as its regular departments. The provision contained in Article 243(Q) and the use of word "Corporation" is indicative of the fact that there must be some autonomy to the local bodies and corporations, to discharge their statutory obligations in pursuance to decision taken by its Board or its elected representatives.

56. Though Section 540 of the Act empowers the State Government to make rules or model rules, but the power conferred on the State Government, would

be subject to other statutory provisions with regard to imposition of tax, recovery and maintenance of infrastructure. For the purpose, the government may frame rules or model rules but without violating other statutory provisions contained in the Act itself. Power of the State Government is subject to other provisions contained in the Act itself.

Provision contained in Section 540 of the Act cannot be read in isolation. While considering the power of State Government to frame rules, regulations or the bye-laws, the Court has to take into account Article 243(Q), Section 2 containing definition clause as well as provision contained in Section 172 as well as other provisions contained in Chapter IX of the Act.

57. The power conferred on the Corporation u/s 172 of the Act contains the power to impose tax on trades, professions, transfer of property, tax on vacant land and so on. Sub-section (2) of Section 172 empowers the Corporation to impose tax in addition to the tax specified in Sub-section (1) for the purposes of Act and subject to the provisions thereof. The power contained in Sub-section (1) of Section 172 is quite exhaustive and empowers the Corporation to impose tax on any matter in furtherance of the Act. Sub-section (4) of Section 172 of the Act further clarifies that the power of the Corporation to impose tax shall be similar as of the State Government, meaning thereby, power of State Government to impose tax under List 2 of Schedule 7 of the Constitution, shall be available to the Corporations to impose taxes within their jurisdiction.

58. Apart from Sub-section (2) of Section 172, Section 192 confers additional power to the Corporation empowering it to impose tax on the advertisement. Further Section 193 provides that without written permission of the Municipal Commissioner, no advertisement shall be exhibited. It further provides that in case advertisement contravenes any bye-law made by the corporation under Clause (48) of Section 541 of the Act, no permission shall be granted. It further provides that the permission shall be granted only for the period for which tax is paid. Section 194 of the Act further provides that the permission granted u/s 193 of the Act shall be void in case advertisement contravenes any bye-law made by the corporation under Clause (4)8 of Section 541 of the Act. Section 195 further provides that it is the beneficiary of the advertisement, who shall be responsible to face punitive action in the event of contravention of provision or bye-laws with regard to advertisement.

59. The Provisions contained in Sections 172 to 196 should be read conjointly and not in isolation. While framing the rules, the state government, thus, seems to have not taken into account these statutory provisions. Under Clause V of Rule 5, the owner of the land or building has been held responsible for any default and held liable to pay taxes. This is contrary to provision contained in Section 195 of the Act. Building owners may receive rent but actually beneficiary of the advertisement, is the Company or person, who advertised its goods. It is for the advertising agency to ensure compliance of Rule or Bye-laws.

60. Further under Rule 7 power has been conferred on the Municipal Commissioner to fix the minimum premium amount for every site. The site of advertisement shall be decided by the allotment committee under the Chairmanship of Municipal Commissioner. Virtually, indirectly power to impose premium or tax has been conferred on the Municipal Commissioner which is against the scheme of the Act. It is for the executive body of the corporation to take decision to impose tax or premium and not the municipal commissioner under the Act. Thus, power conferred by the impugned rule on the Municipal Commissioner is in contravention of the Act.

61. A combined reading of Rule 26 with Schedule shows that by the impugned Rule, taxes have been imposed with regard to advertisement though under the Act, power to impose tax has been dealt with under Chapter IX from Section 172 to 205 of the Act. Statutory provisions contain specific provisions how the tax should be imposed. u/s 199 of the Act, proposal should be prepared by the Corporation for imposition of tax through its executive committee. The executive committee of the Corporation shall pass resolution with regard to tax and thereafter it shall send to the state government. The State Government may reject, sanction or modify the proposal u/s 201 of the Act. The Provisions contained in Sections 201, 202 and 203 of the Act abundantly clears that the initial proposal with regard to imposition of tax falling within the domain of corporation should be mooted from corporation. The state government may approve or disapprove the proposal with regard to imposition of tax.

62. u/s 205 of the Act, the state government has power to abolish certain tax in certain circumstances. The government may also direct the corporation to impose tax u/s 206 of the Act by publishing its direction or order in the official Gazette and order so notified shall be implemented by the Corporation through its special resolution.

63. Thus, the power of the state government is supervisory power with regard to tax matter whereas original power to impose tax vests in the Corporation itself. Any other meaning given to statutory provision will make the corporations a department of the State Government which does not seem to aim and object of Article 243(Q) and other related provisions of the Constitution.

64. u/s 306 of the Act also power has been conferred on the Municipal Commissioner to ensure that the advertisement should be removed after serving a notice. In Section 314, the power of the State Government is without prejudice to the generality of the foregoing powers i.e. power of the corporation to make rules. Section 540 of the Act confers additional power on the state government to make rules to carry out the purpose of the Act and may also make model rules for guidance of corporation. Power conferred u/s 540 of the Act does not intend to ignore the executive body of the corporations to take decision or corporation to pass resolution with regard to imposition of tax In case the Executive Body or the Board of the Corporation are divested from their power to pass resolution with regard to tax matters in pursuance to statutory right conferred by the Act

(supra), then it shall amount to give a go bye to the autonomy given to Corporation by the constitutional amendment (supra). Parliament intends to give autonomy to some extent to the corporation so that decision may be taken with regard to imposition of taxes and other related matters at local level.

65. Keeping in view the local needs and requirements, power of the state government is subject to power exercised by the corporation to take decision in tax matters. Of course, the Government may take decision by framing model bye-laws and issuing direction by publication in the official gazette directing the Corporation to impose certain taxes only then the decision of the State Government shall be binding and lawful.

66. Needless to say that in case direction issued by the state government is not sound and affects the right of the people or violative of constitutional provision or tax proposed by the Government is not lawful, then it may invite public resentment or people may approach for judicial review against such direction or decision taken by the state government.

67. Accordingly, the power conferred on the State Government u/s 540 of the Act is subject to Sections 172, 192, 193, 194, 195 and 196 and 199 of the Act. However, the government has right to frame model rules or issue direction u/s 206 of the Act to impose certain taxes by publication in official gazette. Thus, the impugned rules seem to have been framed in contravention of statutory provision contained in the Act. Hence, the judgment in Taj Advertising (supra) seems to not lay down a correct law.

68. The other aspect of the matter is that the provisions contained in the Act with regard to imposition of tax seem to be an instance of conditional legislation. Consistent with their sovereign character, Legislatures in India have been held to possess wide power of delegation. This power is, however, subject to one important limitation. The Legislation cannot delegate essential legislative functions which consist in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct vide in re : Article 143, Constitution of India reported in Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others, However, the delegation may be valid only when the legislative policy and guidelines to implement it are adequately laid down and the delegate is only empowered to carry out the policy within the guidelines laid down by the Legislature vide AIR 1972 SC 917 p. 1922 Tata Iron & Steel Co. v. Workmen (1972) 1 SCC 383 Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. Vs. The Asstt. Commissioner of Sales Tax and Others, P.N. Kaushal and Others Vs. Union of India (UOI) and Others, Ajoy Kumar Banerjee and Others Vs. Union of India (UOI) and Others, A.N. Parasuraman Etc. Vs. State of Tamil Nadu, Agricultural Market Committee Vs. Shalimar Chemical Works Ltd.,

In view of above, delegation of unfettered powers to the Municipal Commissioner to impose tax in the form of penalty seems to be an instance of excessive delegation, contrary to the statutory provisions (supra).

69. A plain reading of statutory provisions contained in the Act (supra) also indicate that the Act is instance of conditional legislature where various riders have been put in with regard to exercise of power by the Corporation and the State Government. The decision by the state government in the form of general order or while approving or disapproving the resolution of corporation shall be placed before the corporation for its consideration.

70. The Supreme Court in the case reported in AIR 1954 SC 46 . 469 Meghraj Kothari Vs. Delimitation Commission and Others, A.V. Nachane and Others Vs. Union of India (UOI) and Another, held that when the Legislature gives power to make delegated legislation and further declares that the same shall have effect even if inconsistent with any existing law, the delegated legislation has that effect, for it is by the will of the Legislature and not by the will of the delegate that the overriding effect is given to the delegated legislation. The present issue does not seem to be covered by such proposition where though final power in tax matter in the form of approval, disapproval or modification vests in the state government, but it shall always be incumbent that all such proposal should be placed before the corporation to consider it by appropriate resolution.

71. The Supreme Court in the case reported in Bangalore Woollen, Cotton and Silk Mills Co. Ltd., Bangalore Vs. The Corporation of The City of Bangalore by its Commissioner, Bangalore City, had affirmed the power of Municipal Corporation to levy octroi on "other articles" not specified in the Schedule but "which may be approved by the Corporation by an order in this behalf holding that it is in the nature of conditional delegation.

72. In Municipal Board, Hapur Vs. Raghuvendra Kripal and Others, the Supreme Court held that when proposals are finally settled or they are submitted to the State Government for sanction and the State Government sanctioned thereafter the order sanctioning the proposal and a copy of the rules is sent to the Board which thereupon by special resolution directs the imposition of the tax with effect from a date to be specified in the resolution, then issuance of notification shall be conclusive proof that the tax has been imposed in accordance to provisions of the Act. The Supreme Court further held that no notification can be issued unless there is a special resolution. The special resolution is the sine qua non of the notification. The provision contained in the Act is almost para materia to the U.P. Municipalities Act, 1960.

73. In Raghuvendra Kripal (supra) their Lordships held that the selection of tax for imposition in municipal area by the legislative will express in the statutory provision and the decision by the Municipal Board is subject to further check by the Government. Relevant portion of the judgment is as under:

The matter may be looked at from another point of view. Excessive delegation is most often found when the legislature does not perform all the essential legislative functions and leaves them to some other agency. The Legislature here performs all essential functions in the imposition of the tax. The selection of tax

for imposition is a Municipal area is by the legislative will express in Section 128. Neither the Municipal Board, nor the government can go outside the list of taxes therein included. The procedure for the imposition of tax is also laid down by the Legislature for the Municipal board to follow and the State Government is there to ensure due observance of that procedure. We have already shown above that it would be impossible for the Legislature to legislate for the numerous Municipal Boards and local authorities with a view to raising taxes for them. The provisions, such as they are, are the best means of achieving consultation of the local population and close scrutiny of the actions of their representatives in imposing tax. The notification which issues is given finality by the voice of the Legislature. It would, therefore, appear that the selection of the tax and its imposition the Legislature plays a decisive part and also lays down the method by which the tax is to be imposed. The Legislature does not make local enquiries, hear objections and decide them functions which are most in appropriate for the Legislature to perform. This task is delegated to the Appellant Board which is the representative body of the local population on whom the tax is levied. In other words, all the essential functions of legislation are performed by the State Legislature and only the minor functions necessary for the imposition of the tax and the inquiries which must be made to ascertain local opinion are left to the Municipal Boards. An additional check is available as Government can veto the actions of a Board if it does not carry out the mandate of the Legislature.

74. In *Bharat Kala Bhandar Ltd. Vs. Municipal Committee, Dhamangaon*, held that in the event of expressed prohibition in Statute against local authority, imposition of tax shall be bad in law. While reading Section 192-A of the Government of India Act, the Supreme Court ruled that the municipalities should act within its jurisdiction conferred by the Statute.

75. In *Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others*, , their Lordships observed as under:

Before we examine Section 3 to find out whether it is effective in its purpose or not we may say a few words about validating statutes in general. When the Legislatue sets out the validate a tax declared by a court be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the Legislature must possess the power to impose the tax, for, it if does not, the action must every remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise.

76. In *Kunj Behari Lal Butail and Others Vs. State of H.P. and Others*, while interpreting the word power to make rules to carry out purpose of the Act, Supreme Court observed that the delegated legislature must advance the purpose of the Statute and unless it does so it cannot be sustained. Relevant

paras of the judgment is as under:

Para 13-It is very common for the legislation to provide for a general rule making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the rest of having been so frame as to fall within the scope of such general power confirmed. If the rule-making power is not expressed in such a usual general form then it shall have to be seen if the rules made are protected by the limits prescribed by the patent act. See : Sant Saran Lal v. Parsuram Sahu 3 AIR para 19.

Para-14-We are also of the opinion that a delegated power to legislate by making rules "for carrying out the purposes of the Act" is a general delegation without laying down any guidelines: it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.

77. In Municipal Board, Bareilly Vs. Bharat Oil Company and Others, the Supreme Court while interpreting the U.P. Municipalities Act observed that the tax imposed by the Municipal Authorities are delegated power conferred by the State Legislature and such imposition of tax should be done in view of condition laid down by the Legislature. The Supreme Court observed that the Board has got power to impose tax but subject to general direction or approval by the State Government.

78. In Global Energy Ltd. and Another Vs. Central Electricity Regulatory Commission, the Supreme Court held that when the regulatory statute is sought to be enforced, the power of authority to impose restriction and condition must be construed having regard to the purpose and object it seeks to achieve. Superior courts would ensure that subordinate legislation must have been framed within the four corners of the Act and is otherwise valid. The Legislature policy providing qualification or disqualification should not be uncertain and the delegate must be furnished with adequate guidelines.

Their lordships further proceeded to observe that law making power may be delegated having conform to policy of parent statute and there should be transparency, openness, responsiveness and accountability on the other hand. Image of law flows from its framework with respect to its neutrality or objectivity. The law has to proceed the basic level of security by assuring that law is knowable, dependable and shielded from excessive manipulation. For convenience paras 35, 38, 39 and 40 are re-produced as under:

Para-35 : In the event a statute provides for licensing, in a case of this nature, the same must thus be found to satisfy the test of reasonableness. The standard for determining reasonableness of a statute so as to satisfy the constitutional scheme as adumbrated in Article 14 of the Constitution of India must receive a higher level of scrutiny than an ordinary statute. Such a higher level of scrutiny is necessary not for the purpose of determining the constitutionality of the

statute alone vis-a-vis the field of legislative power as envisaged under Article 245 of the Constitution of India but also having regard to the object and purpose, the statute seeks to achieve.

Para 38 : When a disqualification is provided, it is to operate at the threshold in respect of the players in the field of trading in electricity. When, however, a regulatory statute is sought to be enforced, the power of authority to impose restrictions and conditions must be construed having to the purpose and object it seeks to achieve. Dealing in any manner with generation, distribution and supply and trading in electrical energy is vital for the economy of the country. The private players who are permitted or who are granted licence in this behalf may be reasonable. Concededly, the doctrine of proportionality may have to be invoked.

Para 39 : The superior courts would ensure that the subordination legislation has been framed within the four corners of the Act and is otherwise valid. The issue therefore, which arises for our consideration is as to whether the delegation having been made for the purpose of carrying out the object, could the limitation be imposed for ascertaining as to whether the applicant is fit and proper person and disregarding his creditworthiness. There cannot be any doubt whatsoever that a statute cannot be vague and unreasonable.

Para 40 : Strong reliance has also been placed by the learned Additional Solicitor General on a decision of this Court in *Clariant International Ltd. v. SEBI* wherein it was held that a discretionary jurisdiction has to be exercised having regard to the purpose for which it was conferred, the object sought to be achieved and the reasons for granting such wide discretion. It was furthermore held that when any criterion is fixed by a statute or by a policy, an attempt should be made by the authority making the delegate legislation to follow the policy formulation broadly and substantially and act in conformity therewith. See also *Ministry of Chemicals & Fertilizers, Govt. of India v. Cipla Ltd.* SCC para 4.1. There cannot be any doubt or dispute with regard to the aforementioned legal proposition.

79. Hon'ble Supreme Court had further proceeded to observe. Paras 71, 72, 73 and 74 of the judgment are re-reproduced as under:

Para-71. The law sometimes can be written in such subjective manner that it affects efficiency and transparent function of the Government. If the statute provides for pointless discretion to agency, it is in essence demolishing the accountability strand within the administrative process as the agency is not under obligation from an objective norm, which can enforce accountability in decision-making process. All law-making, be it in the context of delegated legislation or primary legislation, have to conform to the fundamental tenets of transparency and openness on one hand and responsiveness and accountability on the other. These are fundamental tenets flowing from the process requirement under Article 21, equal protection clause embodied in Article 14 and fundamental freedoms clause ingrained under Article 19. A modern deliberative democracy

cannot function without these attributes.

Para 72- The constitutive understanding of the aforementioned guarantees under the Fundamental Rights Chapter in the Constitution does not give rise to a mere rhetoric and symbolic value inhered by the polity but has to be reflected in minute functioning of all the three wings of State-executive, legislature and judiciary. When we talk of State action, the devil lies in the detail. The approach to writing of laws, rules, notifications, etc. has to showcase these concerns.

Para 73- The image of law which flows from this framework is its neutrality and objectivity: the ability of law to put sphere of general decision-making outside the discretionary power of those wielding governmental power. Law has to provide a basic level of "legal security" by assuring that law is knowable, dependable and shielded from excessive manipulation. In the context of rule making, delegated legislation should establish the structural conditions within which those processes can function effectively. The question which needs to be asked is whether delegate legislation promotes rational and accountable policy implementation. While we say so, we are not oblivious of the contours of the judicial review of the legislative Acts. But, we have made all endeavours to keep ourselves confined within the well-known parameters.

Para 74- A subjectively worded normative device also enables the agency to acquire rents. It determines the degree of accountability and responsiveness of officials and of political and judicial control of the bureaucracy. However, when the provision inherently perpetuates injustice in the award of licences and brings uncertainty and arbitrariness it would be best to stop the Government in the tracks.

80. The supreme court had declared ultra vires the relevant portion of the regulation and struck down clause being extending, excessive and unguided power to the authorities.

81. In the present context, the power conferred for the imposition of tax without discretion to consider by the elected representative of the Corporations and without following the statutory provisions shifting liability on the property owner, unguided and excessive power conferred on the municipal commissioners, makes the rules ultra vires to the Act as well as constitutional scheme added by 74th amendment. All these aspects of the matter and substantial question of law were not considered by the division bench at Allahabad in the case of Taj Advertising (supra).

82. Keeping in view the statutory provisions contained in the Act u/s 172 read with Section 199 of the Act and other provisions, ultimate power to impose tax vests in the Corporation i.e. in its general body or Board constituted by the elected representatives. The Corporation can modify the proposal of executive body u/s 202 of the Act even after sanction of tax proposal by the State Government. It shall be necessary to place the matter for approval before the Corporation and the Corporation shall take final decision by special resolution

with regard to imposition of tax. The State Government has got power u/s 205 of the Act to abolish or modify the tax imposed by the Corporation. It does not mean that the State Government lacks power with regard to tax matter. Power conferred on the State Government is general power which may be exercised without affecting the statutory power provided to Corporation to impose and regulate tax within its jurisdiction. The government may, by notification, u/s 206 of the Act by general or special order published in official gazette, required corporations to impose any tax mentioned in Sub-section (2) of Section 172 of the Act, not already imposed at a specified rate. The Government may also increase, modify or vary the rate of tax in case the Corporation fails to carry out the order.

83. The Government may pass suitable order imposing, increasing, modifying, or varying the tax thereupon and in such event the order of the State Government shall operate as if it had been a resolution duly passed by the Corporation.

84. In view of above, the tax imposed by the State Government straightaway without exercising the power conferred by the Act i.e. issuance of direction by notification in gazette to impose tax seems to be an act of exceeding of jurisdiction. Impugned Rules have been framed by the Government in contravention of statutory provisions (*supra*) contained in the Act. By framing the impugned Rules, the State Government seems to have acted treating the Corporations of the State as its department which seems to not the aim and object of Article 243(Q) of the Constitution.

85. It is a recognized canon of construction that an expression used in a rule, bye-law or form made in exercise of a power conferred by a statute must unless there is anything repugnant in the subject or context have the same meaning as is assigned to it under the statute vide *Onkarlal Nandlal Vs. State of Rajasthan and Another*, However it is subject to rider that the rules should be consistent with the provisions of the Act, and if a rule goes beyond what the Act contemplates, the rule must yield to the Act vide *The Central Bank of India Vs. Their Workmen*, *The Central Bank of India Vs. Their Workmen*, . *Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others*,

86. In AIR 2000 SC 2027, *the Collector of Central Excise Jaipur v. Raghubar India Ltd.* Hon"ble Supreme Court held that the maxim "*generalalia specialibus non derogant*" has application also for construction of a general provision in the Act and a special provision in the Rules made under the Act. If the rule is made under the Act, it may refer to for the purpose of resolving any real ambiguity in the Act.

Thus, the exercise of power by the government in pursuance to the Act must be in the manner provided by the Act read with constitutional provisions and not otherwise. In the present case, the government seems to have exceeded its jurisdiction while framing the rules straightway without following the procedure provided by the Act.

87. One of the arguments advanced by Shri J.N. Mathur, Additional Advocate General is that the Rules in question are only directory and not mandatory. It is a guidelines for corporation to implement it in accordance to law. The argument advanced by Shri Mathur seems to be misconceived. At the face of record the rule provides that it shall come into force with immediate effect i.e. from the date of notification. In the event of non payment of premium, taxes, a penal action may be taken by the Municipal Commissioner. The letter and spirit of the impugned rule makes it mandatory, therefore, the argument advanced by Shri J.N. Mathur, learned Additional Advocate General seems to be not sustainable.

88. To sum up, impugned Rules could not have been framed by the Government in the manner it has been done. At the most, the proposed Rule or the Model Rules could have been sent to the Corporation and it was for the Corporation to consider the proposal of State Government in pursuance to power conferred by Section 202 of the Act and thereupon the Corporation could have directed for imposition of tax w.e.f. the date to be specified in resolution and consequential notification issued u/s 203 of the Act. In the event of failure on the part of Corporation, government has got option to take recourse in pursuance to power conferred under Sections 205 and 206 of the Act.

89. In view of above, the judgment of the division bench in the case of Taj Advertising (*supra*) does not seem to lay down the correct law and questions No. 1, 2, 6 and 7 are answered as under:

(1) State Government has got legislative competence to frame rules but subject to fulfilment of necessary conditions and procedure prescribed under Chapter IX of the Act (*supra*).

(2) Government could not have framed impugned rules for all the Municipal Corporations without taking recourse of not only Section 206 of the Act but other statutory provisions contained in Chapter IX of the Act.

(6) Impugned Rule 209 is invalid and ultra vires to the Act being framed without following the provisions of Sections 199 to 203 of the Act and other statutory provisions discussed in the body of judgment (*supra*).

(7) Provision contained in the Rule 2009 requiring the owner of building to face penal consequences is invalid and violative of Section 195 of the Act.

Other questions framed by the Division Bench are left open for consideration by the regular Division Bench since no contrary finding has been recorded in the case of Taj Advertising. It is open to the Division Bench to record finding on other questions in case it is so desired.

Let the writ petition be listed before the appropriate division bench forthwith to decide the issues keeping in view the finding recorded and questions answered hereinabove.