**(2015) 03 MP CK 0148**

**In the Madhya Pradesh High Court**

**Case No :** Writ Petition No. 3987 of 2008

Hoarding Advertisement People Welfare Association and Others APPELLANT

Vs

State of M.P. RESPONDENT

**Date of Decision :** 12-03-2015

**Acts Referred:**

Constitution of India, 1950 — Article 14, 19(1)(g), 243, 243(E), 243(X)
Madhya Pradesh Municipal Corporation Act, 1956 — Section 129, 132, 132(1), 132(2)(b), 132(6)
Madhya Pradesh Municipalities Act, 1961 — Section 109, 127(2), 130

**Citation :** (2015) 03 MP CK 0148

**Hon'ble Judges :** Rajendra Menon, J;Vandana Kasrekar, J

**Bench :** Division Bench

**Advocate :** A.M. Mathur, Shri Upadhyay, Learned Senior Counsels and Sanjay Agrawal, for the Appellant; P.K. Kourav, Learned Additional Advocate General, Advocates for the Respondent

**Final Decision :** Dismissed

# Judgement

Rajendra Menon, J—Challenging the constitutional validity in the matter of delegation of taxation power to the Municipal Corporations under Section 133 of the M.P. Municipal Corporation Act, 1956 (hereinafter referred to as "the Act of 1956") and contending that the powers conferred and delegated by the aforesaid statutory provisions suffers from the vice of excessive delegation of legislative powers and is violative of Article 14 and in breach of the conditions stipulated in Article 243-X(b) of the Constitution of India, this writ petition is filed. It is also said that as the provisions of Section 133 of the Act of 1956 does not prescribe any condition or limits as to the rate of taxation in the matter of display of advertisement through hoardings, therefore, the provision is unconstitutional. Further challenge in the writ petition is made to a resolution Annexure P/1 dated 29.4.2006 and another one bearing resolution No. 1, whereby there is an increase in the advertisement tax which is corelated to the ground rent payable as fixed under the Collector guide line for the area where the advertisement is displayed. It is further said that the advertisement rate fixed is contrary to the Bhopal Municipal Corporation Advertisement Byelaws, 1967 (hereinafter referred to as "the Byelaws of 1964"). That apart, by amending the writ petition, certain increase in the advertisement rate vide resolution Annexure P/3 dated 24.3.2008 is also challenged on the ground that it is unreasonable and contrary to the statutory provisions.

2. Petitioner claims to be an association of Advertisers engaged in the business of conducting the work of advertisement through display of hoardings and advertisement board''s in the City of Bhopal. It is said to be a society registered under the Society Registrikaran Adhiniyam. Petitioner No. 2 is the Secretary of the petitioner No. 1 Association and the remaining petitioners are individual advertisers and Members of the Association. It is said that the association is raising the cause of its Members in the writ petition. According to the petitioner under Section 132 of the Act of 1956, the Municipal Corporation is empowered to impose obligatory or compulsory taxes as well as optional taxes. It is said that one of the optional taxes that can be imposed under Section 133(6) is the tax contemplated in sub clause (L) thereof i.e. a tax on advertisement other than the advertisement published in the Newspaper. It is further said that Section 133 of the Act of 1956 lays down the procedure for imposition of tax and fees by the Municipal Corporation and also a provision for increase of the tax. It is said that prior to amendment of the Act vide Act No. 12 of 1995 sub section(1) of Section 133 (the unamended provision) required various detailed procedure to be followed by Municipal Corporation as is detailed in para 5.4 of the writ petition. However, for the present, as the same is not very relevant, we may not go in detail into the same. However, in this writ petition petitioners have challenged tax imposition on advertisement and hoardings on the following counts :-

(a) the constitutional validity and the power conferred on the Municipal Corporation under Section 133 is challenged on two counts, (1) that it is beyond the parameters of the powers conferred under Article 243-X(b) of the Constitution of India, as no conditions and limitations with regard to rate of tax is fixed, the same, runs in conflict to the constitutional provisions, is violative of Article 14 and 243-X, therefore, the same be declared as Ultra Vires. That apart, it is said that even if the provision is held to be Intra Vires, the power exercised by the Municipal Corporation for passing the impugned resolution in question and imposing the tax is unsustainable, because : (a) as no conditions with regard to maximum and minimum limits, in the matter of taxation is prescribed by the State Government and therefore, without such prescription by the State Government, the imposition of tax is unsustainable. It is said that without there being any maximum or minimum rate of tax prescribed by the State Government, imposition by the Corporation is unsustainable. (b) that tax fixed and rate prescribed is unreasonable, contrary to byelaws of Municipal Corporation, Bhopal and therefore, the same be quashed.

 

3. Shri A.M. Mathur, learned Senior Counsel along with Shri Upadhyay, learned Senior Counsel and ably assisted by Shri Sanjay Agrawal, argued that the provisions of Article 243-X(b) of the Constitution of India empowers the State to make a law by which it may assign to the Municipalities such taxes, duties, tolls and fees levied and collected by the State Government for such purposes but the assignment is subject to such limits and conditions as may be prescribed. It is said that while imposing the advertisement tax impugned in this petition, neither any conditions are laid down nor any limit with regard to rates of taxes prescribed and therefore, the provisions of Section 133 of the Act of 1956 is Ultra Vires of Article 243-X.

4. That apart, it was argued that as the provisions of Section 133 gives uncontrolled power to the State Government, and the Municipal Corporation to impose the tax without prescribing any conditions and limit this is violative of Article 14 of the Constitution.

5. Thereafter, it was tried to be emphasized that under Section 133 of the Act of 1956, even if the State Government can authorize the corporation to levy the tax by passing of resolution but permitting passing of the resolution in the matter of imposition of tax without there being any limitation, condition and prescribing a maximum and minimum limit for the rate of tax to be collected is arbitrary and unsustainable and therefore, the relief claimed for in this petition, be allowed. Shri A.M. Mathur, learned Senior Counsel and his associates counsel took us through the provisions of Section 132, Section 133, Article 14, Article 19(1)(g) of Constitution, the words "subject to such conditions and limits" as appearing Article 243-X and various other statutory provisions like Section 133 to say that when no condition and limit are prescribed for imposition of tax, the same is unsustainable. It is said that the State can delegate the power of taxing or can assign its right to collect tax to the Municipal Corporation but the same has to be done on such conditions and such limitations as may be prescribed by the State Government. In the instant case, as no conditions or limitation with regard to the rate of tax is prescribed, the resolution and power exercised by the Municipal Corporation is said to be unsustainable. It was also argued that under Section 366 of the Act of 1956 provisions for grant of license and permission is contemplated. In sub clause 11 thereof, it is provided that rate of license and permission fee can be renewed only once in every three years and in the instance case as the rate of tax is being renewed every year. It is said that the same is in violation to requirement of Section 366. That apart, by referring to the manner in which tax is fixed, particularly with regard to the quantum of tax fixed, it is tried to be emphasized by referring to a detail chart produced in this regard to say that initially when the rate of tax was fixed in the year 2002-2003 it was based on a different formulae as is evident from the chart annexed to this petition and now with a rate increasing from the year 2002 continuously upto 2014, it is said that there is an increase of more than 7500% and therefore, this increase is arbitrary which cannot be permitted.

 

6. Referring to the following judgments of the Supreme Court and the Madhya Pradesh High Court and placing much emphasis on the question of non availability of any conditions or limits laid down for imposition of tax, challenge is made to the imposition of the duty. The judgments in this regard relied upon are : Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another, AIR 1968 SC 1232 : (1968) 3 SCR 251 ; Gulabchand Bapalal Modi Vs. Municipal Corporation of Ahmedabad City, AIR 1971 SC 2100 : (1971) 1 SCC 823 : (1971) 3 SCR 942 ; Ganesh Ginning and Pressing Factory Vs. Municipal Council, Anjad and others, (1978) JLJ 622 : (1979) MPLJ 85 ; Kishore Gupta Vs. Municipal Corporation, Indore and Another, AIR 1980 MP 79 ; Smt. Meera Khandelwal Vs. State of Madhya Pradesh and Others, AIR 1997 MP 163 : (1996) ILR (MP) 83 : (1997) 1 JLJ 402 : (1997) 2 MPLJ 333 .; Nagrik Upbhokta M. Manch Vs. Union of India (UOI) and Others, AIR 2002 SC 2405 : (2002) 4 JT 625 : (2002) 4 SCALE 365 : (2002) 5 SCC 466 : (2002) 3 SCR 735 : (2002) 2 UJ 865 : (2002) AIRSCW 2622 : (2002) 4 Supreme 100 ; Sakhi Gopal Agrawal and Others Vs. State of M.P. and Others, (2004) 1 JLJ 26 : (2003) 4 MPHT 1 : (2004) 1 MPLJ 390 : (2003) 3 MPLJ 554 .

7. It was argued that the powers exercised by the Municipal Corporation in the matter being contrary to the provisions of Article 243 and the Act of 1956 is unsustainable. Shri A.M. Mathur referred to the judgment of the Supreme Court in the case of Birla Cotton, Spinning and Weaving Mills (supra) and Gulab Chand Modi (supra) and emphasized that the power conferred on the Municipal Authorities for imposing the tax in question without there being any conditions imposed and limitation prescribed, is beyond the delegative power available as per the constitutional provision i.e. Article 243 and therefore, is liable to be declared as Ultra Vires. Referring to the words "subject to" and its interpretation in the case of Sakshi Gopal Verma (supra) by a Full Bench of this Court it is said that the delegation made by the State Government to the Municipal Corporation is beyond the condition prescribed under the constitutional provision. On the same analogy reliance is also placed on the judgment of the Supreme Court in the case of Delhi Race Course. Further a judgment of a coordinate Bench of this Court in the case of Fun Multiplex Pvt. Ltd. Vs. State of M.P. and others, (2012) 1 MPHT 449 , is relied upon to say that the provisions are unconstitutional.

8. Reliance was also placed on a Division Bench judgments of this Court in the case of Meera Khandelwal (supra), in support of this contention with regard to constitutional validity of the provision. That apart, reference was made to the judgment of a Division Bench of this Court in the case of Kishore Kumar Gupta (supra) to canvas the contention that once the rates of fees to be laid down is prescribed under the byelaws any action taken for charging the fees in contravention to the byelaws, is illegal. Reference was made in this regard to Annexure P/6, the byelaw and the schedule of fee available at page 25 of the paper book to say that once by the byelaw a fees structure has been fixed, anything done contrary to this is unsustainable. Reliance was also placed on the judgment in the case of Ganesh Ginning and Pressing Factory (supra) to say that

once a minimum and maximum limit is fixed by the byelaws, the Municipal Corporation has no power to increase the taxes beyond the limit prescribed. Shri A.M. Mathur, learned Senior Counsel also invited our attention to the provisions of Section 366 sub clause (11) to emphasize about the unreasonableness in the matter of fixing of tax and the fact about the tax fixed being highly disproportionate. Shri Updhyay, learned Senior Counsel also referred to Section 366(2), judgment in the case of Dhampur Sugar Mills Ltd. Vs. State of U.P. and Others, AIR 2008 SC 48 : (2007) 11 JT 293 : (2007) 11 SCALE 418 : (2007) 8 SCC 338 : (2007) 10 SCR 245 : (2007) AIRSCW 6072 : (2007) 7 Supreme 132 to say that any action done without prescription of condition and fixing of limitation is unsustainable.

9. Refuting the aforesaid contentions Shri P.K. Kourav, learned Additional Advocate General who appears for the State Government argued on the question of Constitutional validity of the impugned provisions. He referred to the statements and objects with regard to the constitutional amendment brought into force w.e.f. 20 th April, 1993, to part IX-A of the Constitution of India and tried to emphasize that while interpreting the provisions of the law in question and before deciding the question of its constitutional validity or otherwise, the purpose and reason why the Constitution was amended in the year 1993, should be taken note of and a decision taken. It was argued that the local bodies functioning in the various states had become weak and ineffective. There were failure in holding regular election, the local bodies were subjected to prolonged supersession and there was inadequate devaluation of power to these local bodies. With a view to remove all these deficiencies it was thought necessary to amend the constitutional provision and incorporate necessary provisions relating to functioning of the urban local bodies, so as to give them more autonomy in the field of their proper functioning, to make their performance more effective and vibrant as an independent institute of self governance. It was said that if the statement and objects of the amendment is perused, it would be seen that apart from various other proposals made, the statement and object contemplates that with a view to make the local bodies, units of self governance, it was decided to give them powers for levy of taxes and duties and one of the object of the amendment was to empower the local bodies by making constitutional provision to empower them to levy of taxes and duties, by assigning of such taxes and duties to the Municipalities by the State Government and to promote them into independent units of self governance. It is said that the Constitution 74th Amendment enforced on 20th April, 1993 and its aims and objects would clearly show that Article 243(E) was incorporated to assign to the Municipalities the power of levying such taxes and duties and tolls which were initially collected by the State Government. It was argued by Shri P.K. Kourav that the words "subject to such conditions and limits" appearing in Article 243-X(b) speaks about laying down conditions for imposition of the tax and limiting the power of the Municipalities. It was argued by Shri Kourav that the word "limits" used in Article does not mean the financial limits or the maximum and minimum limit for

 

imposing the tax or duties. It refers to the limitations to be imposed for exercising the delegated powers and the control to be exercised by the State Government in limiting arbitrary exercise of power by the Municipalities. It is argued by Shri P.K. Kourav that the Constitutional provision contemplates grant of discretion to the Corporation in the matter of imposition of tax based on various peculiar and special local conditions which may vary from one Corporation to another and even from one area to another within the limits of the same Municipal Corporation. It was argued that depending upon the economic and financial conditions of the area where the Municipal Corporation was functioning, powers were to be given to the Municipalities to impose the tax after assessing the local conditions. Shri Kourav referred to Section 129 of the Municipalities Act and various other provisions like Section 421 of the M.P. Municipality Act and the provisions of Chapter 9 of the Act of 1956 conferring various powers of control to be exercised by the State Government and argued that all these provisions were incorporated into the Act of 1956 to ensure that control of the State Government is maintained in the functioning of the Municipal Corporation and these controls are nothing but conditions and limitation prescribed with regard to exercise of power by the Municipal Corporation as contemplated under Article 243(E) and is a system of check and balance by the Government to control the working of the Municipal Corporation at the same time the autonomy of the Municipal Corporation as an independent unit of self governance is maintained. Shri P.K. Kourav referred to the judgment of the Division Bench in the case of Meera Khandelwal (supra), para 16 and 17 of the said judgment and argued that while considering the constitutional validity of Section 129 of the M.P. Municipalities Act which is pari materia to the provisions of Section 133, similar submissions made have already been rejected by a coordinate Bench of this Court and therefore, it is tried to be argued that now there is no force in the submissions of the learned Senior Counsel for the petitioners. He referred to the provisions of Section 322(9) of the Act of 1956 and various other provisions to say that the State Government exercises various controls in the matter and the contention of the petitioners that the act is Ultra Vires is unsustainable.

10. Shri P.K. Kourav submitted that after constitutional amendment was incorporated, the provisions of Section 132(9) which initially existed was deleted on 25.8.2003 by amending Act 23 of 2003. Sub section 9 of Section 132 which originally reads as under was omitted :-

"(9) The State Government may, by notification, in the Official Gazette, prescribe the maximum and minimum rate of any tax specified in this section, subject to which the Corporation shall determine the rate of such tax."

He emphasized that this omission was made to bring the provisions of Act of 1956 in confirmation with the requirement of Article 243-X of the Constitution of India and once the provision for prescribing maximum and minimum rate of tax is done away with the resultant conclusion is that Municipal Corporation has the discretion to fix the minimum and maximum limits.

11. Shri Naman Nagrath learned Senior Counsel and Shri Sanjay K. Agrawal, who also appeared for some of the Municipal Corporation in this case and other connected cases, argued in the same line as was argued by Shri P.K. Kourav and tried to justify the constitutional validity of the provisions in question. It was argued by them that conditions for controlling the activities of the Municipal Corporation as required under the Constitution are already inbuilt in the Act of 1956 and the limits are also laid down under which the power can be exercised and therefore, it is not appropriate to say that the provision is unsustainable. It was submitted that now after amending the provisions of Section 132(9) of the Act of 1956, there is no necessity for fixing the maximum or minimum limit for imposition of tax, learned counsel invited our attention to a judgment of the Division Bench of this Court in the case of M.T. Cloth Market Merchant Association, Indore Vs. Indore Municipal Corporation : 1983 MPLJ pg. 286, where the author of the said judgment Hon''ble Justice Shri G.P. Singh, Chief Justice (as he then was), after consider the judgment in the case of Ganesh Ginning and Pressing Factory (supra), has clearly laid down that a tax imposed by the Municipal Corporation under Section 132(6) cannot be held to be invalid only because no maximum or minimum limit of taxation is prescribed by the State Government. Placing reliance of this judgment and contending that the law laid down by Ganesh Ginning and Pressing Factory (supra), relied upon by Shri A.K. Mathur, learned Senior Counsel is not applicable because it was based on the then existing provisions of Section 127(2) of the Municipalities Act of 1961 and referring to the observations made in this regard by the Division Bench in para 8 in the case of M.T. Cloth Market Merchant Association (supra), it was argued that the contentions of the petitioners are not correct.

12. That apart, Shri Naman Nagrath, learned Senior Counsel again took us through various provisions of M.P. Municipal Corporation Amending Act 18/1997, Section 132(1) the object and purpose of the Act, the provision for Control contained in Chapter 10 of the Act of 1956, Section 66, Section 67, the judgments in the case of Sakshi Gopal Verma (supra) and in particular, Birla Cotton, Spinning and Weaving Mills (supra) and argued that conditions and limitations for imposition of tax and the duty is already provided for in the Act of 1956 and therefore, it is not necessary to incorporate separate provision. Shri Naman Nagrath, learned Senior Counsel in detail took us through the principles laid down by the Supreme Court from para 28 onwards upto para 33, 34 and 35 in the case of Birla Cotton, Spinning and Weaving Mills (supra) and tried to emphasize that the conditions and control to be exercised by the State Government as contemplated under Section 243-X does not relate to only laying down conditions by separate notification but if in the parent Act like the act of 1956 itself conditions are already available as is in the present case and when the Act of taxation, impugned is undertaken by a elected representative, who are representing the people then this condition itself is nothing but a check and balance, meeting the requirement of the constitutional mandate. Accordingly,

 

Shri Naman Nagrath, learned Senior Counsel argued that there is no merit in the contentions advanced by learned counsel for the petitioners. That apart, Shri Naman Nagrath, learned Senior Counsel and Shri Sanjay K. Agrawal demonstrated before us by pointing out that page 25 of the paper book referred to by the petitioners to say that the rate of tax is fixed by byelaws is not correct. It is pointed out that the Bhopal Municipal Corporation Advertisement byelaws 1967 starts from page 26 of the paper book and this is the byelaw, which was enacted in exercise of its power under Section 427 and 442 of the Municipal Corporation Act. Learned counsel took us through the entire byelaw to say that no where in the byelaw is there a maximum or minimum limit of tax prescribed nor is the rate of tax prescribed in the byelaws. It is argued by them that this byelaw only contemplates for certain procedure for giving right for advertisement. As far as notification at page 25 is concerned, it is the case of the respondents that this notification dated 27 th February 1964 has been issued by the Municipal Corporation under sub section 1 of Section 132 read with Sub section 1(c) of Section 442 fixing the rate of tax separately. It is said that even the impugned rate of tax is fixed in accordance to this provision and therefore, it was submitted and explained to us that notification available at page 25 is not a byelaw as contended by the petitioner but it is separate notification passed by the Municipal Corporation imposing and notifying a tax as has been done in the present case. Finally it was summed up that in the facts and circumstances of the case, there is no constitutional or statutory violation which warrants reconsideration. They therefore, pray for dismissal of the petition.

13. Shri Naman Nagrath, learned Senior Counsel also invited our attention to the provisions of Section 133(1) of the M.P. Municipal Corporation Act, 1956 the procedure provided for passing of resolution at the time of final adoption of rate estimate and budget, its approval by the Municipal Corporation and by referring to certain observations made in this regard in the case of Birla Cotton, Spinning and Weaving Mills (supra) tried to argue that this provision itself is a control mechanism meeting the requirement of the constitutional mandate. It is further said that as the resolution is passed by the representative of the people it indicates that the requirement of the constitutional mandate as laid down by the Supreme Court in the case of Birla Cotton, Spinning and Weaving Mills (supra) is met with.

14. Shri Sanjay K. Agrawal, learned counsel appearing for the Bhopal Municipal Corporation in some of the cases brought to our notice a Division Bench judgment of this Court in the case of Sagardeep Advertising Vs. Municipal Corporation and Others, (2007) ILR (MP) 450 to say that the argument of Shri A.M. Mathur, learned Senior Counsel with reference to Section 366 and sub section 11 is unsustainable for the simple reason that in the case of Sagardeep Advertising Pvt. Ltd. (supra) this aspect of the matter has been considered and it has been rejected. Shri Sanjay Agrawal argued that for the purpose of taxation under Section 132(6), particularly with regard to advertisement tax, the provision of Section 366 cannot be made applicable as held by Division Bench in

the case of Sagardeep Advertising Pvt. Ltd. (supra)

15. Having heard learned counsel for the parties, it is seen that the first question that warrants consideration is the challenge made to the constitutional validity of Section 133 in the matter of power granted to the Municipal Corporation for imposition of tax. It was argued that this power delegated to the Municipal Corporation is contrary to the provisions of Article 243-X of the Constitution.

16. Article 243-X of the Constitution gives power for imposition of tax/ fee and its delegation to the Municipalities. The Article contemplates that the legislature of a State may by law assigning to the Municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purpose and subject to such conditions and limit. It is said that as the power conferred on the Municipal Corporation for imposition of tax and fee under Section 133 is without prescription of any limitation and condition in as much as the maximum and minimum limits for tax to be fixed is not stipulated. The power given to the Municipal Corporation under Section 133(1) of the Madhya Pradesh Municipalities Act is in violation to the mandate of Article 243-X and Article 14 of the Constitution.

17. Article 243-X of the Constitution was incorporated after the 74 th Amendment was made to the Constitution in the year 1993. It was found by the Parliament that many State local bodies have become weak and ineffective on account of a variety of reasons which included failure to hold regular elections, prolonged supersession and inadequate devolution of powers and function. Considering these inadequacy it was considered necessary to incorporate provisions relating to Urban local bodies in the Constitution for the purpose of giving them various powers which included the power of taxation. It is therefore, clear that the aims and object for bringing into force the 74 th amendment to the Constitution and one of the object being to empower the Municipalities and the Municipal Corporation to levy taxes and to assign to them such duties as were originally done by the State Government for the purpose of imposing of taxes. It is clear that Article 243-X of the Constitution was incorporated to empower the Municipal Corporation to levy such taxes which was originally levied by the State Government so as to make them independent units of self governance and the State Government was delegated this power to assign this duty to the Municipal Corporation. It is because of this reason that Section 133(1) of the M.P. Municipal Corporation Act, 1956 was amended w.e.f. 1.5.1995 by substituting Act 12 of 1995 and a provision incorporated for the purpose of empowering the Municipalities to impose any tax or fee as may be prescribed under the M.P. Municipalities Act. However, sub section (1) of Section 133 contemplates that the Corporation may by resolution at the time of final adoption of the budget estimate for the next financial year subject to provisions of the Municipalities Act and such limitations and conditions as may be imposed by the State Government, impose the tax. It is therefore, clear that imposition of tax and fee by the Municipal Corporation under Section 133(1) is subject to the provisions of

 

Madhya Pradesh Municipalities Act, 1956 and limitations and conditions imposed by the State Government. Shri A.M. Mathur, learned Senior Counsel tried to argue that imposition of the conditions and limitations being absent in the provisions of Section 133(1) and the notification issued being without any limits for the maximum and minimum limit of tax to be imposed, the delegation of powers exercised by the Municipal Corporation is unsustainable.

18. The most important question is with regard to interpretation of the words "subject to such limitations and conditions" which appears in Section 133(1) so also the same words again appearing in Article 243-X-B. It was the contention of Shri Mathur, learned Senior Counsel that "subject to such limits and conditions" means not only the conditions and procedure for imposition of tax but also the maximum and minimum limit for imposition of tax.

19. However, Shri P.K. Kourav, learned Additional Advocate General had argued that the words "subject to such limitation and conditions" does not mean fixing of the maximum or minimum limits of taxation but it contemplates a provision for laying down certain measures of control to be exercised by the State Government so as to limit the powers of the Municipalities by ensuring that they discharge the powers delegated to them in a proper manner and their action in enforcing the delegated power is not arbitrary or unjustified. It is emphasised by Shri P.K. Kourav that the meaning of the words "subject to such limitations and conditions" does not refer to the conditions of prescribing the minimum and maximum rate of tax only.

20. In this regard if various provisions of Madhya Pradesh Municipalities Act are taken note of, it would be seen that various limitations and conditions are imposed by the State Government in this Act which restricts and controls the manner in which the power is to be exercised by the Municipal Corporation or the Municipality while imposing or recovering of taxes and fees, for eg. under Section 133(1) the Municipal Corporation is to pass a resolution at the time of final adoption of budget estimate for the financial year concerned, giving its intention for imposing any tax or fee as may be specified. Thereafter, sub section (2) contemplates that the resolution shall contain various provisions with regard to the manner in which tax is to be imposed, the clases of persons and description of property to be taxed, the amount or rate of tax or fees to be imposed, the system for assessment and collection of tax and sub section (3) says that the resolution as passed shall be conclusive evidence of imposition of the new tax or fee. Accordingly, it is clear that imposition of tax is by resolution of the Municipal Corporation and is subject to control of the State Government. Similar provisions for controlling the activities of the Municipal Corporation exercising its delegated powers are contained under various provisions of the Madhya Pradesh Municipalities Act for eg. Section 27 contemplates a provision for estimation of income and expenditure to be prepared by the Commissioner and its supervision and control by the State Government. Budget estimates are prepared under Section 98.

 

21. Section 66 of the Act empowers the Corporation to take adequate provisions by means of measures which it can lawfully take for matters enumerated therein. Section 69 of the Act clothes the Corporation with Executive Powers for carrying out the purpose of the Act. Section 189-A empowers the Corporation to lease out the recovery of any tax and fees imposed by way of public auction to a private contractor subject to conditions and limitations prescribed by the State Government. Apart from the above, sections 76 to 85 contemplates provision for managing the Municipal properties and liabilities. Section 80 deals with powers to ensure that streets, lands, public places, drains and other immoveable property are not sold or leased out save in accordance with the provisions of the Act. Chapter XXVI empowers the Corporation to control and manage streets within the limits of the Corporation. Section 322 empowers the Corporation for erection of walls, fences, rail, posts etc for preventing misuse of the Corporation''s property.

22. Similar provisions are contained in section 322(2) and 335, wherein the Commissioner is empowered to prohibit by public notice, misuse of any building, wall, tree or board against public interest. Finally, the State Government is given the entire supervisory powers under section 421. If Section 421 of the Act is taken note of, it would be seen that every Act of the Municipal Corporation and every resolution passed, it is subject to the control of the State Government which can suspend execution of any resolution and prohibits its imposition. That being so, it has to be taken note of that various provisions are contained in M.P. Municipal Corporation Act like Section 421, 422 and 423 which empowers the State Government to control the manner in which the power is to be exercised by the Municipal Corporation. In this regard, if the principle of law laid down by the Supreme Court in the case of Birla Cotton, Spinning and Weaving Mills (supra) is taken note of it would be seen that it lays down certain principle, application of which indicates that the contentions advanced by Shri A.M. Mathur, learned Senior Counsel cannot be accepted. In the case of Birla Cotton, Spinning and Weaving Mills (supra), certain powers for collection of tax on consumption or sale of electricity imposed by the Delhi Municipal Corporation under the Municipal Corporation Act applicable in Delhi was challenged and in that case also the argument advanced was that the delegation for levy and collection of electricity duty is without any conditions or limitation. Hon''ble Supreme Court examined the provisions of Delhi Municipalities Act and found that imposition of taxes under Section 150 of the Delhi Corporation Act contemplated provisions for imposing mandatory and optional taxes. In the State of Madhya Pradesh also similar provisions are available. Under Section 132 of the Madhya Pradesh Municipal Corporation Act, provisions are made for imposing compulsory and optional taxes. Sub section (1) of Section 132 and the provisions of Clause ''A'' to ''F'' thereof provides for imposition of compulsory taxes but sub section (6) of Section 132 speaks about optional taxes that may be imposed by the Municipal Corporation subject to any general or special order given by the State Government. It is therefore, clear that advertisement tax which is a tax

 

contemplated under Clause ''I'' of Section 132(6) is an optional tax as considered by the Supreme Court in the case of Birla Cotton, Spinning and Weaving Mills (supra). Thereafter, the principle of law is discussed and from para 21 onwards, Hon''ble Supreme Court discusses the principle of law with regard to fixation of rates of taxes, checks and control to be exercised by Government when the power is delegated to the Municipal Corporation for imposition of tax. After referring to a judgment in the case of Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others, AIR 1958 SC 909 : (1959) 1 SCR 427 : (1958) 9 STC 388 , it is held by the Supreme Court that on the basis of various authorities, it is clear that it is not unconstitutional for the Legislature to leave it to the Executive to determine the details the relating to working of taxation law, including fixation of rate and the manner of fixing the rate for taxation. It has been held that once procedural safeguards, control and guidelines are available, it cannot be said that the legislative power of delegation exercised is an excess.

23. After reviewing all the judgments on the question from paragraph 28 onwards, Hon''ble Supreme Court discussed the imposition of guidelines and in paragraphs 28 and 29, the following principle are laid down:-

"28. A review of these authorities therefore leads to the conclusion that so far as this Court is concerned the principle is well established that essential legislative function consists of the determination of the legislative policy and its formulation as a binding rule of conduct and cannot be delegated by the legislature. Nor is there any unlimited right of delegation inherent in the legislative power itself. This is not warranted by the provisions of the Constitution. The legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act. Where the legislative policy is enunciated with sufficient clearness or a standard is laid down, the courts should not interfere. What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of the particular Act with which the Court has to deal including its preamble. Further it appears to us that the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation.

29. What form the guidance should take is again a matter which cannot be stated in general terms. It will depend upon the circumstances of each statute under consideration; in some cases guidance in broad general terms may be enough; in other cases more detailed guidance may be necessary. As we are concerned in the present case with the field of taxation, let us look at the nature of guidance necessary in this field. The guidance may take the form of providing maximum rates of tax upto which a local body may be given the discretion to make its choice, or it may take the form of providing for consultation with the people of the local area and then fixing the rates after such consultation. It may also take the form of subjecting the rate to be fixed by the local body to the

 

approval of Government which acts as a watch-dog on the actions of the local body in this matter on behalf of the legislature. There may be other ways, in which guidance may be provided. But the purpose of guidance, whatsoever may be the manner thereof, is to see that the local body fixes a reasonable rate of taxation for the local area concerned. So long as the legislature has made provision to achieve that reasonable rates of taxation are fixed by local bodies, whatever may be the method employed for this purpose- provided it is effective it may be said that there is guidance for the purpose of fixation of rates of taxation. The reasonableness of rates may be ensured by fixing a maximum beyond which the local bodies may not go. It may be ensured by providing safeguards laying down the procedure for consulting the wishes of the local inhabitants. It may consist in the supervision by Government of the rate of taxation by local bodies. So long as the law has provided a method by which the local body can be controlled and there is provision to see that reasonable rates are fixed, it can be said that there is guidance in the matter of fix in rates for local taxation. As we have already said there is pre- eminently a case for delegating the fixation of rates of tax to the local body and so long as the legislature has provided a me-hod for seeing that rates fixed are reasonable, be it in one form or another, it may be said that there is guidance for fixing rates of taxation and the power assigned to the local body for fixing the rates is not uncontrolled and uncanalised. It is on the basis of these principles that we have to consider the Act with which we are concerned."

(Emphasis Supplied)

24. However, when paragraph 29 reproduced hereinabove, is analysed, it would be seen that the form in which the guidelines or limitation is to be imposed cannot be laid down in general terms. It depends upon the circumstances of each statute under consideration. In some cases, guidelines may be in broad general terms and in some cases it may provide for fixing maximum rate of taxation or in some cases it may be left to the discretion of the local authority to make its choice in the matter of fixation of tax. Thereafter, from paragraph 30 onwards, the provisions of checks and balance already available in the statutory provision is taken note of and in paragraph 33 and again in paragraph 35 certain provisions of the Corporation Act applicable in the State of Delhi is considered and thereafter it is held that there are various provisions in the Act which are nothing but guidelines and terms of conditions laid down for the purpose of exercising the delegated power.

In paragraph 33, 34 and 35 the matter is so dealt with by the Hon''ble Supreme Court:

"33. The first circumstance which must be taken into account in this connection is that the delegation has been made to an elected body responsible to the people including those who pay taxes. The councillors have to go for election every four years. This means that if they have behaved unreasonably and the inhabitants of the area so consider it they can be thrown out at the ensuing elections. This is in our opinion a great check on the elected councillors acting unreasonably and fixing unreasonable rates of taxation. This is a democratic method of bringing to book the elected representatives who act unreasonably in such matters. It is however urged that S. 490 of the Art provides for the supersession of the Corporation in case if is not competent to perform or persistently makes default in the performance of the duties imposed upon it by or under the Act or any other law or exceeds, or abuses its power. In such a case the elected body may be superseded and all powers and duties conferred and imposed upon the Corporation shall be exercised and performed by such officer or authority as the Central Government may provide in this behalf. It is urged that when this happens the power of taxation goes in the hands of some officer or authority appointed by Government who is not accountable to the local electorate and who may exercise all the powers of taxation conferred on the elected Corporation by the Act. This however has not happened in the present case and we need not express any opinion on the question whether such officer or authority would be competent to increase the rates of taxes already fixed when the Corporation is superseded or can impose new taxes which were not there at the time of supersession. That is a matter which may have to be considered when such a situation arises; but so long as the power of taxation conferred by S. 150 is exercised by the elected body there will always be a check in the form of the members thereof having to face the electorate after every four years with the liability of being thrown out if they act unreasonably. This check which is inherent in an elected municipal body, must enter into the verdict whether the delegation to such a body, even though it is wide in extent, can be upheld on the basis that this is a method of controlling the actions of the elected body and setting a limit to which it can go in the matter of taxation, even though no maximum as such is provided in the Act."

(Emphasis Supplied)

34. Another guide or control on the limit of taxation is to be found in the purposes of the Act. The Corporation has been assigned certain obligatory functions which it must perform and for which it must find money by taxation. It has also been assigned certain discretionary functions. If it undertakes any of them it must find money. Even though the money that has to be found may be large, it is not, as we have already indicated, unlimited for it must be only for the discharge of functions whether obligatory or optional assigned to the Corporation. The limit to which the Corporation can tax is therefore circumscribed by the need to finance the functions, obligatory or optional which it has to or may undertake to perform. It will be not open to the Corporation by the use of taxing power to collect more than it needs for the functions it performs. It cannot, for example, raise the rate of taxation to such an extent, as to provide a surplus which is much more than what it needs for its existence in carrying out the functions assigned to it, subject to its having the minimum cash balance of Rs. 4,00,000 as provided in the Act at the end of a year. This is in our opinion another check which will guide the Corporation in fixing its rates of tax under s.

 

150 after taking into account the yield from obligatory taxes. Though the mere fact that specific purposes and functions are set out in an impugned Act may not be conclusive-it is one of the factors which should be taken into account along with other relevant factors. It cannot therefore be said that there is no guidance to the Corporation in the matter of fixing rates of optional taxes, though it must be admitted that a large discretion is left to it in this behalf. Even so there are limits to which the Corporation can go in fixing these taxes and those limits like the maximum fixed for obligatory taxes are the guidelines within which the taxing power of the Corporation with respect to optional taxes must be exercised. This power is exercised by the Corporation after debate by the elected representatives of the local area which the Corporation administers. In such circumstances we think that there is a limit and guidelines provided by the Act beyond which the Corporation cannot go.

35. Another limit and guideline is provided by the necessity of adopting budget estimates each year as laid down in s. 109 of the Act. That section provides for division of the budget of the Corporation into four parts i.e., general, electricity supply, transport, water and sewage disposal. The budget will show the revenue and expenditure and these must balance so that the limit of taxation cannot exceed the needs of the Corporation as shown in the budget to be prepared under the provisions of the Act. These four budgets are prepared by four Standing Committees of the Corporation and are presented to the Corporation where they are adopted after debate by the elected representatives of the local area. Preparation of budget estimates and their approval by the Corporation is therefore another limit and guideline within which the power of taxation has to be exercised. Even though the needs may be large, we have already indicated that they cannot be unlimited in the case of the Corporation, for its functions both obligatory and optional are well defined under the Act. Here again there is a limit to which the taxing power of the Corporation can be exercised in the matter of optional taxes as well, even though, there is no maximum fixed as such in the Act."

25. If the aforesaid circumstances are applied in the backdrop of the provisions contemplated in the MP Municipalities Act, it would be seen that in this case also the power of levying, collecting and fixing the tax is entrusted to the Municipal Corporation through an elected body responsible to the people. All elections to the Council take place every five years and an assumption has to be drawn that the elected representative have acted or performed reasonably in the manner of fixing the rates of taxation, keeping in view the public interest.

26. If the principle as detailed hereinabove in paragraph 33 is taken note of, it is seen that the power of taxation in the State of MP is also exercised by an elected body, therefore, an assumption has to be drawn that there will always be a check in the form of the members doing so on the floor of the house when the taxation provisions are discussed before its adoption.

27. Finally, in paragraphs 37 and 38, the Hon''ble Supreme Court goes to lay

 

down the following principle:

"37. Finally there is another check on the power of the Corporation which is inherent in the matter of exercise of power by subordinate public representative bodies, such as municipal boards. In such cases if the act of such a body in the exercise of the power conferred on it by the law is unreasonable, the courts can hold that such exercise is void for unreasonableness. This principle was laid down as far back as 1898 in Kruse v. Johnson(1) in connection with a bye-law made by a count council. In that case the county council made a certain bye-law and its validity was challenged on the ground that it was unreasonable. The Court held that a bye-law could be struck down on the ground of unreasonableness but took pains to point out that in determining the validity of a bye-law made by a public representative body, such as a county council, the court ought to be slow to hold that the byelaw was void for unreasonableness. The Court further held that" a bye- law so made out ought to be supported unless it is manifestly partial and unequal in its operation between different classes, or unjust, or made in bad faith, or clearly involving an unjustifiable interference with the liberty of those subject to it." The same principle would apply to the fixation of rates of taxation and if per chance the Corporation fixes rates which are unreasonable, there is control in the court to strike down such an unreasonable impost.

38. On a careful consideration therefore of the various provisions of the Act, we must hold that the power conferred by s. 150 of the Act on the Corporation is not unguided in the circumstances and cannot be said to amount to excessive delegation."

28. From the aforesaid, it is clear that laying down of conditions and limitations does not mean that it has to come from the State Government in the form of orders, while imposing the tax. It can be done in the form of various provisions already incorporated in the Statute namely, in this case the MP Municipal Corporation Act,1956, and if the provisions of the Act of 1956 and the conditions and various limits prescribed controlling the activities of the Municipal Corporation as contained in the Act are taken note of, it would be clear that the conditions and limitations as laid down by the Supreme Court in the case of Birla Cotton Spinning and Weaving Mills (supra) is in existence and, therefore, on this count the Act cannot be termed as unsustainable.

29. Much emphasis was laid down by Shri A.M. Mathur, learned Senior Advocate, to say that because no minimum or maximum rate of tax is prescribed the entire resolution and the order for recovery of adequate tax is unconstitutional.

30. In this regard, it would be seen that prior to the amendment to the MP Municipalities Act, section 132(9) as it originally existed contemplated a provision for prescribing the maximum and minimum limits of tax to be imposed by the Municipal Corporation. Sub-section (9) of Section 132 is reproduced in paragraph 10 of this judgment. However, this clause was deleted vide Amending Act 23 of 2003 with effect from 25.8.2003, and by removing the provision for prescribing

 

the maximum and minimum limits as argued by Shri P.K. Kaurav, the MP Municipalities Act, power of taxation contained under section 132 was brought in accordance to the aims and object for incorporating Article 243(X). The aims and object of Article 243(X) of the Constitution has already been referred to hereinabove, which indicates that the powers of local and urban bodies being inadequate in various matters, including taxation, the constitutional amendment was made for incorporation Article 243 and by removing the limits for prescribing the maximum and minimum, the MP Municipalities Act was also brought in conformity with the requirement of Article 243(X) of the Constitution.

31. That being so, this conscious amendment by the State Government is clearly an indication of the fact that discretion is given to the Municipal Corporation in the matter of fixation of tax and selection of the minimum or maximum as may be required and merely because the minimum or maximum rate of tax has not been fixed, the provision cannot be termed as unconstitutional.

32. That apart, the question as to whether the provision becomes unconstitutional due to non- fixation of the minimum or maximum rate has already been considered by a Coordinate Division Bench of this Court in the case of MT Cloth Market Merchants Association (supra) and Hon''ble Justice G.P. Singh, as he then was, in paragraph 8 of the aforesaid judgment deals with the matter as under:

"8. The learned counsel for the petitioner then submitted that the imposition of all the three aforesaid taxes was invalid for the reason that no maximum or minimum has been prescribed by the State Government under section 132(6). A perusal of this provision would show that it is not obligatory for the Government to prescribe any maximum or minimum with respect to the amount or to the rate of taxes specified in Sub-sections (1) and (2) of Section 132. When these limits are prescribed, the Corporation''s power of taxation must be exercised within the limits but omission to prescribe the maximum and minimum limits do not take away the power of the Corporation to impose the taxes. The learned counsel relied upon Ganesh Ginning and Pressing Factory Vs. Municipal Council, Anjad and others, (1978) JLJ 622 : (1979) MPLJ 85 which related to the construction of Sections 127(2) and 130 of the MP Municipalities Act, 1961. Section 130 as then in force authorized the Municipal Corporation to vary the tax within the limits prescribed under Section 127(2). On a proper construction of this provision it was held that unless the limits were prescribed, the Municipal Council could not vary the tax. The language of those sections was entirely different and the case relied upon has no application here."

33. From the aforesaid, it is established that merely because the maximum and minimum rate of tax has not been fixed, the provision will not become unconstitutional. Even the case of Ganesh Ginning and Pressing Factory relied upon by Shri A.M. Mathur is considered, explained in this case of MT Cloth Market Merchants Association.

 

34. Accordingly, now as all the contentions advanced by Shri Mathur in this regard are found to be unsustainable, we see no reason to uphold the arguments advanced, particularly in the light of the principle laid down by the Supreme Court in the case of Birla Cotton Spinning and Weaving Mills (supra), from paragraph 28 onwards and particularly in paragraphs 33, 34 and 35 of the aforesaid judgment.

35. Even though during the course of hearing, learned counsel for the parties had referred to various judgments namely, Gulab Chand Modi (supra), Meera Khandelwal (supra), Nagrik Upbhogta Manch (supra), Delhi Race Course (supra) and Fun Multiplex (supra), but considering the fact that for deciding the controversy involved in this petition, the principles laid down in the case of Birla Cotton and Weaving Mills (supra), Sakshi Gopal Verma (supra) and M.T. Cloth Market Merchant Association (supra) are sufficient. It is not necessary now to refer in detail all the other judgments.

36. As far as fixation of ground rent and the contention that the rate of tax fixed is exorbitant, it would be seen that the same has been done by the Municipal Corporation keeping in view various factors like the population of the city, the economic conditions and developed nature of the city, the area where the advertisement is to be put; the situation, location and various other factors which is different for various areas. Even in the matter of imposition of property tax in the case of Sakshi Gopal Verma (supra), this Court has held that fixation of tax based on situation and location of the house is proper.

37. That being so, as far as fixation of ground rent and the rate of tax is concerned, as the Corporation through its councilors " the elected body, has taken a decision to impose the tax at a particular rate, this Court does not deem it proper to interfere with such a decision taken. The right of the Municipal Corporation to fix taxes being in accordance with the procedure contemplated under law, no case is made out for interference on this count.

38. As far as the contention that in fixing the tax, the provisions of section 366(II) has been violated is concerned, this question has been considered by the Division Bench in the case of M/s. Sagardeep Advertising (supra) and the matter has been dealt with in the following manner:

"(a) The power to impose tax on advertisements and to regulate all activity including advertisements on Corporation land, streets and open spaces within the Corporation area and to charge rent or fee vests is in the Corporation.

(c) that Section 366 of the Act only prescribes the general conditions of Licences and permissions but does not deal with the manner in which the application shall be processed nor does it prescribe any procedure to cater for a situation like the present one where several persons apply for installing advertisement boards or hoardings at the same place and same time or the manner in which their rival claims should be considered."

 

17. As the respondent authorities in the instant case are levying tax and charging rent and not a fixed licence fee as envisaged by the taxing provisions, the contention of the learned counsel for the petitioner that in the absence of prescription of maximum and minimum limit, no fee can be levied by the Corporation deserves no consideration and is hereby rejected."

39. It is seen that the provisions of section 366 only prescribes the general conditions for granting license and permission and does not deal with the question of advertisement, which is dealt with separately by a bylaw, therefore, the contention of the petitioner with regard to violation of section 366 cannot be accepted, as in Bhopal Municipal Corporation the provision for grant of advertisement is contemplated by a statutory Bye-law and therefore, the general provision of Section 366(II) with regard to license and permission will not apply. To that effect also, the grounds raised by the petitioner is not tenable and is accordingly rejected.

40. Apart from the aforesaid, during the course of hearing, learned counsel for the petitioner had invited our attention to a Notification available at page 26 of the paper-book and the by-laws of the Bhopal Municipal Corporation Advertisement Bylaws, 1967 to say that the impugned resolution now passed is contrary to the rate of tax fixed in the Notification dated 27.2.1984 available at page 25, which is termed to be the bylaw. An argument was tried to be advanced to say that the resolution now passed fixing the rate of tax is contrary to the bylaws is unsustainable.

41. In this regard it was pointed out by Shri Naman Nagrath, Shri P.K. Kaurav " Senior Advocates, and Shri Sanjay Agrawal that the Notification dated 7.2.1984 available at page 25 is not a bylaw. The bylaw is available from page 26 onwards and the Notification at page 25 is nothing but a resolution of the Municipal Corporation fixing the rate of tax in the year 1984.

42. We find this to be correct. If the Notification dated 27.2.1984 available on record is analysed, it would be seen that this Notification is issued by the Municipal Corporation, Bhopal and it only reproduces a resolution in the matter of fixing the tax for advertisement under section 133. What is filed at page 25 is a Notification issued by the Corporation and now the impugned resolution is also nothing but a subsequent act of the elected body in fixing the rate of advertisement. Accordingly, the Notification dated 27.2.1984 is also a Notification fixing the advertisement at that point of time. It is neither a bylaw nor part of the bylaw. It is an act akin to the one now undertaken by the Municipal Corporation in passing the resolution for fixing the rate of taxes only.

43. However, the bylaws of the Bhopal Municipal Corporation namely the Bhopal Municipal Corporation Advertisement Bylaw, 1967 is available from page 67 onwards and if this bylaw is analysed in its totality, it would be seen that no minimum or maximum rate of tax is prescribed in this byelaw. On the contrary, bylaw 2(f) contemplates and provides that tax means a tax on advertisement

 

imposed in accordance to the provisions of section 132(2)(b) and thereafter the bylaw only contemplates provisions for issuing an advertisement giving the work of advertisement and various other aspects indicated therein, but there is nothing in this fixing the maximum or minimum rate of advertisement.

44. That being so, the argument that was advanced to say that the maximum and minimum rate of tax fixed by the impugned Notification is contrary to the bylaws is a misconceived argument, which cannot be accepted. Once on due analysis of the totality of the circumstances, we have recorded a finding that the imposition of tax by the Bhopal Municipal Corporation in the matter does not suffer from the vices of being in excess of the delegation of power and when we find that the imposition made and the action taken is strictly in accordance to the constitution bench judgment of the Supreme Court in the case of Birla Cotton Spinning and Weaving Mills (supra), we see no reason to make any further indulgence in the matter. The arguments advanced are wholly misconceived and cannot be accepted.

45. Accordingly, the petition being devoid of merits is dismissed.