
(2014) 10 BOM CK 0069

In the Bombay High Court

Case No : Writ Petition Nos. 2720, 3039, 3040 and 3041 of 2013

Municipal Labour Union

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 01-10-2014

Acts Referred:

Bombay General Clauses Act, 1904 — Section 24, 24(d), 3, 4, 5

Bombay Provincial Municipal Corporations Act, 1949 — Section 109, 126, 126(3), 127, 127(1)

Constitution of India, 1950 — Article 14, 168, 19(1)(a), 226, 243I

Citation : (2014) 6 ABR 324

Hon'ble Judges : S.C. Dharmadhikari, J; B.P. Colabawalla, J

Bench : Division Bench

Advocate : Neeta Karnik, Advocate for the Appellant; S.K. Shinde, Special Counsel, A.B. Vagyan, Government Pleader, Afroz Shah, A.A. Garge, R.R. Pitale, R.S. Khadapkar, G.H. Keluskar and Abhijit Kulkarni, Advocate for the Respondent

Judgement

S.C. Dharmadhikari

1. Since both sides agree that the challenge in these Writ Petitions is common, they are being decided by this common judgment.

2. For properly appreciating the arguments of the parties, the facts in Writ Petition No. 2720/2013 are referred to.

3. The challenge in this Writ Petition is to the legality and validity of Section 127(2)(aaa), Section 99 (partly) and Section 152T of the Bombay Provincial Municipal Corporations Act, 1949 and now the Maharashtra Municipal Corporations Act. The provisions as particularly indicated in the prayer clauses together with Notifications are impugned as being ultra vires Part IXA of the Constitution of India and particularly Articles 243W and 243X. The prayers read as under:-

"(a) This Hon'ble Court may be pleased to invoke it's writ jurisdiction under

Article 226 of the Constitution of India and be pleased to issue a writ of mandamus or a writ, direction or order in the nature of mandamus and be pleased to;

(i) hold and declare that Sections 127(2)(aaa), 99(partly) and S. 152-T of the Bombay Provincial Municipal Corporation Act, 1949 unconstitutional and ultra vires the provisions of Part IXA and Article 243W and Article 243X in particular of the Constitution of India and be struck down.

(ii) hold and declare that Sections 127(2)(aaa), 99 (partly) and 99C (partly), 99D and 152T of the Bombay Provincial Municipal Corporation Act, 1949 as illegal being ultra vires the provisions of Sections 127(2)(a), 149, 454, 456 and 457 of the Bombay Provincial Municipal Corporation Act, 1949 and be struck down.

(iii) hold and declare that the Bombay Provincial Municipal Corporation (Local Body Tax) Rules, 2010 framed under Section 152T as being ultra vires the provisions of Part IXA Article 243W and Article 243X of the Constitution of India and be struck down.

(iv) hold and declare that the Bombay Provincial Municipal Corporation (Local Body Tax) Rules, 2010 framed under Section 152T as being ultra vires the provisions of Section 127(2)(a), 149, 454, 456 and 457 of the Bombay Provincial Municipal Corporation Act, 1949 and be struck down.

(v) quash and set aside Notification dated 25.03.2010 and Notifications dated 25.02.2013 annexed at Exhibits B and G to this petition.

(b) pending the hearing and final disposal of this Writ Petition, the impugned action of the Respondent No. 1 of imposition of Local Body Tax in lieu of octroi on Respondent Nos. 2 to 6 and consequential Notification dated 25.03.2010 (Exhibit B) and Notification dated 25.02.2013 (Exhibit G) issued by Respondent No. 1 may kindly be stayed and the Respondent Nos. 2 to 6 Corporations be allowed to continue to levy Octroi in accordance with provisions of the Maharashtra Municipal Corporation Act, 1949 and on such terms and conditions as this Hon"ble Court deems fit and proper."

4. The Petitioner Nos. 1 to 5 are the Unions/Associations of employees in Thane, Pune, Pimpri Chinchwad, Nagpur and Navi Mumbai Municipal Corporations. The Respondent No. 1 is the State of Maharashtra. The constitutional validity of the above provisions has been challenged in the following facts and circumstances.

5. The Petitioners stated that it is a matter of common knowledge that there has always been an attempt on the part of the Traders who for their selfish motives have confronted Municipal Corporations governed under the Bombay Provincial Municipal Corporations Act, 1949 (for short "the said Act") on levy of Octroi. The traders from time to time have raised issues and protested levy of Octroi by the Municipal Corporations. Such protests were wholly unjustified and against the financial interest of the Municipal Corporations. However, the State Government from time to time acted at the behest of such traders and their Associations so

as to initiate action to do away with Octroi and to replace the same with a system more beneficial to them. In furtherance of it's object to help the traders, the Respondent No. 1 vide a Notification dated 21st October, 2008 sought to impose cess on the D-Class Municipal Corporations governed under the provisions of the said Act in place of Octroi. There are 16 such Municipal Corporations which fall under D-Class in the state of Maharashtra. The Respondent No. 1, however, realized the mistake in implementation of cess as the same would be totally non feasible and against the interest of the Municipal Corporations. The Respondent No. 1 vide a Notification dated 15th November 2008 cancelled the levy of the Cess which was to replace Octroi. This was done on account of various representations by the D Class Municipal Corporations as also the adverse effect noticed on the financial stability of the said Municipal Corporations.

6. It is submitted that it is a matter of record that all the Municipal Corporations have raised protest against such an action of the Respondent No. 1 to bring about any change in the existing levy of Octroi. By letter dated 17.11.2009 addressed by the Mira-Bhayander Municipal Corporation to the Respondent No. 1 it is clearly stated that on account of the Respondent No. 1's action of forcible levying of Cess upon Mira-Bhayander Municipal Corporation for a period of 109 days between 01.09.2008 to 18.12.2008, it had lost revenue of Rs. 10,46,26,748/-. Hence, it had raised a demand in respect of 15% of the amount which the State Government had promised to give. The Corporation in it's above letter clearly stated that levy of Cess has adversely affected the revenue of the said Municipal Corporation thereby seriously affecting the financial condition which would affect the development works to be undertaken by the Municipal Corporation. It is, therefore, apparent that the forcible levy of cess upon the said D Class Municipal Corporations had led to severe loss and the said Notification had been cancelled ultimately.

7. The Petitioners stated that despite abundant record available with the Respondent No. 1 showing that the imposition of any other alternative other than levy of Octroi by the Municipal Corporations, is against the financial/revenue interests of such Municipal Corporations, the Respondent No. 1, however, continued to act at the behest of the Traders who were opposing the Octroi. The Respondent No. 1 in the above circumstances issued an Ordinance dated 31st August, 2009 namely the Bombay Provincial Municipal Corporation Ordinance, 2009. By this Ordinance, the Respondent No. 1 undertook various amendments to the said Act and the Bombay Village Panchayat Act, 1958 so as to illegally introduce a levy of the Local Body Tax to replace Octroi. The said Ordinance was subsequently replaced by the Maharashtra Act XXVII of 2009, i.e. impugned Act, which was published in the Official Gazette on 24th December 2009 by the Respondent No. 1. The said Act is deemed to have come into force 31st August, 2009. Annexure-A to the petition is a copy of the Maharashtra Act XXVII of 2009 i.e. impugned Act.

8. The Petitioners stated that the impugned Act incorporates extensive amendments to the said Act, 1949, namely, Section 2 incorporates the definition of Local Body Tax under Sub Clause 31(a) and at the same time amendment deletes Octroi from Sub-Section (2) of Clause 42. Furthermore, Section 99B and 99C are incorporated pertaining to determination of categories of goods for Local Body Tax by the State Government. Section 99C dispenses with the application of Section 99B when the Local Body Tax is to be first levied. The impugned Act also amends Sub Section (2) of Section 127 to incorporate Section 127(2)(aaa) so as to include Local Body Tax to be levied by the Municipal Corporations on the entry of goods into the limits of the city for consumption, use or sale therein in lieu of Octroi or Cess if so directed by the State Government by Notification in Official Gazette. Furthermore by incorporation of Section 149A, an additional stamp duty of 1% on certain transfers of immoveable properties in Municipal areas has been incorporated so as to make a provision to purportedly compensate the loss of revenue which the Corporations may suffer on account of dispensation of Octroi. By incorporating Chapter XI-B to the said Act, provisions are made as regard "levy" of Local Body Tax. Section 152T as introduced illegally confers power on the State Government to make Rules by Notification in the Official Gazette to carry out the purposes of the Act. The Respondent No. 1 by a Notification published in the Official Gazette dated 1st January 2010 published the Draft Rules as framed under Section 152T of the impugned Act, namely, the Bombay Provisional Municipal Corporations (Local Body Tax) Rules, 2010. The said Rules contemplate the manner in which the Local Body Tax could be levied and collected by the Municipal Corporations. However there was no wide publication of the said Draft Rules to inform all the affected about the impending changes being brought about by the Respondent No. 1. That in fact complete secrecy was kept in the whole process. That a few representations were made by the office bearers of the Petitioner Unions, but they were in fact never called for any hearing.

9. The Petitioners stated that the Respondent No. 1 hastily and without following the due procedure of prior publication have finalized the Final Rules under the amended and newly added Section 152T. The Respondent No. 1 thereby has breached the legal mandate of Section 152T while issuing the impugned Notification for finalizing the Rules on 25.03.2010. Annexure B to the petition is a copy of the impugned Notification. Though the Draft Notification was published in Government Gazette dated 01.01.2010 the fundamental requirement of informing persons likely to be affected is not at all complied with. That the previous publication as required under Section 152T has to be in consonance with and compliance of the necessary ingredients as per Section 24 of the Bombay General Clauses Act, 1904. That the said Section requires the authority making the rules to publish the draft Proposed Rules for information of persons likely to be affected thereby. That the Respondent No. 1 has not given wide publicity to the said Proposed Rules thereby denying the Petitioners as also all other affected parties an opportunity to raise their objections as contemplated

under Section 24(d) of the Bombay General Clauses Act, 1904. That the discretion exercised by the Respondent No. 1 while deciding to merely publish the said Proposed Rules in a Government Gazette has led to breach of the aforesaid Section 24 itself, as none of the affected parties could exercise their right of objecting and/or filing suggestions to the Respondent No. 1 on the subject matter. That the ramification of such major changes affecting the very existence of the Municipal Corporations are far reaching and will affect the public at large. In such circumstances the Respondent No. 1 deciding that publication of draft rules in Government Gazette would suffice and was sufficient is, therefore, erroneous. Thus the impugned Notification of 2010 being conclusive proof of there being no previous publication as required under section 152T, therefore, cannot be accepted and/or presumed. Thus the impugned Notification of Rules 2010 is illegal and bad in law for there being no previous publication as provided by Section 24 of the Bombay General Clauses Act, 1904. That the Impugned Rules 2010 are, therefore, finalized without abiding with the legal requirement of previous publication. That the impugned Rules, therefore, are illegal and bad-in-law. The Petitioners stated that the whole procedure undertaken is per se illegal and bad-in-law. That the Respondent No. 1 has not yet finalized the rates to be charged under the Rules and a letter dated 25.02.2013 has been issued belatedly to call upon the Corporations to come for a hearing upon the said issue on 02.03.2013. Annexure C is a copy of the said letter. It is, therefore, apparent that the Respondent No. 1 has illegally issued the impugned Notification dated 25.03.2010 for illegally forcing the Municipal Corporations into imposing Local body Tax with effect from 01.04.2013 without finalizing the Rates. That the Respondents No. 2 to 6 have already finalized their Budget and finalizing the rates, thereafter, is ex-facie against the interest of the Corporations. Thus, the Respondent No. 1 has illegally finalized the Draft Rules 2010 without compliance of Section 152T.

10. It is stated that the Respondent, thereafter, by a Communication dated 7th January 2010 issued to 16 Municipal Corporations mentioned therein, called upon the said Corporations to forward their proposals before 31.01.2010 as regards the Schedule of Rates for the levy of Local Body Tax. It is also stated that in doing so the Octroi income on the said articles and the proposed rates to be applied, shall be so fixed so as to take into consideration the income generation as it stood under the Octroi. It was further stated that for implementation of the Local Body Tax the concerned employees are required to be trained and hence, the list of such employees should be forwarded. It was also stated that for implementation of the Local body Tax it is required that those traders who are liable to pay the Local Body Tax are required to be registered as per the provisions of the Amending Act and the same is required to be done 30 days prior to 1st April 2010 and therefore, process should be initiated to collect data from concerned authorities, namely, Sales Tax, Labour Department, Excise etc.. That Respondent No. 1 did not take appropriate steps so as to make an adequate publication of its intention to discontinue octroi and replace the same by the

Local Body Tax by implementing the provisions of the impugned Act. The Corporators of most of the Municipal Corporations and the members of Municipalities were kept unaware of the said decision of the Respondent No. 1. Such surreptitious actions of the Respondent No. 1 have prevented the Petitioners and many other persons and organizations who are aggrieved by the Impugned Act 2009 and the impugned Rules 2010 and who would have justifiably convinced the Respondent No. 1 not to dispense with the Octroi, by approaching the Respondent No. 1 with their objections and grievances, from exercising their right of raising objections and/or suggestions and being heard thereupon.

11. It is stated that the Petitioners have represented and opposed the Respondent No. 1's impugned decision of discontinuing Octroi by substituting with Local Body Tax and have corresponded regarding the illegality of the same with the Respondent No. 1. The Petitioners have pointed out how the same would bring about a situation of emergency due to financial break down of the Municipal Corporations. The Petitioners have immediately contacted their counterparts in other Municipal Corporations and Municipalities to gather information and have gathered all the information. The Petitioners have also immediately submitted their representation inter alia pointing out that it would be inappropriate, arbitrary and illegal for the Respondent No. 1 to discontinue the levy of octroi and imposition of Local Body Tax upon the Municipal Corporations. It was, therefore, requested by the Petitioners to the Respondent No. 1 that a hearing be accorded to them so that all the evils which would arise if the impugned act is implemented, can be demonstrated. Annexures D, E and F to the Petition are copies of the said representations dated 22.02.2010, 03.03.2010 and 04.03.2010, respectively. However, the Respondent No. 1 has not given any hearing to the Petitioners and has illegally gone ahead and issued Notification dated 25.02.2013 directing the Respondent Nos. 2 to 6 to levy Local Body Tax in their respective Corporations with effect from 01.04.2013. Annexure G to the petition is a copy of the Impugned Notification dated 25.02.2013. That the Respondent Nos. 2 to 6 are not in favour of imposition of the Local body Tax in lieu of Octroi and have not passed any Resolution to the said effect till date. That it is thus, ex-facie apparent that the Respondent No. 1 by illegally issuing the impugned notification dated 25.02.2013 is forcing the Respondent Nos. 2 to 6 to collect Local Body Tax in lieu of octroi. That the said action of the Respondent No. 1 is totally and completely in breach of the constitutional mandate of sovereignty of Local Self Governments.

12. It is further stated that the Respondent No. 1 has by the above said amendments to the said Act taken away the autonomy of the Municipal Corporations. That the Municipalities are local self Governments under the Constitutional Scheme having full power and authority to choose which tax is in their revenue interests and should be levied. That by the impugned Act 2009 the Respondent No. 1 has infact rendered nugatory and/or superseded the provisions of the said Act. That there is a clear conflict in the provisions of the Amending

Act 2009 and Rules 2010 on the one hand and the existing provisions of the said Act on the other. That the existing provisions of the said Act become ineffective and are rendered otiose in view of the amended provisions. That the financial condition of the Respondent Municipal Corporations in the absence of the regular income generated from Octroi being the main backbone of revenue will become precarious. It would adversely affect the development works to be undertaken by them. That several other public interest activities which such public bodies are required to undertake under the provisions of the respective Acts shall become impossible to perform. That such dictate by the Respondent No. 1 upon the Respondent Nos. 2 to 6 to levy of Local Body Tax in lieu of Octroi is unconstitutional being violative of the 74th Amendment to the Constitution of India.

13. It is stated that the impugned Act is per se ultra-vires and unconstitutional inasmuch as it violates the provisions of Part IX-A of the Constitution of India and is also against the basic objects and reasons of the 74th Amendment Act, 1992. That the same amends the Constitution of India and incorporates Part IX-A dealing with Municipalities in the Constitution of India. It is stated that the impugned Amendment Act 2009 is also in direct conflict with the existing provisions of Sections 99, 149, 454, 456 and 457 of the said Act as set out in detail in the body of this Writ Petition. By the impugned Act, the Respondent No. 1 has taken away, deprived and/or abdicated the Municipal Corporations functioning under the said Act of its powers to choose and levy appropriate taxes as per the provisions of the said Act. In short, by the impugned Act the Respondent No. 1 has foisted upon the Municipal Corporations the Local Body Tax which is wholly against the financial interest, financial viability and the stability and/or existence of the Municipal Corporations. The impugned legislation has been enacted disregarding the Constitutional mandate only to favour the demand of the traders to do away with Octroi. In so doing, the Respondent No. 1 has closed its eyes to number of vital issues which are agitated from time to time by the various Municipal Corporations clearly indicating that such levy of Local Body Tax is totally non-feasible, ineffective and wholly unreasonable, arbitrary and violative of Article 14 of the Constitution of India. It is stated that the Petitioners too have from time to time made representations, but have not been heard. However inspite of the aforesaid legal position the Respondent No. 1 has decided to force the Respondent Nos. 2 to 6 Corporations into implementing provisions of the impugned Act 2009 and enforce the same by the impugned Rules 2010. That the Respondent No. 1 has now issued the Impugned Resolution dated 25.02.2013 to force the Respondent Nos. 2 to 6 into enforcing the impugned Act and Rules from 01.04.2013. The said decision of Respondent No. 1 is totally disregarding the consequences that would ensue by such levy which will deprive the Respondent Municipal Corporations of its valuable source of revenue which for decades is being earned by the Municipal Corporations by stable levy and collection of Octroi duty.

14. It is stated that the autonomy of the Local Self Government, i.e. Respondent

Nos. 2 to 6 Corporations, is completely taken away by the impugned Act. That examples of various Municipal Corporations, who have been adversely suffered because of the levy of Cess, have been placed before Respondent No. 1. If Local Body Tax is implemented, there would be uncontrolled evasion of the tax forcing the Corporation to file proceedings and there would be serious problems of liquidity. That implementation of the Local Body Tax is complicated and hence it is not feasible to levy the same. That under Sections 99 and 129, the Corporations are empowered to levy Octroi and that by making amendments to the said Sections 127(2)(aaa) the basic rights of the Corporation to determine which tax is to be imposed has been taken away. It will render Municipal Corporations unable to undertake various developments to cater to the increasing population and the commensurate development activities. It is impossible to contemplate such revenue collection or generation from any tax other than Octroi much less Local Body Tax. That the Respondent No. 1 has implemented the impugned Act and Rules unilaterally without taking the Respondent No. 2 to 6 Municipal Corporations into confidence and the same is at the instigation of the traders. That in doing so the Respondent has clearly transgressed the constitutional mandate as contained in Part IX-A of the Constitution.

15. It is, therefore, stated that the above Constitutional mandate is not being considered and the Respondent No. 1 has gone ahead and issued impugned Notification dated 25.02.2013 directing the Respondent Nos. 2 to 6 to impose the Local Body Tax from 01.04.2013 in their Corporation limits by discontinuing the Octroi collections. The Respondent No. 1 appears to be hell-bent and adamant to impose the levy of Local Body Tax despite the legal position being that the impugned Act, Rule & Notification are ultra vires, illegal, unreasonable, null and void. That in fact almost all the Municipal Corporations wherein the Respondent No. 1 has imposed Local Body Tax in lieu of Octroi by issuing identical Notifications previous to the presently impugned one have approached this Hon'ble Court by challenging the impugned Act and Rules as also the Notifications identical to the presently impugned one dated 25.02.2013. That all the said Writ Petitions have been entertained with interim stay being granted and further permissions to the said Petitioner Corporations to collect Octroi too have been granted. Annexure-H are the copies of interim orders passed in the said Writ Petitions.

16. The Petitioners, after referring to the above provisions and other material, have contended before us that the impugned provisions, Rules and Notifications imposing Local Body Tax in lieu of Octroi in the Respondent Nos. 2 to 6 Municipal Corporations are, therefore, ultra vires, unconstitutional and be declared as such.

17. Ms. Karnik, learned counsel appearing for the Petitioners, submitted that the Petitioners have no personal or vested interest in approaching this Court and seeking the declaration as above. The impression that is being given that the Petitioners are seeking to protect self interest and hence, insisting on

continuation of Octroi, is an attempt to divert the attention of this Court from the main grievance and issue.

18. Ms. Karnik submitted that all Municipal Corporations in the State are hard pressed for funds. They are somehow managing the affairs. There is tremendous strain on public fund. The sources of income and revenue for the Municipal Corporations are diminishing and the Municipal Corporations at times are surviving on the borrowed funds. She invites our attention to the scheme of the Municipal Legislation and submits that far from projecting self interest, the Petitioners seek to protect the larger public interest. The survival of Municipal Corporations is at stake. There was no material so as to conclude that the present scheme of taxation including Octroi Duty has in any way affected much less adversely the interest of the Municipal Corporations. The Municipal Corporations require the revenue on day to day basis for providing basic amenities and implementation of schemes for preservation and protection of public health. Therefore, providing sanitation, roads and clean drinking water is stated to be the bounden duty of the Public Body. To provide all this the Municipal Corporations require staff. However, no posts are allowed to be created. The services which ought to be performed by the Municipal Corporations in terms of the Legislation are to be performed, but without proper funds. There are no sources of revenue and finance. The question going to the root of the matter is, whether, the Octroi and which was the source of revenue was serving the object and purpose of the Legislation. It is at the instance of the Trader Community and who devised ways and means to circumvent and avoid the Octroi Post/Check Naka that the Government has stepped in.

19. Ms. Karnik has invited our attention to the then BPMC Act, 1949 and now styled as the Maharashtra Municipal Corporation Act. She submits that by Chapter-X what has been indicated is firstly the borrowing powers and thereafter, the provisions whereunder there are powers conferred in the Municipal Corporations to borrow the money. The provisions as are incorporated under Chapter-X of the said Act and now under the Maharashtra Municipal Corporation Act under the same heading, would indicate that the Municipal funds and other funds which have to be generated, augmented and maintained are not enough for the purpose of discharging the diverse functions and duties. In that regard, Ms. Karnik submits that by Section 109A of the said Act there are restrictions on utilisation of funds created by the Corporation and it states that notwithstanding anything contained in Section 109, except with the prior approval of the State Government, neither any internal loan shall be taken by the Municipal Corporation from any of the funds created by the Corporation nor shall any utilization of such funds for any purposes other than the purposes for which they are created be made by the Corporation. Upon introduction of such provision with effect from 21.05.2011 the Municipal Corporations are obliged to seek an approval in terms of this provision from the State Government. That cripples the Municipal Corporations further. In these circumstances what Section 127 enables is imposition of taxes. The Municipal Corporation by sub-section (1) is mandated

to impose the property taxes, taxes on vehicles, boats and animals in terms of clauses (a) and (b) of sub-section (1) and by subsection (2) thereof in addition the Corporation may, for the purposes of the said Act and subject to the provisions thereof, impose any of the taxes stipulated in the clauses of this sub-section. Ms. Karnik submits that the Corporations do not have wide powers as would enable them to coerce the persons concerned to pay taxes and particularly in the case of Octroi and now Local Body Tax which is an account based taxation. In the absence of such coercive measures the Traders are not expected to act on their own and volunteer to pay the taxes. The statutes, namely, Income Tax and Sales Tax contain several provisions enabling imposition, levy, assessment and recovery of taxes smoothly and by the machinery of the Government. In these circumstances by forcing the Corporations now to shift to Local Body Tax in lieu of Octroi or Cess would further weaken their base and is an encroachment on their autonomy and independence. Ms. Karnik has in that behalf invited our attention to Sections 387 and 388 of the said Act to submit that the powers conferred thereby, namely, of entry and inspection do not empower the Corporations to collect the taxes by making periodical inspection or entering upon the premises so as to inspect the account books of the businessmen/traders/commercial entities.

20. It is in this backdrop that Ms. Karnik has invited our attention to the constitutional provisions and particularly Article 243P and 243W of the Constitution of India. She submits that the Municipal Corporation/Municipality is envisaged as an independent unit of Local Self Government. This status is in jeopardy and danger of being interfered with. She submits that such interference is apparent from the language of Section 127(2)(aaa) by which it is imperative for the Corporation to shift to levy, assess and recover the Local Body Tax. Thus, earlier provision of Section 127(2) with its language in comparison did not amount to such an interference with independence and autonomy of the Corporation. There, the Corporation had discretion to levy Octroi or in lieu of Octroi a Cess on the goods brought within the limits of the city for consumption, use or sale thereof. This could have been levied in lieu of Octroi with the previous sanction of the State Government. In juxtaposition the language of clause (aaa) of Section 127(2) is peculiar and leaving no discretion or option at all. If there is direction by the Government which is published in the Official Gazette to impose Local Body Tax on the entry of goods for consumption, use or sale in the city, then, it means that Octroi or Cess has to be replaced necessarily by such Local Body Tax. Thereafter, no Octroi or Cess can be imposed. By such drastic measure the Government has virtually taken away the freedom, autonomy and independence guaranteed by the Constitutional provisions. Ms. Karnik also invites our attention to Article 304(b) of the Constitution of India and urges that there is no compliance with the mandate of the same either.

21. Ms. Karnik invites our attention to the scheme of the said Act and submits that the provisions thereof would have to be construed reasonably and though the sections particularly in the concerned Chapter would have to be read

together and harmoniously, still by such process it is not possible to reconcile some of the provisions with each other. She has invited our attention, as already noted, to the amendment to Section 127(2) and the section as it stood prior thereto. She has also invited our attention to Section 149 of the said Act to submit that the procedure to be followed in levying other taxes as laid down by Section 149 would have to be followed and it is the prerogative of the Corporation to make appropriate provisions and in terms of sub-section (1) of Section 149. In elaborating her submission she pointed out that clause (a) of sub-section (1) of Section 149 requires the Corporation to take into consideration the nature of taxes, rates thereof, class or classes of persons, articles or properties liable thereto and exemptions therefrom, if any, to be granted. Ms. Karnik submits that now the Corporation cannot decide on these matters or any of the other specified in sub-section (1) of Section 149. Now everything is imposed on the Corporation and by the Government. If there is nothing left to be done by the Corporation, then, Section 149 is rendered otiose. Then, she invites our attention to Section 99 of the said Act and submits that it was for the Corporation and after considering the Standing Committee's proposals to determine, subject to the limitations and conditions prescribed in Chapter XI, the rates at which the municipal taxes referred to in Section 127(1) shall be levied and the rates at and extent to which any of the taxes referred to in sub-section (2) of the said Section which the Corporation decides to impose shall be levied. Now, upon amendments which have been made this determination cannot be done by the Corporation in the case of Local Body Tax. Therefore, the fixation of rates at which Local Body Tax has to be levied will also be determined by the Government. The Government will also determine the goods on which Local Body Tax has to be levied and in that regard Ms. Karnik invites our attention to Sections 99B, 99C and 99D which have been brought in by the amendment. She submits that this would show that the entire regime of Local Body Tax is controlled and regulated by the State Government. The Corporation cannot, even if the tax is named as Local Body Tax, do anything in relation to levy and imposition of this tax. Such being the mandate of law, now there is no alternative but to hold that the impugned provisions contravene the Constitutional mandate as emphasized above.

22. Our attention is then invited by Ms. Karnik to Section 152P of the said Act. She submits that apart from inherent contradiction and reconciliation as between Section 127(2) and Section 127(2)(aaa), additionally Chapter XI-B has been brought in the statute book. "Provisions relating to Local Body Tax" is the title of this Chapter. All the provisions from Sections 152P to 152T appearing therein would indicate as to how the authority and power of the Corporation is taken over by the State Government. Now the State Government alone has the power to levy Local Body Tax. It is only the collection thereof which is left to the Corporation. There is thus great and serious erosion in the status of the Corporation as an independent unit of Self Government at local level. She has invited our attention to Section 152T of the said Act to urge that if the State

Government is going to make the Rules and the Rules as envisaged by Sections 444, 446 and 447 and Schedule-D being already in place, then, collision and conflict situation will arise resulting in chaos and uncertainty and the revenues of the Corporation would further deplete and decrease. This can never be said to be the intention of the Constitution makers or law makers. In these circumstances Ms. Karnik submits that the impugned provisions be struck down.

23. Ms. Karnik has handed over to us the Note of Written Argument particularly on the point of locus of the Petitioners and it is further submitted by her that the group of Petitions before this Court are filed not only by the registered Trade Unions espousing cause of employees of the concerned five Municipal Corporations, but also by Municipal Councillors who are aggrieved by decimation of the power and authority of the Corporation and the enhancement of power and authority of Municipal Commissioner. That the Thane Municipal Corporation has passed the Resolution No. 22 dated 08.05.2013 thereby condemning the imposition of Local Body Tax in lieu of Octroi on the Corporation.

24. Ms. Karnik has submitted that second State Finance Commission's report annexed to the Respondents' reply records that the share of Octroi in total revenue is between 44% to 57% and thus, is major source of income. That the second major source is Property Tax which contributes 11% to 19% and third is water charge at 6% to 8%. However, same report at paragraph 10.27 records steady decline in Property Tax collections. Thus, the Octroi is the backbone of revenue collection. That the recommendation of the Finance Commission as set out in paragraph 10.32(4)(e) of the report is regarding an account-based cess system as an alternative to Octroi. However, this recommendation of 2002 though acted upon in 2006 miserably failed and the State Government permitted the Municipal Corporations except Navi Mumbai Municipal Corporation to revert back to Octroi. In such circumstances the State Government cannot place reliance upon the very same recommendations which when acted upon have failed. That the State Government has set up Committees as per the Government Resolution dated 28.12.2011 for finding any better taxation policy other than Local Body Tax and this fact is not denied by the Respondents in their reply. However, the conclusions of the said study Group are not placed before this Court. It is, therefore, submitted that the decision to impose Local Body Tax is arbitrary. That the Schedule D Rule 288 of the Octroi Rules provides for an account-based system and the said power ought to have been better regulated so that the objections by small traders regarding paper work could have been ameliorated by checking at entry point & alleged harassment of medium and big traders could have been taken care of under Rule 288. This double filtered checking system would have benefited the Corporation, whereas impugned decision now puts this crucial Municipal tax at the mercy of self-declaration of the traders.

25. Ms. Karnik has further submitted that the reasons for introducing Local Body Tax are set out in the statement & object and it is stated in paragraph 1 thereof

that the method of levy and collection of Octroi often leads to disruption of free movement of goods and is a major deterrent to the business. Apart from this, there is traffic congestion at Octroi posts creating traffic problems. In paragraph 3 of the statement of objects and reasons, it is stated that there is persistent demand from the traders to abolish octroi system and evolve an alternative system. Ms. Karnik has submitted that insofar as the reasons set out in paragraph 1 of the statement and object are concerned, it is further recorded in paragraph 2 thereof that to overcome above difficulties set out in paragraph 1 as an alternative system the State Government had introduced a Cess in lieu of Octroi in "D" class Municipal Corporations. However, while implementing the levy & collection of cess various difficulties were faced subsequent to which the Corporations were allowed to switch over to Octroi. That the Local Body Tax and Cess are both account based and there is no difference in the levy and collection of them. Thus, the reasons set out in paragraph 1 for now introducing Local Body Tax do not stand the test of reason.

26. Ms. Karnik then submitted that insofar as the reasons set out in paragraph 3 of the statement and objects, a persistent demand from the traders to abolish Octroi cannot be held to be a valid and legal ground for abolishing the same. That it is of much importance that the traders inspite of abolition of Octroi at their behest, have refused to register themselves under the new LBT regime and have been agitating and representing against the same. The registration figures set out in paragraph 11 of the Respondent No. 1's reply are those which are deemed to be registered due to they being already registered under the Maharashtra Value Added Tax Act, 2002 (Rule 9(3) of the Local Body Tax Rules, 2010). They too have refused to file the returns. In such circumstances the objective as recorded in paragraph 3 cannot be considered to be legal, valid and bonafide. It is, thus, apparent that there has been no research data collection preceding the impugned Act which is nothing but acceding to demands of the traders at the cost of putting the very existence of the Municipal Corporation at peril. In such circumstances Ms. Karnik submitted that the Writ Petition be allowed.

27. On the other hand, Mr. Shinde, learned Additional Government Pleader appearing on behalf of the State, submitted that in the Affidavit in Reply there is point-wise answer given to the objections raised to the levy of Local Body Tax. It is pointed out as to how these objections can be said to be frivolous and without any basis. Mr. Shinde has invited our attention to the affidavit of Mr. Govind Appasaheb Lokhande, Deputy Secretary, Urban Development Department, Mantralaya, Mumbai dated 28.07.2014. Mr. Shinde submits that this Writ Petition has been filed only by the representatives of employees in Thane, Pune, Pimpri Chinchwad, Nagpur and Navi Mumbai Municipal Corporations. The direction of the State is issued to several Municipal Corporations. Pertinently none of the Municipal Corporations are aggrieved and have come forward to challenge imposition of levy far from it's legality and constitutionality. The Corporations have a distinct legal identity and independent of their employees. It is capable of

suing and being sued in it's own name. It has not come forward to assail the legal provisions. Therefore, the employees and Unions who have a vested interest in retention of earlier regime of octroi have for their own benefits filed such petitions and which deserve to be dismissed. The argument of Mr. Shinde is that there is absolutely no substance in the challenge. The bogey of encroachment on independence and autonomy of the Corporations is raised only to further the interest of Unions and employees. There is no basis inasmuch as there was never any independence or autonomy to select the tax for imposition. The imposition of tax is by the State Government or subject to it's approval and that has been the position throughout including prior to the amendment.

28. Mr. Shinde has invited our attention to Section 127 of the said Act to submit that the taxes to be imposed under the said Act are specified therein. The Corporation was given the freedom to impose the taxes in addition to those specified in Section 127(1). Thus, the Corporation which is a creation of an Act of the Legislature of the State gives the powers of control and supervision to the State Government advisedly. The State Government has been given equally the powers to give directions and in terms of which the imposition of taxes is directed by the State. Therefore, it is futile and false to urge that the Corporation devices a tax or selects the persons and goods for taxation. Even the rates thereof can be determined by the Corporation, but all this is subject to the previous sanction of the State Government. Mr. Shinde submits that Section 127(2) of the said Act, therefore, must be understood properly and completely. That enables the Corporation to impose the tax specified in clauses therein and which is in addition to the taxes specified in sub-section (1) of Section 127. Even in relation thereto and prior to the impugned amendments when Section 127(2) (aa) was brought in the statute book that enabled the cess on entry of goods into the limits of the city for consumption, use or sale therein to be levied in lieu of octroi with the previous sanction of the State Government. No challenge is laid to this provision. There also the cess in lieu of octroi was levied, but with the previous sanction of the State Government. Such provision was not considered to be encroachment or attack on the freedom, autonomy and independence of the Municipal Corporation as an unit of the Self Government. Mr. Shinde submits that by constitutional amendments made in the year 1992, Parts IX and IX-A have been inserted in the Constitution of India. Clause (aa) referred above has been on the statute book from 1996 i.e. after the constitutional amendment, but none has complained that it falls foul of the constitutional provisions referred by Ms. Karnik. In such circumstances there is no substance in the contentions of Ms. Karnik that absence of proviso as appearing below clause (aa) in the newly added and inserted clause (aaa) makes much difference. By sub-section (2) of Section 127 there is discretion in the Corporation to impose any additional taxes. However, the discretion ends the moment there is a direction from the State to levy the cess on entry of goods into the limits of the city for consumption, use or sale therein in lieu of octroi. Hence, what one finds by insertion of clause (aaa) is that the State has brought in the Local Body Tax on the entry of goods into the

limits of the city for consumption, use or sale therein in lieu of octroi or cess if so directed by the State Government. This provision is similar to the proviso below clause (aa) of Section 127 of the said Act.

29. Mr. Shinde has submitted that in the affidavit the entire rational and reasoning for imposition of Local Body Tax in lieu of octroi has been set out and in that behalf he referred to paragraph 5 onwards of the affidavit in reply.

30. Mr. Shinde submits that the amendment has been brought in by the Bombay Provincial Municipal Corporations (Amendment) Act, 2009 (Act No. 27 of 2009) dated 24.12.2009 with effect from 31.08.2009. The disadvantages, obstacles and difficulties faced by earlier system of octroi and collection thereof having been extensively set out it is apparent that the Government had to intervene and clear the mess. Earlier system of octroi was restricting and disrupting free movement of goods which was acting as major deterrent to the growth of business. Therefore, in the alternate and in the form of account based entry the tax was brought in. The account based entry tax was recoverable from the persons carrying on the business within the limits of Municipal area and physically importing the goods into the limits of the Municipal area for consumption, use or sale.

31. Mr. Shinde submits that due to the difficulties faced, there was demand from the various organizations and representative bodies of trading community and transporters to abolish the octroi. In view thereof and in exercise of the powers conferred by clause (aaa) of Section 127(2) the notification was issued on 25.02.2013. That was to direct the Thane Municipal Corporation to impose Local Body Tax in lieu of octroi with effect from 01.04.2013. Similar notifications and issuing directions to other Municipal Corporations, namely, Pune, Navi Mumbai, Pimpri Chinchwad and Nagpur have been issued. Once the Local Body Tax is an account based tax and there is a complete mechanism for imposition, levy, assessment and recovery thereof, then, it is improper to urge that independence of the Corporation in municipal taxation matter has been eroded or interfered with. Mr. Shinde invites our attention to the Rules and which have been put in place pursuant to these amendments. He submits that there is absolutely no basis for the contention that the provisions in relation to municipal taxation and as are found in the said Act have become irreconcilable or there is no harmony in the light of introduction of the Local Body Tax. In that regard, he invites our attention to paragraphs 9 and 10 of the affidavit filed in reply. He has submitted that the traders and transporters, so also, general public have welcomed the introduction of Local Body Tax and replacement of octroi therewith. The number of traders who have registered themselves is increasing. The difference is that the Local Body Tax is collected on the basis of accounts maintained by the traders while the octroi was collected directly from the transporters at the time of entry in the Municipal Limits of the Corporations. The rates of octroi and Local Body Tax are same. The revenue collected in the Municipal limits goes to the Corporation itself. The tax is charged on the turnover and therefore, there is

increasing trend in the revenue received from this tax and which was not possible earlier in octroi. Similarly, the expenditure on tax collection has also reduced as few employees/man power is required for assessment of returns received from the Traders. Mr. Shinde submits that to generate additional revenue to the concerned Municipal Corporation, the State Government grants 1% of the total stamp duty collected within the jurisdiction of such Municipal Corporation. Thus, all efforts are made not only not to harm the interest of the Municipal Corporation, but also to strengthen its economy so that it functions independently without depending on the State Government for financial assistance. It can then effectively fulfill the obligations and aspirations of residents and constitutional mandate. Referring to paragraph 14 of the affidavit in reply, Mr. Shinde submits that the decision of the State has been implemented successfully by all Corporations except the Mumbai Municipal Corporation.

32. Mr. Shinde has taken us through para-wise reply in this affidavit and which according to him denies the allegations to the contrary and made by the Petitioners. There is absolutely no opposition for imposition, levy and assessment of Local Body Tax. Mr. Shinde has taken us through the main pleas in this affidavit and which are to the following effect:-

"25. With reference to para No. 11 of the Petition, it is denied that the impugned Act is ultra vires and unconstitutional and violates the provisions of Part IX-A of the Constitution and is against the basic objects and reasons of 74th Amendment as alleged or at all. It is denied that the impugned amended Act is in direct conflict of the existing provisions of Sections 99, 149, 455 and 457 of the Maharashtra Municipal Corporation Act, as alleged or at all. I say that the provision of Section 149, 454, 456 and 457 are not applicable to the Local Body Tax. It is denied that by the impugned Act the Respondents have taken away/deprived and/or abdicated the Corporation's functions and its powers to choose and levy taxes as alleged or at all. I say that there is no power in the Municipal Corporation to choose a particular tax. It is denied that by the impugned Act the Respondents have foisted upon the Municipal Corporation the Local Body Tax which is wholly against the financial interest, financial viability and stability and or the existence of the Municipal Corporation as alleged or at all. It is denied that the impugned Legislation has been enacted disregarding the constitutional mandate as alleged or at all. It is denied that the impugned Legislation has been enacted to favour the traders in lieu of Octroi as alleged or at all. It is denied that the Respondent No. 1 has closed its eyes to number of vital issues which are agitated from time to time by the various Municipal Corporations as alleged or at all. It is denied that the levy of Local Body Tax is totally non feasible in effective and wholly unreasonable, arbitrary and violative of Article 14 of the Constitution of India as alleged or at all. I say that the Petitioners have not provided the details of time to time representations. It is denied that the Respondent No. 1 is forcing the respective Corporations to implement the provisions of the Act and Rules as alleged.

26. With reference to para 14-A of the Writ Petition, I say that Article 243W of the Constitution of India, it is not obligatory for the State legislature to make a law to endow the municipal bodies the right to levy and collect municipal taxes, but it is an enabling provision. It is denied that the impugned Act is ultra vires of the provision of Part IX-A of the Constitution and in particular Article 243W of the Constitution of India as alleged or at all. I crave leave to refer to and rely upon Article 243W, 243X and 243Y of the Constitution of India for its true interpretation and legal effect thereof. It is denied that a reading of this Articles gives power and verdict to the constitutional scheme empowers the Corporation with authority and power to function as an institution of self Government and to determine for itself as to what would be the beneficial source of revenue as alleged or otherwise. It is denied that the impugned amending Act is contrary to the Articles 243W, 243X and 243Y of the Constitution of India and it is rendered nugatory the said constitutional provisions as the State Government is conferring upon itself the power to decide on behalf of Corporation as alleged or at all. I say that the power and authority to impose LBT flows from Bombay Provincial Municipal Corporation Act, 1949 subject to the limitations imposed by the Act itself. I say that Bombay Provincial Municipal Corporation Act, 1949 does not give the authority or power to the Municipal Corporations to impose or levy tax as per their choice. It is denied that the Municipal Corporation is entitled to determine which of the taxes mentioned in Section 127(2) of the Bombay Provincial Municipal Corporation Act, 1949 is to be imposed depending upon the local factors, financial requirement of the Corporation and other commitments. I say that imposition of LBT in lieu of octroi is within the power and jurisdiction of the State Legislature and the Municipal Corporation have no legislative role to play by considering the extraneous material."

33. For all these reasons it is submitted by Mr. Shinde that the Writ Petition be dismissed.

34. Mr. Shinde has relied upon the following decisions in support of his above submissions:-

- (1) Anil Kumar Gulati and Others etc. Vs. State of M.P. and Others etc., .
- (2) Shanti G. Patel and Others Vs. State of Maharashtra and Others, .
- (3) B.K. Srinivasan and Others Vs. State of Karnataka and Others, .
- (4) Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others, .
- (5) I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others, .
- (6) AIR 1952 10 (Nagpur).
- (7) Syed Ahmed Aga and Others Vs. The State of Mysore and Others, .

35. In rejoinder to the above submissions, Ms. Karnik would urge that none of

the contentions of Mr. Shinde can be accepted because the State's decision is influenced by the demand of traders and secondly, because of the stand of the State, the Constitutional Scheme is wholly defeated and frustrated. She, therefore, submits that none of the judgments cited by Mr. Shinde and particularly the Full Bench judgment of the Madhya Pradesh High Court will assist the State in any manner. She submits that even other judgment of the Honourable Supreme Court of India in the case of Shanti G. Patel and Others Vs. State of Maharashtra and Others, will not assist the Respondents and therefore, the Writ Petition be allowed.

36. For properly appreciating the rival contentions we would first make reference to the position and status of the Municipalities under the Constitution of India. Part IXA of the Constitution of India contains the provisions regarding "the Municipalities". Article 243P contains the definitions and insofar as the term "Municipality", Article 243P(e) defines the term to mean an Institution of Self Government constituted under Article 243Q of the Constitution of India. Article 243Q deals with "Constitution of Municipalities" whereas Article 243R deals with it's composition. The constitution and composition of Ward Committees, etc. is dealt with by Article 243S and Article 243T provides for reservation of seats. Article 243U provides for duration of Municipalities. Article 243V deals with disqualification for membership. Then, comes Article 243W, on which strong reliance is placed by Ms. Karnik, which reads as under:-

"243W. Powers, authority and responsibilities of Municipalities, etc.:-

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

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

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

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

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

37. Upon a bare perusal of the same it is evident that subject to the provisions of the Constitution, it is the Legislature of a State and which may by law endow the Municipalities with such powers and authority as may be necessary to enable them to function as Institutions of self Government. That law may contain provisions for the devolution of powers and responsibilities upon the

Municipalities and that is how various aspects of planning, economic development, social justice and functions and duties in relation thereto have to be performed by the Municipalities. They have been entrusted to them. There is force in the contentions of Ms. Karnik that the provisions of every law and by which the powers, authorities and responsibilities have been endowed on the Municipalities must be construed in such a way so as to make existence of the Municipalities meaningful and purposeful. That it is an institution of self Government is, therefore, abundantly clear. That such Institution must have certain freedom, autonomy and independence is also apparent. However, her arguments overlook the fact that it is the State which has to make the necessary law. Even in terms of this Constitutional Scheme the law making power of the State is untouched. The power to impose tax by, and funds of, the Municipalities, is granted vide Article 243X. That reads as under:-

"243X. Power to impose taxes by, and funds of, the Municipalities-

The Legislature of a State may, by law-

(a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State-Government for such purposes and subject to such conditions and limits;

(c) provide for making, such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and

(d) provide for constitution of such Funds for crediting all moneys received respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom,

as may be specified in the law."

38. Therefore, what we have held above gets further reinforced and supported by Article 243X of the Constitution of India. It is the Legislature of the State and which makes the law by which Municipalities are authorized to levy, assess, collect and appropriate such taxes, dues, tolls and fees in accordance with such procedure and subject to such limits. There could be assignment of duties to the Municipalities. The State Government may assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits. Therefore, when the Legislature of the State has to endow the Municipalities and by law with powers and authority so as to enable them to function as institutions of self Government effectively, then, that position is in no way affected merely because the law authorizes the State to impose the taxes. Merely because the State has such powers in terms of the law of Legislature does not mean that by itself such law or any provision therein would fall foul of the constitutional mandate. By enactment of Section 127 of the said Act alone the independence of the Municipalities is in

no way affected. Chapter-XI of the said Act deals with "Municipal Taxation". The law itself states that the Corporation shall impose the tax, namely, property tax, tax on vehicles, boats and animals. Pertinently, sub-section (1) of Section 127 of the said Act is not in any way challenged and on the ground that the provisions therein encroach on any power of the Municipality of taxation. Eventually, the Municipality derives its power and authority to impose the tax from the law made by the Legislature. That such law obliges the Corporation to impose the property tax and tax on vehicles, boats and animals, therefore, cannot be said to be encroaching on its independence and autonomy. In fact by sub-section (2) of Section 127 what has been clarified is that 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 taxes stipulated in clauses of sub-section (2). Section 127 of the said Act reads as under:-

"127. Taxes to be imposed under this Act.

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

(a) property taxes;

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

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

(a) octroi;

(aa) a cess on entry of goods into the limits of the City for consumption, use or sale therein to be levied in lieu of Octroi with the previous sanction of the State Government:

Provided that, the State Government may, by notification in the Official Gazette, direct the Corporation to levy the cess on the entry of the goods into the City for consumption, use or sale therein, in lieu of octroi;

(aaa) Local Body Tax on the entry of the goods into the limits of the City for consumption, use or sale therein, in lieu of octroi or cess, if so directed by the State Government by Notification in the Official Gazette;

(b)

(c) a tax on dogs;

(d) a theatre tax;

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

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

impose in the State.

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

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

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

39. A perusal thereof would reveal that the Corporation shall impose the taxes specified in sub-section (1) and in addition thereto, it may impose for the purposes of the Act and subject to the provisions thereof, the taxes enumerated in clauses (a) to (f) of sub-section (2) of Section 127. That such discretion has been given to the Corporation and to impose the taxes in addition to the taxes which have to be compulsorily imposed, would go to show that the Legislature is aware that by imposition of the property taxes and taxes on vehicles, boats and animals alone, the expenses which have to be incurred by the Corporation cannot be met and mitigated. Therefore, the Corporation has been given discretion to impose the additional taxes and one of it is "octroi". There could be a cess on entry of goods into the limits of the city for consumption, use and sale therein and that could be levied in lieu of octroi, but that will be with previous sanction of the State Government. The proviso to clause (aa) of sub-section (2) of Section 127 would show that even if the Corporation decides to levy and continue with the octroi and not impose any cess on entry of goods in lieu thereof, still the State Government is empowered to direct the Corporation to levy the cess on entry of goods into the limits of the city for consumption, use or sale therein, in lieu of octroi. The prayers in the Writ Petition and if carefully perused are not that this proviso should be declared as unconstitutional, null or void nor is there any plea, elaborate or otherwise, to be found in the grounds in the Writ Petition, which would denote that prior to imposition of Local Body Tax the power conferred by the proviso can be termed as unconstitutional. What has been emphasized before us and during the course of argument is that when it comes to Section 127(2)(aaa), there is no such proviso. In other words, there is a contention raised that the proviso below clause (aa) confers discretion in the State Government to direct levy of cess on entry of the goods into the limits of the city for consumption, use or sale therein, in lieu of octroi whereas in comparison clause (aaa) does not contain any such proviso. That the absence of any proviso to clause (aaa) would show that once the State directs that Local Body Tax should be imposed, then, the Corporation has no choice or option, but to so impose it.

40. We do not see how the proviso to clause (aa) can be read in the manner suggested by Ms. Karnik. The Corporation has a discretion to impose and levy a cess on entry of the goods into the limits of the city in lieu of octroi, but even for

that it requires previous sanction of the State Government. The Corporation can shift to such cess in lieu of octroi, but in doing away with the octroi in this manner it would require previous sanction of the State Government. Therefore, the option given to switch over to cess in lieu of octroi is also conditional upon previous sanction of the State Government. If there is no previous sanction the cess cannot be levied is clear from clause (aa). By proviso to clause (aa) it is the State Government which has discretion to issue a notification and by it direct the Corporation to levy the cess on entry of the goods in lieu of octroi. In the event the State exercising such discretion, the Corporation has no choice or freedom. It then cannot insist on continuing the octroi. If the proviso of this nature is taken as guarantee against encroachment into the independence and autonomy of the Corporation flowing from the constitutional mandate, then, that argument is clearly misconceived. Even for additional tax or cess in lieu of octroi the State Government's previous sanction is necessary. Therefore, merely because the State's sanction is necessary or State's directions are binding, does not by itself and anything more denude the Municipality of its constitutional status and position.

41. In that regard the provisions contained in the said Act and particularly in Chapter-XXVIII ought to be noticed. Sections 448 to 452A fall under this Chapter and which is entitled "Control". By Section 448 there is a power conferred in the State Government to require performance of duties in default of any municipal authority. By Section 449 the expenses of measures enforced under Section 448 can be recovered. By Section 450 a power is conferred in the State Government to call for extracts from the proceedings, etc.. By Section 450A a power is conferred in the State Government to issue instructions or directions. That Section 450A reads as under:-

" 450A. Power of State Government to issue instruction or directions.

Notwithstanding anything contained in this Act, the State Government may issue to the Corporation general instructions as to matters of Policy to be followed by the Corporation in respect of its duties and functions and in particular it may issue directions in the larger public interest or for implementation of the policies of the Central Government or the State Government and the National or the State level programs, projects and schemes. Upon the issue of such instructions or directions, it shall be the duty of the Corporation to give effect to such instructions or directions:

Provided that, the State Government shall, before issuing any instructions or directions under this Section, give an opportunity to the Corporation to make representation within fifteen days as to why such instructions or directions shall not be issued. If the Corporation fails to represent within fifteen days or, after having represented the State Government, on considering the representation, is of the opinion that issuing of such instructions or directions is necessary, the State Government may issue the same."

42. Therefore, merely because a power is conferred in the State Government to issue instructions or directions, does not mean that the State would exercise it frequently and indiscriminately or as per its whims and fancies. The power in the State is coupled with a duty. The State is expected to exercise this power bonafide and for the reasons indicated in the statute. That is an overall control and the State is in a position of a patriarch or parent. The State would ensure that the constitutional mandate is not in any way defeated and frustrated or frittered away by the Municipalities and that is why the law enacted by the Legislature contains such provisions. A check and balance system in the form of supervision and control by the State is devised so as not to waste the mandate of the Constitution, but to ensure that the Municipalities act in public interest and for public good. Importantly, the power to tax is an incident of sovereignty. That under the framework of Indian Constitution only two principal bodies which have been vested with plenary powers to make laws. They are the Parliament for the Union and the State Legislatures for the State. In *New Delhi Municipal Committee Vs. State of Punjab*, etc. etc., the Honourable Supreme Court held as under:-

"91. We have great difficulty in accepting this assertion. Article 265 of the Constitution emphatically mandates that "no tax shall be levied or collected except by authority of law". Under the framework of the Constitution there are two principal bodies which have been vested with plenary powers to make laws, these being the Union Legislature, which is described by Article 79 as "Parliament for the Union" and the State Legislatures, which are described by Article 168 in the singular as "Legislature of a State". While certain other bodies have been vested with legislative power, including the power of levying taxes, by the Constitution for specific purpose, as in the case of District Committees and Regional Councils constituted under the aegis of the Sixth Schedule to the Constitution, the plenary power to legislate, especially in matters relating to revenue, still vests with the Union and the State Legislatures. Even if the submission that Municipalities now possess, under Part IXA of the Constitution, a higher juridical status is correct, the extension of that logic to the proposition that they have plenary powers to levy taxes is not, as is clear from a perusal of relevant part of Article 243X of the Constitution.....

92. Article 243ZB provides that this provision will be applicable to Union Territories and the reference to the legislature of a State would apply, in relation to a Union Territory having a Legislative Assembly, to that Legislative Assembly.

93. It is, therefore, clear that even under the new scheme, Municipalities do not have an independent power to levy taxes. Although they can now be granted more substantial powers than ever before, they continue to be dependent upon their parent Legislatures for the bestowal of such privileges. In the case of Municipalities within States, they have to be specifically delegated the power to tax by the concerned State Legislature. In Union Territories which do not have Legislative Assemblies of their own, such a power would have to be delegated by

Parliament. Of the rest, those which have Legislative Assemblies of their own would have to specifically empower Municipalities within them with the power to levy taxes.

94. We have already held that despite the fact that certain Union Territories have Legislative Assemblies of their own, they are very much under the supervision of the Union Government and cannot be said to have an independent status. Under our Constitutional scheme, all taxation must fall within either of two categories: State Taxation or Union Taxation. Since it is axiomatic that taxes levied by authorities within a State would amount to State taxation, it would appear that the words "or by any authority within a State" have been added in Article 285(1) by way of abundant caution. It could also be that these words owe their presence in the provision to historical reasons; it may be noted that Section 154 of the 1935 Act was similarly worded. The fact that Article 289(1), which in its phraseology is different from Section 155 of the 1935 Act having been drafted by the Drafting Committee to meet specific objections, does not contain words similar to those in Article 285(1), will not in any way further the case of the appellant, because the phrase "Union Taxation" will encompass Municipal taxes levied by Municipalities in Union Territories."

43. These provisions enable the State to exercise effective and proper control over the functioning and performance of it's duties by the Municipal Corporation. That is why the drastic power of suspending or rescinding any resolution or order of the Municipal Corporation or other Authority in certain cases is conferred in the State. In addition the power is conferred to dissolve the Corporation itself. Such being the sweep of the powers conferred in the State we do not see how by a mere direction to impose Local Body Tax and levy it within the municipal limits in lieu of octroi could be said to be destructive of the constitutional scheme. Once it is understood that the State has to act in furtherance of and to preserve, safeguard and protect the constitutional mandate and scheme and such powers as are noted above are conferred and to be exercised towards that end, then, there can be no hesitation in rejecting the submissions of Ms. Karnik that firstly in the absence of proviso below clause (aa) and secondly, wording of clause (aaa) itself is ultra vires and unconstitutional being contrary to the scheme noted above.

44. Ms. Karnik submits that not only because there is absence of proviso and in the above terms that clause (aaa) is unconstitutional, ultra vires the above Articles of the Constitution of India. She submits that what has been provided by the Legislature and by the subject law in connection with either alternative or additional taxes elsewhere in the said Act, would lend to support her above submissions. Meaning thereby, whenever the State enables imposition and levy of cess in lieu of octroi or allows the octroi to be levied, assessed and recovered, the law takes care and makes no encroachment in the powers of the Municipal Corporation to determine the rates, select the goods and articles for imposition and levy, the manner in which the levy has to be imposed, assessed and

recovered and all such matters can be decided by the Municipal Corporation itself. The said Act contains enough provisions enabling the Municipal Corporation to take care of these matters and also to frame the Rules in that regard. However, when it comes to Local Body Tax all such provisions are clearly absent and that is why we should take assistance of the provisions like clause (aa) or the proviso thereto and such other Sections in the said Act.

45. Ms. Karnik submits that such is the extent of control and regulation of the State in the matter of Local Body Tax that the Municipal Corporation is helpless. It cannot request the State that it should be given any exemption or it should be relieved from imposition or levy of Local Body Tax. The moment the notification is issued by the State Government in the official Gazette and which contains the direction to the Municipal Corporation concerned to impose and levy Local Body Tax in lieu of octroi or cess, the Municipal Corporation is obliged to do so. It must carry out and implement this direction of the State. Secondly, if one has a look at the other provisions and particularly Sections 99A, 99B, 99C and 99D in juxtaposition and in comparison with Section 99 of the said Act, then, this aspect becomes clear and unambiguous. She submits that by Section 99A the provisions of Section 99 are not to be applied to the cess to be first levied.

46. To our mind, a perusal of Section 99A would reveal that the same deals with a cess in lieu of octroi and to be levied in terms of Section 127(2)(aa). As far as the Local Body Tax is concerned the provisions are contained in Sections 99B, 99C and 99D which read as under:-

"99B. Determination of categories of goods for Local Body Tax:-

The State Government shall, on or before the twentieth day of the February each year, after considering the proposal of the Commissioner in this behalf, and subject to the limitations and conditions prescribed in Chapter XIB, determine the rates and the extent to which the taxes referred to in clause (aaa) of sub-section (2) of Section 127, shall be levied, for various categories of goods in the next ensuing official year and notify such rates and extent in the Official Gazette.

99C. Provisions of section 99B not to apply to Local Body Tax to be first levied:-

In the event it is decided first time to levy Local Body Tax specified in clause (aaa) of sub-section (2) of section 127, if the Local Body Tax can not, by following the provisions of section 99B and the other relevant provisions of this Act, be brought into force on the 1st day of April of any year, then in that case, notwithstanding anything contained in section 99B, the State Government may, by notification in the Official Gazette, subject to the limitations and conditions laid down in Chapter XIB and the rules, determine the rates at and the extent to which and the date from which, the Local Body Tax shall be levied; and thereupon, the Local Body Tax shall be levied at the rates, extent and from the date so notified, and all the relevant provisions of this Act shall, so far as may be, apply to the Local Body Tax as if the procedure laid down by section 99B and the other provisions of this Act had been followed.

99D. Power of State Government to revise rates of Local Body Tax:-

(1) Notwithstanding anything contained in section 99B or 99C, the State Government may at any time, by notification in the Official gazette and for reasons to be specified in such notification, revise the rates and extent of the Local Body Tax determined under section 99B, or, as the case may be, under section 99C.

(2) Every notification issued under sub-section (1) shall be laid, as soon as may be, after it is issued, before each House of the State Legislature."

47. True it is that the determination of categories of goods for the Local Body Tax has to be done by the State Government, but that is by virtue of its position as the patriarch and parent as noted above. The power is conferred in the highest executive functionary, namely, State Government. It is presumed that this power will be exercised bonafide, reasonably and for upholding the avowed object and purpose of the said Act. Further, there are inbuilt checks and safeguards in the scheme of Section 99B to Section 99D itself. When the State determines the categories of goods for Local Body Tax it is obliged to consider the proposals of the Commissioner. Further, that power is subject to the limitations and conditions prescribed in Chapter XIB which contains the provisions relating to Local Body Tax. There, the levy of Local Body Tax is by the Corporation. It levies and collects the Local Body Tax subject to the provisions of Chapter XIB and Rules. Similarly, there also the State Government is conferred with discretion vide Section 152Q not to levy the Local Body Tax on certain goods. This decision is taken by the State after consideration of the proposals of the Commissioner and by Section 152R the provisions of Chapter XIA have been made applicable to levy and collection of Local Body Tax. Meaning thereby, the provisions relating to levy, collection and recovery of cess in lieu of octroi, contained in Chapter XIA shall mutatis mutandis apply to levy and collection of Local Body Tax. There, the levy and incidence of cess, certain goods not liable or exempt from cess, liability of cess in certain cases, cess authorities, registration, memorandum of sales or purchases, liability to maintain and produce accounts, production and inspection of accounts and documents and search of premises, seizure of books of accounts and goods, etc. are some of the matters and all the provisions in relation thereto as are to be found in Chapter XIA are made applicable to Local Body Tax. The Local Body Tax regime is, therefore, not such as could be termed as destructive of the constitutional scheme. Rather at every stage and at every step the proposals of the Commissioner have to be considered by the State Government. The word "consider" means "think carefully about, believe to be, take into account when making a judgment, look attentively at" (As defined in Concise Oxford English Dictionary, Eleventh Edition, Revised). Therefore, it is not as if the wishes of the representatives of people residing within the municipal limits, their views and suggestions, their difficulties and problems, would be ignored or not taken into account at all. The criticism of Ms. Karnik is that assuming all these provisions are termed as safeguards, inbuilt checks and balances, yet the

provisions use the word "Commissioner" and not "Corporation". It is her apprehension that the Commissioner is ordinarily and normally imposed on the Corporation by the State Government. He is appointee of the State Government. On more occasion than one the experience is that the political party in power in the State and the Municipal Corporation is not the same. Meaning thereby the political outfit or political power vests in different parties. The petty party politics and political considerations have definite role to play. The Commissioner, therefore, does not necessarily work in tandem or in coordination with the Municipal Corporation. There is a tendency to override the Municipal Corporation and through the Commissioner. Therefore, the Commissioner may forward the proposals favourable to the State Government or party in power in the State or he may not forward any proposal for consideration at all, then, that would enable the State Government to impose its decisions and directions on an elected body like the Municipal Corporation. That is how the constitutional scheme would be defeated and frustrated.

48. We do not find any basis for this apprehension. These submissions overlook the provisions of the said Act. The said Act firstly sets out the definition of "Corporation". The "Corporation" is defined in the Constitution itself. It is an entity which comes into being in a larger urban area. The constitution of the Corporation is set out in Section 3 of the said Act. The municipal authorities and charged with execution of the said Act are those set out in Section 4. One such municipal authority is the Municipal Commissioner. However, the Corporation by itself is understood as a body corporate having perpetual succession and a common seal and by such name may sue and be sued. It consists of elected councillors and its composition is in terms of Section 5. The powers of the Municipal Corporation and that of the Commissioner have then to be exhaustively referred.

49. In that regard one cannot lose sight of the fact that the management of local affairs is with the Corporation. It is in the General Body of the Corporation that such power vests. The Commissioner being one of the authorities specified by the said Act thus, cannot be held to be a parallel authority and by himself. What the said Act envisages is, it shall be incumbent on the Corporation to make reasonable and adequate provision by any means or measures by which it is lawfully competent to use or take for the matters specified in Section 63 and for the matters specified in Section 66 it may use all its discretion and provide from time to time either wholly or partly for all or any of the matters therein. The performance and of functions and duties imposed or assigned to the Corporation under the said Act or any other law for the time being in force by the State Government and other authority can be discharged either by the Corporation by itself or subject to such directions as may be issued and in terms and conditions as may be determined by the State Government cause it to be discharged or performed or implemented by any agency. It is in these circumstances that one must note Section 67 of the said Act. By sub-section (1) thereof, respective functions of several municipal authorities shall be such as are specifically

prescribed by or under the said Act. Except as otherwise expressly provided in the said Act the municipal government of the city vests in the Corporation. There is, therefore, no force in the complaint that the Commissioner will override the Corporation or ignore it or brush aside its decisions, leave alone the views. When the General Body expresses itself and by means known to law, then, the General Body's proposals, views and suggestions have to be communicated by the Commissioner and that would constitute the proposals of the Commissioner. If the Commissioner does not independently hold any view on the Local Body Tax or any aspect thereof, then, he must forward the views, suggestions and communicate the decisions of the General Body to the State Government by incorporating them in his proposal. In other words, the proposals of the Commissioner would contain the decisions taken by the General Body at its meetings, views and suggestions incorporated in the resolutions of the General Body passed from time to time and equally those of the Authorities who are put in charge of the matters and which are specified by the said Act. Once this is the scheme of the Municipal Law and it is understood in this manner, so also, in this perspective, then, there is no warrant or basis for the apprehension expressed by Ms. Karnik.

50. Eventually, if the Municipal governance vests in the Corporation and it is taken to be the representative body of the people residing within its limits, then, it is the voice of the people themselves. They speak through their representatives. Ignoring the Municipal Corporation would mean ignoring the residents themselves. By no stretch of imagination any of the provisions and which are attacked by the Petitioners can be so read as taking away this position and status of the Municipal Corporation. It is a body corporate representing the people. It is a Government at the municipal level. Once it is charged with the Municipal Governance and it vests in it, then, it is performing a public duty and therefore, it is expected to act in public interest and for public good.

51. In that regard the role of a Municipal Councillor needs to be emphasized. In the context of a Municipal Representative and representing population of the ward or constituency the Honourable Supreme Court in Baldev Singh Gandhi Vs. State of Punjab and Others, held as under:-

"9. The appellant herein is an elected municipal councilor to a democratic institution i.e. local body. The aim and object of the Act is to make better provisions for administration of municipalities. The municipality is a democratic institution of self governance consisting of local people and for the local people and by the local people. The prime object of the local body is to serve the local people and to provide amenities and service to the people residing within the municipality. As a representative of the public it is the duty of an elected representative to see that the public of his constituency are not burdened with excessive and arbitrary levy. No doubt, a municipal commissioner holds a statutory office in a municipal council, but no statutory code of conduct in respect of municipal councillors has been enacted. However, it is a different

question whether such a law could be framed as to restrict the freedom of speech and expression of a municipal councilor. However, it must be borne in mind that the appellant was not an employee or a servant of the municipal council and also never held any office of profit in the municipal council. Every citizen, inasmuch as a municipal councilor, has a freedom of speech and expression under Article 19(1)(a) of the Constitution which includes fair criticism of the law or any executive action. Freedom of speech and expression is guaranteed in our democratic republic both in legislature as well as in local bodies and, therefore, a legislator or municipal councilor legitimately can express his views in regard to what he thinks to be in public interest. A legitimate exercise of right of speech and expression including a fair criticism is not to be throttled."

52. Once the Municipal Councillor has been put at such pedestal and level by law, then, we do not see as to how the Commissioner would be in a position to sidetrack leave alone bypass the Municipal Councillors. Even if the Commissioner is appointed by the State Government and has to perform certain balancing acts, yet it is expected of him that he communicates to the State the desires and wishes of the local population. These wishes and desires may not be palatable or acceptable to those who are in power at the State Level. They may be of different political thought and idea, but so long as the area within the municipal limits or city forms a part of the State boundary and is within the State, then, the State Government also is expected to ask the Commissioner to incorporate in his proposals all such views and suggestions and which may not be in tune with the Commissioner's thought process. Therefore, not only the Commissioner is obliged to incorporate in his proposals all views and suggestions and with which he agrees or otherwise, but equally the State while considering the proposals forwarded or in the event no such proposals being forwarded by the Commissioner, must insist on the Resolution of the Municipal Corporation on the subject being forwarded to it. It can call upon the Commissioner to obtain the views and suggestions of the Municipal Corporation, namely, General Body and forward the same to it within a time frame. That would guarantee respect for a divergent or different view point. That would be in the spirit of democracy and upholding the democratic traditions as well. That is how the State and the Commissioner would have to act and once they are obliged to act in this manner and to uphold the Constitutional scheme, then, there is no scope for the plea that the law falls foul of the same and in the manner suggested by Ms. Karnik.

53. Therefore, we are of the view that whenever the State calls upon the Municipal Corporation to levy the Local Body Tax it is not imposing it on the Municipal Corporation, but reminding it to levy, assess and collect the tax which is more friendly and serving all people including traders. That the Local Body Tax has to be then levied, assessed and collected by the Municipal Corporation does not mean that the State takes an unilateral decision in all matters connected with the levy. Though the State takes a decision the Municipal Corporation is not overlooked and as understood above. Therefore, the determination of the rate of

levy, selection of articles and goods, manner of levy, assessment and recovery though controlled by the State, but the Municipal Corporation has definite role to play in the same. Its role is by no means diluted or diminished. It is eventually the Local Body Tax and to be levied, assessed and recovered by the local body. Therefore, the State Government being empowered by the various provisions noted above to direct levy, to regulate and control its assessment and recovery, does not mean that the autonomy and independence or status and position of the Municipal Corporation is in any manner threatened leave alone defeated or frustrated.

54. If all these provisions are read together and harmoniously and understood in the above perspective, then, there is no hesitation in rejecting the submissions of the Petitioners to the contrary. We are in agreement with Mr. Shinde that the Constitutional Scheme is in no way affected by the amendments made to the said Act.

55. Once the above view is taken strictly it is not necessary to deal with other contentions raised before us. Apart from the fact that we find no merit in the allegation that the Local Body Tax is directed to be imposed and levied so as to take care of interest of the traders alone, we do not find any basis or foundation for the further allegation that the Municipal Corporation's revenue collection would be necessarily reduced or decreased. Just as the municipal employees are expected to recover all taxes including octroi honestly and diligently, equally when they are expected to recover the Local Body Tax, they have to act accordingly. They cannot shirk their responsibility and avoid their duty. There are enough provisions and when some of the sections in relation to the cess and its recovery have been mutatis mutandis made applicable to the levy, assessment and recovery of the Local Body Tax, then, all the more there is no force in the contentions of Ms. Karnik. The employees are also expected to uphold the interest of the Municipal Corporation and that of the public of which they are part of. They have enough powers and to enter upon the premises, effect searches, inspection, etc.. We have noted them exhaustively. In these circumstances we do not find any basis for the complaint that the revenue collection will be adversely affected and thereby causing strain on the budget. The municipal funds are no way decreased or burdened merely because another tax is to be imposed and in lieu of octroi. There is no vested interest of anybody in levy, assessment and collection of octroi and much less any vested right of the municipal employees. For that matter they cannot insist that the Municipal Corporation should levy a particular tax or not levy another additional or alternative tax. They cannot further insist that the Municipal Corporation cannot have alternate taxation or additional tax in lieu of cess or vice-versa. These are not matters where they have any conclusive voice. At the most they may place their suggestions and views before the Municipal Authorities, beyond that the law does not give them any right and to impose their views. In such circumstances we do not find any reason to declare the impugned provisions unconstitutional at their behest or at their instance. In view thereof, we do not find any merit in these Writ Petitions.

56. The reliance placed by Mr. Shinde on the Full Bench decision of the Madhya Pradesh High Court in *Anil Kumar Gulati v/s. State of M.P. (supra)*, is apposite and well placed. The Full Bench presided over by Honourable Mr. Justice Dipak Misra (as His Lordship then was) has very succinctly analyzed the scheme of the municipal governance and emerging from the constitutional provisions. Their Lordships have held thus:-

"17. The first submission advanced by the learned counsel for the petitioners is that in view of the incorporation of certain Articles under Chapter-IXA of the Constitution, the Municipal Corporations and the Municipalities should have been given a free hand to take their own decision but the Legislature having prescribed the criteria, has transgressed the constitutional mandate. To appreciate the aforesaid submission, it is apposite to refer to certain provisions of the Constitution. Article 243Q deals with constitution of Municipality. By virtue of the said Article, the word "Municipality" cover Municipal Corporation. This view has been taken by the Apex Court in the case of *Cantonment Board, Secunderabad Vs. G. Venketram Reddy and Others*, . Article 243R deals with composition of Municipalities. Article 243S provides for constitution and composition of Wards Committees etc. Emphasis has been laid on Article 243Y which provides that the Finance Commission constituted under Article 243I shall also review the financial position of the Municipalities and make recommendations to the Governor as to the principles which should govern the distribution between the State and the Municipalities of the net proceeds of the taxes, tolls and fees leviable by the State. The said provision also prescribes the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Municipalities.

20. It is submitted by the learned counsel for the petitioners that if the aforesaid Article is scanned and scrutinized in proper perspective, it is absolutely vivid that the Legislature of the State has been authorised by the Constitution only to authorise the Municipalities for the purpose of levy, collection and appropriation of certain taxes but there is no other power bestowed on the Legislature. The Legislation has to be in accordance with concept of institution of self-governance but the Legislature by ordaining the procedure has transgressed its limits.

21. On a bare reading of the aforesaid Article, it is perceptible that Article 243W clearly stipulates that subject to provisions of the Constitution, the Legislature of a State may, by law, endow the Municipalities with such powers. Thus the source of power rests within the State Legislature. True it is, there is some concept of self-governance but the Constitution has not empowered the Municipalities to impose taxes on its own as if it has the power to impose taxes by itself as that would have defeated and destroyed many a provision of the Constitution. Article 243X also postulates that the Legislature of a State may, by law, authorise a Municipality to collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits. The aforesaid provision is plain as day to indicate that the Legislature has the authority and it

may authorise the Municipality to collect such taxes in accordance with such procedure and subject to such limits. The significance of the term "such" used at three places under Article 243X(a) cannot be allowed to be marginalised. Thus the submission that the Legislature should have left it to the total discretion of the Municipality or Municipal Corporation is absolutely sans substance.

54. In view of our preceding analysis, we proceed to enumerate our conclusions in seriatim:

(i) The concept of self-governance as provided under Chapter IXA of the Constitution is not absolute and subject to law made by the Legislature.

(ii) Neither the Municipal Corporation nor Municipality can impose tax independently without the authority of State Legislature as that would tantamount to create a sovereign within a sovereign which is impermissible in our constitutional framework and philosophy.

(iii) The contention that the Legislature could not have made law in respect of the role of Municipal Corporation and Municipality is absolutely unfounded and baseless.

(iv) The submission that even if the Legislature has the competence to make law, it should have provided in a specific manner in the main enactment and not left a part of it to the executive, is sans substance.

(v) There is no abdication of basic legislative function by the Legislature. The preponement that there is excessive delegation is devoid of merit.

(vi) The decision rendered in the case of Ratnaprabha (AIR 1977 SC 308) (supra) which has been followed in the case of Indian Oil Corporation Ltd. Vs. Municipal Corporation and Another, have lost their effectiveness because of the base of the said pronouncements has been wiped out by amendment brought in the enactments which has fundamentally altered the situation.

(vii) Sections 138 of the Municipal Corporation Act and Sections 126, 127 and 127A of the Municipalities Act are not defiant of Article 14 of the Constitution of India and do not suffer the frown of the equality clause or any kind of arbitrariness or irrationality.

(viii) Though amendments in respect of other provisions in both the statutes have not been carried out, there is no inconsistency and a harmonious construction is possible and, therefore, on that score the aforesaid provisions cannot be declared as ultra vires.

(ix) With regard to imposition on penalty as provided under Section 138(3) of the Corporation Act and 126(3) of the Municipalities Act, it is inappropriate to state that the authorities, have no discretion to reduce it or there is an un rebuttable presumption in that regard. If the property owner can satisfactorily show that there was bona fide error or mistake on his part, the competent assessing authority can reduce the penalty.

(x) The property owner who is under legal obligation to file the return in regard to self assessment but fails to do so, would be liable to pay surcharge which is irreducible.

(xi) The imposition of penalty can be assailed by way of an appeal before the Mayor-in-Council inasmuch as the assessment is done by a authority so designated under the statute and the Mayor-in-Council being the microcosm of Municipal Corporation has the competence to deal with the same in appeal.

(xii) It would be incumbent on the Municipal Corporation or the Municipality to pass a resolution by fixing the rate on per square foot basis taking into consideration the concept of standard rent fixed under the M.P. Accommodation Control Act though fixation of standard rent would not be the governing or principal primal factor but would be one of the factors. It is also clarified that the fixation of standard rent in respect of a singular house would not meet or subserve the purpose of guidance but when there is fixation of standard rent in respect of a cluster of houses or group of houses that would be taken cognizance of by Municipality or by Municipal Corporation while fixing the annual letting value per square foot on zone basis.

(xiii) If a property owner is affected by the resolution passed by the Municipal Corporation or Municipality can assail the same in entirety before the appropriate authority as provided under both the statutes which we have indicated hereinabove.

(xiv) If a person is aggrieved with regard to assessment of a property situate inside the Corporation can assail it before the District Judge under Section 149 of the Corporation Act and if a person whose property is situated in the Municipality and is grieved by an order of assessment can file an appeal before the Civil Judge as provided under Section 139 of the Municipalities Act. It is hereby made clear that the challenge can be made on every ground except on the ground pertaining to rate as fixation of rent is intrinsically collective and can only be assailed when resolution is challenged before the competent authority.

(xv) It is imperative to State here that it is requisite on the Municipal Corporation as well as the Municipality to fix the rent on category basis taking into consideration the classifications made under the principal enactment and the 1987 Rules."

57. The other decisions cited by Mr. Shinde need not be specifically referred.

58. Lastly, we do not find any basis for the complaint made by Ms. Karnik that the dispensation of previous publication and while enacting and framing the Rules falls foul of the provisions and particularly contained in the Bombay General Clauses Act, 1904.

59. In that regard it has been clarified by the Respondents in the affidavit filed in reply and particularly while dealing with the ground 14(J) of the Writ Petition. The Respondent No. 1 has denied that wide publicity to the proposed Rules was

not given. We find that the Draft Rules were published in the Government Gazette and that has not been denied. The argument is that in addition to this the Draft Rules ought to have been published in the local newspapers. However, reliance was placed on Section 24 of the Bombay General Clauses Act, 1904 by both sides. When the reliance was placed on this provision that itself belies the stand of the Petitioners that the draft was not published. In this case the draft was published in the Government Gazette. Ms. Karnik would term this as no compliance at all and in that regard, she submits that the emphasis ought to be on the publication for information of the persons likely to be affected thereby. She submits that the Municipal Corporation, Corporators, employees of the Corporation as also public at large which was severely affected by major change in the tax regime and having wide ramifications were not informed.

60. We are not able to agree with her. Pertinently, none of the Municipal Corporations or the Corporators have come forward and raised such a plea. Secondly, this section of public is definitely well versed with publication of such drafts in the Government Gazette. Therefore, it is not possible to accept the argument of Ms. Karnik that there is no compliance with Section 24 of the Bombay General Clauses Act, 1904. In this regard what we find from reading of the provisions particularly Section 5 in the Bombay General Clauses Act, 1904 is that it is the official Gazette in which the Act is published and comes into operation on the date on which the assent thereto of the Governor or President as the case may be required is obtained. Thus, it is first published in the official Gazette. Therefore, it is futile to contend that publication in the official Gazette of the draft does not, in the given facts and circumstances, meet the requirement of law. No wider question or controversy needs to be dealt with. The ground in the petition being limited to this aspect, we have no hesitation in rejecting the same. Further, we are not in agreement with Ms. Karnik that there is any undue haste in bringing the Local Body Tax into force.

61. Lastly, the argument was that the mandate of Article 301 and Article 304(b) of the Constitution of India has been violated. Even that argument is without any force inasmuch as what Article 301 guarantees is that the trade, commerce and intercourse throughout India shall be free. However, this is subject to other provisions of Part-XIII of the Constitution of India. That contains Article 302 which permits the Parliament to impose such restrictions as may be required in public interest. In the present case we do not see how this Constitutional mandate has been infringed because the Legislature of a State can impose by law on the goods imported from other States and Union Territories any tax on similar goods manufactured or produced in that State, but that is so subjected as not to discriminate between the goods so imported and the goods so manufactured or produced. Equally, the State can impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest. We have not been shown anything insofar as the argument premised on Article 304(a). If the argument is based on Article 304(b) and the allegation is that there is no compliance of the

mandate thereof, then, we find that there is no averment in the petition firstly, that imposition of Local Body Tax is not a reasonable restriction and secondly, it is not so because it is not in public interest either. In the absence of such averments, on some vague plea raised during the course of arguments, we cannot consider such a serious aspect. Even otherwise we do not find the Constitutional mandate is flouted in any manner. The reliance placed on the judgment of the Honourable Supreme Court in the case of Syed Ahmed Aga and Others Vs. The State of Mysore and Others, is well placed. The Petitioners have failed to show as to how they are affected by imposition of Local Body Tax. The Petitioners are the Municipal Corporation Employees' Unions. Their jobs and their salaries are not adversely affected. The restrictions which have been placed by way of service conditions upon them are not questioned by them any time. None of the traders or businessmen or industrialists have raised before us a challenge and on the footing that they were unduly hampered from carrying on their business as there are unreasonable restrictions on their fundamental rights. In these circumstances this argument need not detain us.

62. For the aforesaid reasons even the other contentions canvassed before us and faintly are without any substance.

63. In these circumstances the Writ Petitions are dismissed. Rule is discharged in each of them. However, there will be no order as to costs.