(2006) 09 CAL CK 0024

In the Calcutta High Court

Case No : Writ Petition No. 2052 of 2004

Outdoor Advertising Association and Another and Selvel Advertising Private Ltd. and Another	APPELLANT
Vs	
Kolkata Municipal Corporation and Others and Kolkata Municipal Corporation and Others	RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:
Calcutta Municipal Corporation Act, 1980 — Section 202

Citation : (2007) 1 CALLT 338

Hon'ble Judges : Sumitra Sen, J

Bench : Single Bench

Advocate : Ashoke Banerjee, Sushovan Sengupta and Avijit Chakroborty for the Petitioner in W.P. No. 2052 of 2004, for the Appellant; A.C. Kar and S. Chakroborty for the Petitioner in W.P. No. 2003 of 2003 and Alok Ghosh and Pramit Roy for the K.M.C., for the Appearing Parties

Judgement

S. Sen, J.—The Petitioners in these applications have impugned the imposition of taxes, fees and charges for display of advertisement and the notice of demand issued on the basis of regulations made by the Kolkata Municipal Corporation (hereinafter referred to as ''the Corporation'').

2. The Petitioners have raised a fundamental question with regard in the power of the Corporation to charge and/or impose fee for grant of permission for erecting, exhibiting or fixing any hoarding, frame, post, kiosk or structure or any advertisement on any land, building or wall within the municipal limits.

3. It is the contention of the Petitioner that having regard to the various provisions of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as ''the said Act'') in particular Sections 202, 203 and 204, the Corporation does not have any authority to impose any tax for grant of permission for exhibiting any advertisement in any form over any land, building or wall.

4. The Petitioner also contends that the regulations framed by the Corporation

relating to schedule of taxes, fees and charges for displaying advertisement contravenes the relevant provisions of the said No.

5. The Petitioners have further contended that the Corporation does not have any authority u/s 204 of the said Act to impose any tax for periods when no advertisements have been displayed on the hoarding affixed on any building, structure or wall.

6. Relying upon the various provisions of the Sections 202, 203 and 204 of the said Act it is submitted on behalf of the Petitioners that incorporation does not have any authority to charge permission fee, as it is not a tax as contemplated u/s 204 of the said Act.

7. It is further contended on behalf of the Petitioners that the uniform rate of fees and/or tax imposed for displaying permission anywhere in Kolkata is arbitrary as the cost of acquiring space for the purpose of displaying advertisement is not the same in different parts of the city of Kolkata.

8. In order to property appreciate the purport of the statutory provisions as contended on behalf of the Petitioner the relevant provisions of the said Act are set out as under:

Section 202. Prohibition of advertisements without written permission of the Municipal Commissioner.-(1) No person shall erect, exhibit, fix or retain upon or over any land, building, wall hoarding, frame post, kiosk or structure any advertisement, or display any advertisement to public view in any manner whatsoever visible from a public street or public place (including any '' advertisement exhibited by means of cinematography), in any place within Calcutta without the written permission of the Municipal Commissioner.

(2) The Municipal Commissioner shall not grant such permission of-

(a) a license for the use of the particular site for purpose of advertisement has not been taken out, or

(b) the advertisement contravenes any provisions of this Act or the rules or the regulations made there under, or

(c) the tax, if any, due in respect of the advertisement has not been paid, or

(d) the Mayor-in-Council, on the basis of the recommendation of the Heritage Conservation Committee, is of the view that such advertisement will obstruct the view of, or destabilize the structure of, or will not be in harmony with, any heritage building.

(3) No person shall broadcast any advertisement, except on radio or television, without the written permission of the Municipal Commissioner.

Section 203. License for use of site far purpose of advertisement.- (1) Except under and in conformity with the terms and conditions of a license, no person being the owner, lessee, sub lessee, occupier or an advertising agent shall use or allow to be used any site in any land, building, wall or erect or allow to be erected on any site, any hoarding, frame, post, kiosk, structure, neon-sign or sky-sign for the purpose of display of any advertisement.

(2) For the purpose of advertisement, every person-

(a) using any site before the commence of this Act, within ninety days from the date of such commencement, or

(b) intending to use any site, or

(c) whose license for use of any site is about to expire, shall apply for a license or renewal of a license, as the case may be, to the Municipal Commissioner in such form as may be specified by the Corporation.

(3) The Municipal Commissioner shall, after making such inspection as may be necessary and within thirty days of the receipt of the application, grant, refuse, renew or cancel a license, as the case may be, on payment of such fees as may be determined by the Corporation by regulations or as the budget estimate shall state under Sub-section (3) of Section 131.

(4) The Municipal Commissioner may, if in his opinion the proposed site for any advertisement is unsuitable from the considerations of public safety, traffic hazards, aesthetic design, or obstruction of the view of, or harmony with, any heritage building, refuse a license or refuse to renew any existing license.

(5) Every license shall be for a period of one year except in case of sites used for temporary fairs, exhibitions, sports events or cultural or social programmers.

(7) The Municipal Commissioner shall cause to be maintained a register wherein the licenses issued under this section shall be separately recorded in respect of advertisement sites-

(a) on telephone, telegraph, tram, electric or other posts or poles erected on or along public or private streets or public places,

(b) in lands or buildings,

(c) in cinema halls, theatres or other places or public resort.

Section 204. Tax on advertisements.-(1) Every person, who erects, exits, fixes or retains upon or over any land, building, wall, hoarding, frame, post, kiosk or structure any advertisement or, displays any advertisement to public view, in any manner whatsoever, visible from a public street or public place (including any advertisement exhibited by means of cinematograph) shall pay for every advertisement which is so erected, exhibited, fixed or retained or so displayed to public view, a tax calculated at such rate as the Corporation may determine by regulations or as the budget estimate shall state under Sub-section (3) of Section 1.31:

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Provided that a surcharge not exceeding fifty per cent, of the applicable rate may be imposed on any advertisement on display of temporary fairs, exhibitions, sports events or cultural or social programmers.

(2) Notwithstanding the provisions of Sub-section (1), no tax shall

be levied under this section on any advertisement which-

(a) relates to a public meeting or to an election to Parliament or The State Legislature or the Corporation or to candidature in respect of such election; or

(b) is exhibited within the window of any building if the advertisement relates to the trade, profession or business carried on in that building; or

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

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

(e) relates to the business of a railway administration and is exhibited within any railway station or upon any wall or other property of a railway administration; or

(f) relates to any activity of the Government or the Corporation,

(3) The tax on any advertisement livable under this section shall be payable in advance in such number of installments and in such manner as the Corporation may by regulations determine or as the budget estimate shall state under Sub-section (3) of Section 131.

Provided that the Corporation may under the terms and conditions of the license u/s 203 require the licensee to collect and pay to the Corporation, subject to a deduction of five per cent to be kept by him as collection charges, the amount of tax in respect of such advertisements as are displayed on any site for which he is the licensee.

9. From the aforesaid provision, it is clear that before an owner, lessee, sub-lessee, occupier or an advertising agent is allowed to use any site or any land, building or wall for causing any advertisement to be displayed in any form, a license is required to be obtained u/s 203 of the said Act.

10. It is, therefore, apparent that an owner, lessee, sub-lessee or occupier of a building may not necessarily be the person causing any advertisement to be displayed, but is only allowing the land, building or wall over which they have a right to be used for displaying, the advertisement and in doing so such persons are required to obtain license. However, an "advertising agent" who is not necessarily an owner, lessee, sub-lessee or occupier of a land, building or wall, before causing any advertisement to be displayed is also required to obtain a

license u/s 203 of the said Act.

11. On a proper construction of Section 203 of the said Act legislative intent as contained in the said Section 203 of the said Act appears to me that when an owner, lessee, sub-lessee or occupier causes an advertisement to be displayed on any land, building or was thereto is required to obtain a license and an advertising agent who may not be an owner, lessee, sub-lessee or occupier of any land, building or wall is also required to obtain a license if such an advertising agent causes any advertisement to be displayed on any land, building or wall belong to others.

12. u/s 202 of the said Act before displaying any advertisement on any land, building or wall by anyone a written permission from the Municipal Commissioner of the Corporation is required. Section 202(2) makes it clear that the Municipal Commissioner shall not grant such permission under certain circumstances. One of such circumstances is not obtaining a license for causing any advertisement to be displayed which is required u/s 203 of the said Act. The permission shall also be refused if any tax remains unpaid in respect of the particular advertisement for which permission has been sought.

13. The enabling provision for imposition of tax is contained in Section 204 of the said Act. u/s 204 of the said Act every person who causes any advertisement to be displayed in any form over any land, building or wall by any form is required to pay tax calculated at such rate as the Corporation may determine by regulation or a stated in the budget estimate framed u/s 131 of the said Act,

14. Therefore, it appears to me that the procedure for displaying any advertisement as contained in the aforesaid provision requires a person intending to cause any advertisement to be displayed is first to obtain a license, then written permission from the Municipal Corporation for displaying such advertisement and then pay tax for the same.

15. From Section 202(2), it is clear that permission may be refusing if a license is not obtained and if there is outstanding dues on account of unpaid tax. The said section does not contain any provision for refusing to grant permission for non-payment of any permission fee.

16. When an advertisement is displayed for the first time there cannot be any question of any outstanding tax. It is, therefore, obviously that Section 202(2)(c) will not apply in cases where permission is sought for displaying advertisement for the first time.

17. Section 204(2) contains the exception to the general condition of imposition of tax. Under the said provision certain advertisement have been exempted from imposition of tax.

18. If the various exemptions as contemplated u/s 204(2) is harmoniously construed the meaning which emanates there from suggests that if any advertisement is exhibited for self-purposes and not for advertising the products

or for the purpose of others then no shall be levied for the same. Therefore, if a doctor or a lawyer or other professional displays any advertisement about his own profession which is carried on at and from the said building and site then no can be levied for the same. It also appears that if the owner or couple of such land or building displays an advertisement of his own name over such land or building no tax can be levied for the same.

19. Applying the aforesaid analogy it appears to me that if a person under an agreement with an owner, lessee, sub-lessee or occupier displays any advertisement of his own name and not the name(sic) product or any purpose or any third party it would come within meaning of the exemption contained in Section 204(2).

20. The aforesaid conclusion is relevant for the purpose of decided an important question raised by the Petitioner, that for the period was no advertisement is displayed in the hoarding or other form of advertisement of any third party and only the name of the members the Petitioner is displayed no tax can be levied.

21. It is true that in such a large metropolitan area it will be well high impossible for the Corporation to test the veracity of the states made by the members of the Petitioner that for a particular period of advertisement was issued, but administrative difficulties cause override the statutory provisions. It is well settled that a charging section should be strictly construed when the section itself doing permit the Corporation to levy tax under certain circumstance, Corporation cannot be permitted to realize tax in contravention of the provisions.

22. It has been contended on behalf of the Corporation that Section 543 of the said Act empowers the Corporation to charge a fee for issuing any license or giving any written permission. For the sake convenience Section 543 is set out as under:

Section 543. Signature, conditions, duration, suspension revocation, etc., of licenses and written permissions.-(1) When it is provided in this Act or the rules or the regulation" -(sic) there under that a license or a written permission shall be(sic) by the Municipal Commissioner or by any other officer improved to grant the same under this Act or the rules or the regulation(sic) there under or by any other officer of the Corporation authorized by the Municipal Commissioner or officer empowered as aforesaid by this behalf shall specify in addition to other matter required(sic) specified under any other provision of this Act or the rule(sic) regulations made there under-

(a) the date of the grant thereof;

(b) the purpose and the period (if any) for which it is granted;

(c) restrictions or conditions, if any, subject to which it is granting

(d) the name and address of the person to whom it is'' granted; any

(e) the fee, if any, paid for the license or written permission.

(2) Except as otherwise provided in the Act or the rules or the regulations made there under, for every such license or written permission a fee may be charged at such rate as may from time to time be fixed by the Municipal Commissioner with the sanction of the Mayor-in-Council, and such fee shall be payable by the person to whom the license or the written permission is granted.

(3) Save as otherwise provided in this Act or the rules or the regulations made there under any license or written permission granted under this Act or any rules or regulations made there under may at any time be suspended or revoked by the Municipal Commissioner or the officer by whom it was granted, if he is satisfied that it has been secured by the grantee through misrepresentation of fraud, or if any of its restrictions or conditions had been infringed or evaded by the grantee, or if the grantee has been convicted for the contravention of any of the provisions of this Act or the rules or the regulations made there under relating to any matter for which The license or permission was granted.

Provided that-

(a) before making any order of suspension or revocation, reasonable opportunity shall be accorded to the grantee of the license(sic) written permission to show cause why it should not be suspended or revoked;

(b) every such order shall contain a brief statement of the reason for the suspension or the revocation of the license or the written permission.

(4) When any such license or written permission is suspended or revoked, or when the period for which the same was granted her expired, the grantee shall, for the purposes of this Act or the rules or the regulations made there under, be deemed to be without a license or written permission until such time as the order suspending or revoking the license or the written permission is rescinded or until the license or the written permission is accused.

(5) Every grantee of any license or written permission granted under this Act shall, at all reasonable times while such license or written permission remains in force, if so required by the Municipal Commissioner or by the other officers by whom, it was granted, produce such license or written permission.

23. From the aforesaid provision, it appears that the Corporation is authorized to charge a fee for granting any license or giving any written permission. However, Section 543 grants a general power on the Corporation to charge fee for granting license or giving written permission, but such power is subject to the other provisions contained in the Act. This is apparent from the expression "except as otherwise provided in the Act or the rules and regulations there under" appearing in Section 543(2).

24. The provision for imposing tax and advertisement other than advertisement in newspaper is contained in Chapter 14 of the said Act which contains Sections 204 till 209. The said provisions have been specifically engrafted in the statute for the purpose of regulating the mode and manner of displaying advertisement

and imposing of tax for displaying advertisement. The power to frame regulations for the purpose imposing tax for displaying advertisement is also contained in Section 204 of the said Act. When a statute contains a specific provision for doing a thing in a particular manner the authority concerned cannot fall back upon the general provisions for doing the same.

25. The intention of the legislature that no license fee or fee for granting written permission can be charged for the purpose of displaying advertisement is clear from Section 202(2), which contains the provision which empowers the Municipal Commissioner to refuse to grant permission under certain, circumstances. The said provision does not confer any authority upon the Municipal Commissioner to refuse to grant permission for non-payment of license fee or fee for granting written permission.

26. On behalf of the Petitioners in W.P. No. 2003 of 2003 (Selvel Advertising Pvt. Ltd. and Anr. v. The KMC and Ors.) in addition to what has been stated above, it was also submitted that since: u/s 204 of the said Act tax can be levied only when an advertisement is displayed, it cannot be a pre-condition for grant of written permission u/s 202. Therefore, Sections 202 and 204 of the said Act cannot be harmoniously construed and, therefore, is required to be struck down. I am unable to accept such submission. It is well settled that a Court should always lean towards upholding legislation and wherever possible interpretation should be made in favor of upholding the legislation rather than to strike it down. I have already explained that Section 202(2)(c) does not apply in case where advertisement was issued for the first time or when no advertisement is displayed so as to come within the ambit of Section 204. The said provision of Section 202(2)(c) has been engrafted in the statute by the legislature to meet future exigencies in the event a person after having given the written permission does not pay tax, then for the subsequent period in permission will not be granted.

27. From the schedule of rates as disclosed in this proceeding, in appears to me that the Corporation has equated fee for granting written permission and for issuing license with tax. It is now well settled that a license fee cannot be equated with tax as for the purpose of imposition of tax there is no concept of quid-pro-quo.

28. Some of the pre-conditions for obtaining the written permission u/s 202 are a license u/s 203 and payment of a u/s 204, there is no pre-conditions u/s 202 for payment of license fee.

29. Further more, the regulations made by the Corporation for the purpose of imposing license fee for granting written permission and imposition of tax has been framed u/s 204 and not u/s 543 of the said Act.

30. It also appears to me that u/s 543 a license fee and a written permission has been equated with one and other, therefore u/s 543 it could be either a license or a written permission but not both.

31. A license and a written permission granted u/s 54: can be signed by the Municipal Commissioner or any other office empowered to grant the same under the Act, therefore, there is a concept of delegation of authority. But such provision is not contained in Section 202 of the said Act which only confers authority upon the Municipal Commissioner to issue the written permission and not by any other authority delegated for the said purpose. u/s 202 the Municipal Commissioner is not empowered to delegate his authority to grant written permission for the purpose of displaying advertisement

32. For the aforesaid reasons, I am of the opinion that the license or written permission as contemplated u/s 543 is different from the written permission to be granted u/s 202 of the said Act.

33. The Corporation is, however, entitled to charge license fee u/s 203, but for the reasons as stated hereinbefore it cannot I. equated with tax as contemplated u/s 204 and non-payment of such license fee cannot also be a ground for refusing to grant written permission u/s 202 as there is no such provision contained in the said section.

34. From the schedule of rate it is apparent that the Corporation charging on three counts that is for giving written permission u/s 202, for granting license u/s 203 and tax under(sic) 204. I am of the clear opinion that the Corporation cannot change(sic) amount for the purpose of granting written permission once a license has been obtained and tax on advertisement displayed is fully paid.

35. The legislative intent of Section 202 of the said Act is clear to the effect that the said section is for the purpose of ensuring that the provisions of the Act and the rules and regulations made there under are fully complied with before a person is permitted to display advertisement. If such is the intention of the legislature the said section cannot be considered to be a charging section under which the Corporation is empowered to charge any amount for written permission far less any tax.

36. Upon a true construction of Section 204(1) and (2), it is apparent that the legislature wanted to impose tax only when advertisement is displayed. Though u/s 204(1) the mere erection of any advertisement is subject to tax, but the said provision is to be read along with Section 204(2) which exempts certain kind of advertisements. Therefore, for a period when no advertisement is displayed no tax can be levied.

37. The decision of K.T. Moopil Nair v. State of Kerala and Anr., reported in 1961 SC 552 was relied upon on behalf of the Petitioner in support of the proposition that a taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Article 14 and that the State cannot levy or collect a tax, except by authority of law. It is needless to mention that the regulations framed for imposing of tax by the Corporation is by reason of the authority conferred upon the Corporation under the statute, but if the statute does not confer any authority to charge fee under the charging section such fee cannot be

charged. In my opinion, the provisions of Sections 202, 203, 204 and 543 if read together does not confer any authority on the Corporation to charge any amount for granting written permission as contemplated u/s 202 of the said Act.

38. From the schedule of rates as disclosed in this proceeding, it appears that not every head of tax or fee can be classified as many of the heads are not static, but to charge the same amount of fee or tax for causing any advertisement in cinema or films shown in cinema halls or for expensive cinema halls like those in multiplexes which are air-conditioned and having all modern facilities to that of a cinema hall situated in a remote area which is without any air-conditioning fitted with rickety chairs and having rudimentary facilities for the public, appears to me to be highly discriminatory and clearly volatile of Article 14 of the Constitution of India.

39. The above is one such example and there are many such which is apparent from the same schedule of rates.

40. In the decision of K.T. Moopil Nair (supra) the Hon''ble Supreme Court has made it clear that classification of personal properties into different categories for the purpose of imposition of tax is permissible so long as there is a rational basis for such classification. Applying the same principle conversely, in the instant case, it appears to me that the regulations framed by the Corporation for charging the Same rate of tax for all advertisements within the Municipal limits of the of Kolkata infringes on the fundamental concept of equality contemplated under Article 14 of the Constitution of India. The proper tax charged by the Corporation of Kolkata is different in the various areas in the Municipal area of the Corporation. The tax imposed for displaying an advertisement in and around the central commercial area of Kolkata cannot be equated with an advertisement displayed in a remote area within the Municipal limits of the Corporation. While c - making classification the authority concerned is required to satisfy the test of intelligible differentia amongst the groups classified similarly failure to classify different groups who are by themselves different are clubbing them into one group may also result in discrimination.

41. The decision of the The State of Kerala Vs. Haji K. Haji K. Kutty Naha and Others etc., was relied upon in support of the proposition that the validity of a taxing statute is open to question on the ground that in infringes fundamental rights. In the said decision the Hon''ble Supreme Court upheld the decision of the High Court in holding that the charging section being Section 4 of the Kerala Buildings Tax Act was ultra vires as the said provision made no attempt at any rational classification. It was held by the Hon''ble Supreme Court that the legislature has not taken into consideration in imposing tax the class to which a building belongs, the nature of construction, the purpose for which it is used its situation, its capacity for profitable user and other relevant circumstances which have a bearing on the matters of taxation. In the instant case, the infirmities pointed out by the Hon''ble Supreme Court in the case of State of Kerala (supra) squarely applies in the manner in which the schedule of rates have been framed

under the regulations by the Corporation. There is absolutely no attempt on the part of the Corporation to make any classification with regard to the locality of the premises, its condition the extent of visibility the road on which it is situated, capacity to generate income etc.

42. The decision of Nathulal Vs. State of Madhya Pradesh, was relied upon on behalf of the Petitioner for the proposition that if payment is made although no licence was issued the business may be carried on. In the said decision of Nathulal (supra) the Appellant was prosecuted u/s 7 of the Essential Commodity. Act for having in stock of wheat for the purpose of sale without a license. The Additional District Magistrate acquitted the Appellant on the ground that there was no mala fide intent on the part of the Appellant. The High Court set aside the order of acquittal and convicted him on the basic that in a case arising out of the Essential Commodities Act "idea of guilty mind" was different from a case like theft. Under the said context, the Hon''ble Supreme Court held that even if the provisions of an Act, has excluded the concept of mens rea the nature of mens rea would be implied in a statute creating an offence depending on the object of the Act at the provisions thereof.

43. Applying the said principle it was submitted on behalf of the Petitioner that since payment of license fee as demanded has already been made in certain cases the Petitioner should be allowed to continue with their business.

44. Since obtaining of a license is a pre-condition for displaying advertisement, the Corporation having accepted the license fee cannot sit over the applications indefinitely and delay the issuance of license. In cases where the Corporation has accepted the license fee the written permission by the Municipal Commissioner u/s 202 cannot be withheld, as the matter of granting the actual license is only a ministerial Act. However, even after granting the permission the Municipal Commissioner may revoke the same if it is found that the advertisement displayed contravenes any of the provisions of the actual license to be granted subsequently.

45. The decision of Phoolchand Narendra Kumar and Others Vs. State of Madhya Pradesh and Others, was relied upon on behalf of the Petitioner in support of the proposition that if license fee is paid the renewal is automatic. In the said decision of M/s. Phoolchand Narendra Kumar (supra) the Division Bench was concerned with a refusal by the collector to renew the license granted under M. P. Foodgrains Dealers Licensing Order 1965. Under the said provision a licensing authority was empowered to refuse to grant or renew the license for any reasons to be recorded in writing. Under those circumstances, the Division Bench held that the power granted to the collector to grant and/or revoke a license must be exercised in a reasonable manner keeping in view all the considerations that are relevant and such authority must be interpreted in the light of the considerations arising from Article 19(1)(g), read with Article 19(6) of the Constitution. In the instant case, however, the authority of the Municipal Commissioner to refuse to grant permission is qualified and not absolute. Therefore, the ratio of the said

decision does not apply in the facts and circumstances of the case.

46. On behalf of the Corporation in the case of Trojan and Co. Ltd. Vs. Rm. N.N. Nagappa Chettiar, and also in the case of Ishwar Dutt v. Land Acquisition Collector and Anr., reported in AIR 2005 SCW 85''-were relied upon for the proposition that the Court cannot go outside the pleadings and no decision can be based on grounds outside the pleadings of the parties.

47. The pleadings of the parties are to be read as a whole. In the instant case, the meaning conveyed from the pleadings of the respective parties the issues raised is clearly be understood. There may not be one specific ground, but the entire pleading read together convey to necessary meaning. There is no lack of pleadings in the instant case.

Furthermore, the issues raised are more or less pure questions of Therefore, such questions can always be raised before this Court.

48. On behalf of the Corporation the case of Salem Advocate Association, Tamilnadu v. U.O.I. reported in AIR 2005 SCW 3827 and also the case of State of U.P. and Ors. v. Baburam Upadhay, reported in 1960 SC 751 were relied upon in support of the proposition that the expression ''shall'' by itself will not always determine the mandatory nature of a statute. The proposition is well settled. In the instant case, the emphasis is not on the expression used in the statute, but the pith and substance of the same which I have construed in the manner as indicated hereinbefore.

49. In the case of Municipal Corporation of Delhi v. Adways and Anr., reported in AIR 1998 Del 141 and also the case of Municipal Corporation of Greater Bombay Vs. Bharat Petroleum Corporation Ltd., were relied upon on behalf of the Corporation in support of the proposition that the Municipal Corporation is empowered to issue directions with regard to hoardings and advertisements for the purpose of regulating installation and construction of signboards and other formal advertisements. The power of the Commissioner of the Corporation is not in question at all. The issue is whether by framing regulations the Corporation can demand fees for granting written permission.

50. In the case of Nathi Devi Vs. Radha Devi Gupta, and also in the case of Prakash Kumar @ Prakash Bhutto Vs. State of Gujarat, were relied upon on behalf of the Corporation to indicate as to what should be the duty of a Court while interpreting a statute. The scope of the Court in the matter of interpreting a statute is well settled. If the language of statue is clear then the scope of the statute will neither be enlarged nor reduced by the Court and Court will not embark upon an exercise of interpretation. However, in the even to there is any ambiguity in the language of the statute or it appears to be violative of the provisions of the Constitution, the Court can certainly interpret the statute in the manner, the Court feels to be lawful and within the constitutional framework.

51. In view of the discussions and the observations made above the applications

are disposed of with the following directions:

A) The Kolkata Municipal Corporation is restrained by an order of injunction from further realizing any amount towards giving written permission in terms of Section 202 of the Kolkata Municipal Corporation Act, 1980.

B) The Kolkata Municipal Corporation is hereby restrained from further realizing license fee in terms of Section 203 of the Collate Municipal Corporation Act, 1980 by equating the same with tax to be realized in terms of Section 204 of this said Act.

C) The Kolkata Municipal Corporation is directed to rectify the schedule of rates for realization of license fee u/s 203 and tax u/s 204 of the Kolkata Municipal Corporation Act, 1980 by making proper classification of the various advertisements displayed by the Petitioner and/or heir members from time to time having regard to its location, size, quality and overall commercial potential, etc.

D) The Kolkata Municipal Corporation is directed not to realize any tax for the period when no advertisement is displayed for and on behalf of a third party by the Petitioner and/or their members.

E) The aforesaid directions are to be complied with within a period of six months from the date of communication of this order upon the Municipal Commissioner of the Kolkata Municipal Corporation.

These applications are disposed of. No order as to costs. Later:

All parties concerned are to act on a signed ''copy of the minutes of the operative portion of this judgment on the usual undertakings Urgent Xerox certified copies be made available to the parties upon compliance of all formalities.

