

(2009) 12 AP CK 0074

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23354 of 2009

Rama Devi Multi Specialty Dental Clinic and Others

APPELLANT

Vs

Greater Hyderabad Municipal Corporation and Others

RESPONDENT

Date of Decision : 31-12-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(6), 265, 301

Hyderabad Municipal Corporation Act, 1955 — Section 119, 169, 183(5), 187, 197

Citation : (2010) 2 ALD 856 : (2010) 3 ALT 302

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : E. Manohar and S. Ravi and A. Sanjeev Kumar, Anjana Taggarse, C.R. Sridharan, S. Niranjana Reddy, Kakara Venkata Rao, M. Sudheer Kumar, C. Prakash Reddy, N. Prashanth, Nyayapathi Prashant, R.A. Achuthanand, P. Srihari, P. Hari Haran, N. Narsing Rao, Ch. Pushyam Kiran, G. Vidya Sagar, P. Radhika, Ghanta Rama Rao, Mirza Safiulla Baig, N. Venkateswarlu, N. Aswartha Narayana, M.S. Srinivasa Iyengar, Srinivasa Rao Velivela, Goalla Seshadri, Srinivas Mantha, M. Srinivas, V. Dyumani, S. Prasad Rao, P. Sri Hari, B. Siva Prasad, P.V. Haragopal, M.V.J.K. Kumar, P. Thirumala Rao, G. Anandam, Goverdhan Venu, T. Sharath, I.V. Ramesh and B. Vijaysen Reddy, for the Appellant; Kalpana Ekbote and R. Ramachandra Reddy, SC for MCH, G. Vijay Kumar, M. Durga Nageswara Rao and Y. Madhusudhan, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—In this batch of writ petitions, notices issued u/s 421 of the Hyderabad Municipal Corporations Act (for short "the Act"), on behalf of the Greater Hyderabad Municipal Corporation (for short "the Corporation"), demanding advertisement fees for the boards displayed by the petitioners are challenged. According to the petitioners, the notices are illegal, arbitrary, unconstitutional and contrary to the provisions of the Act.

2. The petitioners are either business establishments, or professionals, undertaking various activities in the twin cities of Hyderabad and Secunderabad.

They have erected boards, indicating the name of their establishments or depicting the activities undertaken by them. While in some cases, the boards are ordinary in nature without any technical features, in other cases, they are said to be illuminated.

3. The Corporation invited tenders for assigning the contract of collecting advertisement fee. M/s. U.S.M. Agency (for short "the Agency") is said to have quoted about Rs. 10 crores for the five zones of the Corporation put together and emerged as the highest tenderer. A contract was entered into and on the basis of the same, the said Agency served notices of demand of advertisement fee on the petitioners and various others.

4. The petitioners contend that the Act empowers the Corporation to impose the advertisement tax and the levy of fee, that too, on annual basis is without jurisdiction. It is also their case that even if the Corporation has the power to levy advertisement fee, the proviso to Sub-section (1) of Section 421 of the Act exempts the display of boards in the respective business establishments in case they are not illuminated, and that all of them are covered by this exemption. They challenge the action of the Corporation in delegating or outsourcing such an important activity to the Agency, that too, by completely transferring the statutory powers. Other ancillary contentions are also advanced.

5. The Corporation filed a counter-affidavit justifying their action. It is stated that the Corporation is conferred with the power under various provisions of the Act to levy advertisement fee, and that the same is done as regulatory measure and in public interest. According to them, the tariff is fixed as per the prescribed procedure and the work assigned to the Agency is only to collect the prescribed fee, even while retaining the ultimate power with the Corporation.

6. The Agency, which figured as respondent in most of the cases, stated the background in which it came to be assigned the contract of collecting the advertisement fee. According to them, the notices are issued for and on behalf of the Corporation, so much so, the printed books of notices were supplied by the Corporation itself. It is stated that the Agency does not have any independent power to levy fee or to decide the quantum and that they are under obligation to submit account to the Corporation once in every month.

7. The arguments on behalf of the petitioners were advanced mainly by Sri E. Manohar, Sri S. Ravi, Senior Advocates, and learned Counsel Sri A. Sanjeev Kumar, Ms. Anjana Taggarse, Sri C.R. Sridharan, Sri S. Niranjana Reddy. Others have adopted the arguments so advanced.

8. Sri E. Manohar, learned Senior Counsel submits that the Corporation is conferred with the power u/s 197 of the Act to levy advertisement tax and that the impugned notices are without jurisdiction. He submits that the fee referable to Sections 421, 622 etc., of the Act at the most, can be for according permission and not in the form of annual fee. Placing reliance upon certain precedents, learned Counsel submits that the authority which levies fee must justify it by

pleading and proving, existence of quid pro quo, ii it is for rendering any service, or the relation between the expenditure incurred, if it is a regulatory activity.

9. Sri S. Ravi, learned Senior Counsel submits that the respondents did not follow the mandate u/s 421 of the Act and that the fee was levied indiscriminately without verifying the type of boards displayed. By drawing the attention of this Court to the various facets of Section 421 of the Act and other related provisions, he contends that a clear obligation is placed upon the Commissioner to decide as to whether an advertisement board is erected by an agency within its own premises and whether illumination is such that it attracts levy of fee.

10. Sri Sanjeev Kumar, learned Counsel concentrated mostly on the aspect of delegation of the power to levy fee. He submits that the Corporation has indeed delegated its power to levy fee, in favour of the Agency and that such a course is not at all provided for, nor permissible under the Act. He further submits that acting on the basis of the contract awarded to it, the Agency has straightaway issued notices in its own name and that coercive steps were taken for recovery of the amount charged by it.

11. Ms. Anjana Taggarse, learned Counsel submits that when the Act, in clear terms empowers the Corporation to levy advertisement tax, there is absolutely no basis for levy of advertisement fee. According to her, the sign boards erected by the petitioners do not need any permission, and the fee for permission cannot be in the form of tax. She has elaborated upon the distinction between the tax and fee by making reference to precedents. Learned Counsel contends that the Act permits delegation of powers, to a limited extent, u/s 119 of the Act and the conferment of powers upon the Agency to straightaway issue notices indicating the amounts by itself and to collect the amount so levied is contrary to law and provisions of the Act. According to her, the power to levy tax is one of the sovereign functions and that the same cannot be delegated.

12. It is also her case that no activity or exercise of assessment was undertaken by the statutory authority and all such functions are performed only by the Agency. The learned Counsel further points out that even assuming that the Corporation has the power to levy fee, it has not justified the same particularly when no services are rendered by it, much less, any regulatory activity is undertaken. By making reference to Article 265 of the Constitution of India, learned Counsel contends that the impugned levy would have the effect of infringing rights of the petitioners under Article 19 of the Constitution of India. Another facet urged by her is as to the alleged failure on the part of the respondents to verify whether any board was illuminated at all and the circumstances under which it can be said to have been illuminated.

13. Sri C.R. Sridharan, learned Counsel submits that the distinction between levy of tax and fee is so well known that hardly there is any scope for taking the one for the other, and still the respondents have chosen to levy tax by calling it fee.

He submits that the fee cannot be justified on any count whatever, inasmuch as the Corporation did not even assert any justification for it. Learned Counsel submits that mere existence of power can only (sic. cannot) be a justification for exercise thereof without valid basis.

14. Other learned Counsel have thrown light on these very aspects, but from different angles.

15. Smt. Kalpana Ekbote, learned Standing Counsel for the Corporation submits that the Act empowers the Corporation to levy advertisement tax on the one hand and advertisement fee on the other and that the Corporation does have the power to choose either of them. She contends that the very fact that Section 421 of the Act occurs in Chapter XI, dealing with the roads and lanes discloses that the fee is intended for upkeep of the roads and lanes.

16. Learned Counsel submits that the tenders were invited for choosing an agency to collect the fee, since the past experience has shown that the collection was not up to the optimum and efficient. Learned Counsel submits that the Agency was chosen as a measure of outsourcing and the actual power to levy the fee rests with the Corporation only. Reference is made to various clauses contained in the orders issued in favour of the Agency. It is also her case that the Act empowers the delegation of powers by the Commissioner and that no exception can be taken to the procedure and method adopted by the Corporation. She has placed before this Court, the proceedings of the Corporation issued from time to time, fixing and revising the fee. It is urged that the amount sought to be collected roughly represents the expenditure, incurred for regulating the activity of advertisement.

17. As regards the submissions made by the learned Counsel for the parties, about the demand of fee even where the boards are displayed for the respective business premises, learned Counsel submits that an aggrieved party can certainly bring these aspects to the notice of the Commissioner and that the same would be levied in accordance with law, duly verifying the relevant facts. It is stated that in certain cases, the matter was examined by the Commissioner, as directed by this Court, and reasoned orders were passed.

18. Sri G. Vijay Kumar, learned Counsel for the Agency submits that his client responded to a tender notice issued by the Corporation and was awarded the contract to collect the fee. He submits that the notices are issued for and on behalf of the Corporation strictly in accordance with the prescribed procedure and except that the tax is collected, no statutory power is exercised by them. Learned Counsel further submits that the Agency is under obligation to submit the periodical details of the amounts collected towards fee and that the award of contracts to collect fee is not unknown to law.

19. Both the learned Counsel have placed reliance upon certain precedents.

20. The common question involved in this batch of writ petitions is about the

competence of the Corporation to levy advertisement fee, that too, through the medium of a private agency. Before the issue is dealt with in detail, it is necessary to have an idea about the relevant provisions of the Act. It is the largest enactment, which the Andhra Pradesh State Legislation has ever enacted and contains 680 Sections. The Act is divided into 23 Chapters, that reflect the relevant fields of activity or the concerned subject. It empowers the Corporation to take regulatory and punitive steps. Taxes and fees of different kinds are provided for. Chapter VIII deals with Municipal Taxation. Section 197 of the Act enlists the types of taxes that can be levied by the Corporation. Relevant for the purposes of this case are Clause (f) of sub-section (1)(i) and Sub-sections (2) and (3) of Section 197 of the Act, which read as under:

Section 197: Taxation to be imposed under this Act:- (1)(i) for the purposes of this Act, the Corporation shall impose the following taxes namely:

(a) to (e) xxxxx

(f) taxes on advertisements other than advertisements published in the newspapers;

(2) The Corporation may impose any tax other than those specified under sub-section (1) subject to the previous sanction of the Government

(3) The taxes specified in Sub-sections (1) and (2) shall be assessed and levied in accordance with the provisions of this Act and rules made thereunder.

21. Sub-section (2) is a residuary provision and sub-section (3) mandates that levy of such tax shall be in accordance with the provisions of the Act and the Rules made thereunder. Under Chapter VIII, the Corporation is conferred with the power to levy property tax, water tax, conservancy tax, general tax, etc. Chapter XI is about regulation of streets. There are several subheadings in it. One of it is "sky-signs and advertisements" and it contains two sections, namely 420 and 421. They read as under:

Section 420 : Regulations as to sky signs: (1) No person shall, without the written permission of the Commissioner, erect, fix or retain any sky-sign, whether now existing or not, and no such written permission shall be granted, or renewed, for any period exceeding two years from the date of each such permission or renewal:

Provided that in any of the following cases a written permission or renewal by the Commissioner under this section shall become void, namely:

(a) if any addition to the sky-sign be made except for the purpose of making it secure under the direction of the municipal, city engineer;

(b) if any change be made in the sky-sign; or any part thereof;

(c) if the sky-sign or any part thereof falls either through accident, decay or any other cause;

(d) if any addition or alteration be made to, or in the building or structure upon or over which the sky-sign is erected, fixed or retained, if such addition or alteration involves the disturbance of the sky-sign or any part thereof;

(e) if the building or structure upon or over which the sky-sign erected, fixed or retained become unoccupied or be demolished or destroyed.

(2) Where any sky-sign shall be erected, fixed or retained upon or over any land, building, or structure, save and except as permitted as hereinbefore provided, the owner or person in occupation of such land, building or structure shall be deemed to be the person who has erected, fixed or retained such sky-sign in contravention of the provision of this section unless he proves that such contravention was committed by a person not in his employment or under his control, or was committed without his connivance.

(3) If any sky-sign be erected, fixed or retained contrary to the provisions of this section, or after permission for the erection, fixing or retention thereof for any period shall have expired or become void, the Commissioner may, by written notice require the owner or occupier of the land, building or structure, upon or over which the sky-sign is erected, fixed or retained, to take down and remove such sky-sign.

The expression "sky-sign" shall in this section mean any word, letter, model, sign, devise or representation in the nature of an advertisement, announcement or direction, supported on or attached to any post, pole, standard frame work or other support wholly or in part upon or over any land, building or structure which, or any part of which sky-sign, shall be visible against the sky from some point in any street and includes all and every part of any such post, pole, standard, frame-work or other support. The expression "sky-sign" shall also include any balloon, parachute, or other similar device employed wholly or in part for the purpose of any advertisement, announcement or direction upon or over any land, building or structure or upon or over any street, but shall not include.-

(a) any flag staff, pole, vane or weather-cock, unless, adopted or used wholly or in part for the purpose of any advertisement, announcement or direction;

(b) any sign, or any board, frame or other contrivance securely fixed to or on the top of the wall or parapet of any building, or on the cornice or blacking course of any wall, or to the ridge of a roof:

Provided that such board, frame or other contrivance be of one continuous face and not open work and do not extend, in height more than three feet above any part of the wall, or parapet or ridge to, against, or on which it is fixed or supported;

(c) any word, letter, model, sign, device or representation as aforesaid, relating exclusively to the railway administration and place wholly upon or over any railway, railway station, yard, platform or station approach belonging thereto,

and so placed that it cannot fall into any street or public place;

(d) any notice of land or buildings to be sold, or let, placed upon such land or buildings.

Section 421. Regulation and Control of advertisements:- (1) No person shall without the written permission of the Commissioner, erect, exhibit, fix or retain any advertisement whether now existing or not, upon any land, building, wall, hoarding or structure:

Provided always that such permission shall not be necessary in respect of any advertisement which is not an illuminated advertisement nor a sky-sign and which-

(a) is exhibited within the window of any building;

(b) relates to the trade or business carried on within the land or building upon which such advertisement is exhibited or to any sale or letting of such land or building or any effects therein, or to any sale, entertainment or meeting to be held upon or in the same, or to the trade or business carried on by the owner of any vehicle upon which such advertisement is exhibited;

(c) relates to the business of any railway administration;

(d) is exhibited within any railway station or upon any wall or other property of a railway administration except any portion of the surface of such wall or property fronting any street.

(2) Where any advertisement shall be erected, exhibited, fixed or retained after three months from the enactment of this section upon any land, building, wall, hoarding or structure save and except as permitted or exempted from permission as hereinbefore provided, the owner or person in occupation of such land, building, wall, hoarding or structure shall be deemed to be the person who has erected, exhibited, fixed or retained such advertisement in contravention of the provisions of this section unless he proves that such contravention was committed by a person not in his employment or under his control or was committed without his connivance.

(3) If any advertisement be erected, exhibited, fixed or retained contrary to the provision of this section after the written permission for the erection, exhibition, fixing or retention thereof for any period shall have expired or become void, the Commissioner may, by notice in writing, require the owner or occupier of the land, building, wall, hoarding or structure upon which the same is erected, exhibited, fixed or retained, to take down or remove such advertisement.

(4) (a) The word "structure" in this section shall include a tram car, omnibus and any other vehicle and any movable board used primarily as an advertisement or an advertising medium; and

(b) the expression "Illuminated advertisement" in this section shall not include

an illuminated display of goods if such display-

(i) is of goods merely bearing labels showing the name of the article or of its manufacture or of both; and

(ii) is made of lighting which is not, in the opinion of the Commissioner, more than is necessary to make the goods and labels visible at night.

22. Section 421 of the Act contemplates grant of permission for erection, installation or fixation of advertisements. The procedure for grant of licences or permissions is prescribed u/s 622 of the Act. Sub-sections (1), (2) and (3) thereof are relevant, which read as under:

622: Licences and written permission to specify conditions, etc., on which they are granted:

(1) Whenever it is provided in this Act that a licence or a written permission may be given for any purpose, such licence or written permission shall specify the period for which and the restrictions and conditions subject to which, the same is granted, and shall be given under the signature of the Commissioner or of a Municipal Officer empowered u/s 119 to grant the same.

(2) Fees to be Chargeable:- For every such licence or written permission a fee may be charged at such rate as shall from time to time be fixed by the Commissioner, with the sanction of the Corporation.

(3) Licences and written permission may be revoked, etc.:- Subject to the provisions of sub-sections (2) and (3) of Section 530 any licence or written permission granted under this Act may at any time be suspended or revoked by the Commissioner, if any of its restrictions or conditions is infringed or evaded by the person to whom the same has been granted or if the said person is convicted of an infringement of any of the provisions of this Act or of any bye-law made hereunder in any matter to which such licence or permission relates.

23. It appears that the Corporation is not clear about its powers, when it issued the impugned notices. They read as under:

Sub: GHMC- Advertisement Section - Display of Neon/Glow Sign/Vinyl/Front - Lit Boards - Non-Lit Boards, Payment of Advertisement fee ? Notice - Issued - Reg.

It is noticed that the following advertisement of Neon/Glow Sign/Vinyl/Front - Lit Boards - Non Lit Boards is/are erected/exhibited by you without obtaining prior written permission from the Commissioner GHMC paying advertisement fee as required u/s 421 read with Section 622 of H.M.C. Act, 1995 and the rules made thereon (in Rs.).

Sl. No.	Description	Type of	Length	Breadth	Size in	Rate	Total	Board	Sq.Mt. per
									Sq.Mt. Amount Payable

1.	Main Board	N/L	20	5	9.3	375	3487/-	2.	(DS)N/L	2	2.6	0.967	375	362/-
----	------------	-----	----	---	-----	-----	--------	----	---------	---	-----	-------	-----	-------

Rupees in words Three Thousand Eight Hundred Total 3849/- Forty Nine Therefore, notice is hereby issued for payment of requisite advertisement fee as shown above, through Cheques/DDs in favour of USM Business Systems Pvt. Ltd. Within (7) days, the date of receipt of this notice. Failing which action will be initiated as per the provisions of HMC Act, 1955.

24. From a perusal of the notice, it becomes clear that the effort of the Corporation is more to collect the advertisement fee, than to insist on the concerned individual, or establishment, to obtain permission. Further, the notice requires the payment of the fee to be made to a private agency, than the Corporation itself. Therefore, the following questions arise for consideration:

(1) Whether the fee, levied by the Corporation, is in the form of tax, or a fee-simpliciter.

(2) What is the scope of the exemption provided for under proviso to Sub-section (1) of Section 421 of the Act, and

(3) Whether it is permissible for any agency, other than the Corporation, to collect the fee, or tax, as the case may be.

25. Before elaborating the discussion on the aspects, referred to above, it is made clear that the subject-matter of these writ petitions is only the Boards erected by individuals, or business or trade establishments, in the premises, where their activity is carried on, and not other Sign Boards, or Hoardings.

26. On the first question, the law is fairly settled through catena of decisions, spread over the past half a century. Analogous provisions are contained in various enactments, under which the Municipal Corporations and Municipalities across the country function. The provisions of the Act extracted in the preceding paragraphs manifest the legal regime, vis-a-vis the advertisements. At the first place, the Corporation is conferred with the power to impose tax on advertisements, u/s 197(1)(i)(f). In the second place, the Corporation is empowered u/s 421 of the Act, to insist on obtaining permissions before an advisement (sic. advertisement, or sign board is erected. It is a different thing that certain categories of advertisements are exempted from that provision.

27. Though it may appear that levy of tax and insistence on permission result in double exaction, or overlapping to exercises, on a close scrutiny will reveal the otherwise. This in turn needs reference to the very concept of taxation, on the one hand, and levy of fee, on the other hand. The former is in the realm of sovereign power, whereas the latter is purely a regulatory measure, referable to police power. While the State or the Authority that levies fee, is under obligation to prove the justification therefor, though not with mathematical precision, such a necessity does not at all exist in case of taxation. Further, a tax can be levied only through a legislation made by Parliament, or legislation of State, and must accord with the relevant Entries, and Articles 301, 302 and 304 of the Constitution of India. Subject to these conditions, or limitations, it is permissible

to levy tax and fee on the same activity.

28. However, the stages at which and the purposes in relation to which they can be collected or charged, are a bit different. Advertisement, as an activity, is amenable for taxation, as provided for u/s 187 of the Act. Permission for the activity, referable to Section 421, can be insisted, duly levying stipulated fee. Viewed in this context, there does not exist any conflict between levy of tax, on the one hand, and fee, on the other hand, on advertisements, subject to exceptions, u/s 421 of the Act. While tax can be levied periodically, the permission fee, by its very nature, is required to be a one-time affair.

29. The circumstances under which tax, on the one hand, and fee, on the other hand can be levied and the manner in which they are to be collected are substantially different. In catena of decisions, the Hon"ble Supreme Court explained the difference between tax and fee. While the collection of tax is treated as sovereign function, charging of fee is in the realm of Police power. The former does not need any justification, whereas the latter can be levied only for rendering service or as a regulatory measure. If it is in return for rendering services, an element of quid pro quo must exist. On the other hand, if the fee is levied as regulatory measure, it must be roughly to the extent of realizing the expenditure incurred for the regulation. If a fee is levied without there being such justification, it tends to become tax and unless it has legislative support and sanction, it cannot be sustained.

30. There is a general notion, that once the tax imposed by a State or its Agency is found to be in accordance with the relevant provisions, the justification thereof cannot be questioned. Dealing with these and the relevant aspects, a Constitution Bench of the Supreme Court in *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, . held as under:

Para-37: ...A law of taxation is made by Parliament or the Legislature of a State, as the case may be, in exercise of the power conferred under the Constitution by virtue of the entries found therein. It is a law just like any other law made under the Constitution. This Court in *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, , and in *Balaji Vs. Income Tax Officer, Special Investigation Circle*, , held that a law of taxation would be void if it infringed the fundamental right guaranteed under Article 19 of the Constitution. Therefore, the law of taxation also should satisfy the two tests laid down in Article 19(6) of the Constitution. It is said that a law of taxation is always in public interest. Ordinarily it may be so but it cannot be posited that there cannot be any exceptions to it. A taxing law may be in public interest in the sense that the income realized may be used for public good, but there may be occasions, when the rate or the mode of taxation may be so abhorrent to the principles of natural justice or even to well settled principles of taxation that it may cause irremediable hard to the public rather than promote public good, that the Court may have to hold that it is not in public interest. Nor can I agree with the contention that it is impossible for a court to hold in any case that a rate of

taxation is reasonable or not. As a proposition it is unsound. It may be legitimately contended that it is difficult for a Court to come to a definite conclusion on the correctness of a rate fixed by the Legislature. Dixon, C.J., in (1959) 102 CLR 280, (292), gives a very cogent answer to such an argument in a different context. The learned Chief Justice said:

Highly inconvenient as it may be, it is true of some legislative powers limited by definition, whether according to subject-matter, to purpose or otherwise, that the validity of the exercise of the power must sometimes depend on facts, facts which somehow must be ascertained by the Court responsible for deciding the validity of the law.... All that is necessary is to make the point that if a criterion of constitutional validity consists in matter of fact, the fact must be ascertained by the Court as best it can, when the Court is called upon to pronounce upon validity.

31. The levy of fee, toll or other such impositions, however stand on a different footing. They can be, either as a regulatory measures, or as a consideration for the services rendered. In the case of the former, the fee must be to the extent it is needed, to meet the approximate cost of regulation. In the case of the latter, it must be commensurate with the services rendered, though not with absolute precision. In *Corporation of Calcutta and Another Vs. Liberty Cinema*, , the Supreme Court explained this phenomenon from various angles.

32. Recently, in *Calcutta Municipal Corporation and Others Vs. Shrey Mercantile Pvt. Ltd. and Others*, ., the Supreme Court reviewed the law on the subject. It was pointed out that a regulatory statute may also contain taxing provisions, as in the instant case, and the fee that can be levied by the Corporation must result in conferment of a benefit of one form or the other. In that case, the Corporation prescribed ad valorem fee for effecting mutation in the Municipal records, commensurate with the value of the property. In the words of the Supreme Court,

Para 21: (W)e find that the functions of the Corporation with regard to mutation remain the same, whether the applicant is a transferee under a conveyance or a lessee or a beneficiary under a Will or an heir in the case of intestate succession. Once an application for mutation is made, the same is examined by the department and after hearing the objections, if any, the record is ordered to be changed. Ultimately, the exercise is for fiscal purpose. Similarly, the property valuation may be below Rs. 50,000 or above Rs. 2 lakhs, the function of the Corporation in making the mutation entry remains the same. Similarly, whatever may be the cause of mutation, whether it is a case of transfer or devolution, the activity of mutation remains constant in all the cases. The expenses incurred in all the case also cannot vary, whatever be the value of the property or the cause of mutation. In the circumstances, there is no reason given for charging different rates depending on the value of the property and the cause of transfer. By doing so, the incidence of the levy falls differently on persons similarly situated resulting in violation of Article 14 of the Constitution. Moreover, the quantum of fees is disproportionate to the so-called "services" which is one more

circumstance showing arbitrariness in the levy of such imposition. So far as Article 14 is concerned, the Courts in India have always examined whether the classification was based on intelligible differentia and whether the differentia had a reasonable nexus with the object of legislation [See *Om Kumar v. Union of India* (2001) 2 SCC 386].

Para 22. Applying the said tests to the impugned levy, we find that the levy is irrational, arbitrary, discriminatory and beyond Section 183(5) of the said 1980 Act.

33. The same situation exists here. The levy sought to be made on the basis of the size of the advertisement. Further, the purpose of collection of fee is mentioned in the proceedings dated 18-1-1992, issued by the Corporation. The relevant portion reads,

...The cost of inspection, supervision, and control of licenceable advertisements, and their impact in the increased services in the City of Hyderabad has gone up tremendously on account of increase in rates of salaries of the officers, staff, wages of the labour and other incidental expenditure due to increase in the cost of living and also due to the inflationary trends, the general economy of the country as a whole.

34. Once the exercise undertaken by the Corporation is only inspection and supervision of advertisements, it is not known as to how the size of the Board or location would have any bearing upon the quantum of fee. Totally different things would have ensued, had the Corporation undertaken extension of services or facilities to those, who erected the Boards. Here itself, a mention deserves to be made that these considerations would become totally irrelevant, in case the levy is in the form of tax, which, in turn, is required to be made as per the prescribed procedure.

35. That an exaction, though as fee, may tend to become tax; is no longer *res interva*. In *Shri Krishna Das Vs. Town Area Committee, Chirgaon*, the Supreme Court held the circumstances under which, a fee would assume the character of tax, as under:

Para 24: We have seen that a fee is a payment levied by an authority in respect of services performed by it for the benefit of the payer, while a tax is payable for the common benefits conferred by the authority on all tax payers. A fee is a payment made for some special benefit enjoyed by the payer and the payment is proportional to such benefit. Money raised by fee is appropriated for the performance of the service and does not merge in the general revenue. Where, however, the service is indistinguishable from the public services and forms part of the latter it is necessary to inquire what is the primary object of the levy and the essential purpose which it is intended to achieve. While there is no *quid pro quo* between a tax payer and the authority in case of a tax, there is a necessary correlation between fee collected and the service intended, to be rendered. Of course the *quid pro quo* need not be understood in mathematical equivalence but

only in a fair correspondence between the two. A broad co-relationship is all that is necessary.

Para 25: Where it appears that under the guise of levying a fee the authority is attempting to impose a tax, the Court has to scrutinize the scheme to find out whether there is a real correlation between the services and the levy whether it is so coextensive as to be a pretence of a fee but in reality a tax, and whether a substantial portion of the fee collected is spent in rendering the service.

36. Authorities can be multiplied on this aspect. If the said principle is applied to the facts of the instant case, it emerges that the levy is more, in the form of tax, than fee.

37. The second aspect is about the understanding of the respondents, vis-a-vis Section 421 of the Act. This provision has several facets. The first is that the permission is needed for displaying of an advertisement only if it does not fall within the scope of the proviso to Sub-section (1) of Section 421 of the Act. This, in turn, has several attributes, namely, that,

- (a) the advertisement or the board is not illuminated, nor is a sky-sign;
- (b) is exhibited within the window of any building; and
- (c) relates to the business carried on within the land or building upon which the advertisement is exhibited.

The other two exceptions are not relevant for the purpose of this case.

38. In many cases, the levy is made on the advertisements, which are erected in the same premises where the business or other activities are conducted. The word "illuminated" is not defined. However, it is explained in Sub-section (4)(b) of Section 421 of the Act, which has already been extracted. This empowers the Commissioner or a person authorized by him, to apply the parameters mentioned therein and arrive at a conclusion as to whether an advertisement is illuminated one or not. If it is found that it is not illuminated and is exhibited in the window of the building and relates to the business carried out in it, permission is not necessary. On the other hand, if it is illuminated, permission becomes necessary, even if it is exhibited in the window of a building and relates to the business or activity carried out therein. A perusal of the notices issued and the annexures appended thereto in certain cases, discloses that fee was levied, vis-a-vis non-illuminated signboards erected in the business premises. This is clearly outside the powers of the Corporation. Directions, issued by this Court, in certain cases, to examine the matter objectively were not implemented in their letter and spirit.

39. Fair amount of uncertainty exists, as to when a Board can be said to have been illuminated, and when not. The word "illuminate" assumes different characteristics, in relation to advertisement boards. In the ordinary parlance, an object can be said to have illuminated, if it is made visible, when it is otherwise dark. For an establishment, which works only during day time, illumination has

absolutely no relevance. It is only when the activity is spread over night hours, or where the person or the business undertaking intends that the Board must be visible during night hours, that illumination becomes relevant.

In "The Concise Thesaurus", published by Pocket Reference Library, Great Britain, the word "illuminate" is presented with the following meanings:

(1) adorn, brighten, decorate, depict, illumine, light;

(2) edify, enlighten, inform, inspire, instruct.

The following meaning is given to the word "illuminate" in "The New Oxford Dictionary of English".

Light up: a flash of lightning illuminated the house/figurative his face was illuminated by a smile.

Decorate (a building or structure) with lights for a special occasion, (often as adj. Illuminated) decorate (a page or initial letter in a manuscript) with gold, silver, or coloured designs. -figurative [usu. as adj. Illuminating] help to clarify or explain (a subject or matter): a most illuminating discussion. Enlighten (someone) spiritually or intellectually.

40. In some of the precedents, an attempt was made to explain the term, in the context of advertisement, but the matter was left to be decided, with reference to the facts and circumstances.

41. In the context of advertisements, mere fixing of lamps outside the board, to make it visible, may not be treated as illumination. It is only when an arrangement is made within the Board, in such a way, that the light focused from inside makes the external part visible in nights, that the Board can be said to have illuminated. This can be the proper and workable meaning, that can be ascribed to the relevant part of Section 421 of the Act. It would take in its fold, the neon lighting also, where the letters or picture are drawn through glass tubes, and the whole tube is illuminated through electrodes, or other devices. Though the view expressed herein may not be treated as a perfect or the ultimate, it would ensure fair amount of objectivity in determining the rights of citizens.

42. The third aspect is about the Authority, that can levy the fee. The Corporation invited tenders to assign the rights to collect the advertisement fee and the Agency has emerged as the successful tenderer for a sum of about Rs. 10 crores. It is a larger issue as to whether it was competent for the Corporation at all, to assign its statutory functions to private agencies. Since that question is not directly at issue in this batch of writ petitions, it is not dealt with in detail.

43. The limited context in which the discussion is undertaken is in the light of Section 633 of the Act. The power to demand fee or tax is specifically vested with the Commissioner or any person authorized by him. Such persons are naturally to be the officials of the Corporation itself. In the cases on hand, the notices were

issued by the Agency on behalf of the Corporation. In some cases, the notices contained facsimile signatures of the officials of the Corporation and in others, notices were straightaway issued by the Agency. Such a procedure is totally contrary to law.

44. Section 169 of the Act requires that any amount received by the Corporation towards tax and fee must be credited to its consolidated fund. The permission accorded by the Corporation to the Agency to collect the fee, which partakes the characteristics of tax, is totally opposed to the scheme under the Act. The notices issued to the petitioners, require them to pay the fee "through cheques/DDs in favour of USM Business Systems Pvt. Ltd." There would have been some justification for empowering the Agency referred to above, to collect the cheque or DDs to be issued in the name of the Corporation. The course adopted by the Corporation is in clear violation of specific provisions of the Act.

45. The plea of the Corporation and the Agency that the authorization or activity is in the form of outsourcing cannot be accepted. The phrase "outsourcing" is of recent origin. It is a device, where the work, which is otherwise to be done by the regular establishment, is got done by a different agency engaged for that purpose. While in some cases, wages are paid, in other cases, lump sum amounts are paid towards consideration. In the instant case, it is the agency that is placed under obligation to pay huge amounts to the Corporation. It is permitted to retain the amounts collected by it towards fee, irrespective of its quantum. This does not fit into the scheme of the Act.

46. Hence, the writ petitions are allowed holding that:

(a) the advertisement fee levied by the Corporation is in the form of a tax referable to Section 197 of the Act and it could not have been levied without specific authority and in accordance with the prescribed procedure;

(b) the notices impugned in the writ petitions do not accord with Sections 169, 633 and other relevant provisions of the Act, and they are accordingly set aside; and

(c) the Corporation is entitled to insist on the permissions being obtained for erection and display of advertisements, subject, however, to the exceptions covered by the proviso to Sub-section (1) of Section 421 of the Act; and to stipulate fee thereof, commensurate with the service or regulatory activity, and in its discretion to levy tax, u/s 197(f), duly following the prescribed procedure.

There shall be no order as to costs.