
(2016) 08 AHC CK 0227
In the Allahabad High Court
Case No : Writ Tax No. 622 of 2015

Vodafone South Limited

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 24-08-2016

Acts Referred:

Uttar Pradesh General Clauses Act, 1904 — Section 21
Uttar Pradesh Municipal Corporation Act, 1959 — Section 172(a) (ja), 192, 219, 277, 540(1), 544, 550

Citation : (2016) 9 ADJ 249

Hon'ble Judges : Sudhir Agarwal and Dr. Kaushal Jayendra Thaker, JJ.

Bench : Division Bench

Advocate : Ashish Mishra and S.D. Singh, Advocates, for the Petitioner; C.S.C, Rahul Sahai, Advocate, for the Respondent; Ashish Mishra, S.D. Singh, Advocates, for the Petitioner; C.S.C, Rahul Sahai, Advocate, for the Respondent; Ashish Mishra, Advocate, for the Pet

Final Decision : Allowed

Judgement

1. Heard Sri S.D. Singh, learned Senior Advocate for petitioners and learned Standing Counsel as well as Sri Rahul Sahai, Advocate for respondents.
2. All these writ petitions involve common questions of law and fact and, therefore, as agreed by learned counsel for the parties, have been heard together and are being decided by this common judgment.
3. Demand of advertisement tax in accordance with Agra Nagar Nigam (Samachar Patro Me Prakashit Vigyapano Par Kar Ka Nirdharan Karna Aur Use Vasool Karna) Niyamawali, 2005 (hereinafter referred to as the "Rules, 2005") published in U.P. Gazette dated 10.09.2005 and came into force on 01.04.2005 has been challenged on the ground that no such rules were in existence in the year of demand, i.e., 2010-11 and, therefore, demand of advertisement tax under Rules, 2005 is wholly without jurisdiction and illegal.
4. All the petitioners are Companies engaged in providing telecommunication

service. They are Licensed Service Providers in State of U.P. by virtue of licence granted by Government of India, Ministry of Communications and IT, Department of Telecommunication under the provisions of Indian Telegraph Act, 1885 (hereinafter referred to as the "Act, 1885"). They have been authorised to set up and operate "Unified Access Services" (hereinafter referred to as the "UAS") in the licensed service area.

5. Nagar Nigam, Agra (hereinafter referred to as the "NNA") in purported exercise of powers under Sections 192, 219, 540(1), 550, 227, 172(2), (Ja) and 544 of U.P. Municipal Corporation Act, 1959 (hereinafter referred to as the "Act, 1959") framed bye-laws/ Rules 2005 for imposing tax on advertisement, in the manner other than publication in newspapers, within territorial jurisdiction of NNA. Rules, 2005 contemplated a licence for the purpose of such advertisement and rate of tax payable by such person.

6. Subsequently, a new set of Rules, namely, U.P. Municipal Corporation (Assessment and Collection of Tax On Advertisement) Rules, 2009 (hereinafter referred to as the "Rules, 2009") have been framed applicable to every Municipal Corporation in State of U.P. and aforesaid Rules clearly provide that same are being promulgated in supersession of all the previous rules and orders issued in this behalf. These Rules were published in notification dated 24.12.2009 and came into effect from the date of their publication in gazette. It is admitted case of the parties that on promulgation of Rules, 2009, the Rules, 2005 stood superseded.

7. Pursuant thereto NNA issued a demand notice dated 18.11.2010 for the year 2010-11 demanding advertisement tax to the tune of Rs. 5327666/- (in Writ Petition No. 622 of 2015), which was objected by petitioners in Writ Petition No. 139 of 2011. The Court vide judgment dated 29.01.2011 directed NNA to decide objections filed by petitioners. One of the objection taken by petitioners is that Rules, 2009 were challenged being ultra vires of Act, 1959 as also Article 19(1) (a) and 19(1)(g) of the Constitution in various writ petitions led by Misc. Bench No. 3336 of 2010 (Anurag Bansal and others v. State of U.P. and others). A Full Bench of this Court in its judgment reported in 2011(5) ADJ 879 has upheld the contention and declares Rules, 2009 as ultra vires of Act, 1959 and has struck down the same.

8. Petitioners thus contended that since Rules, 2009 have been declared ultra vires, no new Rules have been framed and earlier Rules, 2005 having already superseded by Rules, 2009, will not revive, hence no advertisement tax is payable by them.

9. Respondent-Nagar Nigam, however, by means of orders impugned in writ petitions have decided representation and rejecting same have taken the view that after striking down of Rules, 2009 liability to pay advertisement tax would fall back upon Rules, 2005 which would stand revive and, therefore, petitioners are liable to pay advertisement tax accordingly.

10. The only question which has been argued before us is that, Rules, 2005 after having been superseded and repealed by Rules, 2009 would not revive after Rules, 2009 are declared ultra vires and, therefore, any demand of advertisement tax for the period of 2010-11 and subsequent thereto would be illegal and without jurisdiction.

11. The stand of respondents in counter affidavit is very clear that after Rules, 2009 have been declared ultra vires, superseded Rules, 2005 would automatically revive. Stand taken by NNA in para 19 of counter affidavit filed in leading writ petition i.e. Writ Petition No. 622 of 2015 is reproduced as under:

"19. That the averments made in paragraph no. 24 of the writ petition are not admitted. In reply it is submitted that upon the super session of the Rules of 2005, by the Rules of 2009 and upon adjudication of the rules of 2009 as being ultra vires, the Rules of 2005 stood automatically revived and thus there is no infirmity in the impugned proceedings." (emphasis added)

12. Basic facts are not disputed. Earlier, rules framed were applicable only to NNA for levy of advertisement tax. Subsequently State Government framed a general set of Rules applicable to all Municipal Corporations governed by Act, 1959. Rules, 2009 were published in supersession of all previous rules and orders issued in this behalf. Operative part of Rules, 2009, reads as under:

"In exercise of powers under section 227 read with section 192 and 219, sub-section (1) of section 540 and section 550 of the Uttar Pradesh Municipal Corporation Act, 1959 (Uttar Pradesh Act No. II of 1959) and section 21 of the Uttar Pradesh General Clause Act (Act No. 1 of 1904) and in super session of all the previous rules and orders issued in this behalf, the Governor, after considering the objections and suggestions received in pursuance of order published in Government notification no- 561/IX-9-2008-49Ja/2001, dated February 27, 2008 required by sub-section (2) of section 540 of the said Act of 1959, is pleased to make the following rules:" (emphasis added)

13. Rules, 2009 have been promulgated in a way that firstly rule framing authority has declared that notification dated 24.10.2009 is being issued in exercise of powers under Section 227 read with 192, 219, 540(1) and 550 of Act, 1959 and Section 21 of U.P. General Clauses Act, 1904 (hereinafter referred to as the "Act, 1904") and in supersession of all the previous rules and orders issued in this behalf. Second part of notification says that Governor after considering objections and suggestions received in pursuance of order published in Government notification dated 27.02.2008 as required by Section 540(2) of Act, 1959 is pleaded to make following rules, i.e., Rules, 2009. Thus by first part Rule framing authority has superseded all existing rules and orders issued in reference to provisions, namely, Sections 227, 192, 219, 540(1) and 550 of Act, 1959 read with Rule 21 of Act, 1904 and by subsequent part, Rules, 2009 have been promulgated.

14. It is not the case of respondents that power exercised by Rule framing

authority with regard to supersession of earlier rules was bad or even this part has been nullified by any subsequent judgment of this Court.

15. Earlier validity of Rules, 2009 was upheld in *Taj Advertising and others v. State of U.P. and others*, 2010(4) ALJ 293. In another set of petitions filed at Lucknow Bench led by Misc. Bench No. 3336 of 2010 (*Anurag Bansal and others v. State of U.P. and others*), Division Bench disagreeing with the view taken in *Taj Advertising (supra)*, formulated following questions and referred matter to Larger Bench:

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

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

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

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

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

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

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

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

16. Full Bench, however, decided to deliberate only questions no. 1, 2, 6 and 7 and answered the same as under:

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

(2) Government could not have framed impugned rules for all the Municipal Corporations without taking recourse of not only Section 206 of the Act but other

statutory provisions contained in Chapter IX of the Act.

(6) Impugned Rules 2009 is invalid and ultra vires to the Act being framed without following the provisions of Sections 199 to 203 of the Act and other statutory provisions discussed in the body of judgment (supra).

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

17. Now the question is, "whether in view of aforesaid decision can it be said that Rules, 2005, stood superseded by Rules, 2009 would revive after striking down of Rules, 2009 by Full Bench in Anurag Bansal (supra), authorising NNA to charge advertisement tax from petitioners under Rules, 2005".

18. Validity/vires of statutory provisions normally examined in different ways and on different grounds. When an amendment is made to the provisions of Constitution, the only scope available to examine the same is, whether the same alters basic features of Constitution or not. Validity of a Principal Legislation made by Parliament or State Legislature is normally assailable on the ground of legislative competence or violation of constitutional provisions. Scope of challenge to delegated legislation namely, rules, regulations-by-laws etc is much wider. Validity thereof can also be challenged on the ground that same are inconsistent with the provisions of Statute under which they have been framed or that mandatory procedure prescribed in statute for making delegated legislation have not been followed.

19. Effect of declaring any legislation as ultra vires or bad for any other reason is also different and depends upon various factors. An amendment to constitutional provision if declares ultra vires as it alters any element of basic feature of Constitution, it is considered to be a patent want jurisdiction on the part of Parliament which would have no effect on the law earlier to such legislation and, therefore, subsequent legislation if struck down would result in revival of earlier provision as if the earlier provision was never altered or repealed or substituted etc. A Constitution Bench recently has expressed this view in Supreme Court Advocates-on-Record Association and another v. Union of India, 2016(5) SCC 1. In the majority judgment rendered by Hon'ble Jagdish Singh Khehar, J. (for Himself and on behalf of Justice Madan B. Lokur, Justice Kurian Joseph and Justice Adarsh Kumar Goel), Court considered this aspect in paras 408 to 415 holding, when amended provision postulating a different provision is set aside, the original process of selection and appointment under unamended provision would revive.

20. When a principal legislation or delegated legislation is struck down being violative of fundamental rights or want of legislation, it is void ab initio. Sometimes when legislation is in the teeth of prohibition under Constitution, the Courts have evolved doctrine of "still-born". In N.P.V. Sundara v. State of Andhra Pradesh AIR 1958 SC 468 doctrine of "still-born" piece of legislation was considered and it was held:

"If a law is on a field not within the domain of the legislature, it is absolutely null and void, and a subsequent cession of that field to the legislature will not have the effect to breathing life into what was a still-born piece of legislation and a fresh legislation on the subject would be requisite. But if the law is in respect of a matter assigned to the legislature but its provisions disregard constitutional prohibitions, though the law would be unenforceable by reason of those prohibitions, when once they are removed, the law will become effective without re-enactment."

(emphasis added)

21. A slight different controversy arose in *Sagir Ahmad v. The State of U.P. & Ors* AIR 1954 SC 728. Therein U.P. State Transport Act, 1951 was promulgated enabling State Government to run Stage Carriage Service to the exclusion of others. Pursuant thereto State Government made a declaration extending aforesaid Act to a particular area and framed a scheme for operation of Stage Carriage Service on certain routes to the exclusion of others. Article 19(1)(g) conferred power upon a citizen to carry on business and there was no power under Constitution available to State to deny such fundamental right to a citizen by engaging itself to carry on any trade or business. An amendment was made vide Constitution (First) Amendment Act, 1951. Thereunder State became entitled to carry on any trade or business either by itself or through corporation owned or controlled by it to the exclusion of private citizens wholly or in part. State sought to protect its enactment authorising itself to run Stage Carriage Service to exclusion of others on the basis of aforesaid amendment of Constitution. The question raised before Court was, whether Constitution (First) Amendment Act could be invoked to validate earlier legislation. Court held that U.P. State Transport Act, 1951 when enacted was unconstitutional, therefore, it was "still-born". It could not have been vitalized by subsequent amendment of Constitution removing constitutional objection and must be re-enacted. Hon'ble Mukherjea, J. speaking for Court, referred to Prof. Cooley in his work on "Constitutional Limitations" (Vol. I page 384) and said:

"a statute void for unconstitutionality is dead and cannot be vitalised by a subsequent amendment of the Constitution removing the constitutional objection but must be re-enacted".

22. Court not only quoted aforesaid passage from Prof. Cooley but also said that this is a sound law and, therefore, gave it a legal recognition binding upon all in this country.

23. This view was reiterated in *Deep Chand v. The State of U.P. & Ors*. AIR 1958 SC 648 where Court said that a plain reading of Article 13(2) indicates, without any reasonable doubt, that prohibition goes to the root of the matter and limits State's power to make law; the law made in spite of prohibition is a "still-born" law.

24. Again another Constitution bench in *Mahendra Lal Jaini v. State of U.P.* AIR

1963 SC 1019 reiterated the above view in para 22 of report. It says:

"...it must be held that unlike a law covered by Article 13(1) which was valid when made, the law made in contravention of the prohibition contained in Article 13(2) is a still-born law either wholly or partially depending upon the extent of the contravention. Such a law is dead from the beginning and there can be no question of its revival under the doctrine of eclipse."

(emphasis added)

25. This has been followed in *Rakesh v. Dr. JT* 2005 (12) SC 1.

26. In the present case power of State to make Rules under Act, 1959 was not doubted by Court in *Anurag Bansal* (supra) but for disregard of procedural provisions, imposition of advertisement tax by State Government by Rules, 2009 was held invalid. Thus Rules, 2009 were struck down since procedure to make Rule which was mandatory, not followed. To our mind it is not a case where doctrine of "still-born" would be attracted. Rules, 2009 have not been struck down for want of legislative competence but they have been held invalid for the reason that mandatory procedure prescribed in statute have not been followed and, therefore, here doctrine of "still-born" and consequences if such a law is made, would not apply but here is a case where a subordinate legislation has been found invalid for want of observance of certain mandatory procedure prescribed in statute. In these circumstances, it has to be examined whether subsequent delegated legislation when held invalid or struck down, would result in revival of earlier subordinate legislation which was already superseded by subsequent legislation.

27. In this regard we find that first decision available to us is *Firm A.T.B. Mehtab Majid and Co. v. State of Madras* AIR 1963 SC 928. Therein validity of Rule 16 of Madras General Sales Tax (Turnover and Assessment) Rules, 1939 as substituted w.e.f. 01.04.1955 was challenged. Court held that it is discriminatory and also contravenes Article 304-A of the Constitution. An argument was raised that if amended rules is invalid old Rule 16 would revive. The Court in para 24 of the judgment said:

"24. It has been urged for the respondent that if the impugned rule be held to be invalid, old Rule 16 gets revived and that the tax assessed on the petitioner will be good. We do not agree. Once the old rule has been substituted by the new rule, it ceases to exist and it does not automatically get revived when the new rule is held to be invalid."

28. Again a similar issued came up for consideration before another Constitution Bench in *B.N. Tiwari v. Union of India and others* AIR 1965 SC 1430. Therein Ministry of Home Affairs made a provision vide resolution dated 13.09.1950 providing reservation for Scheduled Caste and Schedule Tribe at 12.5 percent and 5 percent respectively. There was no provision for carry forward. It was added by a supplementary instruction issued in 1952 providing that if suitable

reserved category candidates are not available in one recruitment the unfilled vacancies shall be carried forward in next recruitment but still some vacancies remained unfilled they would be treated unreserved. This carry forward rule was amended by Government in 1955 to further carry forward unfilled vacancies without any provision for lapse, i.e., for treating vacancies unreserved. Result of substitution of provision by 1955 Rule was that paras 5(3) and 5(4) of 1952 Rule cease to exist. This rule of carry forward made in 1955 was challenged in *T. Devadasan v. The Union of India* and another, AIR 1964 SC 179 on the ground that it is unconstitutional. The Court struck down carry forward rule of 1955.

29. In *B.N. Tiwari* (supra) petitioner argued before Supreme Court that carry forward rule of 1955 was struck down and 1952 rule having already ceased to exist by substitution of 1955 Rule, hence there was no carry forward rule either of 1952 or 1955. In alternative it was argued that if 1952 Carry Forward Rule still continue, that is also arbitrary. Court considered three questions as under:

(1) Whether Carry Forward Rule of 1952 can still be said to exist?

(2) Whether Carry Forward Rule of 1952 if it is still exist is bad for the same reason as the Carry Forward Rule of 1955 in the light of judgment in *T. Devadasan* (supra).

(3) Whether petitioner-B.N. Tiwari would be entitled to appointment even if Carry Forward Rule, 1952 does not exist?

30. Answering first question, Court said that in *T. Devadasan* (supra) Carry Forward Rule as modified in 1955 was declared invalid. Court did not say that it will result in revival of 1952 Rule. Further declaration of 1955 Rule as invalid would not mean that the Court said that 1952 Rule must be deemed to exist or revived because of declaration of 1955 Rule as invalid. Court held:

"The carry forward rule of 1952 was substituted by the carry forward rule of 1955. On this substitution the carry forward rule of 1952 clearly ,Ceased "to exist because its place was taken by the carry forward rule of 1955. Thus by promulgating the new carry forward rule in 1955, the Government of India itself cancelled the carry forward rule,of 1952. When therefore this Court struck down the carry forward rule as modified in 1955 that did not mean that the carry forward rule of 1952 which had already ceased to exist, because the Government of India itself cancelled it and had substituted a modified rule in 1955 in its place, could revive. We are therefore of opinion that after the judgment of this Court in *Devadasan*'s case there is no carry forward rule at all, for the carry forward rule of 1955 was struck down by this Court while the carry forward rule of 1952 had ceased to exist when the Government of India substituted the carry forward rule of 1955 in its place."

(emphasis added)

31. It also held that in view of above answer to first question the second question, whether 1952 Rule is also invalid, need not to answer. We are not

concerned with third question and the issue raised in these writ petitions, in our view, is covered by the answer given by Supreme Court to first question in B.N. Tiwari (supra).

32. Again a similar question arose in Indian Express Newspaper (Bom) Pvt. Ltd. and others v. Union of India and others, 1986(159) ITC 856. Government of India had issued a notification dated 15.07.1977 under which total exemption was granted. It was substituted by notification dated 01.03.1981. Subsequent notification dated 01.03.1981 was challenged and struck down. The question arose, whether after striking down notification dated 01.03.1981, earlier notification would revive. Court held that on striking down of subsequent notification repealed notification would not revive.

33. The judgments in Firm A. T. B. Mehtab Majid (supra) and B.N. Tiwari (supra) came up for consideration before a three Judge Bench in West Uttar Pradesh Sugar Mills Association and others v. State of U.P. and others, 2002(2) SCC 645. Therein Rule 49 of U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954 was substituted by U.P. Sugarcane (Regulation of Supply and Purchase) (Amendment) Rules, 1992. Rule 1(2) of notification dated 24.04.1992 which caused said amendment clearly provides that amendment Rules, 1992 shall remain in force w.e.f. 01.10.1991 to 30.09.1992. Therefore, effect of amendment of rules was only one year. However, Rule 2 whereby amendment was caused, said that for the rules setup in Column 1, rules set out in Column 2 shall be substituted. After 30.09.1992, Cane Commissioner issued a circular that now old Rule 49 has revived. This was challenged and argument was raised that old Rule 49 having already been substituted without, any reservation, it would not revive after amended rule also become inoperative after 30.09.1992. Court considered the question, once old rule has been deleted, repealed or substituted by new rule, whether old rule would revive when substituted rule cease to be operative and it was answered in negative. However, in para 15 of judgment, Court said, that it would have been a different case where a subsequent law which modified earlier law held to be void. In such case, earlier law shall be deemed to have never been modified or repealed and, therefore, continued to be in force. Where it is found that legislature lacked competence to enact a law, still amends existing law and subsequently it is found that legislature or the authority was denuded with the power to amend the existing law, in such a case old law would revive and continue but where the rule framing authority has substituted a provision without showing intention to keep the old provision alive, position would be different.

34. In Supreme Court Advocates-on-Record Association (supra) also this issue has been considered after referring to earlier authorities on the subject, Court held, when an amendment is brought or a new set of rule is brought by substitution or supersession by legislature the annulment or concealment by legislature itself and if that be so earlier provision would not revive. In para 412.4 after referring judgments in Koteswar Vittal Kamath v. K. Rangappa Baliga

and Co., 1969(1) SCC 255, Court observed, that, it is true that if amendment to an erstwhile legislative enactment, envisages substitution of an existing provision, the process of substitution must be deemed to comprise of two steps. The first step would envisage that old rule would cease to exist and second step would envisage that new rule had taken place of the old rule. As such, even if new rule was to be declared invalid, the first step depicted above, namely, that old rule has ceased to exist, would remain unaltered. Court however observed that said position will not apply in the matter considered by Constitution Bench in Supreme Court Advocates-on-Record Association (supra) for the reason that impugned Constitutional amendment was promulgated independently of original provisions of Constitution.

35. In para 412.7 of judgment, Court referred to its decision in Indian Express Newspaper (Bom) Pvt. Ltd. (supra) and said that legal effect of an earlier law, later law enacted in its place was declared invalid would not depend merely upon the use of words like "substitution" or "supersession". It would depend on totality of circumstances and context upon which provision was couched. Court also referred to the judgment in Bhagat Ram Sharma v. Union of India, 1988 (Suppl.) SCC 30 to observe that an enactment purported to be an amendment has the same qualitative effect as the repeal of existing statutory provision and said that there is no quarrel on the said proposition. It also said that it is not considering the question of effect of an amendment or a repeal but was faced with the case dealing with the effect of striking down of Constitutional amendment and legislative enactment through a process of judicial review.

36. In India Tobacco Co. Ltd. v. CTO, 1975(3) SCC 512 the effect and meaning of repeal was considered. Court said that repeal connotes abrogation or obliteration of one statute by another from statute book completely as if it had never been passed. When an Act is repealed, it must be considered (except as to transactions past and closed) as if it had never existed. It said:

"Repeal is not a matter of mere form but one of substance, depending upon the intention of the Legislature. If the intention, indicated expressly or by necessary implication in the subsequent statute, was to abrogate or wipe off the former enactment, wholly or in part, then it would be a case of total or pro tanto repeal. If the intention was merely to modify the former enactment by engrafting an exception or granting an exemption, or by super-adding conditions, or by restricting, intercepting or suspending its operation, such modification would not amount to a repeal."

37. Court further observed that broadly speaking, principal object of a repealing and amending Act is to excise dead matter, prune off superfluities and reject clearly inconsistent enactments.

38. If we examine the matter in present cases in the light of aforesaid discussion, we find that Rules, 2009 made two declarations. One is an independent declaration that existing rules and orders are superseded and

second is an enactment of a set of rules by Rule framing authority.

39. Rules, 2009 dealing with liability and procedure of imposition of advertisement tax have been struck down for the reason that tax imposed by State Government straightway without exercising procedure provided in the Act. Rules, 2009 were framed by Government in contravention of statutory provision contained in Act. In paras 84 and 86 of judgment in Anurag Bansal (supra) Full Bench observed as under:

"84. ...the tax imposed by the State Government straightaway without exercising the power conferred by the Act i.e. issuance of direction by notification in gazette to impose tax seems to be an act of exceeding of jurisdiction. Impugned Rules have been framed by the Government in contravention of statutory provisions (supra) contained in the Act.

86. ...government seems to have exceeded its jurisdiction while framing the rules straightway without following the procedure provided by the Act."

40. Simultaneously in para 82 of judgment, Court further said:

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

41. In para 83, Court said:

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

42. Thus the power of State Government to abolish or modify a tax imposed by Government has validly been recognised but advertisement tax imposed by Rules, 2009 by State Government has been struck down for not complying with Section 206 of Act, 1959 and also without following the provisions of Sections 199 and 203 of Act, 1959. Thus aforesaid judgment in Anurag Bansal (supra) has nowhere declared that Rules, 2009, in so far as in initial part of notification, supersedes existing rules and orders, lacks authority and that part will not be operated. Legislative intention is clear that existing rules and orders in respect of advertisement tax were superseded. New set of Rules, which have been struck down, would not render revival of supersession already done by Rule framing authority and that be so in our view Rules, 2005 shall not revive.

43. Sri Rahul Sahai, learned counsel appearing for respondent-Nagar Nigam, when confronted with aforesaid authorities, could not place any authority before us so as to pursue to take a different view in the matter.

44. The authorities, therefore, committed a manifest error in proceeding to demand advertisement tax under Rules, 2005 on the assumption that after judgment in Anurag Bansal (supra) striking down Rules, 2009, earlier Rules, 2005 would stand revive. This is neither legally permissible nor otherwise valid.

45. In view of above, all these writ petitions are allowed. The orders and demand notices impugned in all these writ petitions are hereby quashed. It is held that respondents shall not be entitled to realise any amount under orders impugned in this writ petition, which are quashed by this judgment. If any, amount has been deposited by petitioners pursuant to impugned orders or realised by respondents by coercive method or otherwise, same shall be refunded to petitioners without any further delay.

46. However, we make it clear that this judgment shall not preclude Competent Rule making authority from promulgating new set of rules in accordance with law.

47. No costs.