

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 228 OF 2023

- 1. MUMBAI HOARDING OWNERS' ASSOCIATION,**
A company registered under Section 25 of the Companies Act, 1956 having its Registered office at c/o 141, Tardeo Airconditioned Market, Tardeo Road, Mumbai 400 034.
- 2. ARISE ADVERTISERS PVT LTD,**
of Mumbai, a company incorporated under the Companies Act, 1956 and having its registered office at 905, Raheja Centre, next to Free Press Building, Nariman Point, Mumbai 400 021.

... PETITIONERS

~ VERSUS ~

- 1. STATE OF MAHARASHTRA,**
Through its Principal/Chief Secretary, Mantralaya, Mumbai 400 032.
- 2. URBAN DEVELOPMENT AUTHORITY,**
through its Principal Secretary, having office address at Mantralaya, Mumbai
- 3. MUMBAI METROPOLITAN REGION DEVELOPMENT AUTHORITY,**
having its office at MMRDA Office

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SANJAY
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Building, Bandra-Kurla Complex, C-14 & 15, E-Block, Bandra (East), Mumbai 400 051.

4. **PUBLIC WORKS DEPARTMENT**,
through its Executive Engineer having
office at Mantralaya, Mumbai 400 032.
5. **MAHARASHTRA STATE ROAD
TRANSPORT CORPORATION**,
through its Divisional Controller,
having office at Maharashtra Vahatuk
Bhavan, Dr Anandrao Nair Marg,
Mumbai Central, Mumbai 400 009.
6. **SR LICENSE INSPECTOR
(LICENSE)**,
H/East Municipal Ward, Prabhat
Colony, Santacruz (East),
Mumbai 400 055.
7. **SR LICENSE INSPECTOR
(LICENSE)**,
K/East Mumbai Ward, Azad Road,
Gundawali, Andheri (East),
Mumbai 400 005.
8. **MUNICIPAL CORPORATION OF
GREATER MUMBAI**,
Mahanagarpalika Marg, Mumbai 400
002.
9. **SUPRI ADVERTISING &
ENTERTAINMENT PVT LTD**,
a company incorporated under the
provisions of the Companies Act, 1956,
having its Registered Office at C-4/3 &
4, Rakshalekha Co-operative Housing
Society, Lane No. 6, Koregaon Park,
Pune 411 001.

...RESPONDENTS

APPEARANCES

FOR THE PETITIONERS	Mr Ashish Kamat, Senior Advocate, with Shyam Kapadia, Mohit Khanna & Smruti Kanade, i/b Negandhi Shah & Himayatullah.
FOR RESPONDENT NO 5	Mr Nitesh Bhutekar, with Gargi Warunjikar & Aniket Nangare, i/b NV Bhutekar,
FOR RESPONDENT NO 9	Mr VR Dhond, Senior Advocate, with Dr Abhinav Chandrachud, Prasad Shenoy, SR Garud & Vidhi Karia, i/b Jayakar & Partners.
FOR RESPONDENT-STATE	Ms PH Kantharia, GP, with Milind More, Addl. GP & Himanshu Takke, AGP.
FOR RESPONDENT-MCGM	Ms Pooja Yadav.
PRESENT IN PERSON	Mr Shriram Manjrekar, Assistant Superintendent (License Department).

**CORAM : GS Patel &
Kamal Khata, JJ.**

**DATED : 30th November 2023 &
1st December 2023**

ORAL JUDGMENT (Per GS Patel J):-

1. Rule. Rule returnable forthwith. All Respondents waive service. There are Affidavits in Reply from the MCGM and the principal contesting Respondent added by amendment, the 9th Respondent (“**Supri Advertising**”).

2. These are the Great Hoarding Wars. The Petitioners have an older form of outdoor advertisements, on billboards or hoardings. Supri Advertising has more modern hoardings on cantilevers. The Petitioners want Supri Advertising’s cantilevered hoardings gone. They say, in essence, that Supri Advertising’s cantilevered hoardings are not permitted, and actually forbidden, by the controlling municipal policy and guidelines and are unauthorised; and such hoardings, cantilevered as they are over footpaths or carriageways, are inherently hazardous and pose a danger to the public.

3. The 1st Petitioner is an association of which the 2nd Petitioner is a member. The 1st Petitioners’ members are all owners of billboards or hoardings in Mumbai.

4. There are only two final prayers in the Petition, prayer clauses (a) and (b) at pages 28 and 29 and they read as follows.

“(a) Issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate orders or directions in the nature of mandamus directing the Respondents to remove all unauthorized cantilever structures, including but not limited to those identified by the letters dated 25th May 2022 and 28th July 2022 (Exhibits B to E hereto);

(b) Issue a writ of mandamus or a writ in the nature of

mandamus or any other appropriate orders or directions in the nature of mandamus directing the Respondents to frame a policy with respect to not to permit cantilever structures projecting over the footpaths or roads in accordance with Orders of this Hon'ble Court dated 27th June 2019.”

5. We have not the slightest hesitation in rejecting prayer clause (b) immediately. It is one thing to petition a writ court for a mandamus under Article 226 of the Constitution of India to direct the public authority to frame a policy. It is quite another to seek a mandamus that the policy be framed *in a particular manner*. That would amount to legislation by mandamus. Indeed our own court has repeatedly held, following binding decisions of the Supreme Court, that this cannot be done.

6. This aspect of the law i.e., that Courts will not issue a mandamus to legislate, is by no means *res integra*. It has been settled law for a long time and we may fruitfully refer to paragraph 25 of the Supreme Court decision in *Census Commissioner v R Krishnamurthy*.¹ The Supreme Court held:

“25. Interference with the policy decision and issue of a mandamus to frame a policy in a particular manner are absolutely different. The Act has conferred power on the Central government to issue notification regarding the manner in which the census has to be carried out and the Central Government has issued notifications, and the competent authority has issued directions. **It is not within**

1 (2015) 2 SCC 796.

the domain of the court to legislate. The courts do interpret the law and in such interpretation certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court may also fill up the gaps in certain spheres applying the doctrine of constitutional silence or abeyance. But, the courts are not to plunge into policy-making by adding something to the policy by way of issuing a writ of mandamus. There the judicial restraint is called for remembering what we have stated in the beginning. The courts are required to understand the policy decisions framed by the executive. If a policy decision or a notification is arbitrary, it may invite the frown of Article 14 of the Constitution. But when the notification was not under assail and the same is in consonance with the Act, it is really unfathomable how the High Court could issue directions as to the manner in which a census would be carried out by adding certain aspects. **It is, in fact, issuance of a direction for framing a policy in a specific manner.”**

(Emphasis added)

7. This decision was followed by a Division Bench of this court in *Municipal Corporation of Greater Mumbai v State of Maharashtra*.² The Division Bench was dealing with an interim order of 2014 by which a previous Division Bench itself issued specific guidelines itself for the constitution of what is now known as the Technical Advisory Committee to assess the structural condition of buildings. The Division Bench that finally disposed of the matter (AS Oka J, as he then was, and RI Chagla J), while referring to *R Krishnamurthy's* case held that this was an impermissible exercise of writ jurisdiction.

2 2018 SCC OnLine Bom 816.

However, since the MCGM had already accepted the interim order and acted on it by framing and adopting a policy and guidelines that had the force of statute, no further action was then then called for.

8. The problem with prayer clause (b) is its assumption that there is a policy vacuum; hence the demand to frame *some* policy. But if it is shown, and in this case, as we shall presently see, it is indeed so shown, that there exists a policy, then no question arises of even considering prayer clause (b). This is quite apart from the fact, and which will be a significant concern, although not dispositive, that the Petitioners have deliberately suppressed to mention the existing policy although they could not possibly have been unaware of it.

9. It is Mr Dhond's submission that the two prayers and the frame of the Petition as originally filed constitute a gross abuse of the process of this court. He submits that the Petition is thoroughly motivated and *mala fide*. Prayer clause (a) purports to direct itself against "*all* unauthorised cantilevered structures" but the record shows that this entire prayer is directed only against Supri Advertising. This is also the intent of prayer clause (b), he submits, which is nothing but an attempt to shut down Supri Advertising forever.

10. We believe Mr Dhond is justified in his submission. Supri Advertising was not initially a Respondent to the Petition when it was first instituted, despite Supri Advertising being mentioned by name no less than 19 times in the Petition (we have counted

ourselves). In paragraph 31, the Petitioners justified the non-joinder of Supri Advertising by saying:

“31. The Petitioners have not joined Supri, Dr Anahita Pandole or NAGAR to the present Writ Petition since the reliefs sought herein are directed squarely against the Respondents. **They are thus not necessary or proper parties hereto.** In any event, the Petitioners crave leave to amend and/or modify the present Petition, including to add them as parties, if so directed by this Hon’ble Court.”

(Emphasis added)

11. It was not until 14th October 2022 at the first hearing when Supri Advertising appeared, apparently without notice, that the Petitioners sought to amend the Petition to join Supri Advertising, and in paragraph 31 deleted the reference to Supri Advertising.

12. This becomes relevant once we set the Petition in an appropriate matrix. There is a needlessly lengthy list of dates that purports to range over several issues, but we are not here concerned with the question of a general policy as was the subject matter of a series of orders passed by this court in a Public Interest Litigation filed by one Dr Anahita Pandole. The Petition does not therefore bring into question any policy or issue regarding hoardings generally. It is specifically directed against cantilevered hoardings.

13. We pause to note what this distinction really is. A typical outdoor hoarding is usually mounted on a structure, frequently made of steel members. There are stanchions on either side and a supporting or backing frame on which the billboard is mounted. The

vertical and horizontal dimensions of a permissible hoarding, the height above ground, etc., are all specified. The entire structure is anchored on both sides to the earth. Sometimes, these hoardings are affixed to existing structures such as buildings, walls or other surfaces, or they may even be mounted on concrete columns. The cantilevered hoardings in question, are typically those that have a single supporting column or stanchion. The advertising panel then projects sideways. This is always at a height above the ground.

14. Although it does not matter to the determination of the Petition, a few photographs that were shown to us at earlier hearings seem to us to indicate that what has happened here is that Supri Advertising's cantilevered hoardings have apparently blocked visual access or the line of sight to the hoardings of the 1st Petitioner association's members.

15. Mr Dhond would have it that this is actually the objective of the Petitioner. There is no material in the Petition or on record to indicate that cantilevered structures are per se always hazardous and can never be permitted. There is not even anecdotal evidence to this effect.

16. We find, after an extended hearing that took the entirety of the afternoon yesterday, that there are also important omissions and elisions that are completely unexplained in the Petition. This cannot be without consequence, because at least one of these omissions is crucial. We will look at the dates to the extent they are necessary,

but before we proceed to those, we believe it would be important to have regard to the manner in which the Petition is laid.

17. A statement of facts is said to be begin from paragraph 11. Paragraph 12 mentions that because of the proliferation of hoardings without a regulatory framework, a set of guidelines came to be issued in 2007 by the MCGM. These were meant for the regulation of various aspects related to the erection of hoardings across the city. These guidelines followed certain directions of this court in the Anahita Pandole Public Interest Litigation, the details of which are unimportant. Guidelines were issued by the MCGM under Sections 328 and 328A of the Mumbai Municipal Corporation Act, 1888 (“**the MMC Act**”). The guidelines themselves had definitions of hoardings, sky-signs, etc. They also provided for punishments for contravention of the policy guidelines. The 2007 guidelines explicitly prohibited the projections of hoardings on to the footpath or onto a public road.

18. Mr Kamat for the Petitioners has sought to make much of this provision, but we believe this is entirely misdirected for a simple reason: the policy guidelines themselves had provisions regarding the dimensions of the hoardings. The projections in question are not to be understood as projections *per se* but are more reasonably understood as unauthorised extensions beyond the permissible or authorised dimensions, especially the width. We have read these guidelines with Mr Kamat and we are unable to agree with him that anything in these guidelines constitutes an absolute prohibition on cantilevers.

19. It is true that these 2007 guidelines did provide that the hoardings could not be permitted to 'project over' a carriageway or a road lane where there was no footpath. But this again has to be understood in the context of not an absolute prohibition but as a restraint against an unauthorised dimensional extension or expansion of the permitted hoardings.

20. There is an argument taken before us and a pleading in the Petition that the justification for this so called restraint was public safety i.e., to prevent danger to pedestrians. But we note that equally there are restrictions, and Mr Kamat himself relies on these, against moving images on hoardings. But for some strange reason, Mr Kamat confines this argument to moving images on cantilevered hoardings but has nothing at all to say about what we ourselves notice in the city, that is to say an increasing proliferation of moving images on decidedly over-bright panels on hoardings which are *not* cantilevered. We notice ourselves that at least at two places that we can immediately identify and which are on main arterial roads, viz., at the Wilson College Bus Stop (both north-bound and south-bound) and secondly, at the left hand turn proceeding northwards towards Kemps' Corner on the building above HDFC Bank, there are extremely large non-cantilevered hoardings that have moving images, are excessively bright and are clearly hazardous to motorists, especially at night. There is no explanation whatsoever in the Petition as to why these are not dangerous, but similar ones on cantilevered hoardings only because they are cantilevered are more especially dangerous. We note this only to point out that the Petition itself is highly selective in what it portrays and what it glosses over. There is nothing shown to us in any of the guidelines to indicate that

the MCGM has at any point taken any steps towards directing advertisers with these bright, back-lit moving images hoardings to dim or reduce their brightness according to ambient conditions. This is well-known technology, viz., that a display need not be at full brightness when the ambient light is low, but can and should be lit more softly.

21. Paragraph 18 now begins to give us the dates that are of concern to these Petitioners. It says that, in May 2022 (this date is important), the Petitioners noticed that there were several steel cantilevered structures on concrete footings at various intervals along the Western Express Highway. The Petitioners said that these had “popped up”.

22. On 25th May 2022, the association wrote to the MCGM expressing shock and alarm at these cantilevered structures and said that it did so out of a concern for public safety. This gives us the context to what we just said i.e., the very selective concern for public safety that is portrayed in this Petition.

23. The Petitioners reiterated many of the contentions that they have taken in this Petition and complain now that despite this representation no action was taken.

24. On 28th July 2022, three advertisers, including the 2nd Petitioner, wrote to the Senior Inspector Licenses and other authorities of the MCGM regarding cantilevered hoardings. This correspondence is summarised in paragraph 20 of the Petition.

25. On 26th July 2022, members of the 1st Petitioner Association met the MCGM's Additional Municipal Commissioner complaining about the unauthorised cantilevered structures and making their submissions.

26. The complaint in paragraph 22 was that there was continued inaction.

27. Paragraph 23 is where Supri Advertising now enters the frame. It is here that the Petitioners mention that they then found that on 5th January 2010, Supri Advertising had entered into a Tripartite Agreement with the Public Works Department (“**PWD**”) of the State Government the 4th Respondent, and the Maharashtra State Road Transport Corporation (“**MSRTC**”), the 5th Respondent. This Tripartite Agreement included putting up what are called Bus Queue Shelters (“**BQS**”) i.e., hoardings at covered bus stops along the Western Express Highway alignment. A copy of this Agreement is at Exhibit “G”.

28. Mr Dhond accepts that this is the Tripartite Agreement that was signed by Supri Advertising with PWD and MSRTC. But this Agreement deals not just with cantilevered structures but also with BQS. We note that the Wilson College hoardings we have mentioned earlier are BQS — but they have nothing to do with Supri Advertising.

29. Interestingly in the Petition, there is a factual gulf for there is no allegation made that between January 2010 and for the next 12

years till May 2022, the Petitioners found any cantilevered hoardings sufficient to warrant alarm let alone concern for public safety. Paragraph 24 tells us that on 15th July 2011 the MCGM granted permission to Supri Advertising for a number of BQs, several glow-sign boards, and also double sided cantilevers.

30. It is on this basis that it is now being argued that the 5th January 2010 Agreement and the permissions of 15th July 2011 should (today, in December 2023) be held to be illegal and should be quashed as being violative of the guidelines. But the grant of permission is one thing. To succeed in any such application the Petitioners would necessarily have to show that pursuant to the 15th July 2011 permission cantilevered hoardings were indeed put up between 15th July 2011 and would then have to explain, if they were, why the Petitioners took no objection to those. On this the Petition is entirely silent.

31. Indeed, paragraph 24 must be read with paragraph 18 because it is the Petitioner's specific case that it was *not till May 2022* that the Petitioners *for the first time* found any vestige or sign of cantilevered hoardings to which they had objections.

32. We are unable to see how such a case can be retrofitted almost as an after-thought. It is also not in dispute that at some point after 2011 the permission to Supri Advertising was withdrawn. This resulted in an order of 20th November 2017 by the MCGM against Supri Advertising and in regard to which Supri Advertising filed a Writ Petition (L) No. 2385 of 2018. That Petition came before a

Division Bench of this court. One of us, GS Patel J, was a member of that Bench along with SC Dharmadhikari J when an order was passed on 27th June 2019. Mr Kamat has endeavoured to show from this order that the High Court itself had deprecated cantilevered hoardings. The entire submission is in our view misplaced. We were at that time concerned with hoardings being placed on medians i.e., on the dividers and projecting on either side. This is apparent from paragraphs 3 and 7 of the order at pages 141 and 143 which read as follows:

“3. All that the Petitioners are seeking is equal treatment and on par with others. They should be granted such permissions and approvals as are required under the Mumbai Municipal Corporation Act and the policies of the Corporation. These permissions and approvals or licenses will be utilised to display advertisements, not in the middle of the road, but by the sides. Meaning thereby, the cantilever would be installed on pavements and footpaths, but not on road dividers. They would also be placed in such a manner so as not to cause any inconvenience to the pedestrians. The pedestrian traffic can move smoothly without any hindrance or obstruction, much less a fear of accidents.

7. As far as operative clause (3) of the impugned order is concerned, it is clear that the Municipal Corporation of Greater Mumbai Policy Guidelines, which the Municipal Commissioner refers to, relates to permission to display advertisement on cantilevers on road dividers. Once Mr Kamdar has stated, on instructions, that the petitioners are not interested in displaying any advertisements on cantilevers on road dividers, then, this issue need not detain us. As far as sides of the road are concerned, it is entirely for the Municipal Commissioner to grant the permissions in

accordance with its policies and the prevailing provisions of law.”

33. Then there is reference made to paragraph 10 at pages 145 and 146. We quote that paragraph:

“10 We are informed that in pursuance of the earlier orders of this Court and the observations therein and particularly to uphold the larger public interest and to take care of every concern relating to public safety, the Municipal Corporation is coming out with a revised policy. We expect the Municipal Corporation to devise such policy as would avoid accidents resulting in deaths of motorists and pedestrians. The greatest concern of this Court is of public safety. Once anything is permitted to be installed right in the middle of the road and it protrudes on the road, then, we have noticed several mishaps and accidents caused by collapsing of such hoardings and advertisements, particularly when in monsoon season, the speed of wind is stated to be anything between 45-55-65 kms per hour. There is also a genuine apprehension if the advertisements are displayed prominently by use of modern technology and when they are illuminated or presented in such a manner even in daylight that they distract the motorists and pedestrians crossing the roads. The Municipal Corporation would do well to view the slides and pictures of the recent cyclone in Odisha and particularly the stretch near Puri Beach and Bhubaneswar market. All the advertisements flew off and fell directly on the road and some of them came down so fast or briskly, that the motorists and others using the road were saved by a whisker. Every time people may not be so lucky. In these circumstances we would expect the Municipal Commissioner now to look into these issues in the backdrop of the larger public interest and public safety and may be that the Municipal Corporation may have

to forego some revenue, but that is worth it. Let such a policy be outlined and made public within six (6) months.”

34. As this shows our concern was indeed with public safety as it is even now (hence our reference to the over-bright hoardings that the MCGM continues to permit).

35. Importantly, the references in paragraph 10 were not *only* to cantilevered hoardings. We mentioned the damage done during the Odisha cyclone but when we said that entire hoardings had fallen over, this was a reference to *all* hoardings including those similar to the ones that the Petitioners put up.

36. Paragraph 28 of the Petition is important from the perspective of certain dates. We reproduce paragraphs 28, 29 and 32 of the Petition.

“28. Not only has no such policy been framed by Respondent No.8 despite the passage of three years and the clear directive of this Hon’ble Court to forsake revenue for public safety, at least to the best of the Petitioners’ knowledge, in brazen disregard tantamounting to contempt of this Hon’ble Court, Respondent No. 8 has lacked in implementing the same, **and it now appears that, vide letter dated 21st December 2019, granted permission to the very same Respondent No. 9 to erect and display 20 cantilever hoardings on the Western Express Highway subject to certain terms and conditions.** The relevant terms of the said letter are as follows:

a. Clause 6 of the letter provides that Respondent No. 9 shall abide by all the conditions of the

Policy Guidelines formulated by Respondent No. 8 from time to time.

b. Clause 9 states that the cantilevers shall not be illuminated without a no-objection certificate from the traffic police department and prior approval of Respondent No. 8.

c. Clause 11 states that breach of the conditions of the Policy Guidelines will entail action under Section 328 / 328A r/w Section 471 / 472 of the MMC Act including removal of action against all advertisements.

d. Clause 13 states that the advertisement which may distract the attention of the driver is not allowed.

e. Clause 19 states that no time the size of the cantilever structure shall be bigger than the permitted size.

A copy of the said letter dated 21st December 2019 is hereto annexed and marked as **Exhibit “L”**.

29. It is respectfully submitted that the present unauthorized cantilever structures as pointed out by letters dated 25th May 2022 and 28th July 2022 are in gross violation of the Policy Guidelines and are hazardous to the safety of the public. They are also in total disregard of the Order of this Hon’ble Court. Instead of framing guidelines as directed, it appears that the Corporation Respondent No.8 has done the exact opposite, i.e., granted permission for the offending and dangerous cantilever advertisements. The subject unauthorized cantilever structures have been constructed by Respondent No.9. The Respondents, despite repeated reminders by the Petitioner No.1 have feigned ignorance towards removal of the said unauthorized cantilever structures posing a threat to safe flow of traffic which is liable to severe repercussions in the form of loss of life in case of a mishap.

32. It is also pertinent to note that on 23rd June 2022, one advertiser, being M/s Pioneer Publicity Corporation Pvt Ltd (“*Pioneer*”) complained about certain cantilever hoardings that were obstructing the visibility of its own hoarding. Notably, on 12th July 2022, Respondent No. 8 responded and pointed out that the advertiser had been informed of the complaint and the Superintendent of License had also been intimated. On 26th August 2022, Respondent No. 5 also acted on the said letter from Pioneer and addressed a letter to Respondent No.3 recommending a shifting of the cantilever hoarding with immediate effect. Copies of the said letters dated 23rd June 2022, 12th July 2022 and 26th August 2022 are annexed hereto and marked as Exhibit “O”, “P” and “Q”, respectively.”

(Emphasis added)

37. These are important because this Petition was filed on 6th October 2022. What it studiously does not mention is that on 29th April 2022 the State Government came out with an overriding policy. This was notified in the official government gazette. A copy is annexed to the Affidavit in Reply. There is not even a reference to it in the Writ Petition.

38. We are unable to understand how in October 2022, these Petitioners could have been unaware of a State Government policy. The relevant portion in the official English translations starts at page 332. These are guidelines and they are said to fall within the ambit of the MMC Act and related statutes. They are the Greater Mumbai Municipal Corporation (Regulation and Control of the Display at Sky Signs and Advertisements) Guidelines 2022. Clause 1(4) says that these guidelines supersede all previous guidelines and

circulars issued in this regard. Sub-clause (5) makes reference expressly to Sections 328 and 328A of MMC Act.

39. These State Government guidelines addressed themselves to various types of advertising. Chapter II deals with ‘Advertisements on Business Premises’. Chapter III deals with ‘Temporary Advertisements’ and defines in sub-clause (2) of Chapter III the various types of temporary advertisements such as banners, boards, flags, building wraps, floating balloons etc. Chapter IV then deals with ‘Advertisement Permissions of Hoardings and Advertisements other than on Business Premises. Sub-clause (2) provides for general guidelines of hoarding. This has several subsidiary clauses numbered alphabetically from (A) onwards. There are even provisions for advertisements on parked vehicles, electronic screens with video displays or laser shows in sub-clause (H)(2), advertisement boards on moving vehicles, advertisement boards on flyover bridges, kiosks, etc., in sub-clause (L), backlit boards, and, interestingly, in sub-clause (M) at page 354 cantilevered hoardings.

40. Sub-Clause (i) of clause (M) of clause (2) of Chapter IV says that cantilevers *will be permitted* at a minimum height of 12 feet above the ground. The permission of the Municipal Commissioner is required. A committee is to be constituted to ascertain suitable locations and then there are in sub-clause (3) various restrictions that are imposed.

41. We note this for a very simple reason. It demonstrates quite emphatically a most glaring lacuna in this Petition. The Petitioners

could not have been unaware of the State Government guidelines of 29th April 2022. Yet in a Petition of 6th October 2022 there is not even a mention of these guidelines and the entire Petition proceeds on the footing that the only guidelines in question are of 2007 and that cantilevered hoardings are wholly prohibited.

42. This omission is not accidental. It is not inadvertent. It is studied. It is deliberate. What makes matters worse is that in paragraph 21 sub-paragraph (a) there is a reference to an objection in August 2022 to what is said to be ‘proposed’ State policy guideline that were published on the MCGM’s website. This objection is said to be in Exhibit “F” to the Petition which is at page 102. This is a communication of 2nd August 2022 from the 1st Petitioner to the Additional Municipal Commissioner. Annexure “A” to this letter is a list of objections to a policy that was put up on the MCGM website. But this makes it all the more surprising that there is no reference whatsoever to the gazetted notification of the State Government that was several months prior of 29th April 2022.

43. The matter does not end here on facts. We will deal with the remaining facts immediately before we examined the grounds in the Petition.

44. Mr Dhond has given us a compilation which we formally take on record. Page 195 of this compilation is a communication of 4th January 2023 (there is a typographical error in the date) from the license department of the MCGM to Supri Advertising. It mentions municipal permission granted to Supri Advertising for 20

cantilevered single-side display panels at various locations on the Western Express Highway. A license fee was decided to be accepted but this was subject to — and this is of particular interest to us — said to be subject to the outcome of, astonishingly, at least four civil suits filed in the City Civil Court, all in 2022, and the present Writ Petition itself. The grievance in the suits was that the plaintiffs' hoardings were obstructed by the cantilevers. This is the real objective of this very Petition too, and it is this objective that is sought to be papered over by framing the prayers in some omnibus terms.

45. At page 195A of the compilation, we find a communication of 20th September 2022 to Supri Advertising from the office of the Superintendent of Licenses of the MCGM. This specifically conveys approval and permission to Supri Advertising from the MCGM to put up the cantilevered hoardings at 20 identified locations. The dimensions of each are specified.

46. Why is this relevant? As Mr Dhond points out it is of immediate importance because of the framing of prayer clause (a) which seeks the removal of “*all* unauthorised cantilevered hoardings”. The moment it is shown that Supri Advertisings hoardings are *not unauthorised*, i.e., that they have permissions, and those permissions are not assailed or challenged, then prayer clause (a) must necessarily fail.

47. Mr Dhond also submits that what is curious in the Petition is not what is challenged but what is not challenged. Even after this

permission was pointed out, no attempt was made to amend the Petition to introduce a challenge to these permissions. There is no challenge to the State Government guidelines or notification of 29th April 2022 either.

48. Instead, what is canvassed before us is that the MCGM has now framed its own policy in *December 2022* which prohibits cantilevered hoarding. A copy of the Circular is at page 381, and again it is not a disclosure in the Petition but is disclosed as Exhibit “M” to the Affidavit in Reply.

49. Cantilevers are dealt with in a separate sub-heading which we find at page 389. It says that no *new* permission for erection of cantilevers shall be permitted. The second bullet point says that *existing permissions are to be continued* subject to fulfilment of terms and that these existing permissions would be revoked if any violation was found. All existing permissions for cantilevers are to continue till the expiry of the tender period. Again and again, what is argued before us is that since no new permissions can be granted for cantilevers, therefore all permissions including those *previously* granted must be cancelled.

50. There is no omnibus prohibition even in the MCGM guidelines or Circular of December 2022. As late as the end of November 2023 no attempt is made by the Petitioners to directly challenge the permissions granted to Supri Advertising.

51. Nothing is demonstrated in regard to the events from 2011 until 2022. The fact of filing of the suits in the City Civil Court by other advertisers who, for all we know may well be members of the 1st Petitioner, is not mentioned in the Petition either.

52. Instead, what is now sought to be done is to expand the case impermissibly in the course of a Rejoinder after the relevant material is brought on record by Supri Advertising. This Rejoinder starts at page no 459. It is now argued that the 2022 guidelines of the State Government do not hold the field but that it is the 2nd December 2022 Circular of the MCGM that governs. This is plainly mischievous. For what the December 2022 Circular says is that no *new* permissions will be granted. Supri Advertising's permission is not a new permission. It was a permission that was granted *prior to the December 2022 MCGM Circular*. It is specifically saved and protected by clauses in the December 2022 Circular.

53. There is no explanation even in the Rejoinder why the 29th April 2022 guidelines were not even referenced or mentioned let alone dealt with in the Petition itself.

54. The level of mischief can be gauged from paragraph 3.1 to 3.3 of the Affidavit in Rejoinder at pages 461 and 462. They read as follows:

“3.1 The 2022 guidelines published on 29th April 2022 (at Exhibit N to the Reply) do not hold the field. This is clear from the 2022 circular dated 2nd December 2022 (at Exhibit M to the Reply) which provides that while the MCGM is in the process of formulating its guidelines, it is

modifying the Policy Guidelines to a certain extent as per the 2022 guidelines published by the state government. Accordingly, the 2022 circular tabulates the earlier provisions i.e. Policy Guidelines and the modification to the clauses.

3.2 In fact, in the proposed modification at serial no.4 *viz.* “Advertisements other than business premises”, the MCGM has modified the Policy Guidelines to not permit advertisements on cantilevers. Thus, the MCGM on its own accord has now prohibited advertisements on cantilevers.

3.3 Thus, the MCGM first illegally granted permissions to Respondent No. 9 to erect cantilevers for advertisements but has now by way of the 2022 circular sought to prohibit the same. In effect, the MCGM has created a complete monopoly in favour of Respondent No. 9 by granting it illegal permissions in brazen violation of the policy Guidelines and discontinuing such grant, albeit correctly and in accordance with the Orders passed by this Hon’ble Court.”

55. There is no purpose served in reiterating what is plainly obvious that this entire Petition is motivated and *mala fide*. It is an abuse of the process of this court. It is only meant to prohibit Respondent No 9 and this was sought to be done without even joining Respondent No 9 to begin with. The BQS Agreement of 2010 and the permissions of 2011 are belatedly sought to be questioned in 2022 and 2023 but without a shred of evidence that even if they mention cantilevers there was a single cantilever hoarding that the Petitioner found objectionable from 2011 until, on the Petitioner’s own showing May 2022. There is no substantive prayer directed against the 2010 Agreement and the 2011

permissions. There is no challenge to the April 2022 State Government policy. There is no challenge to even the December 2022 MCGM policy on the basis that on account of public safety it should not permit previous permissions. This is illogical, for if the case is that cantilevered hoardings are inherently dangerous, then they must be shown to be dangerous no matter in what year they were put up; therefore, the Petitioners would logically have had to assail the MCGM policy to the extent that it permits existing cantilevered hoarding agreements to continue to the end of their term. Even this is not done.

56. Let us finally look at the grounds in the Petition for what they are worth and to our mind they are worth very little. Grounds (B), (F) and (M) needs to be reproduced:

“B. The cantilever advertisements / hoardings overhang the Western Express Highway, perhaps the busiest and most arterial road of the city. They obstruct the visibility of the driver, apart from proving a serious distraction if made functional, which can result into untoward incidents of injury or loss of life. The erection of such structures are expressly barred under Section 308(1)(a) as stated hereinabove and are therefore, are liable to be removed.

F. The position and the structure of the cantilever is such that it falls squarely on the carriageway thereby being directly in the line of sight of the motorists. Further, the cantilever structures are being illuminated with bright LED lights, are designed to grab attention. These cumulatively result in the same being a distraction and likely to be hazardous to pedestrians and motorists alike. The same would be doubtless lead to accidents if they haven't done so already.

M. The offending unauthorized cantilever structures are liable to be a cause of untoward incidents and mishaps resulting into loss of life and injury and therefore, in public interest, it is crucial that the Respondent remove the same at the earliest since every single day the structures continue, they pose a threat and endanger public safety.”

57. We will be forgiven if we find this most amusing. These Petitioners, who have no problems putting up enormous oversized and over-bright hoardings on the periphery, somehow believe without even anecdotal evidence that a cantilevered hoarding is a serious distraction to a driver. These Petitioners forget that sometimes even judges self-drive. We too are acutely aware of what is a distraction when we are behind the wheel. Generalized statements of this kind are worthless. They need to be backed by empirical data. There is not a single study reference. There is not a reference to a single accident, or a single mishap, said to have been caused because of a cantilevered hoarding. There is no survey to which the Petitioners point. We are simply expected to take their word for it as if this is a *res ipsa loquitur* situation. We dare say that if this was put into a suit and the Plaintiff was to give evidence, a single question in cross examination would suffice to put an end to the entire suit.

58. The submissions that the cantilevered structures violate the 2007 policy are aspects which we have dealt with. We have also shown how the Petitioners have misread even the 2007 policies restrictions against so called projections. The allegation that the advertisements by Supri violate this court’s order is facially incorrect.

59. Then comes ground (H) at page 25. This is conceivably the give away. This is how it reads:

“H. The Respondents have failed to frame any policy, let alone make the same public, as directed to do so by this Hon’ble Court vide the abovementioned Order dated 27th June 2019.”

60. Therefore, the suppression of the 29th April 2022 policy by the State Government several months prior to the filing of the Petition was not accidental. The suppression was deliberate. The Petition proceeds on the footing that as of the date of institution of the Petition there was *no* governing policy. It does not mention that there was a policy that superseded all previous policies and was specifically under the MMC Act and the relevant provisions thereafter.

61. The Affidavit in Reply by the Supri Advertising was filed on 23rd January 2023. The Petitioners took their time over a Rejoinder and did not file it till 5th October 2023. By that time, the Petitioners knew of the 21st December 2019 permissions granted by the MCGM to Supri Advertising. But until 30th November 2023 the Petitioners did nothing at all to bring into question in the Petition itself that permission of 21st December 2019.

62. Beyond this, there is absolutely nothing in this Petition. Yet, this Petition was repeatedly urged before us as if there is some critical point of law. When we pointed out some of these aspects, a faint attempt was made to seek time in the middle of an extended argument to reconsider the Petition and to move an amendment if

necessary, i.e., to treat the Petition as a work in constant progress. We declined to grant any such liberty.

63. We have on our regular lists, matters filed by individuals who complain of the most indescribable inflictions on them and their properties. There are people here who are without homes and without transit rent who have not been given promised accommodation for decades together. There are many other matters, and all of these had to be kept on hold for the entirety of an afternoon while these two Petitioners persisted with this Petition, treating our courts as playing fields or worse. For they have quite literally gambled on this litigation. The suppressions in the Petition are in themselves sufficient to warrant a dismissal with costs. The law in that regard is well settled anyway. We have however dealt with the Petition fully on merits and addressed all aspects. It is in these circumstances that we have not the slightest hesitation in not only dismissing the Petition but in doing so with an order of costs that we believe is entirely justified. We are not directing these costs to be paid to Supri Advertising. We believe it is making enough making as it is. The MCGM has large deposits, and it is itself in no urgent need of funds. But there are others who would benefit from this order of costs and therefore costs quantified as Rs 5 lakhs are to be paid within one week to each of the following two charitable organizations (i.e., Rs 10 lakhs in all), viz., Tata Memorial Hospital, and St Jude India Child Care Centres which works with cancer affected children and their families.

Tata Memorial Hospital	
A/c No.	1002449683
Bank Name	Central Bank Of India
Branch	TMH
RTGS/IFSC/NEFT Code	CBIN0284241
PAN No	AAATT3620R

St. Jude India Child Care Centres	
A/c No.	02402320004130
Bank Name	HDFC Bank Ltd.
Branch	Sandoz House, Dr AB Road, Worli, Mumbai 400 018
RTGS/IFSC/NEFT Code	HDFC0000240
PAN No	AAKCS1062K

64. At the request of the Learned Advocate for the Petitioners, time to make payment of costs is extended by another week, i.e., two weeks from the date this order is uploaded.

(Kamal Khata, J)

(G. S. Patel, J)