IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1305 OF 2003

1. Aurangabad Advertising Association
(Through its President:
Shri Upendra S/o Laldas Javeri,
Age : 46 Years, Occu. : Business,
R/o Madhav Apartment,
Pandariba Road, Aurangabad)

2. Dilmohansingh S/o Hardayalsingh Ghai,
Age : 44 Years, Occu. : Business,
R/o Chetan Plaza Apartment,
Opp. : Roplekar Hospital,
Samrat Nagar, Aurangabad

3. Smt. Sharmila W/o Ashishkumar Chatterjee,
Age : 39 Years, Occu. : Business,
Prop : Dhruv Advertising Agency,
R/o Plot No. 7, “Meera”,
Shantiniketan Colony,
Near Shani Mandir, Kranti Chowk,
Aurangabad

4. Laldas Manohardas Zaveri,
Age : 75 Years, Occu. : Business,
R/o Madhav Apartment,
Pandariba Road, Aurangabad .. Petitioners

Versus

1. The State of Maharashtra

2. The Aurangabad Municipal Corporation
(Through its Commissioner)
Aurangabad .. Respondents

3. M/s. Sale Ads ,
A Registered Partnership Firm,
Through its Partner,
Shri Pramod Purushottam Mehta,
Age : 49 Years, Occu. : Business,
R/o 19, Radhamohan Colony,
Khokadpura, Aurangabad .. Intervener

Shri S. B. Talekar, Advocate for the Petitioners
Shri G. K. Naik Thigle, Addl. Govt. Pleader for the State
Shri Umakant Patil, Advocate for Respondent No.2

CORAM : S. V. GANGAPURWALA AND
A. I. S. CHEEMA, JJ.

CLOSED FOR JUDGMENT ON : 08TH MAY, 2015
JUDGMENT PRONOUNCED ON: 24th June, 2015

JUDGMENT (*Per S. V. Gangapurwala, J.*) :

1) The petitioners vide the present writ petition assails the resolution dated 28.02.2002 bearing Subject No. 578/8 passed by the General Body of the Municipal Corporation thereby increasing the rates / fees of advertisement and as confirmed in

its meeting dated 17.04.2002 / 24.04.2002. The petitioners also incidentally challenge the notices issued pursuant to the said resolution directing the petitioner to pay the advertisement fees as per the said rates.

2) Mr. Talekar learned counsel for the petitioner strenuously contends that, the Petitioner No. 1 is an association of members engaged in the business of advertisement and publicity of various commercial products and services of commercial units in the city of Aurangabad. Petitioner Nos. 2 to 4 are members of the Petitioner No. 1 association carrying on the business of advertisement and publicity and are granted permission by the Municipal Corporation, Aurangabad to advertise, display the hoardings on centre pole on payment of rental charges and fees for a period of one year each time commencing from 01st April. According to the learned counsel the Municipal Corporation has enhanced the advertisement fees / rental charges almost 40 times during less than two years. Up to 31.03.2001 the advertisement fees / rental charges were Rs. 288/- per year on the private land and Rs. 312/- on Government land. However the same were enhanced to Rs. 936/- per year with effect from 01.04.2001 and Rs.1272/- from 01.09.2001. The

learned counsel submits that, the said advertisement fees / rental charges were enhanced for the 03rd time with effect from 01.04.2002 from Rs. 1272/- per annum to Rs. 9,600/- per annum. The learned counsel submits that, for the first time on 19.10.2002 the respondent corporation communicated the petitioner and its members about the enhancement of the advertisement fees vide Resolution dated 28.02.2002. According to the learned counsel the rent and or advertisement fees for the 4th time was enhanced from Rs. 9,600/- to Rs. 12,000/- with effect from 01.04.2002.

3) The learned counsel submits that, the petitioners preferred representations with the respondents from time to time insisting upon the respondents that the enhancement of the advertisement fees / rental charges is exorbitant and excessive. The same was applied with retrospective effect which is not permissible. The representations given from time to time were not considered.

4) The learned counsel submits that, the advertisement fees is a fee and not tax. The learned counsel submits that, there were no rules in operation and before the rules can be approved and finalized by the Government the rates / fees has been

enhanced and fixed by the Municipal Corporation which is illegal and not sustainable. The respondent corporation do not have authority to levy the fees until and unless the rules were framed and finalized. The rules have come in to effect in the year, 2003 and the fees charged with effect from 01.04.2002 is illegal and erroneous. The learned counsel submits that, there is no increase in the services to be rendered by the corporation after 01.04.2002. There was no efficacy whatsoever including increase in the nature of services to be rendered by the Corporation so as to justify any enhancement in advertisement fees. There is distinction between tax and fees. The fee has to be in proportion to the substantial benefits / privileges vis a vis services rendered by the authority. According to Mr. Talekar, the learned counsel there has to be nexus between the quantum of fees and the services rendered by the authority. The increase in the advertisement fees by 40 to 50 time is not in proportion to the services rendered by the corporation. The same is bad and violative of Article 14 and 19 (1) (g) of the Constitution of India. The enhancement with retrospective effect is also illegal. The learned counsel submits that, the advertisement fees in Aurangabad is highest in whole State of Maharashtra. The learned counsel submits that, there has to be Quid pro quo between the cess and the services rendered. The learned counsel relies on the judgment of the Apex Court in a case of **Diwan Chand Builders and Constructors V/s Union of India and Others** reported in **2012 (1) SCC 101**, so also on the judgment of the Apex Court in a case of **Vijayalashmi Rice Mill and Others V/s Commercial Tax Officers, Palakol and Others** reported in **2006 (6) SCC 763** and **Jindal Stainless Ltd and Another V/s State of Haryana and Others** reported in **2006 (7) SCC 241** and submits that the distinction between the tax and fees is that the tax is of compulsory exaction of money by the State or a public authority for a public purpose on the other hand fee is a charge for special service rendered by the same governmental agencies i.e. there has to be Quid pro quo. According to the learned counsel though the resolution of 2001 is not assailed specifically by a separate prayer clause still the notices are challenged and this Court can mold the relief considering the powers of this Court under Article 226 of the Constitution of India so also under Order VII Rule 7 of the Code of Civil Procedure, 1908. For the said purpose the learned counsel relies on the judgment of the Apex Court in a case of **Uttar Pradesh State Brassware Corporation Ltd V/s Udai Narain Pandey** reported in **2006 (1) SCC 479.** It is further submitted that, even the text of the resolution shows that the fees is increased to collect and increase revenue which can not be the purpose of fees. The learned counsel submits that, mere acceptance of enhancement of advertisement fees in 2014 can not amount to acceptance of the old rates as the rates fixed in the year, 2002 are already subject matter of the present writ petition.

5) Mr. Patil, the learned counsel for the Respondent Corporation submits that, the Respondent Corporation was charging the same license fee from 2002 till 2014. It has not increased the license fees. The learned counsel submits that, the hoardings are permitted for a particular period and after due sanction by the Commissioner. The process to grant permission and allow the hoarding on a particular building is lengthy one and needs expenses for the staff which is engaged for the said purpose. After displaying the hoarding on a particular location the Corporation has to monitor from time to time the hoarding and get the report from the surveyor. It has to check from time to time whether the hoardings displayed are as per the specifications. However the hoardings which are not complying with the terms and conditions of the license are required to be issued notice and then the hoardings are to be removed by appointing the separate staff, vehicle etc. for which the

Corporation has to spend the amount out of the advertisement / license fees. Many time illegal hoardings are displayed which also requires steps to be taken by appointing the staff and also legal process is involved. The licensee use focus on the hoarding which causes disturbance to the traffic the same is required to be removed by the Corporation by appointing private agencies. For supervision private agencies are appointed, expenditures are required to be done from funds received from the license fees and these expenditures are proportionated with the funds received by the Corporation from the advertisement fees. The license fee is charged as per the rules framed. As per Clause 9 of the said rules the agencies are under obligation to pay the charges as is fixed by the Commissioner in advance for six months. The Corporation has revised the rate / fees in the year, 2013. In the year, 2013 the meeting of the members of the petitioner association was held in the office of the Deputy Commissioner with regard to the fixation of advertisement fees. The matter was discussed at length and after discussion the members of the petitioner association gave an application in the name of Deputy Commissioner (State) Municipal Corporation, Aurangabad on 10th November, 2014 requesting to increase only 15% rates for displaying the hoardings in comparison with the earlier rates fixed by the Corporation. They are ready to pay the hoarding charges at a time for 3 year's. According to the learned counsel the petitioner association through the representation accepted the earlier rates fixed in 2002 and requested it to increase only 15% in addition to the rates of 2002. The learned counsel submits that, in view of the said acceptance the petition does not survive. The learned counsel relies on the judgment of this Court in a case of **Kolhapur Zilla Rajya Abkari Parvana Dharak Samajik Seva Sangh, Kolhapur V/s Kolhapur Municipal Corporation** reported in **2006 (2) Mh. L. J. 507.**

6) We have considered the submissions canvassed by the learned counsel for the respective parties.

7) The Corporation has the power to levy the fees with regard to the advertisement even as per Section 386 of the Maharashtra Municipal Corporation Act. Section 386 (2) lays down that for every license or written permission the fee may be charged at such rate as from time to time is fixed by the Commissioner with the sanction of the Corporation. Even as per the rules framed by the Municipal Corporation namely the Bombay Provincial Municipal Corporation (Control of Advertisement and Hoardings) Rules, 2003 more particularly

Rule 9, the rental charges and or fees can be collected from the agencies as per the rates decided by the Commissioner. The rules of 2003 are not assailed by the petitioner. The resolution of the year, 2001 is not assailed in the present writ petition, wherein according to the petitioner the rates were enhanced. In light of that, the same can not be a subject matter of consideration. What can be the subject matter of consideration is resolution which is assailed in the present writ petition.

8) The amount that is collected by the Corporation from the licensee while giving permission for advertisement or display of hoardings etc. even according to the respondent Corporation is the fee and not a tax. As such it is not necessary to consider the provisions of Section 127 of the Maharashtra Municipal Corporation Act. Section 386 (2) empowers the corporation to levy fees and even as per the rules of 2003 the corporation is entitled to levy the fees. The emphasis of the petitioner is on the existence of Quid pro quo as advertisement fee / rate is the fees and not a tax. The traditional view that there must be actual Quid pro quo for a fee has undergone a sea change. It has been observed by the Apex Court in a case of **Vijayalashmi Rice Mill and Others V/s Commercial Tax Officers, Palakol and**

Others relied by the petitioner referring to the judgment of the Apex Court in a case of **Sona Chandi Oal Committee V/s State of Maharashtra** reported in **2005 (2) SCC 345** wherein the Apex Court has observed that, the concept of fee has undergone a sea change. The traditional concept of Quid pro quo in a fee has undergone considerable transformation. So far as regulatory fee is concerned the services to be rendered is not a condition precedent and the same does not loose the character of a fee provided the fee so charged is not excessive. It is not necessary that services to be rendered by the collecting authority should be confined to the contributors alone.

9) In the present case it has been brought on record that, the corporation has to appoint independent agency to monitor the hoardings, to take steps against illegal hoardings and for more than 11 years from 2002 fees is not enhanced and they have been increased with effect from 2014 only. Before the increase of 2001 and 2002, the fees was same for many years and apparently and disproportionately low.

10) In a case of **Jindal Stainless Ltd and Another V/s State of Haryana and Others** relied by the learned counsel for the petitioner the Apex Court considered the concept of tax,

compensatory tax and fee. It has been observed by the Apex Court in the said case that, tax is levied as a part of the common burden. The principle behind the levy of tax is the principle of ability or capacity. A tax is a payment where special benefit if any is converted into a common burden on the other hand the fee is based on the principle of equivalence. In case of a fee or compensatory tax the principle of equivalence applies. The position of a fee or a compensatory tax is the same. The fee or a compensatory tax is a quantifiable and measurable benefit. It has been observed that, fee or compensatory tax has to be broadly proportional. From the point of view of Government the compensatory tax is a charge for offering trading facilities. It adds to the value of the trading and commerce which does not happen in a case of tax as such the Apex Court in para 45 observed as under-

> ***"To sum up, the basis of every levy is the controlling factor. In the case of "a tax", the levy is a part of common burden based on the principle of ability or capacity to pay. In the case of "a fee", the basis is the special benefit to the payer (individual as such) based on the principle of equivalence. When the tax is imposed as a part of regulation or as a part of regulatory measure, its basis shifts from***

> ***the concept of "burden" to the concept of measurable / quantifiable benefit and then it becomes "a compensatory tax" and its payment is then not for revenue but as reimbursement / recompense to the service / facility provider. It is then a tax on recompense. Compensatory tax is by nature hybrid but it is more closer to fees than to tax as both fees and compensatory taxes are based on the principle of equivalence and on the basis of reimbursement / recompense."***

11) In the present case also the advertisement adds to the value of the trading and commerce. It can also be said to be a compensatory tax wherein also equivalence as required in fees is necessary. The statistics are not before the Court to consider the equivalence of the fees and the services rendered. However broadly the services rendered are spelt out by the respondent corporation. It is not the case that the services are not rendered by the corporation. The Co-relationship between the levy of fees and services rendered is one of the general character and not of a mathematical exactitude. All that is necessary, is that there should be reasonable relationship between the levy of fees and the services rendered. Considering the above we do not feel that any case is made out for quashing the fees that was levied in the

year, 2002. Moreover recently when the advertisement fees is increased there was a meeting between the members of the petitioner association and the respondent corporation wherein the members of the petitioner association including the petitioner agreed that they would pay the advertisement fees at an increased rate of 15% from the old rate. So also they agreed to pay advertisement fees 3 years in lump sum. The same was without any protest and there was unequivocal consent by the petitioner and its members that they would be paying the advertisement fees 15% more than they were paying earlier i.e. from 2002 onwards till, 2014 i.e. date of the letter given by them.

12) For all these years the petitioners are paying the amount of the advertisement fees as fixed by the corporation. Even the contract was granted to the intervenor herein for advertisement.

13) Considering all the aforesaid conspectus of the matter the writ petition is dismissed. Rule discharged. However with no order as to costs.

[A. I. S. CHEEMA, J.] **[S. V. GANGAPURWALA, J.]**

sam/June. 15