

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1968 OF 2013**

- 1. YOG ADVERTISING & MARKETING SERVICES,**
a proprietorship firm having his office at
9, Dr. M.B. Velkar Street, Kalbadevi
Road, Mumbai – 400 002
 - 2. M/S. ANURAG SITES,**
a partnership firm having its office at 10,
Rajhans, 6, Dongershi Road, Teenbatti,
Malabar Hill, Mumbai – 400 006
- ...Petitioners

Versus

- 1. MUNICIPAL CORPORATION OF GREATER MUMBAI,**
a statutory body incorporated under the
Mumbai Municipal Corporation Act,
1888 having its office at Mahapalika
Marg, Mumbai – 400 001
- 2. THE MUNICIPAL COMMISSIONER OF GREATER MUMBAI,**
having his office at Mahapalika Marg,
Mumbai – 400 001

WITH

WRIT PETITION NO. 1068 OF 2010

- 1. INDIAN OUTDOOR ADVERTISING ASSOCIATION,**
a Company incorporated under the
provisions of the Companies Act, 1956,

having its registered office at 1, Krishna
Commercial Centre, 6, Udyog Nagar,
Opp. Telephone Exchange, S.V. Road,
Goregaon (W), Mumbai – 400 062

2. **MR. AMLAN BASU**,
Manager, Indian Outdoor Advertising
Association, Adult, Indian Inhabitant,
having his office at 1, Krishna
Commercial Centre, 6, Udyog Nagar,
Opp. Telephone Exchange, S.V. Road,
Goregaon (W), Mumbai – 400 062

...Petitioners

versus

1. **MUNICIPAL CORPORATION OF
GREATER MUMBAI**,
a statutory body incorporated under the
Mumbai Municipal Corporation Act,
1888 having its office at Mahapalika
Marg, Mumbai – 400 001
2. **THE MUNICIPAL
COMMISSIONER OF GREATER
MUMBAI**,
having his office at Mahapalika Marg,
Mumbai – 400 001

WITH

WRIT PETITION NO. 735 OF 1997

1. **M/S. SHEEN ADS**,
a partnership firm registered under the
provisions of the Partnership Act, 1932
and having its office at 2/31, Tardeo A.C.
Market, Tardeo Road, Mumbai – 400 034
2. **MAYUR G. PATEL**,
Sole Proprietor of FOCUS having its
office at 2A, Umesh Kiron, Bhagatsingh

Road, Vile Parle (W), Mumbai 400 056

...Petitioners

Versus

**1. THE MUNICIPAL CORPORATION
OF GREATER MUMBAI,**

a statutory body incorporated under the
Mumbai Municipal Corporation Act,
1888 having its office at Mahapalika
Marg, Mumbai – 400 001

2. MR. GIRISH GOKHALE,
Municipal Commissioner, Municipal
Corporation of Greater Bombay,
Mahapalika Marg, Mumbai – 400 001

...Respondents

WITH

WRIT PETITION NO. 1407 OF 1997

1. ATUL HEMRAJ ASHAR,
of Bombay, Indian Inhabitant, carrying on
proprietary business in the name and
style of Messrs Orion Advertisers having
his address at 4/B-Tardeo Air
Conditioned Market, 4th Floor, Tardeo,
Bombay – 400 034

2. MRS. MANALI ATUL ASHAR,
of Bombay Indian Inhabitant, carrying on
proprietary business in the name and
style of Messrs Orion Advertisers having
his address at 4/B-Tardeo Air
Conditioned Market, 4th Floor, Tardeo,
Bombay – 400 034

...Petitioners

Versus

**MUNICIPAL CORPORATION OF
GREATER MUMBAI,**
a body corporate, incorporated under the

Bombay Municipal Corporation Act, 1888
having its office at Mahapalika Marg, Mumbai –
400 001

...Respondents

APPEARANCES

FOR THE PETITIONERS

Mr. Anil Anturkar, Senior Advocate,
*with Mr. Yahya Ghogri & Mr. Yatin
Sheth, i/b Sonal Doshi & Co., in
WP/1968/ 2013.*

**Mr. P.K. Dhakephalkar, Senior
Advocate,** *with Ms. Smruti Kanadi,
Ms. Rujuta Patil & Mr. Yahya
Ghogari, i/b M/s. Negandhi Shah &
Himayatullah in WP/ 1068/2010.*

Ms. Hetal Patel, *with Ms. Shakti Parwaney
& Mr. Navin Parekh in WP/1407/
1997.*

Mr. Shailesh Mandon, Senior Advocate
*with Ms. Smruti Kanadi, Ms. Rujuta
Patil & Mr. Yahya Ghogari, i/b M/s.
Negandhi Shah & Himayatullah in
WP/735/1997.*

FOR THE RESPONDENTS

Mr. A.Y. Sakhare, Senior Advocate, *with
Mr. Joel John Carloes, Mr. Vinod
Mahadik & Mrs. Shobha Ajitkumar.*

CORAM

**: A.S. OKA &
G.S. PATEL, JJ.**

JUDGMENT RESERVED ON

: 26th November 2015

JUDGMENT PRONOUNCED ON

: 27th January 2016

JUDGMENT: (Per G.S. Patel, J.)

1. Writ Petition No. 1968 of 2013 (“**Yog Advertising**”) and Writ Petition No. 1068 of 2010 (“**Indian Outdoor**”) challenge Circular No. 999 dated 11th December 2009 issued by the 1st Respondent relating to an increase or revision in the license fees charged to owners of advertising hoardings. The prayers in these two Writ Petitions are, first, to quash the impugned resolution and to direct its withdrawal, and, second, to direct the 1st Respondent Municipal Corporation to accept payment of licence fees for such advertisements and hoardings at the previous rates.

2. Writ Petition No. 735 of 1997 (“**Sheen Ads**”) was previously dismissed for default on 17th October 2011. It was restored to file on 31st March 2012 and ultimately directed to be placed along with the *Yog Advertising* and *Indian Outdoor* writ petitions. The challenge in *Sheen Ads* and in Writ Petition No. 1407 of 1997 (“**Atul Ashar**”) is to the resolution of the 1st Respondent passed on 12th December 1996 increasing the applicable rates for advertising hoardings.

3. It is necessary to note that the earlier two writ petitions, viz., *Sheen Ads* and *Atul Ashar*, have become infructuous with time. The resolution of 12th December 1996 impugned in these two writ petitions has since been superseded by the resolution dated 11th December 2009 challenged in *Yog Advertising* and *Indian Outdoor*. We are, therefore, concerned with the challenge to the extant resolution of 11th December 2009.

4. In both *Yog Advertising* and *Indian Outdoor*, Rule was granted and these matters were placed before us for hearing and final disposal. We have heard counsel for the respective parties at some length and, with their assistance, carefully considered the material on record.

5. Under the Mumbai Municipal Corporation Act (“**the MMC Act**”), the 1st Respondent Corporation is empowered to regulate and control *inter alia* advertisements and sky-signs. Section 328A of the MMC Act requires prior written permission of the 2nd Respondent Municipal Commissioner before any advertisement is erected, exhibited, fixed or retained upon any land, building, hoarding or structure. Section 328A of the MMC Act reads:

“328A. Regulation and control of advertisements.

(1) No person shall, without the written permission of the Commissioner, erect, exhibition, fix or retain any advertisement whether now existing or not, upon any land, building, wall, hoarding or structure where an advertisement depicts any scene from a cinematographic film, stage play or other stage performance, such permission shall not be granted, unless prior scrutiny of such advertisement is made by the Commissioner and he is satisfied that the erection or exhibition of such advertisement is not likely to offend against decency or morality:

Provided that, the power of the Commissioner under this sub-section shall be subject to the regulations framed in this behalf.

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

- (a) is exhibited within the window of any building;
- (b) relates to the trade or business carried on within the land or building upon which such advertisement is exhibited or to any sale or letting of such land or building or any effects therein, or to any sale, entertainment or meeting to be held upon or in the same; or to the trade or business carried on by the owner of any tram-car, omnibus or other vehicle upon which such advertisement is exhibited;
- (c) relates to the business of any railway company;
- (d) is exhibited within any railway station or upon any

wall or other property of a railway company, except any portion of the surface of such wall or property fronting any street:

Provided also that such permission shall not be necessary for a period of three years—

(i) after the coming into force of the Bombay Municipal Extension of Limits Act, 1950, in respect of advertisements upon a site in the suburbs which was occupied by advertisements on the first day of January 1950.

(ii) after the coming into force of the Bombay Municipal (Further Extension of Limits and Schedule BBA {Amendment} Act, 1956, in respect of advertisements upon a site in the extended suburbs which was occupied by advertisement on the first day of January 1956.

(2) Where any advertisement shall be erected, exhibited, fixed or retained after three months from the enactment of this section or, as the case may be, the coming into force of the Bombay Municipal (Extension of Limits) Act, 1950 or the coming into force of the Bombay Municipal {Further Extension of Limits and Schedule BBA {Amendment} Act, 1956) upon any land,

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

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

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

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

include an illuminated display of goods,
if such display:

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

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

6. Further under Section 479(2) of the MMC Act, the 1st Respondent Corporation is entitled to prescribe and charge fees as are sanctioned by the 1st Respondent Corporation. Section 479 of the MMC Act reads:

"479. Licences and written permission to specify condition etc., on which they are granted.

(1) Whenever it is provided in this Act that a licence or a written permission may be given for any purpose, such licence or written permission shall specify the period for which, and the restrictions and conditions subject to which, the same is granted, and shall be given under the signature of the Commissioner or of a municipal officer empowered under section 68 to grant the same.

Fees to be chargeable.

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

Licences and written permissions may be revoked, etc.

(3) Subject to the provisions of clauses (d) and (dd) of section 403, any licence or written permission granted under this Act may at any time be suspended or revoked by the Commissioner, if any of its restrictions or conditions is infringed or evaded by the person to whom the same has been granted, or if the said person is convicted of an infringement of any of the provisions of this Act or of any regulation or by-law made hereunder in any matter to which such licence or permission relates.

When licence or written permission is revoked, etc. grantee to be deemed to be without a licence or written permission.

(4) When any such licence or written permission is suspended or revoked or when the period for which the same was granted has expired the person to whom the same was granted shall for all purposes of this act, be deemed to be without a licence or written permission until the Commissioner's order for suspending or revoking the licence or written permission is cancelled by him or until the licence

or written permission is renewed, as the case may be.

Grantees to be bound to produce licence or written permission.

(5) Every person to whom any such licence or written permission has been granted shall at all reasonable times while such written permission or licence remains in force, if so required by the Commissioner produce such licence or written permission."

7. The case presented by Mr. Anturkar and Mr. Dhakephalkar for the Petitioners in *Yog Advertising* and *Indian Outdoor* is as follows. On 8th May 1985, the 1st Respondent Corporation passed a resolution increasing advertising fees by 50%. On 2nd May 1989, there was another resolution (No. 27) once again raising the rates by about 60-70%. In the meantime, the resolution of 8th May 1985 was challenged in this Court in Writ Petition No. 1070 of 1986. That Writ Petition was allowed on 9th March 1992. The judgment was carried in appeal and was set aside on 1st March 1994.

8. On 19th October 1996, the Municipal Commissioner sought sanction for a further increase in the advertising license fees. On 12th December 1996, *vide* resolution No. 976, the 1st Respondent Corporation increased the licence fees for all hoardings. This resolution is the subject matter of the *Sheen Ads* and *Atul Ashar* writ petitions. In 1998, the 1st Respondent Corporation once again increased the applicable fees. On 13th January 2013, by resolution

No. 1540, the advertising fees were increased by 100%.¹ At that time, the 1st Respondent Corporation also issued new Policy Guidelines for the grant of permission for display of sky-signs and advertisements.² Resolution No. 1540 was not challenged. On 25th April 2008, the 1st Respondent Corporation modified its Policy Guidelines. On 30th December 2008, the Mumbai Hoarding Owners' Association ("MHOA") wrote to the 1st Respondent asking for a reduction in the licence fees by at least 50%. This request was justified by referring to certain overall conditions that had by then come to pass. On 2nd December 2009, the Commissioner sought an increase in the licence fees yet again. He proposed a flat, across-the-board increase of 80% for one year and thereafter an increase of 10% annually. This was sought to be justified on various grounds. These grounds are substantially the same as are presented before us by Mr. Sakhare on behalf of the Respondents defending the impugned resolution and supporting the proposed increase and we will turn to this again in the discussion that follows. On 11th December 2009, the impugned resolution No. 999 was passed approving and sanctioning the Municipal Commissioner's request.³

9. In order to better appreciate the Petitioners' submissions, it is necessary at this stage to set out some of the justifications given by the Petitioners *inter alia* for the earlier request for a reduction in the licence fees and in support of their contention that the impugned

¹ Writ Petition No. 1068 of 2010, *p.* 71

² Writ Petition No. 1968 of 2013, *p.* 86

³ Exhibit "A1", Pp. 37 to 55 (in Marathi); English translation at Exhibit "A2" Pp. 56 to 139.

resolution prescribes a fee that is not only exorbitant but is disproportionate and has no discernible nexus to the object and purpose of the statute; and is wholly unrelated, even on a broad correlation, to the costs and expenses incurred by the Corporation. For the purpose of levying these licence fees, areas in Mumbai have been divided into two categories, viz., Category “A” and Category “B”. These are geographically distributed. There is also a prescribed procedure for the erection and display of hoardings. No objection clearances are required from the building owner or cooperative society in question, in certain cases from the traffic police, as also a certification from a structural engineer, the submission of location plans and block plans, the filing of a prescribed application and so on. The licence fees charged are renewable monthly. There are also regulations specifying the minimum distance between two hoardings and the later Policy Guidelines of 2008 also attempted to standardize the areas of the hoardings, so that they were kept uniform on a single road. This required some advertisers and hoarding owners to reduce or adjust the sizes of their hoardings and to comply with other requirements for beautification etc. According to the Petitioners, this increased the financial burden on the Petitioners. In its letter of 30th December 2008,⁴ MHOA said that the general slow-down in the economy had affected its members’ interests as there were fewer takers for display hoardings. Hoarding owners had been forced to reduce rates and to offer large discounts. For this reason, the MHOA requested a drop in the licence fees by 50%. On 1st January 2010, the Petitioners were informed of the revision (the one that is

⁴ WP No. 1968 of 2013 (*Yog Advertising*), Ex. “C”, pp. 140-141.

now impugned before us).⁵ MHOA replied by its letter dated 14th January 2010⁶ once again protesting and saying that these increases were entirely unwarranted.

10. The submission of Mr. Anturkar and Mr. Dhakephalkar is principally that the licence fee in question is essentially regulatory in nature and not compensatory. As such, there must, in their submission, be at least a broad correlation between the services rendered by the Municipal Corporation and the fees levied. While there may not be a mathematical exactitude between the costs of the services and the fees, i.e., while it is not necessary to show a 1:1 correlation, it is nonetheless necessary, in the submission of Mr. Anturkar and Mr. Dhakephalkar, to at least show a reasonable, broad and overall correlation between the costs of the services and the quantum of the fees levied. They say that the justifications given for the increase are wholly untenable. Therefore, in their submission, when the 1st Respondent Corporation says that the number of hoardings has been reduced and that there is an overall increase in costs and a need to augment the revenue of the Respondent Corporation, this can serve as no justification at all. Mr. Anturkar and Mr. Dhakephalkar are at pains to emphasize that it is not the revenue earned by the entire Corporation that is of relevance or the costs of the Corporation as a whole, but the costs related to the regulation and licensing of the hoardings that alone must be considered.

⁵ WP No. 1968 of 2013 (*Yog Advertising*), Ex. "D", pp. 142-149.

⁶ WP No. 1968 of 2013 (*Yog Advertising*), Ex. "E", pp. 150-151.

11. In the *Yog Advertising* writ petition, there is a tabulation presented in paragraph 22(c),⁷ which seeks to compare the revenue from hoardings in crores against the expenditure of the entire licence department (i.e., not restricted only to licences for hoardings). According to the Petitioners, this shows that the revenue earned, year on year, is far in excess of the expenditure incurred. For the years 2010-2011 and 2011-2012, the revenue has in fact been almost twice that of the aggregate expenditure of the entire licence department of the 1st Respondent Corporation. The Petitioners also claim that the licences issued under Sections 328 and 328A of the MMC Act include licences for other kinds of advertisements such as advertisement on buses, taxis, street banners, balloons and so on. According to them, licences issued under Sections 328 and 328A of the MMC Act were 8.15% of the total licences issued by the 1st Respondent Corporation in 2011-2012. A total of 10370 such licences were issued. Of these, only 3000 were in respect of hoardings; while 7,370 licences were in respect of other types of advertising such as bus stands, bus shelters and so on. It is unreasonable, the Petitioners submit, to treat all costs of advertising licensing as being relatable only to hoardings. Mr. Anturkar also points to the Affidavit dated 10th February 2014 of one Mr. Shahbuddin Shaikh⁸ in reply to the *Yog Advertising* petition filed on behalf of the Respondents. In paragraph 13 of this Affidavit, the Respondents have accepted that the fee charged is a regulatory and not compensatory fee. However, the Affidavit claims that costs have gone up substantially and continuous monitoring is required. Mr. Anturkar has expanded on this argument, one which

⁷ P.16

⁸ Pp.189 to 202 of Writ Petition No. 1968 of 2013.

we shall consider subsequently. At this stage, we mention this only in the context of Mr. Anturkar's submission that every increase in a regulatory fee is required to be justified, albeit with only a broad correlation but not mathematical precision.

12. It is not enough, he says, to assert that there has been increase in general expenditure. Further, in his submission, the Petitioners are not concerned and are not required to be concerned with the costs incurred by the 1st Respondent Corporation in issuing and supervision of other licences under other sections. The overall general expenditure of the Respondent Corporation is, therefore, wholly irrelevant. Some link must be established by the 1st Respondent Corporation between the quantum of the taxes and the facilities or services rendered. It is only these expenditures that are necessary for providing the services in question that are required to be taken into account. Thus, he submits, it is impermissible to take into account, for instance, an increase in salaries and wages of the 1st Respondent's staff. If that is to be taken into account, then the impost is no longer a fee but is a tax. In any event, any such increase must be proportionate. By this, we understand him to mean that the increase must be reasonable and not exorbitant. If there is any additional expenditure incurred in the provision of licensing in respect of hoarding, then certainly this additional expenditure is relevant; but the existence of any such additional expenditure must be shown clearly and unequivocally, though in broad terms. It cannot be presumed or surmised, not can it be inferred from a general statement of an overall rise in costs.

13. Consider four categories of expenditure submits Mr. Anturkar: (a) the entire expenses of the 1st Respondent Corporation; (b) the expenses of all licence departments; (c) the expenses relatable to licences issued under Sections 328 and 328A; and (d) all expenses in respect of the additional services provided while granting licence to hoarding owners. An increase may be justified on the grounds of category (d), category (c), or category (b), in that order, but it can never be justified in terms of category (a). Thus, the impugned resolution, in his submission, must fall on both grounds. First there is absolutely no material justifying the increase of 80% in a single year and there is certainly no justification for the increase of 10% annually thereafter.

14. Mr. Dhakephalkar supplements Mr. Anturkar's submissions. He submits that the licensing department of the 1st Respondent Corporation is not restricted in its work to hoarding licences alone. It deals with other departments as well. In Writ Petition No. 1068 of 2010, in paragraph 20(c), there is yet another tabulation that purports to show the revenue collected from hoarding against the expenditure of the entire licence department and its actual income. For 2008-2009, where the revenue collected from hoarding licenses was Rs.29.40 crores, the expenditure incurred by the licence department for that very year was Rs. 28 crores. The actual income of the licence department for that period was Rs. 66.69 crores. This, he submits, is only generally disputed but without a specific traverse. The costs of which the Respondents speak, in Mr. Dhakephalkar's submission, relate to the costs of various departments which are common to all, or at any rate, to many types of licences, and are not specific or restricted to hoarding licences.

For instance, the work of an Inspector of Licences or the Executive Engineer (Building Proposals) are all one-time efforts applicable to fresh licences. These are not even costs incurred monthly. These are also costs applicable to other types of licences as well. In addition, where specific permissions are required in relation to Heritage Buildings or from the Coastal Zone Management Authority, the Garden Department, Civil Aviation or the Highway Authorities, separate fees are charged by each of the authorities concerned and separate permissions are taken. It is not permissible, in his submission, to take into account general expenses.

15. Mr. Sakhare refutes this formulation. He draws attention to the affidavit of Shaikh's Affidavit in Reply in Writ Petition No. 1968 of 2013. Apart from issues of delay and of the Petitioners having acted on the impugned resolution,⁹ the affidavit sets out at some length in paragraph 8 the justification for the increase in license fees.¹⁰ The procedure is explained. From this, it is clear that this is not a matter of receiving an application, processing it mechanically and issuing a license across the table. There are several other activities required, and a very great deal of coordination between various departments and officers: the Executive Engineer, Building Proposals; the Executive Engineer, Development Plan; Assistant Commissioners; the Garden Superintendent; Ward Officers; Supdts of Licenses; Deputy Municipal Commissioners; Additional Municipal Commissioners; and so on. Various aspects have to be taken into account including heritage, coastal regulation, civil aviation, the fire brigade and more. In paragraph 15 of this affidavit,

⁹ Writ Petition 1968 of 2013, *p.* 191, paragraph 5.

¹⁰ Writ Petition 1968 of 2013, *pp.* 192-197.

Shaikh sets out some financial considerations. In 2003-2004, the cost of administering Municipal services as Rs.5,366.26 crores. In 2007-2008, this almost doubled to Rs.10,585.87 crores. There is, in addition, the affidavit says, the constantly rising cost of living and the devaluation of the rupee. Shaikh has filed yet another affidavit of 18th November 2015.¹¹ In paragraph 16 of this affidavit, Shaikh disputes the correctness of the Petitioners' tabulation, and points out that the 1st Respondent Corporation incurs huge expenses in salary and wage increases, and that these do indeed constitute a significant chunk of the license department's expenses.

16. Mr. Sakhare emphasizes the complexity of the exercise. What the Petitioners seek to portray, he says, is a gross over-simplification. There is a constant intertwining of various considerations and authorities, all working in tandem and at various levels, and it is not possible to sheer off all these other factors and limit oneself to the licensing department or to one particular hoarding/advertisement-related activity of that department; nor is this, Mr. Sakhare says, the mandate of the law. Mr. Sakhare very seriously disputes the proposition canvassed against him, viz., that regard must be had only to the income and expenses of the license department, or that part of the license department with which the Petitioners are concerned, and that everything else is extraneous. This is simply unviable, Mr. Sakhare submits; the license department, like every other department, is part of the overall municipal administration. It does not work in isolation or in a vacuum. The licenses in question, he says, are more than simple yes/no permissions. They are, after

¹¹ Writ Petition No.1968 of 2013, *pp.* 189-192.

all, and this is undisputed, a process of regulation; and that involves scrutiny, management, approval and supervision.

17. Mr. Anturkar and Mr. Dhakephalkar both relied on a number of authorities in support of their submissions. Given the frame of the Petitions before us, and the tenor of the Affidavits in Reply, it is not, in our view, necessary to enter into any larger debate as to the difference between a fee and a tax,¹² or, for that matter, between a tax, a fee and a compensatory tax.¹³ We find, however, that there is some authority for a more general proposition, that this distinction is now increasingly blurred.¹⁴ Yet, the distinction drawn by the Supreme Court in *Vam Organic Chemicals Ltd. & Anr. v State of U.P. & Ors.*¹⁵ (“**Vam Organics - I**”) between fee charged for a license, i.e., a regulatory fee, and a compensatory fee charged for services, is a distinction that has frequently been reiterated. For the former, i.e., a regulatory fee, the existence of a *quid pro quo* is not necessary, though it well settled that the fee should not be excessive. There need be only a reasonable correlation between the levy of a regulatory license fee and the statutory purpose.¹⁶ Such a correlation is necessary.¹⁷

¹² *Selvel Publicity Consultant Pvt. Ltd. & Ors. v Municipal Corporation of Greater Bombay & Anr.*, 1992 Mh LJ 1142; *Kandivli Cooperative Industrial Estate & Anr. v Municipal Corporation of Greater Mumbai & Ors.*, 2015 AIR SCW 1217 : 2015 SCC OnLine SC 98

¹³ *Jindal Stainless Ltd. (2) & Anr. v State of Haryana & Ors.*, (2006) 7 SCC 241

¹⁴ *State of H.P. & Ors. v Shivalik Agro Poly Products & Ors.*, (2004) 8 SCC 556

¹⁵ (1997) 2 SCC 715

¹⁶ *A. P. Paper Mills Ltd. v Government of A.P. & Anr.*, (2000) 8 SCC 167

¹⁷ *Calcutta Municipal Corporation & Ors. v Shrey Mercantile (P) Ltd. & Ors.*, (2005) 4 SCC 245

18. The question then is what test is to be applied to gauge whether or not the fee is reasonable and is shown to have the necessary broad correlation or nexus. This issue was answered by the Supreme Court in *State of U.P. & Ors. v Vam Organic Chemicals Ltd. & Ors.*¹⁸ (“**Vam Organics - II**”) thus:

41. The High Court was also of the view that Section 18-G of the IDR Act did not operate in different fields. The reasoning of the High Court in *Vam Organics-I* [(1997) 2 SCC 715] has been adopted by the same learned Judge in *Bihar Distillery* case [(1997) 2 SCC 727]. We have already noted that the reading and construction and consequent limitation of *Synthetics* [(1990) 1 SCC 109 : 1989 Supp (1) SCR 623] in *Bihar Distillery* [(1997) 2 SCC 727] has been disapproved and can safely be said not to represent the law. However, *Vam Organics-I* [(1997) 2 SCC 715] also had held that the State was competent to regulate industrial alcohol so that it was not converted into potable liquor, the High Court also found that the State was competent to levy a fee for the purpose. It was held that the fee could be levied not only for services rendered but also towards the cost of regulation. In the first case, the element of quid pro quo is necessary but in the second case, the fee must be reasonable. The High Court then said:

¹⁸ (2004) 1 SCC 225

"The question then arises, how to judge the reasonableness of such a fee. In our opinion, it would be appropriate, in such a case, to look to the expenditure which the State undergoes for administering the regulation, and if we find that there is a broad correlation between the expenditure and the fees charged, we should sustain the same."

42. The Court noticed the facts stated in the counter-affidavits, particularly, setting up of a headquarters laboratory and deployment of a good number of officers and employees who were engaged in manning the laboratory besides the staff which is posted at the distilleries. There was, according to the High Court, a broad correlation between the amount of fee charged and the expenses incurred for implementing and overseeing the regulation. The challenge to the levy of licence fee under Rule 2 was accordingly dismissed. As we have noted, the appeal of Vam Organics-I [(1997) 2 SCC 715] was dismissed by this Court affirming this reasoning of the High Court because it found no reason to differ with it.

43. Considering the various authorities cited, we are of the view that the State Government is competent to levy fee for the purpose of ensuring that industrial alcohol is not surreptitiously converted into potable alcohol so that the State is

deprived of revenue on the sale of such potable alcohol and the public is protected from consuming such illicit liquor. But this power stops with the denaturation of the industrial alcohol. Denatured spirit has been held in *Vam Organics-I* [(1997) 2 SCC 715] to be outside the seisin of the State Legislature. Assuming that denatured spirit may by whatever process be renatured (a proposition which is seriously disputed by the respondents) and then converted into potable liquor, this would not give the State the power to regulate it. Even according to the demarcation of the fields of legislative competence as envisaged in *Bihar Distillery* [(1997) 2 SCC 727] industrial alcohol for industrial purposes falls within the exclusive control of the Union and according to *Bihar Distillery* [(1997) 2 SCC 727] "denatured rectified spirit, of course, is wholly and exclusively industrial alcohol" (SCC p. 742, para 23).

44. Besides, the fee is required to be justified with reference to the cost of such regulation. The industry is already paying a fee under Rule 2 for such regulation. Indeed, the justification for levying the fee under Rule 3(a) is the identical justification given by the State for levying the fee under Rule 2. **Presumably, a full complement of excise officers and staff are appointed by the State in the Excise Department to carry**

out their duties under the Act to oversee, control and keep duty on the various kinds of intoxicants under the Act. **Having regard to the decision in Vam Organics-I [(1997) 2 SCC 715] we must also assume that apart from the normal strength, additional officers and staff were appointed to regulate the denaturation of the industrial alcohol.** There is nothing to show that there has been any deployment of any additional staff to oversee the possibility of renaturation of the denatured spirit.

45. The question is (to borrow the language in *Synthetics* [(1990) 1 SCC 109 : 1989 Supp (1) SCR 623]),

whether in the garb of regulations a legislation which is in pith and substance, as we look upon the instant legislation, a fee or levy **which has no connection** with the cost or expenses administering the regulation, can be imposed purely as regulatory measure. Judged by the pith and substance of the impugned legislation, we are definitely of the opinion that these levies cannot be treated as part of regulatory measures. (SCC p. 149, para 63)

The State has not produced any material to show that it was incurring any additional cost for any further regulation of denatured spirit. Any trace of a lingering

doubt as to the propriety of the levy under Rule 3(a) must be taken to have been noted off effectively with the order passed by three Judges of this Court in the writ petition filed by *Synthetics* challenging the same levy as we have noted earlier. That order has resulted in granting *Synthetics and Chemicals Ltd.* relief from payment under Rule 3(a). The only distinction between the present respondents' cases and *Synthetics* was that the respondents chose to challenge the levy before the High Court. That could be no rational basis for denying the respondents who are otherwise identically situated, the same relief. (See *Anil Kumar Neotia v. Union of India* [(1988) 2 SCC 587].) In the absence of any such correlation the fee under Rule 3 is not a fee at all levied for the purpose of additional regulation or for any service rendered but is really a tax in the garb of a fee.

(Emphasis added)

19. We read this pronouncement to mean that the test of reasonableness hinges on a broad correlation being established by the authority that seeks to charge the fee between the fee and expenses; should the authority fail in doing so, the fee is nothing but a taxing impost. We believe Mr. Sakhare to be correct in his

submission that on the material before us, *Vam Organics - II* supports the 1st Respondent rather than the Petitioners.¹⁹

20. *State of Tamil Nadu v TVL South Indian Sugar Mills Association*²⁰ reiterates this concept of a broad correlation between the fee and the departmental expenses, although it terms this as a requirement of ‘causality’. As long as the fee is not expropriatory,²¹ a Court will not substitute its view of what the fee should be once a broad equivalence or correlation is shown and the fee is found to be reasonable.

21. Mr. Dhakephalkar relied on the decision of the Supreme Court in *State of H.P. & Ors. v Shivalik Agro Poly Products & Ors.*²² in support of his submission that the broad correlation or, in the words of *Jindal Stainless*, ‘equivalence’,²³ required to be shown between the fee charged and the expenses incurred cannot include the totality of expenses. We find, however, that the authority does not support his submission. In paragraphs 15 and 18 of that decision,

¹⁹ We need only note in passing that we find the Petitioners’ reliance on *Jindal Stainless (supra)* somewhat misplaced, because in that case no question arose of a compensatory fee, or the distinction between a regulatory and a compensatory fee.

²⁰ 2015 SCC OnLine SC 713

²¹ *Vidharbha Chamber of Commerce & Industries, Akola v Commissioner, Municipal Corporation of Akola City & Anr.*, 2007 (5) Mh LJ 82

²² *Supra*; (2004) 8 SCC 556

²³ *Mumbai Agricultural Produce Market Committee & Anr. v Hindustan Lever Ltd. & Ors.*, (2008) 5 SCC 575

following *inter alia* the decision in *Sreenivasa General Traders State of A. P.*,²⁴ the Supreme Court in *Shivalik Agro* held:²⁵

15. It will be thus seen that the statement of law made in *Shirur Mutt* case [AIR 1954 SC 282 : 1954 SCR 1005] regarding the attributes of fee has undergone a sea change. The consistent view now is that there is no generic difference between a tax and a fee which are both compulsory exaction of money by public authorities. The correlation between the levy and the services rendered should be one of general character and not of mathematical exactitude. Further, the broad and general correlation between the totality of the fee on the one hand and the totality of the expenses of the services on the other, will be sufficient to justify the levy. The levy will not fail only on the ground that the measure of its distribution on the persons or incidence is disproportionate to the actual services rendered by them. The true test being the comprehensive level of the value of the totality of the services set off against the totality of the receipts, the character of the fee is thus established. The vagaries in its distribution amongst the class do not detract from the concept of a fee as such.

²⁴ (1983) 4 SCC 353

²⁵ This decision has been relied on subsequently in *Vijaylaxmi Rice Mill & Ors. v Commercial Tax Officers, Palakol, & Ors.*, (2006) 6 SCC 763.

16. ...

17. ...

18. There is no material on record to show that the overall amount received by the Government by way of fee from the Registration Department far exceeds the overall expenditure incurred in maintaining the said department. The High Court and also the District Court merely took into consideration the registration fee paid by the plaintiffs and did not at all examine whether there was any substantial discrepancy between the total amount of fee realised by the Registration Department and the total amount of expenditure incurred by the Government in the maintenance and functioning of the department. The notification issued by the State Government could not be struck down merely by taking into consideration the registration fee paid by the plaintiffs and quantification of the value of services rendered to them.

(Emphasis added)

22. Mr. Sakhare is justified in his submission that the principle is succinctly stated in *Secundarabad Hyderabad Hotel Owners' Association & Ors. v Hyderabad Municipal Corporation, Hyderabad & Anr.*:²⁶

²⁶ (1999) 2 SCC 274

9. It is, by now, well settled that a licence fee may be either regulatory or compensatory. When a fee is charged for rendering specific services, a certain element of quid pro quo must be there between the service rendered and the fee charged so that the licence fee is commensurate with the cost of rendering the service although exact arithmetical equivalence is not expected. However, this is not the only kind of fee which can be charged. Licence fees can also be regulatory when the activities for which a licence is given require to be regulated or controlled. The fee which is charged for regulation for such activity would be validly classifiable as a fee and not a tax although no service is rendered. An element of quid pro quo for the levy of such fees is not required although such fees cannot be excessive.

(Emphasis added)

23. In paragraph 23 of *State of Maharashtra & Ors. v Salvation Army, Western India Territory*,²⁷ in the context of a 2% levy under the Bombay Public Trusts Act, 1950 on donations to charitable organisations, a three-Judge Bench of the Supreme Court said:

23. As we said, the fee must, as far practically as possible, be commensurate with the services rendered. One should not seek for any mathematical accuracy in

²⁷ (1975) 1 SCC 509; per Matthew J.

these matters but be content with rough approximations. The services are mostly rendered by the officers of the Charity Organisation. With the proliferation of public trusts in the State, it became necessary to expand the Charity Organisation and to increase the staff for supervision and control. It also became necessary to have more regional offices for the more effective and immediate supervision and control. The expenditure in constructing buildings for locating the head office and regional offices and the increase in the allowances or other amenities to the staff have also to be included in the costs of the services. When there is surplus, it cannot immediately be said that the surplus must necessarily go in reduction of the rate of contribution to be levied thereafter. We think that it would neither be expedient nor prudent to lay down any abstract proposition that whenever there is surplus in a particular year or a number of years, that surplus must always be taken into consideration and the rate of the contribution should be reduced for the next year or subsequent years. ...

(Emphasis added)

24. In addition, paragraphs 26 to 28 of the Supreme Court decision in *Sona Chandi Oal Committee & Ors. v State of Maharashtra*,²⁸ relied on by Mr. Sakhare, are apposite:

26. This apart, the fee charged is regulatory in nature to control and supervise the functioning of the moneylending business to protect the debtors, the vast majority of which are poor peasants, tenants, agricultural labourers and salaried workers who are unable to repay their loans. The object of the Act is to control the moneylending business and protect the debtors from the malpractices in the business by detecting illegal moneylending. This exercise is a must to carry out the object of the Act for which a lot of infrastructure is required. The duty of the staff and the officers of the department is to visit the places of moneylending business, inspect the accounts and other matters relating to the business, to find out illegal moneylending, carry out raids in suspicious cases and do regular inspection as provided in the Act. The Act serves a larger public interest.

27. The respondent State in its counter-affidavit has stated that the strength of the staff looking after moneylending work has been considerably and significantly increased in the recent past. The total receipts from inspection fees and licence

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(2005) 2 SCC 345

fees under the Act are very meagre in the range of Rs 25 to 30 lakhs every year. Receipts from inspection fees and licence fees under the Act form a very small part of the total receipts of the Cooperative Department which are to the tune of Rs 21 crores. The licence fees and inspection fees under the Act are not even sufficient to meet the expenses incurred on the staff looking after the moneylending business. Since the Act is a social legislation with the intention to protect the debtors from the malpractices in the business the State is performing its duties even though the revenue under the Act is not even sufficient to meet the expenditure on the staff performing duties under the Act. In view of these submissions it cannot be held that the fees are either arbitrary or excessive.

28. Contention raised by Shri G.L. Sanghi, Senior Counsel for the appellants that the fees have to be uniform has no merit in view of the judgment of this Court in *Secunderabad Hyderabad Hotel Owners' Assn. v. Hyderabad Municipal Corpn.* [(1999) 2 SCC 274] and *State of Maharashtra v. Salvation Army, Western India Territory* [(1975) 1 SCC 509 : 1975 SCC (Tax) 145]. It has been held in these judgments that fees are ordinarily uniform but the absence of uniformity is not the sole criterion on which it can be said that the levy is in the nature of tax.

25. In *Delhi Race Club Ltd. v Union of India & Ors.*,²⁹ the Supreme Court traced the history of the law on the subject, and considered in particular whether in the guise of a fee, said to be onerous, the impost was really a tax. It noted that in *Kewal Krishan Puri v State of Punjab*,³⁰ the Supreme Court had earlier postulated a quantification of the extent of acceptable correlation and had actually posited a measure. A three-Judge Bench of the Supreme Court in *Sreenivasa General Traders v State of A.P.*³¹ analysed the *Kewal Krishan Puri* decision and held that the observations in the latter appeared to be *obiter*. In paragraphs 36 and 37 in *Delhi Race Club*, the decision in *Sreenivasa General Traders* was quoted at length on the principles that are now well known: that there is no generic difference now between a tax and a fee; both are compulsory exactions of money by public authorities; merely because collections for the services rendered are not specifically appropriated toward the expenditure in the provision of those services is not in itself decisive; there need only exist a broad correlation, not of mathematical precision, between the levy of a fee and the services rendered; that a fee can legitimately be directed both to the regulation of a given activity and to the provision of revenue.³²

26. We believe this is sufficient authority for our present purposes, and it is not necessary to examine every one of the additional authorities cited by Mr. Sakhare.³³

²⁹ (2012) 8 SCC 680

³⁰ (1980) 1 SCC 416

³¹ (1983) 4 SCC 353

³² The decision in *Secunderabad Hyderabad Hotel Owners' Association* was also relied on.

27. It is in this jurisprudential context that we must assess the rival submissions. There are, Mr. Sakhare says, not just one, but as many as 13 different departments involved at some level or the other in this regulation. To merely say, as the Petitioners do, that the fee is excessive is insufficient. There is no authority, Mr. Sakhare submits, and in our view rightly, that the attendant costs of ancillary or related departments, or the needs of increasing annual establishment expenditure, or even, for that matter, the ‘provision of revenue’, should be entirely disregarded. We agree with Mr. Sakhare that when Mr. Anturkar and Mr. Dhakephalkar seek to dissect the income earned from fees and set this against establishment expenses in so fine-grained and granular a manner, they are demanding that very mathematical exactitude that they agree is not required. This is precisely the consequence of Mr. Dhakephalkar’s submission based on the material in the *Indian Outdoor* petition³⁴ that the 1st Respondent Corporation must show an increase in the costs of this particular department to justify the fee rise. This seems to us to be both circular and self-defeating: on the one hand contending that a one-is-to-one correspondence need not be shown, but simultaneously contending that anything that is not specifically justified is axiomatically unreasonable. Indeed, we find Mr. Dhakephalkar’s attempt to distinguish *Secunderabad Hyderabad Hotel Owners’ Association* is ineffective, for there, too, the Court took into consideration the expenses being incurred by two other departments that were also connected with the activity sought to be regulated.

³³ *P. M. Ashwathanarayana Setty & Anr. v State of Karnataka & Ors.*, 1989 Supp (1) SCC 696; *The Delhi Cloth & General Mills Co. Ltd. v The Chief Commissioner, Delhi, & Ors.*, (1970) 2 SCC 172

³⁴ Page 162 of the paperbook

28. We do not also think that too much can be made of Mr. Dhakephalkar's submission that the figures given by the Petitioners in *Sheen Ads* are not specifically denied.

29. On the other hand, Mr. Sakhare's submission that the only surviving test today is one of reasonableness, determined by the demonstration of a broad correlation, is one that commends itself. We do not think it is either possible or wise for a Court to blinker itself from the everyday realities of public administration. The experience with budgets constantly in deficit and the recommendations of successive Pay Commissions themselves tell us enough about the constantly increasing costs and expenses of public bodies and authorities. We note, too, that the licensing departments deal with a multitude of licenses, not only the advertising and hoarding licenses with which the Petitioners are concerned. Mr. Sakhare is quite right, in our view, in throwing up his hands in helpless exasperation at the suggestion that manhours spent on advertising and hoarding licensing work between various departments be computed separately. What is this, he asks, and quite correctly, if not yet another attempt at establishing an exact arithmetical equivalence between the fee and the licensing cost? Apart from the license department, there are officers at the ward level, inspectors, commissioners at every level of the hierarchy, and so on down the line. The process of licensing is one that has been described on affidavit.³⁵ It is complex, and, with time, more and more departments are involved as municipal policies change and evolve. In fact we know this to be true *inter alia* because various PILs in this Court itself required the Municipal Corporation to take

³⁵ WP No. 1968 of 2013 (*Yog Advertising*), paragraphs 9-10, p. 197.

into account a multitude of factors (trees, line of sight, road safety, building regulations) that were not of the same level of importance earlier. Mr. Sakhare submits that the increase in expenses shown on affidavit³⁶ is a sufficiently broad correlation to meet jurisprudential standards. We agree.

30. Is there enough material to say that there is absolutely no correlation between the rise in expenses and the one-time 80% fee? We do not think so. Conversely, we believe that there is more than enough material to justify it as a one-time fee. What of the proposed 10% annual increase? The challenge on this ground must also fail in our view. The increase is not extortionate or in any sense expropriatory. Given the general annual rise in cost of living, and, therefore, the increased annual burden to the municipal exchequer, the proposed increase is moderate. The impugned increases and the circular are not unreasonable or arbitrary.

31. The Petitions fail. Rule is discharged. No costs.

(G. S. PATEL, J.)

(A.S. OKA, J.)

³⁶ WP No. 1968 of 2013 (*Yog Advertising*), paragraph 15, *p.* 200.