

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19358 of 2021

Advertisers Welfare Association, a having its registered office at 106, Jagtarni Tower, Jamal Road, P.O. G.P.O., P.S. Kotwali, District Patna through its General Secretary, Suraj, aged about 41 years (male), son of Prem Nivas Sinha, resident of Khagaul Road, Beside Durga Mandir Yarpur, P.O. GPO, P.S. Gardanibag, District Patna. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Urban Development, government of Bihar, Patna.
2. The Principal Secretary, Department of Urban Development, Government of Bihar, Patna.
3. The Muzaffarpur Municipal Corporation, through the Municipal Commissioner, Muzaffarpur.
4. The Municipal Commissioner, Muzaffarpur Municipal Corporation, Muzaffarpur.
5. The Mayor, Muzaffarpur Municipal Corporation, Muzaffarpur.
6. The Deputy Commissioner, Muzaffarpur Municipal Corporation, Muzaffarpur.
7. Rampion Advertising and Consulting Pvt Ltd, Mishra Commercial Complex, Near Lohia Chowk, Laheriasarai, Darbhanga, PIN Code 846001.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Rohit Singh, Advocate Mr. Vijay, Tiwari, Advocate Mr. Piyush Ranjan, Advocate
For the State	:	Mr. Kinkar Kumar (SC-9) Mr. Ashutosh Kr. Upadhyaya, AC to SC-9
For the M.M.C.	:	Mr. Awadhesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

8 18-07-2023 Heard Mr. Suraj Samdarshi, learned counsel for the petitioner, Mr. Awadhesh Kumar, learned counsel appearing for the Muzaffarpur Municipal Corporation as also Mr. Kinkar Kumar, learned SC-9 for the State.

2. It is unfortunate that earlier a vague counter-affidavit was filed on behalf of the State shifting the entire responsibility on the Muzaffarpur Municipal Corporation and



later despite the case being adjourned on the last occasion, the State failed to file any supplementary counter affidavit.

3. This Court was inclined to impose a heavy cost on the State but on the submissions put forward by Mr. Kinkar Kumar, learned State Counsel that he will convey the anguish of the Court to the authorities of the Urban Development Department, no cost is imposed.

4. However, this Court must record that the Department prepares the statement of fact in a casual manner and the moment it finds that Municipal authorities are party respondents, a counter affidavit is filed stating that it is for the concerned Municipal authority to respond. Certainly, the contents of the writ petition is not being read.

5. The writ petition was preferred for grant of following reliefs:

(i) to issue a writ, order or direction in the nature of certiorari for quashing the letter no. 1717 dated 27.09.2018 issued by Respondent Town Commissioner, in light of resolution no. (ka) 5 passed in meeting dated 28.04.2018, by which the rates of tax for advertisement have been prescribed, as being contrary and in teeth of the provisions of Bihar Goods and Services Tax Act 2017 and the Constitution of India;



(ii) to issue a writ, order or direction in the nature of mandamus commanding the Respondents to refund the amount of tax paid by the members of the petitioner association to the Muzaffarpur Municipal Corporation after 16.09.2016 on outdoor advertising;

(iii) further to hold that after omission of entry no. 55 from the State List in Schedule VII of the Constitution of India by the Constitution (One Hundred and First Amendment) Act 2016 with effect from 16.09.2016, the respondents do not have the legislative competence to levy, demand and recover tax on advertisement;

(iv) to further adjudicate and hold that in absence of any rules or regulations framed under the Bihar Municipal Act, 2007, the Respondents cannot levy, demand and recover any tax upon outdoor advertisement;

(v) it may further adjudicate and hold that any levy of tax can be done only with the authority of law.

6. After much deliberations, the parties have come to an agreement that so far as the authority letter vide memo No. 1716 dated 27.09.2018 is concerned, the same is vague in nature and this keeps the advertisers in dark inasmuch as they do not know the basis on which the license fee will be collected from



them.

7. In the considered view of the Court also, the contents is/are vague in nature and the same has to go.

8. Mr. Awadhesh Kumar, learned counsel for the Muzaffarpur Municipal Corporation has taken this Court to **Section 146 of the Bihar Municipal Act, 2007** (henceforth, for short, 'the Act') which read as follows:

146. Licence for use of site for purpose of advertisement -(1) Except under, and in conformity with, such terms and conditions of a licence as the Municipality may, by the regulations, provide, no person being the owner, lessee, sub-lessee, occupier or advertising agent shall use, or allow to be used, any site in any land, building or wall, or erect, or allow to be erected, on any site any hoarding, frame, post, kiosk, structure, vehicle, neon-sign or sky-sign for the purpose of display of any advertisement.

(2) For the purpose of advertisement, every person-

(a) using any site before the commencement of this Act, within ninety days from the date of such commencement, or

(b) intending to use any site, or

(c) whose licence for use of any



site is about to expire shall apply for a licence or renewal of licence, as the case may be, to the Chief Municipal Officer in such Form as may be specified by the Municipality.

(3) The Chief Municipal Officer shall, after making such inspection as may be necessary and within thirty days of the receipt of the application, grant or renew a licence, as the case may be, on payment of such fee as may be determined by regulations, or refuse or cancel a licence, as the case may be.

(4) The Chief Municipal Officer may, if, in his opinion, the proposed site for any advertisement is unsuitable from the considerations of public safety, traffic hazards or aesthetic design, refuse to grant a licence, or to renew any existing licence, within thirty days of the receipt of the application.

(5) Every licence shall be for a period of one year except in the case of sites used for any temporary congregation of whatever nature including fairs, festivals, circus, yatra, exhibitions, sports events, or cultural or social programmes.

(6) The Chief Municipal Officer shall cause to be maintained a register wherein the licences issued under this



Section shall be separately recorded in respect of advertisement sites-

(a) on telephone, telegraph, tram, electric or other posts or poles erected on or along public or private streets or public places,

(b) in lands or buildings, and

(c) in cinema-halls, theatres or other places of public resort.

9. He thus submits that for taking license fee, the Municipality in absence of regulation can prepare terms and conditions and there is no bar on it.

10. Mr. Suraj Samdarshi, learned counsel for the petitioner agrees to it that they can prepare the terms and conditions and once the same is made available to them, it will be easier for them to pay the amount and to take a decision whether to continue with the hoarding or not in view of the fact that they also have to pay the GST.

11. Learned State Counsel also echoed the submission put forward by the learned counsel for the Muzaffarpur Municipal Corporation that till the regulation comes into picture, they can go ahead with the terms and conditions for accepting license fee.

12. In the aforesaid background, with the consent of the parties, this Court directs the Muzaffarpur Municipal



Corporation that pending regulations to:

(i) prepare the terms and conditions in line with Section 146 of 'the Act' to maintain clarity relating to the demand of license fee;

(ii) the said exercise should be completed within a period of eight weeks from today;

(iii) once the terms and conditions is/are prepared, each and every individual advertiser shall be put on notice alongwith demand of license fee.

13. It will be open to the advertiser to respond to it and take the matter forward so that the license fee is being collected by the Muzaffarpur Municipal Corporation, as in absence of terms and conditions and/or regulation, they themselves have suffered financial loss for their own inaction.

14. Needless to say, the aggrieved parties always have the liberty to challenge the same.

15. The Muzaffarpur Municipal Corporation shall simultaneously take steps for drafting regulation too.

16. The Authority letter issued vide memo No. 1716 dated 27.09.2018 issued by the Municipal Commissioner, Muzaffarpur Municipal Corporation stands quashed.

17. The writ application stands disposed of with the



aforesaid observations. However, it is made clear as also undertaken by the petitioner Association that till the Muzaffarpur Municipal Corporation comes out with its terms and conditions, no fresh hoarding/structure will come up at any place/building by any of the advertiser.

(Rajiv Roy, J)

kiran/-

U			
---	--	--	--

