



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8953 OF 2018

Municipal Commissioner, Pune Municipal
Corporation And Anr.Petitioner
V/S
Shri. Ashish Laxman ChavanRespondent

**WITH
WRIT PETITION NO. 8959 OF 2018**

Municipal Commissioner, Pune Municipal
Corporation And Anr.Petitioner
V/S
Shri. Dattatraya Ramchandra MemaneRespondent

**WITH
WRIT PETITION NO. 8956 OF 2018**

Municipal Commissioner, Pune Municipal
Corporation And Anr.Petitioner
V/S
Shri. Sachin Damodar BodkeRespondent

**WITH
WRIT PETITION NO. 8961 OF 2018**

Municipal Commissioner, Pune Municipal
Corporation And Anr. ...Petitioner
V/S
Shri. Ravindra Kaluram JagdaleRespondent

WITH

WRIT PETITION NO. 8962 OF 2018

Municipal Commissioner, Pune Municipal Corporation And Anr.Petitioner

V/S

Shri. Ravindra Gangaram ShindeRespondent

WITH

WRIT PETITION NO. 8963 OF 2018

Municipal Commissioner, Pune Municipal Corporation And Anr.Petitioner

V/S

Shri. Gopal Chhaganlal ChavanRespondent

WITH

WRIT PETITION NO. 8960 OF 2018

Municipal Commissioner, Pune Municipal Corporation And Anr.Petitioner

V/S

Shri. Shripad Balkrishna BojjaRespondent

WITH

WRIT PETITION NO. 8958 OF 2018

Municipal Commissioner, Pune Municipal Corporation And Anr.Petitioner

V/S

Shri. Mahesh Rajendra BendreRespondent

WITH

WRIT PETITION NO. 8957 OF 2018

Municipal Commissioner, Pune Municipal
Corporation And Anr. ...Petitioner
V/S
Shri. Pradeep Namdeo MahadikRespondent

WITH
WRIT PETITION NO. 9588 OF 2016

Municipal Commissioner, Pune Municipal
Corporation And AnrPetitioner
V/S
Shri. Rajesh Nathoba WaghchoureRespondent

WITH
WRIT PETITION NO. 9600 OF 2016

Municipal Commissioner, Pune Municipal
Corporation And Anr.Petitioner
V/S
Shri. Suhas Ramakant MahajanRespondent

WITH
WRIT PETITION NO. 9597 OF 2016

Municipal Commissioner, Pune Municipal
Corporation And AnrPetitioner
V/S
Shri. Ramdas Laxman BadeRespondent

WITH
WRIT PETITION NO. 9592 OF 2016

Municipal Commissioner, Pune Municipal Corporation ..Petitioner

V/s
Shri. Navalkumar Parshuram KaleRespondent

WITH
WRIT PETITION NO. 9985 OF 2016

Municipal Commissioner, Pune Municipal
Corporation And Anr.Petitioner
V/s

Shri. Jagdish Mohansingh PardeshiRespondent

WITH
WRIT PETITION NO. 10023 OF 2016

Municipal Commissioner, Pune MunicipalPetitioner
Corporation And Anr
V/S

Shri. Gorakhashnath Tolaram GofaneRespondent

WITH
WRIT PETITION NO. 9986 OF 2016

Municipal Commissioner, Pune MunicipalPetitioner
Corporation And Anr.
V/S

Shri. Vivek Gangaram PhuleRespondent

WITH
WRIT PETITION NO. 8955 OF 2018

Municipal Commissioner, Pune
Municipal Corporation And Anr. ...Petitioner
V/S

Shri. Sandeep Ramakant BhandgaonkarRespondent

WITH
WRIT PETITION NO. 9816 OF 2016

Municipal Commissioner, Pune
Municipal Corporation And Anr.Petitioner
V/S

Shri. Yogesh Valmik DhamdhareRespondent

WITH
WRIT PETITION NO. 9458 OF 2016

Municipal Commissioner, Pune Municipal
Corporation And Anr.Petitioner
V/S

Shri. Milind Dattatray ThigaleRespondent

WITH
WRIT PETITION NO. 9455 OF 2016

Municipal Commissioner, Pune Municipal
Corporation And Anr.Petitioner
V/S

Shri. Kamlesh Madhukar PradhanRespondent

WITH
WRIT PETITION NO. 9754 OF 2016

Municipal Commissioner, Pune Municipal
Corporation And AnrPetitioner
V/S

Shri. Ganesh Dattatray BhujbalRespondent

..

Mr. Abhijit Kulkarni a/w Mr. Gourav Shahane, Mr. Krushna Jaybhay, Ms. Sweta Shah, Advocates for the Petitioners.

Mr. A.S. Rao i/by Mr. Prashant Kamble, Advocate for the Respondents.

...

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 19 OCTOBER 2023

PRONOUNCED ON : 03 NOVEMBER 2023

JUDGMENT

1. Rule. Rule is made returnable forthwith. With the consent of the parties, Petitions are taken up for final hearing and disposal.

2. Pune Municipal Corporation has filed the present petitions challenging the Orders passed by the Industrial Court in various Complaints filed by the Respondent-Employees. The Industrial Court has allowed the complaints of Respondent-employees and has directed the Petitioner-Corporation to pay the amount of 'Mushahira' coming to the share of the Respondent-Employees within a period of three months. 'Mushahira' is sort of 20% incentive payable to employees on the compromise fees recovered from Octroi evaders. The

Industrial Court has further directed that interest @ 6% p.a. would be payable on the amount due on failure to pay the same within three months.

3. Petitioner is a Municipal Corporation established under the provisions of Maharashtra Municipal Corporations Act, 1949. Respondents are employees of Pune Municipal Corporation who were posted on various posts in the Octroi Department. The General Body of Municipal Corporation adopted a Resolution in its meeting held on 27 August 1984 resolving that 20% of amount recovered towards the compromise fees from Octroi evaders be paid as *Mushahira* to the employees apprehending the goods. The Respondents were deployed on the duty of apprehending the Octroi evaders from time to time. It appears that the employees apprehending Octroi evaders were being paid 20% amount of compromise fees towards *Mushahira* up to the year 2007. From the year 2008-2009, the Municipal Corporation discontinued the system of paying such *Mushahira* to Octroi employees. The Union therefore made representations dated 21 July 2009, 22 January 2010, 12 August 2010 and 25 November 2010 complaining about discontinuation of system of payment of *Mushahira*. Additionally, the concerned

employees also made representations on 17 February 2010 and 25 February 2010. A notice was also served upon the Municipal Corporation through Advocate on 07 December 2010. It appears that the Chief Octroi Officer also requested the Municipal Commissioner for continuation of scheme for payment of 20% *Mushahira*. However, since the system of payment of *Mushahira* was not continued, the Union sent letter dated 11 March 2013. The employees finally approached the Industrial Court by filing various complaints under Section 28(1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTP & PULP Act**) alleging unfair labour practices on the part of Municipal Corporation and demanding payment of unpaid amount of *Mushahira* for various periods.

4. For illustrative purposes, it would be appropriate to refer to the pleadings raised in Complaint filed by the employee-Ashish Laxman Chavan (Respondent) in Writ Petition No.8953 of 2018. Shri. Ashish Laxman Chavan came to be appointed in the municipal service on 06 May 1995. He was deputed to work in Patrolling Squad of Octroi Department from 06 August 2004 to 26 August 2009. His designation at the relevant time was Patrolling Squad Inspector. According to

him, the total amount due and payable for having apprehended several Octroi evaders during the period from 06 August 2004 to 26 August 2009 is Rs. 3,15,000/-, records of which are available with the Municipal Corporation. Accordingly in the Complaint (ULP No. 90 of 2013) Shri. Ashish Laxman Chavan prayed for payment of amount of *Mushahira* during the period from 06 August 2004 to 26 August 2009 along with the interest at the rate of 18% per annum.

5. The complaints were resisted by the Municipal Corporation by filing its reply. The Municipal Corporation claimed that its Octroi Department is not an 'industry' and that therefore the complaints filed by the employees were not maintainable. The complaints were also resisted on the ground of delay and laches. It was also contended that the system of paying *Mushahira* was stopped by the Municipal Corporation from 02 September 2009 vide Resolution No.183 dated 13 May 2010.

6. The Industrial Court, after hearing both the sides, delivered Award dated 02 April 2016 allowing the complaints holding that the Petitioner-Municipal Corporation has indulged in unfair labour practices as enumerated in item-9 of

Schedule IV of MRTU & PULP Act. The Corporation is directed to pay the amount of *Mushahira* coming to the share of the Complainants within three months, failing which interest at the rate of 6% per annum from the date of the order till the actual date of payment.

7. Mr. Kulkarni, the learned counsel would appear on behalf of the Petitioner-Municipal Corporation and submit that the complaints filed by the Respondent-employees were not maintainable as the Octroi Department of the Municipal Corporation is not an industry. In support of this contention, he would rely upon the Judgment of the Apex Court in ***Parmanand Vs. Nagar Palika, Dehradun & Others***¹ and Judgement of the Division Bench of this Court in ***Abdul Shabir Khan Ahmed Khan & Ors. Vs. Municipal Council, Bhandara***².

8. Mr. Kulkarni would further submit that the Complaints filed by the Respondents were otherwise time barred. That, no right was created in favour of the employees to demand the amount of *Mushahira*. That it is their duty to collect Octroi and therefore they cannot seek any additional

¹ (2004) ILLJ 235 SC, 2003 (10) SCALE 481, (2003) 9 SCC 290

² **1969 MHLJ 532.**

payments over and above the salary and allowances. That, grant of any such *Mushahira* creates discrimination between two sets of employees of the Municipal Corporation. That while other employees do not get any incentive, those working in Octroi Department demand incentive for collection of higher amount of Octroi. He would pray for setting aside Awards passed by the Industrial Court.

9. *Per Contra*, Mr. Rao would appear for Respondent-employees and oppose the petition and support the orders passed by the Industrial Court. He would submit that even Octroi Department of Municipal Corporation is held to be an industry. Relying on the Judgment of the Apex Court in ***Corporation of City of Nagpur Vs. Its employees & Ors***,³ he would submit that the Tax Department of Municipal Corporation has been held to be an Industry. He would also place reliance on Division Bench Judgment of this Court in ***Abdul Wahab Sheikh Lal Bhai Vs. G.E. Patankar, Industrial Tribunal Vs. Ors***.⁴ in support of his contention that Octroi Department of a Municipal Corporation falls within the definition of the term 'industry'. He would therefore

3 **1960 LLJ 523**

4 **1989 MHLJ 100**

submit that complaints filed by the employees were therefore maintainable.

10. Mr. Rao would further submit that the Resolution passed by the General Body of the Municipal Corporation has created a right in favour of employees to claim payment of *Mushahira*. That, such right created in favour of employees' cannot be defeated at the whims and caprices of the Municipal Commissioner. That, there is nothing on record to indicate that the Resolution passed by the Municipal Corporation has been rescinded by the State Government or any fresh resolution is passed discontinuing the system of payment of *Mushahira*. That, even the subsequent Resolution No. 183 dated 13 May 2010 envisaged continuance of the scheme for payment of *Mushahira*. That, the Industrial Court has directed payment of *Mushahira* to the employees in respect of the period when the scheme for payment of such *Mushahira* was invogue. That, in such circumstances, there is no patent error in the order of Industrial Court. He would pray for dismissal of the Petitions.

11. Rival contentions of the parties now fall for my consideration.

12. The first issue raised by the Petitioner-Municipal Corporation is that its Octroi Department is not an 'industry' and therefore, the complaints filed by the employees were not maintainable. It would therefore be necessary to first answer the issue of maintainability of the complaints. The Industrial Court has relied upon judgment of the Apex Court in ***Corporation of City of Nagpur*** (*supra*) for holding that the Octroi Department of the Municipal Corporation is an industry. In ***Corporation of City of Nagpur*** (*supra*), the Apex Court has considered each and every department of the Municipal Corporations for determining whether such departments would be covered by the expression 'industry' within the meaning of Industrial Disputes Act. So far as the Tax Department is concerned, the Apex Court held as under:-

"(1) Tax department: The main functions of this department are the imposition and collection of conservancy, water and property taxes. No separate staff has been employed for the assessment and levy of property taxes: the same staff does the work connected with assessment and collection of water-rates as well as scavenging taxes. It is not disputed that the work of assessment and levy of water-rate and scavenging rate for private latrines is far heavier than the other works entrusted to this department. No attempt has been made to allocate specific proportion of the staff for different functions. We, therefore, must accept the finding of the State industrial court that the staff of this department doing clerical or manual work predominantly does the work connected with scavenging taxes and water-rate. The said rates are really intended as fees for the service rendered. The services, namely, scavenging and supply of

water, can equally be undertaken by a private firm or an individual for remuneration and the fact that the municipality does the same duty does not make it any the less a service coming under the definition of "industry." We would, however, prefer to sustain the finding on a broader basis. There cannot be a distinction between property tax and other taxes collected by the municipality for the purpose of designating the Tax department as an industry or otherwise. The scheme of the Corporation Act is that taxes and fees are collected in order to enable the municipality to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of "industry," it would be illogical to exclude the Tax department from the definition. While in the case of private individuals or firms services are paid in cash or otherwise, in the case of public institutions, as the services are rendered to the public, the taxes collected from them constitute a fund for performing those services. As most of the services rendered by the municipality come under the definition of "industry," we should hold that the employees of the Tax department are also entitled to the benefits under the Act.

13. However, a Division Bench of this Court in ***Abdul Shabir Khan Ahmed Khan*** (*supra*) considered the issue specifically with regard to the Octroi Department of the Municipal Corporation. It considered the Judgement of the Apex Court in ***Corporation of City of Nagpur*** (*supra*) and held that the judgment of Apex Court envisaged examination of activities of each of the departments for arriving at a conclusion as to whether that department would be treated as an 'industry'. Though Tax Department of Municipal Corporation is held as an industry in ***Corporation of City of Nagpur***, Division Bench of this Court considered whether Octroi Department would be an industry and held

that the same cannot be treated as an industry. This Court held in para 13 as under:-

13. *It will thus be seen that this Octroi Department not only does not produce material goods, nor render material services but only shares by delegation in the governmental functions, namely, imposing, collecting and levying the Octroi tax and as such, the activities of the Octroi Department cannot be held to amount to an "industry". In view of this, we are of opinion that the Octroi Department of which the petitioners are the employees cannot be held to be an "industry" and as such, the provisions of the Industrial Disputes Act, and particularly those of section 25F thereof, cannot be made applicable to the present employer. Therefore, there was no need for the respondent-Municipal Council to follow the procedure laid down in section 25F (b) of the Industrial Disputes Act and the non-payment of the retrenchment compensation provided therein does not make the termination or the retrenchment invalid. The petitioners have been given a proper notice and there is no infirmity on that account.*

14. Thus while the Apex Court in ***Corporation of City of Nagpur*** held that the Tax Department of Municipal Corporation is an industry, Division Bench of this Court in ***Abdul Shabir Khan Ahmed Khan*** held that 'Octroi Department' of Municipal Corporation is not an industry.

15. In ***Parmanand*** (*supra*) the Apex Court held that activities of Nagar Palika and all its department, except those dealing with levy of house tax, etc fall within definition of an 'industry'. It is after placing reliance of the Judgment in ***Parmanand*** (*supra*) that Mr. Kulkarni has strenuously contended that departments concerned with levy of taxes have

been excluded by the Apex Court in **Parmanand** from purview 'industry'.

16. A Division Bench of this Court in **Abdul Vahab Shaikh Lal Bhai** (*supra*) has held that Octroi Department of the Municipal Corporation would fall within definition of industry. Thus there are divergence of opinion in various judgments as to whether Octroi Department of the Municipal Corporation would be an 'industry'. In **Parmanand** (*supra*), the Apex Court had held that the activities of Nagar Palika in all its departments except those dealing with levy of house tax, etc. would fall within the definition of the 'industry'. On the contrary, in its earlier Judgment in **Corporation of City of Nagpur**, the Apex Court has held that the activities of Tax Department of the Municipal Corporation would be an industry.

17. In view of the divergence of views, I feel that the question need not be answered considering the peculiar facts and circumstances of the case. The issue whether Octroi Department of Municipal Corporation is an industry or not is therefore left upon.

18. Adverting to the merits of the petition, Respondents claimed *Mushahira* in the form of 20% incentives out of compromise fees recovered from Octroi evaders. The Urdu word '*Mushahira*' means 'stipend' in English. The Resolution No.1175 adopted by the Standing Committee of Municipal Corporation on 27 August 1984 has described the word '*Mushahira*' to mean Gift (*Bakshihi*). There is no dispute to the position that the amount of *Mushahira* is over and above the salary and allowances payable to the employees posted in the Octroi Department. The Standing Committee Resolution No.1175 adopted on 27 August 1984, reads thus:-

नगरसचिव कार्यालय

पुणे महानगरपालिका

स्थायी समिती ठराव क्र. ११७५.

दिनांक : २७-८-८४

सभा क्र. ३३

विषय क्र. . ११४८

ठराव क्र. ११७५

खाते : महा. आयुक्त.

संदर्भ: मा. महा. आयुक्त याचि क्र. मआ - ६६७, दि.३०-६-८४ चे पत्र .

मा. महापालिका आयुक्त यांनी दिलेली कारणे व केलेली शिफारस विचारात घेऊन--

आयातकर उत्पन्नात वाढ करण्यासाठी सेवकांना उत्तेजनार्थ बक्षीस म्हणून जास्तीत जास्त २० टक्के मुशाहिरा देण्याबाबत स्थायी समितीचा ठराव क्रमांक २१६०, दि. २२-११-८३ चा झाला आहे. तथापि हि रक्कम फार कमी असल्याने त्यात वाढ करण्याबाबत मा. आयुक्त यांच्या संदर्भाकित पत्रात सुचविल्याप्रमाणे (१ ते ५ मुद्यांप्रमाणे) रक्कम मुशाहिरा (बक्षिसी) म्हणून देण्यास मान्यता देण्यात येत आहे.

सही/- नगरसचिव, पुणे मनपा.

-खरी नकल-

आयतकार प्रमुख, पुणे महानगरपालिका.

मुद्दे क्र. १ ते ५.

१. नाक्यावरील सेवक ड्युटीवर असताना किंवा इतरवेळी त्यांनी बिगर जकात माल पकडून दिल्यास त्यांना वसूल झालेल्या तडजोड फी चे २० टक्के मुशाहिरा देण्यात यावा.
२. तपासणी निरीक्षकांनी साध्वीक तऱ्हेने बिगर जकात माल पकडल्यास त्यांनाही जीप ड्राइवर व शिपायासहित सर्वास मिळून २० टक्के मुशाहिरा स्वरूपात देण्यात यावी.
३. बिगर जकात माल पकडल्यानंतर आयातदारांनी तडजोड फी नाकारता प्रकरण न्यायप्रविस्ट झाल्यास न्यायालयात जो दंड होईल त्यांच्या २० टक्के रक्कम मुशाहिरा म्हणून देण्यात यावी.
- 3A) मा. महा. आयुक्त मान्य करतील त्याच वाहनांपैकी वाहन पकडल्यास मुशाहिरा देण्यात येईल.
४. मनपा. आयतकर विभागातील सेवकांच्या अतिरिक्त..व अन्य सेवक पोलीस अधिकारी व पोलीस यांनाही बिगर जकात माल पकडून मनपा चे ताब्यात दिल्यास त्यांना मालाचे जकातीचे स्वरूपात रुपये ५००/- पर्यंतचा मुशाहिरा व प्रशस्तिपत्रकही द्यावे.
५. सदरची पद्धती दि. १-४-१९८४ पासून अंमलात आणावी.

19. Perusal of the Resolution dated 27 August 1984 would indicate that the Municipal Corporation had resolved to pay 20% of compromise fees recovered from Octroi Evaders. However, such payment was not automatic in that Para 3A of the Resolution specifically directed that *Mushahira* would be paid only in respect of those vehicles which are approved by the Municipal Commissioner. Thus for every case of recovery of Octroi, payment of *Mushahira* was not payable as a matter of right and a discretion was vested in the Municipal Commissioner to certify the vehicles in respect of which such *Mushahira* could be paid.

20. Payment of salary and allowances to the employees and officers of the Municipal Corporation are governed by the

provisions of Section 51 of the Maharashtra Municipal Corporations Act, 1949. Section 51 reads thus:-

51. Number, designations, grades, etc. of other municipal officers and servants.

(1) Subject to the provisions of sub-section (4), the Standing Committee shall from time to time determine the number, designations, grades, salaries, fees and allowances of auditors, assistant auditors', officers, clerks and servants to be immediately subordinate to the Municipal Chief Auditor and the Municipal Secretary respectively.

(2) The Commissioner shall, from time to time, prepare and bring before the Standing Committee a statement setting forth the number, designations and grades of the other officers and servants who should in his opinion be maintained, and the amount and nature of the salaries, fees and allowances which he proposes should be paid to each.

(3) The Standing Committee shall, subject to the provisions of sub-section (4), sanction such statement either as it stands or subject to such modifications as it deems expedient.

(4) No new posts of the officers and servants of the Corporation shall be created without the prior sanction of the State Government:

Provided that, the decision of the Government on a proposal complete in all respects, received from the Corporation for creation of posts shall be communicated to the Corporation within ninety days from the date of the receipt of such proposal by the Government.

(5) Nothing in this section shall be construed as affecting the right of the Corporation or of the Commissioner to make any temporary appointment which it or he is empowered to make under section 53.

Explanation.— Any revision of pay scale or pay structure or grant of special pay, or grade, or revision of allowances (excluding dearness allowance) or change in designation shall be deemed, for the purposes of sub-section (4), to be the creation of a new post.

(emphasis supplied)

21. Thus, Standing Committee is empowered to determine salaries payable to the Municipal employees. However, under Explanation to Section 51, revision of payscale, pay structure or grant of special pay or grade or revision of allowances is deemed to be treated as 'creation of new posts'. Under sub-Section(4) of Section 51, no new posts in municipal service can be created without the prior sanction of the State Government. Thus though the Standing Committee is empowered to determine salaries payable to municipal employees, any revision in the payscale or grant of any special pay or revision of allowances cannot take effect without prior sanction of the State Government. Payment of *Mushahira*, those not part of salary, is in form of a special allowance, payable to the municipal employees in the Octroi Department as an incentive for collection of higher amount of Octroi. Since amounts towards such *Mushahira* can be paid to the municipal employees and officers only through the funds of the Municipal Corporation, the amount of such *Mushahira* would form of part of either special pay or special allowances. Therefore, for payment of such special pay or special allowance in the form of *Mushahira*, previous sanction of the State Government is mandatory. There is nothing on record to indicate that the State Government had granted approval to

the Municipal Corporation's Resolution No. 1175 adopted on 27 August 1984. Though it is vaguely pleaded in the complaints that the Government had granted approval to the Standing Committee's Resolution, no material was produced before the Industrial Court to prove that such approval was granted by the State Government. On the contrary, it was pleaded by the Municipal Corporation in its reply filed before the Industrial Court that the Chief Auditor had objected to payment of such *Mushahira* to the Municipal employees. The Industrial Court's Order does not record any finding that the prior sanction of the State Government was obtained for payment of *Mushahira*. In my view, therefore, the entire system of payment of *Mushahira* adopted by the Municipal Corporation was *dehorse* the statutory provisions.

22. Even if it is assumed that the State Government had sanctioned the system of paying *Mushahira*, payment of *Mushahira* was not automatic or as a matter of right in every case of Octroi evasion. The vehicles, in respect of which *Mushahira* could be paid, were required to be approved by the Municipal Commissioner. Therefore it was open for the Municipal Corporation to deny *Mushahira* in his discretion. The Resolution of the Standing Committee, can at best, be

treated as an enabling provision under which the Municipal Corporation was vested with power to sanction *Mushahira* for catching selected vehicles involved in Octroi evasion. No corresponding right was created in employees' favour to demand such *Mushahira* as a matter of right. Ignoring this position, the Industrial Court has however issued a blanket direction for payment of *Mushahira* to all Respondents.

23. Even though Mr. Rao attempted to take me through the evidence recorded before the Industrial Tribunal, in my view, once the system of payment of *Mushahira* is found to be in breach of statutory provisions on account of non-grant of prior sanction by the State Government, no amount of evidence would confer any right on the Respondents which statutorily does not exist. Merely because the Municipal Corporation might have paid such *Mushahira* to its employees in the past would not create any right in their favour to continue to receive it. Municipal Commissioner has rightly discontinued the system of payment of *Mushahira*, which has no statutory recognition.

24. Mr. Rao's contention that the system for payment of *Mushahira* was beneficial both to Municipal Corporation as

well as its employees would not cut any ice. He has submitted that the Municipal Corporation has saved funds by not employing a contractor to collect Octroi. To my mind, such submission cannot be countenanced as the Municipal employees cannot demand anything over and above salary and allowances payable to them as per the Rules of the Municipal Corporation. As rightly pointed out by Mr. Kulkarni such system of payment of any amount over and above salary and allowances would create discrimination amongst employees and would be a cause of heartburn for other employees not posted in Octroi Department. Such system would also create unnecessary demand amongst the employees to seek posting in the Octroi Department. The amount demanded by Respondent-employees towards *Mushahira* in their complaints also appear to be considerably high. To illustrate, Shri. Pradip Namdev Mahadik demanded *Mushahira* of Rs. 12,00,000/- for having worked in the Octroi Department after 09 August 2007. Payment of such exceptionally high amount in the form of commission for collection of Octroi over and above salary and allowances to selected few employees is otherwise unjustifiable and cannot be countenanced. The Municipal Commissioner has rightly discontinued the system, which has no statutory recognition. The employees of Octroi Department

perform their duties in apprehending vehicles evading Octroi. For performing their duties, they cannot demand any incentives in the form of commission on the Octroi so collected. In my view therefore the Municipal Corporation has rightly discontinued the scheme of payment of *Mushahira*. No error can be found in such action of the Municipal Corporation. The Industrial court ought to have been appreciated the matter in right perspective. It has committed serious error in allowing the complaints filed by the Respondent-employees.

25. In my view therefore, no right is vested in the employee of Octroi Department of the Municipal Corporation to claim any amount towards *Mushahira* from the Municipal Corporation. The Industrial Court has erred in allowing the complaints and in directing payment of *Mushahira*. The impugned Awards are therefore unsustainable and are liable to be set aside. Writ petitions accordingly succeed. Impugned Judgments and orders passed by the Industrial Court are accordingly set aside. Rule is made absolute. There shall be no order as to costs.

SANDEEP V. MARNE, J