2025:BHC-NAG:5052-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 7243/2017

(VODAFONE IDEA LIMITED (PREVIOUSLY KNOWN AS IDEA CELLULAR LIMITED) **VERSUS** CHANDRAPUR MUNICIPAL CORPORATION, CHANDRAPUR & OTHERS)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders.	*Court's or Judge's order*

Shri M. Anilkumar, counsel for the petitioner.
Shri M.I. Dhatrak, counsel for the respondent nos.1 and 3.
Shri I.J. Damle, Assistant Government Pleader for the respondent no.2.

CORAM : NITIN W. SAMBRE AND VRUSHALI V. JOSHI, JJ.
DATE : FEBRUARY 13, 2025

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Heard the learned counsel for the respective parties.

2. The petitioner has approached this Court seeking following prayers:-

"*(a) Issue a Writ of Certiorari, or a Writ in the nature of Certiorari, or any other appropriate Writ, order or direction, quashing the impugned demand letter dated 13.9.2017 (Annexure II) issued by the Respondent No.3 as being illegal and without jurisdiction;*

(b) Be pleased to declare that the provisions of the Maharashtra Municipal Corporation Act, 1949 and the Rules made therein under and in particular the Resolutions do not apply to the Petitioner as the Boards displayed as per Annexure-V dated 12.9.2017 are not hoardings within the meaning of the Act and Rules;

(c) Be pleased to issue a Writ of Prohibition or a writ in the nature of Prohibition or any other appropriate Writ, order or Direction, restraining the Respondents, their agents, servants, officers and representatives from directly or indirectly, and in any manner whatsoever,-

(d) Be Pleased to Hold and Declare that the respondent Nos.1 and 3 have no right to pass any resolution contrary to the Provisions of The Maharashtra Municipalities (Advertisement Tax) Rules, 1970 and as a consequence declare all the Resolutions passed by them from time to time more particularly Resolution dated 26th Feb.2015 (Annexure III) as null and void and be pleased to set aside;

(e) Direct the Respondent No.2 to frame guidelines and fix Uniform Rates of Advertisement Taxes and norms for levy of the Taxes in the State of Maharashtra and direct the Corporations, Councils, Gram Panchayats to uniformly levy the same in terms of the Rules laid down under the Act;

(f) that pending the hearing and final disposal of the present petition, this Hon'ble Court be pleased to direct the Respondents, their agents, servants, officers and representatives to desist and refrain from enforcing the provisions of the Maharashtra Municipal Corporation Act, 1949 and the Rules made thereinunder and from acting on the demand dt.13.9.2017 and others and taking any coercive action against the Petitioner."

3. The facts necessary for deciding the writ petition are as under:-

The petitioner, a company incorporated under the Companies Act, 1956, claims to be holding a license granted by the Government of India under Section 4 of the Indian Telegraph Act, 1885 to install, maintain and operate the mobile telecommunication services. According to the petitioner, it is a 'Telegraph Authority' under the provisions of the Telegraph Act. The company has two types of connections for the purpose of providing mobile services to its customers. According to the petitioner, it has never erected, painted or installed any hoarding on its own and the agencies are appointed for the said purpose. The petitioner has got printed glow sign and flex boards depicting its trade name. It is urged that such glow sign boards are supplied by the petitioner to its agents which are in the business of retail marketing of its mobile connections.

4. The respondent no.1-Municipal Corporation, Chandrapur by enforcing the provisions of the Maharashtra Municipal Corporations Act, 1949, particularly Sections 244 and 245 which provides for 'regulation and control of advertisement' and taking aid from the Bombay Provincial Municipal Corporation (Control of Advertisement and Hoarding) Rules, 2003 has issued the demand of Rs.32,82,197/- for the Financial Years 2016-2018 towards fixing of 79 Boards by its retailers. The said demand is questioned by the petitioner in this writ petition on the ground that the boards are affixed on the

private properties and not in public places as the same are displayed on the individual private shop blocks of the retailers which in any case cannot be termed as 'display hoarding' within the meaning of the Act of 1949 and the Rules framed thereunder.

5. Shri M.Anilkumar, counsel appearing for the petitioner claims that the demand is assessed for 79 boards without carrying any survey or inspection whatsoever. According to him, the demand issued is not in accordance with the provisions of Section 127 of the Act of 1949. He would further claim that the demand is made pursuant to the resolution passed by the respondent-Corporation on June 23, 2016 which was never made available to the petitioner. It is further claimed that the levy of permission charges to the extent of Rs.20,000/- per year is also illegal and without any authority. According to him, the act of the respondents is arbitrary, unreasonable and in violation of the Articles 14, 19(1)(g) and 21 of the Constitution of India. He would claim that in absence of the provisions in the parent statute by virtue of the application of the Rules, the levy cannot be imposed. It is claimed that for the boards which are erected by the retailers, the petitioner cannot be fastened with the liability. In support of the aforesaid contentions, the counsel for the petitioner has claimed that the alleged tax cannot be collected from the petitioner particularly when the premises in question are neither owned nor hired by the petitioner. It is claimed that the objection raised by the petitioner was not duly looked into by the respondents

and that being so the demand dated September 13, 2017 issued by the respondent no.3 is liable to be quashed and set aside.

6. As against above, Shri M.I. Dhatrak, counsel appearing for the respondent nos.1 and 3 and Shri I.J. Damle, Assistant Government Pleader for the respondent no.2 would submit that it is an admitted position that the petitioner has provided the flex board as could be inferred from the pleadings in the writ petition and the same are with the purpose of advertising its brand and product. It is claimed that the levy of the advertisement tax on the petitioner is based on the scientific study and the assessment carried out by the respondents. It is claimed that since the display boards are provided by the petitioner who has installed the same in public view, it is the petitioner who is liable to pay the tax as demanded. According to the respondents 79 advertising boards were displayed by the petitioner and the petitioner has intentionally suppressed that it has installed the boards. Our attention is invited to the joint survey conducted pursuant to the application moved by the petitioner on September 12, 2017 wherein list of 79 advertising boards installed by the petitioner was prepared. As such, it is not open for the petitioner to dispute the same particularly when it is only after the consent of the petitioner by virtue of joint inspection that the list of 79 advertising boards installed by the petitioner was prepared. The counsel for the respondents have prayed for the dismissal of the writ petition.

7. We have considered the rival claims.

8. The petitioner has placed on record certain photographs of the display boards which are installed on the property of the retailers wherefrom it can be inferred that it was the intention of the petitioner to advertise its product and not that of the retailers'. The photographs of the display boards which are demonstrated at Page Nos.27 and 28 apparently speak of the display of big signboards by the petitioner. It is apparent that the petitioner has installed said boards from 2016 onwards and has sought permission to install the boards *vide* communication dated September 12, 2017. The respondent-Municipal Corporation has finalized its advertising policy in the meeting dated June 23, 2016 *vide* resolution no.20 and resolved to charge Rupees Ten per square foot per year and Rupees Twenty Thousand towards the processing of the permission fees. The petitioner was accordingly assessed for two years from 2016-17 to 2017-18 and demand of Rs.32,82,197/- was raised. Apart from above, the list of 79 boards which are assessed was supplied by the petitioner themselves by its communication dated September 12, 2017 and as such, it was not open for the petitioner to claim that there is a dispute about 79 advertising boards/ signboards installed by the petitioner. The communication dated September 12, 2017 issued by the petitioner clearly speaks of furnishing of the details of 79 advertising boards with an intention to facilitate the respondents to assess and levy the tax.

9. It is not in dispute that the issue is statutorily governed by the provisions of the Maharashtra Advertisements Tax Rules, 1970. The said Rules in categorical terms not only provide for levy of tax but also of processing fees. As such, the contention raised by the petitioner that the levy is without any authority and without carrying the joint inspection cannot be accepted.

10. Rather, the petitioner has tried to misdirect the issue by claiming that there should have been a joint inspection by the petitioner alongwith the authorities of the Corporation for assessing the number of signboards/display boards to be taxed. The definition of advertisement, agency and hoarding in the Rules of 2003 referred above particularly under Clause 2(2), 2(3) and 14 respectively sufficiently establishes that the display boards of which the list was supplied by the petitioner for facilitating the advertising tax are very much levy of tax under the Rules.

11. In the aforesaid background, no error apparent on the face of record could be noticed so as to infer that the levy is without authority of law. That being so, the present writ petition fails and stands dismissed. No costs.

(VRUSHALI V. JOSHI, J.) **(NITIN W. SAMBRE, J.)**

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