

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE Mr. JUSTICE M.G.S. KAMAL

WRIT PETITION No.9936 OF 2019 (LB-RES)
C/W

WRIT PETITION No.15016 OF 2019 (LB-TAX)
WRIT PETITION No.15691 OF 2019 (LB-TAX)

IN WP. No.9936 OF 2019:

BETWEEN:

M/s.RAHEEL COMMUNICATION
SHOP NO.7, EDGE COMPLEX
OPP NEW DISTRICT COURT
DEVRAJ URS LAYOUT
DAVANGERE - 577 006

BY PROPRIETOR

RAHEEL ZAMEER
S/O LATE MUNEER AHMED
AGED ABOUT 35 YEARS
R/AT 677/B/77, 1ST FLOOR
1ST MAIN, 5TH CROSS
BHAGATH SINGH NAGAR
DAVANGERE - 577 004.

...PETITIONER

(BY SRI. ZAMEER PASHA, ADVOCATE)

AND:

1. THE COMMISSIONER

MAHANAGARA PALIKE
P.B. ROAD
DAVANGER - 577 001.

2. THE DEPUTY COMMISSIONER
MAHANAGARA PALIKE
P.B. ROAD
DAVANGERE - 577 001.

3. REVENUE OFFICER
MAHANAGARA PALIKE
P.B. ROAD
DAVANGERE - 577 001.

... RESPONDENTS

(BY SRI. AKSHAY B.M., ADVOCATE FOR R1;
R2 & R3 SERVED)

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED NOTICES DATED:26.06.2018 AND 03.10.2018 TO THE PETITIONER DIRECTING HIM OT PAY CERTAIN AMOUNT ISSUED BY THE RESPONDENTS VIDE ANNEXURE-G AND H RESPECTIVELY.

WP.No.15016 OF 2019:

BETWEEN:

M/s.OUTDOOR ADVERTISING
ASSOCIATION BANGALORE
A SOCIETY REGISTERED UNDER THE SOCIETIES
REGISTRATION ACT, 1960
HAVING ITS OFFICE AT NO.S-23
80 FEET MAIN ROAD, KORAMANGALA
BENGALURU-560 095
REPRESENTED BY ITS SECRETARY
MR. MANMOHAN MAAN.

...PETITIONER

(BY SRI. C.K. NANDA KUMAR SR. ADVOCATE FOR
SRI. ARJUN RAO, ADVOCATES)

AND:

- 1 . STATE OF KARNATAKA
REPRESENTED BY THE ADDITIONAL
CHIEF SECRETARY
URBAN DEVELOPMENT DEPARTMENT
GOVERNMENT SECRETARIAT
VIKASA SOUDHA
VIDHANA VEEDHI
BANGALORE-560 001.
- 2 . STATE OF KARNATAKA
REPRESENTED BY THE DIRECTOR
DIRECTORATE OF MUNICIPAL
ADMINISTRATION
9TH AND 10TH FLOORS
V.V. TOWER
VIDHANA VEEDHI
BENGALURU-560 001.
- 3 . STATE OF KARNATAKA
REPRESENTED BY THE
ADDITIONAL CHIEF SECRETARY
FINANCE DEPARTMENT
VIDHANA SOUDHA
VIDHANA VEEDHI
BENGALURU-560 001.
4. THE COMMISSIONER
HUBLI- DHARWAD MAHANAGARA PALIKE
MUNICIPAL OFFICER
ADVERTISEMENT DEPARTMENT
LAMINGTON ROAD
HUBLI - 580 020.
5. THE COMMISSIONER
BELGAUM MAHANAGARA PALIKE
MUNICIPAL OFFICE

ADVERTISEMENT DEPARTMENT
BELGAUM - 590 001.

6. THE COMMISSIONER
KALABURAGI MAHANAGARA PALIKE
MUNICIPAL OFFICE
ADVERTISEMENT DEPARTMENT
STATION ROAD
KALABURGI - 585 311.
BELGAUM.
7. THE COMMISSIONER
BELLARY MAHANAGARA PALIKE
MUNICIPAL OFFICE
ADVERTISEMENT DEPARTMENT
NEAR ROYAL CIRCLE
DOUBLE ROAD
BELLARY - 583 101.
8. THE COMMISSIONER
CITY MUNICIPAL CORPORATION
MUNICIPAL OFFICE
DODDABALAPUR - 561 203.
9. THE COMMISSIONER
TUMKURU MAHANAGARA PALIKE
MUNICIPAL OFFICE
ADVERTISEMENT DEPARTMENT
TUMKURU - 572 101.
10. THE COMMISSIONER
BIJAPUR MAHANAGARA PALIKE
MUNICIPAL OFFICE
ADVERTISEMENT DEPARTMENT
BIJAPUR- 586 101.

11. THE COMMISSIONER
CITY MUNICIPAL CORPORATION
MUNICIPAL OFFICE
ADVERTISEMENT DEPARTMENT
CHANNAPATNA - 562 138.
12. THE CHIEF OFFICER
TOWN MUNICIPAL COUNCIL
MUNICIPAL OFFICE
ADVERTISEMENT DEPARTMENT
CHANNAPATNA - 562 109.
13. THE COMMISSIONER
CITY MUNICIPAL CORPORATION
MUNICIPAL OFFICE
RAMANAGARAM - 562 109.
14. THE COMMISSIONER
DAVANGERE MAHANAGARA PALIKE
MUNICIPAL OFFICE
ADVERTISEMENT DEPARTMENT
CHANNAPATNA - 577 525.
15. THE COMMISSIONER
SHIMOGA MAHANAGARA PALIKE
MUNICIPAL OFFICER
ADVERTISEMENT DEPARTMENT
SHIMOGA- 577 211.
16. THE COMMISSIONER
CITY MUNICIPAL CORPORATION
B.M. ROAD
SANTHEPET CIRCLE
HASSAN - 573 120.

17. THE COMMISSIONER
CITY MUNICIPAL COUNCIL
MUNICIPAL OFFICE
ADVERTISEMENT DEPARTMENT
BIDAR - 585 402.
18. THE COMMISSIONER
CITY MUNICIPAL COUNCIL
MUNICIPAL OFFICE
CHITRADURGA - 575 555.
19. THE COMMISSIONER
CITY MUNICIPAL COUNCIL
MUNICIPAL OFFICE
ADVERTISEMENT DEPARTMENT
HARIHAR - 577 601.
20. THE COMMISSIONER
CITY MUNICIPAL COUNCIL
MUNICIPAL OFFICE
STATION ROAD
HOSPET - 583 201.
21. THE COMMISSIONER
CITY MUNICIPAL CORPORATION
MUNICIPAL OFFICE
ADVERTISEMENT DEPARTMENT
CHICKMAGALURU - 577 111.
22. THE COMMISSIONER
HUBLI-DHARWAD MAHANAGARA PALIKE
MUNICIPAL OFFICE
ADVERTISEMENT DEPARTMENT
NEAR JUBLIEE CIRCLE
DHARWAD - 581 207.

23. THE COMMISSIONER
CITY MUNICIPAL COUNCIL
MUNICIPAL OFFICE
MANDYA - 571 404.
24. THE COMMISSIONER
CITY MUNICIPAL COUNCIL
MUNICIPAL OFFICE
ADVERTISEMENT DEPARTMENT
KOLAR - 563 103.
25. THE COMMISSIONER
MYSORE MAHANAGARA PALIKE
MUNICIPAL OFFICE
ADVERTISEMENT DEPARTMENT
MYSORE - 570 009.
26. THE COMMISSIONER
CITY MUNICIPAL CORPORATION
MUNICIPAL OFFICE
NAVNAGAR
BAGALKOT - 587 111.
27. THE COMMISSIONER
CITY MUNICIPAL COUNCIL
ADVERTISEMENT DEPARTMENT
NEAR M.M. CIRCLE
HAVERI - 581 110.

... RESPONDENTS

(BY SMT. M.C. NAGASHREE, AGA FOR R1 TO R3;
SMT. SUMANGALA, GACHINMATH, ADOCATÉ FOR R4;
SMT. SUMANA BALIGA, ADVOCATE FOR R5;
SRI. P.S. MALIPATIC, ADVOCATE FOR R6;
SRI. K.N. SRINIVAS, ADVOCATE FOR R8;

SRI. R. SUBRAMANYA, ADVOCATE FOR R9;
SRI. HARISH H.V., ADVOCATE FOR R12;
SRI. AKSHAY, B.M., ADVOCATE FOR R14 & R19;
SRI. A.V. GANGADHARAPPA, ADVOCATE FOR R15;
SRI. A. RAVISHANKAR, ADVOCATE FOR R16;
SRI. S. MAHESH, ADVOCATE FOR R18;
SRI. A. NAGARAJAPPA, ADVOCATE FOR R21;
SRI. G.M. ANANDA, ADVOCATE FOR R23;
SRI. GEETHADEVI M.P., ADVOCATE FOR R25;
R7, R10, R11, R13, R17, R20, R22, R24, R26 SERVED)

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT SECTION 103 (b)(vi), SECTION 134, THE WORDS "AFTER THE LEVY OF THE TAX UNDER SECTION 134 HAS BEEN DETERMINED BY THE CORPORATION" IN SECTION 135(1), SECTION 135(2)(ii), SECTION 135(3), SECTION 139, AND SCHEDULE VIII TO/OF THE KARNATAKA MUNICIPAL CORPORATIONS ACT, 1976 ALONG WITH THE RULES/BYE-LAWS FRAMED BY MUNICIPAL CORPORATIONS IN THE STATE IN PURSUANCE OF THE SAID PROVISIONS ARE UNCONSTITUTIONAL AND VOID, AND THEREBY STRIKE THEM DOWN;

IN WP. No.15691 OF 2019:

BETWEEN:

- 1 . UK ADVERTISERS
OUT DOOR ADVERTISING
NO.C.H.106(3)
BJP OFFICE COMPLEX
JEWEL ROCK HOTEL ROAD
DURGIGUDI, SHIMOGA-577 202
REP BY ITS PROPRIETOR
UDAYA KUMAR H.G.
S/O GOPALARAO
AGED ABOUT 56 YEARS

- 2 . SUGAMA ADS AGENCIES
"BUDDHA" OPP. VENKATESHWARA TEMPLE
2ND CROSS, VENKATESH NAGAR
SHIVAMOGGA -577 202
REP BY ITS PROPRIETOR
SRI.B.N.SURESH KUMAR
SRI B.M.NANJUNDAPPA
AGED ABOUT 65 YEARS
- 3 . CREATIVE ADVERTISERS
MIG-22, 2ND PHASE
PRESS COLONY, GOPALA
SHIVAMOGGA-577 202
REP BY ITS PROPRIETOR
SRI.P.C.NAGARAJAPPA
S/O P.CHANNABASAPPA
AGED ABOUT 46 YEARS
- 4 . SRIDEVI ADVERTISERS
MAIN ROAD
NANDINI BADAVANE
ALKOLA, SHIVAMOGGA-577 204
REP BY ITS PROPRIETRIX
SMT.VIJAYAMMA
W/O BASAVARAJ
AGED ABOUT 51 YEARS
- 5 . MARUTHI ADVERTISERS
NO.155, IMPACT
'E' BLOCK, SWAMY VIVEKANANDA EXTN
NEAR RAMAKRISHNA I.T.I. COLLEGE GOPALA
SHIVAMOGGA-577 205
REPRESENTED BY ITS PROPRIETOR
SRI.MAHABALESHWARA.D
S/O RAMAPPA.D
AGED ABOUT 53 YEARS

...PETITIONERS

(BY SRI. HAREESH BHANDARY T., ADVOCATE)

AND:

- 1 . THE SHIMOGA CITY CORPORATION
SHIMOGA TALUK AND DISTRICT - 577 202
REP. BY ITS COMMISSIONER.
 - 2 . THE CITY MUNICIPAL COUNCIL
BHADRAVATHI TALUK - 577 202
REP BY ITS COMMISSIONER.
 - 3 . THE TOWN MUNICIPAL COUNCIL
KADUR TALUK -577 205
REP BY ITS CHIEF OFFICER.
 - 4 . THE TOWN MUNICIPAL COUNCIL
TARIKERE TALUK - 577 205
REP BY ITS CHIEF OFFICER.
 - 5 . THE TOWN MUNICIPAL COUNCIL
SAGAR TALUK -577 205
REP BY ITS CHIEF OFFICER
 - 6 . THE STATE OF KARNATAKA
REP BY ITS SECRETARY TO
DEPARTMENT OF URBAN DEVELOPMENT.
- ... RESPONDENTS

(BY SRI. A.V. GANGADHARAPPA, ADVOCATE FOR R1;
SRI. J.N. NAVEEN, ADVOCATE FOR R3;
SRI. RAVI. H.K., ADVOCATE FOR R4;
SRI. VISHWANATH R. HEGDE, ADVOCATE FOR R5;
SMT. M.C. NAGASHREE, AGA FOR R6;
R2-SERVED)

THIS PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA PRAYING TO
DIRECT THE R-1 TO 5 NOT TO RAISE ANY DEMAND FOR

PAYMENT OF ADVERTISEMENT TAX IN RESPECT OF THE HOARDINGS ERECTED BY THE PETITIONERS WITHIN THEIR LIMITS; DIRECT THE R-1 TO 5 NOT TO TAKE ANY COERCIVE ACTION AGAINST THE HOARDINGS ERECTED BY PETITIONERS WITHIN THE LIMITS OF R-1 TO 5 FOR NON PAYMENT OF ADVERTISEMENT TAX AND ETC.

THESE PETITIONS BEING HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Since the above three writ petitions raised common question with regard to validity of the demand made by respondent authorities for payment of advertisement tax in respect of hoardings erected by the petitioners, they are taken up for analogous hearing and common disposal.

2. In W.P.No.9936/2019 the petitioner has sought the following reliefs:

"i) Issue an appropriate Writ or order or direction by quashing the impugned notice No.SA.DAMAPA/KAMSHA/JAHI/33/2018-19/ & 24/18-19 respectively Dated: 26.06.2018 and 03.10.2018 to the petitioner directing him to pay certain amount issued by the Respondent vide Annexure -G & H respectively.

ii) Issue a Writ of Mandamus directing the respondents not to meddle with the hoardings of the petitioner".

2.1 Petitioner in W.P.No.15016/2019 has sought for following reliefs:

a. Declare that Section 103(b) (vi), Section 134, the words "after the levy of the tax under Section 134 has been determined by the Corporation" in Section 135(1), Section(ii), Section 135(3), Section 139, and Schedule VIII to/of the Karnataka Municipal Corporation Act, 1976 along with the rules/bye-laws framed by Municipal Corporation in the State in pursuance of the said provisions are unconstitutional and void, and thereby strike them down;

b. Declare that Section 94(1)(b)(xiii) including the explanations thereto, Section 94(1-B), the words "after the levy of the tax under Section 94 has been determined by the Municipal Council" in Section 133(1), Section 133(2)(ii), Section 133(3), Proviso (iv) to Section 142, Section 324(1)(ff), and Schedule VII to/of the Karnataka Municipalities Act, 1964 along with the rules/bye-laws framed by Municipalities in the State in pursuance of the said provisions are unconstitutional and void, and thereby strike them down;

c. Declare that bodies under the Karnataka Municipal Corporation Act, 1976 Corporations Act, Karnataka Municipalities Act, 1964, and any other statutory/state bodies/authorities in

the State of Karnataka have no authority to collect advertisement tax;

d. Issue a Writ of Mandamus or any other appropriate Writ directing the Respondents to ensure refund of all amounts collected by the authorities, corporations, municipalities under the Karnataka Municipal Corporations Act, 1976 Corporations Act, Karnataka Municipalities Act, 1964, and any other statutory/state bodies/authorities in pursuance of the said provisions in the state of Karnataka as advertisement tax to the members of the Petitioner".

2.2 W.P.No.15691/2019 filed by the petitioners

therein seeking following reliefs:

"i) Issue writ of Mandamus or any other appropriate writ directing the respondent Nos.1 to 5 not to raise any demand for payment of advertisement tax in respect of the hoardings erected by the petitioners within their limits.

ii) Direct the respondent Nos.1 to 5 not to take any coercive action against the hoardings erected by petitioners within the limits of respondent Nos.1 to 5 for non payment of advertisement tax".

3. It is the common case of the petitioners in the above three writ petitions that they are all carrying on the business *inter alia* outdoor

advertisements involving erecting hoardings, after obtaining necessary permissions from the landlords and also local authorities and thereafter display advertisement of their clients on such hoardings. Petitioners were required to pay advertisement tax in respect of the display of advertisements upon the demands that were raised by the respondent authorities. That in view of the amendment to the Constitution omitting entry No.55 in List II of Schedule VIII to the Constitution by its 101st amendment and consequent promulgation of Goods and Services Act, 2017 the States do not have authority to levy tax as was done prior to the constitutional amendment. However, despite the same the respondent authorities are continuing to raise demand for the payment of tax on advertisement without any authority constraining the petitioners to approach this court seeking reliefs as stated hereinabove.

4. It is the case of the petitioners that by way of constitution (one hundred and first amendment) Act, 2016, entry No.55 of List II of Schedule VIII to the Constitution which conferred power on the State to make law with respect to advertisement tax has been deleted and consequently States have no power to make any laws with respect to advertisement tax. Further advertisement tax has been subsumed into the Goods and Service tax due to the enactment of Central Goods and Services Tax Act, 2017 and Karnataka Goods and Services Tax, 2017. As such, statutory provisions providing for imposition of advertisement tax by the State and its authorities is unconstitutional and void. That despite the aforesaid amendment to the Constitution various corporations, municipalities who are arrayed as respondents in the aforesaid writ petitions are demanding payment of

advertisement tax on a threat of removal of hoardings which is illegal and arbitrary constraining the petitioners to approach this court.

5. Heard Sri.Zameer Pasha, learned counsel for petitioner in W.P.9936/2019, Sri.C.K.Nandakumar, learned Senior counsel appearing for Sri.Arjun Rao for petitioner in W.P.No.15016/2019, Sri.T.Hareesh Bhandary, learned counsel for petitioners in W.P.No.15691/2019, Smt.M.C.Nagashree, learned AGA for respondent-State, Sri.Akshay B.M., learned counsel for respondent No.1 in W.P.No.9936/2019, Smt.Sumangala Gachinmath, learned counsel of respondent No.4, Smt.Sumana Baliga, learned counsel for respondent No.5, Sri.P.S.Malipatil, learned counsel for respondent No.6, Sri.K.N.Srinivas, learned counsel for respondent No.8, Sri.R.Subramanya, learned counsel for respondent No.9, Sri.Harish H.V., learned counsel for respondent No.12, Sri.A.V.Gangaharappa,

learned counsel for respondent No.15, Sri.A.Ravishankar, learned counsel for respondent No.16, Sri.S.Mahesh, learned counsel for respondent No.18, Sri.A.Nagarajappa, learned counsel for respondent No.21, Sri.G.M.Ananda, learned counsel for respondent No.23, Smt.Geethadevi M.P., learned counsel for respondent No.25 in W.P.No.15016/2019, Sri.J.N.Naveen, learned counsel for respondent No.3, Sri.Ravi H.K., learned counsel for respondent No.4 and Sri.Vishwanath R. Hegde, learned counsel for respondent No.5 in W.P.No.15691/2019.

6. Sri.C.K.Nandakumar, learned Senior counsel apart from reiterating the grounds urged in the writ petition submitted that;

(a) the impugned provisions in the Karnataka Municipal Corporations Act, 1976 (KMC Act 1976) and Karnataka Municipalities Act, 1964(KM Act 1964) providing for imposition of tax on advertisement

requires to be quashed as the same are unconstitutional and ultra vires the Constitution in view of 101st amendment to the Constitution.

(b) that the impugned provisions were enacted tracing their power to legislate which was available under entry No.55 of the List II in the 7th schedule of the Constitution which had conferred authority to legislate with regard to taxes on advertisement. That except the said power no other power or authority is available to the State to legislate on the matter of taxes on advertisement.

(c) that apart from implementation of Goods and Services Tax (GST) across the country, the 101st amendment to the Constitution was enacted with the Parliament which received President assent on 08.09.2016, and as per Section 17(b)(3) of the said amendment Act entry No.55 in List II has been

omitted which has come into effect on and from 16.09.2016.

(d) that consequent to the aforesaid amendment the power to legislate on taxation on advertisements no longer exist with the State. However, the impugned provision continue to exist on the Statute Book which are being used and misused by the authorities demanding payment of tax on advertisement.

(e) though consequent to the constitutional 101st amendment, the State has brought necessary amendment to Karnataka Gram Swaraj and Panchayat Raj Act on 12.07.2017 by deleting Section 199(3)(c) of the said Act under which tax on advertisement was being imposed, however no amendment has been made to the impugned provisions. This has led to a situation where advertisement tax are being imposed

only in the areas falling under the limits of Corporations and Municipalities and not in the panchayat areas thereby violating provisions of Article 14 of the Constitution.

(f) that the Additional Chief Secretary, Finance Department had addressed a letter dated 12.05.2017 to the Additional Chief Secretary, Urban Development Department requesting suitable amendment be made in the KMC and KM Act in view of constitutional amendment. However no action in this regard is taken.

(g) that there being no power to enact legislation imposing advertisement tax, continuation of impugned provisions on the statute book is without authority and runs contrary to the provisions of Article 265 of the Constitution which mandates that no tax shall be levied or collected except by a mandate of law.

(h) the petitioners are suffering double taxation upon implementation of GST as well as the demand being made by the respondent authorities on the basis of the impugned provisions which have become unconstitutional.

(i) The petitioners are therefore before this court seeking the aforesaid reliefs. Learned Senior counsel relies upon the following statutes and authorities in support of the aforesaid submissions:

The Goods and Services Tax (Compensation to States) Act, 2017

1. *Pankaj Advertising Vs State of UP - Allahabad High Court Judgment dated 08.02.2019 in Writ Tax No.577/2018*
2. *Koluthara Exports Ltd., Vs. State of Kerala and others- (2002) 2 Supreme Court Cases 459*
3. *New Delhi Municipal Council Vs. State of Punjab and others- (1997)7 Supreme Court Cases 339*
4. *Yadlapati Venkateswarlu Vs. State of Andhra Pradesh and Anr-*

1992 supp (1) Supreme Court Cases 74

5. *Mr.Sunderam Shetty and others Vs State of Karnataka and others, Karnataka High Court Judgment dated 04.08.2021 in Writ Petition No.4601/2020*
6. *Mafatlal Industries Ltd. and others Vs Union of India and others - (1997)5 SCC 536.*

7. On the other hand, learned AGA has filed a memo dated 21.10.2021 along with copy of the notification dated 07.10.2011 whereby the Government of Karnataka has enacted the Karnataka Municipalities and certain other laws (amendment Act) 2021 and a notification dated 07.10.2021 in this regard has been published in the official Gazette. The said amendment Act is intending to substitute the word "tax" with that of the word "fee" where ever found in the impugned provisions contained in the Karnataka Municipalities Act, 1964 and Karnataka Municipal Corporations Act, 1976. Thus, it is

submitted that the present petitions does not survive for consideration.

8. Sri.Akshay B.M., learned counsel appearing for respondent in W.P.No.9936/2019 resisting the aforesaid writ petition and the relief sought therein contended that what is being demanded and charged by the respondent authorities is "fees" for the service being rendered by the respondent authorities and not "tax" as contended by the petitioners. Learned counsel for respondent relies upon the following authorities/judgments in support of his submissions:

(1) Municipal Corporation of Delhi and others Vs Mohd. Yasin - AIR 1983 SC 617.

(2) Union of India (UOI) and others Vs State of UP -AIR 2008 SC 521.

9. Sri.Gangadharappa, learned counsel appearing for one of the respondent-authorities submits that the petitioners have entered into contract

with the respondent authorities and in terms of the contract they are liable to pay tax. Once having agreed to pay the tax they cannot contend to the contrary. That the petitioners are therefore estopped from refusing to pay the tax.

10. Heard the learned counsel for the parties and perused the records.

11. The points that arise for consideration are as under:

(i) Whether the respondent authorities are justified in issuing demand notices calling upon the petitioners to pay the tax on advertisement?

(ii) Whether the impugned provisions namely Section 103(b)(vi), 134 containing the words "after levy of tax under Section 134 has been determined by the Corporation" and in Sections 135(1), 135(2)(ii), 135(3), 139 and Schedule (viii) to the Municipal Corporations Act, 1976 along with bye laws framed by Municipal Corporation pursuant to the aforesaid provisions are unconstitutional and ultra vires the Constitution and require to be quashed?

(iii) Whether impugned provisions namely Section 94(1)(b)(xiii) including the explanation thereto, Section 94(1-B) containing the words "after the levy of tax under Section 94 has been determined by Municipal council" in Sections 133(1), 133(2)(ii), 133(3), proviso (iv) to Section 142, Section 324(1)(ff) and Schedule 7 to the Karnataka Municipalities Act, 1964 along with rules/bye laws framed by Municipalities in the State pursuant to the said provisions are unconstitutional and ultra vires the constitution and require to be quashed?

12. Before advertng to the submissions and counter submissions made by the learned counsel for petitioners and respondents it is appropriate to refer the impugned provisions. The relevant provisions under Karnataka Municipal Corporations Act, 1976 which are impugned are as under:

Section 103(b)(iv)

"103. Taxes which may be imposed:-
Subject to the general or special orders of Government, a corporation shall,

a) XXX

b) [at rates not exceeding those specified in this Act] levy any one or more of the following taxes:

i) xxx

- ii) xxxx
- iii) xxxx
- iv) xxxx
- v) xxx
- vi) a tax on advertisement

Section 134

"134. Tax on advertisement.- Every person who erects, exhibits, fixes or retains, upon or over any land, building, wall or structure any advertisement or who displays any advertisement to public view in any manner whatsoever, in any place whether public or private, shall pay on every advertisement which is so erected, exhibited, fixed, retained or displayed to public view, a tax calculated at such rates and in such manner and subject to such exemptions, as the corporation may, with the approval of the Government, by resolution determine: Provided always that the rates shall be subject to the maxima and minima laid down by the Government in this behalf: Provided further that no tax shall be levied under this section on any advertisement or a notice,-

(a) of a public meeting, or corporation of the city, or

(b) of an election to any legislative body, or

(c) of a candidature in respect of such an election: Provided also that no such

tax shall be levied on any advertisement which is not a sky-sign and which,-

(a) is exhibited within the window of any building; or

(b) relates to the trade or business carried on within the land or building upon or over 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 such land or building; or

(c) relates to the name of the land or building, upon or over which the advertisement is exhibited, or to the name of the owner or occupier of such land or building; or

(d) relates to the business of any railways; or

(e) is exhibited within any railway station or upon any wall or other property of a railway except any portion of the surface of such wall or property fronting any street".

Section 135(1)

"135. Prohibition of advertisements without written permission of Commissioner.- (1) No advertisement shall, after the levy of the tax under section 134 has been determined upon

by the corporation, be erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding or structure within the city or shall be displayed in any manner whatsoever in any place without the written permission of the Commissioner".

Section 135(2)(ii)

"(2) The Commissioner shall not grant such permission if,-

(ii) the tax, if any, due in respect of the advertisement has not been paid".

Section 135(3)

"3) Subject to the provisions of sub-section (2), in the case of an advertisement liable to the advertisement tax, the Commissioner shall grant permission for the period to which the payment of the tax relates and no fee shall be charged in respect of such permission:

Provided that the provisions of this section shall not apply to any advertisement erected, exhibited, fixed or retained on the premises of a railway relating to the business of a railway".

Section 139

139. Collection of tax on advertisement.- The Commissioner may form out the collection of any tax on advertisement leviable under section 134 for any period

not exceeding one year at a time on such terms and conditions as may be provided for in the bye-laws.

**SCHEDULE VIII
(See section 103)
TAX ON ADVERTISEMENTS**

Sl. No.	Particulars	Maximum No. amount of tax per annum (in Rupees)
1	2	3
1	Non-illuminated advertisement on land, building, wall, hoardings, frame, post, structure, etc,-	
	(a) For a space upto 1 sq.m.	50
	(b) For a space over 1 sq.m. and upto to 2.5. sq.m.	80
	(c) For every additional 2.5 sq.m. or less	80
2	2. Non-illuminated advertisement carried on vehicles drawn by bullocks, horses or other animals, human beings, cycle or any other device carried on any vehicle,-	
	(a) For a space up to 5 sq.m.	300
	(b) For every addition 5 .sq.m. or less	300
3	Illuminated advertisement boards carried on vehicles	
	(a) For a space upto 5.sq.m	375
	(b) For every additional 1.sq.m. or	75
4	Non-illuminated advertisement boards, carried by switch boardmen,-	
	(a) For each board not exceeding 1	75
	(b) For each board exceeding 1 sq.m. and upto 2.5. sq.m	150
	(c) For each additional 1 sq.m. in area or less	75
5	Illuminated advertisement boards carried by switch boardmen,-	
	(a) For each board not exceeding 1	150
	(b) For each board exceeding 1 sq.m. and upto 2.5 sq.m.	250
	(c) For each additional 1 sq.m. in area	150

6	Illuminated advertisements on land, building, wall or hoardings, frame, posts, structures, etc.	
	(a) For a space upto 2. sq.m.	75
	(b) For a space over 2. sq.m. and upto 5. sq.m.	150
	(c) For a space over 5. sq.m. and upto 2.5 sq.m	150
	(d) For every additional 2.5 sq.m. or less	175
7	Advertisements exhibited on screens in cinema houses and other public places by means of lantern slides or similar devices,-	
	(a) For a space upto 5. sq.m.	250
	(b) For a space over 5. sq.m. and upto to 2.5 sq.m.	275
	(c) For every additional 2.5 sq.m. or less	275
8	Non-illuminated advertisements suspended across streets,-	
	(a) For a space upto 1. sq.m	50
	(b) For a space over 1. sq.m. and upto 2.5 sq.m	80
	(c) For every additional 2.5 sq.m. or less	80
	N.B. The tax on item 8 will be in addition to the rent for the space which will be chargeable according to the scale to be determined by the Commissioner	
9	9. Non-illuminated advertisement boards standing blank but bearing the name of the advertiser or the announcement "To be let" displayed thereon,-	
	(a) For a space up to 1. sq.m. ..	25
	(b) For a space over 1 sq.m. and upto 2.5 sq.m.	40
	(c) For every additional 2.5 sq.m. or less	40
10	10. Permission to auctioneers to put up nor more than 100 (including two boards of reasonable size advertising each the rent for auction sale, other than those in the premises exhibiting the where the auction is held, one on a prominent board on	500

13. The relevant provisions under Karnataka Municipalities Act, 1964 which are impugned are as under:

Section 94(1)(b)(xiii) and explanation

"94. Taxes which may be imposed.—(1) Subject to the general or special orders of the Government, a municipal council,-

(a) xxx

(b) xxx at rates not exceeding those [specified in this Act], may levy any one or more of the following taxes

(xiii) a tax on advertisements (other than advertisements published in newspapers) erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or displayed to public view in any manner whatsoever visible from a public street or public place (including any advertisement exhibited by means of cinematograph):

Explanation 1.—The word "structure" in this sub-clause includes any movable board on wheels used as an advertisement or an advertisement medium;

Explanation 2.—'public place' for the purpose of this sub-clause, means any

place which is open to the use and enjoyment of the public, whether it is actually used or enjoyed by the public or not;

Explanation 3.—The word "advertisement" in this sub-clause means any word, letter, model, sign, placard, notice, device or representation, whether illuminated or not, in the nature of, and employed wholly or in part for the purpose of, advertisement, announcement or direction".

Section 94(1-B)

"94(1-B) No tax shall be levied on any advertisement which,-

(a) is exhibited with the window of any building if the advertisement relates to the trade, profession or business carried on in that building; or

(b) relates to trade, profession or business carried on within the land or building upon or over which such advertisement is exhibited or to sale or letting of such land or building or any effects therein or any sale, entertainment or meeting to be held on or upon or in, the same; or

(c) relates to the name of the land or building, upon or over which the advertisement is exhibited or to the

name of the owner or occupier of such land or building; or

(d) relates to the business of a railway administration and is exhibited within any railway station or upon any wall or other property of a railway administration;

(e) relates to any activity of the State Government;

(f) relates to any public meeting".

Section 133(1)

"133. Prohibition of advertisements without written permission of municipal council.— (1) No advertisement shall, after the levy of the tax under section 94 has been determined upon by the municipal council, be exhibited, erected, fixed or retained upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall be displayed in any manner whatsoever in any place within the municipal area without the written permission of the municipal council, granted in accordance with bye-laws made under this Act".

Section 133(2)(ii)

"(2) The municipal council shall not grant such permission if,—

(ii) the tax, if any, due in respect of the advertisement has not been paid".

Section 133(3)

"(3) Subject to the provisions of sub-section (2), in the case of an advertisement liable to the advertisement tax, the municipal council shall grant permission for the period to which the payment of the tax relates and no fee shall be charged in respect of such permission".

Proviso (iv) to Section 142

"142. Presentation of bill for taxes.

Provided that no such bill shall be necessary in the case of,—

- (i) XXXXX*
- (ii) XXXXX*
- (iii) XXXXX*
- (iv) a tax on advertisements".*

Section 324(1)(ff)

"324. Power to make bye-laws.—(1) Subject to the provisions of this Act and the rules made thereunder, every municipal council may from time to time make, alter or rescind bye-laws,—

(ff) prescribing the conditions on or subject to which permission may be

granted, renewed, refused, suspended or withdrawn for erecting, exhibiting, fixing or retaining any advertisement liable to tax under this Act, over any land, building or structure or upon or in any vehicle or for displaying in any other manner".

SCHEDULE VII
(Section 94)
TAX ON ADVERTISEMENTS .

Sl. No.	Particulars	Maximum amount of tax per annum Rs.
1	Non-illuminated advertisements on land, building, wall, hoardings, frame, post, structures, etc.—	
	(a) For a space up to 1 sq.m.	10
	(b) For a space over 1 sq.m. and up to 2.5 sq. m.	16
	(c) For every additional 2.5 sq. m. or less.	16
2	Non-illuminated advertisements carried on vehicles, drawn by bullocks, horses, or other animals, human beings, cycle or any other device carried on any vehicle,—	
	(a) For a space up to 5 sq. m.	60
	(b) For every additional 5 sq. m. or less	60
3	Illuminated advertisement boards carried on vehicles,—	
	(a) For a space up to 5 sq. m.	75
	(b) For every additional 1 sq. m. or less	15
4	Non-illuminated advertisement boards, carried by sandwich boardmen,—	
	(a) For each board not exceeding 1 sq. m.	15
	(b) For each board exceeding 1 sq. m. and up to 2.5 sq. m.	30
	(c) For each additional 1 sq. m. in area or less	15

5.	Illuminated advertisement boards carried by sandwich boardmen,—	
	(a) For each board not exceeding 1 sq. m.	30
	(b) For each board exceeding 1 sq. m. and up to 2.5 sq. m.	50
	(c) For each additional 1 sq. m. in area or less	30
6.	Illuminated advertisements on land, building, wall or hoardings, frame, post, structures, etc,—	
	(a) For a space up to .2 sq. m.	15
	(b) For a space over .2 sq. m. and up to .5	30
	(c) For a space over .5 sq. m. and up to 2.5 sq.m.	35
	(d) For every additional 2.5 sq. m. or less	35
7.	Advertisements exhibited on screens in cinema houses and other public places by means of lantern slides or similar devices,—	
	(a) For a space up to .5 sq. m.	50
	(b) For a space over .5 sq. m. and up to 2.5 sq. m.	55
	(c) For every additional 2.5 sq. m. or less	55
8.	Non-illuminated advertisements suspended across streets,—	
	(a) For a space upto 1 sq. m.	10
	(b) For a space over 1 sq. m. and up to 2.5 sq. m.	16
	(c) For every additional 2.5 sq. m. or less	16
	N.B.—The tax on item 8 will be in addition to the space which will be chargeable according to the scale to be determined by the Municipal Commissioner or Chief Officer.	

9.	Non-illuminated advertisement hoardings standing blank but bearing the name of the advertiser or with the announcement "To be let" displayed thereon	
	(a) For a space up to 1 sq. m.	5
	(b) For a space over 1 sq. m. and up to 2.5 sq. m.	8
	(c) For every additional 2.5 sq. m. or less	8
10.	Permission to auctioneers to put up not more than two 100 (including boards of reasonable size advertising each auction sale, the rent for other than those in the premises where the auction is held, exhibiting the one on a prominent site in the locality and one on board on a Municipal lamp post. Municipal lamp post)	

14. As could be seen from the aforesaid provisions under KMC Act, 1976 and KM Act, 1964 power has been entrusted to the Corporation to levy tax on advertisement and the power to determine the rate of tax has been vested with the Corporation and the Municipal Council respectively. Thus, hitherto power to levy and demand the tax on advertisement was traceable to the aforesaid provisions of the Acts. In turn the legislative competence of the State was traceable to entry No.55 of List II of Schedule VIII to

the Constitution of India which conferred power on the State to make laws with respect to advertisement tax.

15. The Parliament brought 101st amendment to the Constitution by way of constitution (one hundred and one first amendment) Act, 2016 by which entry No.55 of List II of Schedule VIII to the Constitution has been omitted. Consequently the State has no power to make any laws with respect to advertisement tax.

16. It is also relevant to note that Parliament enacted "the Goods and Services Tax (Compensation to States) Act, 2017", to provide for compensation to the States for loss of revenue arising on account of implementation of Goods and Services Act in pursuance of the provisions of Constitution(one

hundred and first amendment) Act, 2016. Section 5 of the said Act reads as under:

"5. (1) Subject to provisions of sub-section(2)(3)(4)(5) and (6) the base year revenue for a State shall be the sum of revenue collected by the State and the Local bodies during the base year, on account of taxes levied by the respective State or Union and net refunds, with respect to the following taxes, imposed by the respective State and Union, which are subsumed into goods and services tax namely:

(a)

(b).....

(c).....

(d).....

(e) The tax on advertisement and/or any other tax levied by the concerned State under the erstwhile entry No.55 of List II (State List) of the 7th Schedule to the Constitution.

17. Thus, the aforesaid amendment to the Constitution omitting entry No.55 and consequent promulgation of the Goods and Services Tax (compensation to States) Act, 2017 the power of the

State Legislature to levy tax on advertisement is withdrawn.

18. In an identical situation, the Division Bench of High Court of Allahabad in its Judgment dated 08.02.2019 rendered in the case of **Pankaj Advertising Vs State of UP** passed in Writ Tax No.577/2018 while striking down the bye laws as ultra vires held as under:

"Apart from the above, the State Legislature was invested with power to make laws in respect of taxes and advertisement vide entry No.55 of List II to the 7th Schedule of the Constitution but the said entry was deleted by the constitution (101st amendment) Act, 2016 with effect from 12.09.2016. The said amending Act vide Section 17 amends 7th Schedule and provides for omission of entry No.55 of List II of the said Schedule. Thus, deleting the power of State to make laws in respect of tax advertisement.

Accordingly, when the State was denuded of the power to make laws in respect of tax on advertisement obviously the municipalities also who have divested power to impose any tax on advertisement."

19. It is appropriate to refer to the Judgment of the Constitutional Bench of the Apex Court in the case of ***Koluthara Exports Limited Vs State of Kerala*** and others reported in **(2002)2 SCC 459** wherein the Apex Court dealing with Judgment of the Division Bench of High Court of Kerala (Ernakulam) upholding the Constitutional Validity of Section 4(2) read with Section 2(d) of Kerala Fishermen Welfare Fund Act, 1985(Act 30 of 1985) (As amended by Act 15 of 1987). At paragraph 18 has held as under ;

"18. Now, adverting to the constitutional validity on the impugned provisions, it must be remembered that Part IV of the constitution contains as noticed above, fundamental principles in governance of country. They indicate and determined the direction for the State but they are not legislative head or the fields of legislation like the entries in Lists I , II and III of the Seventh Schedule of the Constitution. When any statute of a State or any provision therein is questioned on the ground of lack of legislative competence, the State cannot claim legitimacy for enacting the impugned provisions with reference to the provisions in part IV of the Constitution; the

Legislative competency must be demonstrated with reference to one or more of the entries in List II and III of the Seventh Schedule of the Constitution."

20. In the case of ***New Delhi Municipal Corporation vs. State of Punjab and others*** reported in ***(1997) 7 SCC 339***. The Nine Judge Bench of the Apex Court dealing with power to levy tax by the Municipalities at paragraphs 97, 98 and 99 has held as under;

"97. We have great difficulty in accepting this assertion. Article 265 of the Constitution emphatically mandates that " no tax shall be levied or collected except by authority of law". Under the framework of the Constitution there are two principal bodies which have been vested with plenary powers to make laws, these being the Union Legislature, which is described by Article 79 as "Parliament for the Union" and the State Legislatures, which are described by Article 168 in the singular as "Legislature of a State". While certain other bodies have been vested with legislative power, including the power of levying taxes by the Constitution for the specific purposes, as in the case of District Committees and Regional Councils constituted under the aegis of the Sixth Schedule to the Constitution, the plenary power to legislate, especially in matters relating to revenue, still vests with the Union and the State Legislatures.

Even if the submission that Municipalities now possess, under Part IX-A of the Constitution, a higher juridical status is correct, the extension of that logic to the proposition that they have plenary powers to levy taxes is not, as is clear from a perusal of the relevant part of Article 243-X of the Constitution which reads as under.

"243-X. Power to impose taxes by, and Funds of, the Municipalities- The Legislature of a State may, by law-

a) Authorise at Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits:

(b)-(d)

as may be specified in the law.

98. Article 243-ZB provides that this provision will be applicable to Union Territories and the reference to the legislature of a State would apply, in relation to a Union Territory having a Legislative Assembly, to that Legislative Assembly.

99. It is, therefore, clear that even under the new scheme, municipalities do not have an independent power to levy taxes. Although they can now be granted more substantial powers than ever before, they continue to be dependent upon their parent legislatures for the bestowal of such privileges. In the case of Municipalities with in States, they have to be specifically delegated the power to tax by the state legislature concerned. In Union Territories which do not have legislative Assemblies of their own, such a power would have to be delegated by Parliament. Of the

rest, those which have Legislative Assemblies of their own would have to specifically empower Municipalities within them with the power to levy taxes".

21. Similarly, the Apex Court in the case of ***Yadlapati Venkateshwaralu vs. State of Andhra Pradesh and another*** reported in **1992 Supp.(1) SCC 74** dealing with the power of the Municipalities to impose tax at paragraph has held as under;

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"It is apt to remember that the State's power to tax is derived from the Constitution and the municipality's power to tax is derived from the State Legislature which could delegate that power in the manner the Constitution permits to the municipal council, an agent of the State Government, and the municipality cannot refuse to raise taxes as directed. The proper authority to determine what should and what should not constitute a public burden is the Legislature of the State. This is not only true for the State itself but it is also true in respect of each municipality of the State; these inferior corporate bodies having only such authority in this regard as the legislature shall confer upon them. A statute will not be declared unconstitutional unless it is specifically challenged and the principle is equally applicable to an enactment authorising levy of a tax for a public purpose. The power to tax is

a sovereign power and is legislative in character and it has to be exercised within the Constitutional limitations. The statutes relating to municipal taxes may be changed according to the existing legislative rules of State policy unless forbidden by the Constitution from doing so. Irregular assessment may also be regularised with retrospective effect within the same Constitutional limitations. Where the Court has not already declared invalid a taxing measure which was of doubtful validity, it is permissible for appropriate legislature to validate it by retrospective legislation. No legal fiction is involved in such a case. Mr.Subba Rao's submission has, therefore, to be rejected".

22. A Co-ordinate Bench of this Court in its judgment dated 04.08.2021 rendered in W.P.No.4601/2020 (LB-BBMP) connected with other matters dealing with the challenge to several imposts/fees imposed by the Bruhath Bangalore Mahanagara Palike and State of Karnataka at paragraphs 19 and 20 has held as under;

"19. Before embarking upon the journey of consideration of impugned impose, I deem it appropriate to consider the position in law with regard to imposition of such imposts or a fee.

20. Article 265 of the Constitution is a source of power for the Union and States to impose taxes in accordance with law. Article 265 of the Constitution of India reads as follows;

"265. Taxes not to be imposed save authority of law. - No tax shall be levied or collected except by authority of law"

Therefore, any imposts can be made only in accordance with and as authorised by law".

23. Thus, from the above settled legal position and facts situation it is clear that on and after implementation of Goods and Service Tax Act, 2017 consequent upon the 101st amendment to the Constitution certain taxes including the taxes and advertisement which were levied by the respective States and the Union are subsumed into goods and service tax. The authority to levy tax which was available under entry No.55 List II (State List) of the Seventh Schedule to the Constitution has been omitted. Consequently, the Municipal Corporations

and the Municipalities which are the inferior corporate bodies of the State do not have power to levy and collect the tax on advertisement.

24. Adverting to the submission made by Sri.Akshya B.M. learned counsel for the respondent No.1 in W.P.No.9936/2019 wherein he submitted that what is being levied and collected by the respondent -authorities is "fee " and not the "tax", therefore, the present petitions are misconceived. He relies of the judgment of The Apex Court in the case of ***Municipal Corporation Delhi vs. Mohammed Yasin and others (1983 SC 617)*** wherein at paragraph 9 the Apex Court has held as under;

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"What do we learn from these precedents? We learn that there is no generic difference between a tax and a fee, though broadly a tax is a compulsory exaction as part of a common burden, without promise of any special advantages to classes of taxpayers

whereas a fee is a payment for services rendered, benefit provided or privilege conferred'. Compulsion is not the hallmark of the distinction between a tax and a fee. That the money collected does not go into a separate fund but goes into the consolidated fund does not also necessarily make a levy a tax. Though a fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere causal relation may be enough. Further, neither the incidence of the fee nor the service rendered need be uniform. That others besides those paying the fees are also benefited does not detract from the character of the fee. In fact the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest. Nor is the Court to assume the role of a cost accountant. It is neither necessary nor expedient to weigh too meticulously the cost of the services rendered etc., against the amount of fees collected so as to evenly balance the two. A broad correlation ship is all that is necessary. Quid pro quo in the strict sense is not the one and only true index of a fee; nor is it necessarily absent in a tax".

25. He also relies upon judgment of the Apex Court in the case of ***Union of India and others vs. State of UP***, wherein referring to Article 285 of the

Constitution at paragraph 9 the said judgment the Apex Court has held as under;

"9. From a perusal of Article 285 it is clear that no property of the Union of India shall be subject to tax imposed by the State, save as Parliament may otherwise provide. The question is whether 'the charges for' supply of water and maintenance of sewerage is in the nature of a tax or a fee for the services rendered by the Jal Sansthan. There is a distinction between a tax and a fee, and hence one has to see the nature of the levy whether it is in the nature of tax or whether it is in the nature of fee for the services rendered by any instrumentality of the State like the Jal Sansthan. There is no two opinion in the matter that so far as supply of water and maintenance of sewerage is concerned, the Jal Sansthan is to maintain it and it is they who bear all the expenses for the maintenance of sewerage and supply of water. It has to create its own funds and therefore, levy under the Act is a must. In order to supply water and maintain sewerage system, the Jal Sansthan has to incur the expenditure for the same. It is in fact a service which is being rendered by the Jal Sansthan to the Railways, and the Railways cannot take this service from the Jal Sansthan without paying the charges for the same. Though the expression tax has been used in the Act of 1975 but in fact it is in the nature of a fee for the services rendered by the Jal Sansthan. What is contemplated under Article 285 is taxation on the property of the Union. In our opinion the Jal Sansthan is not charging any tax on the property of the Union; what is being charged is a fee for services rendered to the Union through

the Railways. Therefore, it is a plain and simple charge for service rendered by the Jal Sansthan for which the Jal Sansthan has to maintain staff for regular supply of water as well as for sewerage system of the effluent discharge by the railway over their platform or from their staff quarters. It is in the nature of a fee for service rendered and not any tax on the property of the Railways".

26. Thus, learned counsel for the respondent No.1 relying upon the aforesaid judgment submit that the levy is 'fee' and not 'tax', therefore, there is no need or requirement of declaring the impugned provisions as unconstitutional and void.

27. Learned AGA referring to the notification dated 07.10.2021 giving effect to the Karnataka Municipalities and certain other law (Second Amendment) Act, 2021 wherein, words "following taxes" "tax" is sought to be substituted with insertion of words "or fee", submits that in view of the aforesaid Act, 2021 the declaration that the impugned provisions are unconstitutional is unwarranted.

28. At this juncture, it is relevant also to refer to letter dated 12.05.1970 issued by the Additional Chief Secretary, Finance Department addressed to Additional Chief Secretary produced at Annexure-K to the W.P.No.15016/2019 requesting suitable amendment to be made in Karnataka Municipal Corporation Act and the Karnataka municipalities act in view of omission of entry 55 of List II of Schedule VIII to the Constitution. The contention of the said letter would reveal that in the event State Government is conscious of the requirement of bringing in necessary amendment to the KMC Act and KM Act.

29. As rightly contended by learned Senior counsel for the petitioner that amendment to the Karnataka Gram Panchayath and Panchayath Swaraj Act has already been made vide Karnataka Gram Swaraj at Panchayath Raj (Amendment) Act 2017 as

seen in the notification dated 12.07.2017 as per Annexure-R whereby provisions similar to Section 94 of KM Act and 103 of KMC Act that existed in Section 199(3) of the Karnataka Gram Swaraj and Panchayath Raj Act, providing for levy of tax and advertisement the Panchayath has been omitted in view of omission of entry No.55 in List II of Schedule VII of the Constitution.

30. The aforesaid amendment made by the State Government to the Panchayath Raj Act has, as contended by the petitioner has lead to anomaly wherein the tax on advertisement is being levied and collected within the limits of Municipal corporation and Municipalities while no such levy is being made within the limits of Panchayaths.

31. It may not be out of context to mention that in the newly enacted Bruhat Bengaluru

Mahanagara Palike Act, 2020 there is a conspicuous absence of provision providing for imposition of tax on advertisement as found in the Municipal Corporation Act, 1976. Which suggest that the Legislature was conscious of deletion of entry No.55 from List II of Schedule VII of the Constitution of India.

32. Thus, for the aforesaid reasons, and analysis this Court is of the considered view that the petitioner in W.P.No.15016/2019 has made out a case for grant of relief as sought for. Consequently, the relief sought for to set aside the demand for payment of tax on advertisement as made in W.P.No.9936/2019 and 15691/2019 also requires to be granted. Points raised above are answered accordingly.

Hence, the following;

ORDER

(i) Writ petitions are allowed.

(ii) The provisions of Section 103(b) (vi) and Section 134 of the Municipal Corporation Act, 1976 providing power to the Municipal Corporations to levy tax on advertisement is declared unconstitutional and void and the same are struck down.

(iii) Consequently, the words "after the levy of the tax and that Section 134 has been determined by the Corporation "found in Sections 135(1) , 135(2)(ii), 135(3), 139 and Schedule VIII to the Municipal Corporation Act, 1976 and the Rules /Bye laws framed by the Municipal Corporations in the State pursuant to the said provision is also declared unconstitutional and void and the same to the said extent are struck down.

(iv) Similarly, Section 94(1)(b) (xiii) including explanation thereto, Section 94(1-B) and the words "after the levy of tax under Section 94 has been

determined by the Municipal Council "in Section 133(1), Section 132(2)(ii), Section 133(3) proviso (iv) to Section 142 , Section 324(1)(ff) and Schedule VII to the Karnataka Municipalities Act, 1964 along with rules framed by the Municipalities in the State pursuant to the said provisions are declared unconstitutional and to that extent are struck down.

(v) Demand made at Annexures-G and H dated 26.06.2018 and 03.10.2018 raised against the petitioners in W.P.No.9936/2019 for payment of amount towards the advertisement tax are quashed.

(vi) Consequently, Gratuity the relief sought in W.P.No.15691/2019, the respondents-authorities are directed not to raise any demand for payment of advertisement taxes in respect of the hoardings erected by the petitioners and also not to take any

coercive actions in respect of the hoardings erected by the petitioners within their limits.

(vii) As regards the relief for refund of the all amounts collected by the respondent authorities from the Members of the petitioner in W.P.No.15016/2019 towards advertisement tax is concerned, the tax collected on and after the 101st Amendment of the Constitution omitting the entry No.55 of List II to Schedule VII to the Constitution, the petitioner is at liberty to make a representation providing details of the amounts paid towards advertisement tax, in that event respondent-authorities may either refund the amounts so paid by the petitioner or give an endorsement to the petitioner to adjust and appropriate the said amount against other levies, if any, by the respondent authorities to be imposed on the petitioner in the State of Karnataka. The respondent-authorities if choose to adjust and

appropriate the amounts already paid by the petitioner towards the advertisement tax, they shall give detailed break up of such adjustment and appropriation to the petitioner within a period of six weeks from the date of representation made by the petitioner. It is made clear that if there are no levies against which the amount paid could be adjusted or appropriated, the respondent-authorities shall refund the same to the petitioner in this writ petition.

**Sd/-
JUDGE**

SBN/RU