
Pepsico India Holdings (Pvt.) Ltd. Vs State of U.P. and Others

Misc. Bench No. 9629 of 2007 and Writ Petition Nos. 1631 (M/B) of 2004, 4028 (M/B) of 2010, 215 (M/B), 7521 (M/B), 3045 (M/B) of 2007, 749 (M/B) of 2005, 214 (M/B) of 2007, 2563 (M/B) of 2004, 84 (M/B) of 2007, 1609 (M/B) of 2004, 3363 (M/B) of 2006, 1568

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: Jan. 8, 2015

Acts Referred:

Constitution of India, 1950 - Article 243(Q), 285, 348#Uttar Pradesh Municipal Corporation Act, 1959 - Section 122(1), 134, 172, 172, 172

Citation: (2015) 1 ADJ 273 : (2015) 109 ALR 333 : (2015) 3 AWC 3154 : (2015) 1 UPLBEC 40

Hon'ble Judges: Arvind Kumar Tripathi, J.; Devi Prasad Singh, J.

Bench: Division Bench

Advocate: Vikas Singh and Dheeraj Naiar, for the Appellant; R.K. Singh and Shailendra Singh Chauhan, Advocates for the Respondent

Final Decision: Allowed

Judgement

Devi Prasad Singh, J.

This bunch of writ petitions, has been preferred against the notices issued by the Nagar Nigam, Lucknow, Nagar

Nigam Allahabad and Nagar Nigam Bareilly in view of tax imposed for advertisement in their respective shops in pursuance of power conferred by

Rules framed for the purpose. Respective Nagar Nigam of these three districts framed Rules in pursuance of provisions contained in Section 227

read with Section 192 and 219, 540(1) and 550 of Uttar Pradesh Municipal Corporation Act, 1959 (in short the Act) superseding all existing

Rules. The Rules of three Nagar Nigams are identical in nature and for the purpose of disposal of these writ petitions, the Rules framed by the

Lucknow Nagar Nigam namely, the Lucknow Municipal Corporation (Assessment and collection of tax on advertisements not being

advertisements published in news papers) Rules, 2000 (in short the rules,) is taken as leading one of the leading Writ Petition No. 9629 (M/B) of

2007.

2. The petitioners have challenged the vires of Rules followed by notices issued in pursuance of power conferred by Rules demanding the payment

of advertisement tax. The provisions contained in Section 193(1), 193(2)(i) of the Act read with Section 541(48) of the Act have also been

impugned through amendment of writ petitions to declare the respective provisions as ultra vires to the Constitution and strike down the same.

However, on 18.2.2014, Sri Nageshwar Rao, learned Senior Counsel appearing for the petitioners, had not pressed the relief challenging the

provisions of the Act. Hence the controversy for adjudication relates to validity of the Rules (supra) and notices issued in pursuance thereof. Copy

of the Rules has been filed as Annexure 2 to the leading Writ Petition No. 9629 (M/B) of 2007.

3. The petitioners are companies registered under the Companies Act, 1956 and carry on the business inter alia manufacturing and marketing soft

drinks, beverages being sold under the trade names Pepsi, Lahar, 7UP, Mirinda etc., within the limits of the city of Lucknow. The soft drinks are

sold from the respective dealers of the petitioners company where advertisement is displayed with regard to trade and business carried upon or

over their premises the sign board depicting the trade marks, logo and/or image soft drinks with or without the name of such outlets. Certain

photographs have also been filed collectively as Annexure 3 which show that sign boards have been placed outer walls of the shops over which the

name of the shop as well as the name of beverages, snack food etc., have been indicated in bold letters.

4. It has been pleaded that beverages as well as snack food are sold by the petitioners companies to the distributors as well as retailers. It is the

sole discretion of retailers to have or not have to any particular display of produce upon their retail outlet/shop. These retailers or distributors are

neither owned nor controlled by the petitioners. The premises exclusively belong to the distributors/retailers.

5. The Rules have been notified by the Government in pursuance of power conferred by clause (3) of Article 348 of the Constitution of India on

3.3.2000. Under Rule 3, it has been provided that no person shall display, paste or exhibit, write or draw any advertisement without obtaining

prior permission from Mukhya Nagar Adhikari. Application may be moved under Rule 4 in the prescribed format and under Rule 5, the

application for permission referred to in rule-4, may be rejected on certain grounds. Under Rule 7, it has been provided that tax shall be paid for

the whole year in three instalments. Rule 9 deals with the advertisement over the shop and Rule 10 further provides that any advertisement done

without prior permission may be wiped off by the Nagar Nigam. Rule 12 imposes certain restriction over the advertisement whereas Rule 13

empowers Mukhya Nagar Adhikari to remove any advertisement. For convenience, Rule, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the Rules are

reproduced as under:

3. (1) No person shall without obtaining permission from the Mukhya Nagar Adhikari:

(a) display, paste, exhibit, write or draw any advertisement or any kind of picture which gives an impression of being an advertisement to common

prudent person, on any house, bridge, street, footpath or the land appurtenant to it. Tree, Nagar Prachir (Boundary wall), city gate, electric or

telephone poles, moving vehicles or any open place within the limits of the Corporation; or

(b) display, exhibit or hang any type of advertisement to any street, road, bridge, Nagar Prachir, City gate, electric or telephone poles, on moving

vehicles or by sticking on it.

(2) No person or the owner of a house structure shall without obtaining permission from the Mukhya Nagar Adhikari display, exhibit or paste any

advertisement himself nor he shall give permission to any person for such advertisement by displaying, pasting, drawing or hanging any of its part

visible from the public place or from the public street.

4. (1) An application for permission in the prescribed form shall be submitted by the advertiser together with the requisite descriptions, sketch

drawing or site plan of such exhibition, pasting or hanging with details of site, alongwith other formalities, as may be required. If the advertisement is

intended to be displayed on angle iron of girders by fixing hoarding thereon, on the side of any public road or footpath, the entire description and

the size of advertisement shall also be furnished together with the application.

(2) In case any advertisement is intended to be displayed on private building, wall or in a land which is visible from the road, street or any lane, a

certified copy of the consent of the concerned owner of the land or building shall also be furnished with the application.

(3) In case any owner of the land desires to display an advertisement on his own land or wall of his building as is visible from the road, street or

any lane, he shall have to submit detailed information together with the application and to take permission under these rules.

(4) Permission will be granted after the advertiser deposited amount of the tax calculated in accordance with the rates of taxes specified in the

schedule appended to these rules and subject to such conditions as may be imposed in the interest of public safety and decency.

5. The application for permission referred to in rule-4 may be rejected in case:

(a) the application does not contain all the requisite details, the advertisement is considered to be indecent, obscene or injurious in appearance or it

contains objectionable writing or obscene or nude sketches, pictures or any symbol of intoxication;

(b) the advertisement is likely to create any apprehension of breach of public peace or tranquillity, or is against the public order and public unity by

its appearance or may cause damage to life or property due to falling under storm or hurricane or due to disturbance in traffic or due to any other

reason.

(c) the site is unsuitable in the reasonable, opinion of the Mukhya Nagar Adhikari, or

(d) the advertisement is contrary to the provisions of any law for the time being in force.

6. The permission shall be for the period specified in the permission letter. The annual permission shall be for the maximum period of one year from

the date of the permission or upto 31st March of the financial year in which permission is granted, whichever is earlier.

7. The tax shall be payable for the whole year in three instalments. First instalments of 30% of the tax shall be payable in April, in every financial

year. The second instalment of 40% and Third instalment of 30% shall respectively be payable in July and October in every financial year.

8. A permission shall also be obtained from Mukhya Nagar Adhikari for displaying any advertisement which is different from the advertisement

referred to in the schedule and the amount of tax payable for such advertisement shall be such as may be fixed by the Mukhya Nagar Adhikari The

duration of such permission shall be one year from the date of the permission or upto 31st March of the financial year in which permission is

granted, whichever is earlier.

9. No advertisement of any shop shall without prior permission of Mukhya Nagar Adhikari and prior payment of tax be exhibited by hanging

cardboard, pasting stickers, painting writing or displaying in any other manner.

Explanation: (i) If the name of the shop has been displayed or exhibited by hanging a board, painting or in any manner whatsoever, the same shall

not be treated as advertisement and shall not be taxable under these rules; and

(ii) If there is a mention of any article describing its quality, etc., alongwith the name of shop or independently attracting the common public by

advertisement, the same shall be taxable under these rules.

10. Any advertiser having obtained permission under these rules shall wipe off or remove the advertisement including those exhibited on moving

vehicle within a week of the date of expiry of such permission.

11. Permission granted under these rules shall be non-transferable. The description of the advertisement shall also not be liable to be changed

without prior permission of the Mukhya Nagar Adhikari.

12. Notwithstanding anything Contained to the contrary in any contract or agreement, no advertisement on hoarding shall be displayed:

(1) If exceeding to 40 feet x 10 feet and its rear portion is less than 6 feet above the level of the ground.

(2) on the turning or crossing of the road or street at a place within 200 feet from the turning or crossing nor within 100 feet of the traffic signal nor

it shall be displayed in a way obstructing vehicular or pedestrian traffic.

(3) on public building, Nagar Prachir, walls, like hospital, educational institution, Public Offices or National Movements.

(4) on the walls of a private house by writing or painting on it in a colour different from that specified by the Municipal Commissioner.

(5) in prohibited areas declared as such by Corporation"" or the State Government from time to time more Particularly:

(i) around the historical and national monuments.

- (ii) around Vidhan Sabha,
- (iii) around Raj Bhawan,
- (iv) around High Court,
- (v) Mahatma Gandhi Marg (from Parivartan Chowk to Railway Crossing after Loreto Convent School and V.V.I.P. Guest House,
- (vi) In front of Hathi Park and Buddha Park,
- (vii) In front of Income Tax Office, Ashok Marg,
- (viii) royal Hotel Crossing and Cooperative Building Footpath,
- (ix) Islands and in front of statues and all other main Chaurahas,
- (x) around the General Post Office (G.P.O. Crossing), and
- (xi) Allahabad Bank Crossing, Hazratganj to Charan Hotel, in-front of Charbagh Railway Station (Ravindralaya to Nattha Hotel Tirana).

13. It shall be lawful for the Mukhya Nagar Adhikari to remove any advertisement or hoarding being displayed in contravention of these rules and

expense of the removal of such an advertisement shall be recoverable from the advertiser as the dues of the corporation, in accordance with

Chapter XXI or the Act.

6. While assailing the impugned Rules, Sri Nageshwar Rao, learned Senior Counsel assisted by Sri Vikas Singh has raised two fold arguments;

firstly, the Rules, have been framed not by following procedure provided under the Act with due resolution of the Board and secondly, the

imposition of tax over the advertisement in the shop of a building is beyond jurisdiction in view of the provisions contained in Section 172 read with

Section 192 of the Act.

7. So far as the first limb of argument of Sri Nageshwar Rao is concerned, it does not seem to be no more res integra. The controversy has been

settled by the Full Bench of this Court in the case of Writ Petition No. 3336 (M/B) of 2010 (Anugar Bansal v. State of U.P. and others), decided

on 20.4.2011. In the case of Anurag Bansal, Full Bench has considered the power of Municipal Corporation to impose tax as contained in

Chapter IX of the Act. After considering various provisions contained in Chapter IX of the Act read with Part 9-A of the Constitution, the Full

Bench observed as under:

55- Keeping in view the constitutional provisions (supra) and definition of word "corporation", there appears no doubt that though the

corporations discharge their obligations in pursuance to statutory provisions contained in the Act but that too subject to only limited interference of

the State Government. The Government may issue appropriate guidelines, frame rules or regulations without substantially affecting the autonomy of

the corporations and also without interfering day-to-day business. Otherwise the purpose of 74th amendment of the Constitution shall frustrate. In

any case it is not permissible for the Government to treat the local bodies and corporations as its regular departments. The provision contained in

Article 243(Q) and the use of word ""Corporation" is indicative of the fact that there must be some autonomy to the local bodies and corporations,

to discharge their statutory obligations in pursuance to decision taken by its Board or its elected representatives.

56- Though Section 540 of the Act empowers the State Government to make rules or model rules, but the power conferred on the State

Government, would be subject to other statutory provisions with regard to imposition of tax, recovery and maintenance of infrastructure. For the

purpose, the Government may frame rules or model rules but without violating other statutory provisions contained in the Act itself. Power of the

State Government is subject to other provisions contained in the Act itself.

Provision contained in Section 540 of the Act cannot be read in isolation. While considering the power of State _ Government to frame rules,

regulations or the bye-laws, the Court has to take into account Article 243(Q), Section 2 containing definition clause as well as provision contained

in Section 172 as well as other provisions contained in Chapter IX of the Act.

57- The power conferred on the Corporation under Section 172 of the Act contains the power to impose tax on trades, professions, transfer of

property, tax on vacant land and so on. Sub-section (2) of Section 172 empowers the Corporation to impose tax in addition to the tax specified in

sub-section (1) for the purposes of Act and subject to the provisions thereof. The power contained in sub-section (1) of Section 172 is quite

exhaustive and empowers the Corporation to impose tax on any matter in furtherance of the Act. Sub-section (4) of Section 172 of the Act further

clarifies that the power of the Corporation to impose tax shall be similar as of the State Government, meaning thereby, power of State Government

to impose tax under List 2 of Schedule-7 of the Constitution, shall be available to the Corporations to impose taxes within their jurisdiction.

58- Apart from sub-section (2) of Section 172, Section 192 confers additional power to the Corporation empowering it to impose tax on the

advertisement.

Further Section 193 provides that without written permission of the Municipal Commissioner, no advertisement shall be exhibited. It further

provides that in case advertisement contravenes any bye-law made by the corporation under Clause (48) of Section 541 of the Act, no permission

shall be granted. It further provides that the permission shall be granted only for the period for which tax is paid.

Section 194 of the Act further provides that the permission granted under Section 193 of the Act shall be void in case advertisement contravenes

any bye-law made by the corporation under Clause (4)8 of Section 541 of the Act. Section 195 further provides that it is the beneficiary of the

advertisement, who shall be responsible to face punitive action in the event of contravention of provision or bye-laws with regard to advertisement.

59- The Provisions contained in Sections 172 to 196 should be read conjointly and not in isolation. While framing the rules, the state Government,

thus, seems to have not taken into account these statutory provisions.

Under Clause V of Rule 5, the owner of the land or building has been held responsible for any default and held liable to pay taxes. This is contrary

to provision contained in Section 195 of the Act. Building owners may receive rent but actually beneficiary of the advertisement, is the Company or

person, who advertised its goods. It is for the advertising agency to ensure compliance of Rule or Bye-laws.

60- Further under Rule 7 power has been conferred on the Municipal Commissioner to fix the minimum premium amount for every site. The site of

advertisement shall be decided by the allotment committee under the Chairmanship of Municipal Commissioner. Virtually, indirectly power to

impose premium or tax has been conferred on the Municipal Commissioner which is against the scheme of the Act. It is for the executive body of

the corporation to take decision to impose tax or premium and not the municipal commissioner under the Act. Thus, power conferred by the

impugned rule on the Municipal Commissioner is in contravention of the Act.

61- A combined reading of Rule 26 with Schedule shows that by the impugned Rule, taxes have been imposed with regard to advertisement

though under the Act, power to impose tax has been dealt with under Chapter IX from Section 172 to 205 of the Act. Statutory provisions contain

specific provisions how the tax should be imposed. Under Section 199 of the Act, proposal should be prepared by the Corporation for imposition

of tax through its executive committee. The executive committee of the Corporation shall pass resolution with regard to tax and thereafter it shall

send to the state Government. The State Government may reject, sanction or modify the proposal under Section 201 of the Act. The Provisions

contained in Sections 201, 202 and 203 of the Act abundantly clears that the initial proposal with regard to imposition of tax falling within the

domain of corporation should be mooted from corporation. The state Government may approve or disapprove the proposal with regard to

imposition of tax.

62- Under Section 205 of the Act, the state Government has power to abolish certain tax in certain circumstances. The Government may also

direct the corporation to impose tax under Section 206 of the Act by publishing its direction or order in the official Gazette and order so notified

shall be implemented by the Corporation through its special resolution.

63- Thus, the power of the state Government is supervisory power with regard to tax matter whereas original power to impose tax vests in the

Corporation itself. Any other meaning given to statutory provision will make the corporations a department of the State Government which does

not seem to aim and object of Article 243(Q) and other related provisions of the Constitution.

64- Under Section 306 of the Act also power has been conferred on the Municipal Commissioner to ensure that the advertisement should be

removed after serving a notice. In Section 314, the power of the State Government is without prejudice to the generality of the foregoing powers

i.e. power of the corporation to make rules. Section 540 of the Act confers additional power on the state Government to make rules to carry out

the purpose of the Act and may also make model rules for guidance of corporation. Power conferred under Section 540 of the Act does not

intend to ignore the executive body of the corporations to take decision or corporation to pass resolution with regard to imposition of tax in case

the Executive Body or the Board of the Corporation are divested from their power to pass resolution with regard to tax matters in pursuance to

statutory right conferred by the Act (supra), then it shall amount to give a go bye to the autonomy given to Corporation by the constitutional

amendment (supra). Parliament intends to give autonomy to some extent to the corporation so that decision may be taken with regard to imposition

of taxes and other related matters at local level.

65- Keeping in view the local needs and requirements, power of the state Government is subject to power exercised by the corporation to take

decision in tax matters. Of course, the Government may take decision by framing model bye-laws and issuing direction by publication in the official

gazette directing the Corporation to impose certain taxes only then the decision of the State Government shall be binding and lawful.

66- Needless to say that in case direction issued by the state Government is not sound and affects the right of the people or violative of

constitutional provision or tax proposed by the Government is not lawful, then it may invite public resentment or people may approach for judicial

review against such direction or decision taken by the state Government.

67- Accordingly, the power conferred on the State Government under Section 540 of the Act is subject to Sections 172, 192, 193, 194, 195 and

196 and 199 of the Act. However, the Government has right to frame model rules or issue direction under Section 206 of the Act to impose

certain taxes by publication in official gazette. Thus, the impugned rules seem to have been framed in contravention of statutory provision contained

in the Act. Hence, the judgment in Taj Advertising (supra) seems to not lay down a correct law.

8. Admittedly, no resolution was passed by the Municipal Corporation and the procedure contained in Chapter IX of the Act, have not been

followed. Accordingly, impugned rules, seem to have been framed arbitrarily without following due statutory procedure contained in the Act hence

seem to be not sustainable.

9. Section 172 further restricts the power of Municipal Corporation and is subjected it to Article 285 of the Constitution. For convenience, Section

172 is reproduced as under:

Section 172. Taxes to be imposed under this Act: (1) For the purposes of this Act and subject to the provisions thereof and of Article 285 of the

Constitution of India, the Corporation shall impose the following taxes, namely.--

(a) Property taxes;

(b) a tax on vehicles other than mechanically propelled vehicles, and other conveyances plying for hire or kept within the City or on boats moored

therein:

(c) a tax on helicopters or any other type of planes, when they land on or take off from the helipads, airports, airstrips or places made for this

purpose situated within the Corporation. The tax so imposed shall be paid by the airport authority or person or persons, or managers, or director

or institution or department or agency involved in the maintenance, management and supervision of the airport, airstrip, helipad or the place as the

case may be;

(d) a tax on trades and professions;

(e) a tax on deeds of transfer of immovable property situated within the city;

(f) a tax on vacant land situated within the city;]

(2) In addition to the taxes specified in sub-section (1) the Corporation may for the purposes of this Act and subject to the provisions thereof

impose any of the following taxes, namely,

(a) a tax on callings and on holding a public or private appointment.]

(b) [***]

(c) [***]

(d) [***]

(e) a tax on dogs kept within the City;

(f) a betterment tax;

(g) [000]

(h) a tax on advertisements not being advertisements published in newspapers;

(i) a theatre tax; and

(j) [***]

[***]

(3) The corporation taxes shall be assessed and levied in accordance with the provisions of this Act and the rules and bye-laws framed thereunder.

(4) Nothing in this section shall authorize the imposition of any tax which the State Legislature has no power to impose in the State under the

Constitution of India:

Provided that where any tax was being lawfully levied in the area included in the City immediately before the commencement of the Constitution of

India such tax may continue to be levied and applied for the purposes of this Act until provision to the contrary is made by Parliament.

10. Section 192 of the Act confers power of Nagar Nigam to impose tax with regard to items enumerated in clause (h) of sub-section (2) of

Section 172 of the Act. For convenience, Section 192 of the Act is reproduced as under:

Section 192. Tax on advertisements.--Where a Corporation imposes a tax mentioned in Clause (h) of subsection (2) of Section 172, every

person who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding 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

may be provided by the Act or rules made thereunder: Provided that no tax shall be levied under this section on any advertisement or a notice--

(a) of public meetings, or

(b) of an election to any legislative body or the Corporation, 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 advertisement is exhibited, or to any sale or letting of

such land or building or any effects therein or to any sale, entertainment or meeting to be held upon or in the same, or

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

or building, or

(d) relates to the business of any railway administration, or

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

wall or properly fronting any street.

Explanation 1--The word ""structure"" in this section shall include any movable board on wheels used as an advertisement or an advertisement

medium.

Explanation 2--""Public place"" shall, for the purpose of this section mean 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.

11. It has been vehemently argued by the learned counsel for the petitioners that in view of the proviso contained in Section 192, no tax may be

levied on any advertisement which is not a sky sign and which is exhibited on the window of any building and relates to trade and business carried

on or business carried on within the land or building upon or over which advertisement is exhibited. Submission is that the display of board or sign

used on respective shops by the distributors over the building or outside the shop, is not the sky sign.

12. In a case in Calcutta Soft Drinks Pvt. Ltd. Vs. Calcutta Municipal Corporation and Others, , Calcutta High Court while dealing with pari

materia provisions held that it excludes the jurisdiction of corporation to impose tax. It is not necessary that person who has a trade-licence to

carry on business in a particular premises, surely fall within the expression, ""occupier of such land or building"" as only lawful occupier of a premises

is given trade-licence to carry on a business in a premises.

13. In identical cases, decided on 30.6.2009, in Writ Petition No. 9039 of 2007 (LB-BMP) (Hutchison Essar South Ltd. v. Bruhat Bangalore

Mahanagara Palike and others) connected with other writ petitions, the Karnataka High Court reiterated aforesaid proposition and held as under:

8. In order to better appreciate the contentions advanced by the learned counsel for the parties, it is necessary to extract the third proviso to

Section 134 of the Act which runs thus:

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 windows of any building; or

(b) relates to the trade or business carried on within the [vacant land or building] upon or over which such advertisement is exhibited, or to any sale

or letting of such [vacant land or building] or any effects therein or to any sale, entertainment or meeting to be held upon or in such [vacant land or

building]; or

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

of such [vacant 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.

9. In V. Vasudev Bhat's case (supra), the third proviso to Section 129-A of the City Municipal Act reads thus:

Provided further that no such tax shall be levied on any advertisement which is not a sky-sign and which (a)--(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 the same.

14. The decision of the Madras High Court in V. Vasudev Bhat's case (supra), in my considered opinion applies on all its fours and for the very

same reasons, findings and conclusions, the petitioners are entitled to exemption from payment of advertisement tax under the third proviso to

Section 134 of the Act. The order of the Special Commissioner, impugned and the demand for payment of tax by the notices impugned are illegal.

14. Karnataka High Court has followed the judgment of Madras High Court in the case in V. Vasudeva Bhat Vs. The Revenue Officer,

Corporation of Madras, . Madras High Court defined the sky-sign as under, to quote:

... But this, it appears to me, overlooks the words in Explanation 2 "" Hall be visible against the sky"". The word ""against"" to my mind, clearly points

to the requirement that the advertisement should be visible against the sky in the sense that the sky should be at the back of the advertisement and

not merely above it. The learned Advocate-General suggested that Explanation 2 makes it clear that an advertisement which is directly fixed upon

the wall, will not be within its scope and the words ""or other support"" indicate that between the wall and the advertisement there should be some

other support. Whether this interpretation is correct or not, I am clear that an advertisement fixed on the wall and not visible against the sky in the

sense that what is behind"" is the wall and not the sky, is not within Explanation 2. Such an advertisement is not a sky-sign within the meaning of

Section 129-A.

The meaning of sky-sign is given in Funk and Wagnalls, New Standard Dictionary thus:

a sign or an advertisement so placed as to be backed by the sky.

The word ""against"" in Explanation 2 precisely conveys this meaning.

15. Punjab and Haryana High Court at Chandigarh in a case decided on 11.11.2011: Aradhana Drinks and Beverages Pvt. Ltd. v. State of

Punjab and others, (CWP No. 17226 of 2009), in identical situation held as under:

[17] The precise case of the petitioner is that since the Dealer Boards have been erected or displayed only on those outlets, shops or buildings

where the trade or business pertaining to the products sold or marketed by it is also carried on, these boards relate to the trade" or ""business"

carried on within such outlets, shops or buildings and are excepted from the Advertisement Tax under proviso (c) of Section 122(1) of the Act.

The Municipal Authorities have apparently not undertaken any exercise to refute or admit the afore-stated fact based contention specifically raised

by the petitioner in para 2 of the writ petition and are heavily banking upon the principle of predominance to urge that the protection of the

exemption clause is admissible only where an outlet, shop or building displaying the Dealer Board is in exclusive use for the trade or business of the

products sought to be advertised.

[29] For the reasons afore-stated, we hold that so long as the trade, profession or business being carried on within the land, building, shop or

outlet etc. also includes the trade, profession or business in the goods, services and/or any other taxable activity in relation to which the

advertisement board has been erected, exhibited fixed or retained upon such land, building, shop or outlet, no Advertisement Tax can be levied in

view of the proviso (c) to Section 122(1) of the Act. Since it is the categoric case of the petitioner on facts that the Dealer Boards have been

erected or displayed by it on the out-let, shops or buildings where one of the activity of the "business" on trade" carried on includes the sale of the

products marketed or distributed by the petitioner, no Advertisement Tax is leviable on such Dealer Boards. This declaration of ours, however, is

subject to the caveat that wherever the Municipal Corporation is able to establish that the business carried on within the land, building, shop or

outlet where the Dealer Boards have been erected or displayed does not at all include the sale of the products marketed or distributed by the

petitioner-Company, the Corporation shall be at liberty to call upon the petitioner for assessment of the advertisement tax with specific reference to

such Dealer Boards and proceed further in accordance with law.

16. In Bimal Chandra Banerjee Vs. State of Madhya Pradesh etc., , followed by Ahmedabad Urban Development Authority Vs. Sharadkumar

Jayantikumar Pasawalla and others, . Their lordships of Hon"ble Supreme Court held that a levy not contemplated by the statute cannot be

imposed by rules made thereunder. Hence in view of exemption granted by the proviso of Section 192 the Rules framed by the respective

Municipal Corporations, seem to be ultra vires to the Act.

17. In Words and Phrases Permanent Edition, Vol. 39, the word, "sky sign", has been defined as under:

SKY SIGN

Building Code of city of New York, § 24-144 provides that any sign or advertising device supported or attached over or above any building, etc.,

shall be deemed a "sky sign", and prohibits such sign from being constructed more than nine feet above the front wall of a building at any part.

18. Section 2(1), Section 2(71) of the Act defines the "advertisement" and "sky sign". For convenience, both are reproduced as under:

2 (1) "advertisement" means any word, letter, model, sign, placed, board, 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 and includes any hoarding or similar

structures used or adapted to be used for the display of advertisement;

2 (71) "sky-sign" means any word, letter, model, sign, device or other representation, in the nature of an advertisement, announcement or direction,

which is supported on or attached to any post, pole, standard, framework or other support wholly or in part upon, over or above any building or

structure and which is wholly or in part visible against the sky from any point in any street or public place, and includes--

(a) every part of support, and

(b) any balloon, parachute or similar device employed wholly or in part of the purposes of any advertisement or announcement, on, over or above

any building, structure or erection of any kind, or on or over any street or public place;

but shall not be deemed to include--

(i) any flagstaff, pole, vane or weathercock unless adapted or used wholly or in part for the purposes of any advertisement or announcement;

(ii) any sign on any board, frame or other contrivance securely fixed to or on the top of the wall or parapet of any building, on the cornice or

blocking course or any wall or to the ridge of a roof, if such contrivance be of one continuous face and not open work and does not extend in

height more than three feet above any part of such wall, parapet or ridge; or

(iii) any representation which relates exclusively to the business of a railway administration as defined in the Indian Railways Act, 1890, and which

is placed wholly upon or over any railway station yard, platform or station approach, or premises belonging to such railway administration, and

which is also so placed that it could not fall into any street or public place;

19. In view of definitions given under sub-section (1) and (71) of Section 2 of the Act, it appears that wherever any hoarding or similar structure

are used to display certain thing for the purpose of advertisement, shall be deemed to be an advertisement. The definition of advertisement is

comprehensive in nature. However, in case we go through sub-section (71) of Section 2 of the Act, the condition precedent for sky-sign is that the

fixture or structure must be open to sky and should be attached to any post, pole, standard framework or other support wholly or in part open

over and above any building or structure which is wholly, in part visible from, any point in any street or public place.

Clause (i), (ii) and (iii) of sub-section (71) of Section 2 of the Act include certain instructions which shall not be covered under sky-sign like

flagstaff, pole, vane, weathercock, sign on any board, frame or other contrivance as well as any other representation which relate exclusively to the

business of Railway Administration etc. Thus, advertisement done in the mode and manner provided by Clause (i), (ii), and (iii) shall not be sky-

sign hence, no tax may be imposed. The exception provided under sub-section (71) of Section 2 of the Act, has not been included and taken into

account in the impugned Rules.

20. While framing Rules, the respondents have not taken into account the definition clause given in sub-section (71) of Section 2 of the Act. The

exception provided therein, should have been the part of the Rules which exempt the use of board, frame or alike fixtures over the wall of shop

from sky-sign.

21. It is well-settled law that while interpreting a statute, meaning should be assigned to each and every word, line by line, word by word and the

statute as a whole. According to Maxwell, a construction which would leave without effect any part of the language of a statute will normally be

rejected.

Hon"ble Supreme Court by catena of judgment held that while interpreting any section of a statute, every word and provision should be looked

into in context to which it is used and not in isolation vide Grasim Industries Ltd. Vs. Collector of Customs, Bombay, ; Easland Combines,

Coimbatore Vs. The Collector of Central Excise, Coimbatore, ; A.N. Roy, Commissioner of Police and Another Vs. Suresh Sham Singh, and

Deewan Singh and Others Vs. Rajendra Pd. Ardevi and Others, .

22. In view of the above, the respondents cannot exclude the proviso while interpreting Section 192 of the Act while framing Rules in question.

The respondents while framing Rules, have not considered the proviso which provides that no tax shall be levied on any advertisement which is not

a sky-sign. Accordingly, the Rules seems to be comprehensive in nature and inclusive of sky-signs hence suffer from violation of statutory mandate.

23. No other grounds are required to be considered since the writ petition deserves to be allowed on the grounds firstly, the procedure contained

in the Act, has not been followed while framing Rules and secondly, power has been conferred on the Nagar Nigam to impose tax on

advertisement which include all advertisements inclusive of sky-signs. Accordingly, writ petition deserves to be allowed hence allowed in the

manner as follows:

(i) The impugned Rules contained in Annexure 2 to the leading Writ Petition No. 9629 (M/B) of 2007 as well as other identical Rules, framed by

Nagar Nigam Lucknow; Nagar Nigamm Bareilly and Nagar Nigam Allahabad are declared illegal, void and inoperative. However, it shall be open

to respondents to frame new Rules in accordance with law and keeping in view the observations made in the body of the present judgment.

(ii) The petitioners shall be entitled for refund of tax deposited by them if any, from the respondents expeditiously say, within three months.

(iii) The writ petitions are allowed accordingly. No orders as to costs.