

**THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY****Writ Petition No.5173 of 2023****ORDER:**

Assailing the legal validity of the impugned demand notices, dated 22.12.2022, issued to the petitioners demanding payment of advertisement tax, the present Writ Petition has been filed by the petitioners.

2) Heard learned counsel for the petitioners; and learned Assistant Government Pleader for Municipal Administration and Urban Development for 1st respondent; and Sri K.Madhava Reddy, learned Standing Counsel for GVMC, appearing for respondents 2 and 3.

3) Outline facts of the *lis* may be stated as follows:-

The petitioners have been doing various businesses within the limits of Greater Visakhapatnam Municipal Corporation. They have erected name boards relating to their business activity to the premises of their business. Therefore, the impugned notices under Sections 420 and 421 of the A.P. Municipal Corporation Act, 1955, (for short "the Act"), were issued to the petitioners demanding payment of advertisement tax for the period 2022-23. The imposition of the said



advertisement tax and issuance of the impugned notices demanding payment of the advertisement tax for the year 2022-23 is assailed by the petitioners in this Writ Petition on the ground that the 2nd respondent Municipal Corporation is not competent to issue any such notices imposing the advertisement tax.

4) As the competency of the Municipal Corporation to impose the advertisement tax is questioned, the three basic provisions relevant in the context to consider to resolve the controversy are Article 265, Article 246 of the Constitution of India and Entry-55 in List-II (State List) of the Seventh Schedule of the Constitution of India. Article 265 of the Constitution of India reads thus:

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

5) The aforesaid Article makes it manifest and mandates that in order to impose any tax, the State shall be authorised by law to levy or collect any such tax. Therefore, inevitably there must be specific law authorising or empowering the State to levy and collect tax. In the absence of any law enabling,



authorising or empowering the State to impose and collect any tax, levy of such tax would be wholly unconstitutional.

6) Chapter-I of Part-XI of the Constitution of India deals with distribution of legislative powers between Parliament and the Legislature of a State to make laws. Clause (1) of Article 245 mandates that Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State. Clause (3) of Article 246 further mandates that subject to clauses (1) and (2) that the Legislature of any State would have exclusive power to make laws for the State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule of the Constitution of India, which is called as the State List. So, the matters on which the State is empowered to make laws are enumerated in List II of the Seventh Schedule in the Constitution, which is referred to as the “State List”. The State is empowered to make laws only in respect of those matters, which are enumerated in List II of the Seventh Schedule.



7) Now, it is significant to note that Entry-55 of List-II authorises the State to make law for collection of taxes on advertisements. Entry-55 of List-II of the Seventh Schedule of the Constitution of India as it stood prior to its repeal, reads thus:

“55. Taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio and television.”

8) Therefore, as per Entry-55 of List-II of the Seventh Schedule of the Constitution of India, the State is empowered to make a law for levy and collection of advertisement tax.

9) Now, in the present context, it is also relevant to consider the power of delegation of the State to impose taxes to the Municipal bodies. A study of the history of Municipal Acts in India shows that the power to impose and collect tax is being delegated to Municipal bodies for the last several years. In all Statutes dealing with local administration, inevitably the power of taxation is delegated to the Municipal authorities. As such power is a necessary adjunct to a system of local self government, in majority of Statutes, there has been a large area of delegation of taxing power for local purposes to local



bodies subject to the control by the Government as the Legislature considers necessary in the matter of imposition of taxes. Thus, the history of the Municipal Acts shows that there is wide area of delegation in the matter of imposition of taxes to local bodies subject to controls and safeguards of various kinds which partake the nature of guidance in the matter of fixing the rates for local taxation. However, local authorities do not act as Legislature when they impose a tax but act as the agent of the State Legislature. So, this power and the extent of these powers must be found in the Statute which creates them and endows them with such powers.

10) Section 197 of A.P. Municipal Corporation Act, 1955, deals with the power and authority of the Corporation to impose taxes on certain items. It enumerates the items on which the Municipal Corporation is authorised to impose and collect tax under law. In exercise of the power conferred on the Legislature of the State under Entry 55 of the Seventh Schedule to make law for levy and collection of advertisement tax, sub-clause (f) of Clause 1(i) of Section 197 of the Act was incorporated earlier authorising and empowering the Municipal Corporation to impose and collect advertisement



tax. This imposition of advertisement tax is valid as at that time it was in consonance with Article 265 and Entry-55 of List-II of the Seventh Schedule of the Constitution of India.

11) Section 197 of the A.P. Municipal Corporation Act, 1955, to the extent, it is relevant in the present context, reads thus:

“197. Taxation to be imposed under this Act:-- (1) (i) For the purposes of this Act, the Corporation shall impose the following taxes, namely:--

- (a);
- (b);
- (c);
- (d);
- (e) [x x x];

(f) taxes on advertisements other than advertisements published in the newspapers;

- (g);

(ii) In addition to the taxes specified in clause (i) the Corporation may for the purposes of this Act and subject to the provisions thereof also impose any of the following taxes:-

- (a);
- (b) [x x x];

(2) The Corporation may impose any tax other than those specified under Sub-section (1) subject to the previous sanction of the Government.

(3) The taxes specified in Sub-section (1) and (2) shall be assessed and levied in accordance with the provisions of this Act and rules made thereunder.”



12) However, it is significant to note that consequent to the 101st amendment of the Constitution of India, Entry-55 in List-II (State List) in the Seventh Schedule of the Constitution of India, which enables the State to make a law for imposition of advertisement tax, was subsequently omitted with effect from 16.9.2016. Therefore, after omitting Entry-55 in List-II by the 101st amendment to the Constitution of India, the power of the State to make law to impose advertisement tax is taken away. So, the State is now not authorised and empowered to make any law to impose and collect any such advertisement tax with effect from 16.09.2016. Consequent to the said 101st amendment omitting Entry-55 in the State List, Section 197(1)(i)(f) of the A.P. Municipal Corporation Act, 1955, authorising the Corporation to impose tax on advertisements has been also omitted by Act 9 of 2020 in the A.P. Municipal Corporation Act, 1955, with effect from 03.01.2020. So, from 03.01.2020 onwards, the Corporation now has no authority of law to impose any such advertisement tax.

13) Therefore, after omission of Entry-55 in List-II of the Seventh Schedule of the Constitution of India by the 101st amendment of the Act, 2016, with effect from 16.9.2016,



even the State Government did not have the legislative competence to make law to levy or collect taxes on the advertisements which was earlier available under Entry-55 of List-II. The power of imposition of such tax earlier vested with the Municipal Corporation under 197(1)(i)(f) of the Act has been also taken away by omitting the said sub clause (f) of clause 1(i) of Section 197 with effect from 03-01-2020, as discussed supra. Therefore, the Municipal Corporation also has now no statutory competence to levy, impose or collect advertisement taxes.

14) In view of the above, the levy and demand made for payment of advertisement tax by the Greater Visakhapatnam Municipal Corporation, which is impugned in this writ petition, is clearly without any legislative or statutory competence and it is *ultra vires* Article 265 of the Constitution of India. When the State is now denuded of the power to make law in respect of the tax on advertisements after omission of Entry-55 in List-II of the Seventh Schedule of the Constitution of India, obviously, the Corporations were also divested of the power to impose any tax on advertisements.



15) Resultantly, the writ petition is allowed declaring the impugned notices imposing advertisement tax and demanding the petitioners to pay the same as unconstitutional. The imposition of advertisement tax on the petitioners and demanding the petitioners to pay the same by the impugned notices by the respondent-Corporation is clearly unsustainable under law. Therefore, the impugned notices issued to the petitioners are hereby set aside. No costs.

Consequently, miscellaneous applications, pending if any, shall also stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date:07.03.2023.

Note:
L.R. copy to be marked.
B/O
cs



***HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

+ Writ Petition No.5173 of 2023

% Dated 07-03-2023

Preethi Jain & Ors.

..... Petitioners

Vs.

\$ The State of Andhra Pradesh rep. by its Principal Secretary,
 Municipal Administration and Urban Development Department, AP
 Secretariat, Velagapudi, A.P. & Ors.

.....Respondents

! Counsel for the petitioners : Sri V.V. Satish, learned counsel.

^ Counsel for respondent No.1: Learned Asst. Govt. Pleader for
 Municipal Administration and
 Urban Development;
 Counsel for respondent Nos.2 & 3: Sri K.Madhava Reddy,
 Learned Standing Counsel for
 GVMC.

<GIST:

> HEAD NOTE:

? Cases referred:



IN THE HIGH COURT OF THE STATE OF ANDHRA PRADESH

Writ Petition No.5173 of 2023

Preethi Jain & Ors.

..... Petitioners

Vs.

\$ The State of Andhra Pradesh rep. by its Principal Secretary,
 Municipal Administration and Urban Development Department, AP
 Secretariat, Velagapudi, A.P. & Ors.

.....Respondents

ORDER PRONOUNCED ON: 07-03-2023

HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

- | | |
|--|-------|
| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | -- |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals | -Yes- |
| 3. Whether Their Ladyship/Lordship wish to see
the fair copy of the Judgment? | -Yes- |

JUSTICE CHEEKATI MANAVENDRANATH ROY