

--- 1 ---

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

D.B.: HON'BLE MR. S. C. SHARMA AND
HON'BLE MR. ALOK VERMA, JJ

WRIT PETITION NO. 2016 / 2016

HAVELLS INDIA LTD., INDORE
Vs.
INDORE MUNICIPAL CORPORATION
AND TWO OTHERS

WRIT PETITION NO. 2106 / 2012

M/S. SANGHI BROTHERS (INDORE) PVT. LTD.,
Vs.
THE COMMISSIONER,
INDORE MUNICIPAL CORPORATION, INDORE
AND ANOTHER

A N D

WRIT PETITION NO. 1842 / 2016

M/S. HARSH AUTOMOBILES PVT. LTD.,
Vs.
INDORE MUNICIPAL CORPORATION,
INDORE

* * * * *

ORDER

(24/10/2017)

PER : S. C. SHARMA, J :-

The petitioner before this Court has filed this present writ petition being aggrieved by the order dated 19/3/2015 passed by the respondent – Indore Municipal Corporation,

--- 2 ---

Indore by which the petitioner Company has been directed to pay advertisement tax in respect of glow signs and neon signs board affixed in or outside the premises of dealers, distributors and retailers and to pay the same to M/s. Shouraditya Advertisement, a collecting agency for the purpose of collection of advertisement tax. The petition is also against the order dated 12/1/2016 by which the petitioner's objections in the matter of imposition of advertisement tax have been rejected. The petitioner is a Company registered under the provisions of the Companies Act, 1956 having registered Office at Civil Lines, Delhi and is engaged in the business of manufacturing wide spectrum of electronic / electrical products. The petitioner Company has stated that for the purposes of bringing availability of the petitioner's products to the knowledge of common public name boards, sign boards and flex boards are displayed by the petitioner's dealer, distributors and retailers at their respective premises and the action of the Indore Municipal Corporation, Indore in imposing advertisement tax is bad in law. Various grounds have been raised by the petitioner Company and it has been argued that the advertisement tax cannot be levied or

--- 3 ---

imposed based upon the resolution dated 28/4/2011 and 13/10/2011 passed by the Mayor-in-Council. It has also been stated that the resolution dated 10/8/1973 passed by the Indore Municipal Corporation, Indore is illegal, *ultra vires*, and unconstitutional. Various other grounds have also been raised in the Writ Petition and reliance has been placed upon the following judgments :

<u>Name of parties</u>	<u>Citation</u>
Ram Sumer Vs. State of U.P.	(1985) 1 SCC 427
Krishan Lal Vs. State of J&K	(1994) 4 SCC 422
Mathuram Agrawal Vs. State of M.P.	(1999) 8 SCC 667
Amresh Tiwari Vs. Lalta Prasad	(2000) 4 SCC 440
Municipal Corporation of Greater Bombay Vs. Bharat Petroleum	(2002) 4 SCC 219
State of Bihar Vs. Lal Krishna Advani	(2003) 8 SCC 361
P.S. Sathappan Vs. Andhra Bank Ltd.,	(2004) 11 SCC 672
ICICI Bank Vs. Municipal Corporation of Greater Bombay	(2005) 6 SCC 404
Parle Biscuits Vs. State of Bihar	(2005) 9 SCC 669
M. P. Gopalakrishnan Vs. State of Kerala	(2005) 11 SCC 45
Chander Kanta Vs. Rajinder	(2008) 5 SCC 117
Consumer Online Foundation Vs. U.O.I.	(2011) 5 SCC 360
JIK Industries Vs. Amarlal	(2012) 3 SCC 255
CIT Vs. Vatika Township	(2015) 1 SCC 1
CCE & Customs Vs. Larsen & Toubro Ltd	(2016) 1 SCC 170
Himmatlal Harilal Vs. State of M.P.	AIR 1954 SC 403
Collector of Customs Vs. Ramchand	AIR 1961 SC 1506
Ratiloku Shetty Vs. Municipal Corporation, Mumbai	AIR 2001 Bom. 380
Calcutta Soft Drinks Pvt. Ltd., Vs. Calcutta Municipal Corporation	AIR 2007 Cal. 136
Aradhana Drinks & Beverages Pvt. Ltd., Vs.	AIR 2012 P&H 20

--- 4 ---

State of Punjab	
Krishna Pictures Vs. Administration I.M.C.	1980 JLJ 530
Hutchison Vs. Bruhat Bangalore Mahanagar Palika	ILR 2009 Karnataka 4255

Learned counsel for the respondent – Indore Municipal Corporation, Indore, at the outset, has drawn attention of this Court towards the judgment delivered by the Division Bench in the case of Bharti Airtel Vs. State of Madhya Pradesh (W.P.No. 2296 / 2012, decided on 12/1/2015) and, therefore, the Writ Petition deserves to be dismissed.

This Court has carefully gone through the judgment delivered Bharti Airtel Vs. State of Madhya Pradesh (W.P.No. 2296 / 2012, decided on 12/1/2015) and the same reads as under :

This order shall govern disposal of (1) Writ Petition No.2296/2012 (Bharti Airtel Limited v. The State of Madhya Pradesh & others), (2) Writ Petition No.2468/2012 (Idea Cellular Limited v. The State of Madhya Pradesh & others), (3) Writ Petition No.2725/2012 (Vodafone Essar Limited v. The State of Madhya Pradesh & others), (4) Writ Petition No.3446/2012 (Reliance Telecom Limited v. The State of Madhya Pradesh & others), (5) Writ Petition No.3619/2012 (Ultratech Cement Limited v. The State of Madhya Pradesh & others), (6) Writ Petition No.3627/2012 (ACC Limited v. The State of Madhya Pradesh & others), (7) Writ Petition No.3744/2012 (Som Distilleries & Breweries Limited v. Commissioner, Municipal Corporation, Indore & others), (8) Writ Petition No.4081/2012 (M/s. Samsung India Electronics Private Limited v. The State of Madhya Pradesh & others), (9) Writ Petition No.4692/2012 (Videocon Industries Limited v. The State of Madhya Pradesh & others), (10) Writ Petition No.4693/2012 (Kail Limited v. The

--- 5 ---

State of Madhya Pradesh & others), (11) Writ Petition No.5116/2012 (Nokia India Limited v. The State of Madhya Pradesh & others), (12) Writ Petition No.5160/2012 (M/s. Ramani Ice Cream Company Limited v. Assistant Commissioner, Indore Municipal Corporation, Indore & another), (13) Writ Petition No.5680/2012 (M/s. Heidelberg Cement India Limited v. The State of Madhya Pradesh & others), (14) Writ Petition No.5681/2012 (Birla Corporation Limited v. The State of Madhya Pradesh & others), (15) Writ Petition No.5814/2012 (Vadilal Enterprises Limited v. Indore Municipal Corporation & another), (16) Writ Petition No.6134/2012 (The India Cements Limited v. The State of Madhya Pradesh & others), (17) Writ Petition No.6207/2012 (M/s. Pidilite Industries Limited v. The State of Madhya Pradesh & others), (18) Writ Petition No.4592/2013 (Tata Teleservices Limited v. The State of Madhya Pradesh & others), (19) Writ Petition No.8170/2012 (Total Oil India Private Limited v. The State of Madhya Pradesh & others), (20) Contempt Case No.463/2014 (Idea Cellular Limited v. Mr. Rakesh Singh & another), (21) Writ Petition No.4770/2014 (Signature Laminates Private Limited v. The State of Madhya Pradesh & others), (22) Writ Petition No.6099/2014 (Nokia India Sales Private Limited v. The State of Madhya Pradesh & others) and (23) Writ Petition No.6344/2014 (Value Industries Limited v. The State of Madhya Pradesh & others).

2. In all these petitions under Article 226 of the Constitution of India, the challenge is, essentially, to the imposition of 'advertisement tax' other than the advertisements published in newspapers under Section 132 (6) (I) of the Madhya Pradesh Municipal Corporation Act, 1956 (in short, "the Act of 1956") by the Municipal Corporation, Indore and its agents / contractors and also prayed for issuance of writ of prohibition, restraining respondents and its agents from threatening the petitioners for levy, collection and recovery of 'advertisement tax' and from removing the hoardings / signage and other advertisements of the retailers of the petitioners.

3. The petitioners have also challenged Resolution No.167 dated 24.08.2011 and Resolution No.233 dated 13.10.2011 passed by the Mayor-in-Council as well as work order dated 20.10.2011 issued by respondent No.2 – Indore Municipal Corporation in favour of respondent No.3 – M/s. Shauryaditya Advertise and an agreement dated 20.10.2011 executed between respondent No.2 and respondent No.3 for collection of the 'advertisement tax'.

4. Section 132 of the Act of 1956 enumerates the taxes which can be imposed by the Corporation. A tax on advertisement other than the advertisements published in newspapers, is one of the taxes, which the Corporation can impose under the Act of 1956. The procedure for imposition of taxes is contained in Section 133 of the Act of 1956. Sub Section (1) of Section 133 of the Act of 1956 provides that the Corporation may, by a special meeting bring forward a resolution to propose imposition of any

--- 6 ---

tax under Section 132 defining classes of persons or description of property proposed to be taxed, amount or rate of tax to be imposed and the system of assessment to be adopted.

5. As per Section 132 (6) (l) of the Act of 1956, the Corporation is empowered to levy tax on permissible display or advertisements on public place or on private land or building at such rate and from such date, as the State Government may direct by notification in the official gazette and in such manner as laid down in the Act of 1956 and as may be provided in the rules made by the State Government under Section 427 (Bye laws) of the Act of 1956. The levy, assessment and collection of taxes under Chapter XII of the Act of 1956 are to be in accordance with the provisions of the Act of 1956 and the Rules and bye-laws made thereunder. The provisions in relation to the imposition of 'advertisement tax' has been specified under Section 132 (6) (l) of the Act of 1956, which reads as under: -

“132. Taxes to be imposed under this Act.-

(6) In addition to the taxes specified in sub-section (1), the Corporation may, for the purpose of this Act, subject to any general or special order which the State Government may make in this behalf, impose any of the following taxes, namely:-

(l) a tax on advertisement other than advertisements published in news papers.”

6. Respondent No.2 framed “the Indore Municipal Corporation (Advertisement) Bye Laws, 1976” (in short, “the Bye Laws of 1976”) in accordance with the powers vested on it under Sections 427 and 442 of the Act of 1956 and the said Bye Laws of 1976 were approved by respondent No.1 under Section 430 (of the Act of 1956) and were published in the official gazette on 18.08.1978, as required under Sections 429 and 431 of the Act of 1956.

7. As per the Bye Laws of 1976, respondent No.2 is empowered to levy and collect 'advertisement tax' under Clauses 4, 5 & 6 of the Bye Laws of 1976, which reads, as under: -

“4. Collection of tax. - The tax shall be collected in advance at the office of the Municipal Corporation, Indore after the Municipal Commissioner has approved the proposed advertisement and granted permission, in accordance with these bye laws.

5. Permission for advertisements. - No advertisement shall be exhibited, erected, fixed or retained or displayed except with the permission of the Municipal Commissioner.

6. Permission how granted. - (1) Every person desiring to exhibit, erect, fix, retain or display advertisement shall apply in Form 'A' to the Municipal Commissioner not less than seven clear days before the advertisement is to be made, with full particulars of the matter to be advertised;

--- 7 ---

Provided that the Municipal Commissioner may for reasons to be recorded in writing entertain an application at any time.

(2) The Municipal Commissioner shall, within four days from the date of receipt of the application, intimate the applicant the amount of tax payable on the intended advertisement.

(3) After the applicant has paid the tax, the application shall be considered and the Municipal Commissioner shall pass orders in Form 'B' permitting the exhibition or retention of the advertisement.

(4) A duplicate copy of every advertisement to which permission has been accorded under Clause (3) shall be produced by the applicant at the Municipal Office and shall be sealed in token of the tax paid and permission granted.

(7) Conditions of grant of permission. - (1) No advertisement shall be erected, exhibited, fixed, retained or displayed or caused to be erected, exhibited, fixed or retained or displayed on any historic place or monument or in public park or pleasure promenade.

(2) (i) No vehicle shall be used to display any advertisement in a manner, form or method, different from that approved by the Municipal Commissioner.

(ii) The advertisement boards or notices carried on any vehicle shall in no case project beyond the length and width of the vehicle nor shall they be so placed as to obscure the registration marks or the obligatory lamps or to hamper the rider or driver of any vehicle.

(3) (a) The advertisement hoardings:
(i) shall not be more than 9 metres high from the ground level.

(ii) shall not project beyond the general line of buildings in the street or more than 0.30 metre beyond the building line in the streets for which a building line has been prescribed.

(iii) shall not be within 27 metres from any public park or pleasure promenade.

(iv) shall not in the opinion of the Municipal Commissioner be disproportionately large in comparison with the size of the land or building on which they are displayed.

(v) No advertisement hoardings cinema and poster-boards, and similar structures used for the purpose of advertising shall as a general rule be allowed to be put up along the promenades or

--- 8 ---

abutting on public parks and recreation grounds, places of worship, public convenience nor in purely residential localities and at heavy traffic points and important road junctions except in the latter case to the extent permitted at approved sites. Once a regulated hoardings has been allowed at any of the approved sites, all subsequent advertisers will be required to conform thereto in the matter of size, position, alignment and the like of their hoardings.

(c) (i) The permissible sizes of hoardings for any one advertisement shall be as under:

Large size : To be erected in horizontal positions only;
Small size : To be erected either horizontally or vertically.

(ii) As a general rule no indiscriminate mixture of hoarding of different size will be allowed at any one place.

(d) The lower base or the bottom of a hoarding at an approved size shall be at a height of not less than 2.40 meters from the surface of the ground below it and it shall be in correct alignment with the other approved hoardings, if any, previously allowed to be put at the site.

(e) The supports of all such hoardings shall be of steel or other metal or of sound quality of timber about 10 cm x 10 cm, thickness firmly in-bedded in the ground and suitably painted.

(f) Before an advertisement hoarding is allowed to be erected at an approved site, the advertisers shall be required to submit to the Municipal Commissioner a copy of the design showing the size dimensions and the like of the hoarding and supports, and the design and colour scheme of the matter to be advertised and no advertisements shall be allowed as are not in harmony with the back ground and / or offered against good taste and public morals.

(g) In the case of hoardings put up by the side or road bridges, the height of the supports will be adjusted as to make one uniform line, not higher than the embankment wall (railing) of the road bridge.

(h) Any advertisement, board and the like allowed to be put up against railway station fencing and / or the railings round public buildings, shall be in level with the top of such fencing or railing and not project beyond the same.

(i) All advertisement hoardings, cinema and poster boards and their supports, licensed by the Municipal Corporation be maintained at all time in a neat and tidy conditions;

(j) Publicity and advertising agent shall affix their nameplates at the top of every hoarding erected by them.

--- 9 ---

9. Refusal of Permission. - Notwithstanding anything in these byelaws permission to exhibit, erect, retain or display an advertisement may be refused on the ground of cleanliness, safety or public order and in such a case the persons for refusal shall be communicated to the applicant in writing.

10. Removal of advertisements. - (1) The Municipal Commissioner shall be entitled to require the owner or occupier of any property or the persons, firm or institution to remove an advertisement exhibited without permission.

(2) The order under clause (1) shall be in writing and served on the person concerned with the offending advertisement.

(3) The person on whom the order under clause (1) is served shall comply with the same within the period specified in the order.

(4) In case of non-compliance the Municipal Commissioner may take all necessary steps to remove the advertisement and the cost incurred in this behalf shall be recovered from the person against whom the order under clause (1) is made.

11. Appeals. - Any person aggrieved by an order of the Municipal Commissioner under these byelaws may appeal to the Corporation within thirty days from the date of such order.

12. Penalty. - Whoever contravene any provisions of these byelaws shall be punishable with fine which may extend to one hundred rupees and in the case of a continuing breach with fine which may extend to ten rupees for each day during which the breach continues after conviction for the first breach.”

8. Sections 133, 134, 173, 174, 175, 184, 189-A, 427, 430 and 431 of the Act of 1956 reads, as under: -

“**133. Imposition of Taxes and Fees.**- (1) The Corporation may, by a resolution, at the time to final adoption of the budget estimates for the next financial year, subject to the provisions of this Act and subject to such limitations and conditions, as may be prescribed by the State Government in this behalf-

(a) impose any of the taxes or fees specified in this Act; or

(b) increase the rates of taxes or fees already imposed.

(2) The resolution as referred to in sub-section (1) shall contain-

(a) in case of imposition of any tax or fees, the provisions under which such tax or fee is being imposed, class of persons or description of property to be taxed, the amount or rate of tax or fee being imposed, system of assessment and collection to be adopted and the date from which imposition of such tax or fee shall take

--- 10 ---

effect;

(b) in case of increase of rate of any tax or fee, the prevailing rate of such tax or fee, the proposed increased rate of such tax or fee and the date from which increase of rate of such tax or fees shall take effect.

(3) The resolution, as passed, shall be conclusive evidence of the imposition of a new tax or fee; or increase of rate of any tax or fee, as the case may be:

Provided that if the Corporation decides to have supplementary taxation during the financial year; it may do so from such date as the Corporation may resolve, subject to the provisions of this Act and subject to such limitation and conditions as may be prescribed by the State Government in this behalf.

(4) Nothing contained in this section shall apply to tax mentioned in clause (a) of sub-section (1) of Section 132, which shall be charged and levied in accordance with Section 135.

134. Recovery of Taxes.- A Municipal tax may be recovered by one or more of the following processes or in accordance with the byelaws made for the purpose:

(1) by presenting a bill;

(2) by serving written notice of demand;

(3) by distraint and sale of movable property of the person concerned;

(4) by attachment and sale of his immovable property;

(5) in the case of octroi or toll, by the attachment and sale of goods and vehicles;

(6) in the case of property tax, by attachment of rent due in respect of the property.

(7) by a suit.

173. Presentation of bill for taxes and other demands.-

(1) When any amount declared by or under the provisions of this Act to be recoverable in the manner provided in this chapter, or payable on account of any tax imposed within the limits of the city shall have become due, the Commissioner shall, with the least practicable delay cause to be presented to any person liable for the payment thereof a bill for the sum claimed as due.

--- 11 ---

(2) **Contents of bill.**- Every such bill shall specify-

- (a) the period for which: and
- (b) the property, occupation or thing in respect of which the sum is claimed, and shall also give notice of-
- (i) the liability incurred in default of payment; and
- (ii) the time within which an objection may be preferred as against such claim.

174. If bill not paid within 15 days notice of demand to issue.-

(1) If the sum , for which a bill is presented as aforesaid, is not paid and no objection has been preferred within 15 days from the presentation of the bill, the Commissioner may, serve upon the person to whom such bill has been presented a notice demand in the form prescribed by byelaws.

(2) For every notice of demand a fee shall be charged at the rate specified in the byelaws and shall be payable by the said person, and the fee shall be included in the costs of recovery.

175. In what case warrant may issue.- (1) If the person on whom a notice of demand is served under sub-section (1) of section 174 does not within thirty days of the service of such notice-

- (a) Pay the sum demanded in the notice; or
- (b) show cause to the satisfaction of the Commissioner why he should not pay the same; or
- (c) prefer an appeal in accordance with the provisions of section 184 against the demand;

such sum with all costs of recovery may be recovered under a warrant in the form prescribed byelaws signed by the Commissioner -.

- (i) by distress and sale of the movable property belonging to such person; or
- (ii) by attachment and sale of the immovable property belonging to him;

Provided that, where any precautionary or other measures in respect of any such property have been taken by the Government for the recovery of any sum claimed by it, no proceedings shall be taken over continued under this chapter in respect of such property until the Government's claim has been paid off.

(2) Where the property is within the limits of the City, the warrant

--- 12 ---

shall be addressed to an officer of the Corporation and where the property is outside the limits to the Collector of the district concerned:

Provided that the officer to whom the warrant is addressed under sub-section (2) or subsection (3) may endorse such warrant to a subordinate officer.

(3) for every warrant issued under this section, fee shall be charged at the rates specified in the regulations and the said fee shall be included in the costs of recovery.

184. Appeals.-

(1) Appeals against any notice of demand issued under sub section a(1) of section 174 may be made to the Appeal Committee constituted under section 403 and in the manner prescribed therein Provided that the appeal shall not be entertained unless the sum due under section 174 is deposited in the Corporation and a copy of the receipt is enclosed with the appeal memo.

(2) No such appeal shall be heard had determined unless-

(a) a written objection has been made and determined in accordance with the provisions of this act; and

(b) the amount claimed from the appellant has been deposited by him in the municipality office, and a receipt thereof has been filed with a memo of appeal.

189. Taxation not to be questioned except under this Act.-

(1) No objection shall be taken to any valuation or assessment, nor shall the liability of any person to be assessed or taxed be questioned in any other manner or by any other authority than as provided in this Act.

(2) The Government may make rules under this Act regulating the refund of taxes and such rules may impose limitations on such refunds.

(3) No refund of any tax shall be claimed by any person otherwise than in accordance with the provisions of this Act and the rules and the byelaws made there under.

189-A. Recovery of taxes by public auction or private contract.- Notwithstanding anything contained in this Act, the Corporation may, by public auction or private contract lease the recovery of any of the taxes and fees which may be imposed under this Act, subject to the conditions and limitation, if any, prescribed by the State Government in this behalf.

--- 13 ---

427. Byelaws. - The Corporation may, and if so required by the Government, shall make byelaws consistent with the provisions of this Act and the rules made there under for carrying out the provisions and intentions of this Act, and in particular and without prejudice to the generality of the foregoing power, it may, make byelaws to regulate all or any of the following matters namely:-

(2) **Time and mode of collection of taxes, etc.** - The regulation of the time and mode of collection of any tax which may be imposed under Section 132 or which is charged and levied under Section 135.

(3) **Assessment, collection, remission, refund and recovery of taxes, cesses, etc.** -

(a) the date before which, and rates at which municipal taxes to be levied shall be determined;

(b) the assessment, collection, composition, remission, refund and recovery of taxes and cesses and the exemption from such taxes and cesses, and the prevention of evasion;

(c) the date, place and manner of paying any tax or installment of tax payable under this Act and the person to whom it shall be paid;

(d) the fees for notices of demand of any tax and the execution of warrants of distress and the rates to be charged for maintenance of any livestock distrained; and the persons authorized to receive payment of any sums so payable;

(e) the manner in which the annual values of buildings and land shall be determined for the purposes of assessment;

(23) **Advertisement.** - the exhibition or advertisements and hoardings and similar structures used for the purpose of advertisement;

430. Byelaws to be subject to sanction of Government.-

(1) No byelaw made by the Corporation under this Act shall have any validity until it is confirmed by the Government.

(2) Before sanctioning any such byelaw the Government may modify it.

(3) The Government may cancel its confirmation of any such byelaw and thereupon the byelaws shall cease to have effect.

431. Publication of byelaws and rules in Gazette and effect of such publication.-

--- 14 ---

All byelaws made and confirmed under this Act shall be published in the Gazette and shall thereupon have effect as if enacted in this Act.”

9. A reading of Section 133 of the Act of 1956 will show that it merely deals with the procedure for imposition of tax. The procedure for assessment, collection, remission, refund and recovery of taxes, cesses etc. is provided by the byelaws, which can be made by the Corporation under Section 427 (3) of the Act of 1956.

10. On 01.04.1973, 'advertisement tax' was imposed by the Corporation. After consideration of objections from the public, 'advertisement tax' was made effective in the City of Indore from the date of publication in official gazette i.e. 10.08.1973. On 31st May, 1978, byelaws were framed for assessment and collection of 'advertisement tax'. Validity of implementation of 'advertisement tax' was upheld by a Division Bench of this Court in the case of **Shri Krishna Pictures, Indore & others v. Administrator, Indore Municipal Corporation & another** reported in 1980 J LJ 530; paragraphs 4 and 5 are relevant, which reads, as under: -

“4. The learned counsel for the petitioners also contended that the byelaws for assessment and collection were made on 18th August, 1978 and that before this date the tax was inoperative because no machinery existed for assessment or collection of tax. A taxing statute has to provide not only for imposition of the tax with which it deals but also for its assessment and collection. This follows from Article 265 of the Constitution which directs that no tax shall be levied or collected except by authority of law. The words “levy” and “collection” in this Article are used in a comprehensive sense to cover all steps beginning from imposition and ending with recovery. The Constitution, however, does not make it obligatory that the procedural provisions for assessment must be detailed which must, of necessity, depend upon the nature of the tax imposed by the statute. The assessment of tax on a person or property is a proceeding of quasi-judicial nature and if the machinery provided by the statute for assessment and collection is purely administrative, the imposition of the tax may be held to be invalid as unreasonable restriction of the fundamental rights guaranteed under Article 19 (1) (f) and (g) of the Constitution. But a provision to make an assessment in accordance with quasi-judicial procedure need not be expressly made in a statute and the imposition and recovery of the tax will be held even if an implied provision to that effect can be inferred. These principles are now well established **K.T. Moopil Nair v. State of Kerala** (AIR 1961 SC 552), **Rai Ramkrishna v. State of Bihar** (AIR 1963 SC 1667), **Amalgamated Coalfields v. Janpad Sabha** (AIR 1964 SC 1013 p 1021), **Assistant Collector, C.E. v. N.T. Co. of India Limited** (AIR 1972 SC 2563) and **Roopchand v. K.U.M. Samiti, Raipur** (1975 MPLJ 326).

5. We have earlier stated that till 18th August 1978 no bye-

--- 15 ---

laws had been made by the Corporation under Section 427 (3) for assessment and collection of the tax. Can it then be said that the tax was inoperative before that date because no machinery existed for its assessment and collection? In our opinion, the answer to this question must be given in the negative having regard to the provisions of Sections 173 to 175 of the Act which provide a machinery for recovery of Corporation claims including taxes and which contemplate a quasi-judicial procedure and also provide for an appeal. These sections in so far as relevant read as follows: -

“173. Presentation of bill for taxes and other demands.-

(1) When any amount declared by or under the provisions of this Act to be recoverable in the manner provided in this chapter, or payable on account of any tax imposed within the limits of the city shall have become due, the Commissioner shall, with the least practicable delay cause to be presented to any person liable for the payment thereof a bill for the sum claimed as due.

(2) **Contents of bill.-** Every such bill shall specify-

(a) the period for which: and

(b) the property, occupation or thing in respect of which the sum is claimed, and shall also give notice of-

(i) the liability incurred in default of payment; and

(ii) the time within which an objection may be preferred as against such claim.

174. If bill not paid within 15 days notice of demand to issue.-

(1) If the sum , for which a bill is presented as aforesaid, is not paid and no objection has been preferred within 15 days from the presentation of the bill, the Commissioner may, serve upon the person to whom such bill has been presented a notice demand in the form prescribed by byelaws.

(2) For every notice of demand a fee shall be charged at the rate specified in the byelaws and shall be payable by the said person, and the fee shall be included in the costs of recovery.

175. In what case warrant may issue.- (1) If the person on whom a notice of demand is served under sub-section (1) of section 174 does not within thirty days of the service of such notice-

(a) Pay the sum demanded in the notice; or

(b) show cause to the satisfaction of the Commissioner why he should not pay the same; or

(c) prefer an appeal in accordance with the provisions of section 184 against the demand;

--- 16 ---

such sum with all costs of recovery may be recovered under a warrant in the form prescribed by laws signed by the Commissioner.”

A reading of Section 173 will show that the Commissioner can cause a bill on account of any tax imposed which has become due to be presented to the person liable for the payment thereof. The bill has to show the period for which and the thing in respect of which the same is claimed. The bill has also to specify the time within which an objection may be preferred. On receipt of such a bill the person concerned may either pay the same or raise an objection to the payment before the Commissioner. If the bill is not paid and if no objection is raised, the Commissioner issues a notice of demand under section 174. It is implicit in the terms of Section 174 that if a person on whom the bill is served raises objections within fifteen days, the objections should be decided by the Commissioner in a quasi-judicial manner and it is only when the objections are over-ruled that a notice of demand can follow. The order of the Commissioner rejecting the objections and issuing a notice of demand can be challenged in appeal because the notice of demand is appealable under Section 184. Now in cases where there are separate bye-laws for assessment of tax made under Section 427 (3), the objections which a person can take under section 174 on presentation of a bill would be of a limited character. It would then not be open at this stage to challenge the assessment of tax. But in cases where there are no bye-laws providing for assessment of tax, the bill issued by the Commissioner under section 173 would be in the nature of provisional assessment of tax which can be challenged by raising objections under section 174. The objections in such a case will include also objections to assessment of tax and would be investigated judicially and if the objections are over ruled, the person concerned would have a right of appeal under section 184. We do not find any cogent reason to limit the scope of sections 173 and 174 for recovery of those taxes only for which a separate provision for assessment has been made. As earlier pointed out by us, the procedure and machinery for assessment of a tax from its very nature depends upon the nature of the tax. If the tax is a simple impost for which no separate procedure for assessment is necessary, sections 173 and 174 can be used not only for recovery but also for assessment of the tax in the manner indicated above. As the procedure under these sections is quasi-judicial in nature and is coupled with a safeguard of appeal, it cannot be said that the procedure is administrative and does not fulfill the requirement of the Constitution. In *Assistant Collector, C.K. v. N.T. Co. of India Limited* (supra) the Supreme Court inferred a quasi-judicial procedure for assessment from rule 10-A of the Central Excise Rules which apparently dealt with residuary powers for recovery of sums due to Government and did not expressly provide any procedure for assessment. Similarly, in *Roopchand v. K.U.M. Samiti, Raipur* (supra) a quasi-judicial procedure for assessment

--- 17 ---

was inferred from section 20 of the Madhya Pradesh Agricultural Produce Markets Act, 1960 and rule 56 made thereunder although none of these provisions expressly provided for assessment of the fee imposed. These decisions support our conclusion that sections 173 and 174 impliedly provide for assessment in a quasi-judicial manner in cases where there are no separate bye-laws for assessment of a tax. We are, therefore, unable to accept the argument that the tax was inoperative till 18th August, 1978 for want of any machinery for its assessment or collection.”

11. On 30th May, 1994, Section 189-A was inserted in the Act of 1956, which permits recovery of tax by public auction to a private agency. On 28.10.2002, rates of 'advertisement tax' were altered. On 17.03.2005, Mayor-in-Council passed a resolution for inviting tenders. On 20.04.2005, Corporation passed a resolution to invite tenders for recovery of 'advertisement tax'.

12. On 25.07.2011, tender notice dated 23.07.2011 was published in “Dainik Bhaskar” newspaper. Tender of respondent No.3 was accepted by the Mayor-in-Council on 24.08.2011. On 14.01.2012, notice of demand was issued by respondent No.3, demanding 'advertisement tax' with caution to remove boards.

13. Respondent No.3 has been awarded work for recovery of 'advertisement tax' for a period of five years and work order was issued on 20.10.2011. Before issuing work order, Resolution No.167 dated 24.08.2011 and Resolution No.233 dated 13.10.2011 were passed by Mayor-in-Council. As per work order, respondent No.3 is entitled to recover 'advertisement tax' on behalf of the Municipal Corporation, Indore. Clauses (2) and (3) of the agreement dated 20.10.2011 are relevant, which reads, as under: -
 “2 ;g fd izFke }kjk O:olkf;d laLFkuksa@nqdkuks@O:olkf;d ekWy o dk;kZy; Lo;a ds uke dks NksM+dj vU; fdlh Hkh dEiuh dk foKkiu gksus ij lkns cksMZ ,oa leLr foKkiu ij ;i;s 75@& xykslkbZu ,oa U;wulkbZu cksMZ ij ;i;s 150 izfroxZ fQV izfro" kZ ds eku ls gh olwy fd;k tkosxk ,oa ;fn bl bdjkjukek dh le;kof/k esa f}rh; i{k }kjk mDr njksa esa o`f) dh tkrh gS rks izFke i{k }kjk vuqikfrd :i ls vfrfjDr jkf`k f}rh; i{k dks Hkqxrku dh tkosxhA

3- ;g fd fuxe lhek esa fuxe }kjk fu/kkZfjr njksa ij fu;ekuqlkj foKkiu dj dh olwyh esa fdlh O;fDr@dEiuh@nqdkunkj ;k laLFkk ls fdlh Hkh izdkj dk fookn gksus ij izFke i{k Lo;a lacaf/kr O;fDr dEiuh@nqdku ;k laLFkku ls vius [kpsZ ls fdlh Hkh izdkj ds fookn ¼;fn gksrk gS rks½ dk fujkdj.k izFke i{k }kjk fd;k tkosxk] rFkk mldh leLr tokenkjh izFke i{k QeZ dh jgsxh blesa f}rh; i{k bUnkSj uxj ikfydk fuxe dh tokenkjh ugha jgsxhA ”

14. The contentions urged by the learned Senior Counsel for the petitioners is that respondent No.2 is not competent to pass a resolution granting contract for recovery of 'advertisement tax' purportedly under Section 189-A of the Act of 1956, particularly when the bye-laws dated 31.05.1978 made by the Administrator, Municipal Corporation, Indore for the purpose

--- 18 ---

of 'advertisement tax' framed under Clauses (2), (3) & (23) of Section 427 read with Clause (1) of Section 442 of the Act of 1956 do not confer any such power on the Municipal Corporation, Indore.

15. In respect of challenge of demand notices in the form of invoices raised by respondent No.3, it is submitted that the power to assess and collect 'advertisement tax' is a sovereign power and can only be exercised by the Commissioner of Municipal Corporation, as prescribed under Sections 173, 174 and 175 of the Act of 1956 and these powers cannot be delegated under Section 189-A of the Act of 1956. It is also submitted that action of respondent No.3 in taking physical action of removal of advertisements by muscle power is illegal, void and without jurisdiction, because no such power can be conferred on the contractor.

16. It is also submitted by Shri A.M. Mathur, learned Senior Counsel for the petitioners that no 'advertisement tax' can be recovered from the petitioners without determination of the essential jurisdictional facts by the Municipal Corporation as to (a) whether the glow-sign board / sinage is, in fact, an advertisement; (b) that it is the petitioner, who has exhibited / erected / fixed / retained / displayed the same; (c) its location; and (d) its contents. He submitted that in the present batch of writ petitions, the power to levy of tax involves its levy, assessment and then recovery and all the three stages cannot be entrusted to the private contractor under Section 189-A of the Act of 1956.

17. The argument of the learned Senior Counsel for the petitioners is that the expression "system of assessment" means the entire procedure for assessment and collection of tax, and that as the order of the Administrator do not contain any procedure for assessment or collector of tax, there was non-compliance of the mandatory requirement of Section 133 of the Act of 1956 and the imposition of 'advertisement tax' was invalid.

18. The contention of the learned Senior Counsel for the petitioners is that Section 189-A of the Act of 1956 by itself cannot authorize recovery of 'advertisement tax' by authorizing a third party through auction, because the Byelaws of 1978 do not contain any power / authorization upon respondent No.2 to grant by way of contract / auction its powers to recover 'advertisement tax'. Under the provisions of Section 134 of the Act of 1956, taxes can be recovered either by modes prescribed under Section 134 of the Act of 1956 or in accordance with the Byelaws of 1978. Thus, 'advertisement tax' only can be levied in accordance with the Byelaws of 1978 and not in any other manner. Section 189-A of the Act of 1956 would come into play only when there is a mandate in the byelaws providing for recovery of 'advertisement tax' through an auction. Unless, therefore, the Byelaws of 1978 are amended till that point of time, Section 189-A of the Act of 1956 will not come into play. He also drew our attention to the decision of the Gwalior Bench in the case of **Gwalior Advertisers Association, Gwalior & others v. The State of Madhya Pradesh**

--- 19 ---

& others, Writ Petition No.767/1994 decided on **07.08.1996**; the High Court in paragraph 5 has held, as under: -

“5. Since the bye-laws do not permit recovery of tax through Contractor for installing hoardings for advertisement, the auction on the condition that contractor should recover the tax is violative of bye-laws. In such circumstances, action of the respondent – Corporation is contrary to byelaws framed under Section 427 of the Act of 1956. In such circumstances, Annexure P/6 and R/1 are quashed and respondents are directed to act strictly according to byelaws and they cannot recover the tax through auction unless the byelaws are amended. The petition is allowed. There shall be no order as to costs.”

19. Learned Senior Counsel for the petitioners has also relied upon the judgment in the case of **Sindhi Sahiti Multi Purpose & Transport Co-operative Society Limited, Bhopal v. State of MP & another** reported in **1995 MPLJ 176**. In the Full Bench judgment in the case of **Sindhi Sahiti Multi Purpose & Transport Co-operative Society Limited, Bhopal v. State of MP & another** (supra), it is held in paragraphs No.18 & 24, as under: -

“18. Further question is whether the mode of collection by auction is not permissible? Part X- Chapter XXXVII of the Municipal Corporation Act, 1956 deals with framing of Byelaws:

427. Byelaws. - The Corporation may, and if so required by the Government, shall make byelaws consistent with the provisions of this Act and the rules made there under for carrying out the provisions and intentions of this Act, and in particular and without prejudice to the generality of the foregoing power, it may, make byelaws to regulate all or any of the following matters namely:-

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(3) **Assessment, collection, remission, refund and recovery of taxes, cesses, etc.** -

(c) the date, place and manner of paying tax or installment of tax payable under this Act and the person to whom it shall be paid”.

Section 430 invests State Government with power to sanction which reads as under:

“430. Byelaws to be subject to sanction of Government.-

(1) No byelaw made by the Corporation under this Act shall have any validity until it is confirmed by the Government.

(2) Before sanctioning any such byelaw the Government may modify it.

--- 20 ---

(3)The Government may cancel its confirmation of any such byelaw and thereupon the byelaws shall cease to have effect.”

Thus, when the byelaws are framed, a proper check and control is exercised by State Government. Unless the byelaws can be challenged on any valid reasons, the right to collect the tax by holding auction cannot be assailed. The scheme of Act (Section 88 Thirdly) contemplates appropriation of tax for carrying out the purposes of the Act as also for expenses and costs in discharge of duty. The collection of a tax is one of the functions. The provisions are to be construed to accomplish the results. Reading sections 87 to 88 harmoniously makes the scheme of sections workable. When section 87 that all sums should be credited to municipal fund, the collection of amount of bid money, worked out on the actual collection of tax in earlier years, should be deemed to have been realized and credited. There may be occasions when the regular employees of the Corporation may not be able to realize the whole tax dues. Inefficiency or corruption may adversely affect tax collection, but by method of auction at least the amount of tax expected to be collected is realized in advance. Where there is no ambiguity about the rate of tax and person from whom to be recovered, any method of collection can be adopted. Mode of collection by auction is not prohibited on the other hand, the provisions of the M.P. Municipalities Act impliedly and Rules expressly permit the same. The Scheme for collection of tax by auction is not unknown. The collection of Toll Tax by auction is not uncommon. The provisions of M.P. Municipalities Act, 1961 are reproduced below:

“**105. Credit of moneys to Municipal Fund.**-(1) There shall be credited to the Municipal Fund -

- (a) all moneys received by or on behalf of the Council under the provisions of this Act or of any other law for the time being in force or under any contract;
- (b) the balance, if any standing at the commencement of this Act, at the credit of the Municipal Fund;
- (c) all proceeds of the disposal of property by, or on behalf of the Council;
- (d) all rent accruing from any property of the Council;
- (e) all moneys raised by any tax levied for the purposes of this act;
- (f) all fees payable and levied under this Act;
- (g) all moneys received by way of compensation or for compounding offences under the provisions of this Act;
- (h) all moneys received by, or on behalf of the Council from the

--- 21 ---

State Government or private individuals by way of grant or gift or deposits; and

(i) all interest and profits arising from any investment or from any transaction in connection with, any money belonging to the Council;

(2) Nothing in this section of in this act shall affect any obligations of a Council arising from a trust legally imposed upon or accepted by a Council.

(3) A Council may, for the purpose of efficient discharge of any of the duties imposed upon it under clauses(d), (j) and (l) of section 123 by a resolution passed in that behalf, earmark for each such purpose a specified portion of its income every year for a specified number of years for being credited to a fund called the Public Utility Scheme Fund. The amount so credited shall be expended for the purposes for which it has been earmarked.

Section 160. Lease of levy of tolls, market dues and fees – (1)
The council, may by public auction or private contract, lease the levy of tolls, market dues and fees which may be imposed under this Act:

Provided that the lease shall give security for the due fulfillment of the conditions of the lease.

(2) When leave has been given under sub-section (1) the lessee and any person employed by him to collect any tolls, market dues and fees shall, subject to the conditions of the lease, have the power referred to in sub-section (8) and (5) of Section 157.

Rule 12 : M.P. Municipal Terminal Tax on Passengers (Regulation of Assessment and Collection) Rules, 1988 – The Council may with the previous sanction of the State Government, by public auction or private contract, lease the assessment and collection of the said tax:

Provided that the State Government shall have power to determine the conditions of lease.

24. Taxation and collection of tax are no doubt sovereign functions. The sovereign himself or itself cannot collect the tax. Tax has to be collected through appropriate agency. The agency can be a permanent cadre of employees. The agency can also be temporary agents on whom is conferred the authority to collect the tax, however, of course, subject to the control of the sovereign or the local body. Under the bye-laws, what is intended is creation of such an agency. The agents cannot be expected to attend to the job without any remuneration. Where the employees collect the tax, they deposit the entire amount in the municipal fund and draw their pay. The same method could be followed under the scheme

of auction. The successful bidder could be required to deposit the entire collection in the municipal fund and he may be separately paid for his exertion. Under the bye-laws, instead of depositing the entire amount and taking back the remuneration, the net amount is required to be deposited. Where the collection agency has to be remunerated, remuneration may be fixed on any reasonable basis including percentage or a lump sum. At the same time, the local body may secure guarantee of minimum collection. All these factors are taken into consideration in devising the mode of collection by auction. The local body is assured of minimum collection which is as a matter of fact the maximum possible amount realizable. The local body is secured from loss likely to cause by inefficiency of the collection agent. At the same time, the same agent is assured of remuneration. We are unable to agree that the scheme propounded by the bye-laws is contrary to any of the provisions of the Act. The fact that collection of tax is made through an agency which necessarily has to work under the authority of the local body cannot contravene the provisions of Article 265 of the Constitution. There is no specific provision in the Act requiring collection of tax to be made only through permanent employees of the local body. Arrangement for collection is left to be made by the local body subject to the broad scheme of the Act. The local body has made bye-laws providing for collection of tax by auction. We are unable to agree that this mode of collection is contrary to the Act and the intention of the legislature. We are also unable to agree that the contractor and the staff are beyond the restrictions of law. There is no data in support of the contention that the arrangements secured by the contractor would fetch him undue profit. On the other hand, the data provided by the local body shows that the mode of auction is really beneficial to the local body. We, therefore, reject the contention of the petitioners and uphold the mode of collection challenged by the petitions.”

20. The petitioners have also placed reliance on the Apex Court decision in the case of **Indore Municipal Corporation v. Gujarat Cooperative Housing Society Limited** reported in **AIR 1992 SC 1506**, wherein the Apex Court in paragraph 24 has held, as under: -

“24. The bye-laws are framed under Section 427 of the Act and Section 431 provides that all bye-laws shall be published in the Gazette. The effect of these provisions is that the bye-laws become part of the Act. Thus the Corporation while providing the system of assessment for various taxes can propose a basis but after the bye-laws provided the system of assessment, the Corporation has to abide by that system of assessment.”

It is very clear from the said judgment that when the byelaws have been framed, they become part of the Act and the Corporation has to abide by the byelaws.

21. Further, in the case of **Rajkumar Dawar v. State**

of MP & another reported in **2001 (1) MPLJ 368**, it has been held in paragraphs No.9 and 10, as under: -

“9. This Court had an occasion to consider the scope of section 358 (7) (m) of the Act in the case of Sindhi Sahiti Multipurpose Transport Co-operative Society Ltd. Bairagarh, Bhopal v. Municipal Council, Bhopal and another, reported in 1967 MPLJ 108. The question was also considered in the case of Nagar Palika, Bhind v. M.P. State Road Transport Corporation, reported in 1989 MPLJ 214 = 1989 JLJ 641. Thus, the Council is empowered to impose the fee as provided under the bye-laws. The fee cannot be enhanced by passing a resolution without amending the bye-laws. The bye-laws can be amended in the same manner as provided under Section 21 of the Madhya Pradesh General Clauses Act.

10. In the case of Kamla Prasad Khetan and another v. Union of India, reported in AIR 1957 SC 676, considering the scope of section 21 of General Clauses Act the Apex Court has held in para 15 that power to issue an order includes power to amend the order but this power is subject to a very important qualification and the qualification is contained in the words “exercisable in the like manner and subject to the like sanction and conditions”. Considering the scope of section 21 it is provided that the power includes a power, exercisable in the like manner and subject to the like sanction and conditions, if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued. Thus, if fee is prescribed by a bye-law, it can be very amended in the same manner as the bye-laws were framed. The bye-laws are framed under sub-section (3) of section 357 of the Act. If the Municipal Council desires to amend the bye-laws for enhancing the fee or making a provision therein, the respondent Nagar Panchayat ought to have passed a resolution for amending the bye-laws and should have sent it to the State Government for its approval. If the Government has approved and accepted the proposal then the procedure for amending the bye-laws should be followed in the same manner as the bye-laws were framed. Without any amendment in bye-laws the Nagar Panchayat or Municipal council is not empowered to enhance the rate of fee under the provisions of section 129 of the Act. The enhancement of fee by the respondent Nagar Panchayat in excess of fee prescribed in the bye-laws is void and cannot be recovered. The respondents are entitled to recover the fee as mentioned in the bye-laws. Unless the bye-laws are amended, the respondents are not empowered to recover higher rate of fee than mentioned in the bye-laws. This enhanced fee not provided in any rule or bye-laws cannot be recovered. Even Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law. Article 265 provides that not only levy but also collection of tax must be under the authority of some law. Any recovery by invalid law or rule is liable to be interfered by the Court.”

22. The contention of the learned Senior Counsel for the

--- 24 ---

petitioners that there is no provision in the Byelaws to award contract for recovery of 'advertisement tax' to a private party, and thus, the agreement entered into between respondents No.2 and 3 is void ab-initio, being without authority of law.

23. It has also been submitted by the learned Senior Counsel for the petitioners that no power of assessment of tax has been conferred on respondent No.3 even under Section 189-A of the Act of 1956. The said section is merely for recovery through an auction while the power to assess the tax is only with respondent No.2 under Sections 173 & 174 of the Act of 1956. Respondent No.2 is required to follow the procedure prescribed under Section 173 of the Act of 1956, and as per the procedure prescribed therein, they have to first serve a bill and give necessary details as are prescribed under that section and also give the necessary time to file objections, as prescribed, before such a step is taken. The issuance of an invoice by a private contractor is void, illegal and without jurisdiction. They submitted that the procedure prescribed under Sections 173 and 174 of the Act of 1956 has to be followed by the Commissioner of respondent No.2 and not by the private contractor. In support of the aforesaid contention, they have drawn our attention to paragraphs No.5, 6 and 7 of a Division Bench decision of this Court in the case of **Vyapar Mandal Mandi, Morena v. State of MP & others** reported in **2004 (2) MPLJ 482**, which reads as under: -

“5. Section 127 of the Act empowers the Municipal Council to impose tax under the Act. This section relates to imposition of tax specified in Sub-section (1) subject to any general or special order which the State Government may make in this behalf and Sub-section (6) (n) provides for terminal tax on goods or animals exported from the limits of the Municipal Council. Thus, this tax can be recovered subject to any general or special order which the State Government may make. Powers had been conferred upon the Municipal Council and the manner of collection is provided under the Rules of 1996. Rules 3 to 7 of the Rules of 1996 are reproduced below:-

"3. Every person, businessman, establishment and the license holder under the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 (No. 24 of 1973), shall be responsible to collect the terminal tax or the goods at the rate specified in the Schedule, if he himself exports any goods as shown in the schedule or sale for the purpose of export.

4. The person, businessman, establishment or license holder, as mentioned in Rule 3 shall deposit in the Municipal Treasury the amount of terminal tax collected during the last month on the goods exported from the Municipal limits, through their shop establishment alongwith the return up to 10th day of every month.

5. If on the examination of the return, the Municipal Commissioner or the Chief Municipal Officer, as the case may be required any additional information, he shall give the notice to the person

--- 25 ---

concerned, businessman, establishment or in case of Krishi Upaj Mandi, its license holder, and they shall submit such information within 30 days from the date of receipt of such notice.

6. The Municipal Commissioner/Chief Municipal Officer, as the case may be or any Municipal Officer/employee authorised by them, with the prior approval of Commissioner in case of Municipal Corporation and Chief Municipal Officer and in case of Municipality and Nagar Panchayat, may enter in the shop concerned, establishment or Mandi, as the case may be, to enquire into the information given in the return and may inspect the record as may be necessary.

7. If the return is not submitted or the amount of terminal tax is not deposited in the Municipal Treasury within the period specified in Rule 4, a surcharge at the rate of five per cent per month shall be payable and in case of submission of wrong return, the amount equal to ten times of the tax shall be payable :

Provided that with the approval of the State Government, the amount of penalty may be reduced."

Thus, under the provisions of the Rules of 1996, it is mandatory for the person, businessman, establishment and license holder under the Madhya Pradesh Krishi Upaj Mandi Adhiniyam to collect terminal tax on the goods at the rate specified in the Schedule and shall deposit in the Municipal Treasury the amount of terminal tax collected during the last month on the goods exported from the Municipal limits through their shop, establishment alongwith return upon 10th day of every month. Thus, requirement of law is that every assessee mentioned in Rule 3 shall deposit the tax collected and submit his return on or before 10th day of every month. After return is filed, it will be scrutinised by the Authority under Rule 5, and if the Authority finds that some additional information is required, notice shall be given to the concerned assessee to furnish additional information and the assessee is required to furnish such information within a period of thirty days from the date of receipt of such notice. Rule 6 empowers the Municipal Authority to enter in the shop concerned, establishment or mandi to enquire into the information given in the return and may inspect the record if necessary. After this assessment, amount due is to be assessed. If Assessing Authority finds that return is not proper or incorrect or return is not filed properly, it may impose surcharge for not submitting the return and failure to deposit the terminal tax. Surcharge may be levied at the rate of five percent per month and in case of submission of wrong return, penalty equal to ten times of the tax shall be payable. However, with the approval of the State Government, Municipal Council may reduce the penalty.

6. Question involved in the appeal is whether contractor can be

empowered to recover the terminal tax. The contractor can recover the tax only when after final assessment order for recovery is passed against the assessee and such amount may be collected by the Contractor. Such contract can be auctioned. But recovery by contractor shall be in accordance with the agreement and as per Rules of 1996. Contractor is required to recover the dues under the Rules of 1996. However, if the assessee refuses to pay the amount to the contractor, contractor is not empowered to take any coercive action. On failure to deposit tax due by the assessee, contractor is required to report the matter to the Authorities of the Municipal Council and the Municipal Council shall initiate proceedings for recovery of the tax under the provisions of the Act. Chapter VIII which begins from Section 164 of the Act relates to recovery of Municipal Claims. Section 165 confers power upon the Authorities of the Municipal Council to recover arrears and such recovery can be made through the Magistrate having jurisdiction within the limits of the Municipality and such Magistrate may order recovery by distress and sale of any movable property or attachment and sale of immovable property belonging to such person within the limits of his jurisdiction. Thus power to recover arrears of demand by coercive method vests with the Magistrate under Section 165 of the Act and it cannot be exercised by contractor. Section 166 further provides extent of special provisions for recovery of taxes. It provides that in the event of the notification issued by the State Government, it may suspend operation of Sections 168 to 170 and every amount due on account of any tax shall be recoverable on an application to a Magistrate in the manner provided in Section 165. Section 167 provides for issuance of warrant. When in spite of service of notice of demand under Sub-section (3) of Section 164 the assessee has failed to pay the demanded dues within fifteen days, such sum with all cost of recovery may be recovered under a warrant in the form prescribed by Rules of 1996 by distress and sale of movable property belonging to such person, or by attachment and sale of the immovable property belonging to him.

7. Thus, power under Chapter VIII of the Act can be exercised by the Competent Authority and not by the contractor. We, therefore, hold that after final assessment if any sum is found due it will be collected through contractor but the contractor will not be empowered to recover the amount by coercion. If tax is not paid, then recovery should be made strictly in accordance with the Act as provided in Chapter VIII of the Act. Function of attachment and auction of movable and immovable property cannot be conferred upon the contractor and these functions can only be exercised by the Competent Authority empowered under the Act. The contractor can only ask for payment of tax due and he cannot take coercive method for recovery of tax. Contractor must approach the assessee establishment or firm between sunrise to sunset and furnish notice of demand. Assessee must pay the tax due. However, on refusal of the assessee to pay the dues on the ground that some appeal is filed and order of recovery is stayed or on

--- 27 ---

some other ground, contractor shall report the matter to the Municipal Council ;and Municipal Council then shall proceed to recover the tax by method strictly under Chapter VIII of the Act. However, we clarify that before the order of final assessment is passed, contractor will not be entitled to recover from the assessee any amount of tax which has not been determined finally. Rules and the Act do not empower the contractor to enforce coercive recovery.”

24. Moreover, the right to make coercive recovery cannot be read into section 189-A. In Writ Petition No.2725/2012, the petitioner has moved **IA No.3356/2014**, pointing out with reference to specific documents and FIR that by way of coercive action, the private respondent has damaged the petitioner's board installed at petitioner's own store and has caused loss of Rs.8,00,000/- (rupees eight lakh) to the petitioner. The Municipal Corporation in its letter to the Police Station In-charge has categorically mentioned that coercive recovery has not been made by Municipal Corporation and M/s. Shauryaditya Advertiser (respondent No.3) has resorted to the said illegal action. The letter dated 04.06.2014 annexed as Annexure A/4 to the said **IA No.3356/2014** in Writ Petition No.2725/2012 at page No.4, thus confirms the factum of illegal coercive action by the private respondent No.3.

25. It is also pointed out that the Municipal Corporation has only right to take coercive action for recovery of dues of 'advertisement tax', as prescribed under the Act of 1956 and the Byelaws of 1978 framed thereunder. Respondent No.3 has no power or authority to take any coercive action.

26. The question whether glow-sign board is an advertisement or not, and who has erected the same has to be determined before any recovery can be made. In the case of **ICICI Bank v. Municipal Corporation of Greater Noida** reported in (2005) 6 SCC 404 (SC), it was held: -

“In the present case no exercise was undertaken by the municipal authorities or the Bombay High Court before the High Court had reached to the conclusion that the sign boards of the ATM center put up by the ICICI bank at different locations would be an advertisement within the meaning of Section 328A of the Corporation Act. In fact the notices issued by the bank to the appellant are under Section 328, 328A of the Corporation Act. The reach, ambit and scope of these sections are quite different and they operate in different fields. They do not completely overlap. In the circumstances, it was appropriate for the Corporation to issue notices to the appellant either under Section 328 or under Section 328A of the Corporation Act and notice should not have been issued under both Sections for the same sign board. The Bombay Municipal Corporation Authorities seem to be in a state of doubt and hence the notices clearly do not specify under which section they propose to take action. As we have made it clear that in the present case the sign boards of ATM centers, which are not sky

--- 28 ---

signs, are not covered under the provisions of Section 328 of the Corporation Act, the notices issued shall be deemed to have been issued under Section 328 A of the Corporation Act and the Corporation shall decide the question of advertisement under Section 328A of the Act after indicating the bank a fresh date of hearing. For the reasons stated above the appeal is allowed and judgment and order of the High Court is set aside. Fresh steps can be taken in the light of the observations in this judgment.”

27. They further submitted that no notice has been given prior to the assessment to raise any objection thereto, regarding the factum of ownership of the advertisement or the premises where it has been erected; correctness of measurements of the same; and at whose instance, the advertisement has been exhibited / erected / fixed or retained or displayed. It is also submitted that the petitioner has several retailers who display on their own, the petitioner's name at their premises by way of displaying signage etc. at various sites, buildings, structures, commercial premises etc. in order to display the advertisements at their premises /outlet in order to inform the customers about the presence of the product of the petitioner in their shops / premises. These sinage and display boards are not exhibited / erected / fixed / retained or displayed by the petitioner, but are the function and property of the retailers, who display the same on their own and in any event, the petitioner cannot be called upon by the respondents to pay any 'advertisement tax'. It is also submitted that as per the byelaws of the Indore Municipal Corporation, 'advertisement tax' is payable by a person, who exhibits / erects, fixes or displays the advertisement at his location / premises. The petitioners have filed affidavit stating therein that the 'advertisement tax' cannot be subjected to tax in the hands of the petitioners, because these have not exhibited / erected / fixed by the petitioners at its premises. Respondent No.3 without verifying the aforesaid only on the basis of *ex parte* survey made by respondent No.3 for assessment of 'advertisement tax', whereas no advertisement has been erected or installed by the petitioners at its premises. Merely because, a third person uses the name of the petitioners at its premises that would not make the petitioners liable to make payment of the alleged tax. Under the byelaws, the charge of 'advertisement tax' is on the person, who erects / installs / fixes / retains / displays the advertisement at its premises and not on any other person, therefore, the petitioner is not liable to make payment of any 'advertisement tax'.

28. Shri B.L. Pavecha, learned Senior Counsel has submitted that as per Article 265 of the Constitution of India, no tax shall be levied or collected except by authority of law. The source of power is Section 132 (6) (l) of the Act of 1956. He has also drawn our attention to Sections 133, 134, 173, 174, 175, 184, 189-A, 427, 430 and 431 of the Act of 1956 and submitted that the constitutional mandate of Article 265 of the Constitution of India is comprehensive. The words used in Article 265 are 'levy' and

--- 29 ---

'collect'. In taxing statute, the words 'levy' and 'collect' are not synonymous terms. While the word 'levy' would mean assessment or charging or imposing tax; the word 'collect' in Article 265 of the Constitution of India would mean physical realization of the tax, which levied or imposed. Collection of tax is normally a stage subsequent to the levy of the same. The enforcement of levy could only mean realization of the tax imposed or demanded. He drew our attention to the decision of the Apex Court in the case of **M/s. Somaiya Organics (India) Limited v. State of Uttar Pradesh** reported in **AIR 2001 SC 1723**; in which the Apex Court has in paragraph No.30 held, as under: -

“30. Reading the two paragraphs 89 and 90 together it does appear that this Court regarded the declaration of the provisions being illegal prospectively as only meaning that if the States had already collected the tax they would not be liable to pay back the same. It is the States which were protected as a result of the declaration for otherwise on the conclusion that the impugned Acts lacked legislative competence the result would have been that any tax collected would have become refundable as no State could retain the same because levy would be without the authority of law and contrary to Article 265 of the Constitution. At the same time, it was clearly stipulated that the States were restrained from enforcing the levy any further. The words used in Article 265 are levy and collect. In taxing statute the words levy and collect are not synonymous terms, (refer to Assistant Collector of Central Excise, Calcutta Division v. National Tobacco Company of India Limited (1972) 2 SCC 560 at page 572, while 'levy' would mean the assessment or charging or imposing tax, 'collect' in Article 265 would mean the physical realisation of the tax which is levied or imposed. Collection of tax is normally a stage subsequent to the levy of the same. The enforcement of levy could only mean realisation of the tax imposed or demanded. That the States were prevented to recover the tax, if not already realised, in respect of the period prior to 25th October, 1989 is further evident from paragraph 90 of the judgment. The said paragraph shows that as on the date of the judgment for the period subsequent to 1st March, 1986 the demand of the Central Excise Department on the alcohol manufactured was over Rs. 4 Crores. The Court referred to its orders dated 1st October, 1986 and 16th October, 1986 whereby the State Government was permitted to collect the levy on alcohol manufactured in the company's distilleries. With respect to the said amount of Rs. 4 Crores, it was observed that “It is, therefore, necessary to declare that in future no further realisation will be made in respect of this by the State Government from the petitioners.” The implication clearly was that if out of Rs. 4 Crores the State Government had collected some levy the balance outstanding cannot be collected after 25th October, 1989.”

29. It is the constitutional requirement of Article 265 of the Constitution that for a valid imposed tax, there should be quasi judicial procedure for assessment and quasi judicial procedure for

--- 30 ---

its recovery.

30. Learned Senior Counsel for the petitioners have contended that the Division Bench of Principal Seat of Madhya Pradesh High Court at Jabalpur in the case of **Shri Krishna Pictures, Indore & others v. Administrator, Indore Municipal Corporation & another** (supra) while upholding imposition of 'advertisement tax' has held that the provision of Section 173 of the Act of 1956 require the Municipal Commissioner to send a bill to enable the concerned person to file objection, if any, on receiving such a bill. The aforesaid provision was held a sufficient quasi judicial process for assessment, because the decision of the Commissioner was open to appeal under Section 184 of the Act of 1956. It is also pointed out that at the time of passing of the aforesaid judgment, Section 189-A of the Act of 1956 was not on the statute book, which was inserted only by Madhya Pradesh Act No.16 of 1994, published in MP Gazette (Extraordinary) dated 30th May, 1994. This provision permits a corporation to lease out the recovery of tax, but does not dispense with the requirement of the assessment of tax and essential provision for quasi judicial machinery for its collection and recovery both.

31. The Full Bench judgment in the case of **Sindhi Sahiti Multi Purpose & Transport Co-operative Society Limited, Bhopal v. State of MP & another** (supra), by which the constitutional validity of the byelaws, permitting collection of terminal tax by auctioning the rights to collect it, was delivered in the context of 'Terminal Tax', has no application in the present case. In the present case, the private contractor has sent bills without any recourse or remedy of appeal or revision before the Corporation. In case of 'advertisement tax' existence of quasi judicial machinery is indispensable.

32. The bills sent by the contractor – M/s. Shouraditya is the action of the own exercise and imagination, without any approval or participation of the Municipal Corporation. The petitioners have no opportunity to oppose the bill and to seek its determination by an independent quasi judicial machinery / authority. Such a demand is violative of principles of natural justice and deserves to be quashed on this short ground alone. The fact that the contractor has raised the bills without intervention of the Municipal Corporation is evident from paragraph No.2 of the legal notice dated 21st February, 2012 (Annexure P/6 in Writ Petition No.2468/2012), which reads as under: -

“2. My client submits that in the light of aforesaid agreement and work order my client started its tax collection process after making due survey on different private and commercial institutions, shops, malls and other premises on 21st December, 2011. In respect to the aforesaid process my client sent its humble demand letter along with bill and other supported documents on 14.01.2012 and took signed and sealed receipt from you whereby it requested for your kind support and for payment of your dues of advertising tax incurred due to flex / glow shine / neon shine board and all other modes of advertisement affixed at your premises.

--- 31 ---

Copy of aforesaid demand letter, bill and receipt dated 16.01.2012 given by you are collectively annexed here with this notice marked as Annexure N-2.”

33. They submit that respondent No.3 – contractor is a private person and can recover the amount found to be due only after proper and due assessment by taking steps provided in sub-sections (1), (2) & (7) of Section 134 of the Act of 1956. The power of coercive recovery conferred by sub-sections (3) and (4) of Section 134 of the Act of 1956 are sovereign powers and cannot be delegated by a corporation to a contractor or a private person. Such a person can only recover such a tax in response to the demand raised by him only by filing a civil suit. The powers conferred by sub-sections (3) (4) of Section 134 of the Act of 1956 by attachment and sale are conferred by statute on corporation and not on any other person. Delegation of such powers by corporation would be absolutely void and violative of the constitutional guarantees provided under Article 265 of the Constitution and would result in negation of rule of law. In no event, Section 189-A of the Act of 1956, which permits leasing out “recovery of any tax” can be read or construed so as to empower a private contractor to make assessment of 'advertisement tax' at his sweet will and to recover on his own by attaching and selling movable and immovable properties of citizens at his own choice with no remedy to the affected citizen. Such a situation would result in total anarchy.

34. Per contra, Shri A.K. Sethi, learned Senior Counsel for respondent No.2 – Municipal Corporation, Indore has submitted that in this batch of writ petitions, the petitioners are challenging the mode of recovery of 'advertisement tax' through private contractor and the constitutional validity of Section 189-A of the Act of 1956. He drew our attention to various provisions of the Act of 1956 and the Byelaws of 1978 framed by the Indore Municipal Corporation, which came into force with effect from 31st May, 1958. He submitted that recovery of 'advertisement tax' can be made according to the Byelaws of 1978 and has further denied that there is no provision in the Byelaws of 1978 for granting or seeking to recover 'advertisement tax'. It is submitted that on the basis of Section 189-A of the Act of 1956, the Corporation is empowered to auction for recovery of 'advertisement tax' through a contractor. It is also submitted that by virtue of the powers conferred under Section 131 of the Act of 1956, a resolution was passed by the Indore Municipal Corporation in respect of the imposition of 'advertisement tax' and 'advertisement tax' has been levied in the entire township of Indore within the municipal limits. It has also been stated that in order to recover 'advertisement tax', tenders were floated and the offer of the highest bidder was accepted on behalf of the Indore Municipal Corporation and thereafter, an agreement was executed on 24.08.2011. He submitted that as per Section 132 (6) (i) of the Act of 1956, the petitioner is liable to be taxed, therefore, no case for

--- 32 ---

interference is made out in the matter. He submitted that no power has been given to respondent No.3 – private contractor to recover the tax by taking coercive action against the petitioner. He has drawn our attention to the decision of Gwalior Bench of this Court in the case of **Gwalior Advertisers Association, Gwalior & others v. The State of Madhya Pradesh & others, Writ Petition No.767/1994** decided on **07.08.1996** and submitted that learned Single Judge without considering the provisions of Section 189-A of the Act of 1956 has held that Municipal Corporation has no power to recover 'advertisement tax' through a private contractor, and therefore, the said decision will not be applicable in the present facts and circumstances of the case. He submitted that demand was made after following the provisions of Section 134 (1) of the Act of 1956. Number of petitioners have not raised any objection against the aforesaid demand, and therefore, they cannot make any submissions in respect of the same, and therefore, their contention that respondent No.3 is taking coercive action against them is contrary to the requirement of law.

35. To counter this submission of Shri A.K. Sethi, learned Senior Counsel, Shri B.L. Pavecha, learned Senior Counsel, who is appearing in Writ Petition No.2468/2012 has submitted that immediately after receipt of demand notice dated 14.01.2012 (Annexure P/1), reply was sent on 18.02.2012 vide Annexure P/4 and protest notice was also issued on 01.03.2012 (Annexure P/5).

36. Though from these contentions, it can be said that in some of the matters, no protest notice or objection was raised, but in maximum cases protest letter / objection was raised by the individuals and the Municipal, without deciding their objections, permitted the contractor to recover 'advertisement tax' from them.

37. Shri A.K. Sethi also drew our attention to clauses 4, 5, 6 and 7 of the Byelaws of 1978, which have been reproduced herein above in the preceding paragraphs and submitted that number of persons without taking any prior permission from the Indore Municipal Corporation, started advertising their products by affixing kiosk / sign boards. None of the petitioners have filed any valid permission granted by the Indore Municipal Corporation. He also submitted that an appeal is provided against the demand, but none of them have filed an appeal before the Appellate Authority. He also pointed out that Office of Airtel is situated at Metro Tower, Indore and advertising its products all over the Office and such type of advertisements cannot be permitted unless and until they pay 'advertisement tax'.

38. In reply, it is submitted that huge area for office has been occupied by the company. Total area of office is about 60,000 square feet having six entrance. To know their location, they put sign board / kiosk on some part of their office, which is at their own premises, and therefore, no 'advertisement tax' can be levied by them, which is less than 10% of the total space of the Office.

39. He submitted that after awarding contract to the

--- 33 ---

private contractor, employee of respondent No.3 along with its number of persons came to the premises of the petitioner and started demanding 'advertisement tax'. On failure to pay 'advertisement tax, persons of respondent No.3 started removing sign boards etc. and along with them, no employee / officer of Indore Municipal Corporation was present.

40. It is evident from the aforesaid provisions and the decisions that the power which have been delegated under Section 189-A is for recovery of the amount. That power does not include the levy and the assessment of the tax. In this case, the assessment has to be made by the Corporation. It is for the Corporation to issue notice to the petitioners regarding the provisional levy in respect of the hoardings either installed by them or through the advertising agency and the holders are required to raise objections if they want to lay the challenge to the demand mode. Whereupon, after giving opportunity of hearing to them, the final assessment has to be made and communicated to them. They have a right to file an appeal, if they were aggrieved by the demand raised. In absence thereof, the demand stands finality and in those case where appeal has been made after depositing the amount, as laid down under the law and as per decision of the Appellate Authority, challenged before any other forum unless the contractor can be directed to recover the amount by due process of law. Since the demand has not been raised, in accordance with the provisions laid down under the byelaws.

41. It is contended by the petitioners that since the mode of auction is not provided, consequently the adoption of this auction process is illegal and the contractor cannot be granted the contract, since he has been appointed on the basis of the auction carried out by the Municipal Corporation. The aforesaid contention is misplaced. The Full Bench of MP High Court in the case of **Sindhi Sahiti Multi Purpose & Transport Co-operative Society Limited, Bhopal** v. **State of MP & another** (supra) has dealt with the issue in great detail and decided against the petitioners.

42. Under Clause 5 of the Byelaws, no advertisement shall be exhibited, erected or fixed etc. except with the permission of the Municipal Corporation. Clause 6 lays down a particular form 'A' under which the application seeking permission of the Municipal Corporation is to be made. The Municipal Corporation is required to intimate the applicant the amount of tax payable on the intended advertisement. After the applicant has paid the tax, the application shall be considered and pass orders in Form 'B' permitting the exhibition or retention of the advertisement. From clause (1), it appears that it is this amount which is required to be paid by way of advance in the Office of Municipal Corporation. Clause (4) further lays down that the permission so granted shall be produced by the applicant and the tax shall be deposited and a duplicate copy of every advertisement permission so granted and the tax paid shall be sealed, if the token of tax paid and permission granted.

--- 34 ---

43. The contention advanced that they have no provision for raising objection against the amount of tax determined. Sub-Clause (2) of Clause (6) lays down that Municipal Corporation shall within four days from the date of receipt of the application intimate the applicant the amount of tax payable on intended advertisement. There appears to be in-built provision in Clause 6 (2) to raise objection, but there is no prohibition that the objection cannot be raised. The provisions of the Act of 1956 impliedly gives the power on receipt of the amount of tax payable, as laid down under Clause 6 (2) and if the applicant feels that the amount so determined is not payable or in excess, an objection can be raised and that is why in Clause 3, after the payment of the said tax, the application requires to be considered and the Municipal Corporation is required to pass an order in Form 'B' permitting exhibition or retention of the advertisement. Passing of the order, after the consideration, impliedly means that if any objection is raised, the same has got to be considered. Thus, it cannot be said that no opportunity is accorded to the applicant to raise an objection. Intimation of the amount of tax for the intended advertisement and consideration of the application impliedly amounts to granting an opportunity, which is also, in accordance to the principles of natural justice. Thus, no fault can be found in the procedure laid down and the contention of the petitioners does not appear to be correct, that there does not exist any provision for raising objection against the amount of tax payable, as per Clause 6 of the Byelaws.

44. The contention of Shri Pavecha, relying on the decision reported in the case of M/s. Somaiya Organics (India) Limited v. State of Uttar Pradesh (supra), that levy, collection and physical realization of the tax levied or imposed are not synonymous terms. Collection of tax is subsequent to the levy of the same. The enforcement of levy could only mean the realization of the tax imposed or demanded. There cannot be any dispute to the said proposition of law, as laid down by the Apex Court. Here, there exists a provision under the Byelaws, as stated herein before in Clauses 4, 5 and 6 and as such, the levy is to be imposed by the Municipal Corporation and can be collected and recovered by taking recourse to Section 189-A of the Act of 1956. But, in this case, the difficulty is that nothing has been produced in the record nor any pleading has been made by the Municipal Corporation that they followed the aforesaid clause, i.e. invited application in Form 'A'; determined the intended tax payable; and after the consideration, passed an order in Form 'B'. Consideration means objection, if any, raised or things analogous to it. This procedure has not been complied with and the notices have been issued directly for recovery of the amount, without the Municipal Corporation earlier determining the levy intimating to the applicant and passing a formal order and as such, the demand for recovery, in absence of the compliance of the aforesaid Clauses 4 to 6 is illegal and the advertising agent cannot itself levy or determine the liability of tax. It has the only power, when the advertising agent

--- 35 ---

has to recover the amount, as levied and determined by the Municipal Corporation.

45. The mode of collection by auction is not prohibited on the other hand, the provisions of the Act of 1956 impliedly and the Rules expressly permit the same. The scheme for collection of tax by auction is not unknown. The collection of 'advertisement tax' by auction is not uncommon. The Full Bench of this Court in the case of **Sindhi Sahiti Multi Purpose & Transport Co-operative Society Limited, Bhopal** v. **State of MP & another** (supra) has held that taxation and collection of tax are no doubt sovereign functions. The sovereign himself or itself cannot collect the tax. Tax has to be collected through appropriate agency. The agency can be a permanent cadre of employees. The agency can also be temporary agents on whom is conferred the authority to collect the tax, however, of course subject to the control of the sovereign or the local body. Where the employees collect the tax, they deposit the entire amount in the municipal fund and draw their pay. The same method could be followed under the scheme of auction. The successful bidder could be required to deposit the entire collection in the municipal fund and he may be separately paid for his exertion. Under the bye-laws, instead of depositing the entire amount and taking back the remuneration, the net amount is required to be deposited. Where the collection agency has to be remunerated, remuneration may be fixed on any reasonable basis including percentage or a lump sum. At the same time, the local body may secure guarantee of minimum collection. All these factors are taken into consideration in devising the mode of collection. The local body is assured of minimum collection which is as a matter of fact, the maximum possible amount realizable. The local body is secured from loss likely to cause by inefficiency of the collection agent.

46. We are unable to agree that the scheme propounded by the byelaws is contrary to any of the provisions of the Act of 1956. The fact that collection of tax is made through an agency, which necessarily has to work under the authority of the local body, cannot contravene the provisions of Article 265 of the Constitution. We are unable to agree that this mode of collection is contrary to the Act of 1956 and the intention of the legislature. We are also unable to agree that the contractor and the staff are beyond the restrictions of law. We, therefore, reject the contention of the petitioners and uphold the mode of collection challenged by the petitioners.

47. Reading of Section 133 of the Act of 1956 will show that it merely deals with the procedure for imposition of tax. The procedure for assessment, collection, remission, refund and recovery of taxes, cesses etc. is provided by the byelaws framed by the Municipal Corporation under Section 427 (3) of the Act of 1956.

48. In the case in hands, Byelaws have been framed for assessment and collection of tax under Section 427 (3) of the Act of 1956; and thus, the provisions of Sections 173 and 174 of the

--- 36 ---

Act of 1956 would not be applicable. In the case of **Shri Krishna Pictures, Indore & others v. Administrator, Indore Municipal Corporation & another** (supra), a Division Bench has held that Sections 133 and 134 of the Act impliedly provide for assessment in quasi judicial manner in cases where there are no separate byelaws for assessment of tax. We are, therefore, unable to accept the arguments that recovery and collection of 'advertisement tax' has to be made with Sections 173 and 174 of the Act of 1956.

49. The Byelaws of 1978 are framed under Section 427 of the Act of 1956 and Section 431 of the Act of 1956 provides that all byelaws shall be published in the Gazette and the effect of these provisions is that the Byelaws of 1978 shall become part of the Act of 1956. The Government of Madhya Pradesh has accepted and approved the Byelaws of 1978 framed by the Municipal Corporation, Indore and the same came into force with effect from 18.08.1978. In view of the aforesaid, we are of the view that no case is made out to quash the Resolution No.167 dated 24.08.2011 and Resolution No.233 dated 13.10.2011 passed by the Mayor-in-council. Nor any case is made out to quash the work order dated 20.10.2011 issued by respondent No.2 – Indore Municipal Corporation in favour of respondent No.3 and the agreement by which respondent No.2 awarded the contract to respondent No.3 for collection of the 'advertisement tax'. Considering the fact that the procedure, as prescribed under the Byelaws of 1978, has not been followed by the Municipal Corporation while directing respondent No.3 – contractor to recover 'advertisement tax' on their behalf, we quash the demand, which are subject matter in this batch of writ petitions and direct the Municipal Corporation to issue fresh demand regarding levy and collection of the 'advertisement tax', as per the rules of Byelaws and when the demand is finalized by the Municipal Corporation, then only the same may be given to respondent No.3 – contractor to recover it. The contractor shall recover the amount as per the scheme framed under the Byelaws. The contractor cannot take any coercive action for recovering the amount of 'advertisement tax'. If any one fails to pay 'advertisement tax', then the Municipal Corporation or its employee shall take appropriate steps for recovering the amount of 'advertisement tax', in accordance with the provisions of the Act of 1956 and the Rules and Byelaws framed thereunder.

50. Taking over all view of the matter, therefore, we are inclined to dispose of all the writ petitions and contempt case by quashing and setting aside the demand raised by respondent No.2 – Municipal Corporation, including all consequential action and notices based on the order of the Municipal Corporation, and instead relegate them before the concerned Competent Authority of the respondent No.2 – Municipal Corporation to re-examine the issue afresh in the light of the observations made hitherto.

51. Accordingly, all the writ petitions are allowed in part and are disposed of on the above terms.

52. No order as to costs.

--- 37 ---

This Court is of the considered opinion that all the grounds raised in the present Writ Petition have been answered by the Division Bench and imposition of entertainment tax by the Corporation through an agency M/s. Shouaditya Advertisement has been upheld. The same Company is also a respondent in the present Writ Petition.

In the light of the aforesaid, as the controversy involved in the present case stands concluded by the judgment delivered by the Division Bench, this Court does not find any ground or reason to take a different view of the matter and accordingly the present Writ Petition stands dismissed.

In other connected matters, it has been vehemently argued by Mr. V. K. Jain, learned senior counsel that the boards erected by the establishment owner is not an advertisement and it is the name of the shop or the name of the product or the name of the company of which the shopkeeper is dealing.

The Division Bench of this Court in the case of Bharti

--- 38 ---

Airtel (supra) and other connected matters, has also dealt with the aforesaid issue and all the neon boards, sign boards, display boards are liable for payment of tax, as held by the Division Bench in the aforesaid case.

Resultantly, the present Writ Petition is dismissed. The other connected Writ Petition are also dismissed. No order as to costs.

A copy of this order be placed in the record of the connected Writ Petitions.

(S. C. SHARMA)
J U D G E

(ALOK VERMA)
J U D G E

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