



2023INSC893

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5362 OF 2023

M/S Harsh Automobiles
Private Limited

...APPELLANT(S)

VERSUS

Indore Municipal Corporation

...RESPONDENT(S)

WITH

CIVIL APPEAL NO.5363 OF 2023

M/S Sanghi Brothers
(Indore) Private Limited

...APPELLANT(S)

VERSUS

Indore Municipal Corporation
And another

...RESPONDENT(S)

J U D G M E N T

Aravind Kumar, J.

1. The Order dated 24.10.2017 passed in WP No.1842 of 2016 and WP No.2106 of 2012 by the High Court of Madhya Pradesh whereunder

the demand notices raised against the appellants for payment towards advertisement tax came to be affirmed by relying upon the judgment of ***Bharti Airtel Vs. State of Madhya Pradesh*** rendered in ***WP No. 2296 of 2012*** decided on 12.01.2015 has been called in question.

RE: Facts in C.A.5362 of 2023 arising out of final order and judgment dated 24.10.2017 passed in WP No.1842 of 2016

2. Appellant is the occupier of the premises at 14 Rukmini Plaza, AB Road, Indore and is a dealer of Hyundai Passenger Cars and is carrying on said business at the said premises apart from other places. Appellant has displayed a name board with its trade name and business in the premises where business is being run. Second respondent issued a notice on 04.07.2015 demanding an amount of Rs.2,03,850/- for recovery of advertisement tax namely for the displaying sign board at its premises under Section 189-A of the Municipal Act, 1965. An objection was raised to the same by the appellant contending *inter alia* that putting up of sign board and displaying the name of the appellant's business would not fall within the definition of "advertisement", rather it was displaying its own name and business through the sign board as it would be necessary for the general public to know the name and

nature of business and the product it was dealing with. Being aggrieved by this notice writ petition under Article 226 of the Constitution of India came to be filed and the Hon'ble High Court by impugned order relying upon the judgment of ***Bharti Airtel*** (supra) dismissed the petition. Hence this appeal.

RE: Facts in CA 5363 of 2023 arising out of the final order and judgment dated 24.10.2017 passed in WP No.2106 of 2012.

Appellant is a company incorporated under the Companies Act, 1956 and in order to let the general public know the name and business of the company and the nature of its business and its products, appellant company has put up a name board displaying its trade name within the business premises displaying the products and services in which the appellant is dealing and as such the notice dated 04.01.2012 came to be issued by the second respondent demanding advertisement tax of Rs.1,31,137/- and yet another notice dated 04.01.2012 of Rs.51,000/- in respect of another premises where similar board had been put up by the appellant. These notices were duly replied to by the appellant by objecting to the same and contending *inter alia* that it was not

displaying any advertisement rather it was displaying its own trade name and business sign board and sought for withdrawal of the notice. It was also contended that notice issued was without jurisdiction as one of its premises situated at Lasudia Mori, AB Road, Tehsil and District Indore was situated outside the municipal limits and therefore no tax was leviable. Hence, sought for notices being withdrawn.

3. Subsequently, second respondent issued another notice on 08.02.2012 revising its earlier demand of sum of Rs.1,82,137.50 to Rs.46,050. This notice came to be challenged by filing a Writ Petition under article 226 of the Constitution of India before the High Court of Madhya Pradesh in Writ Petition No.2106 of 2012. The High Court by impugned order dated 24.10.2017 relying upon the judgment of *Bharti Airtel* (supra) dismissed the petition. Hence this appeal.

4. We have heard the arguments of learned advocates appearing for the parties namely Shri Kapil Arora and Mr. Niraj Sharma, learned counsel appearing for the appellants and Shri Mishra Saurabh, learned counsel appearing for the respondent.

5. It is the contention of the learned advocates appearing for the appellant that impugned orders have been passed by relying upon the judgment rendered by the coordinate bench of the High Court in *Bharti Airtel* (supra) which was inapplicable to the facts on hand as the issue involved in the said case related to whether the municipal corporation can appoint a tax collecting agent for the purpose of collection of advertisement tax? and the question relating to display of trade name and nature of business by a trader or a business establishment on its own premises where business is being carried on would tantamount to an advertisement, was neither in issue examined or decided in the said case. It is contended display of trade name and nature of business by a trader at its premises does not amount to “advertisement” and this fact has not been considered by the High Court under the impugned judgment. The learned advocates would further elaborate their submissions by contending that if putting up of a sign board at its own premises for identification purposes or for the customers to know the identity of the premises would amount to advertisement then sign name boards of all business establishments, Government officers, public sector undertakings, sign boards put up by professionals like Doctors,

Advocates, Engineers, Architects, Consultants, schools, colleges, hotels, restaurants etc. would also fall within the ambit of advertisement and would be liable to pay advertisement tax. Non-putting up of sign board displaying the name of the firm would result in the public or the customer making an extensive research and survey for buying a particular product or availing the services which the appellants were to provide. They would also contend that where the sign boards are put up to attract the customers and to promote the purchase of a particular product and providing information of the said product or service at a particular place would be an ‘advertisement’ whereas depicting the name of the business establishment and the products being dealt by it would only be an information to the general public and such display of information would not amount to advertisement and as such it would not be liable to be taxed.

6. They would also contend that imposition of “advertisement tax” on sign boards displaying the name and products of the business establishment is violative of Article 19(1)(a) and 19(1)(g) of the Constitution of India.

7. The learned counsel appearing for the appellant in Civil Appeal No.5363 of 2023 (Special Leave Petition No. 5761 of 2018) would also contend the Indore Municipal Corporation (advertisement, bye-laws) framed by virtue of the powers conferred under Indore Municipal Corporation Act, 1956 would mandate the imposition of advertisement tax to the premises situated within the territorial limits of Indore Municipal Corporation and the business premises of the appellant was situated outside the municipal limits namely the premises at Lasudia Mori, Tehsil and District Indore was not falling within the territorial limits of Municipal Corporation and as seen it would not be exigible for levy of advertisement tax and such levy would be without jurisdiction. Hence, they have sought for allowing the appeal.

8. Per contra, Shri Mishra Saurabh, learned counsel appearing for the respondent No.1 (Indore Municipal Corporation) would contend that appellants were displaying the name of their business establishment, name of their principal, names of the products and services of the companies in which they were dealing, with an intent to bring it to the notice and information of the general public for

commercial exploitation. Hence, he would contend if the sign board which has the purpose to make publicly known and information which is covered under the definition of “advertisement” it would amount to display for commercial exploitation. By referring to the judgment of this Court in ***Municipal Corporation of Greater Bombay (2002) 4 SCC 219*** and ***ICICI Bank Vs. Municipal Corporation of Greater Bombay (2005) 6 SCC 404*** he would contend that appellants have admittedly displayed the trade name and also the products and services in which they are dealing so as to bring it to the notice and information of general public about their business, the product and services provided by them which fulfills the definition of “advertisement” as held in ***Municipal Corporation of Greater Bombay Vs. Bharat Petroleum (2002) 4 SCC 219***. He would further contend that display of names of the commodity would fall under the definition of “advertisement” and therefore the name boards containing the names of product would be liable to advertisement tax. Contending on the touchstone of the Judgments of this Court when the facts on hand are examined it would clearly indicate that display boards of the appellants would reflect that they had a common object to seek the attention of the customers and give

information about the products and services which they would be rendering and thereby advertising to the general public about the product, its utility etc. and seeking the attention of the customers would tantamount to advertisement. Reiterating the contentions raised in the counter-affidavit and by relying upon the following judgments he has sought for dismissal of the appeals.

1. New Delhi Municipal Committee v/s. Allied Motors Pvt. Ltd **(1995) SUPP (4) SCC 150.**
2. ICICI Bank & Another v/s. Municipal Corporation of Greater Bombay & Ors. **(2005) 6 SCC 404.**
3. Municipal Corporation of Greater Bombay v/s. Bharat Petroleum Corporation Ltd. **(2002) 4 SCC 219.**
4. Municipal Corporation of Greater Bombay & Ors. v/s. Ratiloku Shetty **AIR 2002 Bom 94.**
5. Shri Krishna Pictures v/s. Administrator, Indore Municipal Corporation, Indore **1980 J LJ 530.**

9. A plain reading of the impugned order would clearly indicate that the Writ Petitions filed by the appellants herein before the High Court was dismissed by relying upon the judgment of ***Bharti Airtel vs. State of Madhya Pradesh*** rendering in ***W.P. No.2296 of 2012*** on

12.01.2015 by arriving at a conclusion that all the grounds raised in the writ petitions have been answered in *Bharti Airtel*.

10. A perusal of the judgment rendered in *Bharati Airtel* (supra) could indicate that the issue involved or the lis revolved around in the said matter was *whether the advertisement tax levied under the impugned notices therein through the medium of an agency is permissible? Namely, “whether contractor can be empowered to recover the terminal tax?”* It is in this background the impugned notices therein came to be quashed. Hence, we are of the considered view that principles enunciated in *Bharti Airtel* (supra) would be inapplicable to the facts on hand the impugned order would not be sustainable on this short ground. However, it would not stop at it, inasmuch as the issue regarding levy of advertisement tax would still be at large. It is in this background, we propose to examine as to what further course of action is proposed to be taken?

11. In the instant appeals, a demand was raised by the second respondent on the appellants for payment of advertisement tax which was objected to by the appellants contending *inter alia* that imposition

of tax on sign boards is impermissible and they were not advertising any product or goods and had only displayed the name of the business establishment describing or displaying the goods/ products in which they are dealing and exhibiting or displaying its trade name along with the commodity with which it is dealing, on its premises would not tantamount to advertisement particularly when no details/ characteristics, etc. are displayed to attract potential buyers by calling upon such purchasers to purchase a particular product and said notice was unsuccessfully challenged by the respective appellants before the High Court.

12. The Indore Municipal Corporation is a municipality as defined under Article 243-Q of the Constitution of India and by virtue of Entry No.5 of State List-II under Schedule VII of the Constitution the State Government has promulgated Madhya Pradesh Municipal Corporation Act, 1956 for Constitution, regulation of Municipal Corporation whereunder as the Corporation has been empowered to carry out all civil body works including levy and collection of various taxes which includes the tax on “advertisements” (otherwise advertisements

published in newspapers and advertisement broadcasted by radio or television) as provided under Entry No.55 of State List.

13. The respondent authorities have sought to sustain the demand by virtue of Section 132(6)(1) of the Municipal Corporation Act and said provisions reads:

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

(1) For the purpose of this Act, the Corporation shall, subject to any general or special order which the State Government may make in this behalf, impose in the whole or in any part of the Municipal Area, the following taxes namely: -

(a) a tax payable by the owners of buildings or lands situated within the city with reference to the gross annual letting value of the buildings or lands, called the property tax, subject to the provisions of Sections 135,136 and 138.

(b) a water tax, in respect of lands and building to which a water supply is furnished from or which are connected by means of pipe with municipal water works.

(c) a general sanitary cess, for the construction and maintenance of public latrines and for removal and disposal of refuse and general cleanliness of the city.

(d) a general lighting tax, where the lighting of public streets and places is undertaken by the corporation.

(e) a general fire tax, for the conduct and management of the fire service and for the protection of life and property in the case of fire.

(f) a local body tax on the entry of such goods as may be declared by the State Government by notification in the

Official Gazette into the municipal area for consumption, use or sale therein at a rate not exceeding four percent of the value of goods.

(2) Notwithstanding anything contained in clause (f) of sub-section (1) if in the opinion of the State Government it is expedient to do so, it may delegate the power to the Corporation to declare the goods on which local body tax shall be levied and the rates thereof.

(3) The mode of assessment and collection of the local body tax shall be such as may be prescribed.

(4) The water tax under the clause (b) of sub-section (1) shall be charged-

(a) on buildings and lands which are exempted from property tax, at a rate as shall be determined by the Corporation. (omitted)

(b) on buildings and lands which are not exempted from property tax, at a rate as determined in clause (a) plus such percentage of the property tax, as shall be determined by the Corporation.

Provided that the water tax under clause (b) of sub-section (1) shall not be levied on building and land owned by freedom fighters during their life time, if they are exempted from Income Tax and the water connection is for domestic purpose and which does not exceed half inch connection.

(5) The taxes under clause (c), (d), and (e) of sub-section (1) shall be levied at a consolidated rate as under:- (a) on buildings and lands which are exempted from property tax at a rate as determined by the corporation (omitted) (b) on buildings and lands which are not exempted from property tax at a rate prescribed under clause (a) plus such percentage of the property tax, as may be determined by the Corporation, subject to the conditions that such percentage shall not exceed ten percent of the amount of property tax.

(6) In addition to the taxes specified in sub-section (1), the Corporation may, for the purpose of this Act, subject to any

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general or special order which the State Government may make in this behalf, impose any of the following taxes, namely:

- (a) a latrine or conservancy tax payable by the occupier or owner upon private latrines, privies or cesspools or open premises or compounds cleansed by Corporation agency;
- (b) a drainage tax, where a system of drainage has been introduced;
- (c) a tax on persons exercising any profession or art or carrying on any trade or calling within the city;
- (d) omitted
- (e) omitted.
- (f) fees on the registration of cattle sold within the city;
- (g) market dues on persons exposing goods for sale in any market or in any place belonging to or under the control of the Government or of the Corporation;
- (h) a betterment tax on properties whose value may have improved as a result of town planning scheme undertaken by the Corporation;
- (i) a tax on pilgrims resorting periodically to a shrine within the limits of the Corporation;
- (j) a tax on persons occupying houses, buildings or lands within the limits of the Corporation according to their circumstances and property

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- (1) a tax on advertisement other than advertisements published in newspapers."

14. A perusal of the above provision would indicate that a tax on "advertisement" other than the advertisement published in newspapers,

can be imposed. Sub-section (1) of Section 133 of the Act provides that Corporation may, by a special meeting bring forward a resolution to propose imposition of any 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 system of assessment to be adopted. By virtue of power vested under Section 427 of the Act, respondent Corporation has made the Municipal Corporation (advertisement) bye-laws, 1976 which came to be approved by the State Government under Section 430 of the Act and it was duly published in the official gazette on 18.08.1978 as required under Section 429 and 431 of the Act of 1956. The respondent-Corporation is tracing its source of power to levy and collect advertisement tax under clause 4, 5 and 6 of the bye-laws of 1976.

15. In the teeth of aforesaid statutory provisions, it requires to be examined as to whether the display boards or sign boards or name boards as displayed by the appellants would partake the character of “advertisement” so as to attract Section 132 of the Act and thereby the demand is to be sustained? If the answer is in the affirmative, necessarily the demand deserves to be sustained. On the contrary, if the

answer is in the negative it would not detain us for long to quash the same. The incidental question which may also arise would be whether all modes of display would tantamount to advertisement? or such display would only be information to the potential customer so as to make aware about the type of product, goods or services dealt with by the business establishment that is available in the premises of such business establishment? To answer this, it would be apt and appropriate to note the meaning of the expression “advertisement” assigned under various dictionaries. They read as under:

(a) “BLACK'S LAW DICTIONARY, 8TH EDITION

Advertising: 1. The action of drawing the public's attention to something to promote its sale. 2. The business of producing and circulating advertisements

(b) LAW AND COMMERCIAL DICTIONARY

Advertisement: Notice given in a manner designed to attract public attention. *Edwards v. Lubbock Country, Tex Civ. App., 33 S.W.2d 482.* Information communicated to the public, or to an individual concerned, as by handbills, newspaper, television, bill-boards, radio. *First Nat. Corporation v. Perrine, 99 Mont 454: 43 P.2d 1073*

**(c) THE NEW ENCYCLOPAEDIA BRITTANICA
VOLUME-I**

Advertising, the techniques used to bring products, services, opinions, or causes to public notice for the purpose of persuading the public to respond in a certain way toward what is advertised. Most advertising involves promoting a good that is for sale, but similar methods are used to

encourage people to drive safely, to support various charities, or to vote for political candidates, among many other examples.

(d) COLLINS DICTIONARY OF THE ENGLISH LANGUAGE

Advertisement any public notice, as a printed display in a newspaper, short film on television, announcement on radio, etc., designed to sell goods, publicize an event, etc.

Advertising 1) the action or practice of drawing public attention to goods, services, events etc., as by the distribution of printed notices, broadcasting, etc. 2) the business that specializes in creating such publicity, 3) advertisements collectively; publicity.

(e) THE CHAMBERS DICTIONARY

Advertisement - the act of advertising; a public notice with the purpose of informing and/or changing public attitudes and behavior; a short performance recorded for radio, T.V. etc. to advertise goods or services; news.

16. This Court in the case of **ICICI Bank and Another Vs. Municipal Corporation of Greater Bombay** (2005) 6 SCC 404 has held that advertisement should have some commercial exposition or the soliciting customers to the product or service prominently shown in the advertisement. Primarily, it should have a commercial purpose and should be indicative of business activity of the displayer with a view to attract the attention of people to its business it has been further held:

“15. An advertisement is a matter that draws attention of the public or segment of public to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organisation or line of conduct intended to promote sale or use of product or range of products. An advertisement is an information that the producer provides about its products or services. An advertisement tries to get consumers to buy a product or a service. An advertisement is generally of goods and services and is an information intended for the potential customers and not a mere display of the name of the company unless the same happens to be a trade mark or trade name.”

17. The aforesaid finding was recorded in the background of Section 328A of Bombay Municipal Corporation Act. It has been further held therein to the following effect:

“18. The context in which the word advertisement has been used in Section 328-A of the Corporation Act and in the commercial and ordinary parlance it must have direct or indirect connection with the business, trade or commerce carried out by the advertiser. It must have some commercial exposition. The advertisement would be for the purpose of directing or soliciting customers to the product or service prominently shown in the advertisement. If ordinary parlance meaning is not given to the word advertisement in Section 328-A it will create anomalous position, inasmuch as a simple name board put on the house to indicate who is residing in the premises, would also be an advertisement; a name board or signboard of a trader visible to the public or identifying the place of business would also be an advertisement. In our considered opinion advertisement within the meaning of Section 328-A of the Corporation Act must primarily have a commercial purpose and should be indicative of business activity of the displayer with a view to attract the attention of people to its business.

19. In the present case the appellant has put up an illuminated ATM board at various sites and as per the appellant it has been put only to tell the existing customers and others about the location of the ATM centres, which in itself is in the interest of public at large and not to attract new customers for opening the bank account. Normally, the ATM centres enable the customers to carry out the banking activities or transactions at any time, day or night and even on gazetted holidays. They are in the nature of public service as they enable the customers to do away with the need to keep large sums of cash in their house; they are able to have access to the money in their account even on holidays and emergency. The ATM centres have a signboard over them that are illuminated and tell about the fact that there lies the ATM centre of the Bank in that premises. The fact that there is an ATM centre in the premises tells that the appellant Bank is providing automatic teller machine service there and hence the service provider is clearly identified. The communication in this is directed to the account-holders and also to prospective account-holders. The kind of information supplied of the location of the service provided may also be construed of commercial exploitation indirectly, as the signboards may not aim at the existing customers only but they may also affect the decisions of the prospective customers. They tell the prospective customers that the service of the ATM round the clock is being made available by the appellant Bank which would influence the prospective customers to make a decision about which service provider he or she has to choose. The signboard also helps the people to find out which bank is offering better services as compared to the other bank. The fact that a bank has more ATM centers than the other banks, in the competitive trade and business, provides the incentive to the people to choose that bank. The fact that one bank has an ATM center in the given location helps them to get more account-holders in that area. This also serves the commercial interest of the bank. Whether particular action is an advertisement or not would depend on whether the person wants to promote directly or indirectly his product or service. If by any communication, the communicator tries to influence the people to buy his product or service or attract towards his product or service then it would be a guiding factor to identify whether a particular communication of the communicator tantamount to be an advertisement.”

18. Keeping the aforesaid principles enunciated in mind when we turn our attention to the facts on hand in general and particularly the photographs appended (Annexure P-7 in Civil Appeal No.5363 of 2023 @ SLP(C) 5761 of 2018 and Annexure P-6 in Civil Appeal No.5362 of 2023 @ SLP(C) 5703 of 2018), prima facie, it would indicate that as dealers of Tata Motors and Hyundai Vehicles appellants have displayed their name board of respective business establishment which is also depicting the nature of the respective vehicles which are being sold and it would be inseparable part of the appellants' business establishment. By mere mentioning the name of the product in which the business establishment is being run would not partake the character of the advertisement until and unless by such display customers are solicited. In the absence of the display of the name board or sign board either by a business establishment or any other establishment including public offices and professionals or schools or colleges etc. it would drive the potential customer to such a situation where it would be neigh impossible to identify the business establishment from which the potential customer proposes to buy. However, if the sign boards so

displayed would in any manner promote a particular product or goods or services or in other words it would attract customers to purchase a particular brand of product or goods or services and such display provides information about the product/ services and solicit the customers, it may amount to advertisement while the latter would only be an information to the public. The statutory provisions noted hereinabove does not empower the Municipal Corporation or its agency to demand tax for display of information through name boards or display boards. It would emerge from the statutory provisions noted hereinabove that the legislative intent was never to impose tax liability on sign boards but only on advertisement. *Prima facie*, the sign boards are display boards displayed by the appellants' companies in the instant appeals would indicate that they have displayed on their respective premises the general information to the public about the products being dealt with by them and it would not reflect any soliciting of customers or induce the general public to buy the products dealt by the appellants and displayed on the board. Even in such circumstances, if it is held that it amounts to advertisement, such levy would be without authority of

law and would find foul of Article 19(1)(a), 19(1)(g) and Article 265 of the Constitution of India.

19. In the instant case as noticed hereinabove, on the demand being raised both the appellants objected to the same and even before the ink on the objections so raised could dry or in other words even before it came to be considered they approached the High Court invoking the extra ordinary jurisdiction of the High court which was in due haste as such the dismissal of the petition though for a different reason which we have not subscribed our approval, yet the end result requires to be sustained and at the same breadth we hold that impugned notices are required to be adjudicated by the first respondent afresh in the light of objections filed to the said notices. Hence, we direct the first respondent to examine the objections filed by the appellants to the impugned demand notices expeditiously and at any rate with an outer limit of (8) eight weeks from the date of receipt of this order and in the event of issue being answered against the appellants the demand raised thereunder shall not be enforced for a further period of (8) eight weeks from the date of such order or determination. It is needless to state that appellants would be at liberty to challenge any adverse orders passed

by the Commissioner in accordance with law. It is also made clear that interim order passed shall continue till the period indicated hereinabove. In the peculiar circumstances of the case costs made easy.

20. Accordingly, the appeals stand disposed of.

.....J.
(S. Ravindra Bhat)

.....J.
(Aravind Kumar)

New Delhi,
October 09, 2023